

115TH CONGRESS
1ST SESSION

H. R. 1747

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to reauthorize and improve the Brownfields revitalization program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2017

Mr. PALLONE (for himself and Mr. TONKO) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to reauthorize and improve the Brownfields revitalization program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Brownfields Authoriza-
5 tion Increase Act of 2017”.

1 **SEC. 2. CLARIFICATION OF STATE OR LOCAL GOVERNMENT**
2 **OWNERSHIP.**

3 Section 101(20)(D) of the Comprehensive Environ-
4 mental Response, Compensation, and Liability Act of
5 1980 (42 U.S.C. 9601(20)(D)) is amended by striking
6 “involuntarily” the first place it appears.

7 **SEC. 3. NONPROFIT ORGANIZATION ELIGIBILITY.**

8 (a) DEFINITION OF ELIGIBLE ENTITY.—Section
9 104(k)(1) of the Comprehensive Environmental Response,
10 Compensation, and Liability Act of 1980 (42 U.S.C.
11 9604(k)(1)) is amended—

12 (1) in subparagraph (G), by striking “Alaska;
13 or” and inserting “Alaska;”;

14 (2) in subparagraph (H), by striking “Indian
15 community.” and inserting “Indian community; or”;
16 and

17 (3) by adding at the end the following new sub-
18 paragraph:

19 “(I) a nonprofit organization, including—
20 “(i) an organization described in sec-
21 tion 501(c)(3) of the Internal Revenue
22 Code of 1986 and exempt from taxation
23 under section 501(a) of such Code;
24 “(ii) a limited liability corporation in
25 which all managing members or all mem-

1 bers are organizations described under
2 clause (i);

3 “(iii) a limited partnership in which
4 all general partners are—

5 “(I) organizations described
6 under clause (i);

7 “(II) limited liability corporations
8 whose members are all organizations
9 described under clause (i); or

10 “(III) any combination of sub-
11 clauses (I) and (II); or

12 “(iv) a qualified community develop-
13 ment entity, as defined in section
14 45D(c)(1) of the Internal Revenue Code of
15 1986.”.

16 (b) CONFORMING AMENDMENTS.—Section 104(k) of
17 the Comprehensive Environmental Response, Compensa-
18 tion, and Liability Act of 1980 (42 U.S.C. 9604(k)) is
19 amended—

20 (1) in paragraph (3)—

21 (A) in subparagraph (A)(ii)—

22 (i) by striking “or nonprofit organiza-
23 tions”; and

24 (ii) by striking “or organization”; and

25 (B) in subparagraph (B)(ii)—

1 (i) by striking “or other nonprofit or-
2 ganization”; and

3 (ii) by striking “or nonprofit organiza-
4 tion”; and

5 (2) in paragraph (6)(A), by striking “or non-
6 profit organizations”.

7 **SEC. 4. INCREASED FUNDING LIMIT FOR DIRECT REMEDI-**
8 **ATION.**

9 Section 104(k)(3)(A) of the Comprehensive Environ-
10 mental Response, Compensation, and Liability Act of
11 1980 (42 U.S.C. 9604(k)(3)(A)), as amended in section
12 3(b) of this Act, is further amended—

13 (1) in clause (ii)—

14 (A) by striking “\$200,000” and inserting
15 “\$750,000”; and

16 (B) by inserting “, except that during the
17 period of fiscal years 2018 through 2022, the
18 President may, on not more than 2 occasions,
19 waive such \$750,000 limitation to permit the
20 entity to receive a grant in an amount not to
21 exceed \$1,500,000 for a site to be remediated
22 based on special circumstances, as determined
23 by the President” after “site to be remediated”;
24 and

25 (2) by adding after clause (ii) the following:

1 “The President may transfer any duties under this
2 subparagraph to the Administrator.”.

3 **SEC. 5. INDIRECT COSTS.**

4 Subparagraph (B) of section 104(k)(4) of the Com-
5 prehensive Environmental Response, Compensation, and
6 Liability Act of 1980 (42 U.S.C. 9604(k)(4)) is amend-
7 ed—

8 (1) in clause (i), by striking subclause (III) and
9 redesignating subclauses (IV) and (V) as subclauses
10 (III) and (IV), respectively; and

11 (2) by striking clause (ii) and inserting the fol-
12 lowing:

13 “(ii) ACCEPTABLE USE OF FUNDS.—

14 “(I) IN GENERAL.—In addition
15 to other acceptable purposes described
16 in this subsection, a grant or loan
17 under this subsection may be used for
18 payment for the costs of—

19 “(aa) investigation and iden-
20 tification of the extent of con-
21 tamination;

22 “(bb) design and perform-
23 ance of a response action; and

24 “(cc) monitoring of a nat-
25 ural resource.

1 “(II) INDIRECT COSTS.—Not
2 more than 10 percent of a grant or
3 loan under this subsection may be
4 used for the payment of indirect
5 costs.”.

6 **SEC. 6. ELIGIBILITY FOR FUNDING FOR BROWNFIELD**
7 **SITES ACQUIRED PRIOR TO JANUARY 11, 2002.**

8 Subparagraph (B) of section 104(k)(4) of the Com-
9 prehensive Environmental Response, Compensation, and
10 Liability Act of 1980 (42 U.S.C. 9604(k)(4)), as amended
11 in section 5 of this Act, is further amended by striking
12 clause (iii) and inserting the following:

13 “(iii) EXCEPTIONS.—Notwithstanding
14 clause (i)(III), the Administrator may use
15 funds made available to carry out this sub-
16 section for one or more of the following:

17 “(I) To make a grant under
18 paragraph (2) to an eligible entity
19 that acquired a brownfield site to be
20 covered by the grant on or before
21 January 11, 2002.

22 “(II) To make a grant under
23 paragraph (3) to an eligible entity if
24 such eligible entity, except as other-
25 wise provided in this subclause, satis-

1 fies all of the elements set forth in
2 section 101(40) to qualify as a bona
3 fide prospective purchaser, except that
4 the date of acquisition of the
5 brownfield site was on or before Janu-
6 ary 11, 2002. The Administrator may
7 make exceptions with regard to com-
8 pliance with the elements set forth in
9 section 101(40) based on mitigating
10 circumstances, including any of the
11 following:

12 “(aa) The brownfield site
13 was acquired prior to May 31,
14 1997, and compliance with all
15 appropriate inquiry (as required
16 under section 101(40)(B)) can-
17 not be fairly determined.

18 “(bb) A current site assess-
19 ment of the brownfield site has
20 found no evidence that the eligi-
21 ble entity caused or exacerbated
22 contamination found at the site
23 or failed to exercise appropriate
24 care (as required under section

1 101(40)(D)) with respect to con-
2 tamination found at the site.

3 “(cc) The eligible entity held
4 a public hearing with respect to
5 the grant application and no sub-
6 stantive testimony was offered
7 that indicates that the eligible
8 entity caused or exacerbated con-
9 tamination found at the site or
10 failed to exercise appropriate care
11 (as required under section
12 101(40)(D)) with respect to con-
13 tamination found at the site.

14 “(dd) There are other cir-
15 cumstances that make compli-
16 ance with the elements set forth
17 in section 101(40) impractical
18 and not in the public interest.

19 “(III) To make a grant or loan
20 under this subsection to an eligible
21 entity if such entity—

22 “(aa) acquired ownership of
23 the brownfield site at least 30
24 years prior to the date of the

1 grant or loan, but not later than
2 May 31, 1997;

3 “(bb) did not cause or con-
4 tribute to the contamination on
5 the brownfield site; and

6 “(cc) can reasonably indi-
7 cate why such entity cannot com-
8 ply with the elements set forth in
9 section 101(40) to qualify as a
10 bona fide prospective pur-
11 chaser.”.

12 **SEC. 7. MULTI-PURPOSE BROWNFIELD GRANTS.**

13 (a) MULTI-PURPOSE GRANT PROGRAM.—Section
14 104(k) of the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980 (42 U.S.C.
16 9604(k)) is amended—

17 (1) by redesignating paragraph (12) as para-
18 graph (15);

19 (2) by redesignating paragraphs (4) through
20 (11), as amended, as paragraphs (5) through (12),
21 respectively; and

22 (3) by adding after paragraph (3) the following
23 new paragraph:

24 “(4) MULTI-PURPOSE BROWNFIELD GRANTS.—

1 “(A) ESTABLISHMENT OF PROGRAM.—
2 Subject to paragraphs (5) and (6), the Admin-
3 istrator shall establish a program to provide
4 multi-purpose grants to eligible entities, where
5 warranted, as determined by the Administrator
6 based on considerations under paragraph
7 (3)(C), to be used to inventory, characterize, as-
8 sess, conduct planning related to, or remediate
9 (or any combination thereof), one or more
10 brownfield sites in an area, in amounts not to
11 exceed \$1,500,000 per grant.

12 “(B) ADDITIONAL CONSIDERATIONS.—In
13 addition to the considerations under paragraph
14 (3)(C), the Administrator, in determining to
15 award a multi-purpose grant under the program
16 under subparagraph (A), shall consider the ex-
17 tent to which the eligible entity demonstrates—

18 “(i) an overall plan for revitalization
19 of brownfield sites in the area in which the
20 multi-purpose grant will be used;

21 “(ii) the capacity to conduct the range
22 of eligible activities that will be funded by
23 the multi-purpose grant; and

1 “(iii) that a multi-purpose grant is
2 appropriate for meeting the needs of the
3 area in which the grant will be used.

4 “(C) GRANT FUNDS.—Grants provided
5 under the program established under subpara-
6 graph (A) shall be expended not later than 3
7 years after the award of grant funding to the
8 eligible entity, unless the Administrator deter-
9 mines that an extension of not more than 2
10 years is justified.

11 “(D) OWNERSHIP.—A recipient of a grant
12 under this paragraph may not use amounts
13 from such grant on remediation of a brownfield
14 site until such recipient owns such site.

15 “(E) EXISTING AUTHORITY.—Nothing in
16 this paragraph shall limit any other authority of
17 the President or the Administrator under this
18 subsection.”.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 104(k)(3)(A) of the Comprehensive
21 Environmental Response, Compensation, and Liabil-
22 ity Act of 1980 (42 U.S.C. 9604(k)(3)(A)), as
23 amended, is further amended by striking “Subject to
24 paragraphs (4) and (5)” and inserting “Subject to
25 paragraphs (5) and (6)”.

1 (2) Section 104(k)(3)(C) of the Comprehensive
2 Environmental Response, Compensation, and Liabil-
3 ity Act of 1980 (42 U.S.C. 9604(k)(3)(C)) is
4 amended by inserting “or paragraph (4)” after
5 “under subparagraph (A)(ii) or (B)(ii)”.

6 **SEC. 8. PROGRAM FOR SUSTAINABLE REUSE AND ALTER-**
7 **NATIVE ENERGY ON BROWNFIELD SITES.**

8 Section 104(k) of the Comprehensive Environmental
9 Response, Compensation, and Liability Act of 1980 (42
10 U.S.C. 9604(k)) is amended by adding after paragraph
11 (12), as redesignated by section 7(a)(2) of this Act, the
12 following new paragraph:

13 “(13) PROGRAM FOR SUSTAINABLE REUSE AND
14 ALTERNATIVE ENERGY ON BROWNFIELD SITES.—

15 “(A) ESTABLISHMENT AND USE OF
16 FUNDS.—The Administrator shall establish a
17 program to make grants, on a competitive
18 basis, to eligible entities to be used at one or
19 more brownfield sites for projects that reduce
20 environmental impact, increase community liv-
21 ability, and encourage sustainability, includ-
22 ing—

23 “(i) sustainable reuse planning and
24 site analysis, including—

1 “(I) site characterization and as-
2 sessment;

3 “(II) area and corridor sustain-
4 ability plans; and

5 “(III) engineering or feasibility
6 analysis of environmentally beneficial
7 site improvements;

8 “(ii) remediation;

9 “(iii) ecosystem restoration; and

10 “(iv) habitat restoration.

11 “(B) PROJECT SELECTION.—In addition to
12 the criteria under paragraph (6), in selecting
13 grant recipients under this paragraph, the Ad-
14 ministrator shall take into consideration the ex-
15 tent to which a grant will facilitate future use
16 of a brownfield site in an environmentally bene-
17 ficial and sustainable manner, including the po-
18 tential for renewable energy production and
19 green infrastructure, including greenways and
20 hike-bike trails, green buildings, and mixed use
21 and transit-oriented development in smart
22 growth locations.”.

1 **SEC. 9. STAFF FOR SMALL, DISADVANTAGED, OR RURAL**
2 **COMMUNITIES.**

3 Section 104(k) of the Comprehensive Environmental
4 Response, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9604(k)) is amended by adding after paragraph
6 (13) (as added by section 8 of this Act) the following:

7 “(14) STAFF FOR SMALL, DISADVANTAGED, OR
8 RURAL COMMUNITIES.—The Administrator, upon
9 approval of an application made by an eligible entity
10 serving a community that has a small population, is
11 disadvantaged, or is in a rural location, and in ac-
12 cordance with the applicable provisions of sub-
13 chapter VI of chapter 33 of title 5, United States
14 Code, may assign employees of the Environmental
15 Protection Agency to such eligible entity to build
16 local capacity for the remediation and revitalization
17 of brownfield sites located in such communities. The
18 Administrator shall determine, consistent with exist-
19 ing law and regulation in effect as of the date of en-
20 actment of this paragraph and subject to comment
21 and public review, what qualifies as a community
22 that has a small population, is disadvantaged, or is
23 in a rural location for purposes of this paragraph,
24 provided that such definitions include rural municipi-
25 palities, municipalities with populations of up to
26 20,000, and municipalities in which the median

1 household income is at or less than $\frac{2}{3}$ of the State
2 average.”.

3 **SEC. 10. SMALL COMMUNITY TECHNICAL ASSISTANCE**
4 **GRANTS.**

5 Paragraph (7)(A) of section 104(k) of the Com-
6 prehensive Environmental Response, Compensation, and
7 Liability Act of 1980 (42 U.S.C. 9604(k)) (as redesi-
8 gned by section 7(a)(2) of this Act) is amended—

9 (1) by striking “The Administrator may pro-
10 vide,” and inserting the following:

11 “(i) DEFINITIONS.—In this subpara-
12 graph:

13 “(I) DISADVANTAGED AREA.—
14 The term ‘disadvantaged area’ means
15 an area with an annual median house-
16 hold income that is less than $\frac{2}{3}$ of the
17 statewide annual median household
18 income, as determined by the latest
19 available decennial census.

20 “(II) SMALL COMMUNITY.—The
21 term ‘small community’ means a com-
22 munity with a population of not more
23 than 20,000 individuals, as deter-
24 mined by the latest available decennial
25 census.

1 “(ii) ESTABLISHMENT OF PRO-
2 GRAM.—The Administrator shall establish
3 a program to provide grants that pro-
4 vide,”; and

5 (2) by adding at the end the following:

6 “(iii) SMALL OR DISADVANTAGED
7 COMMUNITY RECIPIENTS.—

8 “(I) IN GENERAL.—Subject to
9 subclause (II), in carrying out the
10 program under clause (ii), the Admin-
11 istrator shall use not more than
12 \$1,500,000 of amounts made available
13 to carry out this paragraph to provide
14 grants to eligible entities and institu-
15 tions of higher education, as deter-
16 mined by the Administrator, to assist
17 small communities, Indian tribes,
18 rural areas, or disadvantaged areas in
19 achieving the purposes described in
20 clause (ii).

21 “(II) LIMITATION.—Each grant
22 awarded under subclause (I) shall be
23 not more than \$10,000.”.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—Sub-
3 paragraph (A) of paragraph (15) (as redesignated by sec-
4 tion 7(a)(1) of this Act) of section 104(k) of the Com-
5 prehensive Environmental Response, Compensation, and
6 Liability Act of 1980 (42 U.S.C. 9604(k)) is amended to
7 read as follows:

8 “(A) AUTHORIZATION OF APPROPRIA-
9 TIONS.—There are authorized to be appro-
10 priated to carry out this subsection—

11 “(i) \$350,000,000 for fiscal year
12 2018;

13 “(ii) \$400,000,000 for fiscal year
14 2019;

15 “(iii) \$450,000,000 for fiscal year
16 2020;

17 “(iv) \$500,000,000 for fiscal year
18 2021;

19 “(v) \$550,000,000 for fiscal year
20 2022; and

21 “(vi) \$600,000,000 for fiscal year
22 2023.”

23 (b) SET ASIDE FOR PROGRAM FOR SUSTAINABLE
24 REUSE AND ALTERNATIVE ENERGY ON BROWNFIELD
25 SITES.—Paragraph (15) of section 104(k) of the Com-
26 prehensive Environmental Response, Compensation, and

1 Liability Act of 1980 (42 U.S.C. 9604(k)), as redesign-
 2 nated by section 7(a)(1) of this Act and as amended by
 3 subsection (a) of this section, is further amended by add-
 4 ing after subparagraph (B) the following new subpara-
 5 graph:

6 “(C) SET ASIDE FOR PROGRAM FOR SUS-
 7 TAINABLE REUSE AND ALTERNATIVE ENERGY
 8 ON BROWNFIELD SITES.—Of amounts made
 9 available each fiscal year pursuant to subpara-
 10 graph (A), at least 7.5 percent of such amounts
 11 shall be used to carry out the program under
 12 paragraph (13).”.

13 **SEC. 12. STATE RESPONSE PROGRAMS.**

14 Section 128(a)(3) of the Comprehensive Environ-
 15 mental Response, Compensation, and Liability Act of
 16 1980 (42 U.S.C. 9628(a)(3)) is amended to read as fol-
 17 lows:

18 “(3) FUNDING.—There are authorized to be ap-
 19 propriated to carry out this subsection—

20 “(A) \$70,000,000 for fiscal year 2018;

21 “(B) \$80,000,000 for fiscal year 2019;

22 “(C) \$90,000,000 for fiscal year 2020;

23 “(D) \$100,000,000 for fiscal year 2021;

24 “(E) \$110,000,000 for fiscal year 2022;

25 and

1 “(F) \$120,000,000 for fiscal year 2023
2 and each fiscal year thereafter.”.

○