AMENDMENT NO. _________ Calendar No. _______

Purpose: In the nature of a substitute.


S. 822

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to modify provisions relating to grants, and for other purposes.

Referred to the Committee on ______________ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by ______________

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Brownfields Utiliza-
5 tion, Investment, and Local Development Act of 2017” or
6 the “BUILD Act”.

7 SEC. 2. EXPANDED ELIGIBILITY FOR NONPROFIT ORGANI-
8 ZATIONS.

9 Section 104(k)(1) of the Comprehensive Environ-
10 mental Response, Compensation, and Liability Act of
11 1980 (42 U.S.C. 9604(k)(1)) is amended—
(1) in subparagraph (G), by striking “or” after the semicolon;

(2) in subparagraph (H), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(I) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code;

“(J) a limited liability corporation in which all managing members are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I);

“(K) a limited partnership in which all general partners are organizations described in subparagraph (I) or limited liability corporations whose sole members are organizations described in subparagraph (I); or

“(L) a qualified community development entity (as defined in section 45D(c)(1) of the Internal Revenue Code of 1986).”.
SEC. 3. MULTIPURPOSE BROWNFIELDS GRANTS.

Section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)) is amended—

(1) by redesignating paragraphs (4) through (9) and (10) through (12) as paragraphs (5) through (10) and (13) through (15), respectively;

(2) in paragraph (3)(A), in the matter preceding clause (i), by striking “subject to paragraphs (4) and (5)” and inserting “subject to paragraphs (5) and (6)”;

(3) by inserting after paragraph (3) the following:

“(4) MULTIPURPOSE BROWNFIELDS GRANTS.—

“(A) IN GENERAL.—Subject to subparagraph (D) and paragraphs (5) and (6), the Administrator shall establish a program to provide multipurpose grants to an eligible entity based on the considerations under paragraph (3)(C), to carry out inventory, characterization, assessment, planning, or remediation activities at 1 or more brownfield sites in a proposed area.

“(B) GRANT AMOUNTS.—

“(i) INDIVIDUAL GRANT AMOUNTS.— Each grant awarded under this paragraph shall not exceed $950,000.
“(ii) CUMULATIVE GRANT AMOUNTS.—The total amount of grants awarded for each fiscal year under this paragraph shall not exceed 15 percent of the funds made available for the fiscal year to carry out this subsection.

“(C) CRITERIA.—In awarding a grant under this paragraph, the Administrator shall consider the extent to which an eligible entity is able—

“(i) to provide an overall plan for revitalization of the 1 or more brownfield sites in the proposed area in which the multipurpose grant will be used;

“(ii) to demonstrate a capacity to conduct the range of eligible activities that will be funded by the multipurpose grant; and

“(iii) to demonstrate that a multipurpose grant will meet the needs of the 1 or more brownfield sites in the proposed area.

“(D) CONDITION.—As a condition of receiving a grant under this paragraph, each eligible entity shall expend the full amount of the grant not later than the date that is 3 years
after the date on which the grant is awarded to
the eligible entity unless the Administrator, in
the discretion of the Administrator, provides an
extension.”.

SEC. 4. TREATMENT OF CERTAIN PUBLICLY OWNED
BROWNFIELD SITES.

Section 104(k)(2) of the Comprehensive Environ-
mental Response, Compensation, and Liability Act of
1980 (42 U.S.C. 9604(k)(2)) is amended by adding at the
end the following:

“(C) EXEMPTION FOR CERTAIN PUBLICLY
OWNED BROWNFIELD SITES.—Notwithstanding
any other provision of law, an eligible entity
that is a governmental entity may receive a
grant under this paragraph for property ac-
quired by that governmental entity prior to
January 11, 2002, even if the governmental en-
tity does not qualify as a bona fide prospective
purchaser (as that term is defined in section
101(40)), so long as the eligible entity has not
caused or contributed to a release or threatened
release of a hazardous substance at the prop-
erty.”.
SEC. 5. INCREASED FUNDING FOR REMEDIATION GRANTS.

Section 104(k)(3)(A)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)(3)(A)(ii)) is amended by striking “$200,000 for each site to be remediated” and inserting “$500,000 for each site to be remediated, which limit may be waived by the Administrator, but not to exceed a total of $650,000 for each site, based on the anticipated level of contamination, size, or ownership status of the site”.

SEC. 6. ALLOWING ADMINISTRATIVE COSTS FOR GRANT RECIPIENTS.

Paragraph (5) of section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by section 3(1)) is amended—

(1) in subparagraph (B)—

(A) in clause (i)—

(i) by striking subclause (III); and

(ii) by redesignating subclauses (IV) and (V) as subclauses (III) and (IV), respectively;

(B) by striking clause (ii);

(C) by redesignating clause (iii) as clause (ii); and
(D) in clause (ii) (as redesignated by sub-
paragraph (C)), by striking “Notwithstanding
clause (i)(IV)” and inserting “Notwithstanding
clause (i)(III)”;

(2) by adding at the end the following:

“(E) **Administrative costs.**—

“(i) **In general.**—An eligible entity
may use up to 8 percent of the amounts
made available under a grant or loan
under this subsection for administrative
costs.

“(ii) **Restriction.**—For purposes of
clause (i), the term ‘administrative costs’
does not include—

“(I) investigation and identification
of the extent of contamination;

“(II) design and performance of
a response action; or

“(III) monitoring of a natural re-
source.”.

**SEC. 7. SMALL COMMUNITY TECHNICAL ASSISTANCE**

**GRANTS.**

Paragraph (7)(A) of section 104(k) of the Com-
prehensive Environmental Response, Compensation, and
Liability Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by section 3(1)) is amended—

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

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

“(I) DISADVANTAGED AREA.—
The term ‘disadvantaged area’ means an area with an annual median house-
hold income that is less than 80 per-
cent of the statewide annual median household income, as determined by the latest available decennial census.

“(II) SMALL COMMUNITY.—The term ‘small community’ means a com-
munity with a population of not more than 15,000 individuals, as deter-
determined by the latest available decennial census.

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

(2) by adding at the end the following:
“(iii) Small or disadvantaged community recipients.—

“(I) In general.—Subject to subclause (II), in carrying out the program under clause (ii), the Administrator shall use not more than $600,000 of the amounts made available to carry out this paragraph to provide grants to States that receive amounts under section 128(a) to assist small communities, Indian tribes, rural areas, or disadvantaged areas in achieving the purposes described in clause (ii).

“(II) Limitation.—Each grant awarded under subclause (I) shall be not more than $7,500.”.

SEC. 8. WATERFRONT BROWNFIELDS GRANTS.

Section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)) is amended by inserting after paragraph (10) (as redesignated by section 3(1)) the following:

“(11) Waterfront brownfield sites.—

“(A) Definition of waterfront brownfield site.—In this paragraph, the
term ‘waterfront brownfield site’ means a brownfield site that is adjacent to a body of water or a federally designated floodplain.

“(B) REQUIREMENTS.—In providing grants under this subsection, the Administrator shall—

“(i) take into consideration whether the brownfield site to be served by the grant is a waterfront brownfield site; and

“(ii) give consideration to waterfront brownfield sites.”.

SEC. 9. CLEAN ENERGY BROWNFIELDS GRANTS.

Section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)) (as amended by section 8) is amended by inserting after paragraph (11) the following:

“(12) CLEAN ENERGY PROJECTS AT BROWNFIELD SITES.—

“(A) DEFINITION OF CLEAN ENERGY PROJECT.—In this paragraph, the term ‘clean energy project’ means—

“(i) a facility that generates renewable electricity from wind, solar, or geothermal energy; and
“(ii) any energy efficiency improvement project at a facility, including combined heat and power and district energy.

“(B) Establishment.—The Administrator shall establish a program to provide grants—

“(i) to eligible entities to carry out inventory, characterization, assessment, planning, feasibility analysis, design, or remediation activities to locate a clean energy project at 1 or more brownfield sites; and

“(ii) to capitalize a revolving loan fund for the purposes described in clause (i).

“(C) Maximum amount.—A grant under this paragraph shall not exceed $500,000.”.

SEC. 10. TARGETED FUNDING FOR STATES.

Paragraph (15) of section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by section 3(1)) is amended by adding at the end the following:

“(C) Targeted Funding.—Of the amounts made available under subparagraph
(A) for a fiscal year, the Administrator may use not more than $2,000,000 to provide grants to States for purposes authorized under section 128(a), subject to the condition that each State that receives a grant under this subparagraph shall have used at least 50 percent of the amounts made available to that State in the previous fiscal year to carry out assessment and remediation activities under section 128(a).”.

SEC. 11. CLARIFICATION OF OWNER OR OPERATOR.

(a) Acquisition by State or Local Government as Sovereign.—

   (1) Owner or operator.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) is amended—

      (A) in subparagraph (A), in the first sentence, by striking “due to bankruptcy” and all that follows through “local government,” and inserting “to a unit of State or local government through seizure or otherwise in connection with law enforcement activity; through bankruptcy, tax delinquency, abandonment, or escheat; through any other involuntary transfer or acquisition; through the exercise of eminent
domain authority by purchase or condemnation;
or through other circumstances in which the
unit of State or local government acquires title
by virtue of its function as a sovereign,”;

(B) in subparagraph (C), by striking “section 107(a)(3) or (4)” and inserting “paragraph (3) or (4) of section 107(a),”; and

(C) in subparagraph (D), in the first sentence, by striking “which acquired” and all that follows through “by virtue” and inserting “that
acquired ownership or control through seizure
or otherwise in connection with law enforcement
activity; through bankruptcy, tax delinquency,
abandonment, or escheat; through any other in-
voluntary transfer or acquisition; through the
exercise of eminent domain authority by pur-
chase or condemnation; or through other cir-
cumstances in which the government acquires
title by virtue”.

(2) CONTRACTUAL RELATIONSHIP.—Section
101(35)(A) of the Comprehensive Environmental
Response, Compensation, and Liability Act of 1980
(42 U.S.C. 9601(35)(A)) is amended—
(A) in the matter preceding clause (i), by striking “clause (i), (ii), or (iii)” and inserting “clause (i) or (ii)”;

(B) by striking clause (ii); and

(C) by redesignating clause (iii) as clause (ii).

(b) Alaska Native Village and Native Corporation Relief.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) is amended—

(1) by redesignating subparagraphs (E) through (G) as subparagraphs (F) through (H), respectively, and indenting appropriately;

(2) by inserting after subparagraph (D) the following:

“(E) Exclusion of Certain Alaska Native Villages and Native Corporations.—

“(i) In general.—The term ‘owner or operator’ does not include—

“(I) a Native village or Native Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) that received a contaminated facility from the United States Gov-
ernment under that Act (43 U.S.C. 1601 et seq.); or

“(II) a successor in interest to a contaminated facility referred to in subclause (I) that was conveyed to the successor in interest under section 14(c) of that Act (43 U.S.C. 1613(c)).

“(ii) APPlicability.—Clause (i) does not apply to any Native village, Native Corporation, or successor in interest that has caused or contributed to the release or threatened release of a hazardous substance from a contaminated facility referred to in that clause.

“(iii) Liability.—Any Native village, Native Corporation, or successor in interest that causes or contributes to the release or threatened release of a hazardous substance from a contaminated facility referred to in clause (i) shall be subject to the provisions of this Act in the same manner and to the same extent, procedurally and substantively, as any nongovernmental entity, including liability under section 107.”;
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(3) in subparagraph (G) (as so redesignated), in the matter preceding clause (i), by striking “sub-
paragraph (E)” and inserting “subparagraph (F)”;
and

(4) in clause (i)(II) of subparagraph (H) (as so
redesignated), by striking “1813)” and inserting
“1813))”.

(c) PROSPECTIVE PURCHASERS AND LESSEES.—

(1) BONA FIDE PROSPECTIVE PURCHASER.—

Section 101(40) of the Comprehensive Environ-
mental Response, Compensation, and Liability Act
of 1980 (42 U.S.C. 9601(40)) is amended—

(A) in subparagraph (B)—

(i) by redesignating clauses (i)
through (iii) as subclauses (I) through
(III), respectively, and indenting appro-
priately;

(ii) in subclause (I) (as so redesig-
nated), by striking “clauses (ii) and (iii)”
and inserting “subclauses (II) and (III)”;

(iii) in subclause (II) (as so redesig-
nated), by striking “subparagraph” and in-
serting “clause”; and
(iv) in subclause (III) (as so redesignated), by striking “subparagraph” and inserting “clause”;

(B) in subparagraph (D), by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting appropriately;

(C) in subparagraph (F), by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and indenting appropriately;

(D) in subparagraph (H)—

   (i) in clause (i)—

      (I) in subclause (II), by inserting “, by a tenancy, by the instruments by which a leasehold interest in the facility is created,” after “financed”; and

      (II) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively, and indenting appropriately; and

   (ii) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and indenting appropriately;
(E) by redesignating subparagraphs (B) through (H) as clauses (ii) through (viii), respectively, and indenting appropriately;

(F) by striking the paragraph designation and heading and all that follows through “All disposal of” in subparagraph (A) and inserting the following:

“(40) BONA FIDE PROSPECTIVE PURCHASER.—

“(A) IN GENERAL.—The term ‘bona fide prospective purchaser’ means—

“(i) a person that—

“(I) after January 11, 2002, acquires ownership of a facility; and

“(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B);

“(ii) a tenant of a person described in clause (i);

“(iii) a tenant of a person that—

“(I) formerly met the criteria described in clause (i) but no longer meets that criteria due to a factor unrelated to any action of the tenant; and
“(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i), (iii), (iv), (v), (vi), (vii), and (viii) of subparagraph (B); and

“(iv) a person that—

“(I) holds a leasehold interest in a facility; and

“(II) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B).

“(B) CRITERIA.—The criteria described in this subparagraph are as follows:

“(i) DISPOSAL PRIOR TO ACQUISITION.—All disposal of”; and

(G) by adding at the end the following:

“(C) SPECIAL RULE.—With respect to a facility, in any case in which the ownership or operational control held by a person is established by a tenancy or lease, the person shall be considered to be a bona fide prospective purchaser only if the person establishes by a preponderance of the evidence that the tenancy or
lease is not designed to avoid liability under this Act by any person that—

“(i) does not meet the criteria applicable to that person under subparagraph (B); or

“(ii) is liable under paragraph (3) or (4) of section 107(a).”.

(2) LIMITATION ON LIABILITY.—Section 107(r)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(r)(1)) is amended by striking “purchaser’s” and inserting “bona fide prospective purchaser”.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) BROWNFIELDS REVITALIZATION FUNDING.—

Paragraph (15)(A) of section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by section 3(1)) is amended by striking “2006” and inserting “2020”.