SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that the Act may be cited as the “Brownfields Utilization, Investment, and Local Development Act of 2018.”

Section 2. Redevelopment Certainty for Governmental Entities.

This section amends the exclusion from the definition of “owner or operator” that currently applies to involuntary acquisitions of property by states or local governments in section 101(20)(D) of CERCLA. It does so by removing the term “involuntarily,” and expanding the exclusion to include property voluntarily acquired in connection with law enforcement activity, and through other circumstances in which a state or local government acquires title by virtue of its function as a sovereign.

Section 3. Alaska Native Village and Native Corporation Relief.

This section exempts from the definition of “owner or operator,” Alaska Native villages or Alaska Native Corporations and their successors that received a contaminated facility from the United States government under the Alaska Native Claims Settlement Act. The exemption does not apply if the Alaska Native Village or Native Corporation (or their successors) caused or contributed to the contamination. Without this exclusion the villages and corporations are not eligible for brownfields grants and could be held liable for contamination caused by the federal government.

Section 4. Petroleum Brownfield Enhancement.

This section amends the definition of “brownfield site” in section 101(39)(D) to clarify that a petroleum site is eligible to be a brownfield site if there is no viable responsible party and if EPA or the State determine that the site will be assessed and remediated by a person who is not potentially liable to clean up the site.

Section 5. Prospective Purchasers and Lessees.

This section amends the definition of a “bona fide prospective purchaser” in 101(40) of CERCLA and extends the defense from liability to lessees that meet the requirements to be a bona fide prospective purchaser regardless of whether the owner of the property qualifies for the defense which is consistent with current EPA enforcement discretion.
Section 6. Expanded Eligibility for Nonprofit Organizations.

This section makes certain non-profit entities, 501(c)(3) organizations, limited liability corporations and limited liability partnerships (the members of which are non-profit organizations), and qualified community development entities, “eligible entities” under section 104(k)(1).

Section 7. Treatment of Publicly Owned Brownfields Sites.

This section provides that an otherwise eligible entity may receive a brownfields assessment or remediation grant even if the brownfields property was acquired prior to January 11, 2002.

Section 8. Increased Funding for Remediation Grants.

This section increases the limit for remediation grants from $200,000 to $500,000 and allows EPA to waive that limit up to $650,000 based on the level of contamination, and the size or ownership status of the site.

Section 9. Multipurpose Brownfields Grants.

This section allows EPA to issue multipurpose grants to inventory, characterize, assess, plan, and remediate one or more sites in an area proposed by the eligible entity. The grants may be up to $1,000,000. This section also establishes criteria and conditions for the award of the multipurpose grants and establishes a limit on the total amount of grants EPA may award in each fiscal year.

Section 10. Allowing Administrative Costs for Grant Recipients.

This section allows eligible entities to use up to 5 percent of a grant to pay administrative costs. The section also restricts what may be considered as an administrative cost.

Section 11. Grant Applications.

This section directs EPA to include in the ranking system for grant applications, the extent to which a grant would: address a site adjacent to a body of water or a federally designated flood plain; facilitate the location of a facility that generates renewable electricity; or facilitate the location of energy efficiency improvement projects on a brownfields site. This section also requires EPA to report to Congress by September 30, 2022 on how the Agency applies the ranking criteria.

Section 12. Audits.

This section requires the EPA Inspector General to submit a report to Congress that provides a description of the management of the program (including a description of the allocation of funds under this subsection) by September 30, 2022.
Section 13. Brownfields Funding.

This section is the authorization for appropriations of the brownfields program at current levels ($200,000,000) for fiscal years 2019 through 2023 under section 104(k) of CERCLA.


This section allows EPA to make grants to States under section 128(a) to facilitate small communities, Indian tribes, rural areas, or disadvantaged areas in the State in taking an inventory of sites, conducting site assessment or remediation, facilitating community involvement, or site preparation at brownfields sites. EPA may use up to $1,500,000 of the funds available under 104(k) for this purpose and the grants to States may not be more than $20,000. The section also defines “Disadvantaged Area” and “Small Community.”

Section 15. State Response Program Funding.

This section is the authorization of appropriations for State response grants at current levels ($50,000,000) for fiscal years 2019 through 2023 under section 128(a) of CERCLA.