

111TH CONGRESS
2D SESSION

H. R. 5310

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

MAY 13, 2010

Mr. PALLONE (for himself and Mr. SESTAK) 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 Reauthor-
5 ization Act of 2010”.

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” after “acquired ownership or control”.

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), 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 2011 through 2016, 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 remedi-
 24 ated”; and

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

1 “The President may transfer any duties under this sub-
2 paragraph 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, exacerbated, or
22 failed to exercise appropriate care
23 (as required under section
24 101(40)(D)) with respect to con-
25 tamination found at the site.

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

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

16 “(III) To make a grant or loan
17 under this subsection to an eligible
18 entity if such entity—

19 “(aa) acquired ownership of
20 the brownfield site at least 30
21 years prior to the date of the
22 grant or loan, but not later than
23 May 31, 1997;

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

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

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

11 (a) MULTI-PURPOSE GRANT PROGRAM.—Section
 12 104(k) of the Comprehensive Environmental Response,
 13 Compensation, and Liability Act of 1980 (42 U.S.C.
 14 9604(k)), is amended—

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

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

20 (3) by adding after paragraph (3) the following
 21 new paragraph:

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

23 “(A) ESTABLISHMENT OF PROGRAM.—

24 Subject to paragraphs (5) and (6), the Admin-
 25 istrator shall establish a program to provide

1 multi-purpose grants to eligible entities, where
2 warranted, as determined by the Administrator
3 based on considerations under paragraph
4 (3)(C), to be used to inventory, characterize, as-
5 sess, conduct planning related to, or remediate
6 (or any combination thereof), one or more
7 brownfield sites in an area, in amounts not to
8 exceed \$1,500,000 per grant.

9 “(B) ADDITIONAL CONSIDERATIONS.—In
10 addition to the considerations under paragraph
11 (3)(C), in determining whether a multi-purpose
12 grant is warranted under the program under
13 subparagraph (A), the Administrator shall con-
14 sider the extent to which the eligible entity
15 demonstrates—

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

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

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

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

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

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

16 (b) CONFORMING AMENDMENTS.—

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

23 (2) Section 104(k)(3)(C) of the Comprehensive
24 Environmental Response, Compensation, and Liabil-
25 ity Act of 1980 (42 U.S.C. 9604(k)(3)(C)) is

1 amended by inserting “or paragraph (4)” after
 2 “under subparagraph (A)(ii) or (B)(ii)”.

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

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

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

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

20 “(i) sustainable reuse planning and
 21 site analysis, including—

22 “(I) site characterization and as-
 23 sessment;

24 “(II) area and corridor sustain-
 25 ability plans; and

1 “(III) engineering or feasibility
2 analysis of environmentally beneficial
3 site improvements;
4 “(ii) remediation;
5 “(iii) ecosystem restoration; and
6 “(iv) habitat restoration.

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

19 **SEC. 9. STAFF FOR SMALL, DISADVANTAGED, OR RURAL**
20 **COMMUNITIES.**

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

1 “(14) STAFF FOR SMALL, DISADVANTAGED, OR
2 RURAL COMMUNITIES.—The Administrator, upon
3 approval of an application made by an eligible entity
4 serving a community that has a small population, is
5 disadvantaged, or is in a rural location, and in ac-
6 cordance with the applicable provisions of sub-
7 chapter VI of chapter 33 of title 5, United States
8 Code, may assign employees of the Environmental
9 Protection Agency to such eligible entity to build
10 local capacity for the remediation and revitalization
11 of brownfield sites located in such communities. The
12 Administrator shall determine, consistent with exist-
13 ing law and regulation in effect as of the date of en-
14 actment of this paragraph, what qualifies as a com-
15 munity that has a small population, is disadvan-
16 taged, or is in a rural location for purposes of this
17 paragraph, provided that such definitions include
18 rural municipalities, municipalities with populations
19 of up to 20,000, and municipalities in which the me-
20 dian household income is at or less than $\frac{2}{3}$ of the
21 State average.”.

22 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) AUTHORIZATION OF APPROPRIATIONS.—Sub-
24 paragraph (A) of paragraph (15) (as redesignated by sec-
25 tion 7(a)(1) of this Act) of section 104(k) of the Com-

1 prehensive Environmental Response, Compensation, and
2 Liability Act of 1980 (42 U.S.C. 9604(k)) is amended to
3 read as follows:

4 “(A) AUTHORIZATION OF APPROPRIA-
5 TIONS.—There are authorized to be appro-
6 priated to carry out this subsection—

7 “(i) \$350,000,000 for fiscal year
8 2011;

9 “(ii) \$400,000,000 for fiscal year
10 2012;

11 “(iii) \$450,000,000 for fiscal year
12 2013;

13 “(iv) \$500,000,000 for fiscal year
14 2014;

15 “(v) \$550,000,000 for fiscal year
16 2015; and

17 “(vi) \$600,000,000 for fiscal year
18 2016.”.

19 (b) PETROLEUM SET ASIDE.—Paragraph (15) of sec-
20 tion 104(k) of the Comprehensive Environmental Re-
21 sponse, Compensation, and Liability Act of 1980 (42
22 U.S.C. 9604(k)), as redesignated by section 7(a)(1) of this
23 Act and as amended by subsection (a) of this section, is
24 further amended, in subparagraph (B), by inserting “at
25 least” before “25 percent”.

1 (c) SET ASIDE FOR SUSTAINABLE REUSE.—Para-
 2 graph (15) of section 104(k) of the Comprehensive Envi-
 3 ronmental Response, Compensation, and Liability Act of
 4 1980 (42 U.S.C. 9604(k)), as redesignated by section
 5 7(a)(1) of this Act and as amended by subsections (a) and
 6 (b) of this section, is further amended by adding after sub-
 7 paragraph (B) the following new subparagraph:

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

15 **SEC. 11. STATE RESPONSE PROGRAMS.**

16 Section 128(a)(3) of the Comprehensive Environ-
 17 mental Response, Compensation, and Liability Act of
 18 1980 (42 U.S.C. 9628(a)(3)) is amended to read as fol-
 19 lows:

20 “(3) FUNDING.—There are authorized to be ap-
 21 propriated to carry out this subsection \$70,000,000
 22 for fiscal year 2011, \$80,000,000 for fiscal year
 23 2012, \$90,000,000 for fiscal year 2013,
 24 \$100,000,000 for fiscal year 2014, \$110,000,000 for

- 1 fiscal year 2015, and \$120,000,000 for fiscal year
- 2 2016 and each fiscal year thereafter.”.

