# DIVISION N—BUILD ACT

**SECTION 1. SHORT TITLE.**

This division may be cited as the ''Brownfields Utilization, Investment, and Local Development Act of 2018'' or the ''BUILD Act''.

**SEC. 2. REDEVELOPMENT CERTAINTY FOR GOVERNMENTAL ENTITIES.**

Section 101(20)(D) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) is amended by striking ''ownership or control'' and all that follows through ''by virtue'' and inserting ''ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue''.

**SEC. 3. 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;

(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, with respect to a facility conveyed to a Native village or Native Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act) under the Alaska Native Claims Settlement Act—

"(I) the Native village or Native Corporation that received the facility from the United States Government; or

"(II) a successor in interest to which the facility was conveyed under section 14(c) of such Act.

"(ii) LIMITATION.—The exclusion provided under this subparagraph shall not apply to any entity described in clause (i) that causes or contributes to a release or threatened release of a hazardous substance from the facility conveyed as described in such clause.";

(3) in subparagraph (G) (as so redesignated), in the matter preceding clause (i), by striking ''subparagraph (E)'' and inserting ''subparagraph (F)''; and

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

**SEC. 4. PETROLEUM BROWNFIELD ENHANCEMENT.**

Section 101(39)(D)(ii)(II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(39)(D)(ii)(II)) is amended by amending item (bb) to read as follows:

''(bb) is a site for which there is no viable responsible party and that is determined by the Administrator or the State, as appropriate, to be a site that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site under this Act or any other law pertaining to the cleanup of petroleum products; and''.

**SEC. 5. PROSPECTIVE PURCHASERS AND LESSEES.**

(a) BONA FIDE PROSPECTIVE PURCHASER.—Section 101(40) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(40)) is amended—

(1) in subparagraph (B)—

(A) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and indenting appropriately;

(B) in subclause (I) (as so redesignated), by striking ''clauses (ii) and (iii)'' and inserting ''subclauses (II) and (III)'';

(C) in subclause (II) (as so redesignated), by striking ''subparagraph'' and inserting ''clause''; and

(D) in subclause (III) (as so redesignated), by striking ''subparagraph'' and inserting ''clause'';

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

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

(4) in subparagraph (H)—

(A) 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

(B) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and indenting appropriately;

(5) by redesignating subparagraphs (B) through (H) as clauses (ii) through (viii), respectively, and indenting appropriately; and

(6) 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, with respect to a facility—

''(i) a person who—

''(I) acquires ownership of the facility after January 11, 2002; and

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

''(ii) a person—

"(I) who acquires a leasehold interest in the facility after January 11, 2002;

"(II) who establishes by a preponderance of the evidence that the leasehold interest is not designed to avoid liability under this Act by any person; and

"(III) with respect to whom any of the following conditions apply:

"(aa) The owner of the facility that is subject to the leasehold interest is a person described in clause (i).

"(bb)(AA) The owner of the facility that is subject to the leasehold interest was a person described in clause (i) at the time the leasehold interest was acquired, but can no longer establish by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B) due to circumstances unrelated to any

action of the person who holds the leasehold interest; and

"(BB) the person who holds the leasehold interest 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).

"(cc) The person who holds the leasehold interest 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".

(b) 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. 6. EXPANDED ELIGIBILITY FOR NONPROFIT ORGANIZATIONS.**

Section 104(k)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 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. 7. TREATMENT OF CERTAIN PUBLICLY OWNED BROWNFIELD SITES.**

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

(1) in paragraph (2), by adding at the end the following:

"(C) EXEMPTION FOR CERTAIN PUBLICLY OWNED BROWNFIELD SITES.—Notwithstanding paragraph (5)(B)(iii), an eligible entity described in any of subparagraphs (A) through (H) of paragraph (1) may receive a grant under this paragraph for property acquired by that eligible entity prior to January 11, 2002, even if the eligible entity does not qualify as a bona fide prospective purchaser, so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property."; and

(2) in paragraph (3), by adding at the end the following:

"(E) EXEMPTION FOR CERTAIN PUBLICLY OWNED BROWNFIELD SITES.—Notwithstanding paragraph (5)(B)(iii), an eligible entity described in any of subparagraphs (A) through (H) of paragraph (1) may receive a grant or loan under this paragraph for property acquired by that eligible entity prior to January 11, 2002, even if the eligible entity does not qualify as a bona fide prospective purchaser, so long as the eligible entity has not caused or contributed to a release or threatened release of a hazardous substance at the property.".

**SEC. 8. 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. 9. 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 (12) as paragraphs (5) through (13), 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 criteria under subparagraph (C) and the considerations under paragraph (3)(C), to carry out inventory, characterization, assessment, planning, or remediation activities at 1 or more brownfield sites in an area proposed by the eligible entity.

"(B) GRANT AMOUNTS.—

"(i) INDIVIDUAL GRANT AMOUNTS.—Each grant awarded under this paragraph shall not exceed $1,000,000.

"(ii) CUMULATIVE GRANT AMOUNTS.—The total amount of grants awarded for each fiscal year under this paragraph may 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 the 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 by not later than the date that is 5 years after the date on which the grant is awarded to the eligible entity, unless the Administrator provides an extension.

"(E) OWNERSHIP.—An eligible entity that receives a grant under this paragraph may not expend any of the grant funds for the remediation of a brownfield site unless the eligible entity owns the brownfield site."; and

(4) by striking "paragraph (2) or (3)" each place it appears and inserting "paragraph (2), (3), or (4)".

**SEC. 10. 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 9 of this Act) is amended—

(1) by amending subparagraph (B) to read as follows:

"(B) PROHIBITION.—No part of a grant or loan under this subsection may be used for the payment of—

"(i) a penalty or fine;

"(ii) a Federal cost-share requirement;

"(iii) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 107; or

"(iv) a cost of compliance with any Federal law (including a Federal law specified in section 101(39)(B)), excluding the cost of compliance with laws applicable to the cleanup."; and

(2) by adding at the end the following:

"(E) ADMINISTRATIVE COSTS.—

"(i) IN GENERAL.—An eligible entity may use up to 5 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 of a brownfield site;

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

"(III) monitoring of a natural resource.".

**SEC. 11. GRANT APPLICATIONS.**

(a) WATERFRONT BROWNFIELDS GRANTS; CLEAN ENERGY ON BROWNFIELD SITES.—Paragraph (6)(C) 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 9 of this Act) is amended by adding at the end the following:

"(xi) The extent to which a grant would address a site adjacent to a body of water or a federally designated flood plain.

"(xii) The extent to which a grant would facilitate—

"(I) the location at a brownfield site of a facility that generates renewable electricity from wind, solar, or geothermal energy; or

"(II) any energy efficiency improvement project at a brownfield site,

including a project for a combined heat and power system or a district energy system.''.

(b) REPORT ON RANKING CRITERIA.—Paragraph (6) 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 9 of this Act) is amended by adding at the end the following:

''(D) REPORT ON RANKING CRITERIA.—Not later than September 30, 2022, the Administrator shall submit to Congress a report regarding the Administrator's use of the ranking criteria described in subparagraph (C) in awarding grants under this subsection.''.

**SEC. 12. AUDITS.**

Paragraph (8) 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 9 of this Act) is amended by striking ''3 years after the date of the enactment of this subsection'' and inserting ''September 30, 2022''.

**SEC. 13. BROWNFIELDS FUNDING.**

Paragraph (13) of section 104(k) of the Comprehensive Environmental Response, Compensation, and Liabil-

ity Act of 1980 (42 U.S.C. 9604(k)) (as redesignated by section 9 of this Act) is amended to read as follows:

"(13) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $200,000,000 for each of fiscal years 2019 through 2023.".

**SEC. 14. SMALL COMMUNITY TECHNICAL ASSISTANCE GRANTS.**

(a) IN GENERAL.—Section 128(a)(1)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9628(a)(1)(B)) is amended—

(1) in clause (ii)—

(A) in subclause (I), by striking "; or" and inserting a semicolon;

(B) in subclause (II), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(III) assist small communities, Indian tribes, rural areas, or disadvantaged areas in carrying out activities described in section 104(k)(7)(A) with respect to brownfield sites."; and

(2) by adding at the end the following:

"(iii) SMALL COMMUNITIES, INDIAN TRIBES, RURAL AREAS, AND DISADVANTAGED AREAS.—

"(I) IN GENERAL.—To make grants to States or Indian tribes under clause (ii)(III), the Administrator may use, in addition to amounts available to carry out this subsection, not more than $1,500,000 of the amounts made available to carry out section 104(k)(7) in each fiscal year.

"(II) LIMITATION.—Each grant made under subclause (I) may be not more than $20,000.

"(III) INCLUSION IN OTHER GRANTS.—The Administrator may, at the request of a State or Indian tribe, include a grant under this clause in any other grant to the State or Indian tribe made under this subsection.

"(iv) DEFINITIONS.—In this subparagraph:

"(I) DISADVANTAGED AREA.—The term 'disadvantaged area' means

a community with an annual median household income that is less than 80 percent of the statewide annual median household income, as determined by the President based on the latest available decennial census.

"(II) SMALL COMMUNITY.—The term 'small community' means a community with a population of not more than 15,000 individuals, as determined by the President based on the latest available decennial census.".

(b) CONFORMING AMENDMENT.—Section 104(g)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(g)(1)) is amended by inserting "or section 128(a)(1)(B)(ii)(III)" after "under this section".

**SEC. 15. STATE RESPONSE PROGRAM FUNDING.**

Section 128(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9628(a)(3)) is amended to read as follows:

"(3) FUNDING.—There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2019 through 2023.".