

105TH CONGRESS  
1ST SESSION

# H. R. 990

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the development and use of brownfields, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1997

Mr. QUINN (for himself, Mr. MCHALE, Mr. FRANKS of New Jersey, Mr. MEEHAN, Mr. DOYLE, Mrs. KELLY, Mr. TRAFICANT, Mr. SMITH of New Jersey, Mr. EHLERS, Mr. LIPINSKI, Mr. GREENWOOD, Mr. FRELINGHUYSEN, Mr. CONYERS, Mrs. CARSON, Mr. PORTER, Mr. HOLDEN, Ms. CHRISTIAN-GREEN, Mr. KENNEDY of Rhode Island, and Mr. MCHUGH) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, and Ways and Means, 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

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## A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the development and use of brownfields, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Brownfields Remedi-  
3 ation and Economic Development Act of 1997”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—The Congress finds that:

6 (1) The General Accounting Office has esti-  
7 mated that between 130,000 and 425,000 aban-  
8 doned industrial sites will need cleanup action to be-  
9 come economically viable once again.

10 (2) The cleanup costs to remediate these  
11 “brownfield” sites to productive use could reach  
12 hundreds of billions of dollars.

13 (3) “Brownfields” remediation is the number  
14 one economic priority in many American cities.

15 (4) Encouraging private investment for these  
16 remediation efforts presents an opportunity to create  
17 jobs and promote economic development in localities  
18 and the States.

19 (b) PURPOSE.—The purpose of this Act is to estab-  
20 lish a program under which the Federal Government, in  
21 cooperation with appropriate State and local entities, shall  
22 remediate “brownfields” in order to return them to pro-  
23 ductive use while conserving prime open space, or “green-  
24 fields”.

1 **SEC. 3. EPA CERTIFICATION OF STATE BROWNFIELD PRO-**  
2 **GRAMS.**

3 (a) CERTIFICATION.—The Administrator of the Envi-  
4 ronmental Protection Agency (hereinafter in this Act re-  
5 ferred to as the “Administrator”) shall certify any State  
6 brownfield program submitted to the Administrator under  
7 this Act that satisfies the criteria of section 4. Certifi-  
8 cation of State programs shall be granted only for pro-  
9 grams which have jurisdiction over brownfield sites which  
10 have been contaminated prior to enactment of this Act.

11 (b) CHANGE IN PROGRAM.—Whenever a State makes  
12 a significant change in a certified State brownfield pro-  
13 gram, the State shall submit a statement to the Adminis-  
14 trator demonstrating that the program continues to satisfy  
15 the criteria of section 4.

16 (c) ASSISTANCE.—The Administrator shall provide to  
17 the States, where appropriate, technical assistance and ex-  
18 pertise with respect to certified State brownfield pro-  
19 grams.

20 **SEC. 4. EVALUATION CRITERIA FOR STATE BROWNFIELDS**  
21 **PROGRAMS.**

22 A State brownfields program may be certified under  
23 this Act if the program—

24 (1) covers only contaminated sites that are not  
25 listed on the National Priorities List;

1           (2) provides for public participation, in good  
2 faith prior to the granting of a release from liability  
3 under sections 4 and 5;

4           (3) provides for the reopening of a brownfields  
5 cleanup proposal:

6                 (A) if any person has undertaken any as-  
7 pect of the site assessment or remediation in a  
8 fraudulent manner, including misrepresentation  
9 of such person's relationship to the site;

10                (B) if there is a significant change in sci-  
11 entific standards applicable under the State  
12 program to remediation;

13                (C) if a landowner or prospective pur-  
14 chaser of a brownfield site wishes to change the  
15 proposed use of a site to one that demands a  
16 higher cleanup standard; or

17                (D) if the proposed remediation fails or the  
18 remedy is not properly maintained or operated;  
19 and

20           (4) contains cleanup criteria for brownfield sites  
21 that are protective of public health and the environ-  
22 ment; and

23           (5) includes coordination among State agencies  
24 for environmental protection and business/economic  
25 development.

**1 SEC. 5. LANDOWNER LIABILITY.**

2 In the case of any brownfield site remediation carried  
3 out pursuant to a State program certified under this Act,  
4 upon completion of remediation pursuant to such program  
5 and release from State liability under any applicable State  
6 provisions regarding liability for contaminated sites, the  
7 owner of the brownfield site and the facility operator at  
8 such site shall cease to be liable under sections 106 and  
9 107 of the Comprehensive Environmental Response, Com-  
10 pensation, and Liability Act of 1980 for the contamination  
11 described in the site assessment and evaluation carried out  
12 under the State program at the site concerned to the ex-  
13 tent such liability is based on the status of such person  
14 as described in paragraph (1) or (2) of section 107(a).

**15 SEC. 6. OTHER LIABILITY RELEASES.**

16 In the case of any brownfield site remediation carried  
17 out pursuant to a State program certified under this Act,  
18 upon completion of remediation pursuant to such program  
19 and release from State liability under any applicable State  
20 provisions regarding liability for contaminated sites, the  
21 Administrator shall release the following persons from li-  
22 ability under sections 106 and 107 of the Comprehensive  
23 Environmental Response, Compensation, and Liability Act  
24 of 1980 for the contamination described in the site assess-  
25 ment and evaluation carried out under the State program  
26 at the site concerned to the extent such liability is based

1 on the status of such person as described in paragraph  
2 (1) or (2) of section 107(a):

3 (1) **LENDERS AND DEVELOPERS.**—Lenders and  
4 economic developers, except that no lender or devel-  
5 oper shall be released from liability under sections  
6 106 and 107 for pollution directly caused by their  
7 actions.

8 (2) **PROSPECTIVE PURCHASERS.**—Prospective  
9 purchasers of a brownfields site.

10 (3) **LOCAL GOVERNMENTS.**—Local governments  
11 who have not been involved with the management of  
12 a brownfields site.

13 **SEC. 7. FEDERAL WAIVER.**

14 If the State brownfield cleanup program includes a  
15 waiver from State permitting requirements, relevant Fed-  
16 eral permit requirements shall also be waived by operation  
17 of law.

18 **SEC. 8. BROWNFIELDS IRA.**

19 (a) **IN GENERAL.**—Subpart C of part II of sub-  
20 chapter E of chapter 1 of the Internal Revenue Code of  
21 1986 is amended by inserting after section 468B the fol-  
22 lowing new section:

1 **“SEC. 468C. SPECIAL RULES FOR HAZARDOUS WASTE RE-**  
2 **MEDIATION RESERVES.**

3 “(a) IN GENERAL.—There shall be allowed as a de-  
4 duction for any taxable year the amount of payments  
5 made by the taxpayer to a Hazardous Waste Remediation  
6 Reserve (hereinafter referred to as the ‘Reserve’) during  
7 such taxable year.

8 “(b) LIMITATION ON AMOUNTS PAID INTO RE-  
9 SERVE.—The amount which a taxpayer may pay into the  
10 Reserve for any taxable year shall not exceed the lesser  
11 of—

12 “(1) \$5,000,000, or

13 “(2) the excess (if any) of \$5,000,000 over the  
14 amount paid into the Reserve for all prior taxable  
15 years.

16 “(c) INCOME AND DEDUCTIONS OF THE TAX-  
17 PAYER.—

18 “(1) INCLUSION OF AMOUNTS DISTRIBUTED.—  
19 There shall be includible in the gross income of the  
20 taxpayer for any taxable year—

21 “(A) any amount distributed from the Re-  
22 serve during such taxable year, and

23 “(B) any deemed distribution under sub-  
24 section (e).

25 “(2) DEDUCTION WHEN ECONOMIC PERFORM-  
26 ANCE OCCURS.—In addition to any deduction under

1 subsection (a), there shall be allowable as a deduc-  
2 tion for any taxable year the amount of the qualified  
3 hazardous waste costs with respect to which eco-  
4 nomic performance (within the meaning of section  
5 461(h)(2)) occurs during such taxable year.

6 “(d) HAZARDOUS WASTE REMEDIATION RESERVE.—

7 “(1) IN GENERAL.—For purposes of this sec-  
8 tion, the term ‘Hazardous Waste Remediation Re-  
9 serve’ means a reserve established by the taxpayer  
10 for purposes of this section.

11 “(2) RESERVE EXEMPT FROM TAXATION.—Any  
12 Hazardous Waste Remediation Reserve is exempt  
13 from taxation under this subtitle unless such Re-  
14 serve has ceased to be a Hazardous Waste Remedi-  
15 ation Reserve by reason of subsection (e). Notwith-  
16 standing the preceding sentence, any such Reserve  
17 shall be subject to the taxes imposed by section 511  
18 (relating to imposition of tax on unrelated business  
19 income of charitable, etc. organizations).

20 “(3) CONTRIBUTIONS TO RESERVE.—The Re-  
21 serve shall not accept any payments (or other  
22 amounts) other than payments with respect to which  
23 a deduction is allowable under subsection (a).



1           “(4) USE OF RESERVE.—The Reserve shall be  
2 used exclusively to pay the qualified hazardous waste  
3 costs of the taxpayer.

4           “(5) PROHIBITIONS AGAINST SELF-DEALING.—  
5 Under regulations prescribed by the Secretary, for  
6 purposes of section 4951 (and so much of this title  
7 as relates to such section), the Reserve shall be  
8 treated in the same manner as a trust described in  
9 section 501(c)(21).

10          “(e) DEEMED DISTRIBUTIONS.—

11           “(1) DISQUALIFICATION OF RESERVE FOR  
12 SELF-DEALING.—In any case in which a Reserve vio-  
13 lates any provision of this section or section 4951,  
14 the Secretary may disqualify such Reserve from the  
15 application of this section. In any case to which this  
16 paragraph applies, the Reserve shall be treated as  
17 having distributed all of its funds on the date such  
18 determination takes effect.

19           “(2) FAILURE TO SPEND FUNDS.—A Reserve  
20 shall be treated as having distributed all of its  
21 funds—

22           “(A) on the date which is 10 years after  
23 the date such Reserve was established unless,  
24 as of such date—

1                   “(i) it has been determined that some  
2                   property of the taxpayer is contaminated  
3                   with hazardous waste, and

4                   “(ii) a remediation plan has been pre-  
5                   pared for such site, and

6                   “(B) except as otherwise provided by the  
7                   Secretary, on the date which is 10 years after  
8                   the date such Reserve was established unless,  
9                   as of such date, it is reasonably anticipated that  
10                  the remaining funds in the Reserve will be dis-  
11                  tributed before the date which is 15 years after  
12                  the date such Reserve was established.

13                  “(f) PENALTY FOR DISTRIBUTIONS NOT USED FOR  
14                  QUALIFIED HAZARDOUS WASTE COSTS.—The tax im-  
15                  posed by this chapter for any taxable year in which any  
16                  amount distributed from a Reserve is not used exclusively  
17                  to pay qualified hazardous waste costs shall be increased  
18                  by 10 percent of such amount.

19                  “(g) QUALIFIED HAZARDOUS WASTE COSTS.—For  
20                  purposes of this section, the term ‘qualified hazardous  
21                  waste costs’ means—

22                         “(1) the costs paid or incurred by the taxpayer  
23                         in connection with the assessment of—

1           “(A) the extent of the environmental con-  
2           tamination of a site which is owned by the tax-  
3           payer, and

4           “(B) the expected cost of environmental  
5           remediation required for such site, and

6           “(2) the costs paid or incurred by the taxpayer  
7           to remediate such contamination.

8           “(h) CONTROLLED GROUPS.—All persons treated as  
9           a single employer under subsection (a) or (b) of section  
10          52 shall be treated as one person for purposes of sub-  
11          section (b), and the dollar amount contained in such sub-  
12          section shall be allocated among such persons in such  
13          manner as the Secretary shall prescribe.

14          “(i) TIME WHEN PAYMENTS DEEMED MADE.—For  
15          purposes of this section, a taxpayer shall be deemed to  
16          have made a payment to the Reserve on the last day of  
17          a taxable year if such payment is made on account of such  
18          taxable year and is made within 2½ months after the close  
19          of such taxable year.”.

20          (b) CLERICAL AMENDMENT.—The table of sections  
21          for subpart C of part II of subchapter E of chapter 1 of  
22          such Code is amended by inserting after the item relating  
23          to section 468B the following new item:

          “Sec. 468C. Special rules for hazardous waste remediation re-  
          serves.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

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