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107TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 107–448

BROWNFIELDS REDEVELOPMENT ENHANCEMENT ACT

MAY 8, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2941]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2941) to facilitate the provision of assistance by the Department of Housing and Urban Development for the cleanup and economic redevelopment of brownfields, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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99–006

AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Brownfields Redevelopment Enhancement Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) returning the Nation's brownfield sites to productive economic use could generate more that 550,000 additional jobs and up to $2,400,000,000 in new tax revenues for cities and towns;

(2) redevelopment of brownfield sites and reuse of infrastructure at such sites will protect natural resources and open spaces;

(3) lack of funding for redevelopment is a primary obstacle impeding the reuse of brownfield sites;

(4) the Department of Housing and Urban Development is the agency of the Federal Government that is principally responsible for supporting community development and encouraging productive land use in urban areas of the United States;

(5) grants under the Brownfields Economic Development Initiative of the Department of Housing and Urban Development provide local governments with a flexible source of funding to pursue brownfields redevelopment through land acquisition, site preparation, economic development, and other activities;

(6) to be eligible for such grant funds, a community must be willing to pledge community development block grant funds as partial collateral for a loan guarantee under section 108 of the Housing and Community Development Act of 1974, and this requirement is a barrier to many local communities that are unable or unwilling to pledge such block grant funds as collateral; and

(7) by de-linking grants for brownfields development from section 108 community development loan guarantees and the related pledge of community development block grant funds, more communities will have access to funding for redevelopment of brownfield sites.

(b) PURPOSES.—The purpose of this Act is to provide cities and towns with more flexibility for brownfields development, increased accessibility to brownfields redevelopment funds, and greater capacity to coordinate and collaborate with other government agencies—

(1) by providing additional incentives to invest in the cleanup and development of brownfield sites; and

(2) by de-linking grants for brownfields development from community development loan guarantees and the related pledge of community development block grant funds.

SEC. 3. BROWNFIELDS DEVELOPMENT INITIATIVE.

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended by adding at the end the following new section:

"SEC. 123. BROWNFIELDS DEVELOPMENT INITIATIVE.

"(a) IN GENERAL.—The Secretary may make grants under this section, on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545), only to eligible public entities (as such term is defined in section 108(o) of this title) and Indian tribes for carrying out projects and activities to assist the environmental cleanup and development of brownfield sites.

"(b) USE OF GRANT AMOUNTS.—Amounts from grants under this section shall—

"(1) be used, as provided in subsection (a) of this section, only for activities specified in section 108(a); and

"(2) be subject to the same requirements that, under section 101(c) and paragraphs (2) and (3) of section 104(b), apply to grants under section 106.

"(c) AVAILABILITY OF ASSISTANCE.—The Secretary shall not require, for eligibility for a grant under this section, that such grant amounts be used only in connection or conjunction with projects and activities assisted with a loan guaranteed under section 108.

"(d) APPLICATIONS.—Applications for assistance under this section shall be in the form and in accordance with procedures as shall be established by the Secretary.

"(e) SELECTION CRITERIA AND LEVERAGING.—The Secretary shall establish criteria for awarding grants under this section, which may include the extent to which the applicant has obtained other Federal, State, local, or private funds for the projects and activities to be assisted with grant amounts and such other criteria as the Sec-

retary considers appropriate. Such criteria shall include consideration of the appropriateness of the extent of financial leveraging involved in the projects and activities to be funded with the grant amounts.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this section such sums as may be necessary for each of fiscal years 2003, 2004, 2005, 2006, and 2007.".

SEC. 4. CLARIFICATION OF BROWNFIELDS REDEVELOPMENT AS ELIGIBLE CDBG ACTIVITY.

(a) TECHNICAL CORRECTION.—The penultimate proviso of the first undesignated paragraph of the item relating to "Community Development Block Grants Fund" in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2887) shall be treated as having amended section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) to read as such section was in effect on September 30, 1995.

(b) BROWNFIELDS REDEVELOPMENT ACTIVITIES.—Section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)), as in effect pursuant to subsection (a) of this section, is amended—

(1) in paragraph (24), by striking "and" at the end;

(2) in paragraph (25), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(26) environmental cleanup and economic development activities related to brownfield projects in conjunction with the appropriate environmental regulatory agencies.".

SEC. 5. PILOT PROGRAM FOR NATIONAL REDEVELOPMENT OF BROWNFIELDS.

Section 108(q) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(q)) is amended by adding at the end the following new paragraph:

"(5) PILOT PROGRAM FOR NATIONAL REDEVELOPMENT OF BROWNFIELDS.—

"(A) IN GENERAL.—Using any amounts made available under this subsection, the Secretary may establish a pilot program under which grants under this subsection are used to develop, maintain, and administer (including the payment of an entity or entities selected pursuant to subparagraph (B)) a common loan pool of development loans for brownfield redevelopment projects made on behalf of eligible public entities with the proceeds of obligations guaranteed under this section, including related security and a common loans loss reserve account, for the benefit of participants in the pilot program.

"(B) SELECTION OF PROGRAM MANAGERS AND CONTRACTORS.—The Secretary may select an entity or entities on a competitive or noncompetitive basis to carry out any of the functions involved in the pilot program.

"(C) TERMS FOR PARTICIPATION.—Participation by eligible public entities in the pilot program shall be under such terms and conditions as the Secretary may require.

"(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary—

"(i) for grants under this subsection to be used only in conjunction with the pilot program under this paragraph; and

"(ii) for costs of carrying out the pilot program under this paragraph and ensuring that the program is carried out in an effective, efficient, and viable manner.".

SEC. 6. TECHNICAL AMENDMENT TO ALLOW USE OF CDBG FUNDS TO ADMINISTER RENEWAL COMMUNITIES.

Section 105(a)(13) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(13)) is amended by inserting "and renewal communities" after "enterprise zones".

SEC. 7. APPLICABILITY.

The amendments made by this Act shall apply only with respect to amounts made available for fiscal year 2003 and fiscal years thereafter for use under the provisions of law amended by this Act.

PURPOSE AND SUMMARY

H.R. 2941, the Brownfields Redevelopment Enhancement Act of 2001, will increase access to brownfields redevelopment funds for America's small communities by de-linking section 108 loan guarantees from the Department of Housing and Urban Development's

(HUD's) Brownfields Economic Development Initiative (BEDI) grants. The bill also authorizes HUD to establish a pilot program for a common brownfields redevelopment loan pool.

BACKGROUND AND NEED FOR LEGISLATION

There is widespread consensus over the need to cleanup an estimated 500,000 "brownfield" sites across the country. Brownfield sites are those where redevelopment is complicated by potential environmental contamination, but that are less seriously contaminated than those covered under the Superfund Act (Public Law 96–510, as amended). Many believe that by promoting the redevelopment of these sites and revitalizing the communities around them, local jurisdictions would improve the quality of life and the environment in these areas.

While some States have established programs to encourage brownfields cleanup and redevelopment, liability involving the sites remains controlled by the strict standards of the Superfund law. Investors and developers have therefore been reluctant to purchase brownfield sites, out of concern they will become entangled in legal disputes and be forced to pay for unexpected cleanups.

Both HUD and the Environmental Protection Agency (EPA) currently administer brownfield programs, with EPA focusing on assessment and cleanup and HUD focusing on redevelopment. HUD administers grants through a program called the Brownfields Economic Development Initiative (BEDI) program, which has been helpful for large communities but which carries certain conditions that make smaller communities hesitant to apply for program funds.

On January 11, 2002, President Bush signed the "Small Business Liability Relief and Brownfields Revitalization Act," (Public Law 107–118) which provides up to $200 million a year to States, local governments, and Indian tribes for brownfields cleanup. The legislation, approved by a bipartisan coalition, more than doubles the $92 million spent annually for brownfields cleanup to $200 million. A liability measure within the bill protects the new owners of restored brownfields from having to pay any future cleanup costs. The legislation also calls for the creation of a public record of brownfield sites and encourages community involvement in cleanup and reuse. It authorizes $50 million a year for grants to local and State governments to start and enhance brownfields programs.

While that legislation has been widely hailed as a valuable step forward on the brownfields issue, H.R. 2941 is complementary legislation which addresses a different facet of brownfields redevelopment.

The bill focuses on providing access to capital for local entities that traditionally have had trouble obtaining financing for brownfields redevelopment activities. Most notably, H.R. 2941 eliminates the requirement that local governments obtain section 108 loan guarantees as a condition to receiving BEDI grant funding. De-linking BEDI grants from section 108 loan guarantees is important because some small cities have great difficulty in securing or are unable to secure those guarantees.

H.R. 2941 also establishes a "Pilot Program for National Redevelopment of Brownfields." With this authority, the HUD Secretary will be able to fund a common pool for economic development loans

available to eligible local governments and distribute these loans on a competitive basis. Because the newly-passed "Small Business Liability Relief and Brownfields Revitalization Act" authorizes only $200 million with a $1 million cap on funds to any individual locality, the Pilot Program funds will fill the gap for potential developers of the other hundreds of thousand of brownfields sites across the country.

In response to a request by Mr. Kanjorski, mine-scarred lands are included in H.R. 2941 as eligible brownfields sites.

The Committee intends that HUD will continue its current practice of consulting with other Federal agencies in carrying out the Department's remediation and redevelopment activities under its brownfields program.

Because of concerns over agency coordination of brownfields site cleanup, the Committee believes that HUD should continue to defer to the Federally directed and funded remedial cleanup activities of the Environmental Protection Administration, and other applicable Federal agencies, which are underway or about to occur, in highly contaminated areas. This includes cleanups covered by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, or Superfund), the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act, and the Safe Drinking Water Act. Further, HUD will continue to respect orders issued by EPA, and others, pursuant to their jurisdiction over highly contaminated areas, in carrying out the Department's brownfields program.

This legislation is particularly important in light of the President's HUD budget request which proposes decoupling the brownfields program from the section 108 loan guarantee program to attract more participants. This mirrors the initiative taken in H.R. 2941.

HEARINGS

The Subcommittee on Housing and Community Opportunity held a hearing on March 6, 2002 on H.R. 2941, the Brownfields Redevelopment Enhancement Act of 2001. The following witnesses testified: The Honorable Roy Bernardi, Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development; The Honorable Lydia Reid, Mayor of Mansfield, Ohio; The Honorable Frederick M. Kalisz, Jr., Mayor of New Bedford, Massachusetts; Mr. Charlie Bartsch, Executive Director, Northeast-Midwest Coalition; Mr. John Murphy, Executive Director, National Association for County Community and Economic Development; Mr. Robert Colangelo, Executive Director, National Brownfields Association; and Mr. Charlie Kasko, Regional Sales Manager, Avis America (on behalf of the National Association of Homebuilders).

COMMITTEE CONSIDERATION

On March 14, 2002, the Subcommittee on Housing and Community Opportunity met in open session and approved H.R. 2941, as amended, for full Committee consideration by a voice vote.

On April 11, 2002, the Committee on Financial Services met in open session and ordered H.R. 2941, with an amendment, reported to the House with a favorable recommendation by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

The following amendments were considered:

> An amendment by Mr. Oxley, no. 1, naming brownfields redevelopment as an eligible CDBG activity, was agreed to by a voice vote.
>
> An amendment by Mr. LaFalce, no. 2, allowing CDBG funds to administer renewal communities, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Department of Housing and Urban Development will use the authority granted by this legislation to accelerate and improve the redevelopment of brownfields sites.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 2, 2002.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2941, the Brownfields Redevelopment Enhancement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), and Leo Lex (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2941—Brownfields Redevelopment Enhancement Act

Summary: CBO estimates that implementing H.R. 2941 would cost $96 million over the next five years, assuming the appropriation of the necessary amounts. Of this amount, $65 million would be used by the Department of Housing and Urban Development (HUD) to provide grants to local and tribal governments to support the environmental cleanup and economic development of brownfield sites. (Brownfields are properties where the presence, or potential presence, of a hazardous substance complicates the expansion or redevelopment of the property.)

The remaining $31 million of the bill's estimated cost of $96 million would be used by HUD to establish a pilot program to encourage more communities to support redevelopment efforts at brownfield sites. Under such a program, communities would use their section 108 loan guarantee funds in conjunction with a brownfields grant to make loans to third parties who are interested in redeveloping brownfield sites. In turn, HUD would pool together such loans and then use the majority of the appropriated funds to establish a shared loss reserve for these new loans. Participating communities would then no longer have to use their community block grant development funds to pay for defaults on such loans, and they could receive a share of this reserve after any default payments are made.

Enacting H.R. 2491 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 2941 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The grant programs in the bill would provide benefits to local and the tribal governments engaged in the redevelopment of brownfield sites.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2941 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Brownfields Redevelopment Spending Under Current Law:						
Budget Authority [1]	25	0	0	0	0	0
Estimated Outlays	20	21	19	14	8	5
Proposed Changes						
Brownfields Redevelopment Grants:						
Estimated Authorization Level	0	25	25	25	25	25
Estimated Outlays	0	1	6	14	20	24
Pilot Program:						
Estimated Authorization Level	0	11	11	11	0	0
Estimated Outlays	0	2	6	9	9	5
Total Changes:						
Estimated Authorization Level	0	36	36	36	25	25
Estimated Outlays	0	3	12	23	29	29
Brownfields Redevelopment Spending Under H.R. 2941:						
Estimated Authorization Level [1]	25	36	36	36	25	25
Estimated Outlays	20	24	31	37	37	34

[1] The 2002 level is the amount appropriated for that year for the Brownfields Redevelopment Program.

Basis of estimate: For purposes of this estimate, CBO assumes that the bill will be enacted before the start of fiscal year 2003 and that necessary amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns of similar HUD programs.

CBO estimates that HUD would use an appropriation of $25 a year over the 2003–2007 period to provide grants to public entities for assistance in the cleanup and redevelopment of brownfield sites. Enacting this legislation also would remove the requirement that brownfield redevelopment grants be used in conjunction with section 108 community development loan guarantees.

According to HUD, it would take about three years to implement a pilot program aimed at encouraging additional redevelopment efforts at brownfield sites. Based on the number of communities likely to participate and on previous HUD proposals to establish such a pilot program, CBO estimates that HUD would need $11 million annually over the next three years. If appropriated, we estimate that such funding would be spent over the next six years at rates similar to the disbursement rate for section 108 loan guarantees.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 2941 contains no intergovernmental or private-sector mandates as defined in UMRA. The grant programs in the bill would provide benefits to local and tribal governments engaged in the redevelopment of brownfield sites.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on state, Local, and Tribal Governments: Leo Lex; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title

This section provides the short title of the bill, the "Brownfields Redevelopment Enhancement Act".

Section 2. Findings and Purposes

This section makes certain findings regarding the benefits of brownfields redevelopment and a change to current HUD programs that would enable communities to more effectively work with HUD on brownfields redevelopment. This section also sets forth the purposes of the bill.

Section 3. Brownfields Development Initiative

This section amends Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) to allow the Secretary to make grants to public entities for projects and activities to assist the environmental cleanup and economic development of brownfield sites. Grants will be made (a) based on application procedures established by the Secretary; (b) only for activities specified in section 108(a); (c) with consideration of the extent of financial leveraging involved in funded projects; and (d) without the necessity of a section 108 loan guarantee. Appropriations are authorized for grants for each fiscal year 2003 through 2007.

Section 4. Clarification of Brownfields Redevelopment as Eligible CDBG Activity

This section makes a technical correction to title II of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law 104–204; 110 Stat. 2887). This section also amends section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) to include environmental cleanup and economic development activities related to brownfields projects in conjunction with the appropriate environmental regulatory agencies.

Section 5. Pilot Program for National Redevelopment of Brownfields

This section amends section 108(q) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(q)) by adding that the Secretary may establish a pilot program to develop, maintain, and administer a common loan pool for economic development loans to eligible public entities. Entities may be selected on a competitive or noncompetitive basis under the terms and conditions established by the Secretary. Sufficient appropriations are authorized to ensure the viability of the program.

Section 6. Technical Amendment to Allow Use of CDBG Funds to Administer Renewal Communities

This section amends section 105(a)(13) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(13)) to allow the use of CDBG funds to administer renewal communities.

Section 7. Applicability

This section provides that the bill will apply only with respect to amounts made available for fiscal year 2003 and fiscal years thereafter for use under the provisions of the law amended by the legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

* * * * * * *

TITLE I—COMMUNITY DEVELOPMENT

* * * * * * *

ELIGIBLE ACTIVITIES

SEC. 105. (a) Activities assisted under this title may include only—

(1) * * *

* * * * * * *

(13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones *and renewal communities* and payment of reasonable administrative costs and carrying charges related to (A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act; and (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment

of the Housing and Community Development Amendments of 1981;

* * * * * * *

(24) provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to—

(A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(C) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);

(D) provide up to 50 percent of any downpayment required from low- or moderate-income homebuyers; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyers; **[**and**]**

(25) lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992**[**.**]***; and*

(26) environmental cleanup and economic development activities related to brownfield projects in conjunction with the appropriate environmental regulatory agencies.

* * * * * * *

GUARANTEE OF LOANS FOR ACQUISITION OF PROPERTY

SEC. 108. (a) * * *

* * * * * * *

(q) ECONOMIC DEVELOPMENT GRANTS.—

(1) * * *

* * * * * * *

(5) PILOT PROGRAM FOR NATIONAL REDEVELOPMENT OF BROWNFIELDS.—

(A) IN GENERAL.—Using any amounts made available under this subsection, the Secretary may establish a pilot program under which grants under this subsection are used to develop, maintain, and administer (including the payment of an entity or entities selected pursuant to subparagraph (B)) a common loan pool of development loans for brownfield redevelopment projects made on behalf of eligible public entities with the proceeds of obligations guaranteed under this section, including related security and a common loans loss reserve account, for the benefit of participants in the pilot program.

(B) SELECTION OF PROGRAM MANAGERS AND CONTRACTORS.—The Secretary may select an entity or entities on a competitive or noncompetitive basis to carry out any of the functions involved in the pilot program.

(C) TERMS FOR PARTICIPATION.—Participation by eligible public entities in the pilot program shall be under such terms and conditions as the Secretary may require.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary—

(i) for grants under this subsection to be used only in conjunction with the pilot program under this paragraph; and

(ii) for costs of carrying out the pilot program under this paragraph and ensuring that the program is carried out in an effective, efficient, and viable manner.

* * * * * * *

SEC. 123. BROWNFIELDS DEVELOPMENT INITIATIVE.

(a) IN GENERAL.—The Secretary may make grants under this section, on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545), only to eligible public entities (as such term is defined in section 108(o) of this title) and Indian tribes for carrying out projects and activities to assist the environmental cleanup and development of brownfield sites.

(b) USE OF GRANT AMOUNTS.—Amounts from grants under this section shall—

(1) be used, as provided in subsection (a) of this section, only for activities specified in section 108(a); and

(2) be subject to the same requirements that, under section 101(c) and paragraphs (2) and (3) of section 104(b), apply to grants under section 106.

(c) AVAILABILITY OF ASSISTANCE.—The Secretary shall not require, for eligibility for a grant under this section, that such grant amounts be used only in connection or conjunction with projects and activities assisted with a loan guaranteed under section 108.

(d) APPLICATIONS.—Applications for assistance under this section shall be in the form and in accordance with procedures as shall be established by the Secretary.

(e) SELECTION CRITERIA AND LEVERAGING.—The Secretary shall establish criteria for awarding grants under this section, which may include the extent to which the applicant has obtained other Federal, State, local, or private funds for the projects and activities to be assisted with grant amounts and such other criteria as the Secretary considers appropriate. Such criteria shall include consideration of the appropriateness of the extent of financial leveraging involved in the projects and activities to be funded with the grant amounts.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this section such sums as may be necessary for each of fiscal years 2003, 2004, 2005, 2006, and 2007.

* * * * * * *

ADDITIONAL VIEWS

H.R. 2941, the Brownfields Redevelopment Enhancement Act, is important legislation that will assist in the redevelopment of abandoned contaminated industrial sites in our nation's communities. During debate on this legislation within the Financial Services Committee, however, the lack of a definition of what constituted brownfields concerned me.

More specifically, I wanted to ensure that the Department of Housing and Urban Development (HUD) would consider the clean-up of mine-scarred land eligible for funding within its brownfields program. Within my congressional district, we have significant amounts of abandoned mine land, some of it located in or near town or city centers, and therefore ripe for economic development opportunities. Some of this land is also contaminated or potentially contaminated, sometimes having become a dumping ground for other waste, and it often contributes to water pollution, particularly acid-mine drainage. The redevelopment of this under-used land through HUD's brownfields program could help to improve the economic climate of the region.

Additionally, when Congress considered the brownfields law last year affecting the Environmental Protection Agency's programs, we provided for the eligibility of mine-scarred land. I therefore wanted to ensure parity between the agencies' programs to facilitate the efficient use of government resources to reclaim land.

As a result of my concerns, I worked with the Chairman of the Financial Services Committee during our deliberations on April 11, 2002 over H.R. 2941 to develop and submit a colloquy for the record. The text of that colloquy concerning the definition of brownfields follows:

> Mr. KANJORSKI. Mr. Chairman, it was my intent this morning to introduce an amendment to H.R. 2941, the Brownfields Redevelopment Act, that would provide a definition of brownfields for use by HUD in carrying out its important brownfields program.
>
> As you may know, on December 20, 2001, the House passed by voice vote H.R. 2869, the Small Business Liability Relief and Brownfields Revitalization Act. Included within this bill is a broad and inclusive definition of brownfields that was the result of bipartisan negotiation. This bill was signed into law by President Bush in January, 2002.
>
> My interest in this subject goes back many years because of my desire to see a broad definition of brownfields that specifically includes mine-scarred lands. From my perspective, the expansion of the definition to include excavation of culm banks and the removal of other mining waste at abandoned mine sites will benefit business, gen-

erate jobs, improve the environment, and improve the health and economy of thousands of communities across the nation.

Mr. Chairman, the bill before us today is a good bill and I support it. It is my understanding that we will work together before the legislation is brought to the Floor to address this critical issue.

Mr. OXLEY. We will be pleased to work with you on this issue.

In closing, I am pleased that the Chairman of the Committee recognizes the importance of this issue to my congressional district. I look forward to working with him and my other colleagues to include a brownfields definition that incorporates mine-scarred land in this critical legislation before it comes to the Floor.

PAUL E. KANJORSKI.

DISSENTING VIEWS

H.R. 2941, the Brownfields Redevelopment Enhancement Act, addresses an important problem, the need to clean up "brownfields," sites whose redevelopment is complicated by environmental damage. However, the legislation accomplishes its goal by expanding the federal government's unconstitutional control over matters properly left to state and local governments as well as removing responsibility for brownfield clean-ups from those who caused the damage. Thus, this legislation violates basic constitutional principles and fundamental precepts of justice. H.R. 2941 also embraces an inefficient way of accomplishing the worthy objective of restoring brownfields to a pristine condition.

My primary opposition to this bill is based on its creation of a new "pilot program for national redevelopment of brownfields." A new federal program means increased federal funding and, inevitably, increased federal control. Funding leads to control as the recipients of the funding must be careful to follow all federal rules and "guidelines," lest they lose their federal funds. Thus, innovative ways of restoring environmentally damaged land will not be implemented, for fear that they will not meet with the approval of federal "experts."

Instead of attempting to address the brownfield situation through a bureaucratized one-size-fits all approach, Congress should allow states, local communities, and the private sector to determine for themselves how to deal with brownfields. Questions such as allocation of liability among multiple owners, or who should assume responsibility when the original tortfeasor cannot be identified or lacks the assets to pay for the clean-up, can be resolved through application of traditional concepts of contract and property law. Applying contract and property law at the state and local level is a more efficient way of solving the problem of brownfields than expanding the federal bureaucracy.

Creating more federal programs, financed by additional taxation, is not only an inefficient way to clean up brownfields, it also violates basic constitutional principles. Congress has no constitutional authority to intervene in this issue, in fact, under the 9th and 10th amendments to the Constitution, Congress is explicitly forbidden to operate this type of program.

Furthermore, forcing taxpayers, who had nothing to do with damaging the lands in question, to pay for these clean-ups is an unjust abuse of the taxing power. Fundamental principles of justice would seem to demand that those who damaged the land pay for the clean up. There is also a practical consideration in that when land owners know that the burden of cleaning up polluted land will be paid for by the taxpayers they are less likely to take steps to avoid damaging the land. Thus a taxpayer-funded brownfield clean-up program may result in the creation of more brownfields!

In conclusion, though I recognize the problem created by the brownfields, I cannot support H.R. 2941. This bill furthers the unconstitutional federal role in brownfield clean-ups and violates fundamental principles of justice by forcing innocent taxpayers to bear the cost of those clean-ups. Instead of expanding federal intrusion into this area, Congress should obey the commands of the Constitution and allow the states, local governments, and the private sector to apply traditional concepts of contract and property law to find innovative ways to clean up brownfields.

RON PAUL.

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