

Federal Brownfield Legislation: U.S. House of Representatives Passes Amendments



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The U.S. House of Representatives (“House”) on November 30th passed amendments that would address the federal Brownfield program.

H.R. 3017 is titled the “Brownfields Enhancement, Economic Redevelopment, and Reauthorization Act of 2017” (“H.R. 3017”).

H.R. 3017 amends the Comprehensive Environmental Response, Compensation, and Liability Act and reauthorizes the United States Environmental Protection Agency’s (“EPA”) Brownfield Program. The legislation appears to have bipartisan support.

Residential, commercial, agricultural and industrial properties are sometimes difficult to sell, redevelop, and/or finance because of perceived or real environmental contamination issues. Properties or facilities subject to such impediments are typically called “Brownfields.”

The EPA has defined a “Brownfield” as “abandoned, idled, or under-used industrial or commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.” Besides EPA, many states have Brownfield programs whose purpose is to eliminate unnecessary barriers of the redevelopment of commercial or industrial properties which may have environmental concerns. Arkansas has had such a program for several years.

H.R. 3017 makes several changes to the federal Brownfield related statutory provisions, which include:

- Clarifies the liability of states and local units of government that take title to property involuntarily by virtue of their function as a sovereign
- Clarifies when sites contaminated by petroleum may be considered a Brownfield site and when a leaseholder may qualify for certain liability protections
- Expands eligibility for nonprofit organizations and for eligible entities that took title to a Brownfield site prior to January 11, 2001
- Increases the limit for remediation grants under the Brownfields Program, establishes multipurpose grants and allows recovery of a limited administrative cost
- Adds to the list of criteria for the grant program, whether a grant would facilitate the production of renewable energy
- Allows EPA to provide additional funds for small, rural, and disadvantaged communities and Indian tribes
- Reauthorizes funding for Section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act and Section 128(a) of the same statute

A bill addressing federal Brownfield issues has also been introduced in the Senate (“S. 822”). This bill is denominated the “Brownfields Utilization, Investment, and Local Development Act of 2017.”

Issues addressed in S.822 include:

- Funding for technical assistance grants to small communities and rural areas
- Expansion of the scope of eligible grant recipients to include nonprofit community groups
- Authorization of funding from multipurpose grants to address more complex sites
- Allow certain entities that do not qualify as bona fide prospective purchasers to be eligible to receive grants (as long as government entities did not cause or contribute to a release or threaten the release of a hazardous substance at the property)
- Direct EPA in providing grants to give consideration to Brownfield sites located adjacent to federally designated floodplains

A copy of [H.R. 3017 can be downloaded here](#) and [copy of Senate Bill 822 here](#).