

Bill as Introduced

SB 422 - AS INTRODUCED

2010 SESSION

10-2799

06/01

SENATE BILL **422**

AN ACT relative to small power producer electric sales in brownfields and economically depressed locations.

SPONSORS: Sen. Fuller Clark, Dist 24; Sen. Janeway, Dist 7; Sen. Merrill, Dist 21; Rep. Borden, Rock 18; Rep. Perry, Straf 3

COMMITTEE: Energy, Environment and Economic Development

ANALYSIS

This bill permits a small producer of electric energy to sell such energy to purchasers in brownfields or in economic recovery zones.

.....

Explanation: Matter added to current law appears in *bold italics*.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to small power producer electric sales in brownfields and economically depressed locations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Limited Electrical Energy Producers; Definitions. Amend RSA 362-A:1-a, I-c, to read as
2 follows:

3 I-c. ***“Brownfields” means properties that have been environmentally contaminated.***

4 I-d. “Cogeneration facility” means a facility which produces electric energy and other forms
5 of useful energy, such as steam or heat, which are used for industrial, commercial, heating, or
6 cooling purposes.

7 2 Purchase of Output by Private Sector. Amend the introductory paragraph of RSA 362-A:2-a, I
8 to read as follows:

9 I. A [limited] ***small*** producer of electrical energy shall have the authority to sell its produced
10 electrical energy to not more than 3 purchasers other than the franchise electric utility, ***any***
11 ***purchaser located in a brownfields area, and any purchaser located in an economic***
12 ***recovery zone under section 1400U-1 of the United States Internal Revenue Code (1986),***
13 unless additional authority to sell is otherwise allowed by statute or commission order. Such
14 purchaser may be any individual, partnership, corporation, or association. The commission may
15 authorize a limited producer, including eligible customer-generators, to sell electricity at retail,
16 either directly or indirectly through an electricity supplier, within a limited geographic area where
17 the purchasers of electricity from the limited producer shall not be charged a transmission tariff or
18 rate for such sales if transmission facilities or capacity under federal jurisdiction are not used or
19 needed for the transaction. The public utilities commission shall review and approve all contracts
20 concerning a retail sale of electricity pursuant to this section. The public utilities commission shall
21 not set the terms of such contracts but may disapprove any contract which in its judgment:

22 3 Emergency Temporary Zoning and Planning Ordinances; Utility Structures. Amend
23 RSA 674:30, IV to read as follows:

24 IV. Except for small power production facilities, as defined in RSA 362-A:1-a, X, and
25 cogeneration facilities, as defined in RSA 362-A:1-a, [I-e] ***I-d***, owned and operated by a New
26 Hampshire franchised utility, small power production facilities and cogeneration facilities shall not
27 be considered to be public utilities under this section and may not petition the public utilities
28 commission for an exemption from the operation of any regulation under this subdivision.

29 4 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Energy, Environment and Economic Development Committee

Hearing Report

TO: Members of the Senate

FROM: Michael Rollo, *Legislative Aide*

RE: Hearing report on **SB 422** -An act relative to small power producer electric sales in brownfields and economically depressed locations.

HEARING DATE: March 4, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Fuller Clark, Merrill, Cilley, Lasky, Odell, and Bradley.

MEMBERS OF THE COMMITTEE ABSENT: None

Sponsor(s): Sen. Fuller Clark, Dist 24; Sen. Janeway, Dist 7; Sen. Merrill, Dist 21; Rep. Borden, Rock 18; Rep. Perry, Straff 3

What the bill does: This bill permits a small producer of electric energy to sell such energy to purchasers in brownfields or in economic recovery zones.

Who supports the bill: Sen. Fuller Clark, Dist. 24, Rep. Bob Perry, Straff. 3, Bill Gabler, Clean Power Development, Mel Liston, Clean Power Development, Howard Wilson, Self

Who opposes the bill: George Gantz, UNITIL, Donna Gamache, PSNH

Neutral position: Clifton Below, NH PUC, Allen Brooks, NH DOJ

Summary of testimony received:

Senator Fuller Clark, Dist 24- Prime Sponsor of SB 422

- Hearing called to order at 8:59am.

- Bill amends RSA 362-A:1-a through I-c to allow energy production in economically and environmentally depressed areas by amending the definition of brownfield areas.
- The bill uses existing structures to protect consumers

Allen Brooks, NH Department of Justice

- Neutral, offering information.
- Language contained in bill regarding brownfields is different than existing RSA's. Language mirrors federal language.

Rep. Bob Perry, Straff. 3

- In Support
- Encourages small power producing operations on sites that may not be suitable for other purposes.
- Encourages using Federal definition of Brownfield.

Bill Gabler, Clean Power Development

- In support.
- Clean Power Development is currently developing plans to sell power in Brownfield areas in Berlin and Winchester. Currently companies like Clean Power Development are prohibited by statute from doing this.
- Bill will foster economic development in areas of the state that need it the most.
- Sen. Bradley asked about the reimbursement rate offered to companies. Would a company fall under the retail or generated rate? Mr. Gabler stated that like others, his companies rate would be approved by the PUC and it was not his companies intention to ask for a full rate.
- Sen. Fuller Clark asked who would advantage if the law were change? Mr. Gabler replied that any generator could take advantage of the changes and the potential for economic development for disadvantaged areas was great.
- Sen. Fuller Clark followed up by asking about potential for economic development of brownfields. Mr. Gabler explained that the proposed biomass plant in Berlin would be the cleanest generating facility in the state. He noted that most plants that have been proposed in NH are small and would need to be approved by the PUC.

Howard Wilson, Self

- In support.
- Enables small energy producers to market their products. Appreciates the state getting out of the way of entrepreneurs.

Donna Gamache, Public Service Company of NH

- In opposition
- Has concerns over the potential for running new lines by existing lines.
- Applauds the potential use of brownfield sites.
- Also concerned that the bill could potentially interfere with a 2001 agreement between the state and PSNH over securitization of restructured debt.
- Offered to work with the committee

- Sen. Cilley asked for clarification of the 2001 agreement. Ms. Gamache answered that PSNH was allowed to restructure debt to lower rates for consumers.
- Sen. Cilley asked for clarification over PSNH's opposition to the bill, was it simply that these competing generators may take customers away from PSNH? Ms. Gamache replied that PSNH's opposition was over the transmission of the power, not how or who was producing it.

George Gantz, CEO UNITIL

- In opposition.
- Supports the development of brownfield sites; goals laudable.
- Has concerns that the RSA provisions will not bring the desired results. For last 30 years there have been discussions and access to transmission has been the issue. The retail wheeling initiative was born out of the process. Can't imagine this process benefiting anyone in NH as it is a cumbersome process. Mr. Gantz reminded members that running parallel lines is contrary to public policy and safety concerns.

Clifton Below, Commissioner, NH PUC

- Neutral, offering information
- Sen. Fuller asked whether or not co-generation facilities should be allowed to operate in Brownfields. Comm. Below answered that direct production is a new concept that needs to be studied. Would these producers for charges like PSNH? Would they be non-bypassable?
- Sen. Cilley asked if there is a distinction between selling over franchise lines. Comm. Below replied that yes there is. If a dispute arises over franchise lines, then the dispute would go before the PUC.

Mel Liston, President, Clean Power Development

- In support.
- SB 422 is trying to allow distribution to non-contiguous properties, that is where the opposition arises from. Clean Power Development would like to run lines to new customers in economically depressed areas. These are not existing utility customers. These are new ventures that will help the local economy.

George Gant, President UNITIL

- Wanted to remind the committee that running new lines was contrary to public policy and safety. Cited the damage from last weeks storm. The swift response by utilities would have been hampered if there were even more lines to deal with.

Hearing was closed at 9:55am.

Funding: *Not applicable*

Future Action: Executive action pending.

MSR

File: SB 422

Date: March 4, 2010

Date: March 4, 2010
Time: 8:59 a.m.
Room: LOB Room 102

The Senate Committee on Energy, Environment and Economic Development held a hearing on the following:

Senate Bill 422 relative to small power producer electric sales in brownfields and economically depressed locations.

Members of Committee present: Senator Fuller Clark
 Senator Merrill
 Senator Cilley
 Senator Lasky
 Senator Odell
 Senator Bradley

The Vice Chair, Senator Amanda Merrill, opened the hearing on Senate Bill 422 and invited the prime sponsor, Senator Fuller Clark, to introduce the legislation.

Senator Martha Fuller Clark, D. 24: Thank you very much. For the record, I'm Senator Martha Fuller Clark. I represent District 24: the city of Portsmouth and the seven surrounding communities, and I'm here today as the prime sponsor for Senate Bill 422, which is relative to small power producer electric sales in brownfields and economically depressed locations. This bill amends the existing New Hampshire Limited Electrical Power Production Act. And under this law, a limited power producer, smaller than five megawatts, can sell directly to up to three retail customers without passing the power over to the local utility.

This bill would alter that provision to allow small producers, under 30 megawatts, to sell directly to purchasers who are located in brownfield sites or in economically depressed areas. The hope is that a small, renewable generator would be able to enter into a long term contract with a company that locates where jobs and economic activity are needed. The contract will ensure that there is a purchaser for the power and will help the project get the financing needed to begin construction. Because the bill uses the existing

structure of RSA 362-A, all the provisions that protect the ratepayers and system overall are already in place and managed by the PUC.

And just to ... That's the extent, really, of my substantive testimony. There has been some discussion as to whether or not we have the right definition for brownfields. And I believe that we will hear some additional testimony regarding that issue. And I have had handed out to you the federal definition of brownfields that we may want to refer to.

Please see Attachment #1 – e-mail of brownfields definition.

Senator Martha Fuller Clark, D. 24: So, with that, I think it would probably be best that the questions, going forward, are addressed to the other individuals who are here to speak in favor of the legislation. So, thank you very much.

Please see Attachment #2 – e-mail of Senator Fuller Clark's testimony.

Senator Amanda Merrill, D. 21: Thank you.

Senator Martha Fuller Clark, D. 24: I'd like to call upon Allen Brooks from DES (sic).

Allen Brooks, New Hampshire Department of Justice: Thank you, Madam Chair. Actually, my name's Allen Brooks. I'm from the New Hampshire Department of Justice. I'm Senior Assistant Attorney General and Chief of the Environmental Bureau. We next door ... We look over all the bills that go through for hearing and just noticed on this proposal that the definition of brownfields, as proposed, is slightly different than the definition of brownfields in the brownfields statute, the existing one, which is RSA 147-F. The language that's in the bill proposed mimics the first clause of that exactly, and then there's another clause that's left out.

That may be purposeful on your part. Someone may have made the decision that they want to make it more expansive than the definition of brownfields. As a policy matter, you could probably make it as expansive as you wanted it to be, but I just wanted to make sure that everyone understood that there was a discrepancy between the existing brownfields definition and the proposed definition.

And with that, I can answer any questions that you have or...

Senator Martha Fuller Clark, D. 24: Thank you. Are there any questions from the Committee? Thank you. I'd now like to call upon Bill Gabler. Excuse me. Just before I do that, Representative Perry, did you wish to speak?

Representative Bob Perry: (Speaking from the back of the room) Please.

Senator Martha Fuller Clark, D. 24: Thank you.

Representative Perry: My name is Bob Perry, State Representative from District 3, Strafford County. I also had a concern with the definition of brownfields and discovered that there is a state definition as well as a federal definition. The state definition is brownfields means properties which have been environmentally contaminated, subject to the limitations of RSA 147-F. The federal definition is the term brownfield site means real property, the expansion, re-development, or re-use of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. That definition is more specific, obviously, than the State's definition.

Senator Martha Fuller Clark, D. 24: And would you recommend that, as part of this legislation, that we should be adopting the federal definition?

Representative Perry: The federal ... You know the concern is that the definition not be too broad and yet it not be too specific. To the extent that the economic recovery zone is tied to a definition in the IRS Tax Code, it might be appropriate that the brownfields definition be tied to a specific definition as well. And so, I would encourage the use of the federal definition.

Senator Martha Fuller Clark, D. 24: Thank you very much. Are there other questions for Representative Perry? Yes?

Senator Amanda Merrill, D. 21: Thank you, Madam Chair. Even though you said you had a preference for the federal, do you have - if you said it, I didn't get it - a site for where the state definition is?

Senator Bette R. Lasky, D. 13: One forty-seven F.

Senator Amanda Merrill, D. 21: One forty?

Senator Bette R. Lasky, D. 13: One forty ... RSA 147-F; that's what it is?

Senator Amanda Merrill, D. 21: One forty-seven F.

Representative Perry: Yes.

Senator Amanda Merrill, D. 21: Okay.

Representative Perry: And it's 147-F:3, II.

Senator Amanda Merrill, D. 21: Thank you.

Senator Martha Fuller Clark, D. 24: Thank you very much. Is there anything else that you'd like to add at this time? Are you in support of this legislation?

Representative Perry: I certainly am in support of the legislation.

Senator Martha Fuller Clark, D. 24: And could you give us your reasons why?

Representative Perry: Well, the purpose of the bill is twofold; that is, to encourage the commercial use of brownfields as opposed to residential use, and to allow the expansion of small power producers - being defined as thirty megawatts or less - being able to connect to those commercial operations on those brownfield sites. So, twofold; I think it's a win-win.

Senator Martha Fuller Clark, D. 24: Thank you very much. Other questions? Seeing none, I'll now call upon Bill Gabler. And you're speaking in support of the bill, is that correct?

Bill Gabler, Clean Power Development: In support. Madam Chair and members of the Committee, my name's Bill Gabler, representing Clean Power Development in support of the bill. As many of you are aware, we're currently working to develop two biomass renewable energy projects in the state of New Hampshire, both in the twenty megawatt range. We have been approached by economic development leaders in both of those areas, both of those regions of the state, asking if there is any way we could sell our power directly to new industrial development that they might try to entice to bring into those, to use those brownfields or brownfield areas; those areas being in Berlin and Winchester.

We would love to do it. We would love to assist with the economic development of those brownfield and economically depressed areas. Unfortunately, we're not allowed to under the current statute. So, that's why we support this revision of the statute, which would provide the opportunity for us to sell that power directly, at a rate that would hopefully entice the

further economic development in the communities. That, quite simply, is why we support the bill and are here speaking for it today.

Senator Martha Fuller Clark, D. 24: Are there questions for Mr. Gabler? Yes?

Jeb E. Bradley, D. 3: Thank you, Madam Chair. Good morning, Bill.

Mr. Gabler: Hey.

Jeb E. Bradley, D. 3: How are you?

Mr. Gabler: Good.

Jeb E. Bradley, D. 3: My understanding of this bill is that the reimbursement rate would be at the retail rate or, you know, the all-inclusive cost of energy. Is that your understanding?

Mr. Gabler: No, not at all.

Jeb E. Bradley, D. 3: Is it just the generation rate?

Mr. Gabler: There would ... It would allow a contractual agreement between, say, our plant and the industry at whatever the negotiated rate would be. And that rate, then, would have to be approved by the Public Utilities Commission or to be in the benefit of both parties, if you will. So, it would never be ... I mean, as far as we're concerned, it would never be our intention to ask for the full retail rate of fifteen cents or whatever that number might be. It would be a contracted negotiation, much as in the Berlin project. We're negotiating with the Fraser Paper mill in Gorham to sell them steam at a rate that's agreed to by our two parties.

Jeb E. Bradley, D. 3: Thank you.

Senator Martha Fuller Clark, D. 24: Other questions? I have a couple of questions. If you could talk a little bit more: Who would be advantaged by the change in the statute? As I understand, it could be any type of small development of power. Is that correct?

Mr. Gabler: Well, the advantage would be any generator systems themselves could take advantage of that anywhere in the state; very definitely. The other advantaged organization, if you will, would be a new industry that would seek to develop. And through the ability to tie directly to one of these small renewable power plants, taking advantage of a local

renewable resource, the community then benefits that the developer benefits, because those indigenous renewable resources are now being utilized to bring economic development into that community and grow it.

Senator Martha Fuller Clark, D. 24: So, do you see that this would stimulate or encourage additional re-development of brownfields?

Mr. Gabler: Oh, very definitely. We've been approached by, as I said, economic development people who would love to see us assist with the brownfield work in Berlin and in Winchester. There's three sites in Winchester, for example, all of which could be aided.

Senator Martha Fuller Clark, D. 24: Have you been in contact at all with the Hampton Energy Committee, that I've heard from, that is also very interested in being able to develop a brownfield in Hampton?

Mr. Gabler: We have not had that discussion, no.

Senator Martha Fuller Clark, D. 24: And then, I also have received some letters concerned with the fact that this change in law could, potentially, develop a biomass plant in Winchester and that the residents there are concerned about issues surrounding pollution. Could you speak to that?

Mr. Gabler: You catch me a little off-guard with that. I personally have been to Winchester a number of times, meeting with the planning board, the board of selectmen, and I've not heard that. We do have an intention to ... We have to build a twenty megawatt biomass plant in Winchester. In terms of pollution, my only statement would be that plant has not been designed yet, so I can't speak to any specific numbers.

But the, for example, the Berlin project will be the cleanest biomass plant in the state of New Hampshire and will far exceed all state and federal regulations for air and water. In fact, in terms of water usage, what we're going to do in Berlin is, all our cooling water, rather than tapping the river or the local aquifer, we're going to take water from the wastewater treatment plant - effluent from the wastewater treatment plant - and utilize that rather than having that dumped into the river. So, it'll be an environmental benefit that will clean up the river by not dumping that effluent in, as well as not reducing or lowering the aquifer. And our plan is to do exactly the same thing in Winchester.

So, I can't speak to any specific objections, because I haven't heard them 'til just now. So, I'll generalize and say, "We will ... We're doing everything

possible to make them the absolute best, cleanest plants and environmentally and socially responsible nature.”

Senator Martha Fuller Clark, D. 24: Apparently, there is sort of, it looks like, a national movement that is objecting to all proposed biomass power plants because of an unacceptable risk to public health. And I believe that this is where these letters have come from.

Mr. Gabler: I know that there are three proposed biomass power plants in the state of Massachusetts which have gotten a lot of attention, each of those being in the fifty megawatt range. And there's been a lot of confusion, a lot of issues regarding the sustainability issue and whether a plant of fifty megawatts is sustainable on a long term basis for the biomass resource. For that reason, Massachusetts is now doing a year-long study on the sustainability issue of large power plants.

In the case of our power plants, each one is sized specifically to the available wood basket. It doesn't speak directly to what you asked, but I think what you're citing there as apparently a national movement actually stems from that Massachusetts issue where they're trying to take a second look at those fifty megawatt and larger power plants.

Senator Martha Fuller Clark, D. 24: And it's my understanding that any proposal that would come forth to take advantage of the change in the statute clearly has to be reviewed and approved by the PUC.

Mr. Gabler: Correct. Yeah, there's ... And this goes back to Senator Bradley's question. It's not presumed that there would be any effective rate or number other than a negotiation in a contract ... contractual basis, which has been approved by the PUC.

Senator Martha Fuller Clark, D. 24: Okay. Thank you very much. Other questions? Yes, Senator Merrill.

Senator Amanda Merrill, D. 21: Thank you, Madam Chair. Good morning.

Mr. Gabler: Good morning.

Senator Amanda Merrill, D. 21: The existing language says a limited producer has the authority to sell to not more than three purchasers other than a franchise electric utility. Could you just talk about restrictions or limitations on those three purchasers or up to three purchasers or just whether it's the number itself is limited?

Mr. Gabler: I was not around when it was written, so I can't speak to the basis for it, but it appears to me it's just simply a - and I'm going to use the word arbitrary, and I don't mean that in a pejorative way - but an arbitrary selection of a number of three? I don't know the basis for it; can't speak to why that limitation was imposed.

Senator Amanda Merrill, D. 21: Follow up?

Senator Martha Fuller Clark, D. 24: Yes.

Senator Amanda Merrill, D. 21: Just to follow up?

Mr. Gabler: Yeah.

Senator Amanda Merrill, D. 21: My question was not just about...

Mr. Gabler: Oh, okay; sorry.

Senator Amanda Merrill, D. 21: ...the number, but also anything else; restrictions associated with who those three purchasers can be.

Mr. Gabler: No, there was no restrictions of any kind. It could be any consumers.

Senator Martha Fuller Clark, D. 24: Thank you. Other questions? Thank you very much. I'd like to call upon Howard Wilson.

Howard Wilson: Thank you, Madam. For the record, my name is Howard Wilson. I come here in generalized support of this legislation.

Reading through all the legislation submitted on this specific, generalized issue, I'd recommend to the Committee that SB 422, for later this morning, as SB 334 be heard as one along with SB 418 at the same time. All three bills deal with enabling small power producers to sell - however they define or, possibly, as constrained by the regulatory powers of the State - to a market. And all three, I think, should be combined as one piece of legislation and heard as a whole and then found as "Ought to Pass". Thank you.

Please see Attachment #3 - Mr. Wilson's letter of testimony.

Senator Martha Fuller Clark, D. 24: Thank you very much. Are there questions for Mr. Wilson? Seeing none, I'd now like to call upon Donna Gamache.

Donna Gamache, Public Service of New Hampshire: Thank you. I'm Donna Gamache with Public Service of New Hampshire. And I'd like to first apologize. I'm sure you're all aware that our resources have been spread thin, and first I would have brought somebody with me who understands...

Senator Martha Fuller Clark, D. 24: Could we ... Could we interrupt here...

Ms. Gamache: Yes.

Senator Martha Fuller Clark, D. 24: ...you for a moment and just thank you and thank everyone at PSNH and at Unitil for the extraordinary work that you have done on ... throughout the state but particularly on the Seacoast?

Ms. Gamache: Thank you very much.

Senator Martha Fuller Clark, D. 24: And we know how difficult that's been, but we're glad that you didn't have on-going bad weather.

Ms. Gamache: Yes, thank you. That made a big difference. Thank you very much. I would have brought somebody with me today who understands the Limited Energy Producers Act that we've been talking about. And I just wanted to say that we have concerns. We recognize the goal of the bill is to try to encourage the re-development of brownfields, and we applaud that. We just think an unintended consequence is to, potentially, pose problems in other areas where nobody intended.

I have to admit that when I was first reading all the comments that folks gave back to me, there's a whole lot of confusion back at PSNH as to what it ... what the intent really was. And there was a concern. There have been concerns going back and forth. What does this really mean? But at the end of the day, I had a conversation with our legal team, and they were out actually with tree-trimmers when they were doing it from the truck. So, I'm going to tell you what I know at this point, and that is that they are concerned that, inadvertently, this violates the securitization law and pact that the State made with PSNH back in, I believe it was in, 2001. We believe that is inadvertent but wanted to get that on record and see if there was a potential to maybe work with the Committee and get this out for you to try to make any changes that you see fit.

Senator Martha Fuller Clark, D. 24: I know that we'd be happy to work with you. I think there is a positive intention in this legislation, but we wouldn't want to jeopardize previous agreements and arrangements that have been made. So, other questions for Ms. Gamache? Yes, Senator Cilley?

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair, and thank you for your testimony. Could you illuminate a bit more on what those agreements are or where we'd find them?

Ms. Gamache: Back ... I can tell you, yeah. The PUC, I think, will be able to give you a little more detail than I could today. And as I said, I would have brought someone with me. However, back at the beginning of when the Legislature decided that they wanted to move forward with restructuring ... And the purpose for that was to reduce all utilities but essentially PSNH's rates to our customers. And Senator Bradley was around and very active at that point.

One of the ways to help reach that goal was to allow PSNH to take some of its higher cost debt and essentially refinance it at lower cost. We needed to get a triple A rating to get that lower cost. In so doing, we had an agreement with the State that - over the course of while those loans were out, in order to get those paid back - that there would be no renegeing, essentially on the State's side, for costs that PSNH customers would otherwise be paying that could pay that debt down. And it's called securitization, and that was done about ten years ago, I believe. And it's still on-going, and this bill, essentially, interferes with that pact with the State.

Senator Martha Fuller Clark, D. 24: Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Follow up? Thank you. Just for clarity: So, if I understand what you're saying, is if a power generator, a small power generator, took three industrial complexes and provided power for them, you're assuming that those would be customers of PSNH now?

Ms. Gamache: Yes.

Senator Jacalyn L. Cilley, D. 6: Okay. Follow up, if I may?

Senator Martha Fuller Clark, D. 24: Yes.

Senator Jacalyn L. Cilley, D. 6: Isn't it? It's my understanding that anybody who buys large quantities of power can choose to buy it anywhere they want. I mean, I have a son that runs an ice arena and works through a third party vendor to reduce his rates. So, what would prevent them from doing that to begin with?

Ms. Gamache: It's not the ... It's not the energy itself. What this bill does - we believe inadvertently - is it also allows them to avoid the rest of the costs

associated with PSNH's service, which is the distribution transmission side of the house. It's the whole package because of the words direct and indirect in the language.

Senator Jacalyn L. Cilley, D. 6: Final question?

Senator Martha Fuller Clark, D. 24: Yes.

Senator Jacalyn L. Cilley, D. 6: How long do these agreements go out for?

Ms. Gamache: I was trying yesterday to find that answer, and I do not know how long they go for.

Senator Martha Fuller Clark, D. 24: Twelve years.

Ms. Gamache: Okay.

Jeb E. Bradley, D. 3: So, it's almost over.

Ms. Gamache: Almost over.

Senator Martha Fuller Clark, D. 24: So, it's almost over. So, it might be possible to address that. Okay. Thank you very, very much.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Martha Fuller Clark, D. 24: George Gantz.

George Gantz, Unitil: Good morning, Madam Chair, members of the Committee. My name is George Gantz. I'm a senior vice president for distributive energy resources with Unitil. And we support brownfield development, biomass, renewable energy development, and think that those are clearly laudable goals and the intent behind the bill is an excellent one. Our concerns are with the fact that the effort to promote those laudable goals is resting on a thirty year old provision in the New Hampshire statutes which will not achieve the intended results.

And just as a little bit of background, I'm pretty familiar with the retail wheeling provision that's the LEEPA Law. At the time that was...

Senator Martha Fuller Clark, D. 24: We're going to get educated.

Mr. Gantz: Well, at the time that was introduced - if my recollection is correct - it was just over thirty years ago. I worked in the state energy office

at the time, and there was a last minute flurry of interest. The LEEPA Law was being put together or had been put together. There was some amendments being looked at. And one of the ideas that came up was to introduce retail wheeling as a part of that. And so, I remember working with Peter Brown at the Energy Law Institute. They had a team that was pretty astute on these things at the time, the changes in national energy law. And we helped craft the language that was then included in the retail wheeling provision of the LEEPA Law which is at work here.

And just sort of speaking broadly about the policy issues: in the last thirty plus years, both at the federal and the state level, a lot of ideas have been tossed into the hopper and tried out. Some of those ideas have been very successful; some of those ideas have not been so successful. The retail wheeling provision is one of those that's not been successful, and I don't think it's going to be successful going forward. So, my analogy here is that you've got some great ideas in a cart and you're attaching that cart to a dead horse. So, it's not going to go very far.

Senator Martha Fuller Clark, D. 24: Would you have some recommendations of how we might be able to move that cart forward?

Mr. Gantz: Well, that's a larger discussion about development. And one of the bills you'll be talking with a little bit later - specifically 418, Senate Bill 418 - has some potential for assisting in that process. And I can talk to that a little bit later today. Specifically to this bill, I think one of the things that are important to realize is the landscape thirty years ago was quite different than it is today. Access to transmission was an issue, and the pricing of retail services was an issue for many customers. But in that past thirty years, at the federal level, transmission has been opened up completely. We now have open access transmission; we have a very vibrant wholesale market, both at the regional level and both for generation and for transmission. You can get access to transmission. That process works well.

And at the retail level, we now have customer choice, which we didn't have in the past. So, any customer in the state of New Hampshire has the right to acquire competitive generation service from suppliers of their choice. And I would characterize that market, both in terms of the generation services as well as transmission services and access at the regional level, as an efficient and effective market. It's working. That's an area where I think we've had some great success. I think we've also had our steam sinks success from things like the RGGI bill, where funds are now coming into the state; they're being deployed to energy efficiency. The RPS statutes create a framework of encouraging and, over time, increasing renewable development. We've seen the state grants. We're at the point now with SB 4 ... SB 374-G, the

distributive energy resources law. We've just completed the hearings at the PUC this week. We'll be expecting a decision in the near future from the Commission. So, I think those are some things that I would point to as successes in these areas to try and help.

The retail wheeling provisions in the old LEEPA Law, I don't think, are successful or were successful. And I think some of the reasons ... Well, for example, the bill that you have in front of you, in reference to section 2, the subparagraph i that is amended: if you go to the very end of that paragraph, it says, "The Public Utilities Commission shall not set the terms of such contracts but may disapprove any contract which, in its judgment..." and there's a semi-colon. Well, there's a whole provision of the LEEPA Law that sets forth the guidance that the Commission has to follow. And one of the key provisions of those ... of that section of the law is to prevent subsidies. There's a reference to "shall not cause reasonably ... reasonable uncompensated losses." So, it's clearly ... The framework that's required is to eliminate subsidies or award subsidies.

That's not a trivial exercise at the Commission. It would require studies, evaluations; some of which could be quite expensive to do that. But I think more importantly, the fact that that whole provision of law is there to avoid subsidies means that this type of retail wheeling transaction is going to be competing against what exists in the market today, which, as I said, is very efficient. As customer can go and get a competitive supplier operating efficiently in the regional market. Developers of projects have the opportunity to get access to transmission to sell into that market. It's difficult for me to imagine circumstances where retail wheeling is going to provide any efficiencies over the system that exists as it's already in place.

So, that's an example of the fact that the original law ... And that's why, to my knowledge, we have not had any successful retail wheeling applications in the state of New Hampshire. It's not a trivial process, and because it is there to avoid subsidies, there are other avenues and other mechanisms, and including the market, efficient market mechanisms, that allow developers to bring power to market and for customers now to get access to effective and efficient generation supplies.

So, you know that's one, I think, factor to take into account. Another is that some of the practical, logistical, and even legal issues involved in retail wheeling transactions are some of the same questions that arose in the context of group net metering, the bill that was considered by the House Science, Technology, and Energy Committee. There was some extensive discussions. We raised some concerns about the administrative and logistical issues of tracking energy flows, accounting for energy flows. There's also a

question as to whether, and I think it's clear that, these types of transactions would be federally jurisdictional. So, now we have another layer of regulation that would come into play.

So, I offer those comments to the Committee. The goals of the bill are laudable, but it's difficult to see how the bill would accomplish the goals.

Senator Martha Fuller Clark, D. 24: Thank you very much. Other questions for Mr. Gantz? Okay. Thank you again. And I'm sure that we may continue to be in touch with you...

Mr. Gantz: Yes.

Senator Martha Fuller Clark, D. 24: ...if we have additional questions that we need answered. Is that correct?

Mr. Gantz: Yes, and I'm sorry I didn't have ... I just read this language yesterday.

Senator Martha Fuller Clark, D. 24: Okay.

Mr. Gantz: So, I didn't have the opportunity to confer with sponsors.

Senator Martha Fuller Clark, D. 24: Well, and again, we'd like to extend our thanks to everyone at Unitil for the terrific job that you've done and think that you're to be commended.

Mr. Gantz: Thank you. I'll pass that word along.

Senator Martha Fuller Clark, D. 24: Is there anyone else here who would like to speak to Senate Bill 422? Yes?

Clifton Below, Commissioner of the Public Utilities Commission: (Speaking from the back of the room) I just have a few quick observations, if I might.

I'm Clifton Below, one of the three Commissioners at the Public Utilities Commission. And just listening to the conversation, I have a couple of quick observations. This law, of course, dates back to 1979, which pre-dates the restructuring of the industry by twenty years. And to my knowledge, it really hasn't come into application or use at least in the past decade, if not well before that.

I gather from Mr. Gabler's comments that his concept or intent or the way he reads the language would open the door to small power producers, meaning

me

biomass plants up to thirty megawatts, to sell directly at retail. And he's interpreting that existing language in the statute, which is at line 16, to mean sell directly without going through the distribution utility. I'm not sure that that was what was meant at the time. The concept of selling at retail was a very early concept in 1979, to put into statute, but the reference to directly or indirectly through an electricity supplier, I'm not sure that was intended to mean bypassing the distribution utility, because much of the remaining section of the law of this RSA 362-A:2-a is about, sort of, the requirements for the franchise distribution utility to wield the power, so to speak.

And as has been stated, any generator in New Hampshire or elsewhere can sell at retail directly to any customer in the state. They do ... There is still an exclusive franchise for the distribution, so they can, in a sense, sell directly in the sense that they can get the meter reading data from the utility and bill the customer directly. Or they could, indirectly, do it by having the utility or some other competitive supplier do the billing for them. So, there's just some unclarity (sic) there. But to the extent of the intent of the bill and the extent the Committee wants to move forward with it, at line 15, the phrase, "The Commission may authorize..." The bill reads: "...authorize a limited producer to sell electricity at retail either directly or indirectly." That is the current law.

So, if the intent is to expand that from five megawatt co-gen and renewable to thirty megawatt biomass, then throughout the bill, it should be changed to say limited producer or qualifying small producer. And going back to line 9, in fact the phrase "a small producer" is not a defined term in the statute. The correct term would be "a qualifying small producer". And I don't know that there's any ... A qualifying small producer's a different set that partially overlaps with the phrase "limited producer", but ... And I don't think any limited producers are taking advantage, are using this statute. So, it may be this is all moot, but if you were to admit it, you'd probably want to include both just ... because at the time, there was an amendment to this statute in 1998, that I'm sure then Representative Bradley and myself were sponsors of, that inserted the phrase at line 13, "...unless additional authority to sell is otherwise allowed by statute or Commission order." That phrase was inserted at the time of re-structuring because we didn't really want to disturb anything that might have happened under this statute. But we wanted to say, in a sense, this whole statute's moot because, under another law, there's authority to sell at retail by any generator in the state.

So, I just wanted to clarify that.

Senator Martha Fuller Clark, D. 24: So, I want to ask you a question, since I received this e-mail from the Hampton Energy Committee. They were saying they believe that this bill opens the door to real opportunities in developing a co-generation facility that could serve the needs of sewage treatment plant and two other town power consumers, and that the facility could be located at the sewage treatment plant and provide thermal energy for the process used. But as I understand it, that they're limited because this would be in a brownfields area.

So, this is just a specific kind of project that's come forward. And do you believe that this is the type of project that we should find a way to make viable? So, issue of co-generation again; we're seeing ... Obviously, when we look at what happened with Rochester and the University of New Hampshire, that's a co-generation loop.

Commissioner Below: Well, to some extent, entities could do this now. What they would be selling is the generation output at whatever price, and it doesn't have to be reviewed by the Commission. The issue is: Can you do ... Would you do that by using the wires of the distribution utility such that they still collected distribution charge, standard cost recovery charge, the system benefits charge, the state electricity consumption tax? I presume the electricity consumption tax would still apply, but I guess the question is: Is it the suggestion or the intent of the bill that you allow a bypass of the distribution utility and really allow some proximity to sell directly with lines that run directly from a generator to a user.

That's a somewhat new concept, and I think that would bear some thought, because there is this statute. It's RSA 369-B, called *Electric Rate Reduction Financing* that does...

Senator Martha Fuller Clark, D. 24: Could you repeat that statute number?

Commissioner Below: Three ... RSA 369-B, and it talks about the process for setting up a non-bypassable rate reduction - RRB: rate reduction bond, I guess - charge, and it being collected from every retail customer and not ... The concept of it not being bypassable. And the concept of non-bypassable's also in the re-structuring statute that certain charges - specifically standard cost recovery charge, which this RRB charge is imbedded in for PSNH as well as the system benefits charge I mentioned in this - be non-bypassable; that all customers pay it.

Now, there is this other bill that I believe ... It did pass the House yesterday and updates the net metering law, that expands the coverage of the net

metering law that does allow some, sort of, offsets; expands the offsets behind the meter as well as provides a way for people to have output. So, that partially, maybe, addresses the issue. Although, it doesn't include co-generation facilities; just limited renewable generation.

Senator Martha Fuller Clark, D. 24: Okay. Yes, Senator Cilley?

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. And I have a couple of questions. I'm trying to wrap my head around some the things that we've done over the last couple of years with allowing small energy producers to produce their own power. You know I think we had residential at five megawatt power generators, and they were...

Senator Martha Fuller Clark, D. 24: They were some (indecipherable) in law.

Senator Jacalyn L. Cilley, D. 6: There were a couple, and forgive me, because sitting here today, I'm not remembering all of them. But they were, you know, sort of similar in nature. Is the distinction, to the best of your knowledge - and I know I haven't been very clear about the legislation that I was talking about - is the distinction that they would sell any power they had over the franchise lines?

Commissioner Below: Yes.

Senator Jacalyn L. Cilley, D. 6: If I may follow up?

Senator Martha Fuller Clark, D. 24: Follow up.

Senator Jacalyn L. Cilley, D. 6: But domestic producers wouldn't have to do that?

Commissioner Below: What do you mean, "domestic"?

Senator Jacalyn L. Cilley, D. 6: Well, if a residential ... If a citizen had a windmill in their backyard, and they sold the power ... Well, I suppose if they sold the power, then maybe they would go over franchise lines.

Commissioner Below: Yes.

Senator Jacalyn L. Cilley, D. 6: Okay. So, this leads me, if I might continue? This leads me to my final question. If there is ... If there exists differences between the owners of the distribution lines and the producer of the power such that it is too difficult to come to an arrangement to do that,

what happens then? Because it's my understanding of the case pending now - and I know better than to ask you about anything that's pending between the ... for the PUC - where you have somebody who, in good faith, wants to produce energy for this state and produce jobs, and there are some differences of opinion about that.

Commissioner Below: Well, we need, if there's a dispute with any regulated utility, a complaint can be filed at the Commission. The Commission has authority to follow up, investigate, and resolve it by ordering action by the utility, if it's within the law and our regulations. Is that responsive?

Senator Jacalyn L. Cilley, D. 6: Well, if I may? I'm ... What concerns me is that ... And I'm not speaking to the validity of the issues between these entities. But what concerns me is that if you have a company who wishes to participate in this marketplace - and presumably, one of our main goals is renewables and clean energy and so on - that if their hands are tied to only being able to utilize what is in place currently, they may be hamstrung. I mean, we may be inadvertently precluding them from ever participating in the marketplace, which seems to be occurring now, and that concerns me.

Commissioner Below: I'm not ... An ability to participate in the marketplace is there, 'cause there are technical constraints on inter-connection and, at certain scales, you elevate to ISO New England review of the inter-connection. But assuming that technically it's feasible to inter-connect, meaning the grid will support the output that somebody's putting on the grid, they can inter-connect and sell into the wholesale market or, if they find a retail buyer, they can sell at retail. And if it's a sale at retail, the generator in New Hampshire wants to sell at retail to a customer in New Hampshire, they can do that. It's not ... I don't believe there's any federal jurisdiction over that transaction. If it involves transmission lines, then you know there's an issue about paying for use of transmission. But basically, that option's available now. And people do use it.

Senator Jacalyn L. Cilley, D. 6: Forgive me for belaboring this...

Senator Martha Fuller Clark, D. 24: Yes, you may.

Senator Jacalyn L. Cilley, D. 6: ...but it is critical to this discussion. Who has the final authority about whether somebody can connect to transmission lines?

Commissioner Below: If it's a state jurisdictional facility, which is a distribution facility ... And sometimes some distribution is called transmission and sometimes that means it's federal jurisdictional, but

sometimes it's still our jurisdiction. But every line falls into either state jurisdiction or federal jurisdiction. If it's a state jurisdictional line, we have the final say on that inter-connection, and we have inter-connection rules and disputes resolution rules and things of that sort. If...

Senator Jacalyn L. Cilley, D. 6: So, you need ... Just to stop you there for a moment.

Commissioner Below: Yes?

Senator Jacalyn L. Cilley, D. 6: You need no approval by the owner of the transmission lines?

Commissioner Below: The distribution is what I'll call what we have jurisdiction over. At certain ... At scales, our rules provide for how to inter-connect to distribution lines in New Hampshire. So, yeah, they do have to ... At most scales, you have to get the utility's permission. There's some small scale stuff on net metering that there's a fairly minimal approval process, but there's still an approval process because the utility needs to know what's out there putting power onto the grid. But that's handled right now.

Senator Jacalyn L. Cilley, D. 6: But...

Commissioner Below: And there are literally hundreds of generators in New Hampshire that are inter-connected and sell either at wholesale or possibly at retail.

Senator Jacalyn L. Cilley, D. 6: I'm going to beg your forbearance a little...

Commissioner Below: Okay.

Senator Jacalyn L. Cilley, D. 6: ...a little more. You said you needed the permission of the utility. What happens when that's not given?

Commissioner Below: I don't know that it's not been given.

Senator Jacalyn L. Cilley, D. 6: I would submit that there's a possibility of that. So, let's ... Just humor me.

Commissioner Below: Okay.

Senator Jacalyn L. Cilley, D. 6: What happens when it's not given?

Commissioner Below: Well, if it's not given and the entity that's seeking it, they can file a complaint at the Commission. We don't have any complaints of that sort pending at the Commission.

Senator Jacalyn L. Cilley, D. 6: All right. Final question?

Senator Martha Fuller Clark, D. 24: Yes, okay.

Senator Jacalyn L. Cilley, D. 6: Is there anything that prevents ... If you've got three entities surrounding a brownfield site, is there anything that prevents them from getting into an agreement on something that they would own? They'll throw up a windmill, or they'll put in a biomass plant and generate their own power. Is there anything that prevents them from doing that now?

Commissioner Below: Well, I guess the question ... Generally no, but the question is ... Do you mean separate entities that are on separate parcels of property...

Jeb E. Bradley, D. 3: Right.

Commissioner Below: ...that are, you know, down the street from each other, or ones that are all on the same lot under one ownership?

Senator Jacalyn L. Cilley, D. 6: I don't know. Tell me what the difference is.

Commissioner Below: Well, the difference is if they were all behind one retail meter, no big deal. If they were spread up and down a public street, and the power lines to connect to the other place you had to go across the public right-of-way, then you would have to use the distribution utility's distribution lines to get there because of a general policy that's in statute that we not have two sets of power lines running up and down the streets.

Senator Jacalyn L. Cilley, D. 6: And you need their permission to do so?

Commissioner Below: Yes.

Senator Jacalyn L. Cilley, D. 6: Okay. Thank you.

Senator Martha Fuller Clark, D. 24: Thank you very much, Senator Cilley. Other questions or comments? Okay. Thank you very much. Is there anyone else who would like to speak to or for or against this bill? Yes, if you'd like to come forward, sir. And for the record?

Mel Liston, Clean Power Development: Mel Liston, the President of Clean Power Development. I think I want to get back to some basic things, here. Presently, if we build a biomass energy plant, I presume that we could direct connect to up to three entities, three customers, and sell them energy. Whether they get their back-up power from us or whether they have their own back-up power supplies or whether they get the back-up power from the utilities is a business decision they would make. Obviously, the cost of back-up power is going to be added to their total cost of energy. We would be supplying them energy when it is available from our facility.

We can do that with three because on ... in a contiguous piece of property, we can direct connect to them. Once we have another piece of property or another location, like a brownfield site that's not contiguous, we don't have a mechanism to direct connect to them unless ... The only thing that's available to us is to wheel through the utility system. When you wheel through the utility system, it's not only are we adding the ... You know we're adding all the costs associated with that type of an operation, so they get more than just the energy costs, but they get all the other costs of the utility, the second side of the bill.

So, what we're, in effect, trying to do here is to say, "Okay. We have a contiguous piece of property." You want to take a brownfield piece of property or industrial development zone that's separated and, in theory, legally make it one piece of property so that we can connect to entities who are on that brownfield site. So, a major piece of this, because it was mentioned here, is that we do want to be able to run hard wires up right-of-ways to connect to these brownfields. In other words, we want to run transmission lines; either we or another entity who might be a municipal, for instance, that we would just sell bulk power to.

And the thing about this is that we're not talking about taking away existing customers from utilities. In every case, we're talking about new customers that don't presently exist, especially in the case of brownfields. So, it is economics development, and it is jobs development. And if you're an industry that's looking for a place to build a new factory or a major greenhouse or something that's going to consume a lot of electricity, the cost of electricity is very, very important to you as to whether you want to locate someplace.

Not only does this create additional market that we can sell energy to, but it creates a situation whereby industries may move to New Hampshire, New Hampshire brownfields, or New Hampshire economic development zones that wouldn't otherwise have done that because electricity's a major component of their operation. Greenhouse growing operations are a prime example, as are

anything that involves a lot of computers. And a greenhouse growing operation, with grow lights and electric heat blankets and so on and so forth, they use a tremendous amount of electricity. And where they locate, the price of electricity's going to be very important. Not necessarily do they care about a back-up supply. Okay. If their electric lights go off, do they want to keep heat on the building? So, they would have a back-up heat supply, but it just means that their plants don't grow quite as fast. So, they could wait for it to come along. So, they could get by without a major back-up supply of electricity.

They would use a lot of acreage, and they would employ a lot of people, but their decision to locate in New Hampshire is going to be primarily as a result of they're able to get inexpensive electricity. And right now, we do not have the right to run hard wires or transmission or distribution lines up and down roads and things like that that exist only with the utilities. And that's a major piece of what we're looking for in this specific situation. And this specific situation is brownfields or economic development zones, and it involves a hundred percent new businesses, new consumers. It's not taking away consumers that already belong to the utilities.

So, in a lot of these cases, if not all of them, these would be new customers that employ people and pay taxes and so on and so forth that probably would not exist without this arrangement.

Senator Martha Fuller Clark, D. 24: Thank you. Are there questions for Mr. Liston? Yes, Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair, and thank you for your testimony, Mr. Liston.

Senator Martha Fuller Clark, D. 24: One question.

Senator Jacalyn L. Cilley, D. 6: One question. Does this mean that you would have, with these companies, a sole monopoly? There'd be no other way for them to get their electricity?

Mr. Liston: They can always hook-up to the utility. Like I said, they might have a connection to the utility for their back-up supply, in which case, they will be billed for stand-by power, and they will be billed for consumption of the electricity from the utility when they use that.

Senator Jacalyn L. Cilley, D. 6: Okay. Thank you.

Senator Martha Fuller Clark, D. 24: Yes? George Gantz would like to comment again. Thank you.

Mr. Gantz: (Speaking from the back of the room) Yes, if I could.

Senator Martha Fuller Clark, D. 24: If you come forward...

Mr. Liston: Do I leave or I...

Senator Martha Fuller Clark, D. 24: ...please.

Mr. Liston: Do I stay or leave?

Senator Martha Fuller Clark, D. 24: I think we're finished with you...

Mr. Liston: Okay.

Senator Martha Fuller Clark, D. 24: ...for the time being.

Mr. Gantz: (Speaking from the back of the room) Thank you. I just wanted to add a little context about the original LEEPA Law.

Senator Martha Fuller Clark, D. 24: If you could sit down.

Mr. Gantz: And there's nothing in that original law that contemplated private parties running electric wires along public ways. That was discussed at length thirty years ago and identified as a very significant public policy issue. If you are running electric lines along public ways, you've got safety issues; you've got liability issues; you've got public interest issues. The obligations of the utility operating in public ways are very, very significant; very, very important. As we just saw, when you come into a storm event, and you've got restoration issues, you know that's an example of how important those responsibilities are.

So, the original legislation did not contemplate private parties running electric lines along public ways. That's a very, very serious issue, separate from what the original law did enable and, I think, what is contemplated in the amendment. I just wanted to add that.

Senator Martha Fuller Clark, D. 24: Thank you very, very much. With that, I'm going to close the hearing on Senate Bill 422. I apologize that we're running behind.

Hearing concluded at 9:55 a.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Marty Cote". The signature is written in a cursive, flowing style.

Marty Cote
Senate Secretary
6/3/10

3 Attachments

Whitman, Gregory

From: Rapp, Elaine
Sent: Thursday, March 04, 2010 7:51 AM
To: Frizzell, Jennifer; Fuller Clark, Martha
Subject: Federal definition of Brownfields

Jennifer,
Pursuant to your request for a definition of "Brownfields," please see definition from the federal Brownfields Revitalization Act of 2002.
Elaine
SR#6198

Elaine D. Rapp, Director
New Hampshire Senate Research
senate.research@leg.state.nh.us
Phone: (603) 271-2351
Fax: (603) 271-3099

<http://www.epa.gov/brownfields/overview/glossary.htm>

Brownfields Definition

With certain legal exclusions and additions, the term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Definition Source:
The Brownfields Site definition is found in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002.

"DEFINITION OF BROWNFIELD SITE- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

(39) BROWNFIELD SITE-

(A) IN GENERAL- The term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) EXCLUSIONS- The term "brownfield site" does not include--

(i) a facility that is the subject of a planned or ongoing removal action under this title;

(ii) a facility that is listed on the National Priorities List or is proposed for listing;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this Act;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility that--

(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which--

(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

(II) closure requirements have been specified in a closure plan or permit;

(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

(viii) a portion of a facility--

(I) at which there has been a release of polychlorinated biphenyls; and

(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

(C) SITE-BY-SITE DETERMINATIONS- Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) ADDITIONAL AREAS- For the purposes of section 104(k), the term "brownfield site" includes a site that--

(i) meets the definition of "brownfield site" under subparagraphs (A) through (C); and

(ii)(I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of "hazardous substance" under section 101; and

bb) is a site determined by the Administrator or the State, as appropriate, to be

(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(III) is mine-scarred land."

Attachment #2

Fuller Clark, Martha**From:** James Monahan [jmonahan@dupontgroup.com]**Sent:** Thursday, December 10, 2009 12:54 PM**To:** Fuller Clark, Martha**Subject:** RE:

LSR 2799 - allowing qualifying renewable energy power producers to sell their electrical energy to purchases located in a Brownfield or an economically depressed area:

This bill amends the existing NH Limited Electrical Energy Producers act (RSA 362-A). Under this law, a limited power producer (smaller than 5 megawatts) can sell directly to up to 3 retail customers, without passing the power over to the local utility. This bill would alter that provision to allow small producers under 30 megawatts to sell directly to purchasers who are located in Brownfield sites or in economically depressed locations.

The hope is that a small renewable generator would be able to enter into a long-term contract with a company that locates where jobs and economic activity are needed. The contract will ensure that there is a purchaser for the power and will help the project get the financing needed to begin construction.

The focus on Brownfield's is that by developing a direct energy supply system at the site, which will likely be less expensive than power that is delivered across the grid, communities that have industrial development sites at Brownfield's locations might be able to attract energy intensive businesses. The availability of less expensive power being an tool to promote the development of these areas that otherwise would be viewed as less desirable.

Because the bill uses the existing structure of RSA 362-A, all the provisions that protect the ratepayers and system overall are already in place and managed by the PUC.

I hope you will agree to co-sponsor and support these proposals, which will be important economic development tools for New Hampshire as we move out of the current recession.

In the past utilities have opposed any major expansion of this section of law because they fear the lost of delivery charges, if the users takes delivery directly from a generator, rather through the normal across the grid system. However, the tests that would be applied at the PUC who has to approve these arrangements under the bill would have to determine that the load might not have been developed without this provision, thus, the utility is not losing a customer they would have gotten.

Clean Power Developments work on this approach grew out of discussions with town officials in Berlin and Winchester, NH who are each hoping to develop a Brownfield site into an industrial park.

From: Fuller Clark, Martha [mailto:Martha.FullerClark@leg.state.nh.us]**Sent:** Thursday, December 10, 2009 11:23 AM**To:** James Monahan**Subject:**

Jim, could you prepare a short explanation on why we need to include brownfields per the legislation you and Bill Gabler have proposed and email it to me? Sorry, I don't have the LSR number in front of me. Why would PSNH be opposed? I couldn't answer all of Senator Kelly's questions yesterday. Your comments would be helpful. Many thanks, Martha

3/3/2010

Howard L. Wilson
57 Agony Hill Road
Andover, NH 03216
stoneanarch@tds.net
603-735-5427

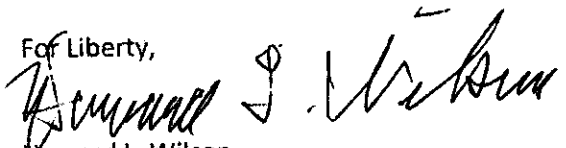
Energy, Environment & Economic Development Committee
March 4, 2010 8:30 AM 102 LOB

Re: SB 422

I would that committee fold SB 422, into legislation for later this morning, as ~~SB~~^{SB} 334, and be heard as one along with SB 418, at the same time.

All 3 bills deal with enablement of small scale energy suppliers, to either supply a small scale market, locally enabled, or dump into the grid, to be distributed or sold as needed, if in excess to needs

As such all 3 pieces of legislation, are parts of a whole, and should be found as one piece of legislation, all as Ought to Pass.

For Liberty,

Howard L. Wilson
Libertarian for US House, 2nd

Speakers

Senate Energy, Environment and Economic Development Committee: Sign-In Sheet

Date: March 4, 2010

Time: 8:30 a.m. Public Hearing on Senate Bill 422

SB 422 relative to small power producer electric sales in brownfields and economically depressed locations.

Name	Representing	Support	Oppose	Speaking?	Yes
Sen. Fuller Clark	Dist. 24	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>
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Testimony

NEW HAMPSHIRE SENATE RESEARCHMEMORANDUM

TO: Jennifer Frizzell for Senator Fuller Clark
 DATE: March 3, 2010
 FROM: Senate Research (Theresa Neves, Diana Ferguson)
 IN RE: Brownfields Definition in NH Statute

You have asked for a definition of the term "brownfields" from the NH Statutes and, if unavailable in NH RSA, then from the US Code. Below are copied excerpts from the NH Statutes found in our search. The definition is in NH RSA 147-F:3,II below and it refers to NH RSA 147-F:4,II also below (emphasis added in both sections).

We also checked the NH Administrative Rules and found reference to NH RSA 147-F:4,II shown below.

Please let us know if you need any additional information on this.

**TITLE X
 PUBLIC HEALTH
 CHAPTER 147-F
 BROWNFIELDS PROGRAM**

147-F:3 Definitions. – In this chapter, the following words shall have the following meanings, unless the context otherwise requires:

I. The definitions of terms provided in RSA 147-B:2 shall be applicable to this chapter to the extent those terms are used in this chapter unless otherwise defined herein.

II. **""Brownfields"" means properties which have been environmentally contaminated, subject to the limitations of RSA 147-F:4, II.**

III. **""Contaminant"" or ""Contamination"" means hazardous waste, hazardous materials (without regard to whether transported in commerce), or oil, as defined in RSA 146-A:2, III.**

IV. **""Department"" means department of environmental services.**

V. **""Eligible person"" means a person who meets the criteria under RSA 147-F:4, I, and who qualifies for a covenant not to sue.**

VI. **""Person"" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, limited liability company, municipality, commission, and the state or a political subdivision of the state.**

VII. **""Program"" means the brownfields program established by this chapter.**

VIII. **""Program participant"" means any person, whether or not eligible for the liability protections created by this chapter, who is approved by the department to use the remedial process prescribed by this chapter.**

Source. 1996, 241:2, eff. July 1, 1996.

NEW HAMPSHIRE SENATE RESEARCH

147-F:4 Eligibility for Program. –

I. A person is eligible to participate in the program if the person qualifies under one of the following categories:

(a) The person is not liable under RSA 147-B for any release or threatened release of a contaminant or contaminants at the property and is either:

(1) A prospective purchaser of eligible property; or

(2) A person who holds a mortgage interest or other security interest in eligible property, including a municipality with respect to property on which there are overdue real estate taxes due to the municipality.

(b) The person, including a municipality, is a current owner of eligible property whose liability under RSA 147-B is based solely on the person's status as owner and who did not cause or contribute to the contamination at the property.

II. Any environmentally contaminated property is eligible unless one of the following conditions applies:

(a) The property is not in compliance with any corrective action order issued under RSA 147-A or any other compliance order issued under a state or federal environmental program and the department determines that the property will not be brought into substantial compliance as a result of participation in the cleanup program.

(b) The property is eligible for cost reimbursement from the oil discharge and disposal cleanup fund, the fuel oil discharge cleanup fund or the motor oil discharge cleanup fund, unless it receives substantially less than full reimbursement from these funds.

III. A person seeking a determination of eligibility shall submit to the department a certificate signed under oath that includes all information the department of justice determines is necessary to verify eligibility.

Source. 1996, 241:2. 1997, 264:2, eff. June 19, 1997.



Brownfields and Land Revitalization

You are here: [EPA Home](#) [Brownfields](#) [Basic Information](#) Brownfields Definition

Brownfields Definition

Brownfields

With certain legal exclusions and additions, the term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Definition Source:

The Brownfields Site definition is found in Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act" signed into law January 11, 2002.

"DEFINITION OF BROWNFIELD SITE- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

(39) BROWNFIELD SITE-

(A) IN GENERAL- The term "brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(B) EXCLUSIONS- The term "brownfield site" does not include--

(i) a facility that is the subject of a planned or ongoing removal action under this title;

(ii) a facility that is listed on the National Priorities List or is proposed for listing;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this Act;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility that--

- (I) is subject to corrective action under section 3004(u) or 3008
- (h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928
- (h)); and
- (II) to which a corrective action permit or order has been issued

or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which--

(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and
(II) closure requirements have been specified in a closure plan or permit;

(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

(viii) a portion of a facility--

(I) at which there has been a release of polychlorinated biphenyls; and
(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

(C) SITE-BY-SITE DETERMINATIONS- Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

(D) ADDITIONAL AREAS- For the purposes of section 104(k), the term "brownfield site" includes a site that--

(i) meets the definition of "brownfield site" under subparagraphs (A) through (C); and

(ii)(I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of "hazardous substance" under section 101; and

bb) is a site determined by the Administrator or the State, as appropriate, to be

(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(III) is mine-scarred land."

<http://www.epa.gov/brownfields/overview/glossary.htm>
Last updated on Friday, November 13, 2009

Penny
#2



Brownfields and Land Revitalization

You are here: [EPA Home](#) Brownfields

Brownfields Quickfinder

2009 Action Plan	Brownfields Conference: Nov 16-18, 2009	Job Training Grants	States & Tribes
ACRES	Brownfields Law	Land Revitalization	Success Stories
All Appropriate Inquiries	Cleanup Grants	Recovery Act	Sustainability
Apply for Funding	Grant Fact Sheets	Revolving Loan Fund Grants	Tax Incentive
Assessment Grants	Grantee Reporting		

EPA Brownfields Program Benefits

The Brownfields Program creates many benefits for local communities, as highlighted below. For additional details, read the summary of EPA Brownfields Program Benefits (PDF) (1 pg, 91K, about PDF).

- Projects leveraged \$18.68 per EPA dollar expended
- Leveraged 61,023 jobs nationwide
- Can reduce stormwater runoff by 44 to 88 percent on brownfield sites
- Can increase residential property values 2 to 3 percent when nearby brownfields are addressed
- Promotes area-wide planning

Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and takes development pressures off greenspaces and working lands. On this site, you can find information about US EPA's Brownfields Program including the [Brownfields Law](#), [Brownfields Grants](#), [Land Revitalization Information](#), and [more....](#)

Grants & Funding: Find resources that can be used for brownfields activities, technical information on brownfields financing matters, and awardee fact sheets using the [Brownfields Grant Fact Sheet Search Tool](#).

Laws & Statutes: Learn about "the Brownfields Law" and other related laws and regulations.

Success Stories: Find Brownfields grantee accomplishments from across the country.

Tools & Technical Information: Find technologies, technical help, contacts, and other resources to aid in the assessment and cleanup of brownfield properties.

Partnerships: Discover the wide range of stakeholders to promote the cleanup and reuse of Brownfields.

Initiatives: Learn about initiatives that explore sector-based solutions, enhance environmental quality, spur economic development, and revitalize communities.

Related Links

- Land Revitalization
- Solid Waste and Emergency Response
- Cleanups in My Community

News & Highlights

- EPA Listening Session on All Appropriate Inquiries Rule (PDF) (1 pg, 15K, about PDF)
- Partnership for Sustainable Communities: Brownfields

Brownfields Recovery Act Activities

- Brownfields Recovery Act Reporting Guidance
- Supplemental Revolving Loan Fund Grants funded by the Recovery Act

Pilot Projects (PDF) (2 pp, 36K, about PDF)
Building a Sustainable Future: A Report on the Environmental Protection Agency's Brownfields Sustainability Pilots (PDF) (48 pp, 2.16M, about PDF)

Job Training Grants funded by the Recovery Act

more...

more...



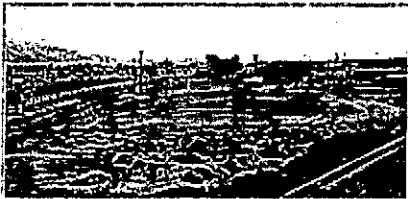
<http://www.epa.gov/brownfields/about.htm>
Last updated on Thursday, February 18, 2010

Brownfields and Land Revitalization

You are here: [EPA Home](#) [Brownfields](#) [Basic Information](#) [About Brownfields](#)

About Brownfields

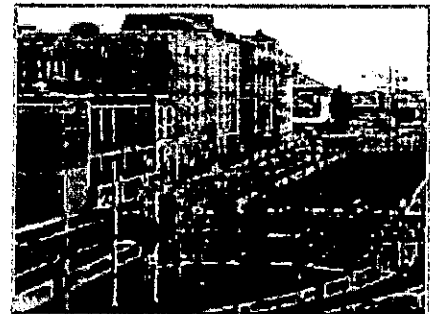
You will need Adobe Reader to view some of the files on this page. See [EPA's PDF page](#) to learn more.



Since its inception in 1995, EPA's Brownfields Program has grown into a proven, results-oriented program that has changed the way contaminated property is perceived, addressed, and managed. EPA's Brownfields Program

is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields. A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. It is estimated that there are more than 450,000 brownfields in the U.S. Cleaning up and reinvesting in these properties increases local tax bases, facilitates job growth, utilizes existing infrastructure, takes development pressures off of undeveloped, open land, and both improves and protects the environment. Initially, EPA provided small amounts of seed money to local governments that launched hundreds of two-year brownfield "pilot" projects. Through passage of the [Small Business Liability Relief and Brownfields Revitalization Act](#), effective polices that EPA had developed over the years were passed into law. The Brownfields Law expanded EPA's assistance by providing new tools for the public and private sectors to promote sustainable brownfields cleanup and reuse.

Brownfields grants continue to serve as the foundation of EPA's Brownfields Program. These grants support revitalization efforts by funding environmental assessment, cleanup, and job training activities. [Brownfields Assessment Grants](#) provide funding for brownfield inventories, planning, environmental assessments, and community outreach. [Brownfields Revolving Loan Fund Grants](#) provide funding to capitalize loans that are used to clean up brownfields. [Brownfields Job Training Grants](#) provide environmental training for residents of brownfields communities. [Brownfields Cleanup Grants](#) provide direct funding for cleanup activities at certain properties with planned greenspace, recreational, or other nonprofit uses.



EPA's investment in the Brownfields Program has resulted in many accomplishments, including leveraging more than \$14.0 billion in brownfields cleanup and redevelopment funding from the private and public sectors and leveraging approximately 60,917 jobs. The momentum generated by the Program is leaving an enduring legacy. The Brownfields Program and its [partners](#) have provided guidance and incentives to support economic revitalization, and empowered communities to address the brownfields in their midst. EPA's Brownfield Program continues to look to the future by expanding the types of properties it addresses, forming new partnerships, and undertaking new initiatives to help revitalize communities across the nation.

About Brownfields

Brownfields Mission

Brownfields and Land Revitalization General Brochure (PDF) (2 pp, 1.5M)
EPA-560-F-09-519
October 2009

Brownfields Law (PDF) (2 pp, 141K)
EPA 500-F-02-134
October 2002



Brownfields and Land Revitalization

You are here: [EPA Home](#) [Brownfields](#) [Laws and Statutes](#) [Small Business Liability Relief and Brownfields Revitalization Act](#) H.R.2869

Small Business Liability Relief and Brownfields Revitalization Act

H.R.2869

**One Hundred Seventh Congress
of the
United States of America
AT THE FIRST SESSION**

Begun and held at the City of Washington on Wednesday,

the third day of January, two thousand and one

An Act

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Liability Relief and Brownfields Revitalization Act."

TITLE I--SMALL BUSINESS LIABILITY PROTECTION

SEC. 101. SHORT TITLE.

This title may be cited as the "Small Business Liability Protection Act."

SEC. 102. SMALL BUSINESS LIABILITY RELIEF.

(a) EXEMPTIONS- Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following new subsections:

"(o) DE MICROMIS EXEMPTION-

"(1) IN GENERAL- Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this Act if liability is based solely on paragraph (3) or (4) of subsection (a), and the person, except as provided in paragraph (4) of this subsection, can demonstrate that--

"(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

"(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

"(2) EXCEPTIONS- Paragraph (1) shall not apply in a case in which--

"(A) the President determines that--

"(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

"(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

"(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

"(3) NO JUDICIAL REVIEW- A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

"(4) NONGOVERNMENTAL THIRD-PARTY CONTRIBUTION ACTIONS- In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this Act, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

"(p) MUNICIPAL SOLID WASTE EXEMPTION-

"(1) IN GENERAL- Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is--

"(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

"(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

"(C) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term 'affiliate' has the meaning of that term provided in the definition of 'small business concern' in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

"(2) EXCEPTION- Paragraph (1) shall not apply in a case in which the President determines that--

"(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

"(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act; or

"(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

"(3) NO JUDICIAL REVIEW- A determination by the President under paragraph (2) shall not be subject to judicial review.

"(4) DEFINITION OF MUNICIPAL SOLID WASTE-

"(A) IN GENERAL- For purposes of this subsection, the term 'municipal solid waste' means waste material--

"(i) generated by a household (including a single or multifamily residence); and

"(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material--

"(I) is essentially the same as waste normally generated by a household;

"(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

"(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

"(B) EXAMPLES- Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

"(C) EXCLUSIONS- The term 'municipal solid waste' does not include--

"(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

"(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

"(5) BURDEN OF PROOF- In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under section 107 or 113 by--

"(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

"(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

"(6) CERTAIN ACTIONS NOT PERMITTED- No contribution action may be brought by a party, other than a Federal, State, or local government, under this Act with respect to circumstances described in paragraph (1)(A).

"(7) COSTS AND FEES- A nongovernmental entity that commences, after the date of the enactment of this subsection, a contribution action under this Act shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o)."

(b) EXPEDITED SETTLEMENT- Section 122(g) of such Act (42 U.S.C. 9622(g)) is amended by adding at the end the following new paragraphs:

"(7) REDUCTION IN SETTLEMENT AMOUNT BASED ON LIMITED ABILITY TO PAY-

"(A) IN GENERAL- The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

"(B) CONSIDERATIONS- In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

"(C) INFORMATION- A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

"(D) ALTERNATIVE PAYMENT METHODS- If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the President shall consider such alternative payment methods as may be necessary or appropriate.

"(8) ADDITIONAL CONDITIONS FOR EXPEDITED SETTLEMENTS-

"(A) WAIVER OF CLAIMS- The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this Act) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

"(B) FAILURE TO COMPLY- The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

"(C) RESPONSIBILITY TO PROVIDE INFORMATION AND ACCESS- A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 104(e).

"(9) BASIS OF DETERMINATION- If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

"(10) NOTIFICATION- As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.

"(11) NO JUDICIAL REVIEW- A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

"(12) NOTICE OF SETTLEMENT- After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement."

SEC. 103. EFFECT ON CONCLUDED ACTIONS.

The amendments made by this title shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act.

TITLE II--BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Brownfields Revitalization and Environmental Restoration Act of 2001."

Subtitle A—Brownfields Revitalization Funding

SEC. 211. BROWNFIELDS REVITALIZATION FUNDING.

(a) DEFINITION OF BROWNFIELD SITE- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

"(39) BROWNFIELD SITE-

"(A) IN GENERAL- The term 'brownfield site' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

"(B) EXCLUSIONS- The term 'brownfield site' does not include--

"(i) a facility that is the subject of a planned or ongoing removal action under this title;

"(ii) a facility that is listed on the National Priorities List or is proposed for listing;

"(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this Act;

"(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

"(v) a facility that--

"(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

"(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

"(vi) a land disposal unit with respect to which--

"(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

"(II) closure requirements have been specified in a closure plan or permit;

"(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

"(viii) a portion of a facility--

"(I) at which there has been a release of polychlorinated biphenyls; and

"(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

"(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

"(C) SITE-BY-SITE DETERMINATIONS- Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the

creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

"(D) ADDITIONAL AREAS- For the purposes of section 104(k), the term 'brownfield site' includes a site that--

"(i) meets the definition of 'brownfield site' under subparagraphs (A) through (C); and

"(ii)(I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of 'hazardous substance' under section 101; and

"(bb) is a site determined by the Administrator or the State, as appropriate, to be --

"(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

"(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

"(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

"(III) is mine-scarred land."

(b) BROWNFIELDS REVITALIZATION FUNDING- Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) is amended by adding at the end the following:

"(k) BROWNFIELDS REVITALIZATION FUNDING-

"(1) DEFINITION OF ELIGIBLE ENTITY- In this subsection, the term 'eligible entity' means-

"(A) a general purpose unit of local government;

"(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

"(C) a government entity created by a State legislature;

"(D) a regional council or group of general purpose units of local government;

"(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

"(F) a State;

"(G) an Indian Tribe other than in Alaska; or

"(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community.

"(2) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT GRANT PROGRAM-

"(A) ESTABLISHMENT OF PROGRAM- The Administrator shall establish a program to--

"(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

"(ii) perform targeted site assessments at brownfield sites.

"(B) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT-

"(i) IN GENERAL- On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

"(ii) SITE CHARACTERIZATION AND ASSESSMENT- A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 101(35)(B).

"(3) GRANTS AND LOANS FOR BROWNFIELD REMEDIATION-

"(A) GRANTS PROVIDED BY THE PRESIDENT- Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to--

"(i) eligible entities, to be used for capitalization of revolving loan funds; and

"(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed \$200,000 for each site to be remediated.

"(B) LOANS AND GRANTS PROVIDED BY ELIGIBLE ENTITIES- An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of--

"(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

"(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

"(C) CONSIDERATIONS- In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration--

"(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

"(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

"(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

"(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

"(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

"(D) TRANSITION- Revolving loan funds that have been established before the date of the enactment of this subsection may be used in accordance with this paragraph.

"(4) GENERAL PROVISIONS-

"(A) MAXIMUM GRANT AMOUNT-

"(i) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT-

"(I) IN GENERAL- A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, \$200,000.

"(II) WAIVER- The Administrator may waive the \$200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed \$350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

"(ii) BROWNFIELD REMEDIATION- A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed \$1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration--

"(I) the number of sites and number of communities that are addressed by the revolving loan fund;

"(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

"(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

"(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

"(B) PROHIBITION-

"(i) IN GENERAL- 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) an administrative cost;

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

"(V) 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.

"(ii) EXCLUSIONS- For the purposes of clause (i)(III), the term 'administrative cost' does not include the cost of--

"(I) investigation and identification of the extent of contamination;

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

"(III) monitoring of a natural resource.

"(C) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS- A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include--

"(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

"(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

"(D) INSURANCE- A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

"(5) GRANT APPLICATIONS-

"(A) SUBMISSION-

"(i) IN GENERAL-

"(I) APPLICATION- An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

"(II) NCP REQUIREMENTS- The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

"(ii) COORDINATION- The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

"(iii) GUIDANCE- The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

"(B) APPROVAL- The Administrator shall--

"(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

"(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under the ranking criteria established under subparagraph (C).

"(C) RANKING CRITERIA- The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

"(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

"(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

"(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

"(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

"(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

"(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

"(vii) The extent to which the applicant is eligible for funding from other sources.

"(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

"(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

"(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

"(6) IMPLEMENTATION OF BROWNFIELDS PROGRAMS-

"(A) ESTABLISHMENT OF PROGRAM- The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

"(B) FUNDING RESTRICTIONS- The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

"(7) AUDITS-

"(A) IN GENERAL- The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

"(B) PROCEDURE- An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

"(C) VIOLATIONS- If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may--

"(i) terminate the grant or loan;

"(ii) require the person to repay any funds received; and

"(iii) seek any other legal remedies available to the Administrator.

"(D) REPORT TO CONGRESS- Not later than 3 years after the date of the enactment of this subsection, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

"(8) LEVERAGING- An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

"(9) AGREEMENTS- Each grant or loan made under this subsection shall--

"(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

"(B) be subject to an agreement that--

"(i) requires the recipient to--

"(I) comply with all applicable Federal and State laws; and

"(II) ensure that the cleanup protects human health and the environment;

"(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;

"(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

"(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

"(10) FACILITY OTHER THAN BROWNFIELD SITE- The fact that a facility may not be a brownfield site within the meaning of section 101(39)(A) has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

"(11) EFFECT ON FEDERAL LAWS- Nothing in this subsection affects any liability or response authority under any Federal law, including--

"(A) this Act (including the last sentence of section 101(14));

"(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

"(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

"(12) FUNDING-

"(A) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this subsection \$200,000,000 for each of fiscal years 2002 through 2006.

"(B) USE OF CERTAIN FUNDS- Of the amount made available under subparagraph (A), \$50,000,000, or, if the amount made available is less than \$200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 101(39)(D)(ii)(II)."

Subtitle B—Brownfields Liability Clarifications

SEC. 221. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

"(q) CONTIGUOUS PROPERTIES-

"(1) NOT CONSIDERED TO BE AN OWNER OR OPERATOR-

"(A) IN GENERAL- A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) solely by reason of the contamination if--

"(i) the person did not cause, contribute, or consent to the release or threatened release;

"(ii) the person is not--

"(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

"(II) the result of a reorganization of a business entity that was potentially liable;

"(iii) the person takes reasonable steps to--

"(I) stop any continuing release;

"(II) prevent any threatened future release; and

"(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

"(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

"(v) the person--

"(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

"(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

"(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this Act;

"(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

"(viii) at the time at which the person acquired the property, the person--

"(I) conducted all appropriate inquiry within the meaning of section 101(35)(B) with respect to the property; and

"(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

"(B) DEMONSTRATION- To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

"(C) BONA FIDE PROSPECTIVE PURCHASER- Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of acquisition of the real

property may qualify as a bona fide prospective purchaser under section 101(40) if the person is otherwise described in that section.

"(D) GROUND WATER- With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

"(2) EFFECT OF LAW- With respect to a person described in this subsection, nothing in this subsection--

"(A) limits any defense to liability that may be available to the person under any other provision of law; or

"(B) imposes liability on the person that is not otherwise imposed by subsection (a).

"(3) ASSURANCES- The Administrator may--

"(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and

"(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f)."

SEC. 222. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION OF BONA FIDE PROSPECTIVE PURCHASER- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 211(a) of this Act) is amended by adding at the end the following:

"(40) BONA FIDE PROSPECTIVE PURCHASER- The term 'bona fide prospective purchaser' means a person (or a tenant of a person) that acquires ownership of a facility after the date of the enactment of this paragraph and that establishes each of the following by a preponderance of the evidence:

"(A) DISPOSAL PRIOR TO ACQUISITION- All disposal of hazardous substances at the facility occurred before the person acquired the facility.

"(B) INQUIRIES-

"(i) IN GENERAL- The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

"(ii) STANDARDS AND PRACTICES- The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.

"(iii) RESIDENTIAL USE- In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility

inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

"(C) NOTICES- The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

"(D) CARE- The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to--

"(i) stop any continuing release;

"(ii) prevent any threatened future release; and

"(iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

"(E) COOPERATION, ASSISTANCE, AND ACCESS- The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

"(F) INSTITUTIONAL CONTROL- The person--

"(i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

"(ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

"(G) REQUESTS; SUBPOENAS- The person complies with any request for information or administrative subpoena issued by the President under this Act.

"(H) NO AFFILIATION- The person is not--

"(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through--

"(I) any direct or indirect familial relationship; or

"(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

"(ii) the result of a reorganization of a business entity that was potentially liable."

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN- Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by this Act) is further amended by adding at the end the following:

"(r) PROSPECTIVE PURCHASER AND WINDFALL LIEN-

"(1) LIMITATION ON LIABILITY- Notwithstanding subsection (a)(1), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall

not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

"(2) LIEN- If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

"(3) CONDITIONS- The conditions referred to in paragraph (2) are the following:

"(A) RESPONSE ACTION- A response action for which there are unrecovered costs of the United States is carried out at the facility.

"(B) FAIR MARKET VALUE- The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

"(4) AMOUNT; DURATION- A lien under paragraph (2)--

"(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

"(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

"(C) shall be subject to the requirements of subsection (I)(3); and

"(D) shall continue until the earlier of--

"(i) satisfaction of the lien by sale or other means; or

"(ii) notwithstanding any statute of limitations under section 113, recovery of all response costs incurred at the facility."

SEC. 223. INNOCENT LANDOWNERS.

Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended--

(1) in subparagraph (A)--

(A) in the first sentence, in the matter preceding clause (i), by striking 'deeds or' and inserting 'deeds, easements, leases, or'; and

(B) in the second sentence--

(i) by striking 'he' and inserting 'the defendant'; and

(ii) by striking the period at the end and inserting ", provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response

action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action;" and

(2) by striking subparagraph (B) and inserting the following:

"(B) REASON TO KNOW-

"(I) ALL APPROPRIATE INQUIRIES- To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that--

"(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

"(II) the defendant took reasonable steps to--

"(aa) stop any continuing release;

"(bb) prevent any threatened future release; and

"(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

"(ii) STANDARDS AND PRACTICES- Not later than 2 years after the date of the enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

"(iii) CRITERIA- In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

"(I) The results of an inquiry by an environmental professional.

"(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

"(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

"(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

"(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

"(VI) Visual inspections of the facility and of adjoining properties.

"(VII) Specialized knowledge or experience on the part of the defendant.

"(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

"(IX) Commonly known or reasonably ascertainable information about the property.

"(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

"(iv) INTERIM STANDARDS AND PRACTICES-

"(I) PROPERTY PURCHASED BEFORE MAY 31, 1997- With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account--

"(aa) any specialized knowledge or experience on the part of the defendant;

"(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

"(cc) commonly known or reasonably ascertainable information about the property;

"(dd) the obviousness of the presence or likely presence of contamination at the property; and

"(ee) the ability of the defendant to detect the contamination by appropriate inspection.

"(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997- With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as 'Standard E1527-97', entitled 'Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process,' shall satisfy the requirements in clause (i).

"(v) SITE INSPECTION AND TITLE SEARCH- In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.'

Subtitle C—State Response Programs

SEC. 231. STATE RESPONSE PROGRAMS.

(a) DEFINITIONS- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by this Act) is further amended by adding at the end the following:

"(41) ELIGIBLE RESPONSE SITE-

"(A) IN GENERAL- The term 'eligible response site' means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

"(B) INCLUSIONS- The term 'eligible response site' includes--

"(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986; or

"(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 128 at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will--

"(I) protect human health and the environment; and

"(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

"(C) EXCLUSIONS- The term 'eligible response site' does not include--

"(i) a facility for which the President--

"(I) conducts or has conducted a preliminary assessment or site inspection; and

"(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or

"(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem."

(b) STATE RESPONSE PROGRAMS- Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 128. STATE RESPONSE PROGRAMS.

"(a) ASSISTANCE TO STATES-

"(1) IN GENERAL-

"(A) STATES- The Administrator may award a grant to a State or Indian tribe that--

"(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

"(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

"(B) USE OF GRANTS BY STATES-

"(i) IN GENERAL- A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

"(ii) ADDITIONAL USES- In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to--

"(I) capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or

"(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

"(2) ELEMENTS- The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

"(A) Timely survey and inventory of brownfield sites in the State.

"(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that--

"(i) a response action will--

"(I) protect human health and the environment; and

"(II) be conducted in accordance with applicable Federal and State law; and

"(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

"(C) Mechanisms and resources to provide meaningful opportunities for public participation, including--

"(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

"(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

"(iii) a mechanism by which--

"(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and

"(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

"(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

"(3) FUNDING- There is authorized to be appropriated to carry out this subsection \$50,000,000 for each of fiscal years 2002 through 2006.

"(b) ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO STATE PROGRAM-

"(1) ENFORCEMENT-

"(A) IN GENERAL- Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which--

"(i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and

"(ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,
the President may not use authority under this Act to take an administrative or judicial enforcement action under section 106(a) or to take a judicial enforcement action to recover response costs under section 107(a) against the person regarding the specific release that is addressed by the response action.

"(B) EXCEPTIONS- The President may bring an administrative or judicial enforcement action under this Act during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if--

"(i) the State requests that the President provide assistance in the performance of a response action;

"(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;

"(iii) after taking into consideration the response activities already taken, the Administrator determines that--

"(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

"(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

"(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present

a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

"(C) PUBLIC RECORD- The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) shall maintain and make available to the public a record of sites as provided in this paragraph.

"(D) EPA NOTIFICATION-

"(i) IN GENERAL- In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall--

"(I) notify the State of the action the Administrator intends to take; and

"(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

"(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

"(ii) STATE REPLY- Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if--

"(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

"(II) the State is planning to abate the release or threatened release, any actions that are planned.

"(iii) IMMEDIATE FEDERAL ACTION- The Administrator may take action immediately after giving notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

"(E) REPORT TO CONGRESS- Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

"(2) SAVINGS PROVISION-

"(A) COSTS INCURRED PRIOR TO LIMITATIONS- Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to the date of the enactment of this section or during a period in which the limitations of paragraph (1)(A) were not applicable.

"(B) EFFECT ON AGREEMENTS BETWEEN STATES AND EPA- Nothing in paragraph (1)--

"(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this Act between a State agency or an Indian tribe and the Administrator that is in effect on or before the date of the enactment of this section (which agreement shall remain in effect, subject to the terms of the agreement); or

"(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

"(3) EFFECTIVE DATE- This subsection applies only to response actions conducted after February 15, 2001.

"(c) EFFECT ON FEDERAL LAWS- Nothing in this section affects any liability or response authority under any Federal law, including--

"(1) this Act, except as provided in subsection (b);

"(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

"(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.)."

SEC. 232. ADDITIONS TO NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended by adding at the end the following:

"(h) NPL DEFERRAL-

"(1) DEFERRAL TO STATE VOLUNTARY CLEANUPS- At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that--

"(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site--

"(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

"(ii) that will provide long-term protection of human health and the environment; or

"(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

"(2) PROGRESS TOWARD CLEANUP- If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not

making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

<http://www.epa.gov/brownfields/laws/hr2869.htm>
Last updated on Thursday, December 24, 2009

"(3) CLEANUP AGREEMENTS- With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on--

"(A) the complexity of the site;

"(B) substantial progress made in negotiations; and

"(C) other appropriate factors, as determined by the President.

"(4) EXCEPTIONS- The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that--

"(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

"(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

"(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met."

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

TITLE X

PUBLIC HEALTH

CHAPTER 147-F

BROWNFIELDS PROGRAM

Section 147-F:3

147-F:3 Definitions. – In this chapter, the following words shall have the following meanings, unless the context otherwise requires:

I. The definitions of terms provided in RSA 147-B:2 shall be applicable to this chapter to the extent those terms are used in this chapter unless otherwise defined herein.

II. ""Brownfields" means properties which have been environmentally contaminated, subject to the limitations of RSA 147-F:4, II.

III. ""Contaminant" or ""Contamination" means hazardous waste, hazardous materials (without regard to whether transported in commerce), or oil, as defined in RSA 146-A:2, III.

IV. ""Department" means department of environmental services.

V. ""Eligible person" means a person who meets the criteria under RSA 147-F:4, I, and who qualifies for a covenant not to sue.

VI. ""Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, limited liability company, municipality, commission, and the state or a political subdivision of the state.

VII. ""Program" means the brownfields program established by this chapter.

VIII. ""Program participant" means any person, whether or not eligible for the liability protections created by this chapter, who is approved by the department to use the remedial process prescribed by this chapter.

Source. 1996, 241:2, eff. July 1, 1996.

15feb96.....4775h
19mar96.....5200h
4/16/96.....5721s
5/9/96.....5920s
05/29/96....6120L-EBA

CHAPTER 241
HOUSE BILL - FINAL VERSION

1996 SESSION

3316L
96-2091
05/08

HOUSE BILL 1536-FN-A-LOCAL

AN ACT relative to encouraging private purchase, clean up, and restoration of environmentally contaminated sites and making a supplemental appropriation to the department of environmental services.

SPONSORS: Rep. Melcher, Hills 11; Rep. Aranda, Rock 13; Rep. Phinney, Graf 8; Sen. Russman, Dist 19

COMMITTEE: Environment and Agriculture

AMENDED ANALYSIS

This bill establishes a brownfields program to give incentives to parties interested in the redevelopment of contaminated properties.

This bill also transfers and establishes positions within the department of environmental services, makes a supplemental appropriation to the department, and makes changes to the budget in order to implement the provisions of the act.

EXPLANATION: Matter added to current law appears in **bold italics**.
Matter removed from current law appears in [brackets].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

15feb96.....4775h
19mar96.....5200h
4/16/96.....5721s
5/9/96.....5920s
05/29/96....6120L-EBA

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department of justice shall issue covenants to eligible persons in accordance with RSA 147-F:6.

147-F:3 Definitions. In this chapter, the following words shall have the following meanings, unless the context otherwise requires:

- I. The definitions of terms provided in RSA 147-B:2 shall be applicable to this chapter to the extent those terms are used in this chapter unless otherwise defined herein.
- II. "Brownfields" means properties which have been environmentally contaminated, subject to the limitations of RSA 147-F:4, II.
- III. "Contaminant" or "Contamination" means hazardous waste, hazardous materials (without regard to whether transported in commerce), or oil, as defined in RSA 146-A:2, III.
- IV. "Department" means department of environmental services.
- V. "Eligible person" means a person who meets the criteria under RSA 147-F:4, I, and who qualifies for a covenant not to sue.
- VI. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, limited liability company, municipality, commission, and the state or a political subdivision of the state.
- VII. "Program" means the brownfields program established by this chapter.
- VIII. "Program participant" means any person, whether or not eligible for the liability protections created by this chapter, who is approved by the department to use the remedial process prescribed by this chapter.

147-F:4 Eligibility for Program.

I. A person is eligible to participate in the program if the person qualifies under one of the following categories:

(a) The person is not liable under RSA 147-B for any release or threatened release of a contaminant or contaminants at the property and is either:

(1) A prospective purchaser of eligible property; or

(2) A person who holds a mortgage interest or other security interest in eligible property, including a municipality with respect to property on which there are overdue real estate taxes due to the municipality.

(b) The person is a current owner of eligible property whose liability under RSA 147-B is based solely on the person's status as owner and who did not cause or contribute to the contamination at the property.

II. Any environmentally contaminated property is eligible unless one of the following conditions applies:

(a) The property is not in compliance with any corrective action order issued under RSA 147-A or any other compliance order issued under a state or federal environmental program and the department determines that the property will not be brought into substantial compliance as a result of participation in the cleanup program.

(b) The property is eligible for cost reimbursement from the oil discharge and disposal cleanup fund, the fuel oil discharge cleanup fund or the motor oil discharge cleanup fund, unless it receives substantially less than full reimbursement from these funds.

III. A person seeking a determination of eligibility shall submit to the department a certificate signed under oath that includes all information the department of justice determines is necessary to verify eligibility.

147-F:5 Available Relief.

I. Any person who meets the eligibility conditions of RSA 147-F:4 may request the assistance of the department in overseeing the investigation and remediation of an eligible property. An eligible person shall be entitled to the liability protections provided in RSA 147-F:7 and shall receive a covenant not to sue issued in accordance with RSA 147-F:6 upon approval of a remedial action plan for the property.

II. A successor owner or successor owners of an eligible property may receive a covenant not to sue in accordance with the terms and conditions of RSA 147-F:17.

III. A holder of a mortgage or other security interest in the eligible property, including a municipality with a tax lien, shall notify the department in connection with a foreclosure or other acquisition or transfer of title or possession of an eligible property, of an intention to continue in the program on the same terms as the original eligible person, or may elect to retain the status of a holder of property in accordance with RSA 146-A:3-c, RSA 146-C:11-a, or RSA 147-B:10, as applicable.

IV. A lessee or tenant (that itself would qualify as an eligible person) of the eligible property under agreement with an eligible person who is implementing an approved remedial action plan under the program shall not be subject to suit described in RSA 147-F:6, I, by the state for the contamination.

V. Any person who is not an eligible person may use the remedial process provided in RSA 147-F:11 through RSA 147-F:16 at the discretion of the department. The department may issue a no-action letter, certificate of partial cleanup, or certificate of completion to any such person upon completion of an approved remedial action

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reckless acts during remedial activities as required by the department; or

(d) Fails to comply with the requirements of RSA 147-F:16, and fails to cure after notice.

147-F:8 Withdrawal from the Program.

I. A program participant may withdraw from the program at any stage before or after approval of the remedial action plan. To withdraw from the program, the program participant must:

(a) File a notice of intent to withdraw with the department.

(b) Stabilize the site in accordance with a site stabilization plan approved by the department. Site stabilization is limited to those actions necessary to ensure that work conducted at the property has not caused greater risk to human health and the environment than existed before the remedial work was commenced, and to ensure that the property will not pose an imminent hazard to human health or the environment.

(c) Pay all outstanding fees accrued by the department in connection with the property's participation in the program, including fees associated with site stabilization.

II. Withdrawal from the program as provided in this section before completion of the approved remedial action plan shall not be considered inconsistent or interference with the approved remedial action plan and will not void the covenant.

147-F:9 Application for Participation in Covenant Not to Sue Program.

I. Any person may submit an application to the department for a determination of that person's eligibility to obtain a covenant not to sue as part of that party's participation in the program administered under this chapter. The application for eligibility for a covenant not to sue shall be in the form and shall include all information the department requires in accordance with rules adopted under RSA 147-F:18.

II. A complete application for an eligibility determination for a covenant not to sue shall in substance consist of:

(a) The information required by the department's application form.

(b) A preliminary environmental assessment of the property, including a legal description of the property, its geologic and hydrologic characteristics, operational history, information about the nature and extent of contamination and its associated risk to human health and the environment, and any other information requested by the department regarding the property.

(c) A description of the proposed redevelopment and future use of the property.

(d) Any information necessary for the department to make a determination of eligibility in accordance with RSA 147-F:4.

(e) A non-refundable application fee of \$500.

(f) A certificate under oath signed by the applicant that provides in substance that:

(1) The applicant and the property are eligible for the program and for a covenant not to sue.

(2) The applicant understands and has complied with the limitations and restrictions relative to the liability protection available under the program.

(3) The information in the application and environmental assessment is accurate and complete to the best of the applicant's knowledge.

(4) The concurrence of the property owner has been obtained, or the property owner's implied consent has been obtained by virtue of a mortgage or other written agreement signed by the owner, or, after a diligent search, the current owner or legal representative thereof could not be located.

(5) The applicant understands and acknowledges that the liability protection under this chapter, including a covenant not to sue, shall be forfeited if the applicant decides not to complete an approved remedial action plan and does not complete site stabilization measures pursuant to RSA 147-F:8; and acknowledges that it may be appropriate accordingly to establish a contingency or escrow fund to cover the costs of site stabilization measures.

III. The applicant shall provide the governing body of the municipality in which the property is located and adjacent property owners with notice of the application when submitted to the department, and shall provide the municipality with a complete copy of the application.

IV. The department shall review the application for completeness within 10 working days of receipt. The department shall promptly notify the applicant in writing if the application is incomplete. If the applicant fails to provide the necessary supplemental information within 30 days of such notification, the department may return the application to the applicant. Any subsequent reapplication shall require an additional application fee.

147-F:10 Eligibility Determination with Respect to Covenant Not to Sue.

I. Within 30 days of receiving a complete application, the department shall make a determination of eligibility in accordance with RSA 147-F:4 after review and approval by the department of justice. The department shall

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- (c) Ensure protection of the groundwater off-site, providing for off-site remediation, or at a minimum, a plan for continued monitoring of the groundwater while contamination remains.
- (d) Describe the cleanup approach for each known contaminant during the active phase of remediation and at completion of the remedy by which performance standards will be met.
- (e) Include a risk assessment, which is satisfactory to the department of health and human services and an environmental risk assessment satisfactory to the department of environmental services, that define the risk to human health and the environment where contaminant concentrations are to remain higher than established performance standards.
- (f) Recommend use restrictions on the proposed and future uses of the property where necessary to protect human health and the environment and describe in detail how such restrictions will be imposed and maintained, including an analysis of the long-term feasibility of maintaining such use restrictions.
- (g) Describe anticipated site stabilization measures for each phase of the remedial action, including cost estimates for achieving site stabilization if remedial work were to be stopped at the property before accomplishing all of the tasks specified in the approved remedial action plan.

VIII. After evaluation and consideration of public comments, if any, the department shall approve, approve with conditions or disapprove the remedial action plan. If the department approves with conditions or disapproves, the program participant shall submit a revised remedial action plan, or the participant may withdraw from the program as provided in this chapter.

IX. A program participant may elect to condense the submittal and review process described in this section after receiving a determination of eligibility or department approval to participate in the program. A program participant shall obtain the approval of the department for an alternative schedule of submissions. The department may require after-the-fact development of work plans, additional investigation, report supplementation, or resubmittal as necessary to obtain an approvable remedial action plan.

147-F:12 Approval of Remedial Action Plan.

- I. Upon receipt of a remedial action plan, the department shall provide public notice of the proposed remedial action. The notice shall provide a date for a public information meeting where there is significant environmental impact.
- II. An approved remedial action plan shall provide for all removal, remedial, monitoring and other activities required to protect human health and the environment and to meet all applicable cleanup standards. The department's approval shall include a designation of the activities that must be completed before a certificate of completion will be issued in accordance with RSA 147-F:13, III.
- III. The department may accept alternative risk-based cleanup standards based upon risk assessments developed pursuant to RSA 147-F:11, VII(e).
- IV. The department may approve a remedial action plan for all, or a portion of, contamination at the property. The department shall impose such conditions on the redevelopment and use of the property as it finds necessary or proper to assure that the contamination on the site does not pose an unacceptable risk to human health and the environment during and after completion of the remedial action plan.

V. Upon approval of a remedial action plan:

- (a) The department shall issue to the program participant a notice of approved remedial action plan that identifies the property, provides a general description of the contamination and summarizes the main components of the remedial action plan, including all specific restrictions on future use of the property.
- (b) The department of justice shall issue a covenant not to sue to a program participant determined to be an eligible person pursuant to RSA 147-F:4. The covenant not to sue shall be in a form and subject to the conditions set forth in RSA 147-F:6.

VI. The program participant shall immediately record the notice of approved remedial action plan in the registry of deeds for the county in which the property is located.

147-F:13 Performance and Completion of Remedial Action.

- I. The program participant shall perform all activities required by the approved remedial action plan and shall provide the department with regular progress reports regarding the work.
- II. The department may require amendment of the remedial action plan at any time during its performance as necessary to attain the cleanup levels established in the remedial action plan in light of the approved risk assessments.
- III. Upon completion of the activities specified in the approved remedial action plan, a program participant shall file with the department a completion report in form and content satisfactory to the department. Once the

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the owner, and any mortgagee entitled to notice who is aggrieved by a decision to remove or modify a use restriction may appeal such decision to the commissioner of the department, whose decision shall be final.

147-F:16 Other Program Requirements.

I. A program participant shall:

- (a) Ensure stabilization of the property in accordance with RSA 147-F:8, I(b) before withdrawal from the program.
- (b) Cooperate with the department throughout site investigation and remediation.
- (c) Upon withdrawal from the program, provide the department with all non-privileged, material documents and information relating to the performance of site investigation or remedial activities at the property.
- (d) Provide access to the department for all environmental compliance or remedial activities at the property until issuance of a certificate of completion.
- (e) Provide access to any person acting pursuant to department approval for the purpose of conducting any investigative or remedial activity related to the contamination at the property until issuance of a certificate of completion.
- (f) Promptly report any release or threat of release caused or exacerbated during remedial activities.
- (g) Undertake emergency response action as required by the department to address releases or threats of releases at the property before completion of the remedial action plan.
- (h) Pay all program fees as required by this chapter.

II. The obligations set forth in Paragraph I shall continue until the property is transferred to a successor owner, except the obligations of subparagraph I(a) shall continue until a successor owner stabilizes the site or completes implementation of a remedial action plan to the satisfaction of the department, and the transferor shall not be relieved of the obligations of subparagraph I(c).

147-F:17 Sale or Transfer of Property in Program.

I. Property in the brownfields program may be transferred to a successor owner at any time during the remedial process. A successor owner may participate in the brownfields program as provided in this section after receiving an eligibility determination under RSA 147-F:10 and paying the program fee under RSA 147-F:14.

II. If transfer of the property is made before approval of a remedial action plan, the successor owner, upon receipt of an eligibility determination and payment of the program fee, shall:

- (a) Become a program participant.
- (b) Continue with pre-remedial activities at the property.
- (c) Be vested with all benefits and obligations provided in this chapter, including responsibility for immediate site stabilization if necessary.

III. If transfer of the property is made after approval of the remedial action plan but before certification of completion in accordance with RSA 147-F:13, the successor owner, after receipt of an eligibility determination and payment of the program fee, shall:

- (a) Become a program participant.
- (b) Assume responsibility for completion of the approved remedial action plan, which shall be amended at the request of the successor to extend or modify the schedule for completion of remedial activities, but only if the site has been stabilized to the department's approval.
- (c) Receive a covenant not to sue in accordance with RSA 147-F:6.

IV. If transfer of the property is made after certification of completion in accordance with RSA 147-F:13, the successor owner shall enjoy the full benefit of the covenant appurtenant to the property and shall comply with all conditions of that covenant. The transferor of property in the program shall certify compliance with the approved remedial action plan, including all use restrictions. This certification shall be provided in writing to the successor owner at the time of transfer, with a copy to be provided to the department.

147-F:18 Rulemaking.

I. The commissioner shall adopt rules, after public hearing and pursuant to RSA 541-A, relative to the administration of the brownfields program, including:

- (a) The form and content of the eligibility application and accompanying certificate, the site investigation work plan and report, the remedial action plan, the environmental risk assessment and other submittals to the department, and the certificate of compliance upon property transfer.
- (b) The scope of the preliminary environmental assessment, site investigation and environmental risk assessment.
- (c) The application and review process, including a checklist of the documents and information required for a

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Class 10 Personnel services - permanent \$110,662
 Class 18 Overtime 10,000
 Class 20 Current expenses 7,500
 Class 24 Maintenance/PC computers 1,500
 Class 30 New equipment 9,400
 Class 49 Transfers to other state agencies 37,000
 Class 50 Personal service/temp 2,000
 Class 60 Benefits 34,476
 Class 70 In-state travel 1,000
 Class 80 Out-of-state travel 3,000

Total Expenses \$216,538

Estimated Source of Funds

Hazardous Waste Cleanup Funds

Class 03 Revolving Funds \$216,538

241:9 New Paragraph; Health Risk Assessment Bureau. Amend RSA 125-H:3 by inserting after paragraph IV the following new paragraph:

IV-a. The commissioner shall have responsibility for developing guidelines for risk assessments.

241:10 Effective Date. This act shall take effect July 1, 1996.

Approved: June 10, 1996

Effective: July 1, 1996

LBAO

LSR 96-2091

Amended 3/19/96*

Prepared 3/21/96

FISCAL NOTE for an act relative to encouraging private purchase, clean up, and restoration of environmentally contaminated sites and making a supplemental appropriation to the department of environmental services.

FISCAL IMPACT:

The Department of Environmental Services has determined that this bill, as amended by the House, will decrease state general fund revenue by \$121,100, decrease state general fund expenditures by \$52,700, increase state restricted revenue \$226,100 and increase state restricted expenditures by \$216,538 in FY 1997 and each year thereafter. There will be no fiscal impact on county and local revenue or expenditures.

This bill appropriates \$216,538 in FY 1997 from the hazardous waste cleanup fund to the Department for the purposes of this act.

METHODOLOGY:

The Department has determined that the fiscal impact of funding the establishment of the Brownfield Program as follows: Section 5 transfers the cost of one Hydrogeologist position (\$52,700) from the general fund to the hazardous waste cleanup fund; Section 6 transfers \$121,100 of current general fund revenue to the hazardous waste cleanup fund; Section 7 deposits new revenue, estimated to be \$105,000 in the hazardous waste cleanup fund; and Section 8 appropriates \$216,538 from the hazardous waste cleanup fund for the purposes of this act.

**This Document did not
include Page 12 of 12**

Voting Sheets

Senate Energy, Environment & Economic Development Committee EXECUTIVE SESSION

Bill # SB422

Hearing date: 3/4/10

Executive session date: 3/18/10

Motion of: Interim Study

VOTE: 5-0

<u>Made by</u>	Fuller Clark <input checked="" type="checkbox"/>	<u>Seconded</u>	Fuller Clark <input type="checkbox"/>	<u>Reported</u>	Fuller Clark <input checked="" type="checkbox"/>
<u>Senator:</u>	Merrill <input type="checkbox"/>	<u>by Senator:</u>	Merrill <input checked="" type="checkbox"/>	<u>by Senator:</u>	Merrill <input type="checkbox"/>
	Lasky <input type="checkbox"/>		Lasky <input type="checkbox"/>		Lasky <input type="checkbox"/>
	Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>		Cilley <input type="checkbox"/>
	Odell <input type="checkbox"/>		Odell <input type="checkbox"/>		Odell <input type="checkbox"/>
	Bradley <input type="checkbox"/>		Bradley <input type="checkbox"/>		Bradley <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Fuller Clark, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Merrill, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cilley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Odell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: March 18, 2010

THE COMMITTEE ON Energy, Environment and Economic Development
to which was referred Senate Bill 422

AN ACT relative to small power producer electric sales in
 brownfields and economically depressed locations.

Having considered the same, the committee recommends that the Bill:

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 5 - 0

AMENDMENT # s

Senator Martha Fuller Clark
For the Committee

Marty Cote 271-3045

New Hampshire General Court - Bill Status System

Docket of SB422

Docket Abbreviations

Bill Title: relative to small power producer electric sales in brownfields and economically depressed locations.

Official Docket of SB422:

Date	Body	Description
01/06/2010	S	Introduced and Referred to Energy, Environment and Economic Development; SJ 1 , Pg.14
02/10/2010	S	Hearing: March 4, 2010, Room 102, LOB, 8:30 a.m.; SC7
03/18/2010	S	Committee Report: Referred to Interim Study 3/24/10; SC12
03/24/2010	S	Refer to Interim Study, MA, VV; SJ 11 , Pg.200

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB422 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: Attachment 1-3

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

___ - AMENDMENT # _____ - AMENDMENT # _____
___ - AMENDMENT # _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED _____ AS AMENDED BY THE HOUSE
___ FINAL VERSION _____ AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: Submission a.

EXECUTIVE SESSION REPORT

___ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

6/7/10
8/3/10
MC

Marilyn Cole
COMMITTEE SECRETARY