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108TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 108–22

BROWNFIELDS REDEVELOPMENT ENHANCEMENT ACT

MARCH 5, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 239]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 239) to facilitate the provision of assistance by the Department of Housing and Urban Development for the cleanup and economic redevelopment of brownfields, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 239, the Brownfields Redevelopment Enhancement Act, increases access to brownfields redevelopment funds for America's small communities by de-linking section 108 loan guarantees from HUD's Brownfields Economic Development Initiative (BEDI)

19–006

grants. The bill also authorizes HUD to establish a pilot program for a common brownfields redevelopment loan pool.

BACKGROUND AND NEED FOR LEGISLATION

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

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

During the 107th Congress the Committee considered H.R. 2941, the Brownfields Redevelopment Act of 2001. The bill was supported by HUD and by the Administration. Significantly, the FY 2003 HUD budget request submitted to the President proposed decoupling the brownfields program from the section 108 loan guarantee program to attract more participants. This mirrored the initiative taken in H.R. 2941.

A hearing was held on H.R. 2941 on March 6. 2002. Witnesses who spoke in favor of the bill included The Honorable Roy Benardi, HUD's Assistant Secretary for Community Planning and Development; The Honorable Lydia Reid, Mayor of Mansfield, Ohio; The Honorable Frederick M. Kalisz, Jr., Mayor of New Bedford, Massachusetts; and representatives of the National Association for County Community and Economic Development, National Association of Homebuilders and National Brownfields Association.

On June 4, 2002, the House passed H.R. 2941 by a voice vote under suspension of the rules. No action was taken in the Senate.

Presumably because of budget constraints, the 2004 HUD budget proposes the elimination of funding for the BEDI program. The Committee believes that this funding should be restored. While the Environmental Protection Agency administers some programs to revitalize brownfields, the Committee believes that HUD should not vacate its own role in cleaning up these blighted sites. The BEDI program is a powerful tool for communities interested in brownfields redevelopment, and fostering a partnership with the EPA will be helpful for both agencies and for our nation's urban areas.

Like it's predecessor, H.R. 239 focuses on providing access to capital for local entities that traditionally have had trouble obtaining financing for brownfields redevelopment activities. Most notably, H.R. 239 eliminates the requirement that local governments obtain section 108 loan guarantees as a condition to receiving BEDI grant funding. De-linking BEDI grants from section 108 loan guarantees is important because some small cities have great difficulty in securing or are unable to secure those guarantees.

H.R. 239 also establishes a "Pilot Program for National Redevelopment of Brownfields." With this authority, the HUD Secretary will be able to fund a common pool for economic development loans available to eligible local governments and distribute these loans on a competitive basis.

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

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

HEARINGS

No hearings were held on this legislation in the 108th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on February 13, 2003 and ordered H.R. 239, the Brownfields Redevelopment Enhancement Act, reported to the House with a favorable recommendation, without amendment, by a voice vote.

COMMITTEE VOTES

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

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

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

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

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

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

CONGRESSIONAL BUDGET OFFICE ESTIMATE

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 25, 2003.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 239, the Brownfields Redevelopment Enhancement Act.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 239—Brownfields Redevelopment Enhancement Act

Summary: CBO estimates that implementing H.R. 239 would cost $96 million over the next five years, assuming appropriation of the necessary amounts. Of this amount, $65 million would be used by the Department of Housing and Urban Development (HUD) to provide grants to local and tribal governments to support the environmental cleanup and economic development of brownfield sites. (Brownfields are properties where the presence, or potential presence, of a hazardous substance complicates the expansion or redevelopment of the property.)

The remaining $31 million of the bill's estimated cost of $96 million would be used by HUD to establish a pilot program to encourage more communities to support redevelopment efforts at brownfield sites. Under such a program, communities would use their section 108 loan guarantee funds in conjunction with a

brownfields grant to make loans to third parties who are interested in redeveloping brownfield sites. In turn, HUD would pool together such loans and then use the majority of the appropriated funds to establish a shared loss reserve for those new loans. Participating communities would then no longer have to use their community development block grant (CDBG) funds to pay for defaults on such loans, and they could receive a share of this reserve after any default payments are made.

Enacting H.R. 239 would have no impact on direct spending or receipts.

H.R. 239 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would provide benefits to local and tribal governments. The grant programs in the bill would provide benefits to local and tribal governments engaged in the redevelopment of brownfield sites.

Estimated cost to the federal government: The estimated budgetary impact of H.R. 239 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
Brownfields Redevelopment Spending Under Current Law:						
Budget Authority [1]	25	0	0	0	0	0
Estimated Outlays	20	21	19	14	8	5
Proposed Changes						
Brownfields Redevelopment Grants:						
Estimated Authorization Level	0	25	25	25	25	25
Estimated Outlays	0	1	6	14	20	24
Pilot Program:						
Estimated Authorization Level	0	11	11	11	0	0
Estimated Outlays	0	2	6	9	9	5
Total Changes:						
Estimated Authorization Level	0	36	36	36	25	25
Estimated Outlays	0	3	12	23	29	29
Brownfields Redevelopment Spending Under H.R. 239:						
Estimated Authorization Level [1]	25	36	36	36	25	25
Estimated Outlays	20	24	31	37	37	34

[1] The 2003 level is the amount appropriated for that year for the Brownfields Redevelopment Program.

Basis of estimate: For purposes of this estimate, CBO assumes that the bill will be enacted before the start of fiscal year 2004 and that necessary amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns of similar HUD programs.

CBO estimates that HUD would use an appropriation of $25 million a year over the 2004–2008 period to provide grants to public entities for assistance in the cleanup and redevelopment of brownfield sites. The appropriation level has been set at $25 million for each if the last six years. Enacting this legislation also would remove the requirement that brownfield redevelopment grants be used in conjunction with section 108 community development loan guarantees.

According to HUD, it would take about three years to implement a pilot program aimed at encouraging additional redevelopment efforts at brownfield sites. Based on the number of communities like-

ly to participate and on previous HUD proposals to establish such a pilot program, CBO estimates that HUD would need $11 million annually over the next three years. If appropriated, we estimate that such funding would be spent over the next six years at rates similar to the disbursement rate for section 108 loan guarantees.

Intergovernmental and private-sector impact: H.R. 239 contains no intergovernmental or private-sector mandates as defined in UMRA. Local and tribal governments would benefit from a national brownfield pilot program, the clarification of brownfield redevelopment as a CDBG activity, and the decoupling of brownfield grants from the section 108 loan guarantee program. Such changes would provide grantees more flexibility in using federal funds. Any costs associated with participating in the grant and pilot programs would be voluntary.

Estimate prepared by: Federal Costs: Susanne S. Mehlman. Impact on State, Local, and Tribal Governments: Greg Waring. Impact on the Private Sector: Lauren Marks.

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

FEDERAL MANDATES STATEMENT

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

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EXECUTIVE BRANCH CORRESPONDENCE

The Committee is including the following executive correspondence on similar legislation from the 107th Congress as it also applies to the bill:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT,

Washington, DC, February 25, 2003.

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

DEAR MR. CHAIRMAN: The Department is supportive of H.R. 2941 (Brownfields Redevelopment Enhancement Act), the principal purpose of which is to delink the Brownfields Economic Development Initiative (BEDI) grant program from the Section 108 Guaranteed Loan program. The impact of delinking the BEDI is that it would allow more communities to participate in the program and have access to funds for the redevelopment of brownfields. Also, we think that by removing the requirement that BEDI grant recipients also utilize Section 108 loan funds in the same project, the grant funds will be utilized faster and projects will be revitalized sooner.

The definition of brownfields that HUD currently uses is, "abandoned, idled, or underused real property (including industrial and commercial facilities) where expansion or redevelopment is complicated by real or perceived contamination." This definition has been successfully used by HUD for many years.

HUD prohibits the use of grant and/or loan funds for restricted areas in its current, and previous, Notice of Funding Availability (NOFA), as follows:

> BEDI grant funds shall not be used in any manner by grantees to provide public or private sector entities with funding to remediate conditions caused by their own actions, where the public entity (or other known prospective beneficiary of the proposed BEDI grant) has been determined responsible for causation and remediation by order of a court or a Federal, State, or local regulatory agency, or is responsible for the remediation as part of a settlement approved by such a court or agency.
>
> Applicants may not propose projects on sites, which are listed or proposed to be listed on EPA's National Priority-List (NPL). Further, applicants are cautioned against proposing projects on sites where the nature and degree of environmental contamination is not well quantified or which are the subject of on-going litigation or environmental enforcement action.

We believe the NOFA—as the regulatory instrument—is the appropriate place to provide further delineations regarding eligible and ineligible sites and provides clear guidelines on eligibility for the program. In order to ensure the integrity of these guidelines, HUD will continue to consult with other Federal agencies in carrying out the Department's brownfields remediation and redevelopment activities.

Sincerely,

ROY A. BERNARDI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

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

Section 2. Findings and purposes

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

Section 3. Brownfields Development Initiative

This section amends title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) to allow the Secretary to make grants to public entities for projects and activities to assist the environmental cleanup and economic development of brownfield sites. Grants will be made (a) based on application procedures established by the Secretary; (b) only for activities specified in section 108(a); (c) with consideration of the extent of financial leveraging involved in funded projects; and (d) without the necessity of a section 108 loan guarantee. Appropriations are authorized for grants for each of fiscal years 2004, 2005, 2006, 2007 and 2008.

Section 4. Clarification of Brownfields redevelopment as eligible CDBG activity

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

Section 5. Pilot program for national redevelopment of Brownfields

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

Section 6. Technical amendment to allow use of CDBG funds to administer renewal communities

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

Section 7. Applicability

This section stipulates that this legislation will apply only with respect to amounts made available for fiscal year 2004 and fiscal

years thereafter for use under the provisions of the law amended by this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

* * * * * * *

PART I—COMMUNITY DEVELOPMENT

* * * * * * *

TITLE I—COMMUNITY DEVELOPMENT

* * * * * * *

ELIGIBLE ACTIVITIES

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

(1) * * *

* * * * * * *

(13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones *and renewal communities* and payment of reasonable administrative costs and carrying charges related to (A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act; and (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;

* * * * * * *

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

(A) * * *

* * * * * * *

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

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

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

* * * * * * *

GUARANTEE OF LOANS FOR ACQUISITION OF PROPERTY

SEC. 108. (a) * * *

* * * * * * *

(q) ECONOMIC DEVELOPMENT GRANTS.—

(1) * * *

* * * * * * *

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

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

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

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

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

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

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

* * * * * * *

SEC. 123. BROWNFIELDS DEVELOPMENT INITIATIVE.

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

velopment of brownfield sites, which shall include mine-scarred lands.

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

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

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

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

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

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

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this section such sums as may be necessary for each of fiscal years 2004, 2005, 2006, 2007, and 2008.

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