



A Blog Post by David J. Freeman of Gibbons

FEDERAL BUDGET ACT EXPANDS LESSEES' ABILITY TO CLAIM SUPERFUND EXEMPTION AS BONA FIDE PROSPECTIVE PURCHASERS



Real Property & Environmental Law Alert



BY DAVID J. FREEMAN

The recently-enacted [Consolidated Omnibus Appropriations Act](#) made headlines in extending funding for federal government programs through September 30, 2018. Less widely noted were the myriad changes wrought by the Act to the administration of many federal programs. Among the programs affected was the [federal brownfields program](#).

The major substantive change in the Act was the expansion of the [Bona Fide Potential Purchaser \(BFPP\)](#) protection for lessees of properties. BFPP status exempts from Superfund liability parties who become owners or operators of facilities after the discharge of contaminants, so long as they are unrelated to parties responsible for the discharge, conduct "all appropriate inquiries" (e.g., a Phase I environmental site assessment) prior to closing, and observe certain other protocols post-closing.

Until now, lessees were precluded from qualifying as a BFPP unless the property owner was also a BFPP.

Now, if a lessee performs the required actions, it can obtain BFPP protection irrespective of whether its landlord is similarly exempted. This change will have a major impact on the [liability exposure of lessees](#), particularly those who are developing and operating properties under long term ground leases.

Most of the Act's [other brownfield-related provisions](#) concern the funding of federal brownfield grants. Non-profit organizations are now eligible for such grants. The eligibility of grants for petroleum-related sites has been expanded. The maximum grant size has been increased from \$200,000 to \$500,000, with EPA having the ability to waive that limit up to \$650,000. The Act also authorizes multi-purpose grants

for up to \$1,000,000, and for grant money to cover administrative costs. Additionally, the ranking criteria for these highly competitive grants has been expanded to include facilities that generate renewable energy or are designed to showcase energy efficiency.

Please feel free to contact us if you have any questions about this new legislation.

[DAVID J. FREEMAN](#) IS A DIRECTOR IN THE GIBBONS ENVIRONMENTAL DEPARTMENT.

We thank Gibbons Law for this important update.

- Gary R. Brown, P.E.



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