

# Freedom Cities Act

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## 119th CONGRESS

1st Session

H. R. \_\_\_\_\_

### A BILL

To establish Freedom Cities that promote innovation, encourage economic growth, and secure the blessings of liberty, among other purposes.

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Freedom City Act.”

#### SECTION 2. FINDINGS.

Congress finds that:

- (a) The productive use of federal land is essential to “provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty” for all Americans, as stated in the Preamble to the Constitution.
- (b) Congress has the power under the Constitution to create Freedom Cities to “provide for the common Defence and general Welfare of the United States,” Article I, § 8, clause 1, and to regulate economic activity that in the aggregate has a substantial effect on interstate commerce, per Article I, § 8, clause 3.
- (c) Congress has the power under Property Clause of the Constitution, Article IV, § 3, to “make all needful Rules and Regulations” governing property belonging to the United States.
- (d) The Necessary and Proper Clause in Article I, § 8, clause 18, gives Congress the power to pass all laws rationally related to the execution of its enumerated powers.
- (e) The Supremacy Clause in Article VI, clause 2, gives Congress the power to preempt any state law or regulation that stands as an obstacle to the exercise of its Constitutional powers.

- (f) As demonstrated by the Antiquities Act of 1906, Congress has the power to authorize the President, subject to statutory guidelines, to create federal enclaves on land owned or controlled by the Government of the United States.
- (g) As demonstrated by the Foreign Trade Zone Act, Congress has the power to authorize a Board composed of directors from various federal agencies to approve and oversee zones exempt from select federal laws and regulations.
- (h) As demonstrated by the Stafford Disaster Relief and Emergency Assistance Act, National Emergencies Act, Public Health Act, Internal Revenue Code, and other statutes, Congress may delegate to the President or an executive agency the power to waive or modify federal regulations subject to legislated limits.
- (i) Congress therefore has power under the Constitution to authorize the creation of Freedom Cities as set forth in this Act.

### **SECTION 3. DEFINITIONS.**

In this Act:

- (a) “Applicant” means an entity seeking from the Board the right to develop a Freedom City.
- (b) “Developer” means an entity responsible for establishing, operating, and maintaining a Freedom City.
- (c) “Freedom City” means a special jurisdiction operating within a federal enclave as established under this Act.
- (d) “Freedom City Land” means real property under a 99-year lease and regulatory concession that runs with the land, which real property qualifies as Federal Enclave Land, constitutes the corpus of a Freedom City Trust, and qualifies as “property” under Amendment V of the Constitution.
- (d) “Freedom City Trust” means an entity in which: the corpus is Freedom City Land; the trustee is the United States, which acts through the Board and holds legal title to the corpus; and the beneficiaries include the parties that have placed the corpus into the trust, who can revoke the trust.
- (d) “Federal Enclave Land” means real property already within a federal enclave as of the effective date of this Act or Federal Land placed within a federal enclave thereafter pursuant to this Act.
- (e) “Federal Land” means real property already belonging to the United States for purposes of Article IV, Section 3, Clause 2 of the Constitution as of the effective date of this Act or real property designated as such after the effective date of this Act, and includes real property to which the United States holds legal title.
- (f) “Freedom City Board” or “Board” means the entity authorized to administer Freedom Cities as specified by this Act.
- (g) “Grantee” means a Developer to which the privilege of establishing, operating, and maintaining a Freedom City has been granted.
- (h) “State” includes any State of the United States, the District of Columbia, and Puerto Rico.

## **SECTION 4. FREEDOM CITY BOARD.**

The Board authorized to administer Freedom Cities as specified by this Act shall consist of the Secretary or delegate of: The U.S. Department of Commerce, who shall chair the Board; The Department of the Treasury; and the Department of the Interior.

## **SECTION 5: ESTABLISHMENT OF FREEDOM CITIES.**

- (a) Board Approval of Freedom Cities.** Subject to this Act and any regulations issued under it, the Board shall approve the development of Freedom Cities by authorizing qualifying Developers to establish, operate, and maintain Freedom Cities.
- (b) Call for Applications.** The Board shall invite applications for the establishment of Freedom Cities and select proposals based on criteria established in this Act.
- (c) Criteria for Approval.** The Board shall approve a Freedom City conditional on a Developer presenting a proposal that meets the Board's specifications and that the Board judges reasonably likely to fulfill one or more of the following policy goals:
  - (1) Putting Federal Land to productive economic use;
  - (2) Creating jobs and new housing for American workers and families;
  - (3) Improving local and national infrastructure networks;
  - (4) Driving innovation in nuclear and data centers, advanced manufacturing and biotech, defense and space, housing and urban development, or other areas likely to substantially affect national defense or the general welfare;
  - (5) Helping to discover more efficient regulatory policies;
  - (6) Demonstrating development practices that reconcile environmental goals with economic development; and
  - (7) Contributing to government budgets.
- (d) Effect of Approval.** Board approval of a Freedom City shall have the effect of: granting the Developer a 99-year lease and concession for developing a Freedom City; placing that Freedom City Land within a Freedom City Trust; and classifying subject Federal Land or Freedom City Land as Federal Enclave Land.
- (e) Limits on Approvals.** The Board shall:
  - (1) Approve no more than ten Freedom Cities;
  - (2) Consider applications on a first-come, first served basis;
  - (3) Take no longer than two weeks to approve or deny an application; and
  - (4) As between competing applications, holding all else equal, favor the one that would increase the geographic distribution of Freedom Cities.

## **SECTION 6: LOCATION OF FREEDOM CITIES.**

**(a) Creation of Federal Land for Freedom City.** Real property owned by a State or private party shall qualify as Federal Land for purposes of this Act upon legal title to it being transferred to the United States as trustee of a Freedom City Trust, provided however that a State must consent to that classification or cede jurisdiction pursuant to 40 U.S.C. § 3112(b).

**(b) Creation of Federal Enclave Land for Freedom City.** Federal Land shall become Federal Enclave Land upon being placed in a Freedom City Trust pursuant to this Act.

**(c) Freedom Cities on Federal Enclave Land.** All Freedom Cities shall be located on Federal Enclave Land, which if not already within a federal enclave shall become Federal Enclave Land upon Board approval of a Freedom City.

## **SECTION 7. PREEMPTION OF STATE LAW.**

(a) State law shall be preempted within the boundaries of an Freedom City except as expressly required otherwise by the Board.

(b) The Board may provide for the continuing effect of state common law in a Freedom City or for the application of select Restatements of the common law, Uniform Codes, Model Rules or Acts, or other rules as proposed by a Developer and approved by the Board.

(c) The Board may provide for the continuing effect, in whole or in part, of a host state's police powers within a Freedom City, consistent with the Federal Assimilative Crimes Act, 18 U.S.C. § 13.

## **SECTION 8. FREEDOM CITY BOARD.**

(a) There is hereby established the Freedom City Board, which shall consist of the Secretary or a designated representative of:

- (1) the Department of Commerce, who shall serve as Chair;
- (2) the Department of Treasury; and
- (3) the Department of the Interior.

(b) The Board shall have the authority under this Act to:

- (1) Administer its own affairs and applications by Developers;
- (2) Approve or deny applications to develop Freedom Cities;
- (3) Waive, modify, or adjust the enforcement within a Freedom City of select federal laws and regulations in order to further the purposes of this Act, including but not limited to the:
  - (A) Internal Revenue Code;
  - (B) National Environmental Policy Act;
  - (C) Clear Water Act;
  - (D) Endangered Species Act;

- (E) Davis-Bacon Act;
  - (D) Comprehensive Environmental Response, Compensation, and Liability Act;
  - (E) Fair Labor Standards Act;
  - (F) Occupational Safety and Health Act; and
  - (G) Affordable Care Act.
  - (3) Report annually to Congress on the development and operation of Freedom Cities;
  - (4) Oversee the development, operation, and governance of Freedom Cities; and
  - (5) Exercise other such authority necessary and proper for the execution of powers under this Act.
- (c) The Board shall have no authority under this Act to waive, modify, or adjust the application within a Freedom City of:
- (A) The United States Constitution, as amended; or
  - (B) This Act.

## **SECTION 9. FUNDING AND REVENUE.**

- (a) Developers of Freedom Cities shall pay application, lease, and concession fees to the United States.
- (b) A Freedom City shall operate under lease and concession terms designed to generate revenue for the United States while minimizing administrative costs.
- (c) The Board may establish a trust, funded in part by Freedom Cities, to among other things compensate states for net costs that Freedom Cities impose on the states' infrastructure.

## **SECTION 10. REGULATION AND SELF-GOVERNANCE.**

- (a) Freedom Cities shall self-regulate under Board oversight.
- (b) The Board shall encourage Freedom Cities to adopt policies that achieve outcomes at least as good as those mandated by applicable federal regulations but through alternative enforcement regimes.
- (c) Federal regulators, including officers enforcing federal regulations, may provide advisory support to a Freedom City but:
  - (A) Freedom Cities shall compensate the government for resources consumed in providing such advisory services; and
  - (B) Federal regulators shall not interfere with local self-governance unless by specific request of the Board or the Freedom City; and
  - (C) Any party harmed by violation of § 10(c)(B) shall have the right to preliminary and permanent injunctive relief and recovery of damages caused by the violation.

## **SECTION 11. CITIZEN PARTICIPATION.**

- (a) Residents of Freedom Cities shall have the right to vote in their cities' elections and participate in self-governance.

- (b) A resident of a Freedom City shall not thereby have any right to participate in state or municipal elections of adjacent jurisdictions but may participate in federal elections and governance no less than does any resident of the District of Columbia.

## **SECTION 11. PROPERTY RIGHTS AND ARBITRATION.**

- (a) The continued effect of this Act irrespective of any amendment, modification, suspension, annulment, interpretation, or construction shall be a material condition of any lessor's obligation arising under a lease made part of Freedom City Land and failure of that condition to obtain shall qualify the lessor to terminate the lease and recover damages notwithstanding any defense premised on sovereign immunity.
- (b) Leases and regulatory concessions hereunder qualify as private property, and any change to them not agreed to by a Developer as a taking under the Fifth and Fourteenth Amendments of the Constitution and as such requiring payment of just compensation.
- (c) All legal disputes about the scope or effectiveness of this Act shall originally be decided by final and binding arbitration administered by the American Arbitration Association under its [Commercial Arbitration Rules and Mediation Procedures](#), with the loser paying all reasonable legal costs and judicial review limited to that allowed by the Federal Arbitration Act.

## **SECTION 12. REVERSION OF FREEDOM CITY LAND TO STATE**

Upon the expiry of a lease creating Freedom City Land, the real property formerly under that lease shall revert to the jurisdiction of the state the boundaries of which encompass that real property.

## **SECTION 13. EFFECTIVE DATE.**

This Act shall take effect immediately upon enactment.

## **SECTION 14. AUTHORIZATION OF APPROPRIATIONS.**

Hereby authorized is the appropriation of such sums as may be necessary to carry out the provisions of this Act.

## **SECTION 15. SEVERABILITY.**

If any provision of this Act, or the application thereof, is held to be invalid, the remaining provisions of this Act shall not be affected thereby.

# *Notes on the Freedom City Act*

## **Legal Requirements for Freedom Cities: Legislation; Preemption; and Exemption**

Freedom cities have three legal requirements: Legislation, preemption, and exemption. Legislation means simply that to create Freedom Cities will require a new federal act. The proposed Freedom City Act creates a framework for authorizing and regulating Freedom Cities. The legislation provides for oversight by a Freedom City Board composed, like the Foreign Trade Zone Board, of the heads of different federal agencies. The Board invites applications, picks winning proposals, and supports the development and launch of Freedom Cities.

That legislation also includes provisions to ensure satisfaction of the other two legal requirements for Freedom cities: Preemption and Exemption. Preemption speaks to the effect of state and local laws and regulations, and the Act says that they generally do not apply in a Freedom City. Instead, federal law prevails. In this, Freedom Cities resemble national monuments and other federal enclaves.

Exemption ensures that federal law applies differently in Freedom Cities than outside of them. In some areas of law, the Act expressly exempts Freedom Cities from the usual rules. In other areas, it directs the Board to apply stated standards to decide how particular federal laws and regulations should apply in a Freedom City. The presumption generally runs not to simply fewer regulations but to *smarter* ones. Freedom Cities will work with federal authorities to serve as test beds for new approaches to regulation.

## **Property Relations Supporting Freedom Cities**

A Freedom City must be located on Freedom City Land. Such land has several characteristics. It must already be within a federal enclave or be placed within one by operation of the Act. That ensures the preemption of state law.

Different parties own different aspects of Freedom City Land. A city's developers own a lease or sublease to the land that runs for 99 years and includes concessions that run with the land. The United States owns legal title to the primary 99-year lease, which it administers for the benefit of those who own the underlying property. This, the United States does in its capacity as trustee of a Freedom City trust, the corpus of which includes the Freedom City Land.

Because the United States owns legal title to Freedom City Land, it qualifies as real property belonging to the United States for purposes of Article IV, Section 3, Clause 2 of the Constitution. That gives Congress the power to regulate use of the land. The Act and the Supremacy Clause together ensure that Congress can thereby preempt state regulations of Freedom City Land. The Act also clarifies, should any doubt about the

matter exist, that Freedom City Land (which includes the lease and associated concessions) qualifies as “property” under Amendment V of the Constitution. That protects developers from takings that might occur in the event of termination or other detrimental alteration of the lease or concessions.

The Act provides for real property to become Freedom City Land through one of three routes. First, if it is already real property within a federal enclave as of the effective date of the Act, it becomes Freedom City Land upon approval by the Board of an application to create a Freedom City there. Second, if it is federal real property not in an enclave, Board approval of a Freedom City has the simultaneous effect of placing the real property within a federal enclave and designating it as Freedom City land.

In both those cases, because only federal owned real estate is involved, no state approval is required for the creation of a Freedom City. The third route to turning real property into Freedom City Land, in contrast, requires state approval. It applies to real property owned by a state or private party. To turn it into Freedom City Land requires that the state consent. With that condition satisfied, the Board’s approval of a Freedom City again classifies the real estate as within a federal enclave.

It bears noting that in no case does Freedom City Land as such belong to the United States in fee simple. Instead, such land includes only the legal title to a 99-year leasehold estate. The United States either carves the lease out of federal lands that it already owns, if the first or second route to creating Freedom City Land is followed, or receives the lease from state or private owners, if the third route is followed. In the former case, the United States gives the Developers a 99-year lease together with concessions that run with the land. In the second case, it gives them a 99-year sublease with concessions.

In any case, at the end of the lease, Freedom City Land—even if located on land that was formerly federal—reverts to the jurisdiction of the host state. In this way, the Act eases a long-running conflict between the federal government and states that object to its continuing claims to lands that once marked the Western frontier. If that outcome does not suit people evaluating it 90 years hence, they can renew the existing arrangement and keep Freedom Cities in operation or make other provisions better adapted for their world, in their time.

## **Regarding Delegation**

While the Constitution in theory limits the power of Congress to delegate its rule-making authority, the Supreme Court has not in practice seen fit to enforce any such limit. Instead, so long as Congress provides some “intelligible principle” for guiding administrative action, it has upheld the delegation. *See, e.g., J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928). Guided by that standard, the Supreme Court has upheld delegations guided by little more than calls to police, *inter alia*, “excessive profits”, *Lichter v. United States*, 334 U.S. 742 (1948), “fair and equitable” prices, *Yakus v. United States*, 321 U.S. 414 (1944), or “just and reasonable” rates, *FPC*



*v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). By its own account, the Court has approved, “without deviation, Congress’s ability to delegate power under broad standards.” *Mistretta v. United States*, 488 U.S. 361, 373–79 (1989). The Freedom City Act offers far more by way of intelligible principles than the many broad delegations already judged constitutional.

Furthermore, insofar as the Board merely exercises the power to waive or exempt the application of federal law, delegation is not at stake. The Board in no case claims to issue new rules binding on the public at large. Instead, it merely shelters a Freedom City from the full impact of federal law conditional on its agreement to a concession running with the land. Those concession terms do not apply to the general public, have only temporary effect, and are matters of private contract and property law. As such, the Board's grant of an FC concession does not happen via the exercise of delegated legislative powers.

## **Regarding Taxation**

Extant and long-standing laws demonstrate that Congress have often delegated to executive agencies the power to waive, modify, or adjust enforcement of tax laws. The same can be said of federal law generally. On top of the executive's inherently broad prosecutorial discretion, reflected in the [widespread agency practice of regulatory waivers and exemptions](#), federal legislation authorizes the President to temporarily cancel or delay the effect of a broad range of legal burdens.

That is not to say that Freedom Cities would thereby escape their obligations to contribute to the costs of government. The Act instead stipulates that "The Board shall encourage Freedom Cities to adopt policies that achieve the same outcomes as applicable federal regulations but through alternative enforcement regimes designed for maximum efficiency." § 10(b). Furthermore, § 5(c) provides that among the criteria for approval of an application to develop a Freedom City, the Board shall favor "(5) Helping to discover more efficient regulatory policies" and "(7) Contributing to government budgets."

Everyone agrees that government operations require funding. The question is how to raise those funds. The Act thus authorizes the Board to reduce otherwise applicable tax burdens within FCs pursuant to its approval of a development plan that relies on more efficient means of paying for government operations. FCs allow testing, within limited and temporary special jurisdictions, of new and more efficient mechanisms to do so.

Taxes represent but one of many areas where Freedom Cities are allowed and indeed encouraged to help develop the next generation of regulation. It is hardly mad science. Freedom Cities will run experiments within legislated limits and under continuing supervision, within relatively tiny areas, for only a set term. Perhaps they will find that the present system of federal income, payroll, Medicare, and Social Security taxes cannot be improved upon. Even that outcome would, by confirming that we live in the

best of all possible words, give a great benefit at little cost. And if Freedom Cities reveal how to improve government, so much the better.