

PUBLICATION

Show Me the Money! Tap Into Tennessee's New and Expanded Programs to Encourage Redevelopment of Contaminated Properties

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Communities and developers now have the opportunity to tap into certain funds earmarked by the state specifically for brownfield redevelopment and to take advantage of certain incentive programs that apply to more brownfield properties.

What is a brownfield? It's a piece of real property that has the potential for real or perceived environmental contamination based on its historical uses. These properties exist in almost every community across the state, and many are left vacant and unutilized.

Specifically, Tennessee passed the Rural Brownfield Investment Act (Pub. Ch. 86) effective July 1, 2023, to incentivize brownfield redevelopment in the state. This Act:

1. Establishes a Brownfield Redevelopment Area Fund to be administered by the Tennessee Department of Environment and Conservation's (TDEC) Brownfield Redevelopment Area Grant Program;
2. Expands the brownfield redevelopment laws related to franchise and excise (F&E) tax credits to incentivize rural and smaller communities to clean up and remediate properties by expanding the credit to include both purchase and remediation costs; and
3. Amends the Brownfield Tax Increment Financing (TIF) law to remove geographic barriers to use and expand eligible qualified project costs.

Brownfield Redevelopment Area Grant (BRAG) Program

The BRAG program establishes a new state-administered brownfield grant program to “direct funds for investigation, assessment and remediation to communities”. The fund contains a recurring \$5 million, with a cap of \$500,000 annually per eligible entity. Eligible entities include “political subdivisions of the state, including, but not limited to, a county, municipality, development district, or development board”. Tenn. Code Ann. 68-212-220(a)(3).

According to TDEC, the law “promotes conservation of Tennessee's agricultural, recreational, and open space lands by encouraging environmentally sound redevelopment of properties blighted by real or perceived contamination”. Tenn. Code Ann. 68-212-220(b).

There are three BRAG project types:

4. Identification – up to \$20,000 (over 12 months) for the creation of an inventory of brownfield sites.
5. Investigation – up to \$100,000 (over 24 months) for conducting Phase I Environmental Site Assessments in accordance with the current ASTM E-1527 standard, a Phase II Environmental Site Assessment, or any other environmental investigation.

6. Remediation – up to \$500,000 (over 24 months) for conducting any action to contain, remove, mitigate, or dispose of hazardous substances, pollutants, other contaminants, or petroleum products, at a brownfield site.

TDEC has proposed a tentative timeline for the implementation of this new program.

February 2024 – the grant is anticipated to period open (information will be provided on how to apply in January 2024)

April 2024 – anticipated proposal submission deadline

June 2024 – TDEC will announce the grant awards to successful applicants

August 2024 – target date for execution of the grant contracts

For FY24, eligible entities may submit multiple applications through BRAG and must select from the three project types listed above. Each eligible entity may submit one application per project type for a total of up to three total applications (one identification, one investigation, and one remediation). Eligible entities may be awarded multiple grants but cannot receive a total of more than \$500,000 in BRAG funds for a given fiscal year. Additionally, eligible entities must complete the contract term or the activities within active contracts prior to submitting a BRAG application for a new project under that same project type.

For investigation and remediation project types, grantees are required to enroll the brownfield redevelopment area in the Brownfield Voluntary Cleanup Oversight and Assistance Program (VOAP). The VOAP cost recovery schedule may be considered grant expenses (reimbursable) for Tier 3 or Tier 4 counties. In Tier 1 and Tier 2 counties, the VOAP fee recovery is considered a "match requirement." Up to 50 percent of a grant applicant's total grant contract may be used for reasonable administrative expenses.

As noted above, the tentative application window for BRAG is February 2024 – April 2024. You can sign up for updates from TDEC on this process at <https://www.tn.gov/environment/program-areas/rem-remediation/grants-resources/brag.html>.

Franchise & Excise (F&E) Brownfield Tax Credit

These F&E tax credits apply against an entity's combined franchise and excise tax liability and are based on the greater of the net worth or the book value of real or tangible personal property owned or used in Tennessee. For a brownfield property to qualify for these tax credits, it must participate in the VOAP and the credit must be approved by three state departments: Revenue, Finance and Administration, and Economic and Community Development.

Credit for a qualified development project is available against the F&E tax liability of up to 50 percent of the purchase price of the property in a Tier 1 or Tier 2 county, and 75 percent in a Tier 3 or Tier 4 county. To qualify in a Tier 1 or Tier 2 county, you must have a \$25M capital investment in a brownfield project. The investment requirement is \$5M in a Tier 3 or Tier 4 county. In addition, pursuant to the 2023 amendments, as to a Tier 3 or Tier 4 county, a credit of up to 100 percent against the F&E tax liability is now available for remediation costs not to exceed \$500,000 for a brownfield project. These credits may carry forward for up to 25 years or until used.

Tax Increment Financing (TIF)

Certain brownfield projects are eligible for cleanup funding through TIF under Tenn. Code Ann. 7-53-316. TIF was previously limited to use in "Redevelopment Zones." However, the 2023 amendments removed these geographic barriers and amended the Brownfield TIF law to include the costs of acquisition of the project site, and costs of improvements to the site as eligible costs. The requirements to qualify for TIF now include:

- Site must be subject to a voluntary agreement or consent order under VOAP; and
- Must obtain approval from the local Industrial Development Board and local government.

Unlike most TIFs in Tennessee, a brownfield can utilize sales tax in addition to property tax.

Overall, the BRAG program and the amendments to the F&E Tax Credits and the TIF options are intended to both facilitate and encourage more brownfield redevelopment in the state of Tennessee.

For any questions, or if you need additional information about Tennessee's Brownfield Redevelopment Area Grant (BRAG) Program, please contact [Ashley Strittmatter](#) or any member of the Baker Donelson [Economic Development Team](#).