TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

SB 271 - HB 319

February 7, 2023

SUMMARY OF BILL: Creates a new franchise and excise tax credit equal to the remediation costs for a brownfield property for a qualified development project in a tier 3 or tier 4 enhancement county; provided, the credit must not exceed $500,000 and the credit, together with any carry forward thereof, taken on a franchise and excise tax return must not exceed 100 percent of the combined franchise and excise tax liability shown on the return before a credit is taken. Establishes that an unused credit may be carried forward in a tax period until the credit is used; however, no credit may be carried forward for more than 15 years.

Expands the current franchise and excise tax credits awarded in conjunction with purchases of brownfield sites to include such sites that are subject to mitigation.

Establishes a new, special account within the State Treasury, to be known as the "Brownfield Redevelopment Area Fund" (Fund), to assist communities with the redevelopment of brownfield sites. Establishes that it is the intent that money for the Fund be appropriated each year in the General Appropriations Act. Gifts, other donations, and grants received by the Department of Environment and Conservation (TDEC) for brownfield development purposes may be deposited in and remain part of the Fund in addition to funds appropriated by the General Assembly. Any unencumbered moneys and any unexpended balance of the Fund remaining at the end of the fiscal year must not revert to the General Fund, but be carried forward until expended. Requires that money in the Fund be used by the TDEC to administer a brownfield development area grant program. Authorizes the TDEC to award grants to eligible entities for the remediation costs and reasonable administrative expenses relative to the redevelopment of brownfield sites. Prohibits administrative expenses from exceeding five percent of the grant awarded, nor any such grant from exceeding $500,000 in a fiscal year. Requires the TDEC to establish criteria and guidelines for the brownfield redevelopment area grant program and publish such criteria and guidelines on its website.

Requires the TDEC to report to the Governor, no later than December 31, 2023, and each December 31 thereafter, regarding the department's administration of the Fund. Such report must also be transmitted to the Speakers of the House of Representatives and the Senate, the Commissioners of the Department of Finance and Administration (F&A) and the Department of Economic and Community Development (ECD).

Requires the TDEC, the Department of Revenue (DOR), and the ECD to post a list of brownfield redevelopment areas on their respective websites.

Removes the limitation that brownfield redevelopment projects are to be located in economically disadvantaged or urban areas for the purposes of industrial development corporations' efforts for redevelopment of brownfield sites. Adds cost of acquisition of the project site and cost of improvements to the project site to the list of qualified costs.

FISCAL IMPACT:

Increase State Revenue - $5,000,000/FY23-24 and Subsequent Years/ Brownfield Redevelopment Area Fund

Forgone State Revenue – Exceeds $100,000/FY23-24 and Subsequent Years/ General Fund

Increase State Expenditures –
$5,278,200/FY23-24/General Fund
$5,274,600/FY24-25 and Subsequent Years/General Fund

$5,000,000/FY23-24 and Subsequent Years/ Brownfield Redevelopment Area Fund

Increase Local Revenue – $5,000,000/FY23-24 and Subsequent Years

Increase Local Expenditures – $5,000,000/FY23-24 and Subsequent Years

Other Fiscal Impact – This legislation may result in additional grant monies, gifts, and donations being allocated to the Brownfield Redevelopment Fund. The amount of any such increase is based on numerous unknown variables and cannot be quantified at this time.

In addition, the proposed legislation may result in state and local sales tax increases and reallocation of future, currently unassessed, property taxes. Due to multiple unknown variables, the timing and extent of any such impacts cannot be determined with reasonable certainty.

The Governor's proposed budget for FY23-24, on page A-33, includes a recurring increase in state expenditures of $5,335,800.

Assumptions:

Expansion of Existing Franchise and Excise Tax Credits (Mitigation)

- Pursuant to Tenn. Code Ann. § 67-4-2009(8)(A), a franchise and excise tax credit, equaling 50 percent of the purchase price of a brownfield property, which is subject to either an investigation or remediation as a brownfield project, is currently available to eligible purchasers. Such purchase must be for a qualified development project.

- Pursuant to Tenn. Code Ann. § 67-4-2009(9)(B), a franchise and excise tax credit, equaling 75 percent of the purchase price of a brownfield property purchased in a tier 3 or tier 4 enhancement county, which is subject to either an investigation or remediation as a brownfield project, is currently available to eligible purchasers. Such purchase must be for a qualified development project.
- The tax credits must be in the "best interest of the state" which is defined as "a determination by the Commissioners of F&A, DOR, and ECD that the qualified development project is a result of the tax credit provided and that the economic benefits to this state resulting from the qualified development project outweigh the anticipated amount of the credit".
- Therefore, any impact on franchise and excise tax revenue is considered forgone revenue.
- Based on information provided by the DOR, the aforementioned franchise and excise tax credits have only been granted four times since 2011, for a total of $15,500,000.
- Of this amount, only $6,000,000 in such credit has been used to offset taxpayers' franchise and excise tax liabilities.
- Between 2011 and 2023, or approximately 12 years, there has been an annual average amount of forgone franchise and excise tax revenue to the state of $500,000 ($6,000,000 / 12 years).
- Unused credits, such as the remaining outstanding credits of $9,500,000 ($15,500,000 - $6,000,000) can be carried forward, but for no more than 15 years.
- At least one additional purchase of a brownfield site, subject to mitigation, will result in forgone state franchise and excise tax revenue.
- It is assumed that only an additional $500,000 in such credits will be used against the purchaser's franchise and excise tax liabilities.
- For purposes of estimation, it is assumed that this credit will be spread out over 15 years.
- Upon use of such credits, it is assumed that another applicable site will be purchased and franchise and excise credits will be claimed; therefore, resulting in forgone state revenue into perpetuity.
- This credit will first be awarded in FY23-24.
- Pursuant to Tenn. Code Ann. § 67-4-2120, all franchise tax revenue is distributed to the General Fund.
- Pursuant to Tenn. Code Ann. §§ 67-4-2020 - 67-4-2022, a portion of excise tax revenue collected from certain businesses, including certain financial institutions, certain investment companies, and cemeteries, are allocated to local governments.
- For the purposes of this fiscal note, it is assumed that the taxpayers impacted by this legislation, do not own any such types of businesses; therefore, these provisions of the proposed legislation will not impact local government revenue.
- There will be a recurring amount of forgone state tax revenue to the General Fund in FY23-24 and subsequent years exceeding $33,333 ($500,000 / 15 years).

New Franchise and Excise Tax Credit

- This legislation creates a new and separate franchise and excise tax credit equal to equal to the remediation costs for a brownfield property for a qualified development project in a tier 3 or tier 4 enhancement county; provided, the credit must not exceed

$500,000 and the credit, together with any carry forward thereof, taken on a franchise and excise tax return must not exceed 100 percent of the combined franchise and excise tax liability shown on the return before a credit is taken. An unused credit may be carried forward; however, no credit may be carried forward for more than 15 years.

- Based on information provided by the DOR, this legislation is estimated to result in one additional purchase of a brownfield site which is subject to mitigation, resulting in forgone state franchise and excise tax revenue.
- It is assumed that an additional $1,000,000 in such credits will be used against the purchaser's franchise and excise tax liabilities.
- For purposes of estimation, it is assumed that this credit will be spread out over 15 years.
- Upon use of such credits, it is assumed that another applicable site will be purchased and franchise and excise credits will be claimed; therefore, resulting in forgone state revenue into perpetuity.
- This credit will first be awarded in FY23-24.
- All impacted franchise and excise tax revenue is distributed to the General Fund.
- There will be a recurring amount of forgone state tax revenue to the General Fund in FY23-24 and subsequent years of $66,667 ($1,000,000 / 15 years).

Brownfield Redevelopment Area Fund and Grant Program

- This legislation establishes the Fund to which funds shall annually be appropriated in the General Appropriations Act.
- Based on information provided by the TDEC, approximately $5,000,000 is expected to be annually appropriated to this Fund, beginning in FY23-24.
- It is estimated that there will be a recurring increase in state expenditures in FY23-24 and subsequent years of $5,000,000 to the General Fund.
- Additionally, gifts, other donations, and grants received by the TDEC for brownfield development purposes may be deposited in and remain part of the Fund.
- This legislation requires that money in the Fund be used by the TDEC to administer a brownfield development area grant program.
- The TDEC's Division of Remediation will administer this grant program for eligible entities for the remediation costs and reasonable administrative expenses relative to the redevelopment of brownfield sites.
- An eligible entity is defined as a political subdivision of the state, including, but not limited to, a county, municipality, development district, or development board. Therefore, grants will be awarded to local government entities.
- The division will be required to establish criteria and guidelines for the brownfield redevelopment area grant program and publish such criteria and guidelines on the TDEC's website.
- The amount of grants that will be awarded from the Fund is not known at this time; however, it is assumed that all funds annually appropriated to the Fund from the General Appropriations Act will be distributed to eligible recipients for the purposes proposed in this legislation. It is further assumed that all funds received by local governmental entities will be expanded by such entities.
- This grant program will begin awarding grants in FY23-24.

- There will be a recurring increase in state expenditures from the Fund, and an equivalent increase in local revenue and local expenditures, in FY23-24 and subsequent years of $5,000,000.
- Based on information from the TDEC, the department will require 3 additional positions to administer this grant program.
- Such positions include one environmental health specialist 5, one grants program manager, and one administrative assistant.
- There will be a recurring increase in state expenditures of $274,636 ($213,408 salaries + $57,428 benefits + $3,800 supplies and travel) in FY23-24 and subsequent years.
- There will be a one-time increase in state expenditures in FY23-24 of $3,600 for computers.
- There will be a total increase in state expenditures of $278,236 ($274,636 + $3,600) in FY23-24.
- There will be a recurring increase in state expenditures of $274,636 in FY24-25 and subsequent years.
- There will be a total increase in state expenditures from the General Fund of $5,278,236 in FY23-24 ($5,000,000 + $278,236).
- There will be a total increase in state expenditures from the General Fund in FY24-25 and subsequent years of $5,274,636 ($5,000,000 + $274,636).
- The TDEC can create and distribute the required report to the appropriate individuals, utilizing existing resources.
- The TDEC, DOR, and ECD can post a list of brownfield redevelopment areas on their respective websites, utilizing existing resources.

Industrial Development Corporations

- Pursuant to Tenn. Code Ann. § 7-53-316, an industrial development corporation is authorized to submit to a municipality for approval an economic impact plan with respect to a brownfield redevelopment project.
- Such plan may provide that excess property tax revenue, resulting from the redevelopment efforts, is allocated to the corporation for the following purposes: payment of expenses of the corporation in furtherance of economic development in the municipality; payment or reimbursement of qualified costs; or payment of debt service on bonds or other obligations issued by the corporation to finance any of the foregoing. In addition, the non-school portion of the local sales tax increment may be allocated for such purposes.
- The corporation shall cease to receive allocations upon the maturity of the original bond or obligation used to finance the project, whose maximum amount of debt maturity must be no longer than 30 years.
- The proposed legislation removes the limitation that brownfield redevelopment projects are to be located in economically disadvantaged or urban areas and establishes that qualified costs include cost of acquisition of the project site and cost of improvements to the project site.
- The proposed changes may result in an increase in qualified projects across the state. Such increases could result in increases in state and local sales tax revenue and reallocation of excess property tax revenue from local governments to industrial

development corporations. However, such reallocated property taxes are currently not levied.
- Due to multiple unknown variables, the timing and extent of any such impacts to state or local government cannot be determined with reasonable certainty.

Total Impact
- The forgone revenue to the General Fund is estimated to exceed $100,000 ($33,333 + $66,667) in FY23-24 and subsequent years.
- There will be an increase in state expenditures to the General Fund of $5,278,236 in FY23-24 and of $5,274,636 in FY24-25 and subsequent years.
- There will be a recurring increase in state revenue to the Fund, and an equivalent recurring increase in state expenditures from the Fund, of $5,000,000 in FY23-24 and subsequent years.
- There will be a recurring increase in local revenue, and an equivalent recurring increase in local expenditures, of $5,000,000 in FY23-24 and subsequent years.
- This legislation may result in additional grant monies, gifts, and donations being allocated to the Fund. The amount of any such increase is based on numerous unknown variables and cannot be quantified at this time.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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