

Brownfields Agreement Fee Increase Summary

September 2025

Background

There are 775 recorded brownfields agreements across the state and over 250 more in the pipeline. These projects have resulted in more than \$30 billion in private investment in redeveloping brownfields, countless gains in economic development for the local areas surrounding these redevelopments, thousands of jobs, 14,000 acres redeveloped, and similar acreage of greenfields saved. However, each of these sites has a set of land use restrictions in place that are vital to protect public health.

Brownfields Funding

Monitoring compliance and enforcing where necessary is a huge stewardship task that requires resources. To obtain these resources, the brownfields program sought and was awarded a 5-year U.S. EPA grant via the Bipartisan Infrastructure Law (BIL) to develop and operate the Property Management Branch through FFY 2027. Recent events make it clear that this federal grant is not going to be renewed (if not entirely canceled prior to 2027), making it imperative to increase fees for funding at this time.

The Brownfields Program has also never received any appropriation of state funds and has always operated on fee receipts and federal grants. The operating expenses of the program are approximately \$3.3 million. The brownfields program has not increased its fees since 2008 when it instituted the Redevelopment Now fee of \$30,000 for expedited brownfield agreements. Therefore, its current fee receipts do not cover its operating expenses. The program has been successful in making up the shortfall by applying for and being awarded federal grants from the U.S. EPA. These grants currently make up about \$1.5 million (including the BIL grant described above). However, it is clear that the BIL grant is not only ending but will have no opportunity for renewal. As a result, the program will soon face a significant decrease in grant fund receipts which must be offset by fee increases.

Stakeholder Process for Equitable Fee Increases

Knowing that fee increases were necessary for the Section by the end of this BIL funding, the Brownfields Redevelopment Section initiated discussions regarding program fee increases as well as program process improvements with a Subgroup of Stakeholders that are most experienced with brownfields. The Subgroup includes external attorneys, consultants, and property developers as well as internal Section staff and counsel. DEQ and these stakeholders discussed numerous approaches for fee increases (and proposals for tax incentive expansion which will continue in the future). The Stakeholder Subgroup provided valuable input which resulted in the most supportable and equitable approach for the increases. After numerous approaches were considered, such as flat rate higher than inflationary, inflation adjustment, individual task-based, fees based on site complexity factor(s), and a flat rate plus a per slab fee; however, in the end it was determined that a simple inflation adjustment of current fees from 2008 was the most equitable.

The efforts of the Subgroup also resulted in the consensus of the group supporting statutory changes to the Brownfields Property Reuse Act (BPRA) which culminated in Session Law 2025-53.

This change clarifying changes to both the fee Section of the BPRA and the Brownfields Property Tax Incentive.

One effect of Session Law 2025-53 is to simplify the fee language of BPRA to make it more consistent with the operations of the program. The fees remain based in the concept of recovering the costs to the state rather than specifying a set dollar amount in statute, but the changes simplified the timing of when the state receives the fees and makes it clear that the state can not only recover fees for agreement implementation and monitoring, but also for enforcement of noncompliance.

The second effect was to ensure the tax incentives can apply to improvements to brownfields properties that have recorded agreements but due to development realities, had to begin construction of said improvements during brownfields agreement negotiation.

Brownfields Process Improvements

Integral to the desires of both the Stakeholder Subgroup and the Brownfields Redevelopment Section has been a continual effort to improve the brownfields process and make it as efficient as possible. Over the last few years, some approaches developed internally and some with the cooperation/input of stakeholders, the BRS has incorporated different process improvements to keep the brownfields process moving forward while facing considerable staffing challenges. These efforts include:

- 1) Establishing, when necessary for development timelines, a process for environmental management plans prior to completion of agreements;
- 2) Establishing the project initiation process on Redevelopment Now sites to ensure the ability for developers to start environmental assessments even when the program's project managers are overloaded;
- 3) Developing predictable requirements for vapor intrusion mitigation and monitoring for consistency within the program;
- 4) Establishing a revised scope of work approval process eliminating the need for assessment workplans;
- 5) Implementing Access DEQ database development for better project management, tracking, and data analysis both internally and externally;
- 6) Developing a streamlined brownfields agreement template and approach to speed the process of drafting, negotiating, and editing a brownfields agreement; and
- 7) Developing checklist approaches for site assessment, vapor intrusion mitigation, and survey plat preparation for predictability and consistency.

All of these process improvements combined will move brownfields agreements from eligibility into public comment faster and increase the throughput in our project pipeline.

Fee Increase and Revenue Model

Tables 1 and 2 below outline our current fee structure and then our proposed fee structure, and the revenue model is shown for each. As shown in Table 1, current fees are \$8,000 for standard projects, \$30,000 for Redevelopment Now projects, and \$15,000 for ready-for-reuse projects. Under the revised fee structure shown in Table 2, these fees were adjusted for inflation from an analysis of the consumer price index 2008. This results in increases to fees from \$8,000 to \$12,000; and from \$30,000 to \$45,000. We have also included all Ready for Reuse projects under the Redevelopment Now Fee Structure as every Ready for Reuse project in recent years has come in under that category and the vast majority of them are large complicated sites with demanding schedules. In addition, projects are only eligible for the lower fee level if they have values of \$5 million¹ or less. For projects over this figure, the higher fee applies. An exception has been made for local governments as prospective developers. Their fees are not increasing and remain at \$8,000 as they are not receiving tax incentive benefits after they improve/redevelop properties.

Unfortunately, the costs to the state do not stop with the completion of the brownfields agreement. Stewardship of continuing care is needed to make sure construction and other future site modifications do not compromise public health. Furthermore, many sites continue redeveloping after their original "redevelopment" that was conceptualized in the brownfields agreement from 15-20 years ago. The costs to the property management branch managing these actions come from BIL grant funds currently, but as the BIL is disappearing, the costs should be shouldered by those that are changing the site conditions through their activities.

Therefore, the new fee structure will also include an annual implementation fee during the period of active construction. The concept for this fee came from the stakeholders subgroup, in that incorporating a review fee into the project construction is easier to budget for than an annual fee after redevelopment is complete. Therefore, an annual \$10,000 implementation fee² will be required for the construction period on all sites, including those with existing brownfields agreements. It would cover the EMP and VIMP review all the way through the end of the proposed monitoring (even if you stop construction after pre-occupancy).

The intent of this cost recovery fee is to begin when your construction begins, essentially at the time of EMP approval. An invoice would be sent annually during development and would stop upon receipt of the final redevelopment summary report (partial year construction will be prorated). Should the project not necessitate all of these items or be a very small/short scope of work, we will negotiate that construction fee to a lesser amount.

In short, the fee increase structure includes the following components:

- 1) Inflation factor using the Consumer Price Index from 2008 to 2025 added to current fees, equates to a 50.04% cumulative increase; and
- 2) Implementation fee previously addressed through the BIL Grant.

The proposed fees below have also been reviewed for statutory consistency by DEQ's counsel in light of the changes to the BPRA made by Session Law 2025-53. In summary, you can see that if

¹ - In discussions with the Stakeholder Subgroup, this value was arrived at as a compromise between \$2 million and \$10 million.

² Should the project not necessitate all of these items or be a very small/short scope of work, we will negotiate that construction fee to a lesser amount.

these fee increases are not instituted, and there is no state appropriation, the program is projected to fall more than \$1 million short of needed revenue annually after cessation of BIL funds.

Table 1. Current Fees (unchanged since 2008)			
Fee Type	Fee Amount	Modeled Projects Per Year	Annual Projected Revenue
Standard	\$8,000	10	\$80,000
Redevelopment Now (express)	\$30,000	45	\$1,350,000
Ready-For-Reuse	\$15,000	5	\$75,000
Revenue			\$1,505,000
Expenditures			\$3,300,000
Gap			\$1,795,000
EPA 128(a) Grant			\$715,000
EPA BIL Grant ¹			\$800,000
Deficit			\$280,000

¹ The EPA BIL Grant ends in 2027, if not sooner, due to federal budget cuts.

Table 2. New Fees (for projects submitted after November 1)			
Fee Type	Fee Amount	Modeled Projects Per Year	Annual Projected Revenue
Muni/Local Government ¹	\$8,000	5	\$40,000
Standard ²	\$12,000	10	\$120,000
Redevelopment Now or Ready-For-Reuse (causative party proxy)	\$45,000	45	\$2,025,000
Construction Review, ³ per year during construction	Up to \$10,000 annually during construction	50	\$400,000
Revenue			\$2,585,000
Expenditures			\$3,300,000
Gap			\$715,000
EPA 128(a) Grant			\$715,000
Deficit			0

¹Separate fee structure for municipalities and local government projects as they do not receive tax benefits, and EPA Grants they use will pay \$8,000 but not more. Supported by stakeholder subgroup.

²Permitted only for projects with estimated capital investment \$5 million or less who choose to be on a slow construction schedule. Supported by Stakeholder Subgroup.

³Charged during active construction only in support of property management branch. Originated by stakeholder subgroup.

In addition to these standard fees above, consistent with the statute as amended after Session Law 2025-53, the Section intends to charge cost recovery for non-compliance issues that are an otherwise unrecovered cost to the state. These mainly consist of fees for not submitting the required annual certification of compliance with land use restrictions and fees charged to recover the costs for more significant noncompliance issues. These fees will be based on recovering the costs to the state consistent with the statute, though they are not expected to significantly change the revenue model shown in the table above.