NOTABLE PROVISIONS OF THE BUILD ACT

CHANGES IN LIABILITY PROTECTIONS AND BROWNFIELD GRANT ADMINISTRATION ASSOCIATED WITH THE BROWNFIELD UTILIZATION, INVESTMENT, AND LOCAL DEVELOPMENT ACT
LIABILITY EXEMPTIONS FOR CERTAIN GOVERNMENT-OWNED SITES NOW IN STATUTE

• State And Local Units of Government Are Exempt From Superfund Liability For Sites Acquired By:
  • Law Enforcement Seizure
  • Bankruptcy
  • Tax Delinquency
  • Abandonment
  • Eminent Domain
  • Other Governmental Functions

• This Liability Exemption Applies Provided The Governmental Unit Did Not Cause Or Contribute To Contamination Of The Property
EXPANDED GRANT ELIGIBILITY FOR OTHER GOVERNMENT-OWNED PROPERTIES

• State And Local Government Agencies May Receive Grant Funding For ANY Site Acquired Prior to January 11, 2002 PROVIDED The Agency Did Not Cause Or Contribute To Contamination Of The Property
  • NOTE: This Is Not a New Liability Defense – It Simply Allows a Government Agency To Receive Grant Funding for Sites Where the Agency Could Be a Superfund PRP

• Prior To The Build Act, Government Agencies Needed To Demonstrate A Phase 1 Had Been Completed In Cases Where The Property Was Acquired Before 1/11/2002
WHICH GOVERNMENT-OWNED SITES ARE NOW ELIGIBLE?

- Any Property Acquired Prior to January 11, 2002 As Long As The Government Agency That Owns The Site Did Not Cause or Contribute To The Contamination

- Properties Acquired After 1/11/2002 For Which The Government Agency Is A Brownfield Prospective Purchaser
  - Conducted All Appropriate Inquiry
  - Exercised Due Care After Acquisition

- Properties Acquired After 1/11/2002 Through Law Enforcement Seizure, Bankruptcy, Tax Delinquency, or Eminent Domain As Long As The Government Agency Did Not Cause or Contribute to the Contamination
NEW ORGANIZATIONS ARE ELIGIBLE FOR ASSESSMENT GRANTS

• Starting in 2018, EPA May Award Assessment Grants To:
  • 501(c)(3) Nonprofit Organizations
  • Limited Liability Corporations or Partnerships in Which All Managing Members Or General Partners Are 501(c)(3) Organizations
  • Qualified Community Development Entities
    • These Are A Very Specific Type of Corporation Defined in Section 45D(c)(1) of the Internal Revenue Code
  • Nonprofits Must Qualify As A Brownfield Prospective Purchaser To Receive A Grant To Assess Sites The Nonprofit Owns. Nonprofits Do Not Have The Liability Exemptions That Are Available To Government Agencies
THE FACTORS EPA CONSIDERS IN AWARDING GRANTS CONTINUES TO GROW

• The Build Act Directs EPA To Give Consideration To Waterfront Brownfield Sites When Selecting Grant Proposals
  • Waterfront Brownfields Are Properties Adjacent to a Body Of Water or Federally Designated Floodplain

• Increasingly Difficult For EPA To Accommodate All Statutory and Agency Priorities In The Grant Guidelines
CRITERIA EPA MUST CONSIDER IN EVALUATING GRANT PROPOSALS

- Assist Communities Unable to Secure Non-Federal Funds
- Stimulate Economic Development
- Reuse Existing Infrastructure
- Provide for Local Decision-Making
- Protect Human Health and the Environmental
- Applicant’s Eligibility for Other Funds
- Waterfront Brownfield Sites
- Ability to Leverage Non-Federal Funds
- Create or Preserve Property for Recreation and Nonprofit Use
- Fair Distribution Between Urban and Nonurban Areas
- Protect Health and Welfare of Sensitive Populations
- Applicant’s Grant Management Ability
- (Got Space For Just One More, Congress)
MORE WAYS TO SPEND EPA BROWNFIELD GRANT FUNDS

- Indirect Costs Are Now Eligible
- Build Act Authorizes Small Community Assistance Grants (States and Tribes Only)
- Build Act Authorizes A New Multipurpose Grant Program
  - Planning, Assessment, and Cleanup Funding in One Grant
  - EPA Anticipates Awarding 10 Grants at $800,000
- Build Act Raises The Maximum Site Cleanup Amount
  - Up to $500,000 Can Be Expended for Cleanup of a Site
  - Applicants May Request Up to $500,000 for Cleanup of One or More Sites.
The Build Act Extends Congress’ Authority To Fund EPA Brownfield Projects Through 2020.

The “Authorization” Levels Are $200 Million For Competitive Grants and $50 Million for State and Tribal Grants (Same As Before…)

NOTE: EPA’s Brownfield Program Has Never Been Funded at the Authorized Level. The New Authorization Amount Should Not Be Viewed As An Increase In Funds Available For Grants
Opportunity Zones

The 2017 Tax Cuts and Jobs Act established Opportunity Zones to spur economic development and investment in some of our nation’s most economically challenged communities throughout the U.S. This new Opportunity Zones program provides tax incentives. The tax incentives encourage private investment to access new economic development and job creation. For an overview of the program, click here.

In order to access this new federal program, governors have the responsibility to identify areas in their state that should be designated as Opportunity Zones, and then follow the guidelines.

Click here to read a press release announcing the U.S. Department of the Treasury’s approval of the 120 Economic Opportunity Zone (EOZ) designations throughout the country.
Strategies for Attracting Investments

Begin Engagement:

- Raise awareness with networks (banks, developers, property owners, business networks) and with local entrepreneurs and growth companies
- Develop relationships with local universities, trade schools, business incubators for longer term investment strategy
- Discuss with local planners and developers how these investments might fit into ongoing pipelines of their work

Preparation Activities:

- Inventory local assets, i.e. land, shovel ready sites, infrastructure, buildings, etc.
  - Have demographics/numbers down pat
    - Elevator speech, written material, website, social media
    - Investor day in the area (shark tank pitches)

Pair Incentives:

- Discuss and promote add on incentives from the local, regional, state partners
  - Consider additional tax relief for certain Opportunity Fund investments
  - Consider regulatory relief, waivers of fees, tax increment financing, workforce development training
  - Stay informed and stay connected with your peers in region/state
The Office of Governor Bruce Rauner invites you to an Opportunity Zone Forum in anticipation of the official federal rules and guidance. The forums will bring together leaders to begin discussions on implementation and how best to utilize the program. Agency representatives from the Illinois Department of Commerce and Economic Opportunity, the Illinois Housing Development Authority and the Illinois Finance Authority will be on hand to aid the discussion. The forums are free and open to the public. Topics to be covered will include tax benefits, identifying zone locations and providing networking possibilities with strategic partners. We hope you can join us!

Rosemont-October 4, 2018
8:30 a.m.-12:00 p.m.
The Don E Stephens Convention Center
5555 N River Road

Decatur-October 10, 2018
1:00 p.m.-4:30 p.m.
Richland Community College
Sailing Education Center-1 College Park

Belleville-October 11, 2018
1:00 p.m.-4:30 p.m.
Southwestern Illinois College-Liberal Arts Building
Room 2311-2313
2900 Carlyle Avenue

To RSVP for one of these events, please visit https://www.illinois.gov/dos/docs/ZoneForums.aspx to register since space is limited.