

*Brownfields***New York Governor Cuomo Proposes  
New Brownfield Cleanup Program in Budget**

**G**ov. Andrew M. Cuomo (D) has proposed a plan to renew and overhaul the state's brownfield cleanup program as part of his budget for the 2015-2016 fiscal year.

The Jan. 21 plan, which is similar to one he proposed last year, would extend the program for 10 years and amend the two tax credits available under the program. The law is currently scheduled to expire Dec. 31, 2015.

Under Cuomo's proposal, the remediation tax credit would be limited to the actual costs for cleaning up a site. The tangible property credit, which is intended for redevelopment, would be limited to sites that are located in economically distressed areas, affordable housing or "upside down" sites where the property value is less than the cleanup costs.

Cuomo also proposed creation of a fast-track option for cleaning up sites without tax credits.

Cuomo vetoed a bill Dec. 29 that would have extended the brownfield cleanup program for two years without making any substantive changes (1 DEN A-3, 1/2/15).

"These changes to the BCP [brownfield cleanup program] would promote predictability and further advance the BCP's environmental cleanup and urban revitalization goals by incentivizing the remediation, strategic reuse, and redevelopment of contaminated properties throughout the state," Cuomo said in a bill memo accompanying the budget.

Cuomo's proposed budget also includes a new \$100 million appropriation for the state's Superfund program.

Lawrence P. Schnapf of the law firm Schnapf LLC told Bloomberg BNA that the brownfield proposal has the same drawbacks as the one Cuomo proposed last year.

"Hopefully, the governor views this proposal as the opening round of negotiations," Schnapf said in a Jan. 21 e-mail.

**Program Has Same Drawbacks.** According to Schnapf, Cuomo's three-prong test for obtaining the tangible property credit "would inject more complication, delays and uncertainty for sites that already have severe development challenges."

"Moreover, the subjectivity of the proposed criteria is likely to result in litigation over which sites qualified for these additional credits," he said.

Schnapf is the co-chair of a New York State Bar Association task force that issued a series of recommendations in December, including lowering the cap for the tangible property credit cap for certain sites and raising it for others, based on the benefits to the state and the community.

David J. Freeman, director of Real Property & Environmental Law at the firm Gibbons P.C., said Cuomo's proposal "includes many thoughtful and constructive suggestions for improving this important program."

**Elements Unnecessarily Draconian.** "However, certain elements of the governor's package—particularly the new restrictions on the availability of development-related tax credits—are unnecessarily draconian and will significantly undercut the attractiveness of the program for cleaning up the thousands of remaining brownfield sites in New York State," Freeman told Bloomberg BNA in a Jan. 22 e-mail.

Freeman, who is the other co-chair of the Bar Association task force, said scaling back the tax credit for redevelopment "can be handled in ways that are much less disruptive to the overall structure of the program."

Darren Suarez, director of government affairs at the Business Council of New York State, told Bloomberg BNA that the governor's proposal is "a welcome sign that there is a desire to extend the program."

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*Further information on the brownfield proposal is available in Part R at <http://publications.budget.ny.gov/eBudget1516/fy1516artVIIbills/REVENUEArticleVII.pdf>.*

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