New York Governor Signs Bill Adjusting Tax Incentives Under State Brownfield Law

ALBANY, N.Y.—Gov. David A. Paterson (D) signed legislation July 23 to adjust the tax incentives available under the state's brownfield cleanup program, in an effort to save the state money and align the incentives more closely with the actual remediation of sites (S. 8717).

The law limits the tax credits available for redevelopment of brownfields to $35 million per project or three times the cost of site cleanup, whichever is less. For manufacturing projects, the law limits redevelopment tax credits to $45 million or six times the cost of remediation, whichever is less.

The law increases the tax credits available for a project's remedial costs from 22 percent of remedial costs to up to 50 percent, depending on the level of cleanup. Under the current program, the state provides separate tax credits for site cleanup, remediation of groundwater contamination, and redevelopment (123 DEN A-10, 6/26/08).

Paterson said that under the current program, a number of developers could receive large windfalls because tax incentives are based on the overall cost of redevelopment, not specifically on cleanup costs.

"The purpose of the brownfields law was to clean up the environment, not clean out the state treasury," Paterson said in a statement. "Now this reformed program will serve as an important tool for revitalizing cities and towns across New York State."

Paterson said project applications that were approved by the state prior to June 23 will be eligible for tax credits under the previous law. Most provisions of the new law take effect immediately.

In addition to adjusting the tax incentives, the law establishes new reporting requirements for the Department of Taxation and Finance, the Department of Environmental Conservation, and brownfield developers.

Lawrence Schnapf, co-chairman of the New York State Bar Association's Brownfield Task Force and chairman of the Brownfield Committee of the Environmental Business Association, told BNA that a more comprehensive bill was needed to reform the program.

"The comprehensive reform that stakeholders had eagerly anticipated fizzled to a debate on how to calculate the site preparation costs and the qualified tangible property costs," said Schnapf, who is with the New York City firm of Schulte, Roth & Zabel.

Schnapf said "the conventional wisdom" is that the bill was primarily aimed at limiting tax breaks for high-rise condominium projects that would generate large tax credits, but have relatively small remedial costs. The new law, however, will have a "disproportionately harsh impact" on many smaller projects, he said.

BY GERALD B. SILVERMAN