

*Brownfields***New York Legislature Approves Bill To Extend, Revamp Brownfields Program**

The New York State Legislature sent a bill (S. 2006) to the governor April 1 to revamp the state's brownfields cleanup program, extending the program for 10 years and changing the terms of the tax credits.

The bill is expected to be signed by Gov. Andrew M. Cuomo (D), who proposed a similar measure earlier this year (15 DEN A-13, 1/23/15).

The brownfields program would have expired Dec. 31.

The governor and lawmakers have been working on measures to overhaul the program for at least a year. Cuomo vetoed a bill in December that would have merely extended the program without making any substantive changes.

The bill scales back the brownfields program's tangible property tax credit, which is intended for redevelopment. For sites in New York City, the credit will only be available for those that are located in so-called environmental zones; "upside-down" or under-utilized sites; or affordable housing projects.

The bill also changes the program's remediation tax credit, which will be limited to the actual cleanup costs for remediating a site. It previously covered all site preparation costs, including construction costs.

"This legislation preserves much of what is valuable about the state's Brownfield Cleanup Program (BCP), while providing certainty to both the environmental community and developers regarding the remediation of brownfield sites in New York State," David J. Freeman, director of Real Property & Environmental Law at the firm Gibbons P.C., told Bloomberg BNA in an e-mail.

Freeman Applauds Provisions. Freeman applauded provisions that maintained the tax credit for site preparation costs, created a fast-track option for some sites and set a reasonable timeline for sites to obtain their "certificate of completion."

"The restrictions on the ability of certain newly enrolled sites to obtain tangible property [development] credits is troublesome," he said. "While some new limitations were inevitable, the specific provisions enacted may go too far. Much will depend on the regulations to

be promulgated by DEC regarding sites that qualify for such credits because they are 'underutilized.'"

Lawrence P. Schnapf of Schnapf LLC told Bloomberg BNA the bill was "a reasonable compromise" between the governor and the development community.

"The governor got his tangible property 'gates' [limits] and the limitations on the site prep costs, while the development community was able to modify the more extreme aspects of the original proposed changes," he said.

Key Provisions Highlighted. Key provisions in the bill would:

- amend the definition of a brownfield to include sites where contamination is present "at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the Department [of Environmental Conservation] that are applicable based on the reasonably anticipated use of the property";

- create a fast-track option to provide a liability release—but no tax credits—for remediating sites that don't present a significant risk to public health or the environment; and

- expand eligibility for the program from sites that are classified as Class 1 under the state Superfund program to include Class 2 sites and sites covered by the Resource Conservation and Recovery Act.

Credits Targeted to Needy Areas. "The Legislature and the governor responded appropriately to clear evidence that the BCP is a cost-effective environmental remediation and economic development tool, which has delivered results in rural and underserved communities alike," Darren Suarez, director of government affairs at the Business Council of New York State, told Bloomberg BNA in an e-mail.

"The adopted reforms to the BCP will target the credits to areas of the State which need additional attention, while also clarifying the scope of the tax credits," he said.

Suarez said the law "will ensure continuity and certainty" for the redevelopment market. Sites that were admitted into the program before 2008 will have until 2017 to complete remediation, he said, while those that entered the program between 2008 and 2015 will have until 2019.

“This change will encourage sites to complete clean-ups,” Suarez said.

BY GERALD B. SILVERMAN

To contact the reporter on this story: Gerald B. Silverman in Albany, N.Y., at gsilverman@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

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