

Commerce, Science, and Transportation in May, but has not yet been voted on by the full Senate.

BY LEORA FALK

Brownfields

New York Legislature Approves Measure Adjusting Tax Breaks for Cleanup Program

ALBANY, N.Y.—Both houses of the New York state Legislature approved a bill June 24 that would adjust the tax incentives available under the state's brownfield cleanup program (S. 8717).

The bill, which is expected to be signed by Gov. David A. Paterson (D), is designed to reduce the state's cost for the program and align the incentives more closely with actual remediation of brownfield sites.

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

The bill would increase the tax credits available for a project's remedial costs from 22 percent of remedial costs to 50 percent.

Under the current program, the state provides separate tax credits for site cleanup, remediation of groundwater contamination, and redevelopment of sites.

Paterson told reporters that the current program needed to be reformed to establish a greater connection between the tax incentives and the actual remediation of brownfield sites. In addition, he said the current program was not affordable for the state.

In a statement, Paterson said the bill "balances the need to both clean up sites and spur development with the need to provide fiscal controls and prevent situations where developers received unintended windfalls."

The state imposed a three-month moratorium on projects earlier this year, in response to concerns about the affordability of the program and other issues (78 DEN A-3, 4/23/08).

Applies to Projects Already Approved. Under the bill, the state's current tax incentives will apply to projects already approved by the state and to projects whose applications were received prior to July 1, 2007.

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 he was "extremely disappointed" in the bill.

He said the bill was too narrow in scope and would result in fewer tax benefits for a number of projects. Schnapf said the measure "does not fix the eligibility problem that was caused by DEC's [Department of Environmental Conservation] unnatural interpretation of what is a brownfield site."

The bill will have "the perverse effect of encouraging large projects to be developed on 'greenfields' because of other state incentives," said Schnapf, who is with the New York City firm of Schulte, Roth & Zabel.

The bill was applauded by Environmental Advocates of New York State, which said the current program provides overly generous tax breaks to some developers in