

Brownfield Redevelopment

Trends in Federal Program Policies and Funding

by Charles Bartsch

Congress has been active on brownfield policy. Lawmakers are advancing funding proposals and refining existing programs to make them better fit the realities of brownfield redevelopment. These proposals are intended to complement ongoing efforts of states and local governments, which continue to innovate. Below are highlights of these federal actions.

Continuation and Extension of Federal Tax Incentives to Encourage Private Investment

Brownfield Cleanup Tax Expensing

The Bush Administration proposed in its fiscal 2006 budget a permanent extension of tax expensing for brownfield remediation costs, which allows site owners to write off all cleanup and related costs (assessment, monitoring, voluntary-cleanup-program fees, etc.) in the year they incur them, rather than over the depreciable life of the property. This expensing is the only existing federal incentive targeted directly to private site owners; it will expire on December 31, 2005.

Legislation has been introduced in the House (H.R. 877) by Reps. Jerry Weller (R-IL), Xavier Becerra (D-CA), and Nancy Johnson (R-CT)—and in the Senate (S. 398) by Sens. Rick Santorum (R-PA) and Evan Bayh (D-IN)—to continue this incentive and make it permanent. These bills also would address two shortcomings of the current expensing incentive by:

- making petroleum sites eligible for expensing (the original language was adopted before the 2002 brownfield law included eligibility for petroleum sites); and
- limiting recapture penalties in order to allow developers who do not intend to be the site's end users to be able to take advantage of this incentive (which can be critical in making cleanup economically feasible initially).

Cleanup Tax Credits

Rep. Mike Turner (R-OH) is expected to re-introduce a bill to authorize \$1 billion in cleanup tax credits, which would be allocated among the states for distribution to local projects. To this end, Rep. Turner held a hearing in September 2005 on ways to ensure effective linkages between state and federal incentives. One of the challenges he is grappling with is structuring an approach which allows potentially-responsible parties (PRPs) who want to do the right thing to participate, without opening up a loophole in the "polluter-pays" principle.

Rehabilitation Tax Credits

Several lawmakers are exploring expansions of existing rehabilitation tax credits, which have proven highly effective in brownfield situations; such changes could have an important impact on brownfield project financing. Already, one such proposal has been introduced with bi-partisan support on the House side (H.R. 659) by Reps. Rob Portman (R-OH), William Jefferson (D-LA), Nancy Johnson (R-CT), Richard

Neal (D-MA), Philip English (R-PA), Stephanie Tubbs-Jones (D-OH), Michael Turner (R-OH), and Brad Miller (D-NC). This bill would increase the allowable tax credit for smaller projects, those with less than \$1 million in qualifying expenditures, from 20 percent to 40 percent. It also would extend the incentive to residential structures at least 50 years old which are not necessarily certified as historic, and redefine "old" buildings eligible to take the 10-percent rehabilitation credit as those at least 50 years old (updating the current law provision, which defines them as "pre-1936").

Changes in Existing Economic and Community Development Programs

In his fiscal 2006 budget, President Bush proposed the most sweeping change in federal economic development programs in more than 30 years. If enacted, the president's proposal would have a profound change on the federal role in brownfield redevelopment. It would consolidate 18 programs from five federal agencies into a single "Strengthening America's Communities Initiative" (SACI) program, operated by the Department of Commerce. These 18 programs received \$5.665 billion in funding in fiscal 2005; Bush proposed total SACI funding of \$3.71 billion, some 34.5 percent less than existing funding levels.

Under the president's proposal, key programs to be consolidated—with independent funding eliminated—

include the Department of Housing and Urban Development's (HUD's) Community Development Block Grants (CDBG), Section 108 loan guarantees, and brownfield (BEDI) efforts; Empowerment Zones/Enterprise Communities operated by HUD and the Department of Agriculture; USDA rural development programs; all of Economic Development Administration's existing development programs; and Treasury's Community Development Financial Institutions (CDFI) fund. Many of these initiatives have been used by communities, and passed through to private and non-profit developers, in order to promote brownfield re-use, often as the key public piece of a public-private partnership.

The president's proposal has run into strong opposition from most local-government and community-development associations, as well as from many members of Congress, including powerful Republicans; more than half the House and Senate signed letters in opposition to the elimination of CDBG as an independent program. In fact, Congress has proceeded to fund the existing programs for fiscal 2006, albeit with cuts in many instances.

The Department of Commerce undertook an aggressive publicity campaign and convened a series of "town meetings" earlier this year, and President Bush promised a legislative package to carry out these changes by early summer. However, as of mid-October, it had yet to be transmitted to Congress. It may be further delayed with the administration's current focus on Hurricane Katrina relief and reconstruction. However, most observers expect the White House to revive this idea in its fiscal 2007 budget request, expected the first week of February 2006.

HUD Brownfields

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Initiative (BEDI)—as noted above, BEDI is proposed to be folded into SACI. However, in fiscal 2005, Congress overrode the administration's zero request and provided \$24 million for this program, slightly less than the \$25 million available in fiscal 2004. Congress will need to rescue this program again, this time in conference committee. The House included \$24 million for BEDI in a floor amendment as it considered HUD appropriations; the Senate did not include any funding in its pending bill. These federal funding struggles are playing out as the program's popularity continues to grow—the number of BEDI applications nearly tripled in fiscal 2005 over the 2002 level.

Community Development Block Grants

HUD's Community Development Block Grant (CDBG) would be the largest program consolidated into the president's new community development initiative. For fiscal 2005, Congress provided HUD with \$4.7 billion for CDBG, although program users are bracing for a significant cut this year. The House, in its pending appropriations bill, proposed \$4.2 billion for

CDBG, while the Senate offered only \$3.8 billion—nearly a 25 percent reduction. A bi-partisan group of senators asked conferees to consider an additional \$200 million for CDBG.

Section 108 Loan Guarantees

The president again proposed no new authority for HUD's Section 108 loan guarantee program for fiscal 2006, stating that the program's purposes can be met by the new economic development program to be operated by the Department of Commerce. The Section 108 loan guarantee program allows cities to use their CDBG funds to leverage private investment for urban revitalization, including brownfield cleanup and redevelopment. Congress for fiscal 2005 provided \$6 million in funding to support \$275 million in guarantees; the House has included no new authority, but the Senate provided some new authority in its appropriations bill. As such, the difference will have to be resolved in conference committee, making the program's future unclear at this point.

Economic Development Administration

EDA would be a key part of the consolidated economic and community development scheme proposed by President Bush, and the administration requested no new funding for EDA's existing programs for fiscal 2006. EDA/Commerce appropriators have specifically rejected the SACI request; for fiscal 2006, the House is seeking \$228 million, and the Senate \$315 million, for EDA programs. In fiscal 2005, Congress provided a total of \$284 million for EDA program obligations, including \$167 million for public works projects, \$25 million for planning, and \$45 million for economic adjustment assistance.

Small Business Administration

SBA programs are not proposed for consolidation into SACI, and small

business efforts will continue to fare well in the budget process. For the business-loans account, SBA's core component, the administration proposed \$129 million in fiscal 2006 appropriations in order to support \$25 billion in loan and investment guarantees, and Congress is expected to provide a comparable amount.

Other Legislative Proposals Impacting Brownfields

As the 109th Congress nears the end of its 1st session in late November, several members advanced bills to enhance the role of federal agencies in brownfield revitalization:

- Rep. Gary Miller (R-CA) re-introduced his bill (H.R. 280) to decouple HUD's Brownfield Economic Development Initiative (BEDI) program from the Section 108 program linkage requirement.
- Reps. Melissa Hart (R-PA) and Stephen Lynch (D-MA) presented separate bills with a common objective—Rep. Lynch's (H.R. 336) would authorize \$75 million within EDA for brownfield site development grants, and Rep. Hart's proposal (H.R. 1237) would provide \$60 million.
- Rep. Lynn Woolsey (D-CA) introduced an energy bill (H.R. 737) that

would target brownfield cleanup as eligible for a new industrial energy and water conservation pilot program.

Environmental Protection Agency's Brownfield Program—Funding and Other Issues

Brownfield Program Appropriations

The president's fiscal 2006 budget requested a total of \$210 million for EPA brownfield efforts, a figure that included \$60 million to support state response programs. Congress, however, provided \$165 million, including \$50 million for state programs—an amount relatively comparable to current year levels.

Section 107/municipal Ownership Issues

As in previous years, the fiscal 2006 appropriation addressed an important brownfield issue, and included language allowing "eligible entities and non-profits" that took ownership of sites prior to January 2002 to be eligible for fiscal 2006 brownfield grant funds. But Section 1956 of the recently-signed transportation bill ("SAFETEA-LU") took it one step further, including a provision making that change permanent for "eligible entities" and

allowing up to 25 percent of program funds appropriated to be used at such sites. This change will greatly enhance local ability to plan and market brownfield sites which may have a longer cleanup and redevelopment horizon.

Brownfield Program Administrative Costs

By law, brownfield grant and cooperative agreement recipients cannot use any of the proceeds for administrative purposes to help carry out the programs and projects. This provision has hampered the ability of communities and other recipients in numerous ways, including their ability to promote working partnerships aimed at brownfield reuse. The brownfield effort is the only program within EPA so restricted. The Senate included a provision allowing "reasonable administrative costs" in its version of the fiscal 2006 EPA appropriations bill, but that provision did not survive conference and was not included in the bill that was signed into law.

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