

# THE URBAN PROSPECT

Housing, Planning and Economic Development in New York

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## Pataki Betting on a Green November

A plan to sell \$1.75 billion in bonds for environmental programs in New York State is now in the hands of the voters. In July, Governor Pataki signed the Clean Water/Clean Air Bond Act of 1996, which would authorize the bond sale to fund capital investments in air and water quality projects throughout the state. The bond issue must now be approved by the voters on November 5, in a referendum that will likely also decide how the state's environmental programs, and how George Pataki's image as an environmental Governor, will fare over the coming years.

### A Substantial Commitment

The Clean Water/Clean Air Act (Chapter 413, Laws of 1996) represents the most dramatic bid for environmental funding since voters rejected the \$1.975 billion "21st Century Environmental Quality Bond Act" in 1990. Defeated by a narrow margin in a stinging blow to the Cuomo Administration, the 1990 Act centered on \$800 million in bond proceeds for land acquisition projects, with the remainder supporting solid waste management, recycling and water quality treatment and improvement projects.

If approved in November, the 1996 Act would divide proceeds from the bond sales among five program headings: \$355 million to capitalize a new state Safe Drinking Water Revolving Fund; \$790 million for clean water projects (including \$250 million for open space protection and land acquisition); \$230 million for improving air quality and exploring new technologies; \$175 million for solid waste projects; and \$200 million for the restoration of municipally owned, contaminated properties. The Act would also authorize initial FY1997 appropriations for each of the programs.

Proposed by the Governor in June and refined through negotiations with legislators and environmentalists, the 1996 Act carries the lessons of its failed predecessor. The rejection of the 1990 Act is often attributed to its emphasis on land acquisition programs that were viewed with suspicion upstate. In some of the Adirondack counties that would have been prime areas for acquisition the measure was rejected by as many as 92 percent of the voters. By contrast, the largest portion of proceeds under the 1996 Act would be divided among water quality improvement projects — an easier political sell — located in key points throughout the state.

Debt service on the bonds would be fully supported through revenues from the existing Real Estate Transfer Tax, which collects two dollars for every \$500 worth of conveyed

real property. Statewide, this tax typically generates between \$140 million and \$190 million in annual revenues, with net FY1996 receipts estimated at \$148 million. Legislation passed in 1994 diverted set amounts of these revenues — \$33.5 million in FY1996 and \$87 million thereafter — to support the state's Environmental Protection Fund; remaining receipts are forwarded to the state's General Fund. Tax revenues diverted for debt service would be over and above those currently dedicated to the Environmental Protection Fund and proceeds from the bonds could not replace support currently provided by that fund.

### Drinking Water

Following a series of general provisions in Title 1, Title 2 of the 1996 Act would allocate \$355 million of bond proceeds to capitalize a Drinking Water Revolving Fund to be administered by the state's Environmental Facilities Corporation. For FY1997, the Act would appropriate \$50 million for this purpose. The establishment and financing of this state revolving fund would enable New York to receive federal capitalization grants under the Safe Drinking Water Act Amendments of 1996, signed by President Clinton on August 6.

The new federal legislation authorizes the federal government to make capitalization grants to states that, among other conditions, establish safe drinking water revolving funds and match federal grants with 20 percent state resources. The funds may then be used to make grants and loans to public water systems within the state. Projects eligible for assistance include capital expenditures for compliance with national primary drinking water regulations; upgrading of drinking water treatment systems; replacement of private wells where they present a significant health threat; restructuring of systems; and the development of alternative sources of water supply. The purpose of the program is to help local water systems cope with the costs of complying with drinking water standards, particularly smaller systems with limited access to capital.

Between currently approved appropriations and appropriations from past years that must be renewed, officials expect Congress to make \$725 million available for safe drinking water capitalization grants nationwide this year. Of that total, New York's share is approximately 4.9 percent (\$35 million). In 1998, that share is expected to increase to as much as 12 percent as the program shifts to a distribution

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formula based on percentage of national need. Following the model of the state Water Pollution Control Revolving Fund — established in 1989 to fund wastewater treatment facility improvements under the Federal Water Quality Act of 1987 — state and federal funds deposited in the Drinking Water Revolving Fund will be used as security for bonds issued by the state Environmental Facilities Corporation. This will allow New York to leverage additional resources.

Unlike most provisions of the Clean Water/Clean Air Bond Act, the sections establishing the Drinking Water Revolving Fund took effect when the Legislature and the Governor approved the bill. However, the sections that would provide state resources for the fund are still subject to November's referendum. If the Act is rejected by the voters, in order to receive the federal safe drinking water grants the state will have to appropriate its 20 percent share from some other source.

## Water Quality and Open Space

Accounting for \$790 million, the largest portion of bond proceeds, Title 3 of the 1996 Act would provide funding for water quality improvement projects, as well as open space, parks improvement, farmland preservation and historic preservation projects throughout the state. For FY1997, the Act would appropriate \$75 million for this purpose.

Of the \$790 million total, \$525 million would be dedicated to the implementation of water quality improvement plans covering the Hudson River Estuary, Long Island Sound, Lake Champlain, New York/New Jersey Harbor, the South Shore Estuary Reserve and Peconic Bay. Each of these areas would receive between \$15 million and \$25 million, although Long Island Sound would receive \$200 million in bond proceeds. Projects supported by these allocations would include sewage treatment plant upgrades, sewer overflow upgrades, stormwater management projects, flood control and aquatic habitat restoration.

Also included in the \$525 million would be \$75 million to implement court-supervised water quality improvements in Onondaga Lake, near Syracuse, \$25 million for pollution control in the Finger Lakes, \$25 million for New York State's contribution to the Great Lakes Water Quality Agreement, \$50 million to assist small cities and rural communities and \$25 million to adapt state-owned facilities for environmental compliance.

Of the remaining funds under Title 3, \$250 million would be available for open space acquisition, parks improvement and historic preservation. While this total represents a substantial increase over the original \$130 million proposed by the Governor, the bill includes significant restrictions on use of the funds for land acquisition. For example, Title 3 funds may only be used to undertake land conservation projects, in cooperation with willing sellers, that "develop, expand or enhance water quality protection or

public access to water bodies, including but not limited to coast lines, aquifers, watersheds, lakes, rivers and streams." Also, the act gives localities the right to block any land acquisition funded under Title 3 that is not already identified in the State Land Acquisition Plan, which is submitted to the Governor and the Legislature every three years under state law. None of the 1996 Bond Act proceeds could be used to fund projects committed to by the state under the New York City watershed agreement.

Title 3 would also authorize the state to use bond proceeds to carry out historic preservation, park improvement and heritage area projects that enhance or provide access to water bodies, or to fund up to 50 percent of the costs of such projects carried out by localities or non-profit corporations. Included in these provisions are restrictions aimed specifically at the proposed Hudson River Park in Manhattan. There has been considerable controversy surrounding this project stemming from plans to use revenues from commercial or residential development along the river to support the park's operating expenses. Title 3 would prohibit the use of bond proceeds to support infrastructure improvements or development within the river that would facilitate such development; further, it would require any entity using bond proceeds within the area designated for the park, with the exception of the City of New York, to gain approval from the local Community Board.

## Solid Waste Projects

Title 4 of the Act allocates the \$175 million in bond proceeds that would be available for solid waste projects among three programs: \$50 million for municipal landfill projects outside of New York City; \$50 million for municipal recycling projects; and \$75 million for the closure of Fresh Kills Landfill. For FY1997, the Act would appropriate \$75 million for these programs.

Governor Pataki sealed the fate of Fresh Kills landfill in May when he signed legislation (Chapter 107, Laws of 1996) that effectively closes the facility by the year 2002. That legislation also prohibits the operation of a garbage-burning incinerator at Brooklyn Navy Yard. In June, the Governor and Mayor Giuliani appointed a 12-member task force that will develop a plan for closing Fresh Kills, the world's largest unlined landfill, and recommend alternatives for disposing of solid waste.

How far the Clean Water/Clean Air Bond Act's \$75 million will go in facilitating the Fresh Kills closure is yet to be seen. City and state officials have not yet provided

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## PUBLIC HOUSING WATCH

# Mixed Blessings

As Congress pauses for the national political conventions, profound changes in the way public housing is operated hang in the balance. Major public housing reform bills have passed both houses and a Senate-House conference committee is in the process of reconciling the differences between them. While some tenant advocates are alarmed, most public housing authorities (PHAs) welcome the provisions aimed at encouraging a mixed-income tenancy.

The House bill, H.R. 2406, and the Senate bill, S.1260, are the key pieces of housing legislation to emerge from the authorization committees now chaired by Representative Rick Lazio of New York and Senator Connie Mack of Florida. Both would deregulate well-performing housing authorities, impose work requirements on residents, merge and deregulate the Section 8 rental certificate and voucher programs and take only limited steps toward the voucherization of public housing.

### Aiming Higher

Income-targeting and rent-setting provisions are considered the key to conference negotiations, with public housing administrators generally supporting the House version. Current law requires that 75 percent of new admissions to public housing have incomes below 50 percent of the area median. The Senate bill would retain the 75 percent requirement but raise the income threshold to 60 percent of area median, while imposing a new requirement that at least 40 percent have incomes below 30 percent of the median. The House bill would require that at least 35 percent have incomes below 30 percent of the area median while the rest have incomes below 80 percent — the current maximum income for eligibility for public housing. An important point of the negotiations is reportedly whether the income targets should be applied to new admissions or to the overall resident population.

At first glance these changes seem to add new income targeting restrictions, but that is not necessarily the case. Since the early 1980s federal "preferences," which favor homeless families and others with very low incomes, have dictated PHA admissions practices. The HUD appropriations bill passed earlier this year suspended the preference system for 1996; both the Senate and House reform bills would permanently replace them with locally-developed preference categories. The new income targeting requirements are intended to ensure that PHA preference schedules do not entirely exclude families with very low incomes. Both bills would also give PHAs additional leeway to manage the income mix of individual developments.

The most controversial aspect of the mixed-income strategy is the elimination of the rent formulas known as the Brooke Amendment. That law, which has been in effect since 1970, limits the rent of public housing tenants to not more than 30 percent of their adjusted monthly income.

However, the law imposed no minimum or maximum. Some analysts argue that this amounts to a 30 percent tax on resident income, discouraging some from working and encouraging those who are employed to leave public housing. Although ceiling rents have been permitted since 1989, they may not be lower than the area Fair Market Rent or the average monthly operating costs plus debt service the PHA incurs for apartments of similar size. Most PHA administrators believe that these rules make public housing non-competitive with other housing opportunities.

S.1260 would allow PHAs to establish rent policies for families whose incomes exceed 50 percent of the area median, while others would continue to pay 30 percent of their adjusted income with a minimum monthly rent not to exceed \$25. H.2406 would allow PHAs to establish "reasonable" rent levels for all families whose income is over 30 percent of the median and who are not classified as elderly, disabled or headed by a veteran. They would also be required to establish minimum rents no lower than \$25 per month and permitted to establish ceiling rents, provided that they do not exceed the average operating expenses attributable to units of a similar size, the reasonable rental value of the unit or the local market rent for comparable units.

### Rent Impacts Weighed

Housing authorities generally favor these changes because they permit greater flexibility in managing the tenant mix and setting rents. Tenant advocates fear, however, that with federal operating subsidies limited, PHAs will be compelled to charge residents more. Rental income currently covers about one-third of the New York City Housing Authority's (NYCHA) annual expenses.

The vast majority of NYCHA tenant households would not be exposed to rent increases under either bill. Out of a total 172,000 households, 51,000 receive public assistance. Virtually all of these fall under the 30 percent of median income threshold. Another 53,000 households are elderly, and so would also be exempt from new rent formulas. All told, about two-thirds of resident families earn less than 30 percent of the area median income and another 16 percent earn between 30 and 50 percent of the median.

In recent years NYCHA has become concerned about the effect of tight income restrictions and federal preferences on the income mix of its developments. Between 1983 and 1996, the proportion of NYCHA resident households who receive the majority of their income from work has fallen from 49 percent to 30 percent. In 1994, the authority promulgated new local admission preferences that favored working families, but HUD has not yet approved their implementation.

During the past decade, social scientists have gathered mounting evidence that concentrating the poor decreases their opportunities and intensifies social problems. That evidence reinforces the financial imperative to adjust the income mix in public housing. But with those changes coming after Congress has eliminated funding for additional rental assistance vouchers, balancing the financial and social health of public housing with the housing needs of very low income families becomes even more of a dilemma. ■

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estimates of how much the full process will cost, although preliminary estimates suggest that the Bond Act's \$75 million will pay for only a fraction of the total project. Official estimates are expected to be included in the task force report, which is due on October 1, 1996.

Of the other programs supported under Title 4, municipal landfill projects would include the closure and reclamation of landfill areas, activities to comply with state regulations and projects aimed at managing gas that is emitted from landfills. Under Title 4, municipalities could enter into agreements with the state for reimbursement of up to 50 percent of the cost of a landfill project or \$2 million, whichever is less. Municipalities with fewer than 3500 residents may receive up to 90 percent of a project's cost. Municipal recycling projects eligible for assistance under Title 4 would include recyclable recovery equipment, source separation equipment or a program for the recovery of recyclables.

## **Environmental Reclamation: Brownfields**

Among the most important provisions of the Bond Act from a community development standpoint, Title 5 would create an Environmental Restoration Projects Program and allocate \$200 million for the remediation of municipally-owned "brownfield" sites. For FY1997, the Act would appropriate \$50 million for this program.

The term "brownfield" generally refers to abandoned or underutilized industrial properties burdened by either real or potential contamination. These sites often revert to municipal ownership through tax foreclosure. While brownfields are often centrally located, with good access to mass transit, roads and other essential infrastructure, they tend to be overlooked for both public and private development for two reasons. First, brownfields are generally not considered hazardous enough to qualify for remediation support under the federal Superfund and other public funding programs. Second, the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related state laws can impose staggering cleanup liabilities on any party that controls a contaminated site, even if that control took effect long after the contamination. These liability issues present substantial risks to any locality, private developer and lender who might otherwise be interested in revitalizing a brownfield site.

Title 5 of the Bond Act attempts to address both these issues by providing localities with resources for remediation, as well as some measure of protection against future liability. Under the Environmental Restoration Projects program, municipalities that are not responsible for a site's original contamination could apply for state funds for up to 75 percent of the costs of a restoration project. Properties would have to be restored to levels set under the state Environmental Conservation Law. After completing the project, the

municipality, as well as any subsequent owner, lessor or lender would be released from liability for any statutory or common law cause of action that could be brought by the state. That release would apply only to issues arising over the presence of hazardous materials prior to the restoration project. Title 5 would also indemnify the municipality and subsequent interested parties for any costs incurred as the result of third-party common law litigation and provide legal counsel in the event of such litigation. Title 5 would not, however, insulate against third-party litigation brought under CERCLA or other statutory grounds.

Currently, the primary vehicle for facilitating brownfield remediation in New York State is a Voluntary Cleanup Program (VCP) operated by the state Department of Environmental Conservation. Under the state VCP, interested parties may enter a consent agreement to restore a site, with clean-up levels set on a case-by-case basis. As with Title 5, the VCP offers some measure of liability protection after a project is completed, although the protections offered by Title 5 appear to be somewhat more complete. The most compelling difference, however, is that the VCP does not provide state funds for remediation. As a result, the VCP has been used primarily by private parties, with municipalities showing only limited interest in the program.

## **Air Quality Projects**

Title 6 of the Act allocates the \$230 million in bond proceeds that would be available for air quality projects, with an initial FY1997 appropriation of \$25 million. Of that total, \$75 million would be available for state investments in "clean" technologies. These include the purchase by the state of clean-fueled vehicles and related infrastructure, as well as state assistance payments for municipalities to acquire clean-fueled buses and supporting facilities. Another \$30 million would be available for a program to assist small businesses outside of New York City in complying with air quality laws and regulations. Finally, Title 6 would provide \$125 million for a "clean air for schools program" to retrofit schools now using antiquated coal-fired furnaces and water heaters. This program is expected to be of particular benefit to New York City, where large numbers of schools use outdated heating systems.

## **A Long Road to November**

With the Pataki Administration has gambling a good deal of its political capital on the success of the Clean Water/Clean Air Bond Act, voters can expect to see some hard campaigning over the next few months. To shepherd the bill through the legislature, and to win the critical support and campaigning resources of environmental groups, the Administration endured long and contentious negotiations that added \$250 million to the Governor's original proposal. By championing the creation of billions of dollars of new debt, the Governor has angered some of the conservative anti-tax groups that usually serve as his most reliable allies. If the initiative fails in November, it could be a devastating blow to the Governor and his administration, as well as to the future of New York's environmental programs. ■