

RENEWABLE ENERGY INCENTIVES IN GOVERNOR'S BROWNFIELD CLEANUP PROGRAM PROPOSAL

Hodgson Russ Renewable Energy Alert
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In her Fiscal Year 2023 Executive Budget, Governor Kathy Hochul is proposing extending and enhancing the highly successful [Brownfield Cleanup Program](#) ("BCP"). In addition to extending the BCP an additional ten years, through December 31, 2032, the legislation would also incentivize the development of renewable energy sites across New York State.

Renewable energy sites are the focal point of two aspects of the proposed expanded program. First, BCP sites located in New York City would have expanded eligibility for the tangible property credit component ("TPCC"). Currently they must meet one of four eligibility criteria, and the new legislation would add two eligibility criteria, one of which is renewable energy sites accepted into the BCP on or after January 1, 2023.

The legislation also proposes a 5% TPCC increase for renewable energy sites throughout the state. This increase is subject to a 24% cap and is only applicable to sites that have been accepted into the BCP on or after January 1, 2023.

Renewable energy sites are defined under the law as:

1. Sites primarily used for any renewable energy system as defined in § 66-p of the Public Service Law, which includes systems that generate electricity or thermal energy through the use of solar thermal, photovoltaic, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells which do not use fossil fuel;
2. Any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system; or
3. Any standalone system storing energy interconnected into New York's Bulk transmission system or an Investor Owned Utility's ("IOU") transmission or distribution system providing distribution services, wholesale market energy, ancillary services, and/or capacity services, including all associated appurtenances to electric plants as defined under section two of the public service law.

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We are currently awaiting the Governor's thirty-day budget amendments, which may change the proposed program. At that point, the focus shifts to the New York State Legislature, with the new budget year starting April 1, 2022, and any changes that they may propose to address renewable energy projects as part of the BCP reauthorization.

Hodgson Russ Takeaways: With the development of the majority of solar projects on farmlands, open fields, and wooded areas to date, further incentivizing the use of brownfields and other previously disturbed areas is essential to New York's aggressive climate change goals. It also represents a great reuse opportunity for these sites, often in a much more meaningful way than what might otherwise be available. But utilizing economic development benefits for these sites – such as enhanced BCP tax credits or NYSERDA's brownfield incentive adder – are key to further unlocking these opportunities. There are still questions as to whether the proposed TPCC percentage increase will be sufficient to bring developers to the table though, as the costs to cleanup (in part) and develop these projects within the context of the BCP still raises cost concerns that may make these projects not commercially viable. The BCP also provides an additional benefit unrelated to the tax credits. At the end of the project, the participant receives a Certificate of Completion, which provides an environmental liability waiver from the State. Again though, most solar projects are on leased properties, meaning some of those type of intangible benefits may not be of much value to the developers.

Placement on brownfields or other contaminated sites is not without risk. Shielding projects from potential risk requires careful understanding of the underlying site issues and careful preparation of the project documents. If you want to speak to an experienced [Brownfield](#) energy team attorney, contact [Michael Hecker](#) (716.848.1599), [Joe Endres](#) (716.848.1504), [Daniel Spitzer](#) (716.848.1420), or any member of our [Renewable Energy](#) team.