S T A T E O F N E W Y O R K

7784

I N S E N A T E

June 9, 2014

Introduced by Sens. GRISANTI, MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the tax law, the economic development law and the general municipal law, in relation to eligibility for participation in the brownfield cleanup program, and assignment of the brownfield redevelopment tax credits; to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites; to amend the environmental conservation law, in relation to hazardous waste generator fees and taxes; to amend the environmental conservation law, the public authorities law and the state finance law, in relation to the environmental restoration program; and to repeal certain provisions of the environmental conservation law and the tax law relating thereto (Part A); and to amend the navigation law, in relation to responsible parties for petroleum contaminated sites and incentives to parties who are willing to remediate petroleum contaminated sites (Part B)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law components of legislation which are necessary to implement the provisions relating to brownfields. Each component is wholly contained within a Part identified as Parts A through B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD15524-01-4

PART A

Section 1. Subdivision (b) of section 27-1318 of the environmental conservation law, as amended by section 2 of part E of chapter 577 of the laws of 2004, is amended to read as follows:

(b) Within [sixty] ONE HUNDRED EIGHTY days of commencement of the remedial design, the owner of an inactive hazardous waste disposal site, and/or any person responsible for implementing a remedial program at such site, where institutional or engineering controls are employed pursuant to this title, shall execute an environmental easement pursuant to title thirty-six of article seventy-one of this chapter.

S 2. Subdivisions 2 and 7-a of section 27-1405 of the environmental conservation law, subdivision 2 as amended and subdivision 7-a as added by section 2 of part A of chapter 577 of the laws of 2004, are amended and four new subdivisions 14-a, 14-b, 20-a, and 29 are added to read as follows:

2. "Brownfield site" or "site" shall mean any real property[, the redevelopment or reuse of which may be complicated by the presence or potential presence of] WHERE a contaminant OR CONTAMINANTS, DO NOT OVERWHELMINGLY CONSIST OF HISTORICAL FILL, AND EXCEED AT MORE THAN MINIMAL LEVELS THE SOIL CLEANUP OBJECTIVES ESTABLISHED PURSUANT TO SUBDIVISION SIX OF SECTION 27-1415 OF THIS TITLE OR OTHER HEALTH-BASED OR ENVIRONMENTAL STANDARDS PROMULGATED BY THE DEPARTMENT THAT ARE APPLICABLE BASED ON THE REASONABLY ANTICIPATED USE OF THE PROPERTY, AS DETERMINED BY THE APPLICANT, WHICH CONTAMINATION IS DEMONSTRATED BY COMPLETION AND SUBMISSION OF AN ASTM PHASE II ENVIRONMENTAL ASSESSMENT REPORT WITHIN NINETY DAYS OF APPLICATION SUBMISSION, AND, IN ADDITION, IS CHARACTERIZED BY ANY OR ALL OF THE FOLLOWING: (I) A CURRENT LEGACY OF VACANCY OR ABANDONMENT FROM PREVIOUS INDUSTRIAL OR COMMERCIAL ACTIVITY OR TAX DELINQUENCY FOR AT LEAST ONE YEAR PRIOR TO THE DATE OF APPLICATION; OR (II) A CURRENT AND HISTORICAL LEGACY OF SEVERE ECONOMIC OR FUNCTIONAL UNDERUTILIZATION INCLUDING USE OF SUCH SITE AS A HAZARDOUS WASTE OR SOLID WASTE FACILITY; OR (III) IN THE CASE OF A SITE CHARACTERIZED PRIMARILY BY FORMER INDUSTRIAL ACTIVITY, FUNCTIONAL OBSOLESCENCE; OR (IV) THE PROJECTED COST OF THE INVESTIGATION AND REMEDIATION BASED ON THE REASONABLY ANTICIPATED USE OF THE PROPERTY AS DETERMINED BY THE APPLICANT EXCEEDS FIFTY PERCENT OF THE CERTIFIED APPRAISED VALUE OF THE PROPERTY ABSENT CONTAMINATION; OR (V) THE SITE HAS BEEN CERTIFIED BY THE MUNICIPALITY IN WHICH THE SITE IS LOCATED AS MEETING ANY OF THE CONDITIONS SET FORTH IN THIS OPENING PARAGRAPH. [Such term] EXCEPT AS PROVIDED IN PARAGRAPH (F) OF THIS SUBDIVISION, BROWNFIELD SITE OR SITE shall not include real property:

(a) listed in the registry of inactive hazardous waste disposal sites under section 27-1305 of this article at the time of application to this program and given a classification as described in subparagraph one or two of paragraph b of subdivision two of section 27-1305 of this article[; provided, however except until July first, two thousand five, real property listed in the registry of inactive hazardous waste disposal sites under subparagraph two of paragraph b of subdivision two of section 27-1305 of this article prior to the effective date of this article, where such real property is owned by a volunteer shall not be deemed ineligible to participate and further provided that the status of any such site as listed in the registry shall not be altered prior to the issuance of a certificate of completion pursuant to section 27-1419 of this title]. THE DEPARTMENT'S ASSESSMENT OF ELIGIBILITY UNDER THIS

PARAGRAPH SHALL NOT CONSTITUTE A FINDING CONCERNING LIABILITY WITH RESPECT TO THE PROPERTY;

(b) listed on the national priorities list established under authority of 42 U.S.C. section 9605;

(c) subject to an enforcement action under title seven or nine of this article, [except] OR PERMITTED AS a treatment, storage or disposal facility [subject to a permit]; provided, that nothing herein contained shall be deemed otherwise to exclude from the scope of the term "brownfield site" a hazardous waste treatment, storage or disposal facility having interim status according to regulations promulgated by the commissioner;

(d) subject to an order for cleanup pursuant to article twelve of the navigation law or pursuant to title ten of article seventeen of this chapter except such property shall not be deemed ineligible if it is subject to a stipulation agreement; or

(e) subject to any other on-going state or federal environmental enforcement action related to the contamination which is at or emanating from the site subject to the present application.

(F) IF A VOLUNTEER SUBMITS A REQUEST FOR PARTICIPATION FOR REAL PROPERTY THAT WOULD OTHERWISE BE DEEMED EXCLUDED FROM CLASSIFICATION AS A BROWNFIELD SITE PURSUANT TO PARAGRAPH (A), (C), (D), OR (E) OF THIS SUBDIVISION, SUCH REAL PROPERTY SHALL NOT BE EXCLUDED, REGARDLESS OF THE STATUS OF ANY REMEDIAL PROGRAM AT THE SITE, EVEN IF THE PROPERTY IS IN THE OPERATION, MAINTENANCE AND MONITORING PHASE, PROVIDED THERE IS STILL CONTAMINATION ON THE PROPERTY TO REMEDIATE, AND FURTHER PROVIDED THE VOLUNTEER ENTERS INTO A BROWNFIELD SITE CLEANUP AGREEMENT IN ACCORDANCE WITH SECTION 27-1409 OF THIS TITLE REQUIRING THE VOLUNTEER TO COMPLETE THE REQUIRED REMEDIATION TO IMPLEMENT A REDEVELOPMENT PROJECT. IF A SITE IS ADMITTED INTO THE PROGRAM, THE RELEVANT STATUTES AND REGULATIONS OF THE PROGRAM SHALL SERVE AS THE PRIMARY GUIDANCE TO THE DEPARTMENT FOR THE DEPARTMENT'S OVERSIGHT AND OTHER RESPONSIBILITIES TOWARD THE SITE AND THE SITE'S APPLICANTS. ANY ON-GOING STATE REMEDIAL PROGRAM, ENFORCEMENT ACTION OR ORDER WITH REGARD TO THE SITE SHALL BE STAYED BY THE BROWNFIELD SITE CLEANUP AGREEMENT, AND SHALL TERMINATE WHEN THE VOLUNTEER RECEIVES A CERTIFICATE OF COMPLETION PURSUANT TO SECTION 27-1419 OF THIS TITLE, EXCEPT TO THE EXTENT THE ON-GOING STATE REMEDIAL PROGRAM, ENFORCEMENT ACTION OR ORDER IS SEEKING TO REQUIRE AN OWNER OF THE SITE AT THE TIME OF THE DISPOSAL, OR OTHER PERSON RESPONSIBLE ACCORDING TO APPLICABLE PRINCIPLES OF STATUTORY OR COMMON LAW LIABILITY, TO ADDRESS AN IMMINENT AND SUBSTANTIAL THREAT TO PUBLIC HEALTH OR THE ENVIRONMENT OR PAY PENALTIES OR RESPONSE COSTS, IN WHICH CASE THE DEPARTMENT CAN CONTINUE TO SEEK ENFORCEMENT AGAINST THE RESPONSIBLE PARTIES. IN THE EVENT THE BROWNFIELD SITE CLEANUP AGREEMENT IS TERMINATED, OR THE VOLUNTEER OR SUBSEQUENT SITE OWNER OR OPERATOR FAIL TO COMPLY WITH THE TERMS OF AN ENVIRONMENTAL EASEMENT IF ONE HAS BEEN CREATED PURSUANT TO TITLE THIRTY-SIX OF ARTICLE SEVENTY-ONE OF THIS CHAPTER, ANY STATE REMEDIAL PROGRAM, ENFORCEMENT ACTION OR ORDER MAY RESUME OR BE RECOMMENCED AFTER TIMELY NOTICE TO ALL CONCERNED PARTIES. IF THE PROPERTY IS LISTED IN THE REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES UNDER SECTION 27-1305 OF THIS ARTICLE, IT SHALL CEASE TO BE CLASSIFIED IN THE REGISTRY UPON ISSUANCE OF THE CERTIFICATE OF COMPLETION PERTAINING TO THE CURRENT AND FUTURE STATUS OF THE PROPERTY, UNLESS SUCH CERTIFICATE IS REVOKED FOR GOOD CAUSE.

7-a. "Contaminant" shall mean hazardous waste, HISTORIC FILL MATERIAL, and/or petroleum as such terms are defined in this section.

14-A. "SEVERE ECONOMIC OR FUNCTIONAL UNDERUTILIZATION" SHALL MEAN THE BROWNFIELD SITE AND ANY IMPROVEMENTS: (A) ON WHICH A BUILDING OR BUILDINGS CONTAINING NO MORE THAN FIFTY PERCENT OF THE PERMISSIBLE FLOOR AREA UNDER APPLICABLE ZONING IS BEING UTILIZED; OR (B) HAS A VALUE OF EQUAL TO OR LESS THAN SEVENTY PERCENT OF THE FLOOR AREA OF THE AVERAGE VALUATION OF LAND IN THE COUNTY OR CITY IN WHICH THE LAND IS LOCATED, EXCEPT IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE INHABITANTS WHERE THE AVERAGE VALUATION SHALL BE BASED ON THE COUNTY IN WHICH THE LAND IS LOCATED.

14-B. "FUNCTIONAL OBSOLESCENCE" SHALL MEAN THE BROWNFIELD SITE AND ANY IMPROVEMENTS THEREON THAT: (A) CAN NO LONGER BE FUNCTIONALLY OR ECONOMICALLY UTILIZED IN THE CAPACITY IN WHICH IT WAS FORMERLY UTILIZED BECAUSE OF: (I) THE CONFIGURATION OF THE BUILDING; OR (II) SUBSTANTIAL STRUCTURAL DEFECTS NOT BROUGHT ABOUT BY DEFERRED MAINTENANCE PRACTICES OR INTENTIONAL CONDUCT; OR (B) THE ENTIRE SITE OR A SIGNIFICANT PORTION THEREOF, WITH OR WITHOUT IMPROVEMENTS IS USED IRREGULARLY OR INTERMITTENTLY; OR (C) THE FUNCTIONALITY OF THE EQUIPMENT INSIDE THE BUILDING OR BUILDINGS IS OBSOLETE FOR A MODERN DAY APPLICATION; OR (D) HAS BEEN CERTIFIED BY THE MUNICIPALITY IN WHICH THE SITE IS LOCATED AS UNDERUTILIZED PURSUANT TO THE CRITERIA IN THIS SUBDIVISION.

20-A. "MINIMALLY CONTAMINATED SITE" SHALL MEAN ANY REAL PROPERTY WHERE A CONTAMINANT IS PRESENT AT LEVELS THAT ONLY MINIMALLY EXCEED THE SOIL CLEANUP OBJECTIVES ESTABLISHED PURSUANT TO SUBDIVISION SIX OF SECTION 27-1415 OF THIS TITLE OR OTHER APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS.

29. "HISTORIC FILL MATERIAL" MEANS NON-INDIGENOUS MATERIAL, DEPOSITED OR DISPOSED OF TO RAISE THE TOPOGRAPHIC ELEVATION OF REAL PROPERTY, WHICH MATERIAL MAY HAVE BEEN CONTAMINATED PRIOR TO EMPLACEMENT, WHICH CONTAINS CONTAMINANTS SIGNIFICANTLY ABOVE THE RESTRICTED SOIL CLEANUP OBJECTIVES ESTABLISHED PURSUANT TO SUBDIVISION SIX OF SECTION 27-1415 OF THIS TITLE BASED ON THE REASONABLY ANTICIPATED USE OF THE PROPERTY, AS DETERMINED BY THE APPLICANT, AND IS IN NO WAY CONNECTED WITH THE SUBSEQUENT OPERATIONS AT THE LOCATION OF THE EMPLACEMENT AND WHICH INCLUDES, WITHOUT LIMITATION, CONSTRUCTION AND DEMOLITION DEBRIS INCLUDING UNCONTAMINATED SOLID WASTE RESULTING FROM THE CONSTRUCTION, REMODELING, REPAIR AND DEMOLITION OF UTILITIES, STRUCTURES, LAND CLEARING AND ROADS. HISTORIC FILL MATERIAL MAY INCLUDE COAL, COAL ASH, COAL RESIDUE, WOOD ASH, MUNICIPAL SOLID WASTE INCINERATOR ASH, CONSTRUCTION AND DEMOLITION DEBRIS, DREDGED SEDIMENTS, RAILROAD BALLAST, REFUSE, LAND CLEARING DEBRIS, SOIL, SLAG, AND SOLID WASTE. IT MAY ALSO INCLUDE SOLID WASTE RESULTING FROM DREDGE SPOILS, INCINERATOR RESIDUE, DEMOLITION DEBRIS, COAL ASH, FLY ASH, AND NONHAZARDOUS WASTE. HISTORIC FILL MATERIAL DOES NOT INCLUDE ANY MATERIAL WHICH IS CHEMICAL PRODUCTION WASTE OR WASTE FROM PROCESSING OF METAL OR MINERAL ORES, RESIDUES, SLAG OR TAILINGS. IN ADDITION, HISTORIC FILL MATERIAL DOES NOT INCLUDE ANY MATERIAL CONNECTED WITH A MUNICIPAL SOLID WASTE SITE BUILT AFTER NINETEEN HUNDRED SIXTY-TWO.

S 3. Subdivision 1 and paragraph (a) of subdivision 8 of section 27-1407 of the environmental conservation law, as amended by section 3 of part A of chapter 577 of the laws of 2004, are amended to read as follows:

1. A person who seeks to participate in this program shall submit a request to the department on a form provided by the department. Such form shall include information to be determined by the department sufficient to allow the department to determine eligibility and the current, intended and reasonably anticipated future land use of the site pursuant

to section 27-1415 of this title. ANY SUCH PERSON SHALL SUBMIT AN ASTM PHASE II ENVIRONMENTAL SITE INVESTIGATION REPORT WITH AN APPLICATION OR WITHIN NINETY DAYS OF SUBMISSION OF THE APPLICATION TO DEMONSTRATE THAT THE SITE MEETS THE CONTAMINATION CRITERIA IN THE BROWNFIELD SITE DEFINITION OF THIS TITLE.

(a) the department determines that the request is for real property which does not meet the requirements of a brownfield site as defined in this title, BUT SUCH REJECTION, IN AND BY ITSELF, DOES NOT PROHIBIT THE SITE FROM QUALIFYING FOR THE NY RAPID PROGRAM IN SECTION 27-1437 OF THIS TITLE; or

S 4. Intentionally omitted.

S 5. Subdivision 6 of section 27-1407 of the environmental conservation law, as added by section 1 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

6. The department shall use all best efforts to expeditiously notify the applicant within forty-five days after receiving their request for participation WHETHER THE SITE MEETS THE BROWNFIELD SITE DEFINITION AND that such request is either accepted or rejected. FOR APPLICANTS THAT DO NOT SUBMIT AN ASTM PHASE II ENVIRONMENT SITE INVESTIGATION REPORT WITH THEIR APPLICATION, THE FORTY-FIVE DAY ACCEPTANCE OR REJECTION OF THEIR APPLICATION IS DEFERRED UNTIL THE DATE PROOF OF CONTAMINATION IS RECEIVED, WHICH SHALL BE RECEIVED NO LATER THAN NINETY DAYS AFTER SUBMISSION OF THE APPLICATION. FOR APPLICANTS THAT MEET THE BROWNFIELD SITE DEFINITION CONTAMINATION CRITERIA BUT THE DEPARTMENT DETERMINES HAVE NOT DEMONSTRATED ONE OF THE OTHER BROWNFIELD SITE CHARACTERIZATION CRITERIA, THE APPLICANT IS ENTITLED TO PARTICIPATE IN THE NY RAPID PROGRAM PURSUANT TO SECTION 27-1437 OF THIS TITLE. IF THE APPLICANT CONTENDS THAT A PROPER DEMONSTRATION OF THE CHARACTERIZATION CRITERIA HAS BEEN MADE, BUT THE DEPARTMENT HAS REJECTED THE DEMONSTRATION, THE APPLICANT MAY ELECT TO COMMENCE THE DISPUTE RESOLUTION PROCESS PURSUANT TO SUBDIVISION THREE OF SECTION 27-1409 OF THIS TITLE.

S 6. Subdivision 9 of section 27-1407 of the environmental conservation law is amended by adding a new paragraph (g) to read as follows:

(G) THE PERSON'S PARTICIPATION IN ANY REMEDIAL PROGRAM UNDER THE DEPARTMENT'S OVERSIGHT WAS TERMINATED BY THE DEPARTMENT OR BY A COURT FOR FAILURE TO SUBSTANTIALLY COMPLY WITH AN AGREEMENT OR ORDER WITHIN THE LAST FORTY-TWO MONTHS.

S 7. Subdivisions 2, 3 and 7 of section 27-1409 of the environmental conservation law, as amended by section 4 of part A of chapter 577 of the laws of 2004, are amended to read as follows:

2. One requiring (A) the [applicant] PARTICIPANT to pay for state costs, INCLUDING THE RECOVERY OF STATE COSTS INCURRED BEFORE THE EFFECTIVE DATE OF SUCH AGREEMENT; provided, however, that SUCH COSTS MAY BE BASED ON A REASONABLE FLAT-FEE FOR OVERSIGHT, WHICH SHALL REFLECT THE PROJECTED FUTURE STATE COSTS INCURRED IN NEGOTIATING AND OVERSEEING IMPLEMENTATION OF SUCH AGREEMENT; AND

(B) with respect to a brownfield site which the department has determined constitutes a significant threat to the public health or environment the department may include a provision requiring the applicant to provide a technical assistance grant, as described in subdivision four of section 27-1417 of this title and under the conditions described therein, to an eligible party in accordance with procedures established under such program, with the cost of such a grant incurred by a volunteer serving as an offset against such state costs[. Where the applicant is a participant, the department shall include provisions relating

to recovery of state costs incurred before the effective date of such agreement];

3. One setting forth a process for resolving disputes arising from the DEMONSTRATION OF PROOF SUBMITTED TO QUALIFY FOR THE BROWNFIELD SITE DEFINITION, OR AN evaluation, analysis, and oversight of the implementation of the REPORT OR work plan as described;

7. One stating that the [department] STATE shall not consider the applicant an operator of such brownfield site based solely upon execution or implementation of such brownfield site cleanup agreement for purposes of remediation liability;

S 8. Intentionally omitted.

S 9. Subdivision 2 of section 27-1413 of the environmental conservation law, as amended by section 6 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

2. For all [other] sites NOT ELIGIBLE TO PARTICIPATE IN THE NY RAPID PROGRAM PURSUANT TO SECTION 27-1437 OF THIS TITLE, the applicant shall develop and evaluate at least two remedial alternatives, one of which would achieve a Track 1 cleanup. The department shall have the discretion to require the evaluation of additional alternatives at a site that has been determined to pose a significant threat. The applicant shall submit the alternatives analysis [as a part of the remedial work plan] to the department for review, approval, modification or rejection.

S 10. Subdivision 4 of section 27-1415 of the environmental conservation law, as amended by section 7 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

4. Tracks. The commissioner, in consultation with the commissioner of health, shall propose within twelve months and thereafter timely promulgate regulations which create a multi-track approach for the remediation of contamination, and, commencing on the effective date of such regulations, utilize such multi-track approach. Such regulations shall provide that groundwater use in Tracks 2, 3 or 4 can be either restricted or unrestricted. The tracks shall be as follows:

Track 1: The remedial program shall achieve a cleanup level that will allow the site to be used for any purpose without restriction and without reliance on the long-term employment of institutional or engineering controls, and shall achieve contaminant-specific remedial action objectives for soil which conform with those contained in the generic table of contaminant-specific remedial action objectives for unrestricted use developed pursuant to subdivision six of this section. Provided, however, that volunteers whose proposed remedial program [for the remediation of groundwater] (1)(I) may require the long-term employment of institutional or engineering controls FOR THE REMEDIATION OF GROUNDWATER after the bulk reduction of groundwater contamination to asymptotic levels has been achieved OR (II) MAY REQUIRE AN INSTITUTIONAL OR ENGINEERING CONTROL FOR MORE THAN FIVE YEARS SOLELY TO ADDRESS SOIL VAPOR INTRUSION FROM THEIR OWN SITE OR LONGER TO ADDRESS OFF-SITE VAPOR ENTERING THE SITE; but (2) whose program would otherwise conform with the requirements necessary to qualify for Track 1, shall qualify for Track 1.

Track 2: The remedial program may include restrictions on the use of the site or reliance on the long-term employment of engineering and/or institutional controls, but shall achieve contaminant-specific remedial action objectives for soil which conform with those contained in one of the generic tables developed pursuant to subdivision six of this section without the use of institutional or engineering controls to reach such objectives.

Track 3: The remedial program shall achieve contaminant-specific remedial action objectives for soil which conform with the criteria used to develop the generic tables for such objectives developed pursuant to subdivision six of this section but may use site specific data to determine such objectives.

Track 4: The remedial program shall achieve a cleanup level that will be protective for the site's current, intended or reasonably anticipated residential, commercial, or industrial use with restrictions and with reliance on the long-term employment of institutional or engineering controls to achieve such level. The regulations shall include a provision requiring that a cleanup level which poses a risk in exceedance of an excess cancer risk of one in one million for carcinogenic end points and a hazard index of one for non-cancer end points for a specific contaminant at a specific site may be approved by the department without requiring the use of institutional or engineering controls to eliminate exposure only upon a site specific finding by the commissioner, in consultation with the commissioner of health, that such level shall be protective of public health and environment. Such finding shall be included in the draft remedial work plan for the site and fully described in the notice and fact sheet provided for such work plan.

S 11. Intentionally omitted.

S 12. Paragraph (h) of subdivision 3 of section 27-1417 of the environmental conservation law is REPEALED, paragraph (i) is relettered paragraph (h) and paragraph (f), as amended by section 8 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

(f) Before the department [finalizes] SELECTS a proposed [remedial work plan] REMEDY FROM THE ALTERNATIVES SET FORTH IN THE ALTERNATIVES ANALYSIS AS PRESCRIBED BY SECTION 27-1413 OF THIS TITLE or makes a determination that site conditions meet the requirements of this title without the necessity for remediation pursuant to section 27-1411 of this title, the department, in consultation with the applicant, must notify individuals on the brownfield site contact list. Such notice shall include a fact sheet describing such plan and provide for a forty-five day public comment period. The commissioner shall hold a public meeting if requested by the affected community and the commissioner has found that the site constitutes a significant threat to the public health or the environment. Further, the affected community may request a public meeting at sites that do not constitute a significant threat. (1) To the extent that the department has determined that site conditions do not pose a significant threat and the site is being addressed by a volunteer, the notice shall state that the department has determined that no remediation is required for the off-site areas and that the department's determination of a significant threat is subject to this forty-five day comment period. (2) If the [remedial work plan] REMEDY includes a Track 2, Track 3 or Track 4 remedy at a non-significant threat site, such comment period shall apply both to the approval of the alternatives analysis by the department, IF APPLICABLE, and the proposed remedy selected by the applicant.

S 13. Paragraph (a) of subdivision 2 and subdivision 3 of section 27-1419 of the environmental conservation law, paragraph (a) of subdivision 2 as added by section 1 of part A of chapter 1 of the laws of 2003 and subdivision 3 as amended by chapter 390 of the laws of 2008, are amended to read as follows:

(a) a description of the remediation activities completed pursuant to the remedial work plan AND ANY INTERIM REMEDIAL MEASURES for the brownfield site;

3. Upon receipt of the final engineering report, the department shall review such report and the data submitted pursuant to the brownfield site cleanup agreement as well as any other relevant information regarding the brownfield site. Upon satisfaction of the commissioner that the remediation requirements set forth in this title have been or will be achieved in accordance with the timeframes, if any, established in the remedial work plan, the commissioner shall issue a written certificate of completion[, such]. THE certificate shall include such information as determined by the department of taxation and finance, including but not limited to the brownfield site boundaries included in the final engineering report, the date of the brownfield site CLEANUP agreement [pursuant to section 27-1409 of this title,] and the applicable percentages available AS OF THE DATE OF THE CERTIFICATE OF COMPLETION for that site for purposes of section twenty-one of the tax law[, with such percentages to be determined as follows with respect to such qualified site] for which the department has issued a notice to the taxpayer after June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of this title[:

For the purposes of calculating], THE APPLICABLE PERCENTAGE FOR the site preparation credit component pursuant to paragraph two of subdivision (a) of section twenty-one of the tax law, and the on-site groundwater remediation credit component pursuant to paragraph four of subdivision (a) of section twenty-one of the tax law[, the applicable percentage] shall be based on the level of cleanup achieved pursuant to subdivision four of section 27-1415 of this title and the level of cleanup of soils to contaminant-specific soil cleanup objectives promulgated pursuant to subdivision six of section 27-1415 of this title, up to a maximum of fifty percent, as follows:

(a) soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be fifty percent;

(b) soil cleanup for residential use, the applicable percentage shall be forty percent, except for Track 4 which shall be twenty-eight percent;

(c) soil cleanup for commercial use, the applicable percentage shall be thirty-three percent, except for Track 4 which shall be twenty-five percent;

(d) soil cleanup for industrial use, the applicable percentage shall be twenty-seven percent, except for Track 4 which shall be twenty-two percent.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE SITE PREPARATION COMPONENT CREDIT AVAILABLE FOR ANY QUALIFIED SITE PURSUANT TO THIS SUBDIVISION SHALL NOT EXCEED FIFTEEN MILLION DOLLARS.

S 14. Subdivision 5 of section 27-1419 of the environmental conservation law, as amended by section 9 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

5. A certificate of completion issued pursuant to this section may be transferred [to the applicant's successors or assigns upon transfer or sale of the brownfield site] BY THE APPLICANT OR SUBSEQUENT HOLDER OF THE CERTIFICATE OF COMPLETION TO A SUCCESSOR TO A REAL PROPERTY INTEREST, INCLUDING LEGAL TITLE, EQUITABLE TITLE OR LEASEHOLD, IN ALL OR A PART OF THE BROWNFIELD SITE FOR WHICH THE CERTIFICATE OF COMPLETION WAS ISSUED. Further, a certificate of completion may be modified or revoked by the commissioner upon a finding that:

(a) Either the applicant, or the applicant's successors or assigns, has failed to comply with the terms and conditions of the brownfield site cleanup agreement;

(b) The applicant made a misrepresentation of a material fact tending to demonstrate that it was qualified as a volunteer;

(c) Either the applicant, or the applicant's successors or assigns, made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the brownfield site cleanup agreement were reached; [or]

(d) THE ENVIRONMENTAL EASEMENT CREATED AND RECORDED PURSUANT TO TITLE THIRTY-SIX OF ARTICLE SEVENTY-ONE OF THIS CHAPTER NO LONGER PROVIDES AN EFFECTIVE OR ENFORCEABLE MEANS OF ENSURING THE PERFORMANCE OF MAINTENANCE, MONITORING OR OPERATING REQUIREMENTS, OR THE RESTRICTIONS ON FUTURE USES, INCLUDING RESTRICTIONS ON DRILLING FOR OR WITHDRAWING GROUNDWATER; OR

(E) There is good cause for such modification or revocation.

S 15. Section 27-1423 of the environmental conservation law is REPEALED.

S 16. Section 27-1429 of the environmental conservation law, as amended by section 13 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

S 27-1429. Permit waivers.

The department[, by and through the commissioner,] shall be EXEMPT, AND SHALL BE authorized to exempt a person from the requirement to obtain any state or local permit or other authorization for any activity needed to implement a program for the investigation and/or remediation of contamination AT OR EMANATING FROM A BROWNFIELD SITE; provided that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

S 17. Subdivision 1 of section 27-1431 of the environmental conservation law is amended by adding a new paragraph c to read as follows:

C. TO INSPECT FOR COMPLIANCE WITH THE SITE MANAGEMENT PLAN APPROVED BY THE DEPARTMENT, INCLUDING (I) INSPECTION OF THE PERFORMANCE OF MAINTENANCE, MONITORING AND OPERATIONAL ACTIVITIES REQUIRED AS PART OF THE REMEDIAL PROGRAM FOR THE SITE, AND (II) TAKING SAMPLES IN ACCORDANCE WITH PARAGRAPH A OF THIS SUBDIVISION.

S 17-a. Section 27-1435 of the environmental conservation law is REPEALED.

S 18. The environmental conservation law is amended by adding a new section 27-1437 to read as follows:

S 27-1437. NY RAPID PROGRAM.

1. NOTWITHSTANDING THE PROVISIONS OF THIS TITLE OR ANY OTHER PROVISION OF LAW, THE DEPARTMENT SHALL PROMULGATE REGULATIONS TO ESTABLISH THE NEW YORK REMEDIATION ACCELERATED PERFORMANCE INTERIM DESIGN (NY RAPID) PROGRAM THAT WILL OFFER AN EXPEDITED PROCESS AND GRANT A LIABILITY WAIVER TO VOLUNTEERS THAT SUCCESSFULLY REMEDIATE MINIMALLY CONTAMINATED SITES OR A SITE WHERE CONTAMINATION IS OVERWHELMINGLY THE RESULT OF THE USE OR PLACEMENT OF HISTORIC FILL MATERIAL ON OR UNDER THE SITE.

2. VOLUNTEERS MAY APPLY AND BE ACCEPTED FOR ENTRANCE INTO NY RAPID IF THE SITE MEETS THE FOLLOWING REQUIREMENTS:

A. CONTAMINATION IS PRESENT BUT OTHERWISE DOES NOT MEET THE DEFINITIONS APPLICABLE TO SUBDIVISION TWO OF SECTION 27-1405 OF THIS TITLE.

B. THE REDEVELOPMENT OF SUCH SITE IS COMPLICATED BY:

(I) THE PRESENCE OF HISTORIC FILL IS THE OVERWHELMING SOURCE OF CONTAMINATION; OR

(II) LEVELS OF CONTAMINATION THAT ARE AT OR NEAR THE LEVELS ESTABLISHED BY THE APPLICABLE SOIL CLEAN-UP OBJECTIVES PURSUANT TO SUBDIVISION SIX OF SECTION 27-1415 OF THIS TITLE; PROVIDED, HOWEVER, SUCH SITE SHALL NOT INCLUDE REAL PROPERTY WITH LEVELS OF CONTAMINATION FOR A SINGLE OR MULTIPLE CONTAMINATES, THE SOURCES OF SUCH LEVELS ARE FROM HISTORICAL FILL, THAT ARE SIGNIFICANTLY GREATER THAN THE APPLICABLE SOIL CLEAN-UP OBJECTIVES PURSUANT TO SUBDIVISION SIX OF SECTION 27-1415 OF THIS TITLE.

3. SITES THAT HAVE RECEIVED A NOTICE OF COMPLETION FROM THE CITY OF NEW YORK UNDER THE LOCAL BROWNFIELD CLEANUP PROGRAM SHALL BE ELIGIBLE.

4. THE APPLICANT SHALL WAIVE IN WRITING ANY CLAIM FOR TAX CREDITS PURSUANT TO SECTION TWENTY-ONE OF THE TAX LAW ON A FORM PRESCRIBED BY THE DEPARTMENT.

5. THE DEPARTMENT SHALL EXEMPT A VOLUNTEER FROM PROCEDURAL REQUIREMENTS OF THIS TITLE THAT THE DEPARTMENT MAY SPECIFY WHICH ARE OTHERWISE APPLICABLE TO IMPLEMENTATION OF AN INVESTIGATION AND/OR REMEDIATION OF CONTAMINATION, PROVIDED THAT THE ACTIVITY IS CONDUCTED IN A MANNER WHICH SATISFIES ALL SUBSTANTIVE TECHNICAL REQUIREMENTS APPLICABLE TO LIKE ACTIVITY CONDUCTED PURSUANT TO THIS TITLE. THE APPROVED WORK PLAN FOR A BROWNFIELD SITE SHALL INCLUDE THE PROCEDURAL REQUIREMENTS THE DEPARTMENT DETERMINES ARE APPROPRIATE BASED ON SITE SPECIFIC CONSIDERATIONS AND CONSIDERATION OF SECTION 27-1417 OF THIS TITLE.

6. A. UPON RECEIPT OF THE FINAL ENGINEERING REPORT PURSUANT TO SUBDIVISION TWO OF SECTION 27-1419 OF THIS TITLE, THE DEPARTMENT SHALL REVIEW SUCH REPORT AND THE DATA SUBMITTED PURSUANT TO A NY RAPID SITE CLEANUP AGREEMENT AS WELL AS ANY OTHER RELEVANT INFORMATION REGARDING THE NY RAPID SITE. UPON SATISFACTION OF THE COMMISSIONER THAT THE REMEDIATION REQUIREMENTS SET FORTH IN THIS TITLE HAVE BEEN OR WILL BE ACHIEVED IN ACCORDANCE WITH THE TIMEFRAMES, IF ANY, ESTABLISHED IN THE REMEDIAL WORK PLAN, THE COMMISSIONER SHALL ISSUE A WRITTEN CERTIFICATE OF COMPLETION. SUCH CERTIFICATE SHALL INCLUDE, BUT NOT BE LIMITED TO, THE BROWNFIELD SITE BOUNDARIES INCLUDED IN THE FINAL ENGINEERING REPORT.

B. PARAGRAPHS FOUR, FIVE, SIX, SEVEN, AND EIGHT OF SECTIONS 27-1419 AND 27-1421 OF THIS TITLE SHALL APPLY TO CERTIFICATES OF COMPLETION ISSUED TO NY RAPID PROGRAM PARTICIPANTS.

S 19. The opening paragraph of subdivision 10 of section 71-3605 of the environmental conservation law, as added by section 2 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

An environmental easement may be enforced in law or equity by its grantor, by the state, or any affected local government as defined in section 71-3603 of this title. Such easement is enforceable against the owner of the burdened property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, REVERSION or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any environmental easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce an environmental easement that:

S 20. Intentionally omitted.

S 21. Paragraph 3 of subdivision (a) of section 21 of the tax law, as amended by chapter 390 of the laws of 2008, is amended to read as follows:

(3) Tangible property credit component. The tangible property credit component shall be equal to the applicable percentage of the cost or

other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property; provided[, however,] that in determining the cost or other basis of such property, the taxpayer shall exclude the acquisition cost of any item of property with respect to which a credit under this section was allowable to another taxpayer. The credit component amount so determined shall be allowed for the taxable year in which such qualified tangible property is placed in service; PROVIDED, HOWEVER, THAT SUCH PROPERTY SHALL BE PLACED IN SERVICE DURING THE ONE HUNDRED TWENTY MONTH PERIOD THAT BEGINS WITH THE FIRST DAY OF THE FIRST TAXABLE YEAR IN WHICH QUALIFIED TANGIBLE PROPERTY IS PLACED IN SERVICE on a qualified site [with respect to which a certificate of completion has been issued to the taxpayer for up to ten taxable years after the date of the issuance of such certificate of completion]. The tangible property credit component shall be allowed with respect to property leased to a second party only if such second party is either (i) not a party responsible for the disposal of hazardous waste or the discharge of petroleum at the site according to applicable principles of statutory or common law liability, or (ii) a party responsible according to applicable principles of statutory or common law liability if such party's liability arises solely from operation of the site subsequent to the disposal of hazardous waste or the discharge of petroleum, and is so certified by the commissioner of environmental conservation at the request of the taxpayer, pursuant to section 27-1419 of the environmental conservation law. Notwithstanding any other provision of law to the contrary, in the case of allowance of credit under this section to such a lessor, the commissioner shall have the authority to reveal to such lessor any information, with respect to the issue of qualified use of property by the lessee, which is the basis for the denial in whole or in part, or for the recapture, of the credit claimed by such lessor. For purposes of the tangible property credit component allowed under this section the taxpayer to whom the certificate of completion is issued, as provided for under subdivision five of section 27-1419 of the environmental conservation law, may transfer the benefits and burdens of the certificate of completion, which run with the land and to the applicant's successors or assigns upon transfer or sale of all or any portion of an interest or estate in the qualified site. However, the taxpayer to whom certificate's benefits and burdens are transferred shall not include the cost of acquiring all or any portion of an interest or estate in the site and the amounts included in the cost or other basis for federal income tax purposes of qualified tangible property already claimed by the previous taxpayer pursuant to this section.

S 22. Subparagraph (A) of paragraph 3-a of subdivision (a) of section 21 of the tax law, as added by chapter 390 of the laws of 2008, is amended to read as follows:

(A) Notwithstanding any other provision of law to the contrary, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed thirty-five million dollars or three times the SUM OF THE costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, AND THE COSTS THAT WOULD HAVE BEEN INCLUDED IN THE CALCULATION OF SUCH COMPONENTS IF NOT TREATED AS AN EXPENSE AND DEDUCTED PURSUANT TO SECTION ONE HUNDRED NINETY-EIGHT OF THE INTERNAL REVENUE CODE, whichever is less; provided, however, that: (1)

in the case of a qualified site to be used primarily for manufacturing activities, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed forty-five million dollars or six times the SUM OF THE costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, AND THE COSTS THAT WOULD HAVE BEEN INCLUDED IN THE CALCULATION OF SUCH COMPONENTS IF NOT TREATED AS AN EXPENSE AND DEDUCTED PURSUANT TO SECTION ONE HUNDRED NINETY-EIGHT OF THE INTERNAL REVENUE CODE, whichever is less; and (2) the provisions of this paragraph shall not apply to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law.

S 23. Subparagraph (D) of paragraph 3-a of subdivision (a) of section 21 of the tax law, as added by chapter 390 of the laws of 2008, is amended to read as follows:

(D) If the qualifying site is located in a brownfield opportunity area and is developed in conformance with the goals and priorities established for that applicable brownfield opportunity area as designated pursuant to section nine hundred seventy-r of the general municipal law, the applicable percentage of the tangible property credit component will be increased by [two] FOUR percent.

S 24. Subdivision 2 of section 355 of the economic development law, as amended by section 4 of part G of chapter 61 of the laws of 2011, is amended to read as follows:

2. Excelsior investment tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit on qualified investments. The credit shall be equal to two percent of the cost or other basis for federal income tax purposes of the qualified investment. A participant may not claim both the excelsior investment tax credit component and the investment tax credit set forth in subdivision twelve of section two hundred ten, subsection (a) of section six hundred six, subsection (i) of section fourteen hundred fifty-six, or subdivision (q) of section fifteen hundred eleven of the tax law for the same property in any taxable year, except that a participant may claim both the excelsior investment tax credit component and the investment tax credit for research and development property. [In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of the tax law may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property.] A credit may not be claimed until a business enterprise has received a certificate of tax credit, provided that qualified investments made on or after the issuance of the certificate of eligibility but before the issuance of the certificate of tax credit to the business enterprise, may be claimed in the first taxable year for which the business enterprise is allowed to claim the credit. Expenses incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the credit.

S 25. Paragraph 5 of subdivision (a) of section 21 of the tax law, as amended by section 1 of part H of chapter 577 of the laws of 2004, is amended to read as follows:

(5) Applicable percentage. For purposes of paragraphs two, three and four of this subdivision, the applicable percentage shall be twelve percent [in the case of credits claimed under article nine, nine-A, thirty-two or thirty-three of this chapter, and ten percent in the case of credits claimed under article twenty-two of this chapter,] except that where at least fifty percent of the area of the qualified site relating to the credit provided for in this section is located in an environmental zone as defined in paragraph six of subdivision (b) of this section, the applicable percentage shall be increased by an additional eight percent. Provided, however, as afforded in section 27-1419 of the environmental conservation law, if the certificate of completion indicates that the qualified site has been remediated to Track 1 as that term is described in subdivision four of section 27-1415 of the environmental conservation law, the applicable percentage set forth in the first sentence of this paragraph shall be increased by an additional two percent.

S 25-a. Paragraph 5 of subdivision (a) of section 21 of the tax law, as amended by section 39 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(5) Applicable percentage. For purposes of paragraphs two, three and four of this subdivision, the applicable percentage shall be twelve percent [in the case of credits claimed under article nine, nine-A or thirty-three of this chapter, and ten percent in the case of credits claimed under article twenty-two of this chapter, except] that where at least fifty percent of the area of the qualified site relating to the credit provided for in this section is located in an environmental zone as defined in paragraph six of subdivision (b) of this section, the applicable percentage shall be increased by an additional eight percent. Provided, however, as afforded in section 27-1419 of the environmental conservation law, if the certificate of completion indicates that the qualified site has been remediated to Track 1 as that term is described in subdivision four of section 27-1415 of the environmental conservation law, the applicable percentage set forth in the first sentence of this paragraph shall be increased by an additional two percent.

S 26. Section 22 of the tax law is REPEALED.

S 27. Paragraphs 2, 4 and 6 of subdivision (b) of section 21 of the tax law, as amended by section 1 of part H of chapter 577 of the laws of 2004, subparagraph (B) and the closing paragraph of paragraph 6 as amended by section 1 of part G of chapter 62 of the laws of 2006, are amended to read as follows:

(2) Site preparation costs. The term "site preparation costs" shall mean all amounts properly [chargeable] CHARGED to a capital account, (i) which are paid or incurred in connection with a site's qualification for a certificate of completion, AND WHICH MAY INCLUDE COSTS ATTRIBUTABLE TO ACTIVITIES UNDERTAKEN UNDER THE OVERSIGHT OF THE DEPARTMENT OF HEALTH OR THE DEPARTMENT OF LABOR TO REMEDIATE REGULATED MATERIALS INCLUDING ASBESTOS, LEAD OR POLYCHLORINATED BIPHENYLS IN BUILDINGS WHICH WILL REMAIN ON THE SITE, and (ii) all other site preparation costs paid or incurred in connection with preparing a site for the erection of a building or a component of a building, or otherwise to establish a site as usable for its industrial, commercial (including the commercial development of residential housing), recreational or conservation purposes. Site preparation costs shall include, but not be limited to, the costs of excavation, temporary electric wiring, scaffolding, demolition costs, and the costs of fencing and security facilities. Site preparation costs shall not include the cost of acquiring the site and shall

not include amounts included in the cost or other basis for federal income tax purposes of qualified tangible property, as described in paragraph three of this subdivision.

(4) On-site groundwater remediation costs. The term "on-site groundwater remediation costs" shall mean all amounts properly [chargeable] CHARGED to a capital account, (i) which are paid or incurred in connection with a site's qualification for a certificate of completion, and (ii) include costs which are paid or incurred in connection with the remediation of on-site groundwater contamination and PAID OR incurred to implement a requirement of the remedial work plan or an interim remedial measure work plan for a qualified site which are imposed pursuant to subdivisions two and three of section 27-1411 of the environmental conservation law.

(6) Environmental zones (EN-Zones). An "environmental zone" shall mean an area designated as such by the commissioner of [economic development] LABOR. Such areas so designated are areas which are census tracts and block numbering areas which, as of the [two thousand] MOST RECENT census, satisfy either of the following criteria:

(A) areas that have both:

(i) a poverty rate of at least twenty percent for the year to which the data relate; and

(ii) an unemployment rate of at least one and one-quarter times the statewide unemployment rate for the year to which the data relate, or;

(B) areas that have a poverty rate of at least two times the poverty rate for the county in which the areas are located for the year to which the data relate [provided, however, that a qualified site shall only be deemed to be located in an environmental zone under this subparagraph (B) if such site was the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the environmental conservation law that was entered into prior to September first, two thousand ten].

Such designation shall be made and a list of all such environmental zones shall be established by the commissioner of [economic development] LABOR no later than [December thirty-first, two thousand four provided, however, that a qualified site shall only be deemed to be located in an environmental zone under subparagraph (B) of this paragraph if such site was the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the environmental conservation law that was entered into prior to September first, two thousand ten] NINETY DAYS FOLLOWING THE OFFICIAL PUBLICATION OF THE MOST RECENT CENSUS.

S 28. Subdivision (a) of section 23 of the tax law, as amended by section 10 of part H of chapter 577 of the laws of 2004, is amended to read as follows:

(a) Allowance of credit. General. A taxpayer subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of such credit shall be equal to the lesser of [thirty] NINETY thousand dollars or fifty percent of the premiums paid on or after the date of the brownfield site cleanup agreement executed by the taxpayer and the department of environmental conservation pursuant to section 27-1409 of the environmental conservation law by the taxpayer for environmental remediation insurance issued with respect to a qualified site.

S 28-a. Subdivision (a) of section 23 of the tax law, as amended by section 41 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(a) Allowance of credit. General. A taxpayer subject to tax under article nine, nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of such credit shall be equal to the lesser of [thirty] NINETY thousand dollars or fifty percent of the premiums paid on or after the date of the brownfield site cleanup agreement executed by the taxpayer and the department of environmental conservation pursuant to section 27-1409 of the environmental conservation law by the taxpayer for environmental remediation insurance issued with respect to a qualified site.

S 29. Section 171-r of the tax law is amended by adding a new subdivision (e) to read as follows:

(E) THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, SHALL PUBLISH BY JANUARY THIRTY-FIRST, TWO THOUSAND FIFTEEN A SUPPLEMENTAL BROWNFIELD CREDIT REPORT CONTAINING THE INFORMATION REQUIRED BY THIS SECTION ABOUT THE CREDITS CLAIMED FOR THE YEARS TWO THOUSAND FIVE, TWO THOUSAND SIX, AND TWO THOUSAND SEVEN.

S 30. Section 171-s of the tax law is REPEALED.

S 31. Paragraph (d) of subdivision 7 of section 27-1415 of the environmental conservation law, as added by section 1 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

(d) The commissioner shall create, update, and maintain a database system for public information purposes and to monitor and track all brownfield sites subject to this title. Data incorporated into such system for each site for which information has been collected pursuant to this title shall include, but shall not be limited to, a site summary, name of site owner, location, status of site remedial activity, WHETHER THE SITE IS LOCATED IN A BROWNFIELD OPPORTUNITY AREA AS DEFINED IN SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW, and, if one has been created pursuant to title thirty-six of article seventy-one of this chapter, a copy of the environmental easement, and a contact number to obtain additional information. Sites shall be added to such system upon the execution of a brownfield site cleanup agreement pursuant to section 27-1409 of this title. If and when an environmental easement is modified or extinguished, the copy of the environmental easement contained in the database shall be updated accordingly. Such database shall be in such a format that it can be readily searched by affected local governments and the public for purposes including but not limited to determining whether an environmental easement has been recorded for a site pursuant to title thirty-six of article seventy-one of this chapter. The database shall be available electronically. Information from this database shall be incorporated into the geographic information system created and maintained by the department pursuant to section 3-0315 of this chapter.

S 31-a. Paragraph b of subdivision 2 of section 970-r of the general municipal law, as added by section 1 of part F of chapter 1 of the laws of 2003, is amended to read as follows:

b. Activities eligible to receive such assistance shall include, but are not limited to, the assembly and development of basic information about:

(1) the borders of the [proposed] brownfield opportunity area;

(2) the number and size of brownfield sites;

(3) current and anticipated uses of the properties in the [proposed] BROWNFIELD OPPORTUNITY area;

(4) current and anticipated future conditions of groundwater in the [proposed] BROWNFIELD OPPORTUNITY area;

(5) known data about the environmental conditions of the properties in the [proposed] BROWNFIELD OPPORTUNITY area;

(6) ownership of the properties in the [proposed] BROWNFIELD OPPORTUNITY area AND WHETHER THE OWNERS WOULD LIKE TO PARTICIPATE DIRECTLY IN THE BROWNFIELD OPPORTUNITY PLANNING PROCESS; and

(7) preliminary descriptions of possible remediation strategies, reuse opportunities, necessary infrastructure improvements and other public or private measures needed to stimulate investment, promote revitalization, and enhance community health and environmental conditions.

S 31-b. Paragraph a of subdivision 3 of section 970-r of the general municipal law, as amended by chapter 390 of the laws of 2008, is amended to read as follows:

a. Within the limits of appropriations therefor, the secretary is authorized to provide, on a competitive basis, financial assistance to municipalities, to community based organizations, to community boards, or to municipalities and community based organizations acting in cooperation to prepare a nomination for designation of a brownfield opportunity area. Such financial assistance shall not exceed ninety percent of the costs of such nomination for any such area. A NOMINATION STUDY MUST INCLUDE SUFFICIENT INFORMATION TO DESIGNATE THE BROWNFIELD OPPORTUNITY AREA DISTRICT. THE CONTENTS OF THE NOMINATION STUDY SHALL BE DEVELOPED BASED ON PRE-NOMINATION STUDY INFORMATION, WHICH SHALL PRINCIPALLY CONSIST OF AN AREA-WIDE ASTM PHASE I ENVIRONMENTAL SITE ASSESSMENT STUDY, OR A PRE-EXISTING AREA-WIDE ASTM PHASE I SITE ASSESSMENT STUDY, DOCUMENTING THE HISTORIC BROWNFIELD USES IN THE DISTRICT. A NOMINATION STUDY IS NOT INTENDED TO BE EQUIVALENT TO OR TO SERVE AS A MASTER PLAN, COMPREHENSIVE PLAN, OR OTHER EQUIVALENT LAND USE STUDY, BUT RATHER IS INTENDED TO BE A BASIC PLAN FOR DESIGNATION OF THE AREA AS A BROWNFIELD OPPORTUNITY DISTRICT BASED ON HISTORIC BROWNFIELD USE INFORMATION AND THE COMMUNITY PARTICIPATION REQUIRED IN THIS SECTION. A MASTER PLAN, COMPREHENSIVE PLAN OR EQUIVALENT LAND USE STUDY MAY BE SEPARATELY DEVELOPED UNDER THIS PROGRAM AS AN IMPLEMENTATION STRATEGY FOR THE FINAL BROWNFIELD OPPORTUNITY AREA PLAN. SINCE A NOMINATION STUDY IS NOT EQUIVALENT TO A FINAL LAND USE PLAN, THE PREPARATION OF THE NOMINATION STUDY DOES NOT REQUIRE REVIEW UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT PURSUANT TO ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW, AND A BROWNFIELD OPPORTUNITY AREA CAN BE DESIGNATED BASED EXCLUSIVELY ON A NOMINATION STUDY. IN THE EVENT THE MUNICIPALITY AND/OR COMMUNITY BASED ORGANIZATION ELECT TO DEVELOP IMPLEMENTATION STRATEGIES, INCLUDING BUT NOT LIMITED TO A MASTER PLAN, COMPREHENSIVE PLAN OR URBAN RENEWAL PLAN, REVIEW UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW IS REQUIRED. NO SUCH NOMINATION STUDY SHALL SUPERSEDE AN EXISTING MASTER PLAN OR EQUIVALENT LAND USE STUDY.

S 31-c. Subdivision 4 of section 970-r of the general municipal law, as amended by chapter 390 of the laws of 2008, is amended to read as follows:

4. Designation of brownfield opportunity area. [Upon completion of] A. WITHIN THIRTY-SIX MONTHS OF THE SUBMISSION OF AN APPLICATION FOR STATE ASSISTANCE PURSUANT TO SUBDIVISION THREE OF THIS SECTION, THE APPLICANT SHALL COMPLETE AND SUBMIT a nomination for designation of a brownfield opportunity area[, it]. THE COMPLETED NOMINATION shall be forwarded by the applicant to the secretary, who shall determine whether it is consistent with the provisions of this section. If the secretary determines that the nomination [is consistent] PLAN PROPERLY DESIGNATES THE BROWNFIELD OPPORTUNITY AREA AND HAS COMPLIED with the provisions of

this section, the brownfield opportunity area shall be designated AND NO FURTHER STUDIES OR PLANS ARE REQUIRED TO FINALIZE THE DESIGNATION OF THE BROWNFIELD OPPORTUNITY AREA DISTRICT. THE SECRETARY SHALL MAKE A DETERMINATION OF WHETHER THE NOMINATED PLAN SHOULD BE FINALIZED AND DESIGNATED WITHIN NINETY DAYS OF RECEIPT OF SUCH NOMINATION. IF THE APPLICANT HAS ELECTED TO PREPARE A FINAL BROWNFIELD OPPORTUNITY PLAN, INCLUDING IMPLEMENTATION STRATEGIES SUCH AS SPECIFIC FUNDING REQUESTS FROM CERTAIN STATE AGENCIES TO ENHANCE DEVELOPMENT OF THE PLAN OR DEVELOPMENT OF MORE FORMAL LAND USE PLANS SUCH AS A MASTER PLAN, COMPREHENSIVE PLAN AND/OR URBAN RENEWAL PLAN, UPON RECEIPT OF ONE OR MORE OF THESE PLANS, THE SECRETARY, IN CONSULTATION WITH ANY OTHER INVOLVED AGENCIES AND/OR OTHER AGENCY FROM WHICH A FUNDING REQUEST HAS BEEN MADE, SHALL REVIEW SUCH PLAN OR PLANS, AND IF REQUIRED, THE ASSOCIATED ENVIRONMENTAL IMPACT REVIEW ANALYSIS PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT UNDER ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW. If the secretary determines that the nomination [is not consistent] PLAN AND/OR THE FINAL BROWNFIELD OPPORTUNITY AREA PLAN DO NOT COMPLY with the provisions of this section, the secretary shall make recommendations in writing to the applicant of the manner and nature in which the nomination PLAN OR THE FINAL BROWNFIELD OPPORTUNITY AREA PLAN should be amended TO BE IN COMPLIANCE. THE APPLICANT SHALL HAVE THIRTY DAYS TO AMEND THE NOMINATION TO BRING THE PLAN INTO COMPLIANCE. IF THE SECRETARY DETERMINES THAT THE AMENDED NOMINATION STILL IS NOT IN COMPLIANCE, THE APPLICANT SHALL BE INELIGIBLE FOR ANY ADDITIONAL STATE ASSISTANCE OFFERED UNDER THIS ARTICLE UNTIL SUCH NOMINATION IS DEEMED TO BE IN COMPLIANCE.

B. THE SECRETARY SHALL PROVIDE ASSISTANCE TO APPLICANTS WHO REQUEST ASSISTANCE ON THE CONTENTS OF LAND USE PLANS, BUT MUNICIPAL APPLICANTS HAVE FINAL AUTHORITY ON THE CONTENTS OF LAND USE PLANS PROVIDED SUCH PLANS ARE CONSISTENT WITH THIS SECTION PURSUANT TO SECTION TWO HUNDRED SIXTY-ONE OF THE TOWN LAW, SECTION SEVEN-SEVEN HUNDRED OF THE VILLAGE LAW, SUBDIVISIONS TWENTY-FOUR AND TWENTY-FIVE OF SECTION TWENTY OF THE GENERAL CITY LAW, SECTION TEN OF THE MUNICIPAL HOME RULE LAW AND SECTION TEN OF THE STATUTE OF LOCAL GOVERNMENTS.

S 32. Section 31 of part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, as amended by chapter 474 of the laws of 2012, is amended to read as follows:

S 31. The tax credits allowed under section 21, 22 or 23 of the tax law and the corresponding provisions in articles 9, 9-A, 22, 32 and 33 of the tax law, as added by the provisions of sections one through twenty-nine of this act, shall not be applicable if the [remediation] certificate OF COMPLETION required to qualify for any of such credits is issued after December 31, [2015] 2025.

S 33. Intentionally omitted.

S 34. Paragraph c of subdivision 3 of section 27-0923 of the environmental conservation law, as amended by section 5 of part I of chapter 577 of the laws of 2004, is amended to read as follows:

c. For the purpose of this section, generation of hazardous waste shall not include retrieval or creation of hazardous waste which must be disposed of under an order of or agreement with the department pursuant to title thirteen or title fourteen of this article or under a contract OR AGREEMENT with the department pursuant to title five of article fifty-six of this chapter OR UNDER AN ORDER OF OR AGREEMENT WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR AN ORDER OF A COURT OF COMPETENT JURISDICTION, RELATED TO A FACILITY ADDRESSED PURSUANT TO THE

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (42 U.S.C. 9601 ET SEQ.) OR UNDER A WRITTEN AGREEMENT WITH A MUNICIPALITY WHICH IS SUBJECT TO A MEMORANDUM OF AGREEMENT WITH THE DEPARTMENT RELATED TO THE REMEDIATION OF BROWNFIELD SITES.

S 35. Subparagraphs (i) and (vi) of paragraph d of subdivision 1 of section 72-0402 of the environmental conservation law, as amended by chapter 99 of the laws of 2010, are amended to read as follows:

(i) under a contract with the department, or with the department's written approval and in compliance with department regulations, or pursuant to an order of the department, the United States environmental protection agency or a court OF COMPETENT JURISDICTION, related to the cleanup or remediation of a hazardous materials or hazardous waste spill, discharge, or surficial cleanup, pursuant to this chapter; or

(vi) under a brownfield site cleanup agreement with the department pursuant to section 27-1409 of this chapter OR UNDER AN AGREEMENT WITH A MUNICIPALITY WHICH IS SUBJECT TO A MEMORANDUM OF AGREEMENT WITH THE DEPARTMENT RELATED TO THE REMEDIATION OF BROWNFIELD SITES; or

S 36. Subdivision 1 of section 1285-q of the public authorities law, as added by section 6 of part I of chapter 1 of the laws of 2003, is amended to read as follows:

1. Subject to chapter fifty-nine of the laws of two thousand, but notwithstanding any other provisions of law to the contrary, in order to assist the corporation in undertaking the administration and the financing of hazardous waste site remediation projects for payment of the state's share of the costs of the remediation of hazardous waste sites, in accordance with title thirteen of article twenty-seven of the environmental conservation law and section ninety-seven-b of the state finance law, and for payment of state costs associated with the remediation of offsite contamination at significant threat sites as provided in section 27-1411 of the environmental conservation law, AND FOR ENVIRONMENTAL RESTORATION PROJECTS PURSUANT TO TITLE FIVE OF ARTICLE FIFTY-SIX OF THE ENVIRONMENTAL CONSERVATION LAW pursuant to capital appropriations made to the department of environmental conservation, the director of the division of budget and the corporation are each authorized to enter into one or more service contracts, none of which shall exceed twenty years in duration, upon such terms and conditions as the director and the corporation may agree, so as to annually provide to the corporation in the aggregate, a sum not to exceed the annual debt service payments and related expenses required for any bonds and notes authorized pursuant to section twelve hundred ninety of this title. Any service contract entered into pursuant to this section shall provide that the obligation of the state to fund or to pay the amounts therein provided for shall not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of moneys available for such purposes, subject to annual appropriation by the legislature. Any such service contract or any payments made or to be made thereunder may be assigned and pledged by the corporation as security for its bonds and notes, as authorized pursuant to section twelve hundred ninety of this title.

S 37. Section 56-0501 of the environmental conservation law, as added by chapter 413 of the laws of 1996, is amended to read as follows:

S 56-0501. Allocation of moneys.

1. Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, two hundred million dollars ($200,000,000) shall be available for disbursements for environmental restoration projects.

2. ENVIRONMENTAL RESTORATION PROJECTS MAY BE FUNDED USING THE PROCEEDS OF BONDS ISSUED PURSUANT TO SECTION TWELVE HUNDRED EIGHTY-FIVE-Q OF THE PUBLIC AUTHORITIES LAW.

S 38. Subdivision 6 of section 56-0502 of the environmental conservation law, as amended by section 2 of part D of chapter 577 of the laws of 2004, is amended to read as follows:

6. "State assistance", for purposes of this title, shall mean in the case of a contract authorized by subdivision one of section 56-0503 of this title, payments made to a municipality to reimburse the municipality for the state share of the costs incurred by the municipality to undertake an environmental restoration project OR IN THE CASE OF AN AGREEMENT AUTHORIZED BY SUBDIVISION THREE OF SECTION 56-0503 OF THIS TITLE, COSTS INCURRED BY THE STATE TO UNDERTAKE AN ENVIRONMENTAL RESTORATION PROJECT BUT NOT REIMBURSED BY A MUNICIPALITY.

S 39. Paragraph (c) of subdivision 2 of section 56-0503 of the environmental conservation law, as amended by section 4 of part D of chapter 1 of the laws of 2003, is amended and a new subdivision 3 is added to read as follows:

(c) A provision that THE MUNICIPALITY SHALL ASSIST IN IDENTIFYING A RESPONSIBLE PARTY BY SEARCHING LOCAL RECORDS, INCLUDING PROPERTY TAX ROLLS, OR DOCUMENT REVIEWS, AND if, in accordance with the required departmental approval of any settlement with a responsible party, any responsible party payments become available to the municipality, before, during or after the completion of an environmental restoration project, which were not included when the state share was calculated pursuant to this section, the state assistance share shall be recalculated, and the municipality shall pay to the state, for deposit into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law, the difference between the original state assistance payment and the recalculated state share. Recalculation of the state share shall be done each time a payment from a responsible party is received by the municipality;

3. THE DEPARTMENT MAY UNDERTAKE AN ENVIRONMENTAL RESTORATION PROJECT ON BEHALF OF A MUNICIPALITY UPON REQUEST. IF THE DEPARTMENT UNDERTAKES THE PROJECT ON BEHALF OF THE MUNICIPALITY, THE STATE SHALL ENTER INTO AN AGREEMENT WITH THE MUNICIPALITY AND THE AGREEMENT SHALL REQUIRE THE MUNICIPALITY TO PERIODICALLY PROVIDE ITS SHARE TO THE STATE FOR COSTS INCURRED DURING THE PROGRESS OF SUCH PROJECT. THE MUNICIPALITY'S SHARE SHALL BE THE SAME AS WOULD BE REQUIRED UNDER SUBDIVISION ONE OF THIS SECTION. THE AGREEMENT SHALL INCLUDE ALL PROVISIONS SPECIFIED IN SUBDIVISION TWO OF THIS SECTION AS APPROPRIATE. FOR PURPOSES OF PROJECTS SUBJECT TO AGREEMENTS UNDER THIS SUBDIVISION, ALL REFERENCES TO CONTRACTS IN THIS TITLE SHALL ALSO APPLY TO AGREEMENTS UNDER THIS SUBDIVISION AS APPROPRIATE.

S 40. Subdivision 4 of section 56-0505 of the environmental conservation law, as amended by section 5 of part D of chapter 1 of the laws of 2003, is amended to read as follows:

4. After completion of such project, the municipality may use the property for public purposes or may dispose of it. If the municipality shall dispose of such property by sale to a responsible party, such party shall pay to such municipality, in addition to such other consideration, an amount of money constituting the amount of state assistance provided [to the municipality] under this title plus accrued interest and transaction costs and the municipality shall deposit that money into the environmental restoration project account of the hazardous waste

remedial fund established under section ninety-seven-b of the state finance law.

S 41. Subdivisions 3 and 4 of section 56-0508 of the environmental conservation law, as added by section 7 of part D of chapter 1 of the laws of 2003, are amended to read as follows:

3. such temporary incidents of ownership by such taxing district shall also qualify it as being the owner of such property [for the purposes of obtaining] TO BE ELIGIBLE FOR funding from the state of New York for such environmental restoration investigation project under this article or for such funding from any source pursuant to any other state, federal, or local law, but such incidents of ownership shall not be sufficient to qualify it as the owner of such property for the purposes of holding it wholly or partially liable for any damages, past, present, or future from any release of any hazardous material, substance, or contaminant into the air, ground, or water, unless such release was caused by such taxing district.

4. within thirty days of the completion of the environmental restoration investigation project and the receipt by the taxing jurisdiction of the final report of such investigation, such taxing jurisdiction shall file such report with the court on notice to the court and all other parties of record, and the stay of the foreclosure shall be lifted (unless lifted earlier by a prior court order), and all incidents of temporary ownership of the taxing jurisdiction that was awarded such taxing district, except any right [to receive funding] for the environmental restoration investigation project TO BE FUNDED, shall cease to exist, and nothing in this subdivision shall preclude the taxing jurisdiction that conducted the environmental restoration investigation project or the taxing jurisdiction that commenced the foreclosure action, if it is a different taxing jurisdiction than the taxing jurisdiction which conducted the investigation, from withdrawing the parcel from foreclosure pursuant to section eleven hundred thirty-eight of the real property tax law.

S 42. Subdivision 2 and paragraph (f) of subdivision 3 of section 97-b of the state finance law, as amended by section 4 of part I of chapter 1 of the laws of 2003, are amended to read as follows:

2. Such fund shall consist of all of the following:

(a) moneys appropriated for transfer to the fund's site investigation and construction account; (b) all fines and other sums accumulated in the fund prior to April first, nineteen hundred eighty-eight pursuant to section 71-2725 of the environmental conservation law for deposit in the fund's site investigation and construction account; (c) all moneys collected or received by the department of taxation and finance pursuant to section 27-0923 of the environmental conservation law for deposit in the fund's industry fee transfer account; (d) all moneys paid into the fund pursuant to section 72-0201 of the environmental conservation law which shall be deposited in the fund's industry fee transfer account; (e) all moneys paid into the fund pursuant to section one hundred eighty-six of the navigation law which shall be deposited in the fund's industry fee transfer account; (f) [all moneys paid into the fund by municipalities for repayment of landfill closure loans made pursuant to title five of article fifty-two of the environmental conservation law for deposit in the fund's site investigation and construction account; (g)] all monies recovered under sections 56-0503, 56-0505 and 56-0507 of the environmental conservation law into the fund's environmental restoration project account; [(h) all] (G) fees paid into the fund pursuant to section [72-0403] 72-0402 of the environmental conservation law which

shall be deposited in the fund's industry fee transfer account; [(i)] (H) payments received for all state costs incurred in negotiating and overseeing the implementation of brownfield site cleanup agreements pursuant to title fourteen OF ARTICLE TWENTY-SEVEN of the environmental conservation law shall be deposited in the hazardous waste remediation oversight and assistance account; and [(j)] (I) other moneys credited or transferred thereto from any other fund or source for deposit in the fund's site investigation and construction account.

(f) to undertake such remedial measures as the department of environmental conservation may determine necessary due to environmental conditions related to the property subject to an agreement [to provide state assistance] OR CONTRACT under title five of article fifty-six of the environmental conservation law [that were unknown to such department at the time of its approval of such agreement which indicates that conditions on such property are not sufficiently protective of human health for its reasonably anticipated uses or due to information received, in whole or in part, after such department's approval of such agreement's final engineering report and certification], which indicates that such agreement's remedial activities are not sufficiently protective of human health for such property's reasonably anticipated uses; and, [respecting the monies in the environmental restoration project account in excess of ten million dollars,] shall provide state assistance under title five of article fifty-six of the environmental conservation law;

S 43. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 44. This act shall take effect immediately and shall apply to sites that submit an application for acceptance into the brownfield cleanup program on or after July 1, 2014; provided, however, that the department of environmental conservation shall not charge volunteers in the brownfield cleanup program for oversight costs for any sites in the program incurred on or after July 1, 2014; and provided further, however, that section twenty-four of this act shall apply to any site where a certificate of completion has been issued on or after June 30, 2008; and provided further that section twenty-five-a of this act shall take effect on the same date and in the same manner as section 39 of Part A of chapter 59 of the laws of 2014, as amended, takes effect; and provided further that section twenty-eight-a of this act shall take effect on the same date and in the same manner as section 41 of part A of chapter 59 of the laws of 2014, takes effect.

PART B

Section 1. Paragraph (a) of subdivision 2 of section 176 of the navigation law, as amended by chapter 584 of the laws of 1992, is amended to read as follows:

(a) Upon the occurrence of a discharge of petroleum, the department shall respond promptly and proceed to cleanup and remove the discharge in accordance with environmental priorities or may, at its discretion, direct the discharger to promptly cleanup and remove the discharge. IF

A PERSON THE DEPARTMENT DEEMS A DISCHARGER, AND THUS DIRECTS TO CLEANUP AND REMOVE THE DISCHARGE PURSUANT TO THIS SECTION PRESENTS THE DEPARTMENT WITH EVIDENCE THAT A THIRD PARTY IS SOLELY RESPONSIBLE FOR THE DISCHARGE AND REQUESTS THE DEPARTMENT TO DETERMINE WHETHER THE EVIDENCE ESTABLISHES THE THIRD PARTY IS IN FACT SOLELY RESPONSIBLE, THE DEPARTMENT SHALL, WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST, DETERMINE IN WRITING EITHER THAT THE THIRD PARTY: (I) SHALL BE DEEMED A DISCHARGER BY THE DEPARTMENT, AND SHALL BE DIRECTED TO UNDERTAKE THE CLEANUP AND REMOVAL OF THE DISCHARGE; OR (II) WILL NOT BE DEEMED A DISCHARGER BY THE DEPARTMENT BECAUSE THE INFORMATION PRESENTED DOES NOT ESTABLISH THE RESPONSIBILITY OF THE THIRD PARTY BY A PREPONDERANCE OF THE EVIDENCE. IF THE DEPARTMENT DETERMINES THAT THE PERSON THE DEPARTMENT INITIALLY DEEMS A DISCHARGER AND THE THIRD PARTY ARE BOTH DISCHARGERS, THE DEPARTMENT SHALL, WITHIN THIRTY DAYS OF SUCH REQUEST, ADVISE EACH OF THE PARTIES THAT THEY ARE DEEMED DISCHARGERS SUBJECT TO APPORTIONMENT OF LIABILITY FOR THE DISCHARGE PURSUANT TO SUBDIVISIONS ONE AND TWO OF SECTION ONE HUNDRED EIGHTY OF THIS ARTICLE. The department shall be responsible for cleanup and removal or as the case may be, for retaining agents and contractors who shall operate under the direction of that department for such purposes. Implementation of cleanup and removal procedures after each discharge shall be conducted in accordance with environmental priorities and procedures established by the department.

S 2. Subdivision 8 of section 176 of the navigation law, as added by chapter 712 of the laws of 1989, is amended and a new subdivision 9 is added to read as follows:

8. Notwithstanding any other provision of law to the contrary, including but not limited to SUBDIVISION (C) OF section 15-108 of the general obligations law, every person providing cleanup, removal of discharge of petroleum or relocation of persons pursuant to this section shall be entitled to contribution from any other responsible party.

9. THE FOLLOWING SHALL NOT BE DEEMED A FINAL AGENCY ACTION SUBJECT TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, AND SHALL NOT HAVE A BINDING EFFECT ON ANY PARTY IN PENDING OR FUTURE PROCEEDINGS REGARDING THE DISCHARGE: (A) A DETERMINATION OR ACTION OF THE DEPARTMENT PURSUANT TO SUBDIVISION ONE, TWO, OR THREE OF THIS SECTION, INCLUDING BUT NOT LIMITED TO, A DETERMINATION OF THE REASONABLENESS OF ANY COSTS INCURRED; (B) A DETERMINATION OR ACTION OF THE ADMINISTRATOR PURSUANT TO SECTION ONE HUNDRED EIGHTY, ONE HUNDRED EIGHTY-ONE-A, OR ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE, INCLUDING THE FILING OF AN ENVIRONMENTAL LIEN.

S 3. Subdivisions 1 and 2 of section 180 of the navigation law, subdivision 1 as added by chapter 845 of the laws of 1977 and subdivision 2 as amended by chapter 672 of the laws of 1991, are amended to read as follows:

1. To represent the state in meetings with the alleged discharger OR DISCHARGERS and claimants concerning liability for the discharge and amount of the claims, AND, IF THERE IS MORE THAN ONE DISCHARGER IN A MEETING, TO APPORTION LIABILITY FOR THE DISCHARGE;

2. To determine if hearings are needed to settle particular claims filed by injured persons AND TO APPORTION LIABILITY BETWEEN AND AMONG DISCHARGERS;

S 4. Subdivision 1 of section 181 of the navigation law, as amended by chapter 712 of the laws of 1989, is amended and a new subdivision 7 is added to read as follows:

1. (A) Any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and

all direct and indirect damages, no matter by whom sustained, as defined in this section, UNLESS THE LIABILITY LIMITATION AS DESCRIBED UNDER PARAGRAPH (B) OF THIS SUBDIVISION APPLIES. In addition to cleanup and removal costs and damages, any such person who is notified of such release and who did not undertake relocation of persons residing in the area of the discharge in accordance with paragraph (c) of subdivision seven of section one hundred seventy-six of this article, shall be liable to the fund for an amount equal to two times the actual and necessary expense incurred by the fund for such relocation pursuant to section one hundred seventy-seven-a of this article.

(B) (I) ANY PERSON WHO AGREES TO REMEDIATE THE DISCHARGE TO THE SATISFACTION OF THE DEPARTMENT, AND IN CONFORMANCE WITH THIS ARTICLE, SHALL BE ENTITLED TO RECEIVE LIABILITY LIMITATION. SUCH AGREEMENT SHALL BE CALLED THE LIABILITY LIMITATION AGREEMENT AND SHALL BE WRITTEN AND EXECUTED BY BOTH THE DEPARTMENT AND SUCH PERSON. AFTER EXECUTION OF THE LIABILITY LIMITATION AGREEMENT, SUCH PERSON SHALL NOT BE LIABLE TO THE STATE UPON ANY STATUTORY OR COMMON LAW CAUSE OF ACTION, ARISING OUT OF THE PRESENCE OF ANY CONTAMINATION IN, ON, OR EMANATING FROM THE SITE THAT WAS THE SUBJECT OF THE LIABILITY LIMITATION, EXCEPT THAT SUCH PERSON SHALL NOT RECEIVE A RELEASE FOR NATURAL RESOURCE DAMAGES THAT MAY BE AVAILABLE UNDER LAW. THE LIABILITY LIMITATION SHALL APPLY TO ALL SUCCESSORS IN OWNERSHIP OF THE PROPERTY AND TO ALL PERSONS WHO LEASE THE PROPERTY OR WHO ENGAGE IN OPERATIONS ON THE PROPERTY, PROVIDED THAT SUCH PERSONS ACT WITH DUE CARE AND IN GOOD FAITH TO ADHERE TO THE REQUIREMENTS OF THE LIABILITY LIMITATION AGREEMENT.

(II) A LIABILITY LIMITATION AGREEMENT AND THE PROTECTIONS IT AFFORDS SHALL NOT APPLY TO ANY DISCHARGE THAT OCCURS SUBSEQUENT TO THE EXECUTION OF THE LIABILITY LIMITATION AGREEMENT, NOR SHALL A LIABILITY LIMITATION AGREEMENT AND THE PROTECTIONS IT AFFORDS RELIEVE ANY PERSON OF THE OBLIGATIONS TO COMPLY IN THE FUTURE WITH LAWS AND REGULATIONS. THE STATE NONETHELESS SHALL RESERVE ALL OF ITS RIGHTS CONCERNING, AND SUCH LIABILITY LIMITATION SHALL NOT EXTEND TO, ANY FURTHER INVESTIGATION AND/OR REMEDIATION THE DEPARTMENT DEEMS NECESSARY DUE TO FRAUD, NONCOMPLIANCE WITH THE TERMS THAT FORMED THE LIABILITY LIMITATION AGREEMENT, OR A WRITTEN FINDING BY THE DEPARTMENT THAT A CHANGE IN AN ENVIRONMENTAL STANDARD, FACTOR, OR CRITERION UPON WHICH THE LIABILITY LIMITATION AGREEMENT WAS BASED WOULD RENDER REMEDIATION ACTIVITIES NO LONGER PROTECTIVE OF PUBLIC HEALTH OR THE ENVIRONMENT. NOTHING IN THIS SECTION SHALL AFFECT THE LIABILITY OF THE PERSON RESPONSIBLE FOR SUCH PERSON'S OWN ACTS OR OMISSIONS CAUSING WRONGFUL DEATH OR PERSONAL INJURY. NOTHING IN THIS SECTION SHALL AFFECT THE LIABILITY OF ANY PERSON WITH RESPECT TO ANY CIVIL ACTION BROUGHT BY A PARTY OTHER THAN THE STATE. THE PROVISIONS OF THIS SECTION SHALL NOT AFFECT AN ACTION OR A CLAIM, INCLUDING A STATUTORY OR COMMON LAW CLAIM FOR CONTRIBUTION OR INDEMNIFICATION, THAT SUCH PERSON HAS OR MAY HAVE AGAINST A THIRD PARTY.

7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PUBLIC CORPORATION SHALL NOT BE LIABLE FOR THE DISCHARGE OF PETROLEUM AT A SITE IF SUCH PUBLIC CORPORATION ACQUIRED SUCH SITE INVOLUNTARILY, AND SUCH PUBLIC CORPORATION RETAINED SUCH SITE WITHOUT PARTICIPATING IN THE DEVELOPMENT OF SUCH SITE. THIS EXEMPTION SHALL NOT APPLY TO ANY PUBLIC CORPORATION THAT HAS (A) CAUSED OR CONTRIBUTED TO THE DISCHARGE OF PETROLEUM FROM OR AT THE SITE, (B) PURCHASED, SOLD, REFINED, TRANSPORTED, OR DISCHARGED PETROLEUM FROM OR AT SUCH SITE, OR (C) CAUSED THE PURCHASE, SALE, REFINEMENT, TRANSPORTATION, OR DISCHARGE OF PETROLEUM FROM OR AT SUCH SITE. THE TERMS "PARTICIPATION IN DEVELOPMENT," "PUBLIC CORPORATION" AND "INVOLUNTARY ACQUISITION OF OWNERSHIP OR CONTROL" SHALL

HAVE THE SAME MEANING AS THOSE TERMS ARE DEFINED IN PARAGRAPHS (C), (D) AND (E) OF SUBDIVISION TWO OF SECTION 27-1323 OF THE ENVIRONMENTAL CONSERVATION LAW. HOWEVER, "PARTICIPATION IN DEVELOPMENT" SHALL NOT INCLUDE IMPROVEMENTS WHICH ARE PART OF A CLEANUP AND REMOVAL OF A DISCHARGE OF PETROLEUM PURSUANT TO THIS ARTICLE.

S 5. Section 183 of the navigation law, as added by chapter 845 of the laws of 1977, is amended to read as follows:

S 183. Settlements. The administrator shall attempt to promote and arrange a settlement between the claimant and the person OR PERSONS responsible for the discharge. If the source of the discharge can be determined and liability is conceded, the claimant and the alleged discharger OR DISCHARGERS may agree to a settlement which shall be final and binding upon the parties and which will waive all recourse against the fund. TO THE EXTENT AN ALLEGED DISCHARGER PRESENTS EVIDENCE TO THE ADMINISTRATOR THAT ANOTHER PARTY IS WHOLLY OR PARTIALLY RESPONSIBLE FOR THE CLAIM, AND REQUESTS THE ADMINISTRATOR TO CONSIDER WHETHER SUCH INFORMATION PRESENTED ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE THIRD PARTY IS IN FACT WHOLLY OR PARTIALLY RESPONSIBLE, THE ADMINISTRATOR WITHIN THIRTY DAYS OF RECEIPT OF SUCH REQUEST SHALL EITHER DETERMINE: (1) IN WRITING, IF THE THIRD PARTY SHALL BE DEEMED AN ADDITIONAL DISCHARGER TO ANY PENDING OR ANTICIPATED CLAIM OR (2) IF AN ADMINISTRATIVE HEARING AS TO LIABILITY IS NECESSARY.

S 6. This act shall take effect immediately.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through B of this act shall be as specifically set forth in the last section of such Parts.