

7970

2015-2016 Regular Sessions

I N   A S S E M B L Y

June 2, 2015

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Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the general municipal law, in relation to the brownfield opportunity area program

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

1     Section 1. Paragraph d of subdivision 1 of section 970-r of the general municipal law, as amended by section 1 of part F of chapter 577 of the laws of 2004, is amended to read as follows:

2     d. "Brownfield" OR "BROWNFIELD site" shall have the same meaning as set forth in section 27-1405 of the environmental conservation law.

3     S 2. The subdivision heading 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:

4     [State] UNTIL JULY FIRST, TWO THOUSAND FIFTEEN, STATE assistance IN ACCORDANCE WITH THIS SUBDIVISION WILL BE AVAILABLE for pre-nomination study for brownfield opportunity areas.

5     S 3. Paragraphs a, b, and i of subdivision 3 of section 970-r of the general municipal law, paragraph a as amended by section 28 of part BB of chapter 56 of the laws of 2015 and paragraphs b and i as amended by chapter 390 of the laws of 2008, are amended, and a new paragraph j is added to read as follows:

6     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. [The contents of the nomination study shall be developed based on

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

LBD10755-02-5

1 pre-nomination study information, which shall principally consist of an  
2 area-wide study, documenting the historic brownfield uses in the area  
3 proposed for designation.]

4 b. An application for such financial assistance shall include an indi-  
5 cation of support from owners of brownfield sites in the proposed brown-  
6 field opportunity area, OR ALTERNATIVELY, DOCUMENTATION OF REQUESTS FOR  
7 SUCH SUPPORT CONSISTING OF AT LEAST TWO MEANS OF OUTREACH TOGETHER WITH  
8 ANY RESPONSES TO SUCH REQUESTS. All residents and property owners in  
9 the proposed brownfield opportunity area shall receive notice OF THE  
10 APPLICATION FOR ASSISTANCE in such form and manner as the secretary  
11 shall prescribe.

12 i. [Following] FOR APPLICATIONS FOR ASSISTANCE SUBMITTED TO THE  
13 DEPARTMENT BEFORE JULY FIRST, TWO THOUSAND FIFTEEN, FOLLOWING notifica-  
14 tion to the applicant that assistance has been awarded, and prior to  
15 disbursement of funds, a contract shall be executed between the depart-  
16 ment and the applicant or co-applicants. The secretary shall establish  
17 terms and conditions for such contracts as the secretary deems appropri-  
18 ate, including provisions to define: applicant's work scope, work sched-  
19 ule, and deliverables; fiscal reports on budgeted and actual use of  
20 funds expended; and requirements for submission of a final fiscal  
21 report. The contract shall also require the distribution of work  
22 products to the department, and, for community based organizations, to  
23 the applicant's municipality. Applicants shall be required to make the  
24 results publicly available. [Such contract shall further include a  
25 provision providing that if]

26 J. FOR APPLICATIONS FOR ASSISTANCE SUBMITTED ON OR AFTER JULY FIRST,  
27 TWO THOUSAND FIFTEEN, FOLLOWING NOTIFICATION TO THE APPLICANT THAT  
28 ASSISTANCE HAS BEEN AWARDED, AND PRIOR TO DISBURSEMENT OF FUNDS, THE  
29 APPLICANT OR APPLICANTS SHALL SUBMIT FOR APPROVAL BY THE SECRETARY A  
30 PROPOSED NOMINATION WORK PLAN. THE NOMINATION WORK PLAN SHALL INCLUDE  
31 WORK SCOPE, WORK SCHEDULE, AND DELIVERABLES, INCLUDING FISCAL REPORTS ON  
32 BUDGETED AND ACTUAL USE OF FUNDS EXPENDED, AND THE ANTICIPATED DATE FOR  
33 SUBMISSION OF A FINAL NOMINATION FOR DESIGNATION. THE WORK PLAN SHALL  
34 ALSO REQUIRE THE DISTRIBUTION OF WORK PRODUCTS TO THE DEPARTMENT AND,  
35 FOR COMMUNITY BASED ORGANIZATIONS, TO THE APPLICANT'S MUNICIPALITY.  
36 WITHIN NINETY DAYS OF RECEIPT OF A PROPOSED WORK PLAN OR REVISED WORK  
37 PLAN, THE DEPARTMENT SHALL EITHER APPROVE THE WORK PLAN OR PROVIDE THE  
38 APPLICANT OR APPLICANTS WITH A WRITTEN NOTICE OF DEFICIENCY, WHICH SHALL  
39 INCLUDE A DETAILED DESCRIPTION OF WHAT FURTHER ELEMENTS ARE REQUIRED TO  
40 REVISE THE WORK PLAN. APPLICANTS SHALL BE REQUIRED TO MAKE ALL WORK  
41 PRODUCTS PUBLICLY AVAILABLE.

42 K. IF any responsible party payments become available to the appli-  
43 cant, the amount of such payments attributable to expenses paid by the  
44 award shall be paid to the department by the applicant; provided that  
45 the applicant may first apply such responsible party payments toward any  
46 actual project costs incurred by the applicant.

47 S 4. Subdivision 4 of section 970-r of the general municipal law, as  
48 amended by section 29 of part BB of chapter 56 of the laws of 2015, is  
49 amended to read as follows:

50 4. Designation of brownfield opportunity area. A. Upon completion of a  
51 nomination for designation of a brownfield opportunity area, it shall be  
52 forwarded by the applicant to the secretary, who shall determine whether  
53 it is consistent with the provisions of this section. The secretary may  
54 review and approve a nomination for designation of a brownfield opportu-  
55 nity area at any time. If the secretary determines that the nomination  
56 is consistent with the provisions of this section, the brownfield oppor-

tunity area shall be designated. If the secretary determines that the nomination is not consistent 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 should be amended. THE SECRETARY SHALL MAKE A DETERMINATION PURSUANT TO THIS SUBDIVISION WITHIN NINETY DAYS OF RECEIPT OF A NOMINATION.

B. AS AN ALTERNATIVE MEANS OF DESIGNATION, A MUNICIPALITY MAY, AT ANY TIME AFTER THE SECRETARY HAS RECEIVED A COMPLETED NOMINATION FOR DESIGNATION, DESIGNATE A BROWNFIELD OPPORTUNITY AREA BY FORMALLY ADOPTING THE NOMINATED BROWNFIELD OPPORTUNITY AREA PLAN AS PART OF THE MUNICIPALITY'S COMPREHENSIVE PLAN FOLLOWING A DETERMINATION BY THE MUNICIPAL PLANNING BOARD, NOTICED TO THE SECRETARY, THAT THE NOMINATION IS CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE. SUCH PLANNING BOARD'S DETERMINATION AND THE MUNICIPALITY'S DESIGNATION BASED ON SUCH DETERMINATION SHALL BE NULL AND VOID AND OF NO FORCE AND EFFECT IF WITHIN THIRTY DAYS OF THE DETERMINATION OF THE PLANNING BOARD THE SECRETARY PROVIDES WRITTEN NOTICE AND FINDINGS TO THE MUNICIPALITY THAT THE SECRETARY HAS DETERMINED THAT THE NOMINATION IS NOT CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

S 5. Subdivision 6 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, paragraph a and subparagraphs 2 and 5 of paragraph e as amended by section 30 of part BB of chapter 56 of the laws of 2015 and paragraph h as amended by section 1 of part F of chapter 577 of the laws of 2004, is amended to read as follows:

6. State assistance for brownfield site assessments AND IMPLEMENTATION ACTIVITIES in brownfield opportunity areas. a. Within the limits of appropriations therefor, the secretary [of state,] 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 conduct brownfield site assessments. Such financial assistance shall not exceed ninety percent of the costs of such brownfield site assessment.

[b.] Brownfield sites eligible for such assistance must be owned by a municipality, or volunteer as such term is defined in section 27-1405 of the environmental conservation law.

[c.] Brownfield site assessment activities eligible for funding include, but are not limited to, testing of properties to determine the nature and extent of the contamination (including soil and groundwater), environmental assessments, the development of a proposed remediation strategy to address any identified contamination, and any other activities deemed appropriate by the commissioner in consultation with the secretary of state. Any environmental assessment shall be subject to the review and approval of such commissioner.

[d.] Applications for such assistance FOR SITE ASSESSMENT shall be submitted to BOTH THE SECRETARY AND the commissioner in a format, and containing such information, as prescribed by the commissioner in consultation with the secretary [of state].

B. 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 CONDUCT IMPLEMENTATION ACTIVITIES IN A BROWNFIELD OPPORTUNITY AREA DESIGNATED PURSUANT TO THIS SECTION. SUCH FINANCIAL ASSISTANCE SHALL NOT EXCEED NINETY PERCENT OF THE COSTS OF SUCH ACTIVITIES. IMPLEMENTATION ACTIVITIES ELIGIBLE FOR FUNDING INCLUDE BUT ARE NOT LIMITED TO, DEMOLITION, ASBESTOS REMOVAL, FINANCIAL ANALYSIS, INFRASTRUCTURE

1 IMPROVEMENT, DESIGN, LANDSCAPING, ENVIRONMENTAL ASSESSMENT, AND ENHANCE-  
2 MENT OR ADDITION OF PUBLIC AMENITIES. APPLICATIONS FOR SUCH ASSISTANCE  
3 SHALL PROVIDE A DESCRIPTION OF THE PROPOSED ACTIVITY OR ACTIVITIES  
4 SUFFICIENT TO DEMONSTRATE ANTICIPATED COSTS AND HOW THE PROPOSED ACTIV-  
5 ITY OR ACTIVITIES ADVANCES THE GOALS AND OBJECTIVES OF THE BROWNFIELD  
6 OPPORTUNITY PLAN.

7 [e] C. Funding preferences [shall be given to applications] for [such]  
8 assistance PURSUANT TO THIS SUBDIVISION SHALL BE GIVEN TO APPLICATIONS  
9 that relate to areas having one or more of the following character-  
10 istics:

11 (1) areas for which the application is a partnered application by a  
12 municipality and a community based organization;

13 (2) areas with concentrations of known or suspected brownfield sites;

14 (3) areas for which the application demonstrates support from a muni-  
15 cipality and a community based organization;

16 (4) areas showing indicators of economic distress including low resi-  
17 dent incomes, high unemployment, high commercial vacancy rates,  
18 depressed property values; and

19 (5) areas with known or suspected brownfield sites presenting strate-  
20 gic opportunities to stimulate economic development, community revitali-  
21 zation or the siting of public amenities.

22 [f] D. The [commissioner] SECRETARY, upon the receipt of an applica-  
23 tion for such assistance from a community based organization not in  
24 cooperation with the local government having jurisdiction over the  
25 proposed brownfield opportunity area, shall request the municipal  
26 government to review and state the municipal government's support or  
27 lack of support. The municipal government's statement shall be consid-  
28 ered a part of the application.

29 [g] E. Prior to making an award for assistance, the [commissioner]  
30 SECRETARY shall notify the temporary president of the senate and the  
31 speaker of the assembly.

32 [h] F. Following notification to the applicant that assistance has  
33 been awarded, and prior to disbursement of funds[, a contract shall be  
34 executed between the department and the applicant or co-applicants. The  
35 commissioner shall establish terms and conditions for such contracts as  
36 the commissioner deems appropriate in consultation with the secretary of  
37 state, including provisions to define: applicant's], THE APPLICANT OR  
38 APPLICANTS SHALL SUBMIT A PROPOSED IMPLEMENTATION WORK PLAN TO THE  
39 DEPARTMENT AND RECEIVE APPROVAL FOR SUCH WORK PLAN. THE WORK PLAN SHALL  
40 INCLUDE work scope, work schedule, and deliverables[;], INCLUDING fiscal  
41 reports on budgeted and actual use of funds expended[;], and [require-  
42 ments] THE ANTICIPATED DATE for submission of a final [fiscal] report.  
43 The [contract] WORK PLAN shall also require the distribution of work  
44 products to the department, and, for community based organizations, to  
45 the applicant's municipality. WITHIN SIXTY DAYS OF RECEIPT OF A  
46 PROPOSED WORK PLAN OR REVISED WORK PLAN, THE DEPARTMENT SHALL EITHER  
47 APPROVE THE WORK PLAN OR PROVIDE THE APPLICANT OR APPLICANTS WITH A  
48 NOTICE OF DEFICIENCY, WHICH SHALL INCLUDE A DETAILED DESCRIPTION OF WHAT  
49 FURTHER ELEMENTS ARE REQUIRED TO REVISE THE WORK PLAN. Applicants shall  
50 be required to make [the results] ALL WORK PRODUCTS publicly available.  
51 [Such contract shall further include a provision providing that if]

52 G. IF any responsible party payments become available to the appli-  
53 cant, the amount of such payments attributable to expenses paid by the  
54 award shall be paid to the department by the applicant; provided that  
55 the applicant may first apply such responsible party payments towards  
56 actual project costs incurred by the applicant.

1 S 6. Subdivision 7 of section 970-r of the general municipal law, as  
2 amended by chapter 390 of the laws of 2008, is amended to read as  
3 follows:

4 7. Amendments to designated area. Any proposed amendment to a brown-  
5 field opportunity area [designated pursuant to this section] OR BROWN-  
6 FIELD OPPORTUNITY AREA PLAN shall be [proposed] SUBMITTED TO, and  
7 reviewed by the secretary[, in the same manner and using the same crite-  
8 ria set forth in this section and applicable to an initial nomination  
9 for the designation of a brownfield opportunity area]. THE SECRETARY  
10 SHALL PROMULGATE RULES THAT CONTAIN CRITERIA AND TIMEFRAMES FOR REVIEW  
11 AND APPROVAL OF AMENDMENTS.

12 S 7. Subdivision 8 of section 970-r of the general municipal law, as  
13 added by section 1 of part F of chapter 1 of the laws of 2003, is  
14 amended to read as follows:

15 8. Applications. a. All applications for [pre-nomination study]  
16 assistance [or applications] AND NOMINATIONS for designation of a brown-  
17 field opportunity area shall demonstrate that the following community  
18 participation activities have been or will be performed by the appli-  
19 cant:

20 (1) identification of the interested public and preparation of a  
21 contact list;

22 (2) identification of major issues of public concern;

23 (3) provision [to] FOR access to [the draft and final] ANY application  
24 for [pre-nomination] assistance and NOMINATION FOR brownfield opportu-  
25 nity area designation AND supporting documents in a manner convenient to  
26 the public;

27 (4) public notice and newspaper notice of (i) the intent of the muni-  
28 cipality and/or community based organization to [undertake a pre-nomina-  
29 tion process or prepare] SEEK ASSISTANCE FOR OR NOMINATE a brownfield  
30 opportunity area [plan], and (ii) the availability of such application.

31 b. Application for nomination of a brownfield opportunity area shall  
32 provide the following minimum community participation activities:

33 (1) a comment period of at least thirty days on a draft application;

34 (2) a public meeting on a brownfield opportunity area draft applica-  
35 tion.

36 S 8. Subdivision 10 of section 970-r of the general municipal law, as  
37 added by section 31 of part BB of chapter 56 of the laws of 2015, is  
38 amended to read as follows:

39 10. [The] BY DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, THE secre-  
40 tary shall establish criteria for brownfield opportunity area conform-  
41 ance determinations for purposes of the brownfield redevelopment tax  
42 credit component pursuant to clause (ii) of subparagraph (B) of para-  
43 graph [(5)] FIVE of subdivision (a) of section twenty-one of the tax  
44 law. In establishing criteria, the secretary shall be guided by, but not  
45 limited to, the following considerations: how the proposed use and  
46 development advances the designated brownfield opportunity area plan's  
47 vision statement, goals and objectives for revitalization; how the  
48 density of development and associated buildings and structures advances  
49 the plan's objectives, desired redevelopment and priorities for invest-  
50 ment; and how the project complies with zoning and other local laws and  
51 standards to guide and ensure appropriate use of the project site.

52 S 9. Section 970-r of the general municipal law is amended by adding a  
53 new subdivision 11 to read as follows:

54 11. BY DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, THE SECRETARY  
55 SHALL ESTABLISH CRITERIA FOR DETERMINING CONSISTENCY WITH THIS SECTION  
56 FOR PURPOSES OF BROWNFIELD OPPORTUNITY AREA DESIGNATIONS. IN ESTABLISH-

1   ING CRITERIA, THE SECRETARY SHALL BE GUIDED BY, BUT NOT LIMITED TO, THE  
2   FOLLOWING CONSIDERATIONS: HOW ADEQUATELY THE NOMINATION DESCRIBES THE  
3   CURRENT STATUS OF THE BROWNFIELD OPPORTUNITY AREA, WHETHER THE NOMI-  
4   NATION PRESENTS AN ATTAINABLE AND REALISTIC PLAN FOR REVITALIZATION, AND  
5   WHETHER THE PLAN IS SUPPORTED BY THE COMMUNITY.  
6   S 10. This act shall take effect immediately.