

# STATE OF NEW YORK

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7491--B

2023-2024 Regular Sessions

## IN ASSEMBLY

May 25, 2023

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Introduced by M. of A. BRONSON, CARROLL, SHRESTHA, LUNSFORD, WOERNER, REYES, GUNTHER, AUBRY, SEAWRIGHT, BICHOTTE HERMELYN, WILLIAMS, RAMOS, BURDICK, EPSTEIN, BRABENEC, K. BROWN, GONZALEZ-ROJAS, MAHER, SIMONE, MAMDANI, COLTON, McMAHON, KELLES, CLARK, GALLAGHER, BURGOS, DAVILA, BORES, ROZIC, OTIS, BLUMENCRANZ, RAGA -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the labor law, in relation to prevailing wage requirements applicable to brownfield remediation work performed under private contract

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The closing paragraph of subdivision 1-a of section 27-1407  
2 of the environmental conservation law, as added by section 3 of part BB  
3 of chapter 56 of the laws of 2015, is amended to read as follows:  
4 Sites are not eligible for tangible property tax credits if: (a) the  
5 contamination from ground water or soil vapor is solely emanating from  
6 property other than the site subject to the present application; or (b)  
7 the department has determined that the property has previously been  
8 remediated pursuant to titles nine, thirteen and fourteen of this arti-  
9 cle, title five of article fifty-six of this chapter and article twelve  
10 of the navigation law such that it may be developed for its then  
11 intended use; or (c) not in compliance with section two hundred twenty-  
12 four-g of the labor law.  
13 § 2. Paragraphs (c) and (d) of subdivision 8 of section 27-1407 of the  
14 environmental conservation law, as amended by section 3 of part A of

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

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chapter 577 of the laws of 2004, are amended and a new paragraph (e) is added to read as follows:

(c) there is an order providing for the investigation, removal, or remediation of contamination relating to the brownfield site against the person who is requesting participation; ~~[or]~~

(d) ~~[The]~~ the person requesting participation is subject to an outstanding claim as provided in subdivision four of this section~~[-]~~; or

(e) the person requesting participation does not demonstrate compliance with section two hundred twenty-four-g of the labor law.

§ 3. Subdivision 5 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, is amended to read as follows:

5. One authorizing the department to terminate a brownfield site cleanup agreement at any time during the implementation of such agreement if the applicant implementing such agreement fails to substantially comply with such agreement's terms and conditions, including the prevailing wage requirements of section two hundred twenty-four-g of the labor law;

§ 4. The labor law is amended by adding a new section 224-g to read as follows:

§ 224-g. Prevailing wage requirements applicable to brownfield remediation work performed under private contract. 1. Subject to the provisions of this section, covered brownfield remediation work shall be subject to prevailing wage requirements in accordance with sections two hundred twenty and two hundred twenty-b of this article as it relates to the following remediation activities: (a) all construction activities including without limitation grading, contouring, trenching, grouting, capping, excavating, incinerating, thermally treating, chemically treating, biologically treating, constructing leachate collection and treatment systems or application of innovative technologies approved by the department; (b) interim remedial measures; and (c) restoration of the environment. Remediation activities which are as defined in paragraph (a), (b), (e), (g), or (h) of subdivision five of section 27-1405 of the environmental conservation law shall not be subject to prevailing wage requirements in accordance with this section.

2. A project shall be deemed a "covered brownfield remediation work" where: (a) the site is seeking or has received a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law; and (b) where the work is paid for in whole or in part by public funds, where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs and where such project costs are over five million dollars.

3. (a) For purposes of this section, "paid for in whole or in part out of public funds" shall mean any of the following:

(i) The payment of money, by a public entity, or a third party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;

(ii) The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs

1 that would have otherwise been at a higher or market rate except for the  
2 involvement of the public entity;

3 (iii) Money loaned by the public entity that is to be repaid on a  
4 contingent basis;

5 (iv) Credits that are applied by the public entity against repayment  
6 of obligations to the public entity; or

7 (v) Benefits under section four hundred sixty-seven-m of the real  
8 property tax law.

9 (b) For purposes of this section, "public entity" shall include, but  
10 shall not be limited to, the state, a local development corporation as  
11 defined in subdivision eight of section eighteen hundred one of the  
12 public authorities law or section fourteen hundred eleven of the not-  
13 for-profit corporation law, a municipal corporation as defined in  
14 section one hundred nineteen-n of the general municipal law, an indus-  
15 trial development agency formed pursuant to article eighteen-A of the  
16 general municipal law or industrial development authorities formed  
17 pursuant to article eight of the public authorities law, and any state,  
18 local or interstate or international authorities as defined in section  
19 two of the public authorities law; and shall include any trust created  
20 by any such entities.

21 4. For purposes of this section "covered brownfield remediation work"  
22 shall not include the following: (a) Construction work performed under a  
23 pre-hire collective bargaining agreement between an owner or contractor  
24 and a bona fide building and construction trade labor organization which  
25 has established itself as the collective bargaining representative for  
26 all persons who will perform work on such a project, and which provides  
27 that only contractors and subcontractors who sign a pre-negotiated  
28 agreement with the labor organization can perform work on such a  
29 project, or construction work performed under a labor peace agreement,  
30 project labor agreement, or any other construction work performed under  
31 an enforceable agreement between an owner or contractor and a bona fide  
32 building and construction trade labor organization; or

33 (b) an affordable housing project as defined in subdivision twenty-  
34 nine of section 27-1405 of the environmental conservation law.

35 5. Upon request of the commissioner, the department of environmental  
36 conservation shall provide site information, including total  
37 construction project costs and project costs, to the commissioner.

38 6. For purposes of this section, the "fiscal officer" shall be deemed  
39 to be the commissioner. The enforcement of any covered brownfield reme-  
40 diation work pursuant to this section shall be subject to the require-  
41 ments of sections two hundred twenty, two hundred twenty-a, two hundred  
42 twenty-b, two hundred twenty-i, two hundred twenty-three, two hundred  
43 twenty-four-b, and two hundred twenty-seven of this chapter and within  
44 the jurisdiction of the fiscal officer; provided, however, nothing  
45 contained in this section shall be deemed to construe any covered brown-  
46 field remediation work as otherwise being considered public work pursu-  
47 ant to this article.

48 7. The fiscal officer may issue rules and regulations governing the  
49 provisions of this section. Violations of this section shall be grounds  
50 for determinations and orders pursuant to section two hundred twenty-b  
51 of this article.

52 8. Each owner and developer subject to the requirements of this  
53 section shall comply with the objectives and goals of certified minority  
54 and women-owned business enterprises pursuant to article fifteen-A of  
55 the executive law and certified service-disabled veteran-owned busi-  
56 nesses pursuant to article three of the veterans' services law. The

1 department in consultation with the commissioner of the division of  
2 minority and women's business development and the director of the divi-  
3 sion of service-disabled veterans' business development shall make  
4 training and resources available to assist minority and women-owned  
5 business enterprises and service-disabled veteran-owned business enter-  
6 prises on covered brownfield remediation work to achieve and maintain  
7 compliance with prevailing wage requirements. The department shall make  
8 such training and resources available online and shall afford minority  
9 and women-owned business enterprises and service-disabled veteran-owned  
10 business enterprises an opportunity to submit comments on such training.

11 9. (a) The fiscal officer shall report to the governor, the temporary  
12 president of the senate, and the speaker of the assembly by July first,  
13 two thousand twenty-five, and annually thereafter, on the participation  
14 of minority and women-owned business enterprises in relation to covered  
15 brownfield remediation work subject to the provisions of this section as  
16 well as the diversity practices of contractors and subcontractors  
17 employing laborers, workers, and mechanics on such projects.

18 (b) Such reports shall include aggregated data on the utilization and  
19 participation of minority and women-owned business enterprises, the  
20 employment of minorities and women in construction-related jobs on such  
21 projects, and the commitment of contractors and subcontractors on such  
22 projects to adopting practices and policies that promote diversity with-  
23 in the workforce. The reports shall also examine the compliance of  
24 contractors and subcontractors with other equal employment opportunity  
25 requirements and anti-discrimination laws, in addition to any other  
26 employment practices deemed pertinent by the commissioner.

27 (c) The fiscal officer may require any owner or developer to disclose  
28 information on the participation of minority and women-owned business  
29 enterprises and the diversity practices of contractors and subcontrac-  
30 tors involved in the performance of any covered brownfield remediation  
31 work. It shall be the duty of the fiscal officer to consult and to  
32 share such information in order to effectuate the requirements of this  
33 section.

34 § 5. This act shall take effect on the first of January next succeed-  
35 ing the date on which it shall have become a law and shall apply to all  
36 requests for participation received pursuant to section 27-1407 of the  
37 environmental conservation law received on or after such date.