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

1006

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. SAYWARD, DUPREY, CASTELLI -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, CALHOUN, CROUCH, FINCH, GIGLIO, HAYES, KOLB, McDONOUGH, MOLINARO, OAKS, RAIA, SALADINO, TEDISCO, THIELE, TOBACCO -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the general municipal law, in relation to brownfields and historic fills and mixed historic fill programs

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

Section 1. Paragraph (a) of subdivision 1 of section 27-1405 of the environmental conservation law, as amended by section 2 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

(a) "Participant" shall mean an applicant who either: (i) was the owner of the site at the time of the disposal or discharge of contaminants, UNLESS SUCH PERSON ACTING IN A LANDLORD CAPACITY AND SUCH PERSON'S TENANTS CAUSED THE DISPOSAL OR DISCHARGE OF CONTAMINANTS PROVIDED SUCH LANDLORD CAN DEMONSTRATE THROUGH LEASE PROVISIONS THE TENANTS WERE RESPONSIBLE FOR DISPOSAL OF THEIR OWN HAZARDOUS WASTE AND ASSOCIATED CONTAMINATION, IN WHICH CASE A LANDLORD IS A VOLUNTEER. FOR THE PURPOSES OF THIS PARAGRAPH, THE LANDLORD IS ONLY ACTING IN A LANDLORD CAPACITY IF SUCH LANDLORD HAS NO PRESENT OWNERSHIP INTEREST OR WITHIN ONE YEAR PRIOR OWNERSHIP INTEREST IN A TENANT CONNECTED TO THE SITE AT THE TIME OF THE DISPOSAL OR DISCHARGE; or (ii) is otherwise a person responsible according to applicable principles of statutory or common law liability, unless such person's liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants.

S 2. The first undesignated paragraph and paragraph (a) of subdivision 2 of section 27-1405 of the environmental conservation law, as amended

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

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by section 2 of part A of chapter 577 of the laws of 2004, are amended and a new paragraph (f) is added to read as follows:

"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 a contaminant, INCLUDING, BUT NOT LIMITED TO, ANY REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OF CONTAMINATED HISTORIC FILL. Such term 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;]

(F) PROVIDED HOWEVER, FOR ALL FIVE CATEGORIES OF INELIGIBLE SITES IN PARAGRAPHS (A) THROUGH (E) OF THIS SUBDIVISION, A VOLUNTEER SHALL NOT BE DEEMED INELIGIBLE TO PARTICIPATE IN REGARDS TO ANY SUCH REAL PROPERTY IF SUCH VOLUNTEER INTENDS TO ACQUIRE SUCH REAL PROPERTY AND ASSUME RESPONSIBILITY, NOT FOR PAST COSTS INCURRED PRIOR TO APPLICATION, BUT FOR ALL FUTURE COSTS TO COMPLETE THE REMEDIATION OF THE SITE SUBJECT TO A REUSE PLAN AS NEGOTIATED WITH THE DEPARTMENT, AND ENTERS INTO A BROWNFIELD CLEANUP AGREEMENT IN ACCORDANCE WITH SECTION 27-1409 OF THIS TITLE. IN THE CASE OF SITES SUBJECT TO FEDERAL JURISDICTION, THE VOLUNTEER MUST SEEK APPROVAL FROM THE APPROPRIATE FEDERAL AGENCIES TO ENTER THE BROWNFIELD CLEANUP PROGRAM PURSUANT TO THIS TITLE. THE ONGOING STATE OR FEDERAL ENVIRONMENTAL ENFORCEMENT ACTIONS AND/OR ORDERS WILL NOT BE SUPERSEDED BY THE VOLUNTEER'S BROWNFIELD CLEANUP AGREEMENT, BUT WILL REMAIN IN FULL FORCE AND EFFECT UNTIL SUCH TIME AS THE VOLUNTEER RECEIVES A CERTIFICATE OF COMPLETION PURSUANT TO SECTION 27-1419 OF THIS TITLE. IN THE EVENT THE VOLUNTEER DOES NOT RECEIVE THE CERTIFICATE OF COMPLETION OR SUCH CERTIFICATE OF COMPLETION IS REVOKED FOR ANY REASON, THE STATE OR FEDERAL ENFORCEMENT ACTION WILL RESUME AFTER TIMELY NOTICE TO ALL PARTIES.

S 3. Section 27-1405 of the environmental conservation law is amended by adding three new subdivisions 17-a, 17-b and 17-c to read as follows:

17-A. "CONTAMINATED HISTORIC FILL" MEANS NON-INDIGENOUS OR NON-NATIVE MATERIAL, HISTORICALLY DEPOSITED OR DISPOSED IN THE GENERAL AREA OF, OR ON, A SITE INTENDED TO CREATE USEABLE LAND BY FILLING WATER BODIES, WETLANDS OR TOPOGRAPHIC DEPRESSIONS, WHICH IS IN NO WAY CONNECTED WITH THE SUBSEQUENT OPERATIONS AT THE LOCATION OF THE EMPLACEMENT, AND WHICH WAS CONTAMINATED PRIOR TO EMPLACEMENT, AND CONTAINS CONTAMINANTS ABOVE THE UNRESTRICTED SOIL CLEANUP OBJECTIVES PURSUANT TO 6 NYCRR SECTION 375-6.8(A). "CONTAMINATED HISTORIC FILL" GENERALLY INCLUDES INCINERATOR RESIDUE, COAL, COAL ASH OR CINDERS, MUNICIPAL SOLID WASTE INCINERATOR ASH, FLY ASH AND OTHER FORMS OF ASH AND CINDERS, INCLUDING BUT NOT LIMITED TO WOOD ASH, RAILROAD BALLAST, ASBESTOS, CONSTRUCTION DEBRIS AND DEMOLITION DEBRIS CONTAMINATED WITH SIGNIFICANT PETROLEUM COMPOUNDS, AND MUNICIPAL SOLID WASTE PLACED IN LANDFILLS THAT HAVE NOT BEEN PROPERLY CLOSED PURSUANT TO 6 NYCRR PART 360, WHICH IS DETERMINED TO BE LEACHING

CONTAMINANTS INTO THE ENVIRONMENT ABOVE THE UNRESTRICTED SOIL CLEANUP OBJECTIVE PURSUANT TO 6 NYCRR SECTION 375-6.8(A). "CONTAMINATED HISTORIC FILL" DOES NOT INCLUDE ANY MATERIAL WHICH IS CHEMICAL PRODUCTION WASTE OR WASTE PRODUCED ON THE SITE FROM PROCESSING OF METAL OR MINERAL ORES, RESIDUES, SLAG OR TAILINGS, WHICH OTHERWISE FALL UNDER THE DEFINITION OF CONTAMINANTS.

17-B. "UNCONTAMINATED HISTORIC FILL" MEANS CONSTRUCTION DEBRIS AND DEMOLITION DEBRIS NOT CONTAMINATED WITH SIGNIFICANT PETROLEUM COMPOUNDS, DREDGE SPOILS NOT CONTAMINATED WITH CONTAMINANTS ABOVE THE UNRESTRICTED SOIL CLEANUP OBJECTIVES PURSUANT TO 6 NYCRR SECTION 375-6.8(A), AND MUNICIPAL SOLID WASTE USED TO FILL LAND WHICH IS NOT A LANDFILL AS DEFINED UNDER 6 NYCRR PART 360, OR PLACED IN A LANDFILL PROPERLY CLOSED AND BEING MAINTAINED PURSUANT TO 6 NYCRR PART 360.

17-C. "MIXED HISTORIC FILL" SHALL MEAN UNCONTAMINATED HISTORIC FILL THAT IS MIXED WITH CONTAMINATED HISTORIC FILL AND SUCH CONTAMINATED HISTORIC FILL CANNOT BE SEPARATED OUT FROM THE TOTAL HISTORIC FILL; THE ORIGINAL HISTORIC FILL SHALL BE DEEMED CONTAMINATED HISTORIC FILL.

S 4. 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, OR WITHIN FIFTEEN DAYS OF THE CLOSE OF THE INITIAL PUBLIC COMMENT PERIOD, WHICHEVER IS LATER, that such request is either accepted or rejected. "BEST EFFORTS" MEANS THAT THE DEPARTMENT PROJECT COUNSEL AND PROJECT MANAGER ASSIGNED TO THE APPLICATION ARE DILIGENTLY EVALUATING THE APPLICATION AND HAVE ISSUED A NOTICE TO THE APPLICANT WITHIN THIS TIME FRAME. IN THE EVENT A NOTICE IS NOT ISSUED DURING THIS TIME FRAME, THE APPLICATION IS DEEMED APPROVED NO LATER THAN THIRTY DAYS AFTER THE TERMINATION OF THIS TIME FRAME FOR REVIEW.

S 5. Subdivision 1, the second undesignated paragraph of subdivision 4 and paragraph (b) of subdivision 7 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, are amended to read as follows:

1. Remedial programs. All remedial programs shall be protective of public health and the environment including but not limited to groundwater according to its classification pursuant to section 17-0301 of this chapter; drinking water, surface water and air (including indoor air); sensitive populations, including children; and ecological resources, including fish and wildlife. In all cases, the target risk of residual contamination at a site shall not exceed an excess cancer risk of one in one million for carcinogenic end points and a hazard index of one for non-cancer end points. WITH RESPECT TO INDOOR AIR, THE DEPARTMENT OF HEALTH SHALL ASSESS WHICH CONTAMINANTS ARE MOST HARMFUL TO PUBLIC HEALTH COMMONLY PRESENT AT BROWNFIELD SITES AND PRIORITIZE SUCH CONTAMINANTS BASED ON TOXICITY AND CONCENTRATION FOR PURPOSES OF THIS PROGRAM.

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 APPLICANTS WHO MUST INSTALL A VAPOR MITIGATION SYSTEM EVEN AFTER ACHIEVING TRACK 1 SOIL CLEANUP OBJECTIVES, OR volunteers whose proposed remedial program for the remediation of groundwater may require

the long-term employment of institutional or engineering controls after the bulk reduction of groundwater contamination to asymptotic levels has been achieved but whose program would otherwise conform with the requirements necessary to qualify for Track 1, shall qualify for Track 1.

(b) The owner of a brownfield site at which institutional or engineering controls, OR VAPOR MITIGATION SYSTEMS, are employed pursuant to this title shall, unless otherwise provided in writing by the department, annually submit to the department a written statement by an individual licensed or otherwise authorized in accordance with article one hundred forty-five of the education law to practice the profession of engineering, or by such other expert as the department may find acceptable certifying under penalty of perjury that the institutional controls and/or engineering controls, OR VAPOR MITIGATION SYSTEMS, employed at such site are unchanged from the previous certification and that nothing has occurred that would impair the ability of such control to protect the public health and environment, or constitute a violation or failure to comply with any operation and maintenance plan for such controls, OR VAPOR MITIGATION SYSTEMS, and giving access to the department to such real property to evaluate continued maintenance of such controls.

S 6. Subdivision 3 and the first undesignated paragraph and paragraph (d) of subdivision 5 of section 27-1419 of the environmental conservation law, subdivision 3 as amended by chapter 390 of the laws of 2008 and the first undesignated paragraph and paragraph (d) of subdivision 5 as amended by section 9 of part A of chapter 577 of the laws of 2004, are amended to read as follows:

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 WITHIN THIRTY DAYS OF RECEIPT. 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 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 agreement pursuant to section 27-1409 of this title, and the applicable percentages available 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 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.

IN THE EVENT THE DEPARTMENT OR THE DEPARTMENT OF HEALTH CONCLUDES THAT IT IS NECESSARY FOR THE APPLICANT TO PERFORM ADDITIONAL REMEDIAL WORK NOT INCLUDED IN THE APPROVED REMEDIAL WORK PLAN, BUT WHICH THE DEPARTMENT HAS CONCLUDED IS NECESSARY TO SATISFY THE TECHNICAL REQUIREMENTS OF THE PROGRAM PURSUANT TO SECTION 27-1415 OF THIS TITLE, THE CERTIFICATE OF COMPLETION WILL STILL BE ISSUED WITHIN THIRTY DAYS OF RECEIPT OF THE FINAL ENGINEERING REPORT FOR THE WORK PERFORMED UNDER THE APPROVED REMEDIAL ACTION WORK PLAN AND A SUPPLEMENTAL REMEDIAL ACTION WORK PLAN MUST BE SUBMITTED INCLUDING A SCHEDULE FOR PERFORMANCE FOR ANY ADDITIONAL ACTIONS THE DEPARTMENT OR THE DEPARTMENT OF HEALTH DEEM NECESSARY. IN THE EVENT THE SUPPLEMENTAL WORK REQUIRED IN THE REMEDIAL ACTION WORK PLAN IS NOT COMPLETED PURSUANT TO ANY SUPPLEMENTAL WORK PLAN, THE DEPARTMENT MAY REOPEN THE CERTIFICATE OF COMPLETION PURSUANT TO THE REOPENER IN SUBPARAGRAPH (I) OF PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION 27-1421 OF THIS TITLE AFTER ALL ADMINISTRATIVE JUDICIAL REVIEWS HAVE BEEN EXHAUSTED.

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, AT WHICH TIME THE SUCCESSORS AND ASSIGNS ASSUME ALL REMAINING RESPONSIBILITY FOR THE BROWNFIELD SITE. Further, a certificate of completion may be modified or revoked by the commissioner upon a finding that:

(d) There is good cause for such modification or revocation BASED ON THE APPLICANT OR THEIR SUCCESSOR AND ASSIGNS FAILURE TO MAINTAIN THE CONTROLS IN THE ENVIRONMENTAL EASEMENT OR ANY FUTURE CONTAMINATION ON OR EMANATING FROM THE SITE.

S 7. The environmental conservation law is amended by adding a new section 27-1437 to read as follows:

S 27-1437. UNCONTAMINATED HISTORIC FILL AND MIXED HISTORIC FILL PROGRAMS.

THE DEPARTMENT OR ANY DELEGATED MUNICIPALITY IS AUTHORIZED TO CREATE A BENEFICIAL USE DETERMINATION PROGRAM FOR THE REUSE AND RECYCLING OF UNCONTAMINATED HISTORIC FILL AND THE MANAGEMENT OF MIXED HISTORIC FILL. IN THE EVENT A MUNICIPALITY REQUESTS DELEGATION TO ADMINISTER SUCH A BENEFICIAL USE DETERMINATION PROGRAM FOR UNCONTAMINATED HISTORIC FILL AND MIXED HISTORIC FILL, THE MUNICIPALITY MUST PROPOSE A PROGRAM THAT WILL BE SUBJECT TO APPROVAL BY THE DEPARTMENT. AT A MINIMUM, THE PROGRAM MUST INCLUDE SAMPLING REQUIREMENTS DESIGNED TO FULLY CHARACTERIZE THE NATURE OF THE MATERIAL, A PROCEDURE TO APPLY FOR AND RECEIVE APPROVAL FOR EXCAVATION AND TRANSPORTATION OF SUCH MATERIAL FOR REUSE AS FILL ON ANOTHER SITE PROVIDED SUCH MATERIAL IS REUSED IN A MANNER AND IN LOCATIONS APPROPRIATE FOR SUCH REUSE. IN ADDITION THE DEPARTMENT SHALL ISSUE A NO FURTHER ACTION LETTER TO THE PARTY ATTEMPTING TO USE SUCH MATERIAL AND THE PROPOSED END USE DEPOSITION SITE OWNER PROVIDED THE MATERIAL HAS BEEN PROPERLY REUSED. THE PROCESS FOR DETERMINING ACCEPTANCE OF THIS MATERIAL AT THE END USE SITE GIVEN THE INTENDED USE WILL CONSIDER A COMPARISON OF ANALYTICAL DATA FROM THE SIDEWALLS OF THE END

USE SITE OF FINAL DEPOSITION AND THE SOURCE SITE UNCONTAMINATED AND/OR MIXED HISTORIC FILL MATERIAL. IF THE COMPARISON INDICATES THAT:

1. THE GROUP AND CATEGORY OF COMPOUNDS IDENTIFIED IN ANALYTICAL DATA FROM BOTH SITES ARE SIMILAR ON BOTH SITES; AND

2. CONCENTRATIONS ARE SIMILAR IN THE SOURCE MATERIAL TO THE DEPOSITION SITE AND WILL NOT CREATE A NEGATIVE IMPACT TO THE FINAL DISPOSAL SITE, THEN, AND ONLY THEN, THE FILL CAN BE ACCEPTED FOR REUSE. THE NO FURTHER ACTION LETTER BY THE DEPARTMENT SHALL CONFIRM THE MATERIAL HAS BEEN PROPERLY REUSED AND NO FURTHER ACTION BY THE DEPARTMENT IS REQUIRED.

S 8. The environmental conservation law is amended by adding a new section 27-1439 to read as follows:

S 27-1439. EXPEDITED REMEDIATION PROGRAM FOR MINIMALLY CONTAMINATED SITES.

TO THE EXTENT THAT A PARTY DOES NOT DESIRE TO PARTICIPATE IN THE BROWNFIELD CLEANUP PROGRAM, BUT DOES DESIRE THE LIABILITY LIMITATION GRANTED UNDER SECTION 27-1421 OF THIS TITLE, SUCH PARTY MAY ELECT TO PARTICIPATE IN AN EXPEDITED REMEDIATION PROGRAM RESERVED FOR MINIMALLY CONTAMINATED SITES SUBJECT TO A STIPULATION AGREEMENT AND REMEDIAL WORK PLAN SUBSEQUENT TO COMPLETION OF A SITE INVESTIGATION REPORT. THE SITES ELIGIBLE TO THIS PROGRAM ARE DEFINED AS SITES WHERE: 1. THE SUSPECT CONTAMINATION IS NOT KNOWN BUT THE HISTORIC SOURCE OF CONTAMINATION IS NOT LIKELY TO HAVE GENERATED SIGNIFICANT LEVELS OF CONTAMINATION, OR 2. THE CONTAMINATION LEVELS ARE KNOWN BUT ARE MINIMAL. CONTAMINATION LEVELS ARE CONSIDERED MINIMAL IF THE ANTICIPATED COST OF REMEDIATION OF THE CONTAMINANT OR CONTAMINATED HISTORIC FILL IS MERELY CONSIDERED BY THE PARTY TO BE A COST OF CONSTRUCTION RATHER THAN A REMEDIAL COST. THE DEPARTMENT SHALL DEVELOP REGULATIONS TO ESTABLISH THE EXPEDITED PROGRAM, WHICH WILL INCLUDE PROCEDURES THAT ARE LESS FORMAL THAN THE BROWNFIELD CLEANUP PROGRAM BUT PROTECTIVE OF THE PUBLIC HEALTH AND THE ENVIRONMENT. THE INTENT OF THIS PROGRAM IS TO ENABLE PROJECTS TO PROCEED ON MINIMALLY CONTAMINATED SITES IN AN EXPEDITED FASHION WITH ALL NECESSARY DEPARTMENT OVERSIGHT IN EXCHANGE FOR A STATE LIABILITY LIMITATION GRANTED AT THE COMPLETION OF THE REQUIRED REMEDIATION.

S 9. Subdivision 2 of section 71-3607 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:

2. Whenever an affected local government receives an application for a building permit or any other application affecting [land use or development of land] ANY OF THE INSTITUTIONAL AND/OR ENVIRONMENTAL CONTROLS IN THE EASEMENT INCLUDING CHANGE OF USE, CHANGE OR IMPACT ON ANY SUBSURFACE CONDITIONS OR CHANGE OR IMPACT ON ANY INDOOR AIR RELATED SYSTEMS INCLUDING VAPOR MITIGATION SYSTEMS OR HEATING AND COOLING SYSTEMS, that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department. THE DEPARTMENT AND THE LOCAL GOVERNMENT SHALL DEVELOP AN EXPEDITED PROCESS FOR IDENTIFYING THOSE PERMITS THAT COULD IN ANY MANNER AFFECT AN ENVIRONMENTAL EASEMENT FROM THOSE PERMITS THAT COULD NOT POSSIBLY HAVE ANY IMPACT. THE DEPARTMENT WILL NOT NEED TO APPROVE ANY PERMITS THAT ARE UNRELATED TO ENVIRONMENTAL EASEMENT INSTITUTIONAL OR ENGINEERING CONTROLS.

S 10. Paragraph a of subdivision 3 and subdivisions 4 and 5 of section 970-r of the general municipal law, paragraph a of subdivision 3 and subdivision 4 as amended by chapter 390 of the laws of 2008 and subdivision 5 as added by section 1 of part F of chapter 1 of the laws of 2003, are 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. 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 AN AREA-WIDE ASTM PHASE I SITE INVESTIGATION STUDY DOCUMENTING THE HISTORIC USES IN THE DISTRICT. A NOMINATION STUDY IS NOT EQUIVALENT TO AND MAY NOT SERVE AS A MASTER PLAN OR OTHER EQUIVALENT LAND USE STUDY. SUCH POSSIBLE MASTER PLAN OR EQUIVALENT LAND USE STUDY MAY BE SEPARATELY DEVELOPED UNDER THIS PROGRAM AS AN IMPLEMENTATION STRATEGY THAT MAY BE ATTACHED TO A FINAL BROWNFIELD OPPORTUNITY AREA PLAN. NO SUCH NOMINATION STUDY SHALL SUPERSEDE AN EXISTING MASTER PLAN OR EQUIVALENT LAND USE STUDY. Such financial assistance shall not exceed ninety percent of the costs of such nomination for any such area.

4. Designation of brownfield opportunity area. Upon completion of a nomination for designation of a brownfield opportunity area, it 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 with the provisions of this section, the brownfield opportunity area shall be designated. A NOMINATION STUDY DOES NOT REQUIRE REVIEW UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT PURSUANT TO ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW. IN THE EVENT THE MUNICIPALITY AND/OR COMMUNITY BASED ORGANIZATION ELECT TO DEVELOP IMPLEMENTATION STRATEGIES, INCLUDING BUT NOT LIMITED TO A MASTER PLAN OR URBAN RENEWAL PLAN, REVIEW UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT PURSUANT TO ARTICLE EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW IS REQUIRED. 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.

5. Priority and preference. The designation of a brownfield opportunity area pursuant to this section is intended to serve as a planning tool. It alone shall not impose any new obligations on any property or property owner. To the extent authorized by law, projects in brownfield opportunity areas designated pursuant to this section shall receive a priority and preference when considered for financial assistance pursuant to articles fifty-four and fifty-six of the environmental conservation law. To the extent authorized by law, projects in brownfield opportunity areas designated pursuant to this section may receive a priority and preference when considered for financial assistance pursuant to any other state, federal or local law. ANY STATE AGENCY WITH PROGRAMS THAT COULD ASSIST DESIGNATED BROWNFIELD OPPORTUNITY AREAS SHALL CONTACT SUCH MUNICIPALITIES AND/OR COMMUNITY BASED ORGANIZATIONS SUBSEQUENT TO A DESIGNATION AND SHALL OFFER ASSISTANCE TO ACCESS ANY POSSIBLE SUPPORTING PROGRAMS OR FUNDING SOURCES.

S 11. This act shall take effect immediately; provided that the amendments to paragraph a of subdivision 3 and subdivision 4 of section 970-r

of the general municipal law made by section ten of this act shall take effect on the same date and in the same manner as chapter 390 of the laws of 2008, takes effect.