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

6316

I N S E N A T E

January 25, 2012

Introduced by Sen. GRISANTI -- 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 and 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:

Section 1. The opening paragraph of section S 27-1403 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:

The legislature hereby finds that there are thousands of abandoned and likely contaminated properties that threaten the health and vitality of the communities they burden, and that these sites, known as brownfields, are also contributing to sprawl development and loss of open space. It is therefore declared that, to advance the policy of the state of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well being, it is appropriate to adopt this act to encourage persons to voluntarily remediate brownfield sites for reuse and redevelopment by establishing within the department a statutory program to encourage cleanup and redevelopment of brownfield sites. All remedies shall be fully 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. A remedial program that achieves a permanent cleanup of a contaminated site, including the restoration of groundwater to its classified use, is to be preferred over a remedial program that does not do so. IT IS THE INTENT OF THE LEGISLATURE THAT THE PROVISIONS OF THIS BROWNFIELD CLEANUP PROGRAM SHALL NOT BE CONSTRUED AS LIMITING OR OTHERWISE AFFECTING ANY AUTHORITY CONFERRED UPON THE DEPARTMENT BY ANY OTHER PROVISION OF LAW. IT IS ALSO THE INTENT OF THE LEGISLATURE TO ENCOURAGE THE CLEANUP AND REDEVELOPMENT OF BROWNFIELDS LOCATED IN BROWNFIELD OPPORTUNITY AREAS, AS DEFINED IN SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW, AND TO ENCOURAGE SUCH REDEVELOPMENT TO BE IN CONFORMANCE WITH THE BROWNFIELD

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

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OPPORTUNITY AREA NOMINATION AND IMPLEMENTATION STRATEGIES APPROVED PURSUANT TO SUCH LAW.

S 2. Paragraph (d) of subdivision 3 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 and a new paragraph (e) is added to read as follows:

(d) the economic benefit to the state to be realized by the expeditious remediation of the property[.]; AND

(E) FOR SITES WITHIN A BROWNFIELD OPPORTUNITY AREA AS DEFINED IN SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW, THE COMPATIBILITY OF THE REMEDY WITH THE BROWNFIELD OPPORTUNITY AREA NOMINATION AND IMPLEMENTATION STRATEGIES, AS VERIFIED BY THE SITE OWNER.

S 3. 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 4. Paragraph (a) of subdivision 4 of section 27-1417 of the environmental conservation law, as amended by section 8 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

(a) Within the limits of appropriations made available pursuant to paragraph j of subdivision three of section ninety-seven-b of the state finance law, the commissioner is authorized to provide grants to any not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code at any site WHICH MAY BE AFFECTED BY A BROWNFIELD SITE REMEDIAL PROGRAM AND IS determined BY THE DEPARTMENT EITHER to pose a significant threat [by the department and which may be affected by a brownfield site remedial program] OR TO BE LOCATED IN A BROWNFIELD OPPORTUNITY AREA AS DEFINED IN SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW. To qualify to receive such assistance, a community group must demonstrate that its membership represents the interests of the community affected by such site. Furthermore, the commissioner is authorized to direct any applicant who is a responsible party, as defined in section 27-1313 of this article, to provide such grants. Such grants shall be known as technical assistance grants and

may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard posed by contamination located or emanating from a brownfield site or sites and the development and implementation of a brownfield site remedial program or programs. Such grants may also be used to hire health and safety experts to advise affected residents on any health assessments and for the education of interested affected community members to enable them to more effectively participate in the remedy selection process. Grants awarded under this section may not be used for the purposes of collecting field sampling data, political activity or lobbying legislative bodies.

S 5. Paragraphs e and f of subdivision 1 of section 27-1420 of the environmental conservation law, as added by chapter 390 of the laws of 2008, are amended to read as follows:

e. the total number of certificates of completion issued; [and]

f. HOW MANY OF THE SITES APPROVED FOR PARTICIPATION, DENIED PARTICIPATION, CURRENTLY PARTICIPATING, AND GRANTED CERTIFICATES OF COMPLETION ARE LOCATED IN BROWNFIELD OPPORTUNITY AREAS AS DEFINED IN SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW; AND

G. such other information as the commissioner may determine is relevant to the status of the administration of the program.

S 6. Subdivision 1 of section 27-1423 of the environmental conservation law, as amended by section 11 of part A of chapter 577 of the laws of 2004, is amended and a new subdivision 3 is added to read as follows:

1. Pursuant to timetables contained in the brownfield site cleanup agreement, AND EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION THREE OF THIS SECTION, the volunteer shall pay all state costs incurred in negotiating and overseeing implementation of such agreement, provided, however, as set forth in a brownfield site cleanup agreement pursuant to this title, that such costs may be based upon a reasonable flat-fee for oversight, which shall reflect the projected future state costs to be incurred in negotiating and overseeing implementation of such agreement. In addition, a participant shall pay all costs incurred by the state up to the effective date of such agreement.

3. NO COSTS SHALL BE INCURRED UNDER THIS SECTION FOR THE NEGOTIATION AND OVERSIGHT OF A BROWNFIELD SITE CLEANUP AGREEMENT FOR SITES WITHIN A BROWNFIELD OPPORTUNITY AREA, PROVIDED THAT THE FUTURE USE OF THE SITE, AS DESCRIBED AND VERIFIED BY THE SITE OWNER, IS COMPATIBLE WITH THE BROWNFIELD OPPORTUNITY AREA NOMINATION AND IMPLEMENTATION STRATEGIES, AND DECLARED AS SUCH BY THE SECRETARY OF STATE. THE FULL COST INCURRED IN NEGOTIATING AND OVERSEEING IMPLEMENTATION OF THE BROWNFIELD SITE CLEANUP AGREEMENT SHALL BE IMMEDIATELY PAYABLE UPON DEVELOPMENT OF THE SITE CONSISTENT WITH THE FUTURE USE AS DESCRIBED AND VERIFIED BY THE SITE OWNER AND WITH THE BROWNFIELD OPPORTUNITY AREA IMPLEMENTATION STRATEGIES DECLARED AS SUCH BY THE SECRETARY OF STATE.

S 7. Subdivision 1 of section 970-r of the general municipal law is amended by adding a new paragraph j to read as follows:

J. "BROWNFIELD OPPORTUNITY AREA" SHALL MEAN A STUDY AREA ACCEPTED BY THE SECRETARY IN CONNECTION WITH A FUNDING AWARD MADE PURSUANT TO THIS SECTION OR A BROWNFIELD OPPORTUNITY AREA DESIGNATED BY THE SECRETARY PURSUANT TO THIS SECTION.

S 8. 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
(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 9. Subdivision 2 of section 970-r of the general municipal law is amended by adding a new paragraph h to read as follows:

H. TO THE EXTENT THAT THERE ARE UNEXPENDED FUNDS APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR FINANCIAL ASSISTANCE AUTHORIZED IN THIS SUBDIVISION, THE COMMISSIONER SHALL SUBALLOCATE SUCH FUNDS TO THE SECRETARY.

S 10. Subdivision 3 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, paragraphs a, b, g, h, i, the opening paragraph and subparagraph 6 of paragraph f as amended by chapter 390 of the laws of 2008, paragraph f as amended by section 1 of part F of chapter 577 of the laws of 2004, is amended to read as follows:

3. State assistance for nominations to designate brownfield opportunity areas. 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.

b. An application for such financial assistance shall include an indication of support from owners of brownfield sites in the [proposed] brownfield opportunity area. All residents and property owners in the [proposed] brownfield opportunity area shall receive notice OF THE APPLICATION in such form and manner as the secretary shall prescribe.

c. No application for such financial assistance shall be considered unless the applicant demonstrates that it has, to the maximum extent practicable, solicited and considered the views of residents of the [proposed] brownfield opportunity area, the views of state and local officials elected to represent such residents and the local organizations representing such residents.

d. Activities eligible to receive such financial assistance shall include the identification, preparation, creation, development and assembly of information and elements to be included in a nomination for designation of a brownfield opportunity area, including but not limited to:

(1) A PLAN FOR THE REDEVELOPMENT AND REVITALIZATION OF THE BROWNFIELD OPPORTUNITY AREA, THAT CONTAINS BUT IS NOT LIMITED TO:
(I) the borders of the [proposed] brownfield opportunity area;
[(2)] (II) the location of each known or suspected brownfield site in the [proposed] brownfield opportunity area;

[(3)] (III) EXISTING DETAILED ASSESSMENTS OF INDIVIDUAL BROWNFIELD SITES AND, WHERE THE CONSENT OF THE SITE OWNER HAS BEEN OBTAINED, THE NEED FOR CONDUCTING ON-SITE ASSESSMENTS;

(IV) KNOWN DATA ABOUT THE ENVIRONMENTAL CONDITIONS OF PROPERTIES IN THE BROWNFIELD OPPORTUNITY AREA;

(V) OWNERSHIP OF THE PROPERTIES IN THE BROWNFIELD OPPORTUNITY AREA;

(VI) THE GOALS AND OBJECTIVES, BOTH SHORT TERM AND LONG TERM, FOR THE ECONOMIC REVITALIZATION OF THE BROWNFIELD OPPORTUNITY AREA;

(VII) IDENTIFICATION OF THE PUBLICLY CONTROLLED AND DEVELOPABLE LAND AND BUILDINGS WITHIN THE BROWNFIELD OPPORTUNITY AREA WHICH ARE OR COULD BE MADE AVAILABLE FOR DEVELOPMENT; AND

(VIII) the identification of strategic sites within the [proposed] brownfield opportunity area AND THE DEVELOPMENT OF STRATEGIES FOR IMPROVING THE LIKELIHOOD THAT SUCH STRATEGIC SITES ARE REUSED OR DEVELOPED CONSISTENT WITH THE BROWNFIELD OPPORTUNITY AREA;

[(4)] (2) AN IMPLEMENTATION STRATEGY THAT INCLUDES, BUT IS NOT LIMITED TO:

(I) the type of potential developments anticipated for sites within the [proposed] brownfield opportunity area proposed by either the current or the prospective owners of such sites;

[(5)] (II) local legislative or regulatory action which may be required to implement a plan for the redevelopment of the [proposed] brownfield opportunity area;

[(6)] (III) priorities for public and private investment in infrastructure, open space, economic development, housing, or community facilities in the [proposed] brownfield opportunity area, INCLUDING THOSE THAT MAY BE ELIGIBLE FOR PRIORITY OR PREFERENCE IN ACCORDANCE WITH SUBDIVISION FIVE OF THIS SECTION;

[(7)] (IV) mapping of current and anticipated uses of the properties and groundwater in the [proposed] brownfield opportunity area;

[(8)] (V) existing detailed assessments of individual brownfield sites and, where the consent of the site owner has been obtained, the need for conducting on-site assessments;

[(9)] (VI) known data about the environmental conditions of properties in the [proposed] brownfield opportunity area;

[(10)] (VII) ownership of the properties in the [proposed] brownfield opportunity area; AND

[(11)] (VIII) descriptions of possible remediation strategies, brownfield redevelopment, necessary infrastructure improvements and other public or private measures needed to stimulate investment, promote revitalization, and enhance community health and environmental conditions[;

(12) the goals and objectives, both short term and long term, for the economic revitalization of the proposed brownfield opportunity area; and

(13) the publicly controlled and other developable lands and buildings within the proposed brownfield opportunity area which are or could be made available for residential, industrial and commercial development].

(3) ACTIVITIES TO ADDRESS KNOWN CONTAMINATION:

(I) THE TESTING OF PROPERTIES TO DETERMINE THE NATURE AND EXTENT OF THE CONTAMINATION (INCLUDING SOIL AND GROUNDWATER);

(II) ENVIRONMENTAL ASSESSMENTS, IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF THE COMMISSIONER;

(III) THE DEVELOPMENT OF A PROPOSED REMEDIATION STRATEGY TO ADDRESS ANY IDENTIFIED CONTAMINATION, IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF THE COMMISSIONER; AND

(IV) ANY OTHER ACTIVITIES RELATING TO ENVIRONMENTAL CONTAMINATION DEEMED APPROPRIATE BY THE SECRETARY.

e. Funding preferences shall be given to applications for such assistance that relate to areas having one or more of the following characteristics:

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

(2) areas with concentrations of brownfield sites;

(3) areas for which the application demonstrates support from a municipality and a community based organization;

(4) areas showing indicators of economic distress including low resident incomes, high unemployment, high commercial vacancy rates, depressed property values; and

(5) areas with brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

f. Each application for such assistance shall be submitted to the secretary in a format, and containing such information, as prescribed by the secretary but shall include, at a minimum, the following:

(1) a statement of the rationale or relationship between the proposed assistance and the criteria set forth in this section for the evaluation and ranking of assistance applications;

(2) the processes by which local participation in the development of the application has been sought;

(3) the process to be carried out under the state assistance including, but not limited to, the goals of and budget for the effort, the work plan and timeline for the attainment of these goals, and the intended process for public participation in the process;

(4) the manner and extent to which public or governmental agencies with jurisdiction over issues that will be addressed in the data gathering process will be involved in this process;

(5) other planning and development initiatives proposed or in progress in the [proposed] brownfield opportunity area;

(6) for each community based organization which is an applicant or a co-applicant, a copy of its determination of tax exempt status issued by the federal internal revenue service pursuant to section 501 of the internal revenue code, a description of the relationship between the community based organization and the area that is the subject of the application, its financial and institutional accountability, its experience in conducting and completing planning initiatives and in working with the local government associated with the [proposed] brownfield opportunity area; and

(7) the financial commitments the applicant will make to the brownfield opportunity area for activities including, but not limited to, marketing of the area for business development, human resource services for residents and businesses in the brownfield opportunity area, and services for small and minority and women-owned businesses.

g. The secretary, upon the receipt of an application for such assistance from a community based organization not in cooperation with the local government having jurisdiction over the [proposed] brownfield opportunity area, shall request the municipal government to review and state the municipal government's support or lack of support. The municipal government's statement shall be considered a part of the application.

h. Prior to making an award for assistance, the secretary shall notify the temporary president of the senate and speaker of the assembly.

i. Following notification to the applicant that assistance has been awarded, and prior to disbursement of funds, a contract shall be

executed between the department and the applicant or co-applicants. The secretary shall establish terms and conditions for such contracts as the secretary deems appropriate, including provisions to define: applicant's work scope, work schedule, and deliverables; fiscal reports on budgeted and actual use of funds expended; and requirements for submission of a final fiscal report. The contract shall also require the distribution of work products to the department, and, for community based organizations, to the applicant's municipality. Applicants shall be required to make the results publicly available. Such contract shall further include a provision providing that if any responsible party payments become available to the applicant, the amount of such payments attributable to expenses paid by the award shall be paid to the department by the applicant; provided that the applicant may first apply such responsible party payments toward any actual project costs incurred by the applicant.

J. TO THE EXTENT THAT THERE ARE UNEXPENDED FUNDS APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR FINANCIAL ASSISTANCE AUTHORIZED IN THIS SUBDIVISION, THE COMMISSIONER SHALL SUBALLOCATE SUCH FUNDS TO THE SECRETARY.

S 11. 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. A. 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. 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.

B. THE SECRETARY SHALL MAKE THE DETERMINATION REGARDING WHETHER A QUALIFIED SITE SUBJECT TO A BROWNFIELD SITE CLEANUP AGREEMENT PURSUANT TO SECTION 27-1409 OF THE ENVIRONMENTAL CONSERVATION LAW IS CONSISTENT WITH A DESIGNATED BROWNFIELD OPPORTUNITY AREA. THE SECRETARY SHALL PROMULGATE REGULATIONS TO ESTABLISH THE PROCESS, CRITERIA AND TIMING FOR MAKING DETERMINATIONS WHETHER A QUALIFIED SITE IS CONSISTENT WITH A DESIGNATED BROWNFIELD OPPORTUNITY AREA.

S 12. Subdivision 5 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:

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.

A. UPON THE AWARD OF FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION, THE SECRETARY SHALL NOTIFY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF PARKS, RECREATION AND HISTORIC PRESERVATION, AND THE EMPIRE STATE DEVELOPMENT CORPORATION OF SUCH ASSISTANCE, AND INCLUDE IN SUCH NOTIFICATION A DESCRIPTION OF THE BROWNFIELD OPPORTUNITY AREA STUDY AREA AND A REQUEST FOR RELEVANT INFORMATION CONCERNING, WITHOUT LIMITATION, LAND USES, CAPITAL PROJECTS AND PLANS RELATING TO PROPERTIES OR THE COMMUNITY WITHIN SUCH BROWNFIELD OPPORTUNITY AREA STUDY AREA, EXISTING PLANS AND PLANNING DOCUMENTS, DEMOGRAPHICS, AND

LOCATION, MAPS AND DESCRIPTION OF EXISTING AND PROPOSED PUBLIC FACILITIES AND INFRASTRUCTURE.

B. UPON THE AWARD OF FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION, THE SECRETARY SHALL NOTIFY RELEVANT FEDERAL AND LOCAL AGENCIES OF SUCH ASSISTANCE, AND INCLUDE IN SUCH NOTIFICATION A DESCRIPTION OF THE BROWNFIELD OPPORTUNITY AREA STUDY AREA AND A REQUEST FOR RELEVANT INFORMATION CONCERNING, WITHOUT LIMITATION, LAND USES, CAPITAL PROJECTS AND PLANS RELATING TO PROPERTIES OR THE COMMUNITY WITHIN SUCH BROWNFIELD OPPORTUNITY AREA STUDY AREA, EXISTING PLANS AND PLANNING DOCUMENTS, DEMOGRAPHICS, AND LOCATION, MAPS AND DESCRIPTION OF EXISTING AND PROPOSED PUBLIC FACILITIES AND INFRASTRUCTURE.

C. WITHIN SIX MONTHS OF AN AWARD OF FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION, THE SECRETARY SHALL SEEK COOPERATION FROM RELEVANT FEDERAL, STATE AND LOCAL AGENCIES IN THE GATHERING OF INFORMATION ABOUT RESOURCES AND OR PROGRAMS THAT MAY BE RELEVANT TO THE BROWNFIELD OPPORTUNITY AREA STUDY AREA.

D. 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.

E. 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.

F. THE SECRETARY SHALL TAKE SUCH MEASURES AS MAY BE NECESSARY TO DETERMINE THE AVAILABILITY OF SUCH FINANCIAL AND OTHER ASSISTANCE AND TO SEEK COOPERATION WITH OTHER STATE, FEDERAL AND LOCAL OFFICIALS IN PROVIDING A PRIORITY AND PREFERENCE TO APPLICANTS PURSUANT TO THIS SUBDIVISION.

G. THE SECRETARY SHALL, IN CONSULTATION WITH OTHER STATE AGENCIES, ISSUE A BROWNFIELD OPPORTUNITY AREA PREFERENCE AND PRIORITY REPORT TO THE GOVERNOR, LEGISLATURE AND MEMBERS SERVING ON THE NEW YORK BROWNFIELDS ADVISORY BOARD PURSUANT TO SECTION 27-1435 OF THE ENVIRONMENTAL CONSERVATION LAW WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SECTION AND EACH SUBSEQUENT YEAR THEREAFTER, IDENTIFYING FUNDING PROGRAMS AND RESOURCES RELEVANT TO AND UTILIZED IN THE IMPLEMENTATION OF BROWNFIELD OPPORTUNITY AREAS. STATE AGENCIES SHALL PROVIDE INFORMATION ABOUT HOW THEY HAVE SOUGHT TO ACHIEVE PREFERENCE AND PRIORITY FOR PROJECTS BUILT CONSISTENT WITH A DESIGNATED BROWNFIELD OPPORTUNITY AREA IN FUNDING PROGRAMS IDENTIFIED IN THE REPORT, INCLUDING BUT NOT LIMITED TO, MODIFYING PROGRAM ELIGIBILITY AND RANKING CRITERIA TO PROVIDE FOR PREFERENCE AND PRIORITY FOR PROJECTS BUILT CONSISTENT WITH A DESIGNATED BROWNFIELD OPPORTUNITY AREA.

H. FOR TEN YEARS FOLLOWING NOTIFICATION OF FINANCIAL ASSISTANCE, MUNICIPALITIES, COMMUNITY BASED ORGANIZATIONS AND COMMUNITY BOARDS AWARDED FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION SHALL BE REQUIRED TO SUBMIT AN ANNUAL REPORT TO THE SECRETARY PROJECTING THE FUNDING, PROGRAMS AND ANY OTHER RESOURCES NEEDED OVER THE UPCOMING FIVE YEARS TO ADVANCE THEIR BROWNFIELD OPPORTUNITY AREA.

S 13. 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 as amended by chapter 386 of the laws of 2007 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 in] IMPLEMENTATION STRATEGIES FOR brownfield opportunity areas. a. Within the limits

of appropriations therefor, the [commissioner, in consultation with 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] IMPLEMENTATION STRATEGIES in a brownfield opportunity area [designated pursuant to this section]. Such financial assistance shall not exceed ninety percent of the costs of such brownfield [site assessment] OPPORTUNITY AREA IMPLEMENTATION STRATEGIES.

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] IMPLEMENTATION STRATEGIES activities eligible for funding include, but are not limited to, (I) testing of properties to determine the nature and extent of the contamination (including soil and groundwater), environmental assessments IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF THE COMMISSIONER, the development of a proposed remediation strategy to address any identified contamination IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF THE COMMISSIONER, 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.] 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; (II) ACTIONS TO EFFECTUATE LOCAL LAND USE CHANGES, INCLUDING ZONING AND NECESSARY LOCAL LAW AMENDMENTS IDENTIFIED IN THE BROWNFIELD OPPORTUNITY AREA; (III) ESTABLISHING DESIGN STANDARDS AND DESIGN GUIDELINES, INCLUDING REQUIREMENTS FOR ENERGY EFFICIENCY, GREEN INFRASTRUCTURE AND WATER RE-USE AND OTHER SUSTAINABILITY AND GREEN DESIGN ELEMENTS; (IV) ACTIVITIES TO MARKET STRATEGIC SITES IN A BROWNFIELD OPPORTUNITY AREA AND OTHER ACTIVITIES TO ATTRACT DEVELOPER INTEREST; AND (V) PRE-DEVELOPMENT ACTIVITIES TO ADVANCE THE BROWNFIELD OPPORTUNITY AREA.

C. Applications for such assistance shall be submitted to the [commissioner] SECRETARY in a format, and containing such information, as prescribed by the [commissioner in consultation with the] secretary [of state].

[e.] D. Funding preferences shall be given to applications for such assistance that relate to areas having one or more of the following characteristics:

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

(2) areas with concentrations of brownfield sites;

(3) areas for which the application demonstrates support from a municipality and a community based organization;

(4) areas showing indicators of economic distress including low resident incomes, high unemployment, high commercial vacancy rates, depressed property values; and

(5) areas with brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

[f.] E. The [commissioner] SECRETARY, upon the receipt of an application for such assistance from a community based organization not in cooperation with the local government having jurisdiction over the [proposed] brownfield opportunity area, shall request the municipal government to review and state the municipal government's support or

lack of support. The municipal government's statement shall be considered a part of the application.

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

[h.] G. Following notification to the applicant that assistance has been awarded, and prior to disbursement of funds, a contract shall be executed between the department and the applicant or co-applicants. The [commissioner] SECRETARY shall establish terms and conditions for such contracts as the [commissioner] SECRETARY deems appropriate [in consultation with the secretary of state], including provisions to define: applicant's work scope, work schedule, and deliverables; fiscal reports on budgeted and actual use of funds expended; and requirements for submission of a final fiscal report. The contract shall also require the distribution of work products to the department, and, for community based organizations, to the applicant's municipality. Applicants shall be required to make the results publicly available. Such contract shall further include a provision providing that if any responsible party payments become available to the applicant, the amount of such payments attributable to expenses paid by the award shall be paid to the department by the applicant; provided that the applicant may first apply such responsible party payments towards actual project costs incurred by the applicant.

H. TO THE EXTENT THAT THERE ARE UNEXPENDED FUNDS APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR FINANCIAL ASSISTANCE AUTHORIZED IN THIS SUBDIVISION, THE COMMISSIONER SHALL SUBALLOCATE SUCH FUNDS TO THE SECRETARY.

S 14. Subdivision 7 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:

7. Amendments to designated area. Any proposed amendment to a brownfield opportunity area designated pursuant to this section shall be proposed TO, and reviewed by the secretary[, in the same manner and using the same criteria set forth in this section and applicable to an initial nomination for the designation of a brownfield opportunity area]. THE SECRETARY SHALL PROMULGATE RULES THAT CONTAIN CRITERIA AND TIMEFRAMES FOR REVIEW AND APPROVAL OF AMENDMENTS.

S 15. Subdivision 8 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:

8. Applications. a. All applications for pre-nomination study assistance or applications for designation of a brownfield opportunity area shall demonstrate that the following community participation activities have been or will be performed by the applicant:

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

(2) identification of major issues of public concern;

(3) provision [to] FOR access to the draft and final application for pre-nomination assistance and brownfield opportunity area designation supporting documents in a manner convenient to the public;

(4) public notice and newspaper notice of (i) the intent of the municipality and/or community based organization to undertake a pre-nomination process or prepare a brownfield opportunity area plan, and (ii) the availability of such application.

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

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

(2) a public meeting on a brownfield opportunity area draft application.

C. AN APPLICANT THAT HAS SATISFACTORILY SUBMITTED INFORMATION EQUIVALENT TO A PRE-NOMINATION STUDY MAY FORGO A PRE-NOMINATION STUDY AND IS ELIGIBLE TO APPLY FOR STATE ASSISTANCE FOR NOMINATIONS TO DESIGNATE A BROWNFIELD OPPORTUNITY AREA.

D. APPLICATIONS FOR PRE-NOMINATION OR NOMINATION PURSUANT TO THIS SECTION MAY BE SUBMITTED TO THE SECRETARY AT ANY TIME DURING THE CALENDAR YEAR.

S 16. This act shall take effect immediately.