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

2696--A

2011-2012 Regular Sessions

I N S E N A T E

January 28, 2011

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, the tax law, the general municipal law, and chapter 174 of the laws of 1968 constituting the New York state urban development corporation act, in relation to eligibility for acceptance into the brownfield cleanup program and assignment of the brownfield redevelopment tax credits provided with respect to such program; and to repeal certain provisions of the environmental conservation law and the tax law relating thereto

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

Section 1. Subdivisions 2 and 4 of section 27-1405 of the environmental conservation law, subdivision 2 as amended by section 2 of part A of chapter 577 of the laws of 2004 and subdivision 4 as added by section 1 of part A of chapter 1 of the laws of 2003, are amended 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 IS KNOWN TO BE PRESENT AT LEVELS EXCEEDING APPLICABLE HEALTH-BASED OR ENVIRONMENTAL STANDARDS OR IS REASONABLY EXPECTED TO BE PRESENT BASED ON HISTORIC COMMERCIAL OR INDUSTRIAL USE OF THE SITE AS ESTABLISHED BY A PHASE I REPORT AS DEFINED IN REGULATIONS PROMULGATED BY THE DEPARTMENT. 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

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

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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;

(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.

4. "Brownfield site cleanup agreement" shall mean an agreement executed in accordance with section 27-1409 of this title by an applicant and the department for the purpose of completing a brownfield site remedial program FOR THOSE SITES FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE APPLICANT ON OR BEFORE JULY FIRST, TWO THOUSAND TWELVE THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE. FOR THOSE SITES FOR WHICH THE DEPARTMENT HAS ISSUED SUCH NOTICE AFTER JULY FIRST, TWO THOUSAND TWELVE, A BROWNFIELD SITE CLEANUP AGREEMENT SHALL MEAN THE ACCEPTANCE OF A REQUEST TO PARTICIPATE IN THE BROWNFIELD CLEANUP PROGRAM PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE AND THE APPLICANT'S ACCEPTANCE OF THE TERMS OF SUCH PARTICIPATION PURSUANT TO SECTION 27-1409 OF THIS TITLE, WITH THE DATE OF THE APPLICANT'S ACCEPTANCE DEEMED TO BE THE DATE OF THE BROWNFIELD SITE CLEANUP AGREEMENT.

S 2. Subdivision 1 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, is 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. IF THE PERSON WHO SEEKS TO PARTICIPATE IN THIS PROGRAM IS ALSO SEEKING TO RECEIVE THE TANGIBLE PROPERTY COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW SUCH PERSON SHALL:

(A) SUBMIT INFORMATION SUFFICIENT TO DEMONSTRATE THAT (I) THE SITE HAS BEEN ABANDONED FOR A PERIOD IN EXCESS OF FIFTEEN YEARS, (II) THE SITE OR A PART THEREOF IS WITHIN OR IMMEDIATELY ADJACENT TO AN ENVIRONMENTAL ZONE AS DEFINED IN PARAGRAPH SIX OF SUBDIVISION (B) OF SECTION TWENTY-ONE OF THE TAX LAW, (III) THE PROJECTED COST OF THE INVESTIGATION

AND REMEDIATION WHICH IS PROTECTIVE FOR THE ANTICIPATED USE OF THE SITE EXCEEDS THE CERTIFIED APPRAISED VALUE OF THE PROPERTY ABSENT CONTAMINATION, OR (IV) THE SITE IS TO BE DEVELOPED AS AFFORDABLE HOUSING WITHIN A LOW OR MODERATE INCOME CENSUS TRACT AND (A) TWENTY PERCENT OF THE UNITS ARE INCOME RESTRICTED; OR (B) A LOW INCOME HOUSING TAX CREDIT PROJECT AND TWENTY PERCENT OF THE UNITS ARE INCOME RESTRICTED OR A PROJECT THAT HAS A MINIMUM OF FIFTY PERCENT OF THE TOTAL UNITS INCOME RESTRICTED WITH AT LEAST TWENTY PERCENT OF THOSE UNITS AT OR BELOW EIGHTY PERCENT OF AREA MEDIAN INCOME (AMI) AND SUBJECT TO AN AGREEMENT WITH A MUNICIPALITY, THE STATE, THE FEDERAL GOVERNMENT, OR AN INSTRUMENTALITY THEREOF, WHERE SUCH AGREEMENT RESTRICTS OCCUPANCY OF THOSE UNITS TO RESIDENTS WHO QUALIFY IN ACCORDANCE WITH AN INCOME TEST;

(B) SUBMIT AN INVESTIGATION REPORT SUFFICIENT TO DEMONSTRATE THAT THE SITE REQUIRES REMEDIATION IN ORDER TO MEET THE REMEDIAL REQUIREMENTS OF THIS TITLE; AND

(C) FOR ANY SITE LOCATED WITHIN A BROWNFIELD OPPORTUNITY AREA AS DESIGNATED BY THE SECRETARY OF STATE PURSUANT TO SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW, A DEMONSTRATION THAT THE DEVELOPMENT OF THE SITE WILL BE IN CONFORMANCE WITH SUCH BROWNFIELD OPPORTUNITY AREA.

S 3. Subdivision 3 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, is amended to read as follows:

3. The department shall notify the person requesting participation in this program within [ten] THIRTY days after receiving such request that such request is either complete or incomplete. In the event the application is determined to be incomplete the department shall specify in writing the missing necessary information required pursuant to this article to complete the application and shall have ten days after receipt of the missing information to issue a written determination if the application is complete.

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] A request for participation that such request is either accepted or rejected, AND, FOR ANY APPLICANT SEEKING TO RECEIVE THE TANGIBLE PROPERTY COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW, A DETERMINATION WHETHER THE CRITERIA FOR RECEIVING SUCH COMPONENT AS SET FORTH IN SUBDIVISION ONE OF THIS SECTION HAVE BEEN MET.

S 5. Paragraphs (c) and (d) 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 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'S PARTICIPATION IN ANY REMEDIATION PROGRAM UNDER THE DEPARTMENT'S OVERSIGHT WAS TERMINATED BY THE DEPARTMENT FOR FAILURE TO SUBSTANTIALLY COMPLY WITH AN AGREEMENT OR ORDER.

S 6. Section 27-1409 of the environmental conservation law is REPEALED and a new section 27-1409 is added to read as follows:

S 27-1409. TERMS OF PARTICIPATION.

1. WITHIN FIFTEEN DAYS OF RECEIPT OF A NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED, THE APPLICANT SHALL, WITHIN FIFTEEN DAYS, ADVISE THE DEPARTMENT IN WRITING WHETHER IT ACCEPTS THE DEPARTMENT'S ELIGIBILITY DETERMINATION AND THE TERMS AND CONDITIONS OF PARTICIPATION AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, THE REGULATIONS PROMULGATED AND GUIDANCE ISSUED PURSUANT TO THIS TITLE, AND OTHER TERMS AND CONDITIONS AS MAY BE CONTAINED IN THE NOTICE. IF THE APPLICANT DOES NOT SO ADVISE THE DEPARTMENT OR DECLINES TO ACCEPT SUCH TERMS AND CONDITIONS, THE APPLICATION SHALL BE DEEMED DENIED.

2. ALL APPLICANTS ACCEPTING PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

(A) THE BOUNDARIES OF THE REAL PROPERTY THAT WILL BE CONSIDERED THE PARTICIPATING BROWNFIELD SITE FOR PURPOSES OF THIS TITLE SHALL BE THOSE SET FORTH IN THE DEPARTMENT'S NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE;

(B) THE APPLICANT SHALL PAY FOR STATE COSTS INCURRED AFTER THE DATE OF THE DEPARTMENT'S NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE; PROVIDED, HOWEVER, THAT 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 DATE OF SUCH NOTICE;

(C) DISPUTES ARISING FROM THE EVALUATION, ANALYSIS, AND OVERSIGHT OF THE IMPLEMENTATION OF THE WORK PLAN SHALL BE RESOLVED IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT;

(D) SECTION EIGHT OF THE COURT OF CLAIMS ACT OR ANY OTHER PROVISION OF LAW TO THE CONTRARY NOTWITHSTANDING, THE STATE SHALL BE IMMUNE FROM LIABILITY AND ACTION WITH RESPECT TO ANY ACT OR OMISSION DONE IN THE DISCHARGE OF THE DEPARTMENT'S RESPONSIBILITIES UNDER THIS TITLE; PROVIDED, HOWEVER, THAT THIS PARAGRAPH SHALL NOT LIMIT THE LIABILITY WHICH MAY OTHERWISE EXIST FOR THE STATE'S GROSS NEGLIGENCE OR UNLAWFUL, WILLFUL OR MALICIOUS ACTS OR OMISSIONS ON THE PART OF THE STATE, STATE AGENCIES, OR THEIR OFFICERS, EMPLOYEES OR AGENTS;

(E) THE DEPARTMENT MAY TERMINATE AN APPLICANT'S PARTICIPATION IN THE BROWNFIELD CLEANUP PROGRAM AT ANY TIME IF THE APPLICANT FAILS TO SUBSTANTIALLY COMPLY WITH THE TERMS AND CONDITIONS OF THIS SECTION, ANY DULY PROMULGATED REGULATIONS IMPLEMENTING THE BROWNFIELD CLEANUP PROGRAM, ANY TERMS AND CONDITIONS SET FORTH IN THE DEPARTMENT'S NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE, OR ANY WORK PLAN APPROVED BY THE DEPARTMENT;

(F) THE DEPARTMENT SHALL NOT CONSIDER THE APPLICANT AN OPERATOR OF A BROWNFIELD SITE BASED SOLELY UPON PARTICIPATION IN THE BROWNFIELD CLEAN-UP PROGRAM FOR PURPOSES OF REMEDIATION LIABILITY;

(G) THE APPLICANT SHALL CONDUCT INVESTIGATION AND/OR REMEDIATION ACTIVITIES PURSUANT TO WORK PLANS APPROVED BY THE DEPARTMENT AND SHALL BEGIN SUCH INVESTIGATION AND/OR REMEDIATION ACTIVITIES WITHIN NINETY DAYS OF APPROVAL OF THE WORK PLAN BY THE DEPARTMENT;

(H) THE APPLICANT SHALL PREPARE AND IMPLEMENT A CITIZEN PARTICIPATION PLAN CONSISTENT WITH THE REQUIREMENTS OF THIS TITLE AS SOON AS POSSIBLE FOLLOWING THE DEPARTMENT'S NOTICE PURSUANT TO SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE BUT PRIOR TO THE PREPARATION OF A DRAFT REMEDIAL INVESTIGATION PLAN BY THE APPLICANT WHICH SHALL INCLUDE A DESCRIPTION OF CITIZEN PARTICIPATION ACTIVITIES ALREADY PERFORMED BY THE APPLICANT AND/OR THE DEPARTMENT; AND

(I) EFFECTIVE UPON THE ACCEPTANCE INTO THE BROWNFIELD CLEANUP PROGRAM PURSUANT TO SUBDIVISION ONE OF THIS SECTION, THE APPLICANT IS DEEMED TO HAVE WAIVED ANY RIGHT SUCH APPLICANT HAS OR MAY HAVE TO MAKE A CLAIM AGAINST THE STATE OF NEW YORK PURSUANT TO ARTICLE TWELVE OF THE NAVIGATION LAW WITH RESPECT TO THE BROWNFIELD SITE, IS DEEMED TO HAVE RELEASED THE NEW YORK ENVIRONMENTAL PROTECTION AND SPILL COMPENSATION FUND FROM ANY AND ALL LEGAL OR EQUITABLE CLAIMS OR CAUSES OF ACTION THAT SUCH APPLICANT MAY HAVE AS A RESULT OF PARTICIPATING IN THE BROWNFIELD CLEANUP PROGRAM OR FULFILLING A BROWNFIELD SITE REMEDIAL PROGRAM AS SUCH SITE.

S 7. Section 27-1411 of the environmental conservation law is amended by adding two new subdivisions 6 and 7 to read as follows:

6. AN APPLICANT SHALL COMMENCE IMPLEMENTATION OF ANY WORK PLAN WITHIN NINETY DAYS OF APPROVAL OF THE PLAN BY THE DEPARTMENT AND COMPLETE THE ACTIVITIES PROVIDED FOR IN SUCH WORK PLAN IN ACCORDANCE WITH THE SCHEDULE SET FORTH THEREIN, OR AS OTHERWISE APPROVED BY THE DEPARTMENT IN WRITING.

7. AN APPLICANT SHALL INCLUDE WITH EVERY REPORT SUBMITTED TO THE DEPARTMENT A SCHEDULE FOR THE SUBMISSION OF ANY SUBSEQUENT WORK PLAN REQUIRED TO MEET THE REQUIREMENTS OF THIS TITLE.

S 8. Subdivision 3 of section 27-1419 of the environmental conservation law, as amended by chapter 390 of the laws of 2008, is 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. 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]. 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 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]. FOR THOSE SITES FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE TAXPAYER AFTER JULY FIRST, TWO THOUSAND TWELVE THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE, THE TANGIBLE PROPERTY COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW SHALL ONLY BE AVAILABLE TO THE TAXPAYER IF SUCH NOTICE INCLUDES A DETERMINATION THAT THE CRITERIA FOR RECEIVING SUCH TAX COMPONENT HAVE BEEN MET. APPLICABLE percentages [to] FOR COMPUTING THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO SECTION TWENTY-ONE OF THE TAX LAW SHALL be determined as follows:

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

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

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

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

(B) WITH RESPECT TO SUCH QUALIFIED SITE FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE TAXPAYER AFTER JULY FIRST, TWO THOUSAND TWELVE THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THIS TITLE, THE APPLICABLE PERCENTAGE FOR THE TANGIBLE PROPERTY CREDIT COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW THE APPLICABLE PERCENTAGE SHALL BE THE SUM OF SIX PERCENT AND THE FOLLOWING ADDITIONAL PERCENTAGES, PROVIDED THAT THE TOTAL PERCENTAGE OF THE TANGIBLE PROPERTY CREDIT COMPONENT SHALL NOT EXCEED TWENTY-FOUR PERCENT AND IS OTHERWISE SUBJECT TO THE LIMITATIONS SET FORTH IN PARAGRAPH THREE-A OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW:

(I) TEN PERCENT FOR A SITE WITHIN AND IN CONFORMANCE WITH A BROWNFIELD OPPORTUNITY AREA DESIGNATED AS SUCH BY THE SECRETARY OF STATE PURSUANT TO SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW. FOR ANY SITE WITHIN AN ENVIRONMENTAL ZONE AND WITHIN AND IN CONFORMANCE WITH A BROWNFIELD OPPORTUNITY AREA, THE APPLICABLE PERCENTAGE UNDER THIS SUBPARAGRAPH SHALL BE TWELVE PERCENT;

(II) FOUR PERCENT FOR SITES ON WHICH THE PRIMARY DEVELOPMENT IS A BUILDING OR BUILDINGS CONSTRUCTED IN CONFORMANCE WITH GREEN BUILDING REGULATIONS PROMULGATED PURSUANT TO SECTION NINETEEN OF THE TAX LAW OR SECTION EIGHTEEN HUNDRED SEVENTY-TWO OF THE PUBLIC AUTHORITIES LAW; AND

(III) EIGHT PERCENT FOR SITES WITHIN AN ENVIRONMENTAL ZONE AS DEFINED IN PARAGRAPH SIX OF SUBDIVISION (B) OF SECTION TWENTY-ONE OF THE TAX LAW OR IN A CENSUS TRACT THAT IS IMMEDIATELY ADJACENT TO AN ENVIRONMENTAL ZONE; OR THE SITE IS TO BE DEVELOPED AS AFFORDABLE HOUSING DEFINED AS HAVING AT LEAST TWENTY PERCENT OF ITS RESIDENTIAL UNITS SUBJECT TO AN AGREEMENT WITH A MUNICIPALITY, THE STATE, THE FEDERAL GOVERNMENT OR AN INSTRUMENTALITY THEREOF, WHERE SUCH AGREEMENT RESTRICTS OCCUPANCY OF THOSE UNITS TO RESIDENTS WHO QUALIFY IN ACCORDANCE WITH AN INCOME TEST AND ARE LOCATED WITHIN A QUALIFIED COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ELIGIBLE CENSUS TRACT AS DEFINED BY THE FEDERAL GOVERNMENT OR THE

SITE IS TO BE DEVELOPED FOR AFFORDABLE HOUSING WITH AT LEAST FIFTY PERCENT OF ITS RESIDENTIAL UNITS AT OR BELOW EIGHTY PERCENT OF AREA MEDIAN INCOME AS DEFINED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR THE METROPOLITAN STATISTICAL AREA OR COUNTY IN WHICH THE SITE IS LOCATED AND SUBJECT TO AN AGREEMENT WITH A MUNICIPALITY, THE STATE, THE FEDERAL GOVERNMENT, OR AN INSTRUMENTALITY THEREOF, WHERE SUCH AGREEMENT RESTRICTS OCCUPANCY OF THOSE UNITS TO RESIDENTS WHO QUALIFY IN ACCORDANCE WITH AN INCOME TEST.

(C) ALL OTHER APPLICABLE PERCENTAGES ARE SET FORTH IN PARAGRAPH FIVE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW.

S 9. 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. 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 (I) was qualified as a volunteer OR (II) MET THE CRITERIA SET FORTH IN SUBDIVISION ONE OF SECTION 27-1407 OF THIS TITLE FOR THE PURPOSE OF RECEIVING THE TANGIBLE PROPERTY COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION TWENTY-ONE OF THE TAX LAW;

(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 GRANTED TO THE DEPARTMENT PURSUANT TO TITLE THIRTY-SIX OF ARTICLE SEVENTY-ONE OF THIS CHAPTER DOES NOT PROVIDE AN EFFECTIVE OR ENFORCEABLE MEANS OF ENSURING THE PERFORMANCE OF MAINTENANCE, MONITORING OR OPERATING REQUIREMENTS, OR THE RESTRICTIONS ON FUTURE LAND USES, INCLUDING RESTRICTIONS ON DRILLING FOR OR WITHDRAWING GROUNDWATER; OR

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

S 10. 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 to read as follows:

1. Pursuant to timetables contained in the brownfield site cleanup agreement, the [volunteer] APPLICANT 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.

S 11. 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 12. 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, (II) INSPECTION FOR THE PURPOSE OF ASCERTAINING CURRENT USES OF THE SITE, AND (III) TAKING SAMPLES IN ACCORDANCE WITH PARAGRAPH A OF THIS SUBDIVISION.

S 13. Chapter 174 of the laws of 1968 constituting the New York state urban development corporation act, is amended by adding a new section 16-v to read as follows:

S 16-V. BROWNFIELDS SHOVEL-READY PROGRAM. 1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT OR ANY OTHER LAW TO THE CONTRARY, THE PROVISIONS OF THIS SECTION SHALL GOVERN ANY PROJECT UNDER THE AUSPICES OF THE CORPORATION FOR URBAN DEVELOPMENT AND RESEARCH OF NEW YORK OR ITS SUCCESSOR IN INTEREST. IT IS THE INTENT OF THE LEGISLATURE AND THE PURPOSE OF THIS LEGISLATION TO STIMULATE ECONOMIC DEVELOPMENT, AFFORDABLE HOUSING, COMMUNITY REVITALIZATION, AND THE SITING OF PUBLIC AMENITIES ON BROWNFIELD SITES IN DISTRESSED URBAN AREAS.

2. THE CHAIRMAN, IN COOPERATION WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, AND THE SECRETARY OF STATE, SHALL DEVELOP A PROGRAM TO PRODUCE NEW JOBS, AFFORDABLE HOUSING AND PUBLIC AMENITIES ON BROWNFIELD SITES IN DISTRESSED URBAN AREAS, THE "BROWNFIELDS SHOVEL-READY PROGRAM". THE CHAIRMAN IS AUTHORIZED TO CARRY OUT A PROGRAM WHICH WILL INCLUDE THE ACQUISITION ASSESSMENT, DEMOLITION, CLEANUP, AND OTHER SITE PREPARATION COSTS NECESSARY TO ACHIEVE THE REUSE FOR THESE PURPOSES BY THE URBAN DEVELOPMENT CORPORATION.

3. ELIGIBLE SITES ARE LIMITED TO BROWNFIELD SITES, AS SUCH TERM IS DEFINED IN SECTION 27-1405 OF THE ENVIRONMENTAL CONSERVATION LAW; AND

A. SITES THAT ARE PART OF A BROWNFIELD OPPORTUNITY AREA OR BROWNFIELD OPPORTUNITY STUDY AREA PURSUANT TO SECTION 970-R OF THE GENERAL MUNICIPAL LAW. THE DEVELOPMENT AND FUTURE USE OF SUCH SITE SHALL BE LIMITED TO USES CONSISTENT WITH AN ADOPTED BROWNFIELD OPPORTUNITY AREA PLAN; OR

B. SITES IDENTIFIED BY THE CHAIRMAN WHICH HAVE NOT ATTRACTED PRIVATE REDEVELOPMENT INTEREST DUE TO THE DEGREE OF CONTAMINATION AND COST OF CORRECTION, PROVIDED THAT SUCH ACQUISITION AND REDEVELOPMENT IS CONSISTENT WITH USES ESTABLISHED, THROUGH A LOCAL PROCESS AND ANY RESTRICTIONS OR LIMITATIONS REGARDING SUCH USES.

4. THE CHAIRMAN SHALL GIVE PRIORITY TO:

A. SITES LOCATED WITHIN A BROWNFIELD OPPORTUNITY AREA, PURSUANT TO SECTION 970-R OF THE GENERAL MUNICIPAL LAW. SPECIFICALLY, THE CHAIRMAN WILL GIVE PRIORITY TO THE CONSIDERATION OF SITES REFERRED PURSUANT TO SECTION 970-R OF THE GENERAL MUNICIPAL LAW; AND

B. PROJECTS IN WHICH THE END USE WILL BE LOW- AND MODERATE-INCOME RESIDENTIAL PROPERTY.

5. EMINENT DOMAIN RESTRICTIONS. A. FOR SITES LOCATED WITHIN A BROWNFIELD OPPORTUNITY AREA, PURSUANT TO SECTION 970-R OF THE GENERAL MUNICIPAL LAW, THE CHAIRMAN SHALL ONLY USE EMINENT DOMAIN POWERS IF THE USE OF SUCH POWER HAS BEEN SPECIFICALLY DISCUSSED AND SUPPORTED BY THE LOCAL COMMUNITY THROUGH THE COMPREHENSIVE BROWNFIELD OPPORTUNITY AREA PLANNING PROCESS, AND IDENTIFIED IN A DESIGNATED BROWNFIELD OPPORTUNITY AREA.

B. FOR ALL OTHER PROJECTS THE CHAIRMAN SHALL NOT EXERCISE ANY EMINENT DOMAIN POWERS PROVIDED FOR IN THIS ACT.

6. THE CHAIRMAN IS AUTHORIZED TO ENTER INTO CONTRACTS TO PREPARE THE SITE; INCLUDING THE SITE ASSESSMENT, DEMOLITION, CLEANUP AND OTHER SITE PREPARATION NECESSARY TO ACHIEVE THE SATISFACTION OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION.

7. BY DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE THE CHAIRMAN SHALL DEVELOP REGULATIONS FOR THE IMPLEMENTATION OF THIS PROGRAM. AT A MINIMUM, SUCH REGULATIONS SHALL INCLUDE PROVISIONS STIPULATING:

A. THAT TO ACHIEVE THE PREPARATION AND REMEDIATION OF BROWNFIELD SITES TO BE OFFERED TO DEVELOPERS OR MANUFACTURERS FOR ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATION. SUCH SITES MAY BE SUBDIVIDED PRIOR TO BEING OFFERED.

B. IN RETURN FOR A REMEDIATED SITE SOLD FOR ONE DOLLAR, DEVELOPERS WOULD AGREE TO:

I. BUILD QUALITY BUILDINGS AT A MINIMUM COST OF THIRTY-EIGHT DOLLARS PER SQUARE FOOT;

II. MEET THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) GREEN BUILDING RATING SYSTEM IN THE BUILDING CONSTRUCTION;

III. PROVIDE A MINIMUM OF ONE NEW JOB PER ONE THOUSAND SQUARE FEET OF BUILDING SPACE;

IV. PAY A MINIMUM OF TEN DOLLARS AND FIFTY CENTS PER HOUR PLUS BENEFITS;

V. HIRE AT LEAST SEVENTY PERCENT OF ITS WORKFORCE FROM THE LOCAL COMMUNITY; AND

VI. ALL REASONABLE RESTRICTIONS AND LIMITATIONS ESTABLISHED BY THE CORPORATION FOR THE BROWNFIELD SITE IDENTIFIED IN THE CITIZEN PARTICIPATION ACTIVITIES.

C. IN THE CASE THAT A REMEDIATED SITE IS SOLD TO AN AFFORDABLE HOUSING DEVELOPER, THE DEVELOPER SHALL BUILD HOUSING UNITS IN ACCORDANCE WITH THE STATE'S AFFORDABILITY GUIDELINES.

D. THE CORPORATION'S CITIZEN PARTICIPATION PLAN. THE CITIZEN PARTICIPATION PLAN SHALL CONSIDER THE LEVEL OF CITIZEN INVOLVEMENT, LOCAL INTEREST AND HISTORY, AND OTHER RELEVANT FACTORS. WHILE RETAINING FLEXIBILITY, CITIZEN PARTICIPATION PLANS SHALL EMBODY THE FOLLOWING PRINCIPLES OF MEANINGFUL CITIZEN PARTICIPATION, AND AT A MINIMUM SHALL INCLUDE:

I. AN IDENTIFICATION OF THE INTERESTED PUBLIC AND PREPARATION OF A BROWNFIELD SITE CONTACT LIST;

II. IDENTIFICATION OF MAJOR ISSUES OF PUBLIC CONCERN RELATED TO THE BROWNFIELD SITE;

III. A DESCRIPTION AND SCHEDULE OF ANY ADDITIONAL PUBLIC PARTICIPATION ACTIVITIES NEEDED TO ADDRESS PUBLIC CONCERNS;

IV. PROVISIONS FOR NOTICE WITH RESPECT TO THE ACQUISITION, ASSESSMENT, DEMOLITION, CLEANUP, AND OTHER SITE PREPARATION COSTS AND INTENDED REUSE OF A SITE;

V. SPECIFIC CONSULTATION REGARDING SUPPORT FOR THE CORPORATION'S ACQUIRING THE BROWNFIELD SITE, INTENDED REUSE AND ANY REASONABLE LIMITATIONS OR CONDITIONS ON THE REDEVELOPMENT OF THE BROWNFIELD SITE; AND

VI. PROVISIONS TO PROVIDE SEPARATE NOTICE OF ALL REASONABLE LIMITATIONS OR CONDITIONS IDENTIFIED IN THE PUBLIC PARTICIPATION THAT THE CORPORATION HAS, WILL BE REQUIRED FOR THE DEVELOPMENT OF THE BROWNFIELD SITE.

S 14. 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 MAY INCLUDE THE COSTS INCURRED IN CONNECTION WITH PREPARING A SITE FOR THE ERECTION OF A BUILDING OR A COMPONENT OF A BUILDING, SUCH AS THE COST OF EXCAVATION, TEMPORARY ELECTRIC WIRING, SCAFFOLDING, FENCING AND SECURITY FACILITIES, TO THE EXTENT THAT SUCH COSTS ARE NOT USED AS A BASIS FOR COMPUTING THE SITE PREPARATION COMPONENT OF THE BROWNFIELD REDEVELOPMENT TAX CREDIT PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION; AND PROVIDED FURTHER THAT 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 on a qualified site with respect to which a certificate of completion has been issued to the taxpayer, OR FOR THE TAXABLE YEAR IN WHICH THE CERTIFICATE OF COMPLETION IS ISSUED IF THE QUALIFIED TANGIBLE PROPERTY IS PLACED IN SERVICE PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF COMPLETION, 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 15. Subparagraph (D) of paragraph 3-a of subdivision (a) of section 21 of the tax law is REPEALED.

S 16. Paragraphs 5 and 6 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, are amended to read as follows:

(5) Applicable percentage. For purposes of COMPUTING THE SITE PREPARATION AND ON-SITE GROUNDWATER REMEDIATION COMPONENTS PURSUANT TO paragraphs two[, three] and four of this subdivision, WITH RESPECT TO SUCH QUALIFIED SITES FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE TAXPAYER BEFORE JUNE TWENTY-THIRD, TWO THOUSAND NINE THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, OR WHERE THE TAXPAYER HAS EITHER BEEN ISSUED OR RECEIVED A CERTIFICATE OF COMPLETION FROM ANOTHER TAXPAYER UNDER SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW BEFORE JUNE TWENTY-THIRD, TWO THOUSAND EIGHT, AND, FOR PURPOSES OF COMPUTING THE TANGIBLE PROPERTY COMPONENT PURSUANT TO PARAGRAPH THREE OF THIS SUBDIVISION WITH RESPECT TO SUCH QUALIFIED SITES FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE TAXPAYER BEFORE JULY FIRST, TWO THOUSAND TWELVE THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, OR WHERE THE TAXPAYER HAS EITHER BEEN ISSUED OR RECEIVED A CERTIFICATE OF COMPLETION FROM ANOTHER TAXPAYER UNDER SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW BEFORE JULY FIRST, TWO THOUSAND TWELVE, 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. ALL OTHER APPLICABLE PERCENTAGES ARE SET FORTH IN SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW.

(6) Site preparation costs and on-site groundwater remediation costs paid or incurred by the taxpayer with respect to a qualified site and 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 shall only include costs [paid or] incurred by the taxpayer 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.

S 17. Paragraphs 2 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 to a capital account, (i) which are [paid or] incurred in connection with a site's qualification for a certificate of completion AND ATTRIBUTABLE TO ACTIVITIES SPECIFIED IN A REMEDIAL WORK PLAN APPROVED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION UNDER SECTION 27-1411 OF THE ENVIRONMENTAL CONSERVATION LAW, and (ii) WITH RESPECT TO ANY QUALIFIED SITE FOR WHICH THE DEPARTMENT HAS ISSUED A NOTICE TO THE TAXPAYER BEFORE JULY FIRST, TWO THOUSAND TWELVE

THAT ITS REQUEST FOR PARTICIPATION HAS BEEN ACCEPTED UNDER SUBDIVISION SIX OF SECTION 27-1407 OF THE ENVIRONMENTAL CONSERVATION LAW, OR WHERE THE TAXPAYER RECEIVED A CERTIFICATE OF COMPLETION FROM ANOTHER TAXPAYER UNDER SECTION 27-1419 OF THE ENVIRONMENTAL CONSERVATION LAW BEFORE JULY FIRST, TWO THOUSAND TWELVE, 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] FOR PURPOSES OF THIS PARAGRAPH, 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.

(6) Environmental zones (EN-Zones). An "environmental zone" shall mean an area designated as such by the commissioner of economic development. 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 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 18. 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 SEPTEMBER THIRTY-FIRST, TWO THOUSAND TWELVE 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 19. 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, paragraph a as amended and paragraph h as added by chapter 386 of the laws of 2007 and paragraph e as amended and paragraph i as added by chapter 390 of the laws of 2008, is amended to read as follows:

1. Definitions. a. "Applicant" shall mean the municipality, community board and/or community based organization submitting an application in the manner authorized by this section.

b. "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.

C. "Commissioner" shall mean the commissioner of the department of environmental conservation.

[c.] D. "Community based organization" shall mean a not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code whose stated mission is promoting reuse of brownfield sites within a specified geographic area in which the community based organization is located; which has twenty-five percent or more of its board of directors residing in the community in such area; and represents a community with a demonstrated financial need. "Community based organization" shall not include any not-for-profit corporation that has caused or contributed to the release or threatened release of a contaminant from or onto the brownfield site, or any not-for-profit corporation that generated, transported, or disposed of, or that arranged for, or caused, the generation, transportation, or disposal of contamination from or onto the brownfield site. This definition shall not apply if more than twenty-five percent of the members, officers or directors of the not-for-profit corporation are or were employed or receiving compensation from any person responsible for a site under title thirteen or title fourteen of article twenty-seven of the environmental conservation law, article twelve of the navigation law or under applicable principles of statutory or common law liability.

[d.] E. "Brownfield site" shall have the same meaning as set forth in section 27-1405 of the environmental conservation law.

[e.] F. "Department" shall mean the department of state.

[f.] G. "Contamination" or "contaminated" shall have the same meaning as provided in section 27-1405 of the environmental conservation law.

[g.] H. "Municipality" shall have the same meaning as set forth in subdivision fifteen of section 56-0101 of the environmental conservation law.

[h.] I. "Community board" shall have the same meaning as set forth in section twenty-eight hundred of the New York city charter.

[i.] J. "Secretary" shall mean the secretary of state.

S 20. 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 21. 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 ALLOCATE SUCH FUNDS TO THE SECRETARY.

S 22. Paragraphs b and d of subdivision 3 of section 970-r of the general municipal law, paragraph b as amended by chapter 390 of the laws of 2008 and paragraph d as added by section 1 of part F of chapter 1 of the laws of 2003, are amended and a new paragraph j is added to read as follows:

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.

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) AND 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 AREAS

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) 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) known data about the environmental conditions of properties in the proposed brownfield opportunity area;

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

[(11)] (V) 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].

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 23. 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 IT SHALL APPLY IN MAKING DETERMINATIONS WHETHER A QUALIFIED SITE IS CONSISTENT WITH A DESIGNATED BROWNFIELD OPPORTUNITY AREA.

S 24. 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, 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 AND OTHER 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 WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS PARAGRAPH 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 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 SUBMIT AN ANNUAL REPORT TO THE SECRETARY PROJECTING THE FUNDING, AND ANY OTHER RESOURCES NEEDED TO ADVANCE THE OBJECTIVES OF THEIR BROWNFIELD OPPORTUNITY AREA PLANS.

S 25. 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 activities] IMPLEMENTATION STRATEGIES 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] 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) THE CARRYING OUT OF ACTIVITIES TO MARKET STRATEGIC SITES IN A BROWNFIELD OPPORTUNITY AREA AND OTHER ACTIVITIES TO ATTRACT DEVELOPER INTEREST; AND

(V) CARRYING OUT OF OTHER PRE-DEVELOPMENT ACTIVITIES TO ADVANCE THE BROWNFIELD OPPORTUNITY AREA.

[d.] 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 26. 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 27. 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 28. Severability clause. 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 29. This act shall take effect immediately.