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I N   S E N A T E

January 25, 2012

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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:

1     Section 1. The opening paragraph of section S 27-1403 of the environ-  
2     mental conservation law, as added by section 1 of part A of chapter 1 of  
3     the laws of 2003, is amended to read as follows:

4     The legislature hereby finds that there are thousands of abandoned and  
5     likely contaminated properties that threaten the health and vitality of  
6     the communities they burden, and that these sites, known as brownfields,  
7     are also contributing to sprawl development and loss of open space. It  
8     is therefore declared that, to advance the policy of the state of New  
9     York to conserve, improve, and protect its natural resources and envi-  
10     ronment and control water, land, and air pollution in order to enhance  
11     the health, safety, and welfare of the people of the state and their  
12     overall economic and social well being, it is appropriate to adopt this  
13     act to encourage persons to voluntarily remediate brownfield sites for  
14     reuse and redevelopment by establishing within the department a statuto-  
15     ry program to encourage cleanup and redevelopment of brownfield sites.  
16     All remedies shall be fully protective of public health and the environ-  
17     ment including, but not limited to, groundwater according to its classi-  
18     fication pursuant to section 17-0301 of this chapter. A remedial program  
19     that achieves a permanent cleanup of a contaminated site, including the  
20     restoration of groundwater to its classified use, is to be preferred  
21     over a remedial program that does not do so. IT IS THE INTENT OF THE  
22     LEGISLATURE THAT THE PROVISIONS OF THIS BROWNFIELD CLEANUP PROGRAM SHALL  
23     NOT BE CONSTRUED AS LIMITING OR OTHERWISE AFFECTING ANY AUTHORITY  
24     CONFERRED UPON THE DEPARTMENT BY ANY OTHER PROVISION OF LAW. IT IS ALSO  
25     THE INTENT OF THE LEGISLATURE TO ENCOURAGE THE CLEANUP AND REDEVELOPMENT  
26     OF BROWNFIELDS LOCATED IN BROWNFIELD OPPORTUNITY AREAS, AS DEFINED IN  
27     SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW, AND TO  
28     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.

LBD14046-01-2

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

3 S 2. Paragraph (d) of subdivision 3 of section 27-1413 of the environ-  
4 mental conservation law, as amended by section 6 of part A of chapter  
5 577 of the laws of 2004, is amended and a new paragraph (e) is added to  
6 read as follows:

7 (d) the economic benefit to the state to be realized by the expe-  
8 ditious remediation of the property[.]; AND

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

13 S 3. Paragraph (d) of subdivision 7 of section 27-1415 of the environ-  
14 mental conservation law, as added by section 1 of part A of chapter 1 of  
15 the laws of 2003, is amended to read as follows:

16 (d) The commissioner shall create, update, and maintain a database  
17 system for public information purposes and to monitor and track all  
18 brownfield sites subject to this title. Data incorporated into such  
19 system for each site for which information has been collected pursuant  
20 to this title shall include, but shall not be limited to, a site summa-  
21 ry, name of site owner, location, status of site remedial activity,  
22 WHETHER THE SITE IS LOCATED IN A BROWNFIELD OPPORTUNITY AREA AS DEFINED  
23 IN SECTION NINE HUNDRED SEVENTY-R OF THE GENERAL MUNICIPAL LAW, and, if  
24 one has been created pursuant to title thirty-six of article seventy-one  
25 of this chapter, a copy of the environmental easement, and a contact  
26 number to obtain additional information. Sites shall be added to such  
27 system upon the execution of a brownfield site cleanup agreement pursu-  
28 ant to section 27-1409 of this title. If and when an environmental ease-  
29 ment is modified or extinguished, the copy of the environmental easement  
30 contained in the database shall be updated accordingly. Such database  
31 shall be in such a format that it can be readily searched by affected  
32 local governments and the public for purposes including but not limited  
33 to determining whether an environmental easement has been recorded for a  
34 site pursuant to title thirty-six of article seventy-one of this chap-  
35 ter. The database shall be available electronically. Information from  
36 this database shall be incorporated into the geographic information  
37 system created and maintained by the department pursuant to section  
38 3-0315 of this chapter.

39 S 4. Paragraph (a) of subdivision 4 of section 27-1417 of the environ-  
40 mental conservation law, as amended by section 8 of part A of chapter  
41 577 of the laws of 2004, is amended to read as follows:

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

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

11 S 5. Paragraphs e and f of subdivision 1 of section 27-1420 of the  
12 environmental conservation law, as added by chapter 390 of the laws of  
13 2008, are amended to read as follows:

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

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

19 G. such other information as the commissioner may determine is rele-  
20 vant to the status of the administration of the program.

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

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

34 3. NO COSTS SHALL BE INCURRED UNDER THIS SECTION FOR THE NEGOTIATION  
35 AND OVERSIGHT OF A BROWNFIELD SITE CLEANUP AGREEMENT FOR SITES WITHIN A  
36 BROWNFIELD OPPORTUNITY AREA, PROVIDED THAT THE FUTURE USE OF THE SITE,  
37 AS DESCRIBED AND VERIFIED BY THE SITE OWNER, IS COMPATIBLE WITH THE  
38 BROWNFIELD OPPORTUNITY AREA NOMINATION AND IMPLEMENTATION STRATEGIES,  
39 AND DECLARED AS SUCH BY THE SECRETARY OF STATE. THE FULL COST INCURRED  
40 IN NEGOTIATING AND OVERSEEING IMPLEMENTATION OF THE BROWNFIELD SITE  
41 CLEANUP AGREEMENT SHALL BE IMMEDIATELY PAYABLE UPON DEVELOPMENT OF THE  
42 SITE CONSISTENT WITH THE FUTURE USE AS DESCRIBED AND VERIFIED BY THE  
43 SITE OWNER AND WITH THE BROWNFIELD OPPORTUNITY AREA IMPLEMENTATION STRA-  
44 TEGIES DECLARED AS SUCH BY THE SECRETARY OF STATE.

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

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

51 S 8. Paragraph b of subdivision 2 of section 970-r of the general  
52 municipal law, as added by section 1 of part F of chapter 1 of the laws  
53 of 2003, is amended to read as follows:

54 b. Activities eligible to receive such assistance shall include, but  
55 are not limited to, the assembly and development of basic information  
56 about:

- 1 (1) the borders of the [proposed] brownfield opportunity area;
- 2 (2) the number and size of brownfield sites;
- 3 (3) current and anticipated uses of the properties in the [proposed]
- 4 BROWNFIELD OPPORTUNITY area;
- 5 (4) current and anticipated future conditions of groundwater in the
- 6 [proposed] BROWNFIELD OPPORTUNITY area;
- 7 (5) known data about the environmental conditions of the properties in
- 8 the [proposed] BROWNFIELD OPPORTUNITY area;
- 9 (6) ownership of the properties in the [proposed] BROWNFIELD OPPORTU-
- 10 NITY area; and
- 11 (7) preliminary descriptions of possible remediation strategies, reuse
- 12 opportunities, necessary infrastructure improvements and other public or
- 13 private measures needed to stimulate investment, promote revitalization,
- 14 and enhance community health and environmental conditions.

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

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

21 S 10. Subdivision 3 of section 970-r of the general municipal law, as  
22 added by section 1 of part F of chapter 1 of the laws of 2003, para-  
23 graphs a, b, g, h, i, the opening paragraph and subparagraph 6 of para-  
24 graph f as amended by chapter 390 of the laws of 2008, paragraph f as  
25 amended by section 1 of part F of chapter 577 of the laws of 2004, is  
26 amended to read as follows:

27 3. State assistance for nominations to designate brownfield opportu-  
28 nity areas. a. Within the limits of appropriations therefor, the secre-  
29 tary is authorized to provide, on a competitive basis, financial assist-  
30 ance to municipalities, to community based organizations, to community  
31 boards, or to municipalities and community based organizations acting in  
32 cooperation to prepare a nomination for designation of a brownfield  
33 opportunity area. Such financial assistance shall not exceed ninety  
34 percent of the costs of such nomination for any such area.

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

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

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

51 (1) A PLAN FOR THE REDEVELOPMENT AND REVITALIZATION OF THE BROWNFIELD  
52 OPPORTUNITY AREA, THAT CONTAINS BUT IS NOT LIMITED TO:

- 53 (I) the borders of the [proposed] brownfield opportunity area;
- 54 [(2)] (II) the location of each known or suspected brownfield site in
- 55 the [proposed] brownfield opportunity area;

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

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

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

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

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

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

16 [(4)] (2) AN IMPLEMENTATION STRATEGY THAT INCLUDES, BUT IS NOT LIMITED  
17 TO:

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

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

24 [(6)] (III) priorities for public and private investment in infras-  
25 tructure, open space, economic development, housing, or community facil-  
26 ities in the [proposed] brownfield opportunity area, INCLUDING THOSE  
27 THAT MAY BE ELIGIBLE FOR PRIORITY OR PREFERENCE IN ACCORDANCE WITH  
28 SUBDIVISION FIVE OF THIS SECTION;

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

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

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

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

38 [(11)] (VIII) descriptions of possible remediation strategies, brown-  
39 field redevelopment, necessary infrastructure improvements and other  
40 public or private measures needed to stimulate investment, promote revi-  
41 talization, and enhance community health and environmental conditions[;

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

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

47 (3) ACTIVITIES TO ADDRESS KNOWN CONTAMINATION:

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

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

52 (III) THE DEVELOPMENT OF A PROPOSED REMEDIATION STRATEGY TO ADDRESS  
53 ANY IDENTIFIED CONTAMINATION, IN CONFORMANCE WITH APPLICABLE REQUIRE-  
54 MENTS OF THE COMMISSIONER; AND

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

1 e. Funding preferences shall be given to applications for such assist-  
2 ance that relate to areas having one or more of the following character-  
3 istics:

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

6 (2) areas with concentrations of brownfield sites;

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

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

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

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

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

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

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

27 (4) the manner and extent to which public or governmental agencies  
28 with jurisdiction over issues that will be addressed in the data gather-  
29 ing process will be involved in this process;

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

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

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

46 g. The secretary, upon the receipt of an application for such assist-  
47 ance from a community based organization not in cooperation with the  
48 local government having jurisdiction over the [proposed] brownfield  
49 opportunity area, shall request the municipal government to review and  
50 state the municipal government's support or lack of support. The munici-  
51 pal government's statement shall be considered a part of the applica-  
52 tion.

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

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

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

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

19 S 11. Subdivision 4 of section 970-r of the general municipal law, as  
20 amended by chapter 390 of the laws of 2008, is amended to read as  
21 follows:

22 4. Designation of brownfield opportunity area. A. Upon completion of a  
23 nomination for designation of a brownfield opportunity area, it shall be  
24 forwarded by the applicant to the secretary, who shall determine whether  
25 it is consistent with the provisions of this section. If the secretary  
26 determines that the nomination is consistent with the provisions of this  
27 section, the brownfield opportunity area shall be designated. If the  
28 secretary determines that the nomination is not consistent with the  
29 provisions of this section, the secretary shall make recommendations in  
30 writing to the applicant of the manner and nature in which the nomi-  
31 nation should be amended.

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

39 S 12. Subdivision 5 of section 970-r of the general municipal law, as  
40 added by section 1 of part F of chapter 1 of the laws of 2003, is  
41 amended to read as follows:

42 5. Priority and preference. The designation of a brownfield opportu-  
43 nity area pursuant to this section is intended to serve as a planning  
44 tool. It alone shall not impose any new obligations on any property or  
45 property owner.

46 A. UPON THE AWARD OF FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION,  
47 THE SECRETARY SHALL NOTIFY THE DIVISION OF HOUSING AND COMMUNITY  
48 RENEWAL, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE DEPARTMENT OF  
49 TRANSPORTATION, THE DEPARTMENT OF PARKS, RECREATION AND HISTORIC PRESER-  
50 VATION, AND THE EMPIRE STATE DEVELOPMENT CORPORATION OF SUCH ASSISTANCE,  
51 AND INCLUDE IN SUCH NOTIFICATION A DESCRIPTION OF THE BROWNFIELD OPPOR-  
52 TUNITY AREA STUDY AREA AND A REQUEST FOR RELEVANT INFORMATION CONCERN-  
53 ING, WITHOUT LIMITATION, LAND USES, CAPITAL PROJECTS AND PLANS RELATING  
54 TO PROPERTIES OR THE COMMUNITY WITHIN SUCH BROWNFIELD OPPORTUNITY AREA  
55 STUDY AREA, EXISTING PLANS AND PLANNING DOCUMENTS, DEMOGRAPHICS, AND

1 LOCATION, MAPS AND DESCRIPTION OF EXISTING AND PROPOSED PUBLIC FACILI-  
2 TIES AND INFRASTRUCTURE.

3 B. UPON THE AWARD OF FINANCIAL ASSISTANCE PURSUANT TO THIS SECTION,  
4 THE SECRETARY SHALL NOTIFY RELEVANT FEDERAL AND LOCAL AGENCIES OF SUCH  
5 ASSISTANCE, AND INCLUDE IN SUCH NOTIFICATION A DESCRIPTION OF THE BROWN-  
6 FIELD OPPORTUNITY AREA STUDY AREA AND A REQUEST FOR RELEVANT INFORMATION  
7 CONCERNING, WITHOUT LIMITATION, LAND USES, CAPITAL PROJECTS AND PLANS  
8 RELATING TO PROPERTIES OR THE COMMUNITY WITHIN SUCH BROWNFIELD OPPORTU-  
9 NITY AREA STUDY AREA, EXISTING PLANS AND PLANNING DOCUMENTS, DEMOGRAPH-  
10 ICS, AND LOCATION, MAPS AND DESCRIPTION OF EXISTING AND PROPOSED PUBLIC  
11 FACILITIES AND INFRASTRUCTURE.

12 C. WITHIN SIX MONTHS OF AN AWARD OF FINANCIAL ASSISTANCE PURSUANT TO  
13 THIS SECTION, THE SECRETARY SHALL SEEK COOPERATION FROM RELEVANT FEDER-  
14 AL, STATE AND LOCAL AGENCIES IN THE GATHERING OF INFORMATION ABOUT  
15 RESOURCES AND OR PROGRAMS THAT MAY BE RELEVANT TO THE BROWNFIELD OPPOR-  
16 TUNITY AREA STUDY AREA.

17 D. To the extent authorized by law, projects in brownfield opportunity  
18 areas designated pursuant to this section shall receive a priority and  
19 preference when considered for financial assistance pursuant to articles  
20 fifty-four and fifty-six of the environmental conservation law.

21 E. To the extent authorized by law, projects in brownfield opportunity  
22 areas designated pursuant to this section may receive a priority and  
23 preference when considered for financial assistance pursuant to any  
24 other state, federal or local law.

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

30 G. THE SECRETARY SHALL, IN CONSULTATION WITH OTHER STATE AGENCIES,  
31 ISSUE A BROWNFIELD OPPORTUNITY AREA PREFERENCE AND PRIORITY REPORT TO  
32 THE GOVERNOR, LEGISLATURE AND MEMBERS SERVING ON THE NEW YORK BROWN-  
33 FIELDS ADVISORY BOARD PURSUANT TO SECTION 27-1435 OF THE ENVIRONMENTAL  
34 CONSERVATION LAW WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SECTION  
35 AND EACH SUBSEQUENT YEAR THEREAFTER, IDENTIFYING FUNDING PROGRAMS AND  
36 RESOURCES RELEVANT TO AND UTILIZED IN THE IMPLEMENTATION OF BROWNFIELD  
37 OPPORTUNITY AREAS. STATE AGENCIES SHALL PROVIDE INFORMATION ABOUT HOW  
38 THEY HAVE SOUGHT TO ACHIEVE PREFERENCE AND PRIORITY FOR PROJECTS BUILT  
39 CONSISTENT WITH A DESIGNATED BROWNFIELD OPPORTUNITY AREA IN FUNDING  
40 PROGRAMS IDENTIFIED IN THE REPORT, INCLUDING BUT NOT LIMITED TO, MODIFY-  
41 ING PROGRAM ELIGIBILITY AND RANKING CRITERIA TO PROVIDE FOR PREFERENCE  
42 AND PRIORITY FOR PROJECTS BUILT CONSISTENT WITH A DESIGNATED BROWNFIELD  
43 OPPORTUNITY AREA.

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

50 S 13. Subdivision 6 of section 970-r of the general municipal law, as  
51 added by section 1 of part F of chapter 1 of the laws of 2003, paragraph  
52 a as amended by chapter 386 of the laws of 2007 and paragraph h as  
53 amended by section 1 of part F of chapter 577 of the laws of 2004, is  
54 amended to read as follows:

55 6. State assistance for [brownfield site assessments in] IMPLEMENTA-  
56 TION STRATEGIES FOR brownfield opportunity areas. a. Within the limits



1 of appropriations therefor, the [commissioner, in consultation with the]  
2 secretary [of state,] is authorized to provide, on a competitive basis,  
3 financial assistance to municipalities, to community based organiza-  
4 tions, to community boards, or to municipalities and community based  
5 organizations acting in cooperation to conduct [brownfield site assess-  
6 ments] IMPLEMENTATION STRATEGIES in a brownfield opportunity area  
7 [designated pursuant to this section]. Such financial assistance shall  
8 not exceed ninety percent of the costs of such brownfield [site assess-  
9 ment] OPPORTUNITY AREA IMPLEMENTATION STRATEGIES.

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

13 c. Brownfield site assessment] IMPLEMENTATION STRATEGIES activities  
14 eligible for funding include, but are not limited to, (I) testing of  
15 properties to determine the nature and extent of the contamination  
16 (including soil and groundwater), environmental assessments IN CONFORM-  
17 ANCE WITH APPLICABLE REQUIREMENTS OF THE COMMISSIONER, the development  
18 of a proposed remediation strategy to address any identified contam-  
19 ination IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF THE COMMISSIONER,  
20 and any other activities deemed appropriate by the [commissioner in  
21 consultation with the] secretary [of state]. [Any environmental assess-  
22 ment shall be subject to the review and approval of such commissioner.

23 d.] BROWNFIELD SITES ELIGIBLE FOR SUCH ASSISTANCE MUST BE OWNED BY A  
24 MUNICIPALITY, OR VOLUNTEER AS SUCH TERM IS DEFINED IN SECTION 27-1405 OF  
25 THE ENVIRONMENTAL CONSERVATION LAW; (II) ACTIONS TO EFFECTUATE LOCAL  
26 LAND USE CHANGES, INCLUDING ZONING AND NECESSARY LOCAL LAW AMENDMENTS  
27 IDENTIFIED IN THE BROWNFIELD OPPORTUNITY AREA; (III) ESTABLISHING DESIGN  
28 STANDARDS AND DESIGN GUIDELINES, INCLUDING REQUIREMENTS FOR ENERGY EFFI-  
29 CIENCY, GREEN INFRASTRUCTURE AND WATER RE-USE AND OTHER SUSTAINABILITY  
30 AND GREEN DESIGN ELEMENTS; (IV) ACTIVITIES TO MARKET STRATEGIC SITES IN  
31 A BROWNFIELD OPPORTUNITY AREA AND OTHER ACTIVITIES TO ATTRACT DEVELOPER  
32 INTEREST; AND (V) PRE-DEVELOPMENT ACTIVITIES TO ADVANCE THE BROWNFIELD  
33 OPPORTUNITY AREA.

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

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

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

43 (2) areas with concentrations of brownfield sites;

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

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

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

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

1 lack of support. The municipal government's statement shall be consid-  
2 ered a part of the application.

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

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

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

28 S 14. Subdivision 7 of section 970-r of the general municipal law, as  
29 amended by chapter 390 of the laws of 2008, is amended to read as  
30 follows:

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

38 S 15. Subdivision 8 of section 970-r of the general municipal law, as  
39 added by section 1 of part F of chapter 1 of the laws of 2003, is  
40 amended to read as follows:

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

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

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

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

51 (4) public notice and newspaper notice of (i) the intent of the muni-  
52 cipality and/or community based organization to undertake a pre-nomi-  
53 nation process or prepare a brownfield opportunity area plan, and (ii) the  
54 availability of such application.

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

1 (1) a comment period of at least thirty days on a draft application;  
2 (2) a public meeting on a brownfield opportunity area draft applica-  
3 tion.

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

8 D. APPLICATIONS FOR PRE-NOMINATION OR NOMINATION PURSUANT TO THIS  
9 SECTION MAY BE SUBMITTED TO THE SECRETARY AT ANY TIME DURING THE CALEN-  
10 DAR YEAR.

11 S 16. This act shall take effect immediately.