

7970--A

2015-2016 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. BRINDISI, FAHY, WOERNER, KAMINSKY, RYAN, McDONALD, GUNTHER, PALMESANO, RAIA, TITONE, ORTIZ, MURRAY, LUPARDO -- Multi-Sponsored by -- M. of A. CROUCH, DiPIETRO, SIMON -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend 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. Paragraph d of subdivision 1 of section 970-r of the gener-  
2     al municipal law, as amended by section 1 of part F of chapter 577 of  
3     the laws of 2004, is amended to read as follows:  
4     d. "Brownfield" OR "BROWNFIELD site" shall have the same meaning as  
5     set forth in section 27-1405 of the environmental conservation law.  
6     S 2. The subdivision heading of subdivision 2 of section 970-r of the  
7     general municipal law, as added by section 1 of part F of chapter 1 of  
8     the laws of 2003, is amended to read as follows:  
9     [State] UNTIL JULY FIRST, TWO THOUSAND SEVENTEEN, STATE assistance IN  
10    ACCORDANCE WITH THIS SUBDIVISION WILL BE AVAILABLE for pre-nomination  
11    study for brownfield opportunity areas.  
12    S 3. Paragraphs a, b, and i of subdivision 3 of section 970-r of the  
13    general municipal law, paragraph a as amended by section 28 of part BB  
14    of chapter 56 of the laws of 2015 and paragraphs b and i as amended by  
15    chapter 390 of the laws of 2008, are amended, and a new paragraph j is  
16    added to read as follows:  
17    a. Within the limits of appropriations therefor, the secretary is  
18    authorized to provide, on a competitive basis, financial assistance to  
19    municipalities, to community based organizations, to community boards,  
20    or to municipalities and community based organizations acting in cooper-

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

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1 ation to prepare a nomination for designation of a brownfield opportu-  
2 nity area. Such financial assistance shall not exceed ninety percent of  
3 the costs of such nomination for any such area. A nomination study must  
4 include sufficient information to designate the brownfield opportunity  
5 area. [The contents of the nomination study shall be developed based on  
6 pre-nomination study information, which shall principally consist of an  
7 area-wide study, documenting the historic brownfield uses in the area  
8 proposed for designation.]

9 b. An application for such financial assistance shall include an indi-  
10 cation of support from owners of brownfield sites in the proposed brown-  
11 field opportunity area, OR ALTERNATIVELY, DOCUMENTATION OF REQUESTS FOR  
12 SUCH SUPPORT CONSISTING OF AT LEAST TWO MEANS OF OUTREACH TOGETHER WITH  
13 ANY RESPONSES TO SUCH REQUESTS. All residents and property owners in  
14 the proposed brownfield opportunity area shall receive notice OF THE  
15 APPLICATION FOR ASSISTANCE in such form and manner as the secretary  
16 shall prescribe.

17 i. [Following] FOR APPLICATIONS FOR ASSISTANCE SUBMITTED TO THE  
18 DEPARTMENT BEFORE JULY FIRST, TWO THOUSAND SEVENTEEN, FOLLOWING notifi-  
19 cation to the applicant that assistance has been awarded, and prior to  
20 disbursement of funds, a contract shall be executed between the depart-  
21 ment and the applicant or co-applicants. The secretary shall establish  
22 terms and conditions for such contracts as the secretary deems appropri-  
23 ate, including provisions to define: applicant's work scope, work sched-  
24 ule, and deliverables; fiscal reports on budgeted and actual use of  
25 funds expended; and requirements for submission of a final fiscal  
26 report. The contract shall also require the distribution of work  
27 products to the department, and, for community based organizations, to  
28 the applicant's municipality. Applicants shall be required to make the  
29 results publicly available. [Such contract shall further include a  
30 provision providing that if]

31 J. FOR APPLICATIONS FOR ASSISTANCE SUBMITTED ON OR AFTER JULY FIRST,  
32 TWO THOUSAND SEVENTEEN, FOLLOWING NOTIFICATION TO THE APPLICANT THAT  
33 ASSISTANCE HAS BEEN AWARDED, AND PRIOR TO DISBURSEMENT OF FUNDS, THE  
34 APPLICANT OR APPLICANTS SHALL SUBMIT FOR APPROVAL BY THE SECRETARY A  
35 PROPOSED NOMINATION WORK PLAN. THE NOMINATION WORK PLAN SHALL INCLUDE  
36 WORK SCOPE, WORK SCHEDULE, AND DELIVERABLES, INCLUDING FISCAL REPORTS ON  
37 BUDGETED AND ACTUAL USE OF FUNDS EXPENDED, AND THE ANTICIPATED DATE FOR  
38 SUBMISSION OF A FINAL NOMINATION FOR DESIGNATION. THE WORK PLAN SHALL  
39 ALSO REQUIRE THE DISTRIBUTION OF WORK PRODUCTS TO THE DEPARTMENT AND,  
40 FOR COMMUNITY BASED ORGANIZATIONS, TO THE APPLICANT'S MUNICIPALITY.  
41 WITHIN NINETY DAYS OF RECEIPT OF A PROPOSED WORK PLAN OR REVISED WORK  
42 PLAN, THE DEPARTMENT SHALL EITHER APPROVE THE WORK PLAN OR PROVIDE THE  
43 APPLICANT OR APPLICANTS WITH A WRITTEN NOTICE OF DEFICIENCY, WHICH SHALL  
44 INCLUDE A DETAILED DESCRIPTION OF WHAT FURTHER ELEMENTS ARE REQUIRED TO  
45 REVISE THE WORK PLAN. APPLICANTS SHALL BE REQUIRED TO MAKE ALL WORK  
46 PRODUCTS PUBLICLY AVAILABLE.

47 K. IF any responsible party payments become available to the appli-  
48 cant, the amount of such payments attributable to expenses paid by the  
49 award shall be paid to the department by the applicant; provided that  
50 the applicant may first apply such responsible party payments toward any  
51 actual project costs incurred by the applicant.

52 S 4. Subdivision 4 of section 970-r of the general municipal law, as  
53 amended by section 29 of part BB of chapter 56 of the laws of 2015, is  
54 amended to read as follows:

55 4. Designation of brownfield opportunity area. A. Upon completion of a  
56 nomination for designation of a brownfield opportunity area, it shall be

1 forwarded by the applicant to the secretary, who shall determine whether  
2 it is consistent with the provisions of this section. The secretary may  
3 review and approve a nomination for designation of a brownfield opportu-  
4 nity area at any time. If the secretary determines that the nomination  
5 is consistent with the provisions of this section, the brownfield oppor-  
6 tunity area shall be designated. If the secretary determines that the  
7 nomination is not consistent with the provisions of this section, the  
8 secretary shall make recommendations in writing to the applicant of the  
9 manner and nature in which the nomination should be amended. THE SECRE-  
10 TARY SHALL MAKE A DETERMINATION PURSUANT TO THIS SUBDIVISION WITHIN  
11 NINETY DAYS OF RECEIPT OF A NOMINATION.

12 B. AS AN ALTERNATIVE MEANS OF DESIGNATION, A MUNICIPALITY MAY, AT ANY  
13 TIME AFTER THE SECRETARY HAS RECEIVED A COMPLETED NOMINATION FOR DESIG-  
14 NATION, DESIGNATE A BROWNFIELD OPPORTUNITY AREA BY FORMALLY ADOPTING THE  
15 NOMINATED BROWNFIELD OPPORTUNITY AREA PLAN AS PART OF THE MUNICIPALITY'S  
16 COMPREHENSIVE PLAN FOLLOWING A DETERMINATION BY THE MUNICIPAL PLANNING  
17 BOARD, NOTICED TO THE SECRETARY, THAT THE NOMINATION IS CONSISTENT WITH  
18 THE PROVISIONS OF THIS ARTICLE. SUCH PLANNING BOARD'S DETERMINATION AND  
19 THE MUNICIPALITY'S DESIGNATION BASED ON SUCH DETERMINATION SHALL BE NULL  
20 AND VOID AND OF NO FORCE AND EFFECT IF WITHIN THIRTY DAYS OF THE DETER-  
21 MINATION OF THE PLANNING BOARD THE SECRETARY PROVIDES WRITTEN NOTICE AND  
22 FINDINGS TO THE MUNICIPALITY THAT THE SECRETARY HAS DETERMINED THAT THE  
23 NOMINATION IS NOT CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE.

24 S 5. Subdivision 6 of section 970-r of the general municipal law, as  
25 added by section 1 of part F of chapter 1 of the laws of 2003, paragraph  
26 a and subparagraphs 2 and 5 of paragraph e as amended by section 30 of  
27 part BB of chapter 56 of the laws of 2015 and paragraph h as amended by  
28 section 1 of part F of chapter 577 of the laws of 2004, is amended to  
29 read as follows:

30 6. State assistance for brownfield site assessments AND IMPLEMENTATION  
31 ACTIVITIES in brownfield opportunity areas. a. Within the limits of  
32 appropriations therefor, the secretary [of state,] is authorized to  
33 provide, on a competitive basis, financial assistance to municipalities,  
34 to community based organizations, to community boards, or to munici-  
35 palities and community based organizations acting in cooperation to  
36 conduct brownfield site assessments. Such financial assistance shall not  
37 exceed ninety percent of the costs of such brownfield site assessment.

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

41 [c.] Brownfield site assessment activities eligible for funding  
42 include, but are not limited to, testing of properties to determine the  
43 nature and extent of the contamination (including soil and groundwater),  
44 environmental assessments, the development of a proposed remediation  
45 strategy to address any identified contamination, and any other activ-  
46 ities deemed appropriate by the commissioner in consultation with the  
47 secretary of state. Any environmental assessment shall be subject to the  
48 review and approval of such commissioner.

49 [d.] Applications for such assistance FOR SITE ASSESSMENT shall be  
50 submitted to BOTH THE SECRETARY AND the commissioner in a format, and  
51 containing such information, as prescribed by the commissioner in  
52 consultation with the secretary [of state].

53 B. WITHIN THE LIMITS OF APPROPRIATIONS THEREFOR, THE SECRETARY IS  
54 AUTHORIZED TO PROVIDE, ON A COMPETITIVE BASIS, FINANCIAL ASSISTANCE TO  
55 MUNICIPALITIES, TO COMMUNITY BASED ORGANIZATIONS, TO COMMUNITY BOARDS,  
56 OR TO MUNICIPALITIES AND COMMUNITY BASED ORGANIZATIONS ACTING IN COOPER-

1 ATION TO CONDUCT IMPLEMENTATION ACTIVITIES IN A BROWNFIELD OPPORTUNITY  
2 AREA DESIGNATED PURSUANT TO THIS SECTION. SUCH FINANCIAL ASSISTANCE  
3 SHALL NOT EXCEED NINETY PERCENT OF THE COSTS OF SUCH ACTIVITIES. IMPE-  
4 MENTATION ACTIVITIES ELIGIBLE FOR FUNDING INCLUDE BUT ARE NOT LIMITED  
5 TO, DEMOLITION, ASBESTOS REMOVAL, FINANCIAL ANALYSIS, INFRASTRUCTURE  
6 IMPROVEMENT, DESIGN, LANDSCAPING, ENVIRONMENTAL ASSESSMENT, AND ENHANCE-  
7 MENT OR ADDITION OF PUBLIC AMENITIES. APPLICATIONS FOR SUCH ASSISTANCE  
8 SHALL PROVIDE A DESCRIPTION OF THE PROPOSED ACTIVITY OR ACTIVITIES  
9 SUFFICIENT TO DEMONSTRATE ANTICIPATED COSTS AND HOW THE PROPOSED ACTIV-  
10 ITY OR ACTIVITIES ADVANCES THE GOALS AND OBJECTIVES OF THE BROWNFIELD  
11 OPPORTUNITY PLAN.

12 [e] C. Funding preferences [shall be given to applications] for [such]  
13 assistance PURSUANT TO THIS SUBDIVISION SHALL BE GIVEN TO APPLICATIONS  
14 that relate to areas having one or more of the following character-  
15 istics:

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

18 (2) areas with concentrations of known or suspected brownfield sites;

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

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

24 (5) areas with known or suspected brownfield sites presenting strate-  
25 gic opportunities to stimulate economic development, community revitali-  
26 zation or the siting of public amenities.

27 [f] D. The [commissioner] SECRETARY, upon the receipt of an applica-  
28 tion for such assistance from a community based organization not in  
29 cooperation with the local government having jurisdiction over the  
30 proposed brownfield opportunity area, shall request the municipal  
31 government to review and state the municipal government's support or  
32 lack of support. The municipal government's statement shall be consid-  
33 ered a part of the application.

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

37 [h] F. Following notification to the applicant that assistance has  
38 been awarded, and prior to disbursement of funds[, a contract shall be  
39 executed between the department and the applicant or co-applicants. The  
40 commissioner shall establish terms and conditions for such contracts as  
41 the commissioner deems appropriate in consultation with the secretary of  
42 state, including provisions to define: applicant's], THE APPLICANT OR  
43 APPLICANTS SHALL SUBMIT A PROPOSED IMPLEMENTATION WORK PLAN TO THE  
44 DEPARTMENT AND RECEIVE APPROVAL FOR SUCH WORK PLAN. THE WORK PLAN SHALL  
45 INCLUDE work scope, work schedule, and deliverables[;], INCLUDING fiscal  
46 reports on budgeted and actual use of funds expended[;], and [require-  
47 ments] THE ANTICIPATED DATE for submission of a final [fiscal] report.  
48 The [contract] WORK PLAN shall also require the distribution of work  
49 products to the department, and, for community based organizations, to  
50 the applicant's municipality. WITHIN SIXTY DAYS OF RECEIPT OF A  
51 PROPOSED WORK PLAN OR REVISED WORK PLAN, THE DEPARTMENT SHALL EITHER  
52 APPROVE THE WORK PLAN OR PROVIDE THE APPLICANT OR APPLICANTS WITH A  
53 NOTICE OF DEFICIENCY, WHICH SHALL INCLUDE A DETAILED DESCRIPTION OF WHAT  
54 FURTHER ELEMENTS ARE REQUIRED TO REVISE THE WORK PLAN. Applicants shall  
55 be required to make [the results] ALL WORK PRODUCTS publicly available.  
56 [Such contract shall further include a provision providing that if]

1 G. IF any responsible party payments become available to the appli-  
2 cant, the amount of such payments attributable to expenses paid by the  
3 award shall be paid to the department by the applicant; provided that  
4 the applicant may first apply such responsible party payments towards  
5 actual project costs incurred by the applicant.

6 S 6. Subdivision 7 of section 970-r of the general municipal law, as  
7 amended by chapter 390 of the laws of 2008, is amended to read as  
8 follows:

9 7. Amendments to designated area. Any proposed amendment to a brown-  
10 field opportunity area [designated pursuant to this section] OR BROWN-  
11 FIELD OPPORTUNITY AREA PLAN shall be [proposed] SUBMITTED TO, and  
12 reviewed by the secretary[, in the same manner and using the same crite-  
13 ria set forth in this section and applicable to an initial nomination  
14 for the designation of a brownfield opportunity area]. THE SECRETARY  
15 SHALL PROMULGATE RULES THAT CONTAIN CRITERIA AND TIMEFRAMES FOR REVIEW  
16 AND APPROVAL OF AMENDMENTS.

17 S 7. Subdivision 8 of section 970-r of the general municipal law, as  
18 added by section 1 of part F of chapter 1 of the laws of 2003, is  
19 amended to read as follows:

20 8. Applications. a. All applications for [pre-nomination study]  
21 assistance [or applications] AND NOMINATIONS for designation of a brown-  
22 field opportunity area shall demonstrate that the following community  
23 participation activities have been or will be performed by the appli-  
24 cant:

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

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

28 (3) provision [to] FOR access to [the draft and final] ANY application  
29 for [pre-nomination] assistance and NOMINATION FOR brownfield opportu-  
30 nity area designation AND supporting documents in a manner convenient to  
31 the public;

32 (4) public notice and newspaper notice of (i) the intent of the muni-  
33 cipality and/or community based organization to [undertake a pre-nomina-  
34 tion process or prepare] SEEK ASSISTANCE FOR OR NOMINATE a brownfield  
35 opportunity area [plan], and (ii) the availability of such application.

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

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

39 (2) a public meeting on a brownfield opportunity area draft applica-  
40 tion.

41 S 8. Subdivision 10 of section 970-r of the general municipal law, as  
42 added by section 31 of part BB of chapter 56 of the laws of 2015, is  
43 amended to read as follows:

44 10. [The] BY DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, THE secre-  
45 tary shall establish criteria for brownfield opportunity area conform-  
46 ance determinations for purposes of the brownfield redevelopment tax  
47 credit component pursuant to clause (ii) of subparagraph (B) of para-  
48 graph [(5)] FIVE of subdivision (a) of section twenty-one of the tax  
49 law. In establishing criteria, the secretary shall be guided by, but not  
50 limited to, the following considerations: how the proposed use and  
51 development advances the designated brownfield opportunity area plan's  
52 vision statement, goals and objectives for revitalization; how the  
53 density of development and associated buildings and structures advances  
54 the plan's objectives, desired redevelopment and priorities for invest-  
55 ment; and how the project complies with zoning and other local laws and  
56 standards to guide and ensure appropriate use of the project site.

1 S 9. Section 970-r of the general municipal law is amended by adding a  
2 new subdivision 11 to read as follows:  
3 11. BY DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, THE SECRETARY  
4 SHALL ESTABLISH CRITERIA FOR DETERMINING CONSISTENCY WITH THIS SECTION  
5 FOR PURPOSES OF BROWNFIELD OPPORTUNITY AREA DESIGNATIONS. IN ESTABLISH-  
6 ING CRITERIA, THE SECRETARY SHALL BE GUIDED BY, BUT NOT LIMITED TO, THE  
7 FOLLOWING CONSIDERATIONS: HOW ADEQUATELY THE NOMINATION DESCRIBES THE  
8 CURRENT STATUS OF THE BROWNFIELD OPPORTUNITY AREA, WHETHER THE NOMI-  
9 NATION PRESENTS AN ATTAINABLE AND REALISTIC PLAN FOR REVITALIZATION, AND  
10 WHETHER THE PLAN IS SUPPORTED BY THE COMMUNITY.  
11 S 10. This act shall take effect immediately.