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

5143--A

2015-2016 Regular Sessions

I N S E N A T E

May 4, 2015

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- recommitted to the Committee on Local Government in accordance with Senate Rule 6, sec. 8 -- 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:

Section 1. Paragraph d of 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, is amended to read as follows:

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

S 2. The subdivision heading 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:

[State] *UNTIL JULY FIRST, TWO THOUSAND SEVENTEEN, STATE assistance IN ACCORDANCE WITH THIS SUBDIVISION WILL BE AVAILABLE* for pre-nomination study for brownfield opportunity areas.

S 3. Paragraphs a, b, and i of subdivision 3 of section 970-r of the general municipal law, paragraph a as amended by section 28 of part BB of chapter 56 of the laws of 2015 and paragraphs b and i as amended by chapter 390 of the laws of 2008, are amended, and a new paragraph j is added to read as follows:

a. Within the limits of appropriations therefor, the secretary is authorized to provide, on a competitive basis, financial assistance to municipalities, to community based organizations, to community boards, or to municipalities and community based organizations acting in cooperation to prepare a nomination for designation of a brownfield opportunity area. Such financial assistance shall not exceed ninety percent of

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

LBD10755-05-6

the costs of such nomination for any such area. A nomination study must include sufficient information to designate the brownfield opportunity area. [The contents of the nomination study shall be developed based on pre-nomination study information, which shall principally consist of an area-wide study, documenting the historic brownfield uses in the area proposed for designation.]

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

i. [Following] FOR APPLICATIONS FOR ASSISTANCE SUBMITTED TO THE DEPARTMENT BEFORE JULY FIRST, TWO THOUSAND SEVENTEEN, FOLLOWING notification to the applicant that assistance has been awarded, and prior to disbursement of funds, a contract shall be executed between the department and the applicant or co-applicants. The secretary shall establish terms and conditions for such contracts as the secretary deems appropriate, including provisions to define: applicant's work scope, work schedule, and deliverables; fiscal reports on budgeted and actual use of funds expended; and requirements for submission of a final fiscal report. The contract shall also require the distribution of work products to the department, and, for community based organizations, to the applicant's municipality. Applicants shall be required to make the results publicly available. [Such contract shall further include a provision providing that if]

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

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

S 4. Subdivision 4 of section 970-r of the general municipal law, as amended by section 29 of part BB of chapter 56 of the laws of 2015, 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. The secretary may

review and approve a nomination for designation of a brownfield opportunity area at any time. 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. THE SECRETARY SHALL MAKE A DETERMINATION PURSUANT TO THIS SUBDIVISION WITHIN NINETY DAYS OF RECEIPT OF A NOMINATION.

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

S 5. 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 and subparagraphs 2 and 5 of paragraph e as amended by section 30 of part BB of chapter 56 of the laws of 2015 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 AND IMPLEMENTATION ACTIVITIES in brownfield opportunity areas. a. Within the limits of appropriations therefor, 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. Such financial assistance shall not exceed ninety percent of the costs of such brownfield site assessment.

[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 eligible for funding include, but are not limited to, testing of properties to determine the nature and extent of the contamination (including soil and groundwater), environmental assessments, the development of a proposed remediation strategy to address any identified contamination, and any other activities deemed appropriate by the commissioner in consultation with the secretary of state. Any environmental assessment shall be subject to the review and approval of such commissioner.

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

B. WITHIN THE LIMITS OF APPROPRIATIONS THEREFOR, THE SECRETARY IS AUTHORIZED TO PROVIDE, ON A COMPETITIVE BASIS, FINANCIAL ASSISTANCE TO MUNICIPALITIES, TO COMMUNITY BASED ORGANIZATIONS, TO COMMUNITY BOARDS, OR TO MUNICIPALITIES AND COMMUNITY BASED ORGANIZATIONS ACTING IN COOPERATION TO CONDUCT IMPLEMENTATION ACTIVITIES IN A BROWNFIELD OPPORTUNITY AREA DESIGNATED PURSUANT TO THIS SECTION. SUCH FINANCIAL ASSISTANCE

SHALL NOT EXCEED NINETY PERCENT OF THE COSTS OF SUCH ACTIVITIES. IMPLEMENTATION ACTIVITIES ELIGIBLE FOR FUNDING INCLUDE BUT ARE NOT LIMITED TO, DEMOLITION, ASBESTOS REMOVAL, FINANCIAL ANALYSIS, INFRASTRUCTURE IMPROVEMENT, DESIGN, LANDSCAPING, ENVIRONMENTAL ASSESSMENT, AND ENHANCEMENT OR ADDITION OF PUBLIC AMENITIES. APPLICATIONS FOR SUCH ASSISTANCE SHALL PROVIDE A DESCRIPTION OF THE PROPOSED ACTIVITY OR ACTIVITIES SUFFICIENT TO DEMONSTRATE ANTICIPATED COSTS AND HOW THE PROPOSED ACTIVITY OR ACTIVITIES ADVANCES THE GOALS AND OBJECTIVES OF THE BROWNFIELD OPPORTUNITY PLAN.

[e] C. Funding preferences [shall be given to applications] for [such] assistance PURSUANT TO THIS SUBDIVISION SHALL BE GIVEN TO APPLICATIONS 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 known or suspected 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 known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

[f] D. 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] E. 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] F. 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 shall establish terms and conditions for such contracts as the commissioner deems appropriate in consultation with the secretary of state, including provisions to define: applicant's], THE APPLICANT OR APPLICANTS SHALL SUBMIT A PROPOSED IMPLEMENTATION WORK PLAN TO THE DEPARTMENT AND RECEIVE APPROVAL FOR SUCH WORK PLAN. THE WORK PLAN SHALL INCLUDE work scope, work schedule, and deliverables[;], INCLUDING fiscal reports on budgeted and actual use of funds expended[;], and [requirements] THE ANTICIPATED DATE for submission of a final [fiscal] report. The [contract] WORK PLAN shall also require the distribution of work products to the department, and, for community based organizations, to the applicant's municipality. WITHIN SIXTY DAYS OF RECEIPT OF A PROPOSED WORK PLAN OR REVISED WORK PLAN, THE DEPARTMENT SHALL EITHER APPROVE THE WORK PLAN OR PROVIDE THE APPLICANT OR APPLICANTS WITH A NOTICE OF DEFICIENCY, WHICH SHALL INCLUDE A DETAILED DESCRIPTION OF WHAT FURTHER ELEMENTS ARE REQUIRED TO REVISE THE WORK PLAN. Applicants shall be required to make [the results] ALL WORK PRODUCTS publicly available. [Such contract shall further include a provision providing that if]

G. 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.

S 6. 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] OR BROWNFIELD OPPORTUNITY AREA PLAN shall be [proposed] SUBMITTED 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 7. 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] AND NOMINATIONS 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] ANY application for [pre-nomination] assistance and NOMINATION FOR brownfield opportunity area designation AND 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] SEEK ASSISTANCE FOR OR NOMINATE 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.

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

10. [The] BY DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, THE secretary shall establish criteria for brownfield opportunity area conformance determinations for purposes of the brownfield redevelopment tax credit component pursuant to clause (ii) of subparagraph (B) of paragraph [(5)] FIVE of subdivision (a) of section twenty-one of the tax law. In establishing criteria, the secretary shall be guided by, but not limited to, the following considerations: how the proposed use and development advances the designated brownfield opportunity area plan's vision statement, goals and objectives for revitalization; how the density of development and associated buildings and structures advances the plan's objectives, desired redevelopment and priorities for investment; and how the project complies with zoning and other local laws and standards to guide and ensure appropriate use of the project site.

S 9. Section 970-r of the general municipal law is amended by adding a new subdivision 11 to read as follows:

11. BY DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN, THE SECRETARY SHALL ESTABLISH CRITERIA FOR DETERMINING CONSISTENCY WITH THIS SECTION FOR PURPOSES OF BROWNFIELD OPPORTUNITY AREA DESIGNATIONS. IN ESTABLISHING CRITERIA, THE SECRETARY SHALL BE GUIDED BY, BUT NOT LIMITED TO, THE FOLLOWING CONSIDERATIONS: HOW ADEQUATELY THE NOMINATION DESCRIBES THE CURRENT STATUS OF THE BROWNFIELD OPPORTUNITY AREA, WHETHER THE NOMINATION PRESENTS AN ATTAINABLE AND REALISTIC PLAN FOR REVITALIZATION, AND WHETHER THE PLAN IS SUPPORTED BY THE COMMUNITY.

S 10. This act shall take effect immediately.