

7/11/15
ECS

DRAFT LBDC

AN ACT to amend the environmental conservation law, the tax law and the general municipal law, in relation to eligibility for participation in the brownfield cleanup program, assignment of the brownfield redevelopment tax credits and brownfield opportunity areas; to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites; to amend the environmental conservation law, in relation to hazardous waste generator fees and taxes; to amend the environmental conservation law and the state finance law, in relation to the environmental restoration program; to amend the environmental conservation law, in relation to limitations on liability; to amend the public authorities law, in relation to certain environmental restoration projects; and to repeal certain provisions of the environmental conservation law and the tax law relating thereto (Part BB);

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1

PART BB

2 Section 1. Subdivision (b) of section 27-1318 of the environmental
3 conservation law, as amended by section 2 of part E of chapter 577 of
4 the laws of 2004, is amended to read as follows:

5 (b) Within [sixty] one hundred eighty days of commencement of the
6 remedial design, the owner of an inactive hazardous waste disposal site,
7 and/or any person responsible for implementing a remedial program at
8 such site, where institutional or engineering controls are employed
9 pursuant to this title, shall execute an environmental easement pursuant
10 to title thirty-six of article seventy-one of this chapter.

11 § 2. Subdivision 2 of section 27-1405 of the environmental conserva-
12 tion law, as amended by section 2 of part A of chapter 577 of the laws

1 of 2004, is amended and three new subdivisions 29, 30 and 31 are added
2 to read as follows:

3 2. "Brownfield site" or "site" shall mean any real property[, the
4 redevelopment or reuse of which may be complicated by the presence or
5 potential presence of] where a contaminant is present at levels exceed-
6 ing the soil cleanup objectives or other health-based or environmental
7 standards, criteria or guidance adopted by the department that are
8 applicable based on the reasonably anticipated use of the property, in
9 accordance with applicable regulations. Such term shall not include real
10 property:

11 (a) listed in the registry of inactive hazardous waste disposal sites
12 under section 27-1305 of this article at the time of application to this
13 program and given a classification as described in subparagraph one or
14 two of paragraph b of subdivision two of section 27-1305 of this arti-
15 cle; provided, however [except until July first, two thousand five],
16 real property listed in the registry of inactive hazardous waste
17 disposal sites under subparagraph two of paragraph b of subdivision two
18 of section 27-1305 of this article [prior to the effective date of this
19 article], where such real property is owned by a volunteer or under
20 contract to be transferred to a volunteer, shall not be deemed ineligi-
21 ble to participate, provided that, prior to the site being accepted into
22 the brownfield cleanup program, the department has not identified any
23 responsible party for that property having the ability to pay for the
24 investigation or cleanup of the property and further provided that the
25 status of any such site as listed in the registry shall not be altered
26 prior to the issuance of a certificate of completion pursuant to section
27 27-1419 of this title. The department's assessment of eligibility under

1 this paragraph shall not constitute a finding concerning liability with
2 respect to the property;

3 (b) listed on the national priorities list established under authority
4 of 42 U.S.C. section 9605;

5 (c) subject to an enforcement action under title seven or nine of this
6 article, [except] or permitted or required to be permitted as a treat-
7 ment, storage or disposal facility [subject to a permit]; provided, that
8 nothing herein contained shall be deemed otherwise to exclude from the
9 scope of the term "brownfield site" a hazardous waste treatment, storage
10 or disposal facility having interim status according to regulations
11 promulgated by the commissioner and provided further that real property
12 owned by a volunteer or under contract to be transferred to a volunteer
13 shall not be deemed ineligible to participate provided that, prior to
14 the site being accepted into the brownfield cleanup program, the depart-
15 ment has not identified any responsible party for that property having
16 the ability to pay for the investigation or cleanup of the property;

17 (d) subject to an order for cleanup pursuant to article twelve of the
18 navigation law or pursuant to title ten of article seventeen of this
19 chapter except such property shall not be deemed ineligible if it is
20 subject to a stipulation agreement; or

21 (e) subject to any other on-going state or federal environmental
22 enforcement action related to the contamination which is at or emanating
23 from the site subject to the present application.

24 29. "Affordable housing project" shall be defined in regulation by the
25 department, after consultation with the division of housing and communi-
26 ty renewal, which shall at a minimum, establish the percentage of units
27 in the project that must be below a defined percentage of the area medi-
28 an income.

1 30. "Underutilized" shall be defined in regulation by the department,
2 after consultation with the business community and the city of New York.
3 Such regulations shall be adopted no later than October first, two thou-
4 sand fifteen and take into consideration the existing use of a property
5 relative to allowable development under zoning, the need for substantial
6 government assistance to redevelop and other relevant factors.

7 31. "Upside down" shall mean a property where the projected and
8 incurred cost of the investigation and remediation which is protective
9 for the anticipated use of the property equals or exceeds seventy-five
10 percent of its independent appraised value, as of the date of submission
11 of the application for participation in the brownfield cleanup program,
12 developed under the hypothetical condition that the property is not
13 contaminated.

14 § 3. Subdivision 1 of section 27-1407 of the environmental conserva-
15 tion law, as amended by section 3 of part A of chapter 577 of the laws
16 of 2004, is amended and a new subdivision 1-a is added to read as
17 follows:

18 1. A person who seeks to participate in this program shall submit a
19 request to the department on a form provided by the department. Such
20 form shall include information to be determined by the department suffi-
21 cient to allow the department to determine eligibility and the current,
22 intended and reasonably anticipated future land use of the site pursuant
23 to section 27-1415 of this title. Any such person shall submit an
24 investigation report sufficient to demonstrate that the site requires
25 remediation in order to meet the remedial requirements of this title.

26 1-a. If the person is also seeking a determination that the site is
27 eligible for the tangible property credit component of the brownfield
28 redevelopment tax credit pursuant to paragraph three of subdivision (a)

1 of section twenty-one of the tax law for a site located in a city having
2 a population of one million or more, such person shall submit informa-
3 tion sufficient to demonstrate that: (a) at least half of the site area
4 is located in an environmental zone as defined in section twenty-one of
5 the tax law; (b) the property is upside down or underutilized; or (c)
6 the project is an affordable housing project. An applicant may request
7 an eligibility determination for tangible property credits at any time
8 from application until the site receives a certificate of completion
9 pursuant to section 27-1419 of this title except for sites seeking
10 eligibility under the underutilized category.

11 Sites are not eligible for tangible property tax credits if: (a) the
12 contamination from ground water or soil vapor is solely emanating from
13 property other than the site subject to the present application; or (b)
14 the department has determined that the property has previously been
15 remediated pursuant to titles nine, thirteen and fourteen of this arti-
16 cle, title five of article fifty-six of this chapter and article twelve
17 of the navigation law such that it may be developed for its then
18 intended use.

19 § 4. Subdivision 3 of section 27-1407 of the environmental conserva-
20 tion law, as amended by section 3 of part A of chapter 577 of the laws
21 of 2004, is amended to read as follows:

22 3. The department shall notify the person requesting participation in
23 this program within [ten] thirty days after receiving such request that
24 such request is either complete or incomplete. In the event the applica-
25 tion is determined to be incomplete the department shall specify in
26 writing the missing necessary information required pursuant to this
27 article to complete the application and shall have ten days after

1 receipt of the missing information to issue a written determination if
2 the application is complete.

3 § 5. Subdivision 6 of section 27-1407 of the environmental conserva-
4 tion law, as added by section 1 of part A of chapter 1 of the laws of
5 2003, is amended to read as follows:

6 6. The department shall use all best efforts to expeditiously notify
7 the applicant within forty-five days after receiving [their request] a
8 complete application for participation that such request is either
9 accepted or rejected, and, for any applicant seeking to receive the
10 tangible property credit component of the brownfield redevelopment tax
11 credit pursuant to paragraph three of subdivision (a) of section twen-
12 ty-one of the tax law, shall concurrently notify the applicant whether
13 the criteria for receiving such component as set forth in subdivision
14 one of this section have been met.

15 § 6. Subdivision 9 of section 27-1407 of the environmental conserva-
16 tion law is amended by adding a new paragraph (g) to read as follows:

17 (g) The person's participation in any remedial program under the
18 department's oversight was terminated by the department or by a court
19 for failure to substantially comply with an agreement or order.

20 § 7. Subdivision 2 of section 27-1409 of the environmental conserva-
21 tion law, as amended by section 4 of part A of chapter 577 of the laws
22 of 2004, is amended to read as follows:

23 2. One requiring: (a) the [applicant] participant to pay for state
24 costs, including the recovery of state costs incurred before the effec-
25 tive date of such agreement; provided, however, that such costs may be
26 based on a reasonable flat-fee for oversight, which shall reflect the
27 projected future state costs incurred in negotiating and overseeing
28 implementation of such agreement; and

1 **(b)** with respect to a brownfield site which the department has deter-
2 mined constitutes a significant threat to the public health or environ-
3 ment the department may include a provision requiring the applicant to
4 provide a technical assistance grant, as described in subdivision four
5 of section 27-1417 of this title and under the conditions described
6 therein, to an eligible party in accordance with procedures established
7 under such program, with the cost of such a grant incurred by a volun-
8 teer serving as an offset against such state costs[. Where the appli-
9 cant is a participant, the department shall include provisions relating
10 to recovery of state costs incurred before the effective date of such
11 agreement];

12 § 8. Section 27-1411 of the environmental conservation law is amended
13 by adding a new subdivision 6 to read as follows:

14 6. An applicant shall include with every report submitted to the
15 department a schedule for the submission of any subsequent work plan
16 required to meet the requirements of this title.

17 § 9. Paragraphs (b), (c) and (d) of subdivision 7 of section 27-1415
18 of the environmental conservation law are relettered paragraphs (c), (d)
19 and (e) and a new paragraph (b) is added to read as follows:

20 (b) Within one hundred eighty days of commencement of the remedial
21 design or at least three months prior to the date of the anticipated
22 issuance of the certificate of completion, the owner of a brownfield
23 site, and/or any person responsible for implementing a remedial program
24 at such site, where institutional or engineering controls are employed
25 pursuant to this title, shall execute an environmental easement pursuant
26 to title thirty-six of article seventy-one of this chapter.

27 § 10. Subdivision 1, paragraph (a) of subdivision 2 and subdivision 3
28 of section 27-1419 of the environmental conservation law, subdivision 1

1 and paragraph (a) of subdivision 2 as added by section 1 of part A of
2 chapter 1 of the laws of 2003, subdivision 3 as amended by chapter 390
3 of the laws of 2008, are amended to read as follows:

4 1. Upon certification by the applicant that the remediation require-
5 ments of this title have been or will be achieved in accordance with the
6 schedules provided in reports submitted to the department on the remedi-
7 al work plan for the brownfield site, such applicant shall submit to the
8 department a final engineering report prepared by an individual licensed
9 or otherwise authorized in accordance with article one hundred forty-
10 five of the education law to practice the profession of engineering.

11 (a) a description of the remediation activities completed pursuant to
12 the remedial work plan and any interim remedial measures for the brown-
13 field site;

14 3. Upon receipt of the final engineering report, the department shall
15 review such report and the data submitted pursuant to the brownfield
16 site cleanup agreement as well as any other relevant information regard-
17 ing the brownfield site. Upon satisfaction of the commissioner that the
18 remediation requirements set forth in this title have been or will be
19 achieved in accordance with the timeframes, if any, established in the
20 remedial work plan, the commissioner shall issue a written certificate
21 of completion[, such]. The certificate shall include such information as
22 determined by the department of taxation and finance, including but not
23 limited to the brownfield site boundaries included in the final engi-
24 neering report, the date of the brownfield site cleanup agreement
25 [pursuant to section 27-1409 of this title], and the applicable percent-
26 ages available as of the date of the certificate of completion for that
27 site for purposes of section twenty-one of the tax law[, with such
28 percentages to be determined as follows with respect to such qualified

1 site]. For those sites for which the department has issued a notice to
2 the applicant on or after July first, two thousand fifteen or the date
3 of publication in the state register of proposed regulations defining
4 "underutilized" as provided in subdivision thirty of section 27-1405 of
5 this title, whichever shall be later, that its request for participation
6 has been accepted under subdivision six of section 27-1407 of this
7 title, the tangible property credit component of the brownfield redev-
8 opment tax credit pursuant to paragraph three of subdivision (a) of
9 section twenty-one of the tax law shall only be available to the taxpay-
10 er if the criteria for receiving such tax component have been met. For
11 those sites for which the department has issued a notice to the taxpayer
12 after June twenty-third, two thousand eight that its request for partic-
13 ipation has been accepted under subdivision six of section 27-1407 of
14 this title[:

15 For the purposes of calculating], the applicable percentage for the
16 site preparation credit component pursuant to paragraph two of subdivi-
17 sion (a) of section twenty-one of the tax law, and the on-site groundwa-
18 ter remediation credit component pursuant to paragraph four of subdivi-
19 sion (a) of section twenty-one of the tax law[, the applicable
20 percentage] shall be based on the level of cleanup achieved pursuant to
21 subdivision four of section 27-1415 of this title and the level of
22 cleanup of soils to contaminant-specific soil cleanup objectives promul-
23 gated pursuant to subdivision six of section 27-1415 of this title, up
24 to a maximum of fifty percent, as follows:

25 (a) soil cleanup for unrestricted use, the protection of groundwater
26 or the protection of ecological resources, the applicable percentage
27 shall be fifty percent;

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

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

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

10 § 11. Subdivision 5 of section 27-1419 of the environmental conserva-
11 tion law, as amended by section 9 of part A of chapter 577 of the laws
12 of 2004, is amended to read as follows:

13 5. A certificate of completion issued pursuant to this section may be
14 transferred [to the applicant's successors or assigns upon transfer or
15 sale of the brownfield site] by the applicant or subsequent holder of
16 the certificate of completion to a successor to a real property inter-
17 est, including legal title, equitable title or leasehold, in all or a
18 part of the brownfield site for which the certificate of completion was
19 issued. Notwithstanding any provision of this chapter to the contrary, a
20 certificate of completion shall not be transferred to a responsible
21 party. Further, a certificate of completion may be modified or revoked
22 by the commissioner upon a finding that:

23 (a) Either the applicant, or the applicant's successors or assigns,
24 has failed to comply with the terms and conditions of the brownfield
25 site cleanup agreement;

26 (b) The applicant made a misrepresentation of a material fact tending
27 to demonstrate that: (i) it was qualified as a volunteer; or (ii) met
28 the criteria set forth in subdivision one-a of section 27-1407 of this

1 title for the purpose of receiving the tangible property credit compo-
2 nent of the brownfield redevelopment tax credit pursuant to paragraph
3 three of subdivision (a) of section twenty-one of the tax law;

4 (c) Either the applicant, or the applicant's successors or assigns,
5 made a misrepresentation of a material fact tending to demonstrate that
6 the cleanup levels identified in the brownfield site cleanup agreement
7 were reached; or

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

9 § 12. Section 27-1423 of the environmental conservation law is
10 REPEALED.

11 § 13. Section 27-1429 of the environmental conservation law, as
12 amended by section 13 of part A of chapter 577 of the laws of 2004, is
13 amended to read as follows:

14 § 27-1429. Permit waivers.

15 The department, by and through the commissioner, shall be exempt for
16 activities conducted pursuant to subdivision five of section 27-1411 of
17 this title and shall be authorized to exempt a person from the require-
18 ment to obtain any state or local permit or other authorization for any
19 activity needed to implement a program for the investigation and/or
20 remediation of contamination at or emanating from a brownfield site;
21 provided that the activity is conducted in a manner which satisfies all
22 substantive technical requirements applicable to like activity conducted
23 pursuant to a permit.

24 § 14. Subdivision 1 of section 27-1431 of the environmental conserva-
25 tion law is amended by adding a new paragraph c to read as follows:

26 c. to inspect for compliance with the site management plan approved by
27 the department, including (i) inspection of the performance of mainte-
28 nance, monitoring and operational activities required as part of the

1 remedial program for the site, (ii) inspection for the purpose of ascer-
2 taining current uses of the site, and (iii) taking samples in accordance
3 with paragraph (a) of this subdivision.

4 § 15. Section 27-1435 of the environmental conservation law is
5 REPEALED.

6 § 15-a. The environmental conservation law is amended by adding a new
7 section 27-1437 to read as follows:

8 § 27-1437. BCP-EZ program.

9 1. The department may promulgate regulations to implement a program
10 providing for the expedited investigation and/or remediation of contam-
11 ination at brownfield sites (BCP-EZ program), provided that:

12 (a) at the time of the application, the department has determined that
13 the brownfield site does not pose a significant threat pursuant to
14 section 27-1411 of this title;

15 (b) the applicant has waived in writing any claim for tax credits
16 pursuant to section twenty-one of the tax law on a form prescribed by
17 the department; and

18 (c) the activity is conducted in a manner which satisfies all require-
19 ments applicable to like activity conducted pursuant to sections 27-1415
20 and 27-1417 of this title, except as provided in subdivision two of this
21 section and the time periods specified in paragraphs (b) and (c) of
22 subdivision three of section 27-1417 of this title.

23 2. For any site accepted into the BCP-EZ program pursuant to this
24 section with a remedial work plan identifying a Track 4 remediation, if
25 a contaminant is identified in soil in excess of the remedial action
26 objectives contained in an applicable generic table developed pursuant
27 to subdivision six of section 27-1415 of this title, the applicant may
28 use site-specific data to demonstrate to the department that the concen-

1 tration of the contaminant in the soils reflects background conditions
2 and, in that case, a contaminant-specific action objective for such
3 contaminant equal to such background concentration may be established
4 provided that such objective is protective of the public health and the
5 environment and is determined in a manner acceptable to the department.

6 3. Upon the department's acceptance of the certification by the appli-
7 cant that the remediation requirements of this title, pursuant to
8 section 27-1419 of this title, have been achieved for the brownfield
9 site and an environmental easement, if necessary, has been created and
10 filed pursuant to title thirty-six of article seventy-one of this chap-
11 ter, a site in the BCP-EZ program shall be eligible to receive a certif-
12 icate of completion in accordance with section 27-1419 of this title;
13 provided, however, that such certificate of completion shall not entitle
14 the holder to any tax credits provided by section twenty-one of the tax
15 law.

16 § 16. The opening paragraph of subdivision 10 of section 71-3605 of
17 the environmental conservation law, as added by section 2 of part A of
18 chapter 1 of the laws of 2003, is amended to read as follows:

19 An environmental easement may be enforced in law or equity by its
20 grantor, by the state, or any affected local government as defined in
21 section 71-3603 of this title. Such easement is enforceable against the
22 owner of the burdened property, any lessees, and any person using the
23 land. Enforcement shall not be defeated because of any subsequent
24 adverse possession, laches, estoppel, reversion or waiver. No general
25 law of the state which operates to defeat the enforcement of any inter-
26 est in real property shall operate to defeat the enforcement of any
27 environmental easement unless such general law expressly states the
28 intent to defeat the enforcement of such easement or provides for the

1 exercise of the power of eminent domain. It is not a defense in any
2 action to enforce an environmental easement that:

3 § 17. Paragraph 3 of subdivision (a) of section 21 of the tax law, as
4 amended by chapter 390 of the laws of 2008, is amended to read as
5 follows:

6 (3) Tangible property credit component.

7 (i) The tangible property credit component shall be equal to the
8 applicable percentage of the cost or other basis for federal income tax
9 purposes of tangible personal property and other tangible property,
10 including buildings and structural components of buildings, which
11 constitute qualified tangible property and may include any related party
12 service fee paid; provided[, however,] that in determining the cost or
13 other basis of such property, the taxpayer shall exclude the acquisition
14 cost of any item of property with respect to which a credit under this
15 section was allowable to another taxpayer. A related party service fee
16 shall be allowed only in the calculation of the tangible property credit
17 component and shall not be allowed in the calculation of the site prepa-
18 ration credit component or the on-site groundwater remediation credit
19 component. The portion of the tangible property credit component which
20 is attributable to related party service fees shall be allowed only as
21 follows: (A) in the taxable year in which the qualified tangible proper-
22 ty described in subparagraph (iii) of this paragraph is placed in
23 service, for that portion of the related party service fees which have
24 been earned and actually paid to the related party on or before the last
25 day of such taxable year; and (B) with respect to any other taxable year
26 for which the tangible property credit component may be claimed under
27 this subparagraph and in which the amount of any additional related
28 party service fees are actually paid by the taxpayer to the related

1 party, the tangible property credit component for such amount shall be
2 allowed in such taxable year. The credit component amount so determined
3 shall be allowed for the taxable year in which such qualified tangible
4 property is first placed in service on a qualified site with respect to
5 which a certificate of completion has been issued to the taxpayer, or
6 for the taxable year in which the certificate of completion is issued if
7 the qualified tangible property is placed in service prior to the issu-
8 ance of the certificate of completion. This credit component shall only
9 be allowed for up to [ten taxable years after] one hundred twenty months
10 after the date of the issuance of such certificate of completion.

11 (ii) The tangible property credit component shall be allowed with
12 respect to property leased to a second party only if such second party
13 is either [(i)] (A) not a party responsible for the disposal of hazard-
14 ous waste or the discharge of petroleum at the site according to appli-
15 cable principles of statutory or common law liability, or [(ii)] (B) a
16 party responsible according to applicable principles of statutory or
17 common law liability if such party's liability arises solely from opera-
18 tion of the site subsequent to the disposal of hazardous waste or the
19 discharge of petroleum, and is so certified by the commissioner of envi-
20 ronmental conservation at the request of the taxpayer, pursuant to
21 section 27-1419 of the environmental conservation law. Notwithstanding
22 any other provision of law to the contrary, in the case of allowance of
23 credit under this section to such a lessor, the commissioner shall have
24 the authority to reveal to such lessor any information, with respect to
25 the issue of qualified use of property by the lessee, which is the basis
26 for the denial in whole or in part, or for the recapture, of the credit
27 claimed by such lessor. For purposes of the tangible property credit
28 component allowed under this section the taxpayer to whom the certif-

1 icate of completion is issued, as provided for under subdivision five of
2 section 27-1419 of the environmental conservation law, may transfer the
3 benefits and burdens of the certificate of completion, which run with
4 the land and to the applicant's successors or assigns upon transfer or
5 sale of all or any portion of an interest or estate in the qualified
6 site. However, the taxpayer to whom certificate's benefits and burdens
7 are transferred shall not include the cost of acquiring all or any
8 portion of an interest or estate in the site and the amounts included in
9 the cost or other basis for federal income tax purposes of qualified
10 tangible property already claimed by the previous taxpayer pursuant to
11 this section.

12 (iii) The term "related party service fee" shall mean any fee or other
13 monetary compensation earned by a related party and calculated as a
14 percentage of project and/or acquisition costs, in consideration of
15 services rendered to or for the benefit of the taxpayer placing quali-
16 fied tangible property in service in connection with the acquisition and
17 development of such property. For purposes of this subparagraph,
18 "related party" shall have the same meaning as related person as defined
19 in subparagraph (c) of paragraph three of subdivision (b) of section
20 four hundred sixty-five of the internal revenue code.

21 (iv) Eligible costs for the tangible property credit component are
22 limited to costs for tangible property that has a depreciable life for
23 federal income tax purposes of fifteen years or more, costs associated
24 with demolition and excavation on the site and the foundation of any
25 buildings constructed as part of the site cover that are not properly
26 included in the site preparation component and costs associated with
27 non-portable equipment, machinery and associated fixtures and appurte-
28 nances used exclusively on the site, whether or not such property has a

1 depreciable life for federal income tax purposes of fifteen years or
2 more.

3 (v) With respect to any qualified site for which the department of
4 environmental conservation has issued a notice to the taxpayer on or
5 after July first, two thousand fifteen or the date of publication in the
6 state register of proposed regulations defining "underutilized" as
7 provided in subdivision thirty of section 27-1405 of the environmental
8 conservation law, whichever shall be later, that its request for partic-
9 ipation has been accepted under subdivision six of section 27-1407 of
10 the environmental conservation law, and the site is eligible for the
11 tangible property credit component because it is an affordable housing
12 project pursuant to subdivision one-a of section 27-1407 of the environ-
13 mental conservation law, the portion of eligible costs to be included in
14 the calculation of the tangible property credit component will be deter-
15 mined by multiplying the total costs qualified for the tangible property
16 credit component by a fraction, the numerator of which shall be the
17 square footage of space of the affordable housing units dedicated to
18 residential occupancy and the denominator of which shall be the total
19 square footage of the building.

20 § 18. Subparagraphs (A) and (B) of paragraph 3-a of subdivision (a) of
21 section 21 of the tax law, as added by chapter 390 of the laws of 2008,
22 are amended to read as follows:

23 (A) Notwithstanding any other provision of law to the contrary, the
24 tangible property credit component available for any qualified site
25 pursuant to paragraph three of this subdivision shall not exceed thir-
26 ty-five million dollars or three times the sum of the costs included in
27 the calculation of the site preparation credit component and the on-site
28 groundwater remediation credit component under paragraphs two and four,

1 respectively, of this subdivision, and the costs that would have been
2 included in the calculation of such components if not treated as an
3 expense and deducted pursuant to section one hundred ninety-eight of the
4 internal revenue code, whichever is less; provided, however, that: (1)
5 in the case of a qualified site to be used primarily for manufacturing
6 activities, the tangible property credit component available for any
7 qualified site pursuant to paragraph three of this subdivision shall not
8 exceed forty-five million dollars or six times the sum of the costs
9 included in the calculation of the site preparation credit component and
10 the on-site groundwater remediation credit component under paragraphs
11 two and four, respectively, of this subdivision, and the costs that
12 would have been included in the calculation of such components if not
13 treated as an expense and deducted pursuant to section one hundred nine-
14 ty-eight of the internal revenue code, whichever is less; and (2) the
15 provisions of this paragraph shall not apply to any qualified site for
16 which the department of environmental conservation has issued a notice
17 to the taxpayer before June twenty-third, two thousand eight that its
18 request for participation has been accepted under subdivision six of
19 section 27-1407 of the environmental conservation law.

20 (B) For the purposes of this paragraph, the term "manufacturing activ-
21 ities" means the production of goods by manufacturing, processing,
22 assembling, refining, mining, extracting, farming, agriculture, horti-
23 culture, floriculture, viticulture or commercial fishing[, and shall
24 also include the activities of a qualified emerging technology company
25 as defined in paragraph (c) of subdivision one of section thirty-one
26 hundred two-e of the public authorities law regardless of the ten
27 million dollar limitation expressed in subparagraph one of such para-
28 graph]; provided however, that the generation and distribution of elec-

1 tricity, the distribution of natural gas, and the production of steam
2 associated with the generation of electricity, shall not constitute
3 manufacturing activities.

4 § 19. Subparagraph (C) of paragraph 3-a of subdivision (a) of section
5 21 of the tax law, as added by chapter 390 of the laws of 2008, is
6 amended to read as follows:

7 (C) In order to properly administer the [credit] credits set forth in
8 [paragraph three of] this subdivision, the department may disclose
9 information about the calculation and the amounts of the credits claimed
10 under [paragraph three of] this subdivision on a taxpayer's return to
11 the department of environmental conservation and other taxpayers claim-
12 ing tax credits under this section with respect to the same qualifying
13 site.

14 § 20. Subparagraph (D) of paragraph 3-a of subdivision (a) of section
15 21 of the tax law, as added by chapter 390 of the laws of 2008, is
16 amended to read as follows:

17 (D) [If] With respect to any qualified site for which the department
18 of environmental conservation has issued a notice to the taxpayer before
19 July first, two thousand fifteen or the date of publication in the state
20 register of proposed regulations defining "underutilized" as provided in
21 subdivision thirty of section 27-1405 of the environmental conservation
22 law, whichever shall be later, that its request for participation has
23 been accepted under subdivision six of section 27-1407 of the environ-
24 mental conservation law, or where the taxpayer has either been issued or
25 received a certificate of completion from another taxpayer under section
26 27-1419 of the environmental conservation law before July first, two
27 thousand fifteen or the date of publication in the state register of
28 proposed regulations defining "underutilized" as provided in subdivision

1 thirty of section 27-1405 of the environmental conservation law, which-
2 ever shall be later, if the qualifying site is located in a brownfield
3 opportunity area and is developed in conformance with the goals and
4 priorities established for that applicable brownfield opportunity area
5 as designated pursuant to section nine hundred seventy-r of the general
6 municipal law, the applicable percentage of the tangible property credit
7 component will be increased by two percent.

8 § 21. Paragraph 5 of subdivision (a) of section 21 of the tax law, as
9 amended by section 39 of part A of chapter 59 of the laws of 2014, is
10 amended to read as follows:

11 (5) Applicable percentage. (A) For purposes of computing the site
12 preparation and on-site groundwater remediation credit components pursu-
13 ant to paragraphs two[, three] and four of this subdivision, with
14 respect to such qualified sites for which the department of environ-
15 mental conservation has issued a notice to the taxpayer before June
16 twenty-third, two thousand eight that its request for participation has
17 been accepted under subdivision six of section 27-1407 of the environ-
18 mental conservation law, or where the taxpayer has either been issued or
19 received a certificate of completion from another taxpayer under section
20 27-1419 of the environmental conservation law for such a site, and, for
21 purposes of computing the tangible property component pursuant to para-
22 graph three of this subdivision with respect to such qualified sites for
23 which the department of environmental conservation has issued a notice
24 to the taxpayer before July first, two thousand fifteen or the date of
25 publication in the state register of proposed regulations defining
26 "underutilized" as provided in subdivision thirty of section 27-1405 of
27 the environmental conservation law, whichever shall be later, that its
28 request for participation has been accepted under subdivision six of

1 section 27-1407 of the environmental conservation law, or where the
2 taxpayer has either been issued or received a certificate of completion
3 from another taxpayer under section 27-1419 of the environmental conser-
4 vation law for such a site, the applicable percentage shall be twelve
5 percent in the case of credits claimed under article nine, nine-A or
6 thirty-three of this chapter, and ten percent in the case of credits
7 claimed under article twenty-two of this chapter, except that where at
8 least fifty percent of the area of the qualified site relating to the
9 credit provided for in this section is located in an environmental zone
10 as defined in paragraph six of subdivision (b) of this section, the
11 applicable percentage shall be increased by an additional eight percent.
12 Provided, however, as afforded in section 27-1419 of the environmental
13 conservation law, if the certificate of completion indicates that the
14 qualified site has been remediated to Track I as that term is described
15 in subdivision four of section 27-1415 of the environmental conservation
16 law, the applicable percentage set forth in the first sentence of this
17 paragraph shall be increased by an additional two percent.

18 (B) With respect to such qualified site for which the department of
19 environmental conservation has issued a notice to the taxpayer on or
20 after July first, two thousand fifteen or the date of publication in the
21 state register of proposed regulations defining "underutilized" as
22 provided in subdivision thirty of section 27-1405 of the environmental
23 conservation law, whichever shall be later, that its request for partic-
24 ipation has been accepted under subdivision six of section 27-1407 of
25 the environmental conservation law, the applicable percentage for the
26 tangible property credit component of the brownfield redevelopment tax
27 credit pursuant to paragraph three of subdivision (a) of this section
28 shall be the sum of ten percent and the following additional percent-

1 ages, provided that if the sum is greater than twenty-four percent, the
2 total percentage of the tangible property credit component shall be
3 twenty-four percent and is otherwise subject to the limitations set
4 forth in paragraphs three and three-a of subdivision (a) of this
5 section:

6 (i) five percent for a site within an environmental zone;

7 (ii) five percent for a site located within a designated brownfield
8 opportunity area and is developed in conformance with the goals and
9 priorities established for that applicable brownfield opportunity area;

10 (iii) five percent for a site developed as affordable housing, as
11 defined in section 27-1405 of the environmental conservation law;

12 (iv) five percent for a site to be used primarily for manufacturing
13 activities as such term is defined in subparagraph (B) of paragraph
14 three-a of this subdivision; and

15 (v) five percent for sites remediated to Track 1 as that term is
16 defined in subdivision four of section 27-1415 of the environmental
17 conservation law.

18 (C) The taxpayer shall submit, in the manner prescribed by the commis-
19 sioner, information sufficient to demonstrate that the site qualifies
20 for any credit components available under subparagraph (B) of this para-
21 graph. If the site is receiving the credit component authorized pursuant
22 to clause (ii) of subparagraph (B) of this paragraph for being located
23 within a designated brownfield opportunity area, the taxpayer shall
24 submit a certification from the secretary of state that the development
25 is in conformance with such brownfield opportunity area plan pursuant to
26 section nine hundred seventy-r of the general municipal law.

1 § 22. Clause (i) of subparagraph (B) of paragraph 3 of subdivision
2 (b) of section 21 of the tax law, as amended by chapter 420 of the laws
3 of 2006, is amended to read as follows:

4 (i) is, or when occupied becomes, part of a dwelling whose primary
5 ownership structure is covered under either article nine-B of the real
6 property law or meets the requirements of section 216 (b)(1) of the
7 Internal Revenue Code or is part of an affordable housing project as
8 defined in subdivision twenty-nine of section 27-1405 of the environ-
9 mental conservation law, where units are sold as single family homes or
10 multiple family dwellings;

11 § 23. Paragraphs 2, 4 and 6 of subdivision (b) of section 21 of the
12 tax law, as amended by section 1 of part H of chapter 577 of the laws of
13 2004 and subparagraph (B) and the closing paragraph of paragraph 6 as
14 amended by section 1 of part G of chapter 62 of the laws of 2006, are
15 amended to read as follows:

16 (2) Site preparation costs. The term "site preparation costs" shall
17 mean all amounts properly chargeable to a capital account, [(i)] which
18 are paid or incurred [in connection with a site's qualification for a
19 certificate of completion, and (ii) all other site preparation costs
20 paid or incurred in connection with preparing a site for the erection of
21 a building or a component of a building, or otherwise to establish a
22 site as usable for its industrial, commercial (including the commercial
23 development of residential housing), recreational or conservation
24 purposes. Site preparation costs shall include, but not be limited to,
25 the costs of excavation, temporary electric wiring, scaffolding, demoli-
26 tion costs, and the costs of fencing and security facilities. Site
27 preparation costs shall not include the cost of acquiring the site and
28 shall not include amounts included in the cost or other basis for feder-

1 al income tax purposes of qualified tangible property, as described in
2 paragraph three of this subdivision] which are necessary to implement a
3 site's investigation, remediation, or qualification for a certificate of
4 completion, and shall include costs of: excavation; demolition; activ-
5 ities undertaken under the oversight of the department of labor or in
6 accordance with standards established by the department of health to
7 remediate and dispose of regulated materials including asbestos, lead or
8 polychlorinated biphenyls; environmental consulting; engineering; legal
9 costs; transportation, disposal, treatment or containment of contam-
10 inated soil; remediation measures taken to address contaminated soil
11 vapor; cover systems consistent with applicable regulations; physical
12 support of excavation; dewatering and other work to facilitate or enable
13 remediation activities; sheeting, shoring, and other engineering
14 controls required to prevent off-site migration of contamination from
15 the qualified site or migrating onto the qualified site; and the costs
16 of fencing, temporary electric wiring, scaffolding, and security facili-
17 ties until such time as the certificate of completion has been issued.
18 Site preparation shall include all costs paid or incurred within sixty
19 months after the last day of the tax year in which the certificate of
20 completion is issued that are necessary for compliance with the certif-
21 icate of completion or subsequent modifications thereof, or the remedial
22 program defined in such certificate of completion including but not
23 limited to institutional controls, engineering controls, an approved
24 site management plan, and an environmental easement with respect to the
25 qualified site. Site preparation cost shall not include the costs of
26 foundation systems that exceed the cover system requirements in the
27 regulations applicable to the qualified site.

1 (4) On-site groundwater remediation costs. The term "on-site groundwa-
2 ter remediation costs" shall mean all amounts properly chargeable to a
3 capital account, [(i)] which are paid or incurred [in connection with a
4 site's qualification for a certificate of completion, and (ii) include
5 costs which are paid or incurred in connection with the remediation of
6 on-site groundwater contamination and incurred to implement a require-
7 ment of the remedial work plan or an interim remedial measure work plan
8 for a qualified site which are imposed pursuant to subdivisions two and
9 three of section 27-1411 of the environmental conservation law] which
10 are necessary to implement a site's groundwater investigation, remedi-
11 ation, or qualification for a certificate of completion not already
12 covered under site preparation costs, and shall include costs of: envi-
13 ronmental consulting; engineering; legal costs; transportation,
14 disposal, treatment or containment of contaminated groundwater; sheet-
15 ing, shoring, and other engineering controls required to prevent off-
16 site migration of groundwater contamination from the qualified site or
17 migrating onto the qualified site; and the costs of fencing, temporary
18 electric wiring and security facilities until such time as the certif-
19 icate of completion is issued. On-site groundwater remediation costs
20 shall include all costs paid or incurred within sixty months after the
21 last day of the tax year in which the certificate of completion is
22 issued that are necessary for compliance with the certificate of
23 completion or subsequent modifications thereof, or the groundwater reme-
24 dial program defined in such certificate of completion including but not
25 limited to institutional controls, engineering controls, an approved
26 site management plan specific to on-site groundwater remediation, and an
27 environmental easement with respect to the qualified site.

1 (6) Environmental zones (EN-Zones). An "environmental zone" shall mean
2 an area designated as such by the commissioner of [economic development]
3 labor. Such areas [so designated are areas which are] shall be census
4 tracts [and block numbering areas which, as of the two thousand census,]
5 that satisfy either of the following criteria:

6 (A) areas that have both:

7 (i) a poverty rate of at least twenty percent [for the year to which
8 the data relate] based on the most recent five year American Community
9 Survey; and

10 (ii) an unemployment rate of at least one and one-quarter times the
11 statewide unemployment rate [for the year to which the data relate]
12 based on the most recent five year American Community Survey, or;

13 (B) areas that have a poverty rate of at least two times the poverty
14 rate for the county in which the areas are located [for the year to
15 which the data relate provided, however, that a qualified site shall
16 only be deemed to be located in an environmental zone under this subpar-
17 agraph (B) if such site was the subject of a brownfield site cleanup
18 agreement pursuant to section 27-1409 of the environmental conservation
19 law that was entered into prior to September first, two thousand ten]
20 based on the most recent five year American Community Survey.

21 Such designation shall be made and a list of all such environmental
22 zones shall be established by the commissioner of [economic development
23 no later than December thirty-first, two thousand four provided, howev-
24 er, that a qualified site shall only be deemed to be located in an envi-
25 ronmental zone under subparagraph (B) of this paragraph if such site was
26 the subject of a brownfield site cleanup agreement pursuant to section
27 27-1409 of the environmental conservation law that was entered into
28 prior to September first, two thousand ten] labor based on the two thou-

1 sand nine through two thousand thirteen American Community Survey esti-
2 mate. Upon request of the commissioner of environmental conservation,
3 the commissioner of labor shall update such designation based on the
4 most recent American Community Survey, or its successor.

5 The determination of whether a site is located in an environmental
6 zone shall be based on the date the department of environmental conser-
7 vation issued a notice to the taxpayer that its request for partic-
8 ipation in the brownfield cleanup program has been deemed complete
9 pursuant to subdivision three of section 27-1407 of the environmental
10 conservation law.

11 § 24. Section 171-r of the tax law is amended by adding a new subdivi-
12 sion (e) to read as follows:

13 (e) The commissioner, in consultation with the commissioner of envi-
14 ronmental conservation, shall publish by January thirty-first, two thou-
15 sand sixteen a supplemental brownfield credit report containing the
16 information required by this section about the credits claimed for the
17 years two thousand five, two thousand six, and two thousand seven.

18 § 25. Section 171-s of the tax law is REPEALED.

19 § 26. Paragraph b of subdivision 2 of section 970-r of the general
20 municipal law, as added by section 1 of part F of chapter 1 of the laws
21 of 2003, is amended to read as follows:

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

- 25 (1) the borders of the proposed brownfield opportunity area;
- 26 (2) the number and size of known or suspected brownfield sites;
- 27 (3) current and anticipated uses of the properties in the proposed
28 brownfield opportunity area;

1 (4) current and anticipated future conditions of groundwater in the
2 proposed brownfield opportunity area;

3 (5) known data about the environmental conditions of the properties in
4 the proposed brownfield opportunity area;

5 (6) ownership of the properties in the proposed brownfield opportunity
6 area and whether the owners are participating in the brownfield opportu-
7 nity area planning process; and

8 (7) preliminary descriptions of possible remediation strategies, reuse
9 opportunities, necessary infrastructure improvements and other public or
10 private measures needed to stimulate investment, promote revitalization,
11 and enhance community health and environmental conditions.

12 § 27. Subparagraphs 2 and 5 of paragraph c of subdivision 2 of section
13 970-r of the general municipal law, as added by section 1 of part F of
14 chapter 1 of the laws of 2003, are amended to read as follows:

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

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

19 § 28. Paragraph a of subdivision 3 of section 970-r of the general
20 municipal law, as amended by chapter 390 of the laws of 2008, is amended
21 to read as follows:

22 a. Within the limits of appropriations therefor, the secretary is
23 authorized to provide, on a competitive basis, financial assistance to
24 municipalities, to community based organizations, to community boards,
25 or to municipalities and community based organizations acting in cooper-
26 ation to prepare a nomination for designation of a brownfield opportu-
27 nity area. Such financial assistance shall not exceed ninety percent of
28 the costs of such nomination for any such area. A nomination study must

1 include sufficient information to designate the brownfield opportunity
2 area. The contents of the nomination study shall be developed based on
3 pre-nomination study information, which shall principally consist of an
4 area-wide study, documenting the historic brownfield uses in the area
5 proposed for designation.

6 § 29. Subparagraphs 2 and 5 of paragraph e of subdivision 3 and subdivi-
7 sion 4 of section 970-r of the general municipal law, subparagraphs 2
8 and 5 of paragraph e of subdivision 3 as added by section 1 of part F of
9 chapter 1 of the laws of 2003 and subdivision 4 as amended by chapter
10 390 of the laws of 2008, are amended to read as follows:

11 (2) areas with concentrations of known or suspected brownfield sites;
12 (5) areas with known or suspected brownfield sites presenting strate-
13 gic opportunities to stimulate economic development, community revitali-
14 zation or the siting of public amenities.

15 4. Designation of brownfield opportunity area. Upon completion of a
16 nomination for designation of a brownfield opportunity area, it shall be
17 forwarded by the applicant to the secretary, who shall determine whether
18 it is consistent with the provisions of this section. The secretary may
19 review and approve a nomination for designation of a brownfield opportu-
20 nity area at any time. If the secretary determines that the nomination
21 is consistent with the provisions of this section, the brownfield oppor-
22 tunity area shall be designated. If the secretary determines that the
23 nomination is not consistent with the provisions of this section, the
24 secretary shall make recommendations in writing to the applicant of the
25 manner and nature in which the nomination should be amended.

26 § 30. Paragraph a and subparagraphs 2 and 5 of paragraph e of subdivi-
27 sion 6 of section 970-r of the general municipal law, paragraph a as
28 amended by chapter 386 of the laws of 2007 and subparagraphs 2 and 5 of

1 paragraph e as added by section 1 of part F of chapter 1 of the laws of
2 2003, are amended to read as follows:

3 a. Within the limits of appropriations therefor, [the commissioner, in
4 consultation with] the secretary of state, is authorized to provide, on
5 a competitive basis, financial assistance to municipalities, to communi-
6 ty based organizations, to community boards, or to municipalities and
7 community based organizations acting in cooperation to conduct brown-
8 field site assessments [in a brownfield opportunity area designated
9 pursuant to this section]. Such financial assistance shall not exceed
10 ninety percent of the costs of such brownfield site assessment.

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

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

15 § 31. Section 970-r of the general municipal law is amended by adding
16 a new subdivision 10 to read as follows:

17 10. The secretary shall establish criteria for brownfield opportunity
18 area conformance determinations for purposes of the brownfield redevel-
19 opment tax credit component pursuant to clause (ii) of subparagraph (B)
20 of paragraph (5) of subdivision (a) of section twenty-one of the tax
21 law. In establishing criteria, the secretary shall be guided by, but not
22 limited to, the following considerations: how the proposed use and
23 development advances the designated brownfield opportunity area plan's
24 vision statement, goals and objectives for revitalization; how the
25 density of development and associated buildings and structures advances
26 the plan's objectives, desired redevelopment and priorities for invest-
27 ment; and how the project complies with zoning and other local laws and
28 standards to guide and ensure appropriate use of the project site.

1 § 32. Section 31 of part H of chapter 1 of the laws of 2003, amending
2 the tax law relating to brownfield redevelopment tax credits, remediated
3 brownfield credit for real property taxes for qualified sites and envi-
4 ronmental remediation insurance credits, as amended by chapter 474 of
5 the laws of 2012, is amended to read as follows:

6 § 31. The tax credits allowed under section [21,] 22 or 23 of the tax
7 law and the corresponding provisions in articles 9, 9-A, 22[, 32] and 33
8 of the tax law, as added by the provisions of sections one through twen-
9 ty-nine of this act, shall not be applicable [if] to any site accepted
10 into the brownfield cleanup program on and after July 1, 2015 or the
11 date of publication in the state register of proposed regulations defin-
12 ing "underutilized" as provided in subdivision 30 of section 27-1405 of
13 the environmental conservation law, whichever shall be later. The tax
14 credits allowed under section 21 of the tax law and the corresponding
15 provisions in articles 9, 9-A, 22 and 33 of the tax law, as added by the
16 provisions of sections one through twenty-nine of this act, shall not be
17 applicable to any site accepted into the brownfield cleanup program
18 after December 31, 2022, provided, however that any sites accepted on or
19 before December 31, 2022 must have received the [remediation] certif-
20 icate of completion required to qualify for any of such credits [is
21 issued after December] on or before March 31, [2015] 2026.

22 § 33. Notwithstanding any other provision of this act, any site for
23 which a brownfield cleanup agreement with the department of environ-
24 mental conservation was entered into (1) prior to June 23, 2008 and
25 which has not received a certificate of completion by December 31, 2017
26 or (2) on or after June 23, 2008 and prior to July 1, 2015 or the date
27 of publication in the state register of proposed regulations defining
28 "underutilized" as provided in subdivision 30 of section 27-1405 of the

1 environmental conservation law, whichever shall be later, and which has
2 not received a certificate of completion by December 31, 2019, shall
3 only be eligible for brownfield redevelopment tax credits available
4 pursuant to section 21 of the tax law as if the site was accepted into
5 the brownfield cleanup program on and after July 1, 2015 or the date of
6 publication in the state register of proposed regulations defining
7 "underutilized" as provided in subdivision 30 of section 27-1405 of the
8 environmental conservation law, whichever shall be later, and shall be
9 subject to the eligibility requirements for the tangible property credit
10 component set forth in subdivision 1-a of section 27-1407 of the envi-
11 ronmental conservation law.

12 § 34. Paragraph c of subdivision 3 of section 27-0923 of the environ-
13 mental conservation law, as amended by section 5 of part I of chapter
14 577 of the laws of 2004, is amended to read as follows:

15 c. For the purpose of this section, generation of hazardous waste
16 shall not include retrieval or creation of hazardous waste which must be
17 disposed of under an order of or agreement with the department pursuant
18 to title thirteen or title fourteen of this article or under a contract
19 with the department pursuant to title five of article fifty-six of this
20 chapter or under an order of or agreement with the United States envi-
21 ronmental protection agency or an order of a court of competent juris-
22 diction, related to a facility addressed pursuant to the Comprehensive
23 Environmental Response, Compensation and Liability Act (42 U.S.C. 9601
24 et seq.) or under a written agreement with a municipality which has
25 entered into a memorandum of agreement with the department related to
26 the remediation of brownfield sites as of August fifth, two thousand
27 ten.

1 § 35. Subparagraphs (i) and (vi) of paragraph d of subdivision 1 of
 2 section 72-0402 of the environmental conservation law, as amended by
 3 chapter 99 of the laws of 2010, are amended to read as follows:

4 (i) under a contract with the department, or with the department's
 5 written approval and in compliance with department regulations, or
 6 pursuant to an order of the department, the United States environmental
 7 protection agency or a court of competent jurisdiction, related to the
 8 cleanup or remediation of a hazardous materials or hazardous waste
 9 spill, discharge, or surficial cleanup, pursuant to this chapter; or

10 (vi) under a brownfield site cleanup agreement with the department
 11 pursuant to section 27-1409 of this chapter or under a written agreement
 12 with a municipality which has entered into a memorandum of agreement
 13 with the department related to the remediation of brownfield sites as of
 14 August fifth, two thousand ten; or

15 § 36. Section 56-0501 of the environmental conservation law, as added
 16 by chapter 413 of the laws of 1996, is amended to read as follows:

17 § 56-0501. Allocation of moneys.

18 1. Of the moneys received by the state from the sale of bonds pursuant
 19 to the Clean Water/Clean Air Bond Act of 1996, two hundred million
 20 dollars (\$200,000,000) shall be available for disbursements for environ-
 21 mental restoration projects.

22 2. Beginning in state fiscal year two thousand fifteen--two thousand
 23 sixteen, environmental restoration projects may be funded using the
 24 proceeds of bonds issued pursuant to section twelve hundred
 25 eighty-five-g of the public authorities law provided that funding for
 26 such projects shall conform to the limitations provided in subdivision
 27 one of such section.

1 § 37. Subdivision 6 of section 56-0502 of the environmental conserva-
2 tion law, as amended by section 2 of part D of chapter 577 of the laws
3 of 2004, is amended to read as follows:

4 6. "State assistance", for purposes of this title, shall mean in the
5 case of a contract authorized by subdivision one of section 56-0503 of
6 this title, payments made to a municipality to reimburse the munici-
7 pality for the state share of the costs incurred by the municipality to
8 undertake an environmental restoration project or in the case of a writ-
9 ten agreement authorized by subdivision three of section 56-0503 of this
10 title, costs incurred by the state to undertake an environmental resto-
11 ration project but not reimbursed by a municipality.

12 § 38. Paragraph (c) of subdivision 2 of section 56-0503 of the envi-
13 ronmental conservation law, as amended by section 4 of part D of chapter
14 1 of the laws of 2003, is amended and a new subdivision 3 is added to
15 read as follows:

16 (c) A provision that the municipality shall assist in identifying a
17 responsible party by searching local records, including property tax
18 rolls, or document reviews, and if, in accordance with the required
19 departmental approval of any settlement with a responsible party, any
20 responsible party payments become available to the municipality, before,
21 during or after the completion of an environmental restoration project,
22 which were not included when the state share was calculated pursuant to
23 this section, the state assistance share shall be recalculated, and the
24 municipality shall pay to the state, for deposit into the environmental
25 restoration project account of the hazardous waste remedial fund estab-
26 lished under section ninety-seven-b of the state finance law, the
27 difference between the original state assistance payment and the recal-

1 culated state share. Recalculation of the state share shall be done each
2 time a payment from a responsible party is received by the municipality;

3 3. The department may undertake an environmental restoration project
4 on behalf of a municipality upon request. If the department undertakes
5 the project on behalf of the municipality, the state shall enter into a
6 written agreement with the municipality and the agreement shall require
7 the municipality to periodically provide its share to the state for
8 costs incurred during the progress of such project. The municipality's
9 share shall be the same as would be required under subdivision one of
10 this section. The agreement shall include all provisions specified in
11 subdivision two of this section as appropriate.

12 § 39. Subdivision 4 of section 56-0505 of the environmental conserva-
13 tion law, as amended by section 5 of part D of chapter 1 of the laws of
14 2003, is amended to read as follows:

15 4. After completion of such project, the municipality may use the
16 property for public purposes or may dispose of it. If the municipality
17 shall dispose of such property by sale to a responsible party, such
18 party shall pay to such municipality, in addition to such other consid-
19 eration, an amount of money constituting the amount of state assistance
20 provided [to the municipality] under this title plus accrued interest
21 and transaction costs and the municipality shall deposit that money into
22 the environmental restoration project account of the hazardous waste
23 remedial fund established under section ninety-seven-b of the state
24 finance law.

25 § 40. Subdivisions 3 and 4 of section 56-0508 of the environmental
26 conservation law, as added by section 7 of part D of chapter 1 of the
27 laws of 2003, are amended to read as follows:

1 3. such temporary incidents of ownership by such taxing district shall
2 also qualify it as being the owner of such property [for the purposes of
3 obtaining] to be eligible for funding from the state of New York for
4 such environmental restoration investigation project under this article
5 or for such funding from any source pursuant to any other state, feder-
6 al, or local law, but such incidents of ownership shall not be suffi-
7 cient to qualify it as the owner of such property for the purposes of
8 holding it wholly or partially liable for any damages, past, present, or
9 future from any release of any hazardous material, substance, or contam-
10 inant into the air, ground, or water, unless such release was caused by
11 such taxing district.

12 4. within thirty days of the completion of the environmental restora-
13 tion investigation project and the receipt by the taxing jurisdiction of
14 the final report of such investigation, such taxing jurisdiction shall
15 file such report with the court on notice to the court and all other
16 parties of record, and the stay of the foreclosure shall be lifted
17 (unless lifted earlier by a prior court order), and all incidents of
18 temporary ownership of the taxing jurisdiction that was awarded such
19 taxing district, except any right [to receive funding] for the environ-
20 mental restoration investigation project to be funded, shall cease to
21 exist, and nothing in this subdivision shall preclude the taxing juris-
22 diction that conducted the environmental restoration investigation
23 project or the taxing jurisdiction that commenced the foreclosure
24 action, if it is a different taxing jurisdiction than the taxing juris-
25 diction which conducted the investigation, from withdrawing the parcel
26 from foreclosure pursuant to section eleven hundred thirty-eight of the
27 real property tax law.

1 § 40-a. The opening paragraph and subparagraph (i) of paragraph (a) of
2 subdivision 1 of section 56-0509 of the environmental conservation law,
3 as amended by section 4 of part D of chapter 577 of the laws of 2004,
4 are amended to read as follows:

5 Notwithstanding any other provision of law and except as provided in
6 subdivision two of this section and in paragraph (h) of subdivision two
7 of section 56-0503 of this title, the following shall not be liable to
8 the state upon any statutory or common law cause of action, or to any
9 person upon any statutory cause of action arising out of the presence of
10 any contamination in or on property at any time before the effective
11 date of a contract entered into pursuant to this title or written agree-
12 ment pursuant to subdivision three of section 56-0503 of this title:

13 (i) a municipality receiving state assistance under this title to
14 undertake, or under written agreement pursuant to subdivision three of
15 section 56-0503 of this title for the state to undertake an environ-
16 mental restoration project and complying with the terms and conditions
17 of the contract or written agreement pursuant to subdivision three of
18 section 56-0503 of this title providing such assistance; and

19 § 41. Paragraph (f) of subdivision 3 of section 97-b of the state
20 finance law, as amended by section 4 of part I of chapter 1 of the laws
21 of 2003, is amended to read as follows:

22 (f) to undertake such remedial measures as the department of environ-
23 mental conservation may determine necessary due to environmental condi-
24 tions related to the property subject to an agreement to provide state
25 assistance or contract under title five of article fifty-six of the
26 environmental conservation law that were unknown to such department at
27 the time of its approval of such agreement or contract which indicates
28 that conditions on such property are not sufficiently protective of

1 human health for its reasonably anticipated uses or due to information
2 received, in whole or in part, after such department's approval of such
3 agreement's final engineering report and certification, which indicates
4 that such agreement's remedial activities are not sufficiently protec-
5 tive of human health for such property's reasonably anticipated uses;
6 and, [respecting the monies in the environmental restoration project
7 account in excess of ten million dollars,] shall provide state assist-
8 ance under title five of article fifty-six of the environmental conser-
9 vation law;

10 § 42. Notwithstanding the provisions of subdivision 1-a of section
11 27-1407 of the environmental conservation law, a site which is accepted
12 into the brownfield cleanup program after the effective date of this act
13 and prior to the adoption of regulations defining "underutilized" as
14 provided in subdivision 30 of section 27-1405 of the environmental
15 conservation law may, within ninety days following the adoption of such
16 regulations, request an eligibility determination to receive the tangi-
17 ble property credit component of the brownfield redevelopment credit
18 pursuant to section 21 of the tax law.

19 § 43. Subdivisions 1 and 3 of section 1285-q of the public authorities
20 law, as added by section 6 of part I of chapter 1 of the laws of 2003,
21 are amended to read as follows:

22 1. Subject to chapter fifty-nine of the laws of two thousand, but
23 notwithstanding any other provisions of law to the contrary, in order to
24 assist the corporation in undertaking the administration and the financ-
25 ing of hazardous waste site remediation projects for payment of the
26 state's share of the costs of the remediation of hazardous waste sites,
27 in accordance with title thirteen of article twenty-seven of the envi-
28 ronmental conservation law and section ninety-seven-b of the state

1 finance law, and for payment of state costs associated with the remedi-
2 ation of offsite contamination at significant threat sites as provided
3 in section 27-1411 of the environmental conservation law, and beginning
4 in state fiscal year two thousand fifteen - two thousand sixteen for
5 environmental restoration projects pursuant to title five of article
6 fifty-six of the environmental conservation law provided that funding
7 for such projects shall not exceed ten percent of the funding appropri-
8 ated for the purposes of financing hazardous waste site remediation
9 projects, pursuant to title thirteen of article twenty-seven of the
10 environmental conservation law in any state fiscal year pursuant to
11 capital appropriations made to the department of environmental conserva-
12 tion, the director of the division of budget and the corporation are
13 each authorized to enter into one or more service contracts, none of
14 which shall exceed twenty years in duration, upon such terms and condi-
15 tions as the director and the corporation may agree, so as to annually
16 provide to the corporation in the aggregate, a sum not to exceed the
17 annual debt service payments and related expenses required for any bonds
18 and notes authorized pursuant to section twelve hundred ninety of this
19 title. Any service contract entered into pursuant to this section shall
20 provide that the obligation of the state to fund or to pay the amounts
21 therein provided for shall not constitute a debt of the state within the
22 meaning of any constitutional or statutory provision and shall be deemed
23 executory only to the extent of moneys available for such purposes,
24 subject to annual appropriation by the legislature. Any such service
25 contract or any payments made or to be made thereunder may be assigned
26 and pledged by the corporation as security for its bonds and notes, as
27 authorized pursuant to section twelve hundred ninety of this title.

1 3. The maximum amount of bonds that may be issued for the purpose of
2 financing hazardous waste site remediation projects and environmental
3 restoration projects authorized by this section shall not exceed [one]
4 two billion two hundred million dollars and shall not exceed one hundred
5 [twenty] million dollars for appropriations enacted for any state fiscal
6 year, provided that the bonds not issued for such appropriations may be
7 issued pursuant to reappropriation in subsequent fiscal years. No bonds
8 shall be issued for the repayment of any new appropriation enacted after
9 March thirty-first, two thousand [thirteen] twenty-six for hazardous
10 waste site remediation projects authorized by this section. Amounts
11 authorized to be issued by this section shall be exclusive of bonds
12 issued to fund any debt service reserve funds, pay costs of issuance of
13 such bonds, and bonds or notes issued to refund or otherwise repay bonds
14 or notes previously issued. Such bonds and notes of the corporation
15 shall not be a debt of the state, and the state shall not be liable
16 thereon, nor shall they be payable out of any funds other than those
17 appropriated by this state to the corporation for debt service and
18 related expenses pursuant to any service contracts executed pursuant to
19 subdivision one of this section, and such bonds and notes shall contain
20 on the face thereof a statement to such effect.

21 § 44. Severability. If any clause, sentence, paragraph, subdivision,
22 section or part of this act shall be adjudged by any court of competent
23 jurisdiction to be invalid, such judgment shall not affect, impair or
24 invalidate the remainder thereof, but shall be confined in its operation
25 to the clause, sentence, paragraph, subdivision, section or part thereof
26 directly involved in the controversy in which such judgment shall have
27 been rendered. It is hereby declared to be the intent of the legislature

1 that this act would have been enacted even if such invalid provisions
2 had not been included herein.

3 § 45. This act shall take effect July 1, 2015 or on the date of publi-
4 cation in the state register of proposed regulations defining "underuti-
5 lized" as provided in subdivision 30 of section 27-1405 of the environ-
6 mental conservation law, whichever shall be later; provided, however,
7 that:

8 a. the commissioner of environmental conservation shall notify the
9 legislative bill drafting commission of the date of publication in the
10 state register of such proposed regulations in order that the commission
11 may maintain an accurate and timely effective data base of the official
12 text of the laws of the state of New York in furtherance of effecting
13 provisions of section 44 of the legislative law and section 70-b of the
14 public officers law;

15 b. the amendments to section 970-r of the general municipal law made
16 by sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty
17 and thirty-one of this act; section 27-0923 of the environmental conser-
18 vation law made by section thirty-four of this act; section 72-0402 of
19 the environmental conservation law made by section thirty-five of this
20 act; section 56-0501 of the environmental conservation law made by
21 section thirty-six of this act; section 56-0502 of the environmental
22 conservation law made by section thirty-seven of this act; section
23 56-0503 of the environmental conservation law made by section thirty-
24 eight of this act; section 56-0505 of the environmental conservation law
25 made by section thirty-nine of this act; section 56-0508 of the environ-
26 mental conservation law made by section forty of this act; section
27 56-0509 of the environmental conservation law as amended by section
28 forty-a of this act; section 97-b of the state finance law made by

1 section forty-one of this act; and section 1285-g of the public authori-
2 ties law made by section forty-three of this act shall take effect imme-
3 diately;

4 c. the department of environmental conservation shall not charge
5 volunteers in the brownfield cleanup program for oversight costs for any
6 sites in the program incurred on or after July 1, 2015 or after the
7 publication in the state register of proposed regulations defining
8 "underutilized" as provided in subdivision 30 of section 27-1405 of the
9 environmental conservation law, whichever shall be later;

10 d. the amendments made by section two of this act relating to the
11 definition of brownfield site, and all amendments made by sections
12 seventeen, eighteen, nineteen, twenty, twenty-one and twenty-three of
13 this act shall apply only to sites for which the department of environ-
14 mental conservation has issued a notice to the applicant on or after
15 July 1, 2015 or after the publication in the state register of proposed
16 regulations defining "underutilized" as provided in subdivision 30 of
17 section 27-1405 of the environmental conservation law, whichever shall
18 be later, that its request for participation has been accepted under
19 subdivision 6 of section 27-1407 of the environmental conservation law
20 subject to the provisions of section thirty-three of this act; and

21 e. the department of labor shall update the environmental zones as
22 required by section twenty-four of this act within ninety days of this
23 act becoming law; and

24 f. the department of environmental conservation shall publish in the
25 state register proposed regulations defining "affordable housing
26 project" as provided in subdivision 29 of section 27-1405 of the envi-
27 ronmental conservation law, on or before June 8, 2015.