

GOVERNOR'S PROGRAM BILL

2007

PROGRAM BILL # 35

MEMORANDUM

AN ACT to amend the tax law and the environmental conservation law, in relation to the brownfield cleanup program and the brownfield tax credits provided with respect to such program

Purpose:

The bill amends the Tax Law to: (1) change the manner in which the Brownfield Cleanup Program redevelopment tax credit is calculated for certain taxpayers, for the purposes of providing additional incentives for more effective site remediations and remediations by volunteers; (2) clarify certain remediation costs that are subject to the tax credit; (3) limit the transferability of certificates of completion; and (4) require the Tax Department to produce an annual report which discloses information about brownfields-related tax credits claimed under the Tax Law. The bill also amends the Environmental Conservation Law (ECL) to require applicants to disclose certain project-related information at various stages of the brownfield application and remediation process.

Summary of Provisions:

Section 1 of the bill amends Tax Law § 21 to change the manner in which the brownfield redevelopment tax credit is calculated for certain taxpayers. Taxpayers who receive approval of a remedial work plan from the Commissioner of Environmental Conservation pursuant to ECL § 27-1411 on or after July 1, 2007, or who receive a certificate of completion pursuant to ECL § 27-1419(5) (i.e., the transfer of a certificate of completion upon the transfer or sale of a brownfield site) on or after July 1, 2007 ("New Applicants"), calculate the tax credit pursuant to the new methodology created by the bill. Taxpayers who receive remedial work plan approval before July 1, 2007, or are eligible for the brownfield tax credits upon transfer to the taxpayer of a certificate of completion before July 1, 2007 ("Grandfathered Applicants"), will continue to calculate the tax credit in substantially the same manner specified by existing law.

Section 1 of the bill also amends Tax Law § 21 to distinguish between applicants who are "participants" and those who are "volunteers," and provides for greater financial incentives to volunteers.¹ The bill also provides for greater incentives, relating to the tangible property tax credit, for cleanups that are performed subject to Track 1 of four defined levels of cleanup

¹ A volunteer is an applicant that is not liable for disposal of hazardous waste or discharge of petroleum at the site, or whose liability arises solely from site ownership acquired after the discharge of hazardous waste or petroleum. A participant is an applicant that was the owner or operator of the site at the time of disposal of hazardous waste or discharge of petroleum, or that is otherwise responsible for the contamination.

“tracks.”²

The bill provides for a tangible property tax credit component to volunteers and participants for properties remediated as follows:

- Track 1 is limited to 100% of the sum of the site preparation credit component and the on-site groundwater remediation credit component or \$5 million, whichever is less.
- Track 2 is limited to 50% of the sum of the site preparation credit component and the on-site groundwater remediation credit component or \$5 million, whichever is less.
- Track 3 is limited to 25% of the sum of the site preparation credit component and the on-site groundwater remediation credit component or \$5 million, whichever is less.
- Track 4 taxpayers are not entitled to any tangible property credit component.

In addition, section 1 of the bill provides that, for New Applicants, site preparation costs include only those costs relating to qualification for a certificate of completion that are paid or incurred in connection with activities specified in a work plan approved by the Department of Environmental Conservation (DEC). For Grandfathered Applicants, site preparation costs include costs paid or incurred in connection with preparing a site for the erection of a building or a component of a building or otherwise establishing a site to be usable for industrial use, commercial development generally, commercial development of residential housing, or recreational or conservation purposes. Site preparation costs do not include the cost of acquiring the site.

Finally, section 1 of the bill amends Tax Law § 21(b)(5) to restrict, to one time only, the transfer of the certificate of completion for purposes of claiming the tangible property tax credit.

Section 2 of the bill requires the Tax Department to produce an annual report which discloses information about tax credits claimed under Tax Law §§ 21-23 during the preceding year, including the identity of taxpayers claiming credits, the amounts of credits earned, tax liability before and after application of the credits, and certain project information.

Sections 3 through 6 of the bill amend the ECL to require applicants to disclose project

² Track 1 provides for the most aggressive cleanup, allowing the site to be used for any purpose without restrictions (an “unrestricted cleanup”). Track 2 provides for cleanups based upon generic soil remediation objectives in a table that may be used for particular uses (e.g., residential, restricted residential, commercial, and industrial use). The cleanup levels vary depending on the use of the site within this track. Track 3 provides for a means of modifying the Track 2 table values when site-specific information indicates that values other than the table values would be more appropriate and still be protective. Track 4 allows an applicant to conduct a traditional evaluation to develop site-specific remedial action objectives.

related information to DEC at various stages of the remediation process, including: (1) costs incurred that may qualify for tax credits; (2) estimated future costs; (3) eligible real property taxes projected to be imposed upon the brownfield site; (4) estimated remediated brownfield credit for real property taxes which can be claimed; (5) estimated credits for the site preparation component of a brownfield redevelopment tax credit, the tangible property component of the brownfield redevelopment tax credit, the on-site groundwater component of the brownfield redevelopment credit, and/or the environmental remediation insurance credit that may be claimed in each year following issuance of the certificate of completion; and (6) any other information DEC deems necessary and appropriate.

Section 7 of the bill contains a severability clause.

Section 8 sets forth the bill's effective date.

Existing Law:

The Brownfield Cleanup Program was created by Chapter 1 of the Laws of 2003, and is codified in Title 14 of Article 27 of the ECL. The Program is intended to encourage private-sector remediation of contaminated property and redevelopment of that property. The State provides tax credits and other incentives to encourage remediation and redevelopment.

Statement in Support:

The bill remedies several shortcomings in the Brownfield Cleanup Program in order to facilitate remediations to higher clean-up standards, encourage the clean-up of more contaminated sites, ensure that taxpayer dollars are utilized more efficiently, and provide more information that will allow for better evaluations of the effectiveness of the program.

1. **Encouraging Remediation to Higher Standards**

First, the current program does not sufficiently encourage applicants to remediate sites to the highest cleanup standards. The Brownfields law provides for a multi-track approach to the remediation of soil contamination, with four cleanup "tracks." Track 1 provides for the most aggressive cleanup, allowing the site to be used for any purpose without restrictions (an "unrestricted cleanup"). Track 2 provides for cleanups based upon generic soil remediation objectives in a table that may be used for particular uses (e.g., residential, restricted residential, commercial, and industrial use). Track 3 provides for a means of modifying the Track 2 table values when site-specific information indicates that values other than the table values would be more appropriate and still be protective. Track 4 allows an applicant to conduct a traditional evaluation to develop site-specific remedial action objectives. The current law does not provide sufficient incentives for developers to perform cleanups to the Track 1 or Track 2 standards.

The bill addresses this problem by providing substantially greater financial incentives to

encourage clean-ups to higher standards by providing that the amount of the tangible property credit component would range from 0% for Track 4 cleanups to 100% for Track 1 cleanups. In addition, the bill provides that a permanent cleanup of a contaminated site, including the restoration of groundwater to its classified use, is to be preferred over a remedial program that does not do so. Moreover, this bill encourages reliance upon the generic soil cleanup objectives contained in DEC regulations.

2. Rewarding Remediation

Second, under current law, the amount of the tangible property tax credit component is not correlated to remediation costs, and instead is correlated to the cost of the overall project. Thus, an applicant who spends relatively little on remediation, but incurs significant redevelopment costs, is eligible to claim a significant tangible property tax credit component. This can result in substantial windfalls for some developers, particularly in market areas where significant financial incentives are not needed to encourage remediation due to the value of real estate or the shortage of "green" parcels for redevelopment. In such cases, the State may receive very little "environmental value" in exchange for lucrative tax credits. Conversely, the current law has had only limited success in encouraging remediation of contaminated sites in areas of the State where the value of redevelopment does not provide sufficient returns to offset the costs of remediation.

The bill remedies these problems by tying the amount of costs spent on remediation to the amount of the tangible property tax credit component. As noted above, the tangible property credit component is limited based in part on a percentage (ranging from 100% down to 25%) of the sum of the two remediation credit components (site preparation and groundwater clean up). As the costs for development typically exceed cleanup costs by significant amounts, the primary goal of the program – to cleanup contaminated sites that blight the State and are unsuitable for development – would be the major focus of the tax incentives, with tax incentives still available for development. This approach will also provide greater financial incentive for smaller projects than exists under current law.

3. Improving Transparency

Finally, the Program has been criticized for a lack of transparency, and it has been contended that the DEC lacks the authority to require disclosure of financial information which will form the basis of claimed credits. This inhibits the State and others from accurately projecting the costs of the credits and, more importantly, evaluating the success of the Program.

The bill requires the Department of Taxation & Finance to prepare a report relating to the credits provided for in sections 21-23 of the Tax Law. The report will disclose: the name of the taxpayer allowed a credit, the amount of each credit earned by each taxpayer, the taxpayer's tax liability before and after the application of the credits, and information identifying the site/project to which the certificate of completion and credit relates. If the taxpayer is a member of a limited

liability corporation, a partner in a partnership or a shareholder in a subchapter S corporation, the report will contain the name of the entity and the amount of credit earned by each entity. In addition, the bill requires disclosure of similar information to DEC by an applicant in the course of the application and remediation process. (These disclosures will not apply to Grandfathered Applicants.) This information will enable the State to evaluate the effectiveness of the Brownfields Cleanup Program, and the Program's tax credit incentive system, and will facilitate fiscal planning.

Budget Implications:

Information relating to the most advanced brownfield applications indicates that costs to the State from these applications will significantly exceed what was originally anticipated. These projects alone could cost the State hundreds of millions of dollars in refundable tax credits over the next few years. In addition, the large number of applicants that have not yet received approval of a remedial work plan could add to significantly to that cost. The bill restructures the BCP program to make the program more cost effective and tie tangible property tax credits to the amount of money invested in remediation, and establishes a cap on the brownfield redevelopment tax credit.

Effective Date:

This bill takes effect immediately. However, the amendment made by section 1 to Tax Law § 21(b)(5) regarding the transferability of certificates of completion will apply for taxable years beginning on or after January 1, 2007 for transfers of certificates of completion made on or after July 1, 2007.

PROGRAM BILL # 35

S. _____
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

TAXLA
(Relates to brownfield cleanup tax
credits)

Tax. brownfield cleanp tax c

AN ACT

to amend the tax law and the envi-
ronmental conservation law, in
relation to the brownfield cleanup
program and the brownfield tax cred-
its provided with respect to such
program

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

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s20 Adams	s22 Golden	s39 Larkin	s11 Padavan	s14 Smith
s55 Alesi	s33 Gonzalez	s01 LaValle	s21 Parker	s58 Stachowski
s42 Bonacic	s47 Griffo	s40 Leibell	s30 Perkins	s16 Stavisky
s46 Breslin	s06 Hannon	s52 Libous	s61 Rath	s35 Stewart-
s43 Bruno	s36 Hassell-	s45 Little	s56 Robach	Cousins
s25 Connor	Thompson	s15 Maltese	s13 Sabini	s60 Thompson
s50 DeFrancisco	s10 Huntley	s05 Marcellino	s41 Saland	s03 Trunzo
s32 Diaz	s07 Johnson, C.	s62 Maziarz	s19 Sampson	s49 Valesky
s17 Dilan	s04 Johnson, O.	s18 Montgomery	s23 Savino	s59 Volker
s29 Duane	s34 Klein	s38 Morahan	s31 Schneiderman	s53 Winner
s44 Farley	s26 Krueger	s54 Nozzolio	s28 Serrano	s48 Wright
s02 Planagan	s27 Kruger	s12 Onorato	s51 Seward	s57 Young
s08 Puschillo	s24 Lauza	s37 Oppenheimer	s09 Skelos	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a010 Conte	a139 Hawley	a112 McDonald	a056 Robinson
a001 Alessi	a032 Cook	a148 Hayes	a019 McDonough	a067 Rosenthal
a021 Alfano	a107 Crouch	a083 Heastie	a104 McEneny	a012 Saladino
a084 Arroyo	a063 Cusick	a028 Hevesi	a017 McKeivitt	a113 Sayward
a118 Aubertine	a045 Cymbrowitz	a048 Hkind	a102 Miller	a029 Scarborough
a035 Aubry	a138 DelMonte	a018 Hooper	a052 Millman	a016 Schimel
a136 Bacalles	a116 Destito	a144 Hoyt	a103 Molinaro	a140 Schimminger
a099 Ball	a086 Diaz, L.	a060 Hyer-Spencer	a132 Morelle	a145 Schroeder
a124 Barclay	a085 Diaz, R.	a042 Jacobs	a037 Nolan	a122 Scozzafava
a014 Barra	a081 Dinowitz	a095 Jaffee	a128 Oaks	a038 Seminerio
a082 Benedetto	a114 Duprey	a057 Jeffries	a069 O'Donnell	a064 Silver
a079 Benjamin	a003 Eddington	a131 John	a137 O'Mara	a093 Spano
a073 Bing	a004 Englebright	a074 Ravanagh	a051 Ortiz	a121 Stirpe
a055 Boyland	a130 Errigo	a100 Kirwan	a150 Parment	a011 Sweeney
a008 Boyle	a072 Espallat	a129 Kolb	a088 Paulin	a110 Tedisco
a089 Bradley	a071 Farrell	a135 Koon	a141 Peoples	a002 Thiele
a044 Brennan	a005 Fields	a034 Lafayette	a039 Peralta	a061 Titone
a092 Brodsky	a123 Finch	a025 Lancman	a058 Perry	a031 Titus
a046 Brook-Krasny	a007 Fitzpatrick	a091 Latimer	a023 Pheffer	a062 Tobacco
a147 Burling	a143 Gabryszak	a013 Lavine	a068 Powell	a105 Tonko
a117 Butler	a090 Galef	a050 Lentol	a087 Pretlow	a054 Towns
a101 Cahill	a133 Gantt	a125 Lifton	a146 Quinn	a115 Townsend
a096 Calhoun	a036 Gianaris	a127 Lopez, P.	a097 Rabbitt	a015 Walker
a043 Camara	a149 Giglio	a053 Lopez, V.	a009 Raia	a041 Weinstein
a106 Canestrari	a066 Glick	a126 Lupardo	a006 Ramos	a020 Weisenberg
a026 Carrozza	a040 Gordon, D.	a111 Magee	a134 Reilich	a024 Weprin
a119 Christensen	a108 Gordon, T.	a120 Magnarelli	a109 Reilly	a070 Wright
a033 Clark	a075 Gottfried	a059 Maisel	a078 Rivera, J.	a022 Young
a142 Cole	a077 Greene	a030 Markey	a080 Rivera, N.	a094 Zebrowski, X
a047 Colton	a098 Gunther	a027 Mayersohn	a076 Rivera, P.	a065

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Subdivisions (a) and (b) of section 21 of the tax law, as
2 amended by section 1 of part H of chapter 577 of the laws of 2004, para-
3 graph 3 of subdivision (b) as amended by chapter 420 of the laws of
4 2006, subparagraph (B) and the closing paragraph of paragraph 6 of
5 subdivision (b) as amended by section 1 of part G of chapter 62 of the
6 laws of 2006, are amended to read as follows:

7 (a) Allowance of credit. (1) General. A taxpayer subject to tax under
8 article nine, nine-A, twenty-two, thirty-two or thirty-three of this
9 chapter shall be allowed a credit against such tax, pursuant to the
10 provisions referenced in subdivision (f) of this section. Such credit
11 shall be allowed with respect to a qualified site, as such term is
12 defined in paragraph one of subdivision (b) of this section. The amount
13 of the credit in a taxable year shall be the sum of the credit compo-
14 nents specified in paragraphs two, three and four of this subdivision
15 applicable in such year, except as otherwise provided in this section.

16 (2) Site preparation credit component. The site preparation credit
17 component shall be equal to the applicable percentage of the site prepa-
18 ration costs paid or incurred by the taxpayer with respect to a quali-
19 fied site. The credit component amount so determined with respect to a
20 site's qualification for a certificate of completion shall be allowed
21 for the taxable year in which the effective date of the certificate of
22 completion occurs. The credit component amount determined other than
23 with respect to such qualification shall be allowed for the taxable year
24 in which the improvement to which the applicable costs apply is placed
25 in service for up to five taxable years after the issuance of such
26 certificate of completion.

27 (3) Tangible property credit component. The tangible property credit
28 component shall be equal to the applicable percentage of the cost or

1 other basis for federal income tax purposes of tangible personal proper-
2 ty and other tangible property, including buildings and structural
3 components of buildings, which constitute qualified tangible property,
4 subject to the limitations provided for under paragraph five of this
5 subdivision. The credit component amount so determined shall be allowed
6 for the taxable year in which such qualified tangible property is placed
7 in service on a qualified site with respect to which a certificate of
8 completion has been issued to the taxpayer, or for the taxable year in
9 which the certificate of completion is issued if the qualified tangible
10 property is placed in service prior to the issuance of the certificate
11 of completion, for up to ten taxable years after the date of the issu-
12 ance of such certificate of completion. The tangible property credit
13 component shall be allowed with respect to property leased to a second
14 party only if such second party is either (i) not a party responsible
15 for the disposal of hazardous waste or the discharge of petroleum at the
16 site according to applicable principles of statutory or common law
17 liability, or (ii) a party responsible according to applicable princi-
18 ples of statutory or common law liability if such party's liability
19 arises solely from operation of the site subsequent to the disposal of
20 hazardous waste or the discharge of petroleum, and is so certified by
21 the commissioner of environmental conservation at the request of the
22 taxpayer, pursuant to section 27-1419 of the environmental conservation
23 law. Notwithstanding any other provision of law to the contrary, in the
24 case of allowance of credit under this section to such a lessor, the
25 commissioner shall have the authority to reveal to such lessor any
26 information, with respect to the issue of qualified use of property by
27 the lessee, which is the basis for the denial in whole or in part, or
28 for the recapture, of the credit claimed by such lessor.

1 (4) On-site groundwater remediation credit component. The on-site
2 groundwater remediation credit component shall be equal to the applica-
3 ble percentage of the on-site groundwater remediation costs paid or
4 incurred by the taxpayer with respect to a qualified site (to the extent
5 that such groundwater remediation costs are not included in the determi-
6 nation of the site preparation credit or the cost or other basis
7 included in the determination of the tangible property credit). The
8 credit component so determined for costs incurred and paid with respect
9 to and prior to the issuance of a certificate of completion shall be
10 allowed for the taxable year in which the effective date of the issuance
11 of a certificate of completion occurs. The credit component amount
12 determined in taxable years after the effective date of the issuance of
13 a certificate of completion shall be allowed in the taxable year such
14 qualified costs are incurred and paid for up to five taxable years after
15 the issuance of such certificate of completion.

16 (5) Applicable percentage. [For] (A) With respect to any qualified
17 site where the taxpayer has received approval of a remedial work plan by
18 the commissioner of environmental conservation under section 27-1411 of
19 the environmental conservation law before July first, two thousand
20 seven, or where the taxpayer received a certificate of completion from
21 another taxpayer under section 27-1419 of the environmental conservation
22 law before July first, two thousand seven, the applicable percentage for
23 purposes of paragraphs two, three and four of this subdivision, [the
24 applicable percentage] shall be twelve percent in the case of credits
25 claimed under article nine, nine-A, thirty-two or thirty-three of this
26 chapter, and ten percent in the case of credits claimed under article
27 twenty-two of this chapter, except that where at least fifty percent of
28 the area of the qualified site relating to the credit provided for in

1 this section is located in an environmental zone as defined in paragraph
2 six of subdivision (b) of this section, the applicable percentage shall
3 be increased by an additional eight percent. Provided, however, as
4 afforded in section 27-1419 of the environmental conservation law, if
5 the certificate of completion indicates that the qualified site has been
6 remediated to Track 1 as that term is described in subdivision four of
7 section 27-1415 of the environmental conservation law, the applicable
8 percentage set forth in the first sentence of this [paragraph] subpara-
9 graph shall be increased by an additional two percent.

10 (B) (i) With respect to any qualified site where the taxpayer receives
11 approval of a remedial work plan by the commissioner of environmental
12 conservation under section 27-1411 of the environmental conservation law
13 on or after July first, two thousand seven, or where the taxpayer
14 receives a certificate of completion from another taxpayer under section
15 27-1419 of the environmental conservation law on or after July first,
16 two thousand seven, the applicable percentage is one hundred percent for
17 a volunteer and twenty-five percent for a participant. However, the
18 amount of the tangible property credit component must not exceed the
19 lesser of: (I) five million dollars or (II) the sum of the site prepara-
20 tion credit component and the on-site groundwater remediation credit
21 component if the certificate of completion indicates that the qualified
22 site has been remediated to Track 1, fifty percent of the sum of the
23 site preparation credit component and the on-site groundwater remedi-
24 ation credit component if the certificate of completion indicates that
25 the qualified site has been remediated to Track 2, and twenty-five
26 percent of the sum of the site preparation credit component and the
27 on-site groundwater remediation credit component if the certificate of
28 completion indicates that the qualified site has been remediated to

1 Track 3. If the certificate of completion indicates that the qualified
2 site has been remediated to Track 4, the taxpayer is not entitled to the
3 tangible property credit component for that qualified site.

4 (ii) The terms "volunteer" and "participant" shall have the meanings
5 described in subdivision one of section 27-1405 of the environmental
6 conservation law. The terms "Track 1," "Track 2," "Track 3," and "Track
7 4" shall have the meanings described in subdivision four of section
8 27-1415 of the environmental conservation law.

9 (iii) Any taxpayer who is eligible to claim the site preparation cred-
10 it component or the on-site groundwater remediation credit component
11 must disclose to any taxpayer who is eligible to claim the tangible
12 property credit component, with respect to the same qualified site, the
13 amount of the site preparation credit component and the on-site ground-
14 water remediation credit component the taxpayer claimed, including any
15 additional amounts claimed in succeeding tax years, so that the taxpayer
16 eligible to claim the tangible property credit component may calculate
17 the amount of that credit.

18 (6) Site preparation costs and on-site groundwater remediation costs
19 paid or incurred by the taxpayer with respect to a qualified site and
20 the cost or other basis for federal income tax purposes of tangible
21 personal property and other tangible property, including buildings and
22 structural components of buildings, which constitute qualified tangible
23 property shall only include costs [paid or] incurred by the taxpayer on
24 or after the date of the brownfield site cleanup agreement executed by
25 the taxpayer and the department of environmental conservation pursuant
26 to section 27-1409 of the environmental conservation law.

27 (7) The amount of any grant received from the federal, state or a
28 local government or an instrumentality or public benefit corporation

1 thereof received by the taxpayer and used to pay for any of the costs
2 described in paragraphs two, three and four of this subdivision, which
3 was not included in the federal gross income of the taxpayer, shall be
4 subtracted in computing the credit components under this section.

5 (b) Definitions. As used in this section, the following terms shall
6 have the following meanings:

7 (1) Qualified site. A "qualified site" is a site with respect to which
8 a certificate of completion has been issued to the taxpayer by the
9 commissioner of environmental conservation pursuant to section 27-1419
10 of the environmental conservation law.

11 (2) Site preparation costs. The term "site preparation costs" shall
12 mean all amounts properly chargeable to a capital account, (i) which are
13 paid or incurred in connection with a site's qualification for a certifi-
14 cate of completion and are costs incurred in connection with activities
15 specified in a work plan approved by the commissioner of environmental
16 conservation under title fourteen of article twenty-seven of the envi-
17 ronmental conservation law, and (ii) with respect to any qualified site
18 where the taxpayer has received approval of a remedial work plan by the
19 commissioner of environmental conservation under section 27-1411 of the
20 environmental conservation law before July first, two thousand seven, or
21 where the taxpayer received a certificate of completion from another
22 taxpayer under section 27-1419 of the environmental conservation law
23 before July first, two thousand seven, all other site preparation costs
24 paid or incurred in connection with preparing a site for the erection of
25 a building or a component of a building, or otherwise to establish a
26 site as usable for its industrial, commercial (including the commercial
27 development of residential housing), recreational or conservation
28 purposes. [Site] For purposes of clause (ii) of this paragraph, site

1 preparation costs shall include, but not be limited to, the costs of
2 excavation, temporary electric wiring, scaffolding, demolition costs,
3 and the costs of fencing and security facilities. Site preparation costs
4 shall not include the cost of acquiring the site and shall not include
5 amounts included in the cost or other basis for federal income tax
6 purposes of qualified tangible property, as described in paragraph three
7 of this subdivision.

8 (3) Qualified tangible property. "Qualified tangible property" is
9 property described in either subparagraph (A) or (B) of this paragraph
10 which:

11 (A) (i) is depreciable pursuant to section one hundred sixty-seven of
12 the internal revenue code,

13 (ii) has a useful life of four years or more,

14 (iii) has been acquired by purchase as defined in section one hundred
15 seventy-nine (d) of the internal revenue code,

16 (iv) has a situs on a qualified site in this state, and

17 (v) is principally used by the taxpayer for industrial, commercial,
18 recreational or environmental conservation purposes (including the
19 commercial development of residential housing); or

20 (B)(i) is, or when occupied becomes, part of a dwelling whose primary
21 ownership structure is covered under either article nine-B of the real
22 property law or meets the requirements of section 216 (b)(1) of the
23 Internal Revenue Code;

24 (ii) has been acquired by purchase (as defined in section one hundred
25 seventy-nine (d) of the Internal Revenue Code);

26 (iii) has a situs on a qualified site in this state; [and]

1 (iv) is principally used by the taxpayer for the commercial develop-
2 ment of residential housing as described in clause (i) of this subpara-
3 graph; and

4 (v) for purposes of this subparagraph only, and notwithstanding any
5 other section of law to the contrary, qualified tangible property [qual-
6 ifying] under this subparagraph shall be deemed to be [qualified tangi-
7 ble property] depreciable for the purposes of [paragraph one of] subdi-
8 vision (d) of this section; and in addition, for the purposes of this
9 subdivision only, property qualifying under this subparagraph shall be
10 deemed to have been placed in service for the purposes of paragraph
11 three of subdivision (a) of this section when a certificate of occupancy
12 is issued for such property.

13 (4) On-site groundwater remediation costs. The term "on-site groundwa-
14 ter remediation costs" shall mean all amounts properly chargeable to a
15 capital account, (i) which are paid or incurred in connection with a
16 site's qualification for a certificate of completion, and (ii) include
17 costs which are paid or incurred in connection with the remediation of
18 on-site groundwater contamination and incurred to implement a require-
19 ment of the remedial work plan or an interim remedial measure work plan
20 for a qualified site which are imposed pursuant to subdivisions two and
21 three of section 27-1411 of the environmental conservation law.

22 (5) Certificate of completion. A "certificate of completion" issued by
23 the commissioner of environmental conservation pursuant to section
24 27-1419 of the environmental conservation law. A certificate of
25 completion may be transferred for purposes of the tax credit allowed
26 under this section, as provided for under subdivision five of section
27 27-1419 of the environmental conservation law, only by a taxpayer who is
28 eligible to claim the site preparation credit component, the on-site

1 groundwater remediation credit component or both but who does not incur
2 costs with respect to qualified tangible property in order to be eligi-
3 ble to claim the tangible property credit component. That taxpayer may
4 transfer the certificate of completion only if: (i) no other taxpayer
5 was issued a certificate of completion with respect to the same quali-
6 fied site or (ii) if more than one taxpayer is issued a certificate of
7 completion with respect to a qualified site, none of those taxpayers
8 incur costs with respect to qualified tangible property in order to be
9 eligible to claim the tangible property credit component. The taxpayer
10 to whom the certificate of completion is transferred is entitled to
11 claim the tangible property credit component with regard to the quali-
12 fied site relating to the certificate, if the taxpayer satisfies the
13 requirements in this section for that credit component. The taxpayer who
14 claims the tangible property credit component, under the circumstances
15 described in this paragraph, may not subsequently transfer the certif-
16 icate of completion for purposes of the tax credit allowed under this
17 section.

18 (6) Environmental zones (EN-Zones). An "environmental zone" shall mean
19 an area designated as such by the commissioner of economic development.
20 Such areas so designated are areas which are census tracts and block
21 numbering areas which, as of the two thousand census, satisfy either of
22 the following criteria:

23 (A) areas that have both:

24 (i) a poverty rate of at least twenty percent for the year to which
25 the data relate; and

26 (ii) an unemployment rate of at least one and one-quarter times the
27 statewide unemployment rate for the year to which the data relate, or;

1 (B) areas that have a poverty rate of at least two times the poverty
2 rate for the county in which the areas are located for the year to which
3 the data relate provided, however, that a qualified site shall only be
4 deemed to be located in an environmental zone under this subparagraph
5 (B) if such site was the subject of a brownfield site cleanup agreement
6 pursuant to section 27-1409 of the environmental conservation law that
7 was entered into prior to September first, two thousand ten.

8 Such designation shall be made and a list of all such environmental
9 zones shall be established by the commissioner of economic development
10 no later than December thirty-first, two thousand four provided, howev-
11 er, that a qualified site shall only be deemed to be located in an envi-
12 ronmental zone under subparagraph (B) of this paragraph if such site was
13 the subject of a brownfield site cleanup agreement pursuant to section
14 27-1409 of the environmental conservation law that was entered into
15 prior to September first, two thousand ten.

16 § 2. The tax law is amended by adding a new section 23-a to read as
17 follows:

18 § 23-a. Brownfield credit report. (a) The department must publish a
19 brownfield credit report annually by January thirty-first. The first
20 report must be published by January thirty-first, two thousand nine.

21 (b)(1) The brownfield credit report must contain the following infor-
22 mation about the credits claimed under sections twenty-one, twenty-two
23 and twenty-three of this article during the previous calendar year:

24 (A) the name of each taxpayer claiming a credit;

25 (B) the amount of each credit earned by each taxpayer;

26 (C) the taxpayer's tax liability before the application of any credits
27 and the taxpayer's tax liability after the application of any credits;

1 (D) information identifying the project for which a certificate of
2 completion was issued and the credit claimed under section twenty-one,
3 twenty-two or twenty-three of this article.

4 (2) If the taxpayer claims a credit under section twenty-one, twenty-
5 two or twenty-three of this article because the taxpayer is a member of
6 a limited liability company, a partner in a partnership or a shareholder
7 in a subchapter S corporation, the name of each limited liability compa-
8 ny, partnership or subchapter S corporation earning any of those credits
9 and the amount of credit earned by each entity must be included in the
10 report instead of information about the taxpayer claiming the credit. In
11 that instance, information regarding the taxpayer's tax liability will
12 not be included in the report.

13 (c) The information included in the brownfield credit report will be
14 based on the information filed with the department during the previous
15 calendar year, to the extent that it is practicable to use that informa-
16 tion.

17 (d) The brownfield credit report will not include any information
18 regarding any credit claimed under section twenty-one, twenty-two, or
19 twenty-three of this article with respect to any qualified site where
20 the taxpayer has received approval of a remedial work plan by the
21 commissioner of environmental conservation under section 27-1411 of the
22 environmental conservation law before July first, two thousand seven, or
23 where the taxpayer received a certificate of completion from another
24 taxpayer under section 27-1419 of the environmental conservation law
25 before July first, two thousand seven.

26 § 3. Subdivision 1 of section 27-1407 of the environmental conserva-
27 tion law, as amended by section 3 of part A of chapter 577 of the laws
28 of 2004, is amended to read as follows:

1 1. A person who seeks to participate in this program shall submit a
2 request to the department on a form provided by the department. Such
3 form shall include (a) such information [to be determined by the depart-
4 ment sufficient to allow] which the department determines is necessary
5 to enable the department to determine eligibility and the current,
6 intended and reasonably anticipated future land use of the site pursuant
7 to section 27-1415 of this title; and (b) an estimate on the basis of
8 information available at the time of the submission of the request for
9 participation of the amounts described in section 27-1432 of this title
10 in such form as the department may prescribe.

11 § 4. Subdivision 2 of section 27-1411 of the environmental conserva-
12 tion law, as amended by section 5 of part A of chapter 577 of the laws
13 of 2004, is amended to read as follows:

14 2. A remedial work plan shall provide for the development and imple-
15 mentation of a remedial program for such contamination within the bound-
16 aries of such brownfield site; provided, however, that a participant
17 shall also be required to provide in such work plan for the development
18 and implementation of a remedial program for contamination that has
19 emanated from such site. The remedial work plan must be accompanied by
20 a statement prepared by the applicant which sets forth, on the basis of
21 information available at the time of the submission of the work plan,
22 the amounts described in section 27-1433 of this title in such form as
23 the department may prescribe.

24 § 5. Section 27-1419 of the environmental conservation law is amended
25 by adding a new subdivision 2-a to read as follows:

26 2-a. The final engineering report must be accompanied by a statement
27 prepared by the applicant which sets forth, on the basis of information
28 available at the time of the submission of the final engineering report,

1 the amounts described in section 27-1432 of this title in such form as
2 the department may prescribe.

3 § 6. The environmental conservation law is amended by adding a new
4 section 27-1432 to read as follows:

5 § 27-1432. Financial disclosure.

6 The department may require any person to furnish the following infor-
7 mation to the department, in a form and manner as prescribed by the
8 department:

9 1. total costs incurred, if any, on or after the effective date of the
10 brownfield site cleanup agreement, which may qualify for the site prepa-
11 ration component of a brownfield redevelopment tax credit, tangible
12 property component of the brownfield redevelopment tax credit, on-site
13 groundwater component of the brownfield redevelopment credit, and the
14 environmental remediation insurance credit;

15 2. estimated future costs to be incurred after the effective date of
16 the brownfield site cleanup agreement which may qualify for the site
17 preparation component of a brownfield redevelopment tax credit, tangible
18 property component of a brownfield redevelopment tax credit, on-site
19 groundwater component of a brownfield redevelopment credit, and environ-
20 mental remediation insurance credit;

21 3. estimated average number of full-time employees to be employed by
22 the applicant, plus the average number of full-time employees to be
23 employed by a lessee or lessees of a portion of the brownfield site
24 during the first taxable year following issuance of the certificate of
25 completion;

26 4. the eligible real property taxes projected to be imposed upon the
27 brownfield site in the first calendar year following issuance of the
28 certificate of completion;

1 5. the estimated remediated brownfield credit for real property taxes
2 which can be claimed in the first taxable year following issuance of the
3 certificate of completion;

4 6. the estimated credits for the site preparation component of a
5 brownfield redevelopment tax credit, the tangible property component of
6 the brownfield redevelopment tax credit, the on-site groundwater compo-
7 nent of the brownfield redevelopment credit, and/or the environmental
8 remediation insurance credit that may be claimed in each year following
9 issuance of the certificate of completion; and

10 7. any other information the department may deem necessary and appro-
11 priate to carry out the purposes of this title.

12 § 7. Severability clause. If any clause, sentence, paragraph, subdivi-
13 sion, section or part of this act shall be adjudged by any court of
14 competent jurisdiction to be invalid, such judgment shall not affect,
15 impair, or invalidate the remainder thereof, but shall be confined in
16 its operation to the clause, sentence, paragraph, subdivision, section
17 or part thereof directly involved in the controversy in which such judg-
18 ment shall have been rendered. It is hereby declared to be the intent of
19 the legislature that this act would have been enacted even if such
20 invalid provisions had not been included herein.

21 § 8. This act shall take effect immediately, except that the amend-
22 ments to paragraph 5 of subdivision (b) of section 21 of the tax law
23 made by section one of this act shall apply for taxable years beginning
24 on or after January 1, 2007 for transfers of certificates of completion
25 made on or after July 1, 2007.

