

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.<sup>1</sup> 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

---

<sup>1</sup> 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.”<sup>2</sup>

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

---

<sup>2</sup> 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.

STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ELIOT SPITZER, GOVERNOR

FOR IMMEDIATE RELEASE:  
June 5, 2007

CONTACT: Christine Anderson  
canderson@chamber.state.ny.us  
212.681.4640  
518.474.8418

## BROWNSFIELDS BILL KEY TO ECONOMIC REVITALIZATION

*Goal is to Focus Tax Dollars on Brownfields Clean-up*

Governor Eliot Spitzer today proposed legislation that would restructure and improve the state's brownfields program. If adopted by the State Legislature, it would redirect state tax dollars to provide real incentives for cleanups of brownfields development sites in order to create "shovel ready" land across the state for development purposes.

Brownfields sites are ones that cannot be developed because of toxic contamination. The contamination is typically not severe enough to warrant a more robust clean up under the Superfund law, but poses health and environmental risks if development occurs without some remediation.

*The Brownfields proposal would:*

- Change the existing brownfields tax credit structure to cover the full cost of brownfields remediation while providing additional incentives to encourage development of newly remediated sites. Current law provides tax credits for the construction of buildings on cleaned-up sites and other costs unrelated to clean up;
- Revise tax credits to encourage parties to undertake more rigorous clean-up efforts that adhere to higher standards;
- Require that participating parties responsible for contributing to pollution at a site pay a greater percentage of clean-up costs; and
- Expand reporting requirements by the recipients of the tax credits to provide the state with more accurate data on a more frequent basis.

In 2003, a new brownfields law was adopted by the State Legislature. An analysis of the first 25 projects certified and approved under the program indicates that only a small fraction of the tax credits granted were related to remediation costs. Current law provides that a percentage of the total development costs beyond remediation be paid to parties for development of brownfields sites and thus the existing cost of the program has significantly exceeded original projections.

"An effective brownfields program is essential to rebuilding blighted areas and revitalizing Upstate cities," said Governor Spitzer. "This proposal will revitalize a lagging state program by increasing the amount of funds available for site remediation and re-development. The current law contains no protections to ensure that the funds directed toward economic development are wisely used or bear any relationship to the number of jobs created leaving the state with an open-ended liability while failing to achieve the law's intent of cleaning up contaminated sites."

Commissioner of the Department of Environmental Conservation Pete Grannis said: "This bill offers a powerful solution to the obstacles in the way of brownfields redevelopment." "By offering dollar for dollar credits for 100 percent of the cleanup costs, this legislation would spur significant redevelopment of contaminated sites and protect the environment and public health. Combined with its important fiscal caps to protect against financial windfalls, and enhanced tax credits for more aggressive cleanups, this balanced legislation is a blueprint for cleaning up brownfields."

Executive Director of the New York State Conference of Mayors, Peter A. Baynes said: "There is clear consensus that previous attempts at creating a thriving brownfields program in New York have not achieved their intended goal. NYCOM is confident, however, that the brownfields reforms proposed by Governor Spitzer to the current brownfields clean-up and redevelopment law will be a key step in jump starting this critically important -- but largely underutilized -- program. The amendments will help this economic and environmental program reach its full potential, while spurring revitalization in upstate and urban areas plagued with eroding tax bases and declining population."

Parties that have remediation plans approved by the Department of Environmental Conservation and actual remediation underway will be governed by the existing tax credit structure.

###



## Act on brownfields

First published: Tuesday, May 29, 2007

New York's landmark 2003 brownfield law is flawed and needs fixing. It also happens to be a textbook example of what can go wrong when negotiations are held in the middle of the night, rather than in public, as Governor Spitzer now insists, as he and legislative leaders try to reach agreement on pending issues.

The law was rushed through during one of the Legislature's infamous marathon sessions, albeit with the best of intentions. Lawmakers had hoped to spur development of contaminated sites, mostly in urban areas and upstate, by offering developers generous tax incentives to build there.

But it didn't take long before the flaws were exposed. Tax credits of up to 22 percent were pegged not only to a developer's cost of cleaning up a contaminated site, but also to the cost of construction itself. That meant big developers in Manhattan could save millions of dollars even if their cleanup costs were relatively modest. A case in point: The firm behind the New York Times Tower in midtown Manhattan applied for \$170 million in tax credits for the \$850 million project, even though cleanup costs were less than \$1 million.

When the loophole was exposed, embarrassed state officials moved to rewrite the rules and disqualify the Times project. But they also tightened rules to a point that discouraged smaller development projects that could have large community benefits, such as affordable housing. And the overall goal of the credit program, to clean up thousands of contaminated sites statewide, remains elusive. So far, only 25 projects have been approved, with another 148 applications under review.

All this could change for the better, however, if Governor Spitzer and legislative leaders add brownfield reform to their priority list for the end of this year's regular session. As it happens, there is a blueprint for just such reform in a new report by the New Partnership for Community Revitalization, a not-for-profit organization of banks, community groups, builders and environmentalists. The group wisely suggests that the tax credit program be targeted at areas plagued with poverty, crime or dwindling population. Just as important, the report recommends separate tax credits for clean-ups and redevelopment.

Many brownfield sites are in urban areas that, sadly, fit the group's criteria all too well, which is why most lenders today will not finance any redevelopment there. But a tax credit program properly targeted to areas most in need of revitalization could lure the financing needed to get things done. First, though, Mr. Spitzer, Senate Majority Leader Joseph Bruno and Assembly Speaker Sheldon Silver must act -- and soon.



**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- Cousins
s43 Bruno	s36 Hassell- Thompson	s45 Little	s56 Robach	s60 Thompson
s25 Connor	s10 Huntley	s05 Marcellino	s41 Saland	s03 Trunzo
s32 Diaz	s07 Johnson, C.	s62 Maziarz	s19 Sampson	s49 Valasky
s17 Dilan	s04 Johnson, O.	s18 Montgomery	s23 Savino	s59 Volker
s29 Duane	s34 Klein	s38 Moranhan	s31 Schneiderman	s53 Winner
s44 Farley	s26 Krueger	s54 Nozzolio	s28 Serrano	s48 Wright
s02 Flanagan	s27 Kruger	s12 Onorato	s51 Seward	s57 Young
s08 Puschillo	s24 Lanza	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 Aubertina	a045 Cymbrowitz	a048 Hkind	a102 Miller	a029 Scarborough
a035 Aubry	a138 DeMonte	a018 Hooper	a052 Millman	a016 Schimal
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 Seminorio
a082 Benedetto	a114 Duprey	a057 Jaffries	a069 O'Donnell	a064 Silver
a079 Benjamin	a003 Eddington	a131 John	a137 O'Nara	a093 Spano
a073 Bing	a004 Englebright	a074 Kavanagh	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-Kranzy	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 Pratlow	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 Magmarcelli	a109 Ralily	a070 Wright
a033 Clark	a075 Gottfried	a059 Maisel	a078 Rivera, J.	a022 Young
a142 Cole	a077 Greene	a030 Markey	a080 Rivera, N.	a094 Zabrowski, 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.