

Regular Session, 2011

SENATE BILL NO. 40

BY SENATORS MORRELL AND ADLEY

TAX/TAXATION. Authorizes DEQ to once again grant transferable credits for the investigation or remediation of hazardous waste "brownfields" sites on and after July 1, 2011, clarifies that the credit may be granted to any public or private "entity" whether taxable or non-taxable, and specifically authorizes credits for the remediation of public parks, playgrounds and other recreational areas. (7/1/11)

1 AN ACT

2 To amend and reenact R.S. 47:6021(A), (B)(1), (D)(2)(a)(i) and (b)(i), (H), the introductory
3 paragraph of (I), (I)(2), (I)(6), and (J) and to enact R.S. 47:6021(B)(6), relative to
4 income tax credits; to provide income tax credits for certain brownfields investors;
5 to clarify the applicability of such credit to remediation of public lands; to provide
6 for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:6021(A), (B)(1), (D)(2)(a)(i) and (b)(i), (H), the introductory
9 paragraph of (I), (I)(2), (I)(6), and (J) are hereby amended and reenacted and R.S.
10 47:6021(B)(6) is hereby enacted to read as follows:

11 §6021. Brownfields Investor Tax Credit

12 A.(1) Purpose. The primary objective of this Section is to stimulate
13 environmental economic development in Louisiana by encouraging the cleanup,
14 redevelopment, and productive reuse of brownfields sites in the state. The legislature
15 hereby finds and declares that unknown environmental liabilities are preventing
16 communities, developers, and investors from restoring brownfields properties to
17 productive use and revitalizing impacted neighborhoods. Brownfields sites languish

1 because developers, both public and private, face a daunting challenge in the form
 2 of exorbitant environmental site assessment study costs, followed by potentially even
 3 more expensive cleanup costs. Banks and other traditional financing sources have
 4 been and remain reluctant to finance the costs involved in the initial assessment of
 5 brownfields sites. These sites may have significant contamination, but nonetheless
 6 retain strong development or redevelopment potential. Properties that were once
 7 used for industrial, manufacturing, or commercial uses are lying abandoned or under
 8 used due to the suspicion or actual knowledge of hazardous substance contamination.

9 (2) In furtherance of that purpose, there is hereby established a tax structure
 10 which encourages **public and** private investment. This structure will provide for
 11 state participation in the form of tax credits to encourage investment in state-certified
 12 brownfields site redevelopment.

13 B. Definitions. The following terms shall have the following meanings for
 14 the purposes of this Section:

15 (1) "Brownfields site" or "state-certified site" means an identified area of
 16 immovable property, **which may include public parks, playgrounds or other**
 17 **recreational areas,** in the state for which a voluntary remediation action or a
 18 voluntary remedial investigation concerning the presence or potential presence of a
 19 hazardous substance or pollutant is authorized by the secretary pursuant to Part II of
 20 Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.

21 * * *

22 **(6) "Taxpayer" or "person" means any individual or any public or**
 23 **private entity whether taxable or non-taxable.**

24 * * *

25 D. Review of applications; certification and administration.

26 * * *

27 ~~(2)(a)(i) Upon approval by the secretary of the Department of Environmental~~
 28 ~~Quality of a voluntary remedial investigation tax credit application, the applicant~~
 29 ~~may proceed with his voluntary remedial investigation. **The applicant shall submit**~~

1 to the Department of Environmental Quality an application for the voluntary
 2 remedial investigation tax credit. Any such investigation shall be conducted
 3 according to Department of Environmental Quality oversight pursuant to the
 4 Voluntary Remediation Program, R.S. 30:2285 et seq.

5 * * *

6 (b)(i) Upon approval by the secretary of the Department of Environmental
 7 Quality of a voluntary remediation tax credit application, the applicant may proceed
 8 with his voluntary remediation action. The applicant shall submit to the
 9 Department of Environmental Quality an application for the voluntary
 10 remediation tax credit application. Any such remedial action shall be
 11 conducted according to Department of Environmental Quality oversight
 12 pursuant to the Voluntary Remediation Program, R.S. 30:2285 et seq.

13 * * *

14 H. Ineligible participants. No corporation or partnership including any
 15 company owned, affiliated, or controlled, in whole or in part, by any company or
 16 person that is a responsible person or is in default on a loan made by the state or a
 17 loan guaranteed by the state, or any company or person who has ever declared
 18 bankruptcy under which an obligation of the company or person to pay or repay
 19 public funds or monies was discharged as a part of such bankruptcy shall be eligible
 20 to receive any tax incentive authorized under this Section. In addition, no responsible
 21 person shall be eligible to receive, or receive the transfer of, any tax incentive
 22 pursuant to this Section for an investigation or remedial action on a property for
 23 which that person was a responsible person.

24 I. Transferability of the credit. Any tax credits provided for in this Section not
 25 previously claimed by any taxpayer against its income tax, if any, may be transferred
 26 or sold to another Louisiana taxpayer, subject to the following conditions:

27 * * *

28 (2) Transferors and transferees shall submit written notification to the
 29 Department of Revenue and the Department of Environmental Quality in writing,

1 a ~~notification~~ of any transfer or sale of tax credits within thirty days after the transfer
2 or sale of such tax credits. The notification shall include the transferor's tax credit
3 balance prior to transfer, a copy of ~~any~~ **the** tax credit certification letter(s) issued by
4 the Department of Environmental Quality, the name of the state-certified site, the
5 transferor's remaining tax credit balance after transfer, all **names and** tax
6 identification numbers for both transferor and transferee, the date of transfer, the
7 amount transferred, a copy of the credit certificate, ~~price paid by the transferee to the~~
8 ~~transferor, for the tax credits,~~ and any other information required by the Department
9 of Revenue. For the purpose of reporting ~~transfer prices~~ **transfers**, the term
10 "transfer" shall include allocations pursuant to R.S. 47:6007(C)(3) as provided by
11 rule. **The Department of Environment Quality shall notify the transferor and**
12 **the Department of Revenue if any transferee is an ineligible participant under**
13 **Subsection H.**

* * *

15 (6) The transferee shall apply such credits ~~in the same manner and against the~~
16 ~~same~~ **income** taxes ~~as the taxpayer originally awarded the credit.~~

17 J. No tax credits shall be granted or allowed ~~after December 31, 2009~~ **from**
18 **January 1, 2010 through June 30, 2011.** However, the transferability provisions of
19 Subsection (I) of this Section shall continue to be effective after December 31, 2009
20 for tax credits authorized on and prior to such date **and on and after July 1, 2011.**

21 Section 2. This Act shall become effective on July 1, 2011. If vetoed by the governor
22 and subsequently approved by the legislature, this Act shall become effective on July 1,
23 2011, or on the day following such approval by the legislature, whichever is later.

The original instrument was prepared by Cathy R. Wells. The following digest, which does not constitute a part of the legislative instrument, was prepared by Danielle Doiron.

DIGEST

Morrell (SB 40)

Present law authorizes a transferable credit against state income tax for investment by an individual or "entity" in either voluntary remedial investigation or voluntary remediation action, or both, in state-certified brownfields sites. The credit was able to be carried forward (used by the remediator or by the transferee) for 10 years.

Present law defines "brownfields site" or "state-certified site" as an identified area of immovable property in the state for which a voluntary remediation action or a voluntary remedial investigation concerning the presence or potential presence of a hazardous substance or pollutant is authorized by the secretary of DEQ pursuant to law.

Present law terminates granting the credit after December 31, 2009, but authorized the credits to be transferred after that date.

Proposed law authorizes granting the credit on and after June 30, 2011, and clarifies that the credit may be granted to any public or private "entity" whether taxable or non-taxable.

Present law requires transferors and transferees to submit in writing notification of any transfers or sales of tax credits within thirty days after transfer or sale. The notification shall include necessary information including the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the Department of Environmental Quality, the name of the state-certified site, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor, for the tax credits, and any other information required by the Department of Revenue.

Proposed law retains present law and requires written notification of all transfers or sales of tax credits to also be submitted to the Department of Environmental Quality within thirty days after the transfer or sale. It further requires a copy of the tax credit certification letter issued by the Department of Environmental Quality, and all names for both transferor and transferee. It removes the requirement to include the price paid by the transferee to the transferor for the tax credits required by the Department of Revenue, and it requires the Department of Environmental Quality to notify the transferor and Department of Revenue of any ineligible transferee.

Present law provides that the credit is "earned" at the time of certification of either an investigation or remediation, or both by the secretary of DEQ. Individuals or entities are eligible to receive a credit of 15% of the total investment made for voluntary remedial investigation and a credit of 50% of the total investment made in voluntary remediation at a state-certified site.

Present law prohibits the "responsible" party or landowner (i.e. the party or landowner responsible under the law for the discharge or disposal, or allowing the discharge or disposal of the hazardous waste on the property) from applying for such credits, including any company owned, affiliated, or controlled, in whole or in part, by any company or person that is a "responsible person".

Proposed law also prohibits a "responsible person" from receiving the transfer of any credit.

Proposed law retains the definition of "brownfields site" and "state-certified site" and clarifies that such definition may include public parks, playgrounds, and other recreational areas.

Proposed law retains the present law procedure.

Effective July 1, 2011.

(Amends R.S. 47:6021(A), B(1), D(2)(a)(i) and (b)(i), (H), (I) (intro para), (I), (I)(2), (6), and (J); adds R.S. 47:6021(B)(6))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Requires written notification of all transfers or sales of tax credits be to the Department of Environmental Quality as well as the Department of Revenue and requires the Environmental Quality to notify the transferor and Department of Revenue of any ineligible transferee.