

SENATE BILL NO. 40

BY SENATORS MORRELL, ADLEY, HEITMEIER AND WILLARD-LEWIS AND REPRESENTATIVES ABRAMSON, ARNOLD, AUSTIN BADON, BISHOP, BROSSETT, HENDERSON, LEGER, MORENO, STIAES AND TUCKER

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), (K) and (L)  
4 relative to income tax credits; to provide income tax credits for certain brownfields  
5 investors; to clarify the applicability of such credit to remediation of public lands;  
6 to provide 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), (K) and (L) are 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  
18 because developers, both public and private, face a daunting challenge in the form  
19 of exorbitant environmental site assessment study costs, followed by potentially even  
20 more expensive cleanup costs. Banks and other traditional financing sources have  
21 been and remain reluctant to finance the costs involved in the initial assessment of  
22 brownfields sites. These sites may have significant contamination, but nonetheless  
23 retain strong development or redevelopment potential. Properties that were once  
24 used for industrial, manufacturing, or commercial uses are lying abandoned or under

1 used due to the suspicion or actual knowledge of hazardous substance contamination.

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

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

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

14 \* \* \*

15 (6) "Taxpayer" or "person" means any individual or any public or  
16 private entity whether taxable or non-taxable.

17 \* \* \*

18 D. Review of applications; certification and administration.

19 \* \* \*

20 ~~(2)(a)(i) Upon approval by the secretary of the Department of Environmental~~  
21 ~~Quality of a voluntary remedial investigation tax credit application, the applicant~~  
22 ~~may proceed with his voluntary remedial investigation. The applicant shall submit~~  
23 ~~to the Department of Environmental Quality an application for the voluntary~~  
24 ~~remedial investigation tax credit. Any such investigation shall be conducted~~  
25 ~~according to Department of Environmental Quality oversight pursuant to the~~  
26 ~~Voluntary Remediation Program, R.S. 30:2285 et seq.~~

27 \* \* \*

28 ~~(b)(i) Upon approval by the secretary of the Department of Environmental~~  
29 ~~Quality of a voluntary remediation tax credit application, the applicant may proceed~~  
30 ~~with his voluntary remediation action. The applicant shall submit to the~~

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

5 \* \* \*

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

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

19 \* \* \*

20 (2) Transferors and transferees shall submit written notification to the  
 21 Department of Revenue and the Department of Environmental Quality ~~in writing,~~  
 22 ~~a notification~~ of any transfer or sale of tax credits within thirty days after the transfer  
 23 or sale of such tax credits. The notification shall include the transferor's tax credit  
 24 balance prior to transfer, a copy of ~~any~~ the tax credit certification letter(s) issued by  
 25 the Department of Environmental Quality, the name of the state-certified site, the  
 26 transferor's remaining tax credit balance after transfer, all names and tax  
 27 identification numbers for both transferor and transferee, the date of transfer, the  
 28 amount transferred, a copy of the credit certificate, ~~price paid by the transferee to the~~  
 29 ~~transferor, for the tax credits,~~ and any other information required by the Department  
 30 of Revenue and the Department of Environmental Quality. For the purpose of

1 reporting ~~transfer prices~~ **transfers**, the term "transfer" shall include allocations  
 2 pursuant to R.S. 47:6007(C)(3) as provided by rule. **The Department of**  
 3 **Environment Quality shall notify the transferor and the Department of Revenue**  
 4 **if any transferee is an ineligible participant under Subsection H of this Section.**

5 \* \* \*

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

8 J. ~~No tax~~ **(1) Tax** credits shall be granted ~~or allowed after December 31,~~  
 9 **2009 during the period beginning July 1, 2011 and ending December 31, 2013.**

10 However, the transferability provisions of Subsection ~~(H)~~ **I** of this Section shall  
 11 continue to be effective ~~after December 31, 2009~~ for tax credits **properly** authorized  
 12 ~~on and prior to such date~~ **during the time periods provided for in this Subsection.**

13 **(2) The Department of Environmental Quality may enter into an**  
 14 **agreement with the federal government to receive federal funding for**  
 15 **reimbursement of state revenues used to pay tax credits authorized pursuant**  
 16 **to this Section, hereinafter referred to as "federal monies". Federal monies**  
 17 **shall be used with respect to specific identifiable brownfields projects for which**  
 18 **a certificate of completion has been issued and a tax credit has been granted and**  
 19 **claimed. Any transfer of federal monies to the state general fund for purposes**  
 20 **of this Section shall be made in accordance with the provisions of Subsection L**  
 21 **of this Section and any requirements of the agreement.**

22 **K. Notwithstanding the provisions of Subsection J of this Section,**  
 23 **beginning January 1, 2014, tax credits may be granted only if the Department**  
 24 **of Environmental Quality enters into an agreement with the federal government**  
 25 **through which the state shall receive federal monies for purposes of tax credits**  
 26 **to be granted on and after January 1, 2014. At the discretion of the secretary**  
 27 **of the Department of Environmental Quality, tax credits may be granted to the**  
 28 **extent and for the time period authorized for the use of federal monies pursuant**  
 29 **to the agreement. The provisions of Paragraph (J)(2) of this Section shall apply**  
 30 **to the use of federal monies for tax credits authorized under this Subsection.**

1            **L. The provisions of this Subsection shall apply only if the Department**  
2            **of Environmental Quality has in the current year either received or been**  
3            **granted the authority to draw federal monies for purposes of the tax credits**  
4            **authorized herein. On June thirtieth in any fiscal year in which brownfields**  
5            **investor tax credits were claimed, the secretary of the Department of Revenue**  
6            **shall notify the secretary of the Department of Environmental Quality of the**  
7            **total value of tax credits claimed during that year. Upon receipt of the**  
8            **notification, the secretary of the Department of Environmental Quality shall**  
9            **request the state treasurer to transfer from the appropriate federal funding**  
10           **allocated for the Department of Environmental Quality for deposit into the state**  
11           **general fund an amount equal to that reported by the secretary of the**  
12           **Department of Revenue, or as much thereof as is available on that date.**

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

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_