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To: Environment Prot, Cons and Water Res; Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2122

1 AN ACT TO CREATE THE MISSISSIPPI BROWNFIELDS VOLUNTARY
2 CLEANUP AND REDEVELOPMENT INCENTIVES ACT; TO EXPRESS THE FINDINGS
3 OF THE LEGISLATURE; TO CREATE A NEW SECTION TO BE CODIFIED AS
4 SECTION 27-7-22.16, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES AN
5 INCOME TAX CREDIT FOR REMEDIATION COST INCURRED AT A BROWNFIELD
6 AGREEMENT SITE; TO DEFINE CERTAIN TERMS; TO PRESCRIBE THE AMOUNT
7 OF THE INCOME TAX CREDIT; TO REQUIRE THE COMMISSION ON
8 ENVIRONMENTAL QUALITY TO APPROVE AN AMOUNT OF REMEDIATION COSTS
9 ELIGIBLE FOR THE TAX CREDIT; TO PROVIDE FOR SUBMISSION OF
10 SUPPORTING INFORMATION TO THE STATE TAX COMMISSION; TO AMEND
11 SECTION 57-1-301, MISSISSIPPI CODE OF 1972, TO MODIFY THE
12 DEFINITION OF CAPITAL IMPROVEMENT TO INCLUDE BROWNFIELD SITE
13 REMEDIATION; TO AMEND SECTION 57-1-303, MISSISSIPPI CODE OF 1972,
14 TO CREATE THE LOCAL GOVERNMENTS BROWNFIELDS REDEVELOPMENT GRANT
15 FUND AND PROGRAM; TO AMEND SECTION 57-1-307, MISSISSIPPI CODE OF
16 1972, TO INCREASE THE AMOUNT OF GENERAL OBLIGATION BONDS
17 AUTHORIZED TO BE ISSUED UNDER THE LOCAL GOVERNMENTS AND CAPITAL
18 IMPROVEMENTS REVOLVING LOAN PROGRAM; TO DEDICATE A PORTION OF THE
19 PROCEEDS OF THE ADDITIONAL BONDS FOR LOANS TO LOCAL GOVERNMENTS
20 FOR BROWNFIELDS SITE REMEDIATION; TO REQUIRE THE PLACEMENT OF A
21 PORTION OF THE INTEREST EARNINGS ON THE PROCEEDS OF THE ADDITIONAL
22 BONDS AUTHORIZED IN THIS ACT TO BE PAID INTO THE LOCAL GOVERNMENTS
23 BROWNFIELDS REDEVELOPMENT GRANT FUND; FOR RELATED PURPOSES.

24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

25 **SECTION 1.** This act shall be known and may be cited as the
26 "Mississippi Brownfields Voluntary Cleanup and Redevelopment
27 Incentives Act."

28 **SECTION 2.** The Legislature finds:

29 (a) There are properties in Mississippi, often referred
30 to as "brownfields," that were contaminated or were perceived to
31 have been contaminated by past activities, but are attractive
32 locations for redevelopment.

33 (b) The safe development or redevelopment of
34 brownfields would benefit the citizens of Mississippi in many
35 ways, including improving the tax base of local governments and
36 creating job opportunities for citizens in the vicinity of
37 brownfields.

38 (c) Owners and prospective developers and redevelopers
39 of brownfields, local governments in which brownfields are
40 located, and federal and state government agencies should be
41 encouraged to provide capital and labor to improve brownfields so
42 that the property can be determined to be safe or made safe for
43 appropriate future use.

44 (d) The reduction of public health and environmental
45 hazards on existing brownfield sites is essential to creating a
46 better quality of life for the citizens of this state.

47 (e) Section 49-35-27, Mississippi Code of 1972,
48 requires the Department of Environmental Quality to conduct a
49 survey of incentive programs in other states for cleanup of
50 contaminated sites by January 1, 1999. The department has
51 conducted its survey and filed its report showing incentives
52 provided in other states.

53 **SECTION 3.** The following shall be codified as Section
54 27-7-22.16, Mississippi Code of 1972:

55 27-7-22.16. (1) (a) Except as otherwise provided under
56 this subsection, the words and phrases used in this section shall
57 have the meanings ascribed to them in Section 49-35-5, Mississippi
58 Code of 1972.

59 (b) "Remediation costs" means reasonable costs paid for
60 the assessment, investigation, remediation, monitoring and related
61 activities at a brownfield agreement site which are consistent
62 with the remedy selected for the site and costs paid to the
63 Department of Environmental Quality for the processing of a
64 brownfield agreement application and administration of a
65 brownfield agreement. Remediation costs shall not include (i)
66 costs incurred before June 26, 1999; (ii) costs incurred after the
67 issuance of a No Further Action letter under Section 49-35-15,
68 Mississippi Code of 1972; (iii) costs incurred before the
69 acceptance of a brownfield agreement site into the Mississippi
70 Brownfields Voluntary Cleanup and Redevelopment program; (iv)

71 costs incurred for any legal services or litigation costs; and (v)
72 any funds provided by any federal, state or local governmental
73 agency or political subdivision.

74 (2) Subject to the limitations provided in subsection (4) of
75 this section, upon submission to the State Tax Commission of
76 information provided for in subsection (5) of this section and any
77 other documentation as the State Tax Commission may require, any
78 brownfield party who (a) has conducted remediation at a brownfield
79 agreement site in accordance with Sections 49-35-1 through
80 49-35-25 and (b) has incurred remediation costs for activities
81 under Sections 49-35-1 through 49-35-25, as approved by the
82 Department of Environmental Quality, shall be allowed a credit in
83 an amount equal to twenty-five percent (25%) of the remediation
84 costs at the brownfield agreement site as approved by the
85 department, against the taxes imposed under this chapter for the
86 tax year in which the costs are incurred.

87 (3) (a) Before applying for the tax credit authorized in
88 this section, a brownfield party shall submit an application for
89 review of remediation costs to the Department of Environmental
90 Quality. The application shall be on forms prescribed by the
91 Commission on Environmental Quality and provided by the
92 department. The application shall include the following:

93 (i) A section identifying the brownfield party,
94 the brownfield agreement site, the date the brownfield agreement
95 was executed and the tax year for which the credit is sought;

96 (ii) An itemization and documentation of the
97 remediation costs incurred;

98 (iii) A demonstration that the costs incurred are
99 remediation costs;

100 (iv) A demonstration that the remediation costs
101 submitted for review were incurred by the brownfield party; and

102 (v) Any other information which the Commission on
103 Environmental Quality or the State Tax Commission deems
104 appropriate.

105 (b) The department shall review to determine whether
106 the costs submitted are remediation costs and whether the costs
107 incurred are reasonable.

108 (c) Within sixty (60) days after receipt of a completed
109 application by the department, the department shall approve,
110 disapprove or approve with modification the remediation costs
111 submitted in the application. The department shall notify the
112 brownfield party in writing of its decision. If the department
113 approves the remediation costs submitted in the application, the
114 department shall state the amount of remediation costs to be
115 applied toward the tax credit under this section for the given tax
116 year. If the department approves with modification or disapproves
117 the remediation costs contained in the application, the department
118 shall state the reasons for disapproval or approval with
119 modification and shall state the amount of remediation costs, if
120 any, to be applied toward the tax credit under this section for
121 the given tax year.

122 (d) Within thirty (30) days after receipt of the
123 department's decision, the brownfield party may request a hearing
124 before the commission regarding the decision of the department to
125 approve with modification or disapprove the remediation costs
126 contained in the application in the form specified under Section
127 49-17-35. An appeal of the commission's decision may be taken as
128 provided under Section 49-17-41.

129 (e) The department's review of the application for
130 review of remediation costs under this section shall be considered
131 a part of the administration of the brownfield agreement.

132 (4) (a) The annual credit provided for in this section
133 shall not exceed the lesser of Forty Thousand Dollars (\$40,000.00)
134 or the amount of the income tax imposed upon the brownfield party

135 at the brownfield agreement site for the taxable year as reduced
136 by the sum of all other credits allowable to the brownfield party
137 under this chapter, except for credit for tax payments made by or
138 on behalf of the brownfield party. Any unused portion of the
139 credit may be carried forward for the succeeding five (5) tax
140 years.

141 (b) The maximum total credit under this section for a
142 brownfield agreement site is One Hundred Fifty Thousand Dollars
143 (\$150,000.00).

144 (5) To be eligible for the tax credit, the brownfield party
145 must submit a copy of the letter from the department stating the
146 amount of remediation costs approved by the department for the
147 given tax year.

148 **SECTION 4.** Section 57-1-301, Mississippi Code of 1972, is
149 amended as follows:

150 57-1-301. (1) There is established a local governments
151 capital improvements revolving loan program to be administered by
152 the Mississippi Development Authority for the purpose of assisting
153 counties and municipalities in making capital improvements.

154 (2) For purposes of Sections 57-1-301 through 57-1-335,
155 "capital improvements" include any combination of the following:

156 (a) Construction or repair of water and sewer
157 facilities;

158 (b) Construction or repair of drainage systems for
159 industrial development;

160 (c) Improvements in fire protection;

161 (d) Construction of new buildings for economic
162 development purposes;

163 (e) Renovation or repair of existing buildings for
164 economic development purposes;

165 (f) Construction or repair of access roads for
166 industrial development;

- 167 (g) Purchase of buildings for economic development
168 purposes;
- 169 (h) Construction or repair of railroad spurs for
170 industrial development;
- 171 (i) Construction of any county or municipally owned
172 health care facilities, excluding any county health departments;
- 173 (j) Construction, purchase, renovation or repair of any
174 building to be utilized as an auditorium or convention center;
- 175 (k) Construction of multipurpose facilities for tourism
176 development;
- 177 (l) Loans to a county to aid in retiring
178 interest-bearing loans utilized for the purchase of a motion
179 picture sound stage; * * *
- 180 (m) Construction, repair and renovation of parks,
181 swimming pools and recreational and athletic facilities; or
- 182 (n) Remediation of brownfield agreement sites in
183 accordance with Sections 49-35-1 through 49-35-25.

184 **SECTION 5.** Section 57-1-303, Mississippi Code of 1972, is
185 amended as follows:

186 57-1-303. (1) (a) (i) There is created a special fund in
187 the State Treasury to be designated as the "Local Governments
188 Capital Improvements Revolving Loan Fund," which fund shall
189 consist of such monies as provided in Sections 57-1-307 through
190 57-1-335. The fund shall be maintained in perpetuity for the
191 purposes established in Sections 57-1-301 through 57-1-335.
192 Unexpended amounts remaining in the fund at the end of a fiscal
193 year shall not lapse into the State General Fund, and any interest
194 earned on amounts in the fund shall be deposited to the credit of
195 the fund. Monies in the fund may not be used or expended for any
196 purpose except as authorized under Sections 57-1-301 through
197 57-1-335.

198 (ii) Monies in the Local Governments Capital
199 Improvements Revolving Loan Fund which are derived from interest

200 on loan payments received by the Mississippi Development Authority
201 after January 1, 2002, for loans funded with proceeds of bonds
202 whose interest is not exempt from income taxation under the
203 provisions of the Internal Revenue Code may be used by the
204 Mississippi Development Authority for the ordinary and necessary
205 general support of the Mississippi Development Authority.
206 However, such monies may not be used for the purpose of providing
207 salary increases for Mississippi Development Authority employees.
208 The Mississippi Development Authority may escalate its budget and
209 expend such monies in accordance with rules and regulations of the
210 Department of Finance and Administration in a manner consistent
211 with the escalation of federal funds. This subparagraph (ii)
212 shall be repealed from and after July 1, 2005.

213 (b) The Local Governments Capital Improvements
214 Revolving Loan Fund shall be divided into the Taxable Local
215 Governments Capital Improvements Revolving Loan Subaccount and the
216 Nontaxable Local Governments Capital Improvements Revolving Loan
217 Subaccount. Funds allocated to the Nontaxable Local Governments
218 Capital Improvements Revolving Loan Subaccount shall be utilized
219 to provide loans for capital improvements that would qualify for
220 the issuance of bonds whose interest is exempt from income
221 taxation under the provisions of the Internal Revenue Code. Funds
222 allocated to the Taxable Local Governments Capital Improvements
223 Revolving Loan Subaccount shall be utilized to provide loans for
224 any eligible capital improvements, including, but not limited to,
225 capital improvements that would qualify for the issuance of bonds
226 whose interest is exempt from income taxation under the provisions
227 of the Internal Revenue Code.

228 (c) Of the funds deposited into the Local Governments
229 Capital Improvements Revolving Loan Fund, not less than
230 Twenty-five Million Dollars (\$25,000,000.00) shall be allocated to
231 the Nontaxable Local Governments Capital Improvements Revolving
232 Loan Subaccount, and the remainder of such funds shall be

233 allocated to the Taxable Local Governments Capital Improvements
234 Revolving Loan Subaccount.

235 (2) A county or an incorporated municipality may apply to
236 the Mississippi Development Authority for a loan under the local
237 governments capital improvements revolving loan program
238 established under Sections 57-1-301 through 57-1-335.

239 (3) (a) The Mississippi Development Authority shall
240 establish a loan program by which loans, at the rate of interest
241 provided for in paragraph (b) of this subsection, may be made
242 available to counties and incorporated municipalities to assist
243 counties and incorporated municipalities in making capital
244 improvements. Loans from the revolving fund may be made to
245 counties and municipalities as set forth in a loan agreement in
246 amounts not to exceed one hundred percent (100%) of eligible
247 project costs as established by the Mississippi Development
248 Authority. The Mississippi Development Authority may require
249 county or municipal participation or funding from other sources,
250 or otherwise limit the percentage of costs covered by loans from
251 the revolving fund. The Mississippi Development Authority may
252 establish a maximum amount for any loan in order to provide for
253 broad and equitable participation in the program and loans for
254 projects described in Section 57-1-301(1)(m) shall not exceed Two
255 Hundred Fifty Thousand Dollars (\$250,000.00) per project.

256 (b) (i) Except as otherwise provided in this paragraph
257 (b), the rate of interest on loans made from the Local Governments
258 Capital Improvements Revolving Loan Fund for capital improvements
259 that would qualify for the issuance of bonds whose interest is
260 exempt from income taxation under the provisions of the Internal
261 Revenue Code shall be at the rate of three percent (3%) per annum,
262 calculated according to the actuarial method. The rate of
263 interest on loans for all other capital improvements shall be at
264 the true interest cost on the most recent issue of twenty-year

265 state general obligation bonds occurring prior to the date such
266 loan is made.

267 (ii) The rate of interest on loans made after
268 April 9, 2002, from the Local Governments Capital Improvements
269 Revolving Loan Fund for capital improvements that would qualify
270 for the issuance of bonds whose interest is exempt from income
271 taxation under the provisions of the Internal Revenue Code shall
272 be at the rate of two percent (2%) per annum, calculated according
273 to the actuarial method. The rate of interest on loans made after
274 April 9, 2002, for all other capital improvements shall be at the
275 rate of three percent (3%) per annum, calculated according to the
276 actuarial method.

277 (iii) Notwithstanding the provisions of this
278 paragraph to the contrary, loans made for the purposes of the
279 capital project described in Section 57-1-301(2)(1) shall bear no
280 interest.

281 (4) A county that receives a loan from the revolving fund
282 shall pledge for repayment of the loan any part of the homestead
283 exemption annual tax loss reimbursement to which it may be
284 entitled under Section 27-33-77. An incorporated municipality
285 that receives a loan from the revolving fund shall pledge for
286 repayment of the loan any part of the sales tax revenue
287 distribution to which it may be entitled under Section 27-65-75.
288 Each loan agreement shall provide for (i) monthly payments, (ii)
289 semiannual payments, or (iii) other periodic payments, the annual
290 total of which shall not exceed the annual total for any other
291 year of the loan by more than fifteen percent (15%). The loan
292 agreement shall provide for the repayment of all funds received
293 within not more than twenty (20) years from the date of project
294 completion.

295 (5) The State Auditor, upon request of the Mississippi
296 Development Authority, shall audit the receipts and expenditures
297 of a county or an incorporated municipality whose loan payments

298 appear to be in arrears, and if he finds that the county or
299 municipality is in arrears in such payments, he shall immediately
300 notify the Executive Director of the Department of Finance and
301 Administration who shall withhold all future payments to the
302 county of homestead exemption reimbursements under Section
303 27-33-77 and all sums allocated to the county or the municipality
304 under Section 27-65-75 until such time as the county or the
305 municipality is again current in its loan payments as certified by
306 the Mississippi Development Authority.

307 (6) Evidences of indebtedness which are issued pursuant to
308 this chapter shall not be deemed indebtedness within the meaning
309 specified in Section 21-33-303 with regard to cities or
310 incorporated towns, and in Section 19-9-5 with regard to counties.

311 (7) There is created a special fund in the State Treasury to
312 be designated as the "Local Governments Brownfields Redevelopment
313 Grant Fund." The fund shall consist of those monies as provided
314 in Section 57-1-307. The fund shall be maintained in perpetuity
315 for the purposes established in this section. Unexpended amounts
316 remaining in the fund at the end of the fiscal year shall not
317 lapse into the State General Fund, and any interest earned on
318 amounts in the fund shall be deposited to the credit of the fund.
319 Monies in the fund may not be used or expended for any purpose
320 except as authorized in this section.

321 (8) (a) The Mississippi Development Authority shall
322 establish a local governments brownfields redevelopment grant
323 program to provide funds to counties and incorporated
324 municipalities for coordination of activities related to
325 brownfields redevelopment. Activities eligible for funding under
326 this program include identification of brownfield sites, site
327 assessment and investigation, and development of remedial action
328 plans. The implementation of remedial action plans or site
329 remediation and post-remediation monitoring shall not be
330 considered eligible activities. The authority shall provide

331 grants to counties or incorporated municipalities, if the county
332 or incorporated municipality demonstrates and the authority
333 determines that following remediation the site will be directly
334 associated with the creation or retention of jobs.

335 (b) Grants shall be awarded on a competitive basis,
336 subject to the availability of funding. Grants shall be limited
337 to a maximum of One Hundred Thousand Dollars (\$100,000.00).

338 (c) Grant amounts shall not exceed seventy-five percent
339 (75%) of the total project amount. The remaining twenty-five
340 percent (25%) shall be provided by the county or incorporated
341 municipality as local matching funds.

342 **SECTION 6.** Section 57-1-307, Mississippi Code of 1972, is
343 amended as follows:

344 57-1-307. (1) The State Bond Commission, at one time, or
345 from time to time, may declare by resolution the necessity for
346 issuance of general obligation bonds of the State of Mississippi
347 to provide funds for all costs incurred or to be incurred for the
348 purposes described in Section 57-1-303. Upon the adoption of a
349 resolution by the Department of Economic and Community
350 Development, declaring the necessity for the issuance of any part
351 or all of the general obligation bonds authorized by this section,
352 the Department of Economic and Community Development shall deliver
353 a certified copy of its resolution or resolutions to the State
354 Bond Commission. Upon receipt of such resolution, the State Bond
355 Commission, in its discretion, may act as the issuing agent,
356 prescribe the form of the bonds, advertise for and accept bids,
357 issue and sell the bonds so authorized to be sold and do any and
358 all other things necessary and advisable in connection with the
359 issuance and sale of such bonds. The total amount of bonds issued
360 under Sections 57-1-307 through 57-1-335 shall not exceed One
361 Hundred Five Million Dollars (\$105,000,000.00); provided, however,
362 that an additional amount of bonds may be issued under Sections
363 57-1-307 and 57-1-335 in an amount not to exceed Thirteen Million

364 Dollars (\$13,000,000.00), and the proceeds of any such additional
365 amount of bonds so issued shall be utilized solely to provide
366 loans for capital improvements that would qualify for the issuance
367 of bonds whose interest is exempt from income taxation under the
368 provisions of the Internal Revenue Code. Of the bonds authorized
369 under this section, Two Million Five Hundred Thousand Dollars
370 (\$2,500,000.00) shall be used only to provide loans to counties
371 and incorporated municipalities for remediation of a brownfield
372 agreement site under Sections 49-35-1 through 49-35-25.

373 (2) Proceeds from the sale of bonds shall be deposited in
374 the special fund created in Section 57-1-303. Except as otherwise
375 provided in this section, any investment earnings on amounts
376 deposited into the special fund created in Section 57-1-303 shall
377 be used to pay debt service on bonds issued under Sections
378 57-1-307 through 57-1-335, in accordance with the proceedings
379 authorizing issuance of such bonds. The investment earnings on
380 the additional bonds authorized to be issued under this section by
381 Senate Bill No. 2122, 2004 Regular Session, fifty percent (50%)
382 shall be deposited into the Local Governments Brownfield Site
383 Remediation Grant Fund created under Section 57-1-303. The
384 remaining fifty percent (50%) of the interest earnings shall be
385 used as otherwise provided in this subsection.

386 **SECTION 7.** Nothing in this act shall affect or defeat any
387 claim, assessment, appeal, suit, right or cause of action for
388 taxes due or accrued under the income tax laws before the date on
389 which this act becomes effective or are begun thereafter. The
390 provisions of the income tax laws are expressly continued in full
391 force, effect and operation for the purpose of the assessment,
392 collection and enrollment of liens for any taxes due or accrued
393 and the execution of any warrant under such laws before the date
394 on which this act becomes effective, and for the imposition of any
395 penalties, forfeitures or claims for failure to comply with such
396 laws.

397 **SECTION 8.** This act shall take effect and be in force from
398 and after January 1, 2005.