

By: Senator(s) Dawkins

To: Finance

SENATE BILL NO. 3090

1 AN ACT TO PROVIDE AN INCOME TAX CREDIT TO COMPANIES THAT
 2 MANUFACTURE NEW PRODUCTS OR THAT SUBSTANTIALLY IMPROVE EXISTING
 3 PRODUCTS THAT HAVE A LESSER OR REDUCED ADVERSE EFFECT ON HUMAN
 4 HEALTH AND THE ENVIRONMENT OR PROVIDES FOR IMPROVEMENT TO HUMAN
 5 HEALTH AND THE ENVIRONMENT WHEN COMPARED WITH EXISTING PRODUCTS OR
 6 COMPETING PRODUCTS THAT SERVE THE SAME PURPOSE; TO PROVIDE THAT
 7 THE MISSISSIPPI DEVELOPMENT AUTHORITY SHALL EXERCISE CERTAIN
 8 POWERS WITH REGARD TO THE CREDIT; TO ESTABLISH CERTAIN ELIGIBILITY
 9 CRITERIA FOR THE PROJECT; TO PROVIDE FOR THE AMOUNT OF THE CREDIT;
 10 AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** As used in this act:

13 (a) "Activation date" means a date selected by an
 14 approved company in the tax incentive agreement at any time within
 15 a two-year period after the date of final approval of the tax
 16 incentive agreement by the authority.

17 (b) "Affiliate" means the following:

18 (i) Members of a family, including only brothers
 19 and sisters of the whole or half blood, spouse, ancestors and
 20 lineal descendants of an individual;

21 (ii) An individual, and a corporation more than
 22 fifty percent (50%) in value of the outstanding stock of which is
 23 owned, directly or indirectly, by or for that individual;

24 (iii) An individual, and a limited liability
 25 company of which more than fifty percent (50%) of the capital
 26 interest or profits are owned or controlled, directly or
 27 indirectly, by or for that individual;

28 (iv) Two (2) corporations which are members of the
 29 same controlled group, which includes and is limited to:

30 1. One or more chains of corporations
31 connected through stock ownership with a common parent corporation
32 if:

33 a. Stock possessing more than fifty
34 percent (50%) of the total combined voting power of all classes of
35 stock entitled to vote or more than fifty percent (50%) of the
36 total value of shares of all classes of stock of each of the
37 corporations, except the common parent corporation, is owned by
38 one or more of the other corporations; and

39 b. The common parent corporation owns
40 stock possessing more than fifty percent (50%) of the total
41 combined voting power of all classes of stock entitled to vote or
42 more than fifty percent (50%) of the total value of shares of all
43 classes of stock of at least one (1) of the other corporations,
44 excluding, in computing the voting power or value, stock owned
45 directly by the other corporations; or

46 2. Two (2) or more corporations if five (5)
47 or fewer persons who are individuals, estates or trusts own stock
48 possessing more than fifty percent (50%) of the total combined
49 voting power of all classes of stock entitled to vote or more than
50 fifty percent (50%) of the total value of shares of all classes of
51 stock of each corporation, taking into account the stock ownership
52 of each person only to the extent the stock ownership is identical
53 with respect to each corporation;

54 (v) A grantor and a fiduciary of any trust;

55 (vi) A fiduciary of a trust and a fiduciary of
56 another trust, if the same person is a grantor of both trusts;

57 (vii) A fiduciary of a trust and a beneficiary of
58 that trust;

59 (viii) A fiduciary of a trust and a beneficiary of
60 another trust, if the same person is a grantor of both trusts;

61 (ix) A fiduciary of a trust and a corporation more
62 than fifty percent (50%) in value of the outstanding stock of

63 which is owned, directly or indirectly, by or for the trust or by
64 or for a person who is a grantor of the trust;

65 (x) A fiduciary of a trust and a limited liability
66 company more than fifty percent (50%) of the capital interest, or
67 the interest in profits, of which owned directly or indirectly, by
68 or for the trust or by or for a person who is a grantor of the
69 trust;

70 (xi) A corporation and a partnership, including a
71 registered limited liability partnership, if the same persons own:

72 1. More than fifty percent (50%) in value of
73 the outstanding stock of the corporation; and

74 2. More than fifty percent (50%) of the
75 capital interest, or the profits interest, in the partnership,
76 including a registered limited liability partnership;

77 (xii) A corporation and a limited liability
78 company if the same persons own:

79 1. More than fifty percent (50%) in value of
80 the outstanding stock of the corporation; and

81 2. More than fifty percent (50%) of the
82 capital interest or the profits in the limited liability company;

83 (xiii) A partnership, including a registered
84 limited liability partnership, and a limited liability company if
85 the same persons own:

86 1. More than fifty percent (50%) of the
87 capital interest or profits in the partnership, including a
88 registered limited liability partnership; and

89 2. More than fifty percent (50%) of the
90 capital interest or the profits in the limited liability company;

91 (xiv) An S corporation and another S corporation
92 if the same persons own more than fifty percent (50%) in value of
93 the outstanding stock of each corporation, S corporation
94 designation being the same as that designation under the Internal
95 Revenue Code of 1986, as amended; or

96 (xv) An S corporation and a C corporation, if the
97 same persons own more than fifty percent (50%) in value of the
98 outstanding stock of each corporation; S and C corporation
99 designations being the same as those designations under the
100 Internal Revenue Code of 1986, as amended.

101 (c) "Approved company" means any eligible company for
102 which the authority has granted final approval of its application
103 pursuant to Section 4 of this act.

104 (d) "Approved costs" means one hundred percent (100%) of
105 the eligible skills upgrade training costs and up to twenty-five
106 percent (25%) of the eligible equipment costs approved by the
107 authority that an approved company may recover through the
108 inducements authorized by this act.

109 (e) "Authority" means the Mississippi Development
110 Authority.

111 (f) "Average hourly wage" means the wage and employment
112 date published by the Department of Employment Security translated
113 into wages per hour based on a two-thousand-eighty-hour work year
114 for the following sectors:

115 (i) Manufacturing;

116 (ii) Transportation, communications and public
117 utilities;

118 (iii) Wholesale and retail trade;

119 (iv) Finance, insurance and real estate; and

120 (v) Services.

121 (g) "Eligible company" means any entity that undertakes
122 and environmental stewardship project.

123 (h) "Eligible costs" means eligible equipment costs
124 plus eligible skills upgrade training costs expended after
125 preliminary approval of the environmental stewardship project.

126 (i) "Eligible equipment costs" means:

127 (i) Obligations incurred for labor and to vendors,
128 contractors, subcontractors, builders, suppliers, deliverymen and

129 materialmen in connection with the acquisition, construction,
130 equipping and installation of an environmental stewardship
131 project;

132 (ii) The cost of contract bonds and of insurance
133 of all kinds that may be required or necessary during the course
134 of acquisition, construction, equipping and installation of an
135 environmental stewardship project which is not paid by the vendor,
136 supplier, deliveryman, contractor or otherwise provided;

137 (iii) All costs of architectural and engineering
138 services, including estimates, plans and specifications,
139 preliminary investigations and supervision of construction,
140 rehabilitation and installation, as well as for the performance of
141 all the duties required by or consequent upon the acquisition,
142 construction, equipping and installation of an environmental
143 stewardship project;

144 (iv) All costs required to be paid under the terms
145 of any contract for the acquisition, construction, equipping and
146 installation of an environmental stewardship project;

147 (v) All costs paid for by the approved company
148 that are required for the installation of utilities, including,
149 but not limited to, water, sewer, sewer treatment, gas,
150 electricity, communications and access to transportation, and
151 including off-site construction of the facilities necessary for
152 implementation of an environmental stewardship project; and

153 (vi) All other costs of a nature comparable to
154 those described in this subsection.

155 (j) "Eligible skills upgrade training costs" means:

156 (i) Fees or salaries required to be paid to
157 instructors who are employees of the approved company, instructors
158 who are full-time, part-time or adjunct instructors with an
159 educational institution, and instructors who are consultants on
160 contract with an approved company in connection with an
161 occupational training program sponsored by an approved company for

162 its full-time employees and specifically relating to an
163 environmental stewardship project;

164 (ii) Administrative fees charged by educational
165 institutions in connection with an occupational training program
166 sponsored by an approved company for its full-time employees and
167 specifically relating to an environmental stewardship project;

168 (iii) The cost of supplies, materials and
169 equipment used exclusively in an occupational training program
170 sponsored by an approved company for its full-time employees and
171 specifically relating to an environmental stewardship project;

172 (iv) The cost of leasing a training facility where
173 space is unavailable at an educational institution or at the
174 premises of an approved company in connection with an occupational
175 training program sponsored by an approved company for its
176 full-time employees and specifically relating to an environmental
177 stewardship project;

178 (v) Employee wages to be paid in connection with
179 an occupational training program sponsored by an approved company
180 for its full-time employees and specifically relating to an
181 environmental stewardship project;

182 (vi) Travel expenses paid by the approved company
183 as incurred by its full-time employees resulting directly from the
184 costs of transportation, lodging and meals that are directly
185 related to an occupational training program necessary for the
186 implementation of an environmental stewardship project; and

187 (vii) All other costs of a nature comparable to
188 those described in this subsection.

189 (k) "Employee benefits" means nonmandated costs paid by
190 an eligible company for its full-time employees for health
191 insurance, life insurance, dental insurance, vision insurance,
192 defined benefits, 401(k) or similar plans.

193 (l) "Environmental stewardship product" means any new
194 manufactured product or substantially improved existing

195 manufactured product that has a lesser or reduced adverse effect
196 on human health and the environment or provides for improvement to
197 human health and the environment when compared with existing
198 products or competing products that serve the same purpose. Such
199 products may include, but are not limited to, those which contain
200 recycled content, minimize waste, conserve energy or water, and
201 reduce the amount of toxics disposed or consumed, but shall not
202 include products that are the result of the production of energy
203 or energy-producing fuels.

204 (m) "Environmental stewardship project" or "project"
205 means:

206 (i) The acquisition, construction and installation
207 of new equipment and, with respect thereto:

208 1. The construction, rehabilitation and
209 installation of improvements to facilities necessary to house the
210 new equipment, including surveys;

211 2. Installation of utilities, including
212 water, sewer, sewage treatment, gas, electricity, communications
213 and similar facilities;

214 3. Off-site construction of utility
215 extensions to the boundaries of the real estate on which the
216 facilities are located;

217 All of which are utilized by an approved company or
218 its affiliate to manufacture an environmental stewardship product
219 as reviewed and recommended to the authority by the Environmental
220 and Public Protection Cabinet; and

221 (ii) The provision of an occupational training
222 program to provide the employees of an approved company or its
223 affiliate with the knowledge and skills necessary to manufacture
224 the new product.

225 (n) "Final approval" means the action taken by the
226 authority designating an eligible company that has previously
227 received a preliminary approval as an approved company and

228 authorizing the execution of an environmental stewardship
229 agreement between the authority and the approved company.

230 (o) "Full-time employee" means a person employed by an
231 approved company for a minimum of thirty-five (35) hours per week
232 and subject to the state income tax.

233 (p) "Inducement" means the Mississippi tax credit as
234 authorized by this act.

235 (q) "Manufacturing" means any activity involving the
236 manufacturing, processing, assembling or production of any
237 property, including the processing that results in a change in the
238 condition of the property and any related activity or function,
239 together with the storage, warehousing, distribution and related
240 office facilities.

241 (r) "Preliminary approval" means the action taken by
242 the authority designating an eligible company as a
243 preliminarily-approved company, and conditioning final approval by
244 the authority upon satisfaction by the eligible company of the
245 requirements set forth in the preliminary approval.

246 **SECTION 2.** The Legislature finds and declares that the
247 general welfare and material well-being of the citizens of the
248 state depends in large measure upon the investment and development
249 of facilities that produce new environmental technologies in the
250 state, and that it is in the best interest of the state to induce
251 the investment for production of new environmental technologies
252 with the state in order to advance the public purposes of
253 relieving unemployment by preserving jobs that might otherwise no
254 longer exist or creating new jobs and by preserving and creating
255 sources of tax revenues for the support of public services
256 provided by the state. The Legislature also finds that the
257 authority prescribed by this act, and the purposes to be
258 accomplished under the provisions of this act are proper
259 governmental and public purposes for which public money may be
260 expended, and that the inducement of the creation of projects is

261 of paramount importance mandating that the provisions of this act
262 be liberally construed and applied in order to advance public
263 purpose.

264 **SECTION 3.** (1) The authority may establish standards for
265 the determination and preliminary approval of eligible companies
266 and their projects by the promulgation of administrative
267 regulations.

268 (2) The criteria for preliminary approval of eligible
269 companies and environmental stewardship projects shall include,
270 but not be limited to, the need for the inducements, the eligible
271 costs to be expended by the eligible company, and the number of
272 employees whose jobs are to be created or retained as a result of
273 the project.

274 (3) Each eligible company making an application to the
275 authority for the inducement shall, in a manner acceptable to the
276 authority, describe the nature of the product to be manufactured
277 as a result of the project, identify the eligible costs associated
278 with the project, identify the time schedule of the proposed
279 project, set out alternatives that are available to the eligible
280 company, identify the influence this incentive had on the
281 company's decision to locate the project in the state and provide
282 any additional information relating to the project as the
283 authority may require.

284 (4) The project shall have eligible costs of at least Five
285 Million Dollars (\$5,000,000.00).

286 (5) (a) Within six (6) months after the activation date,
287 the approved company shall compensate a minimum of ninety percent
288 (90%) of its full-time employees whose jobs were created or
289 retained with base hourly wages equal to either:

290 (i) Seventy-five percent (75%) of the average
291 hourly wage for the state; or

292 (ii) Seventy-five percent (75%) of the average
293 hourly wage for the county in which the project is to be
294 undertaken.

295 (b) If the base hourly wage calculated in paragraph (a)
296 of this subsection is less than one hundred fifty percent (150%)
297 of the federal minimum wage, then the base hourly wage shall be
298 one hundred fifty percent (150%) of the federal minimum wage. In
299 addition to the applicable base hourly wage calculated above, the
300 eligible company shall provide employee benefits equal to at least
301 fifteen percent (15%) of the applicable base hourly wage; however,
302 if the eligible company does not provide employee benefits equal
303 to at least fifteen percent (15%) of the applicable base hourly
304 wage, the eligible company may qualify under this section if it
305 provides the employees hired by the eligible company as a result
306 of the economic development project total hourly compensation
307 equal to or greater than one hundred fifteen percent (115%) of the
308 applicable base hourly wage through increased hourly wages
309 combined with employee benefits.

310 (6) After a review of relevant materials and completion of
311 inquiries, the authority may, by resolution, give its preliminary
312 approval by designating an eligible company as a
313 preliminarily-approved company and authorize a conditional
314 undertaking of the project pursuant to a memorandum of agreement
315 negotiated between the eligible company and the authority.

316 (7) The preliminarily approved company shall, in a manner
317 acceptable to the authority and at certain times as the authority
318 may require, provide documentation relating to the eligible costs
319 expended or obligated in connection with the project. The
320 authority shall review the preliminarily approved company's
321 progress in connection with the project to determine if the
322 conditions set forth in the memorandum of agreement have been met.

323 (8) After a review of the documentation relating to the
324 preliminarily approved company's compliance under the memorandum

325 of agreement, the authority, by resolution, may give its final
326 approval to the preliminarily approved company's application for a
327 project and may grant to the preliminarily approved company the
328 status of an approved company.

329 **SECTION 4.** The authority, upon adoption of its final
330 approval, may enter into with any approved company an
331 environmental stewardship agreement with respect to its project.
332 The terms and provisions of each agreement, including the amount
333 of approved costs, shall be determined by negotiations between the
334 authority and the approved company, except that each agreement
335 shall include the following provisions:

336 (a) The agreement shall set forth an activation date
337 chosen by the approved company;

338 (b) The agreement shall contain a completion date
339 within the provisions of paragraph (e) of this section by which
340 the approved company will have completed the project. Within
341 three (3) months after the completion date, the approved company
342 shall document its expenditures of the eligible costs attributable
343 to the project in a manner acceptable to the authority. The
344 authority may employ an independent consultant or utilize
345 technical resources to verify the cost of the project. The
346 approved company shall reimburse the authority for the cost of a
347 consultant or other technical resources employed by the authority;

348 (c) In consideration of the execution of the agreement
349 between the authority and approved company, the approved company
350 may be permitted a credit against the tax imposed by the Income
351 Tax Law of 1952 on the income of the approved company generated by
352 or arising out of the project as determined under Section 3 of
353 this act;

354 (d) The total inducement authorized in the agreement
355 for the benefit of the approved company shall be equal to the
356 lesser of the total amount of the tax credit against the income as
357 determined under this section through the term of the agreement or

358 the approved costs that have not yet been recovered. The
359 inducement shall be allowed for each taxable year of the approved
360 company during the term of the agreement and for which a tax
361 return of the approved company is filed; however, the maximum
362 amount of inducement claimed by the approved company for any
363 single taxable year of the approved company may be up to
364 twenty-five percent (25%) of the total authorized inducement;

365 (e) The agreement shall provide that the term shall not
366 be longer than the earlier of:

367 (i) The date on which the approved company has
368 received inducements equal to the approved costs of its project;

369 or

370 (ii) Ten (10) years from the activation date;

371 (f) All eligible costs of the project shall be expended
372 by the approved company within three (3) years from the date of
373 final approval by the authority. In the event that all eligible
374 costs of the project are not fully expended by the approved
375 company within the three-year period, the authority is authorized
376 to:

377 (i) Reduce the inducements; or

378 (ii) Suspend the inducements; or

379 (iii) Terminate the agreement.

380 (g) If the agreement is terminated, the authority may
381 require the approved company to repay the State Tax Commission all
382 or part of any inducements received by the approved company prior
383 to the termination of the agreement;

384 (h) The agreement shall specify that the approved
385 company shall make available all of its records pertaining to the
386 project, including, but not limited to, records relating to the
387 expenditure of eligible costs, payroll records and any other
388 records pertaining to the project as the authority may require;

389 (i) The agreement shall not be transferred or assigned
390 by the approved company without the expressed written consent of
391 the authority.

392 **SECTION 5.** By October 1 of each year, the State Tax
393 Commission shall certify to the authority, in the form of an
394 annual report, aggregate income tax credits claimed on tax returns
395 filed during the fiscal year ending June 30 of that year by
396 approved companies with respect to their projects under this act
397 and shall certify to the authority, within ninety (90) days from
398 the date an approved company has filed its state income tax
399 return, when an approved company has taken inducements equal to
400 its approved costs.

401 **SECTION 6.** This act shall take effect and be in force from
402 and after January 1, 2006.