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To: Environment Prot, Cons and Water Res; Finance

SENATE BILL NO. 2122
(As Passed the Senate)

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 57-1-307, MISSISSIPPI CODE OF 1972,
14 TO INCREASE THE AMOUNT OF GENERAL OBLIGATION BONDS AUTHORIZED TO
15 BE ISSUED UNDER THE LOCAL GOVERNMENTS AND CAPITAL IMPROVEMENTS
16 REVOLVING LOAN PROGRAM AND TO DEDICATE THE PROCEEDS OF THE
17 ADDITIONAL BONDS FOR LOANS TO LOCAL GOVERNMENTS FOR BROWNFIELDS
18 SITE REMEDIATION; FOR RELATED PURPOSES.

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

20 **SECTION 1.** This act shall be known and may be cited as the
21 "Mississippi Brownfields Voluntary Cleanup and Redevelopment
22 Incentives Act."

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

24 (a) There are properties in Mississippi, often referred
25 to as "brownfields," that were contaminated or were perceived to
26 have been contaminated by past activities, but are attractive
27 locations for redevelopment.

28 (b) The safe development or redevelopment of
29 brownfields would benefit the citizens of Mississippi in many
30 ways, including improving the tax base of local governments and
31 creating job opportunities for citizens in the vicinity of
32 brownfields.

33 (c) Owners and prospective developers and redevelopers
34 of brownfields, local governments in which brownfields are
35 located, and federal and state government agencies should be

36 encouraged to provide capital and labor to improve brownfields so
37 that the property can be determined to be safe or made safe for
38 appropriate future use.

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

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

48 **SECTION 3.** The following shall be codified as Section
49 27-7-22.16, Mississippi Code of 1972:

50 27-7-22.16. (1) (a) Except as otherwise provided under
51 this subsection, the words and phrases used in this section shall
52 have the meanings ascribed to them in Section 49-35-5, Mississippi
53 Code of 1972.

54 (b) "Remediation costs" means reasonable costs paid for
55 the assessment, investigation, remediation, monitoring and related
56 activities at a brownfield agreement site which are consistent
57 with the remedy selected for the site and costs paid to the
58 Department of Environmental Quality for the processing of a
59 brownfield agreement application and administration of a
60 brownfield agreement. Remediation costs shall not include (i)
61 costs incurred before June 26, 1999; (ii) costs incurred after the
62 issuance of a No Further Action letter under Section 49-35-15,
63 Mississippi Code of 1972; (iii) costs incurred before the
64 acceptance of a brownfield agreement site into the Mississippi
65 Brownfields Voluntary Cleanup and Redevelopment program; (iv)
66 costs incurred for any legal services or litigation costs; and (v)
67 any funds provided by any federal, state or local governmental
68 agency or political subdivision.

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

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

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

91 (ii) An itemization and documentation of the
92 remediation costs incurred;

93 (iii) A demonstration that the costs incurred are
94 remediation costs;

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

97 (v) Any other information which the Commission on
98 Environmental Quality or the State Tax Commission deems
99 appropriate.

100 (b) The department shall review to determine whether
101 the costs submitted are remediation costs and whether the costs
102 incurred are reasonable.

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

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

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

127 (4) (a) The annual credit provided for in this section
128 shall not exceed the lesser of Forty Thousand Dollars (\$40,000.00)
129 or the amount of the income tax imposed upon the brownfield party
130 at the brownfield agreement site for the taxable year as reduced
131 by the sum of all other credits allowable to the brownfield party
132 under this chapter, except for credit for tax payments made by or

133 on behalf of the brownfield party. Any unused portion of the
134 credit may be carried forward for the succeeding five (5) tax
135 years.

136 (b) The maximum total credit under this section for a
137 brownfield agreement site is One Hundred Fifty Thousand Dollars
138 (\$150,000.00).

139 (5) To be eligible for the tax credit, the brownfield party
140 must submit a copy of the letter from the department stating the
141 amount of remediation costs approved by the department for the
142 given tax year.

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

145 57-1-301. (1) There is established a local governments
146 capital improvements revolving loan program to be administered by
147 the Mississippi Development Authority for the purpose of assisting
148 counties and municipalities in making capital improvements.

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

151 (a) Construction or repair of water and sewer
152 facilities;

153 (b) Construction or repair of drainage systems for
154 industrial development;

155 (c) Improvements in fire protection;

156 (d) Construction of new buildings for economic
157 development purposes;

158 (e) Renovation or repair of existing buildings for
159 economic development purposes;

160 (f) Construction or repair of access roads for
161 industrial development;

162 (g) Purchase of buildings for economic development
163 purposes;

164 (h) Construction or repair of railroad spurs for
165 industrial development;

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

179 **SECTION 5.** Section 57-1-307, Mississippi Code of 1972, is
180 amended as follows:

181 57-1-307. (1) The State Bond Commission, at one time, or
182 from time to time, may declare by resolution the necessity for
183 issuance of general obligation bonds of the State of Mississippi
184 to provide funds for all costs incurred or to be incurred for the
185 purposes described in Section 57-1-303. Upon the adoption of a
186 resolution by the Department of Economic and Community
187 Development, declaring the necessity for the issuance of any part
188 or all of the general obligation bonds authorized by this section,
189 the Department of Economic and Community Development shall deliver
190 a certified copy of its resolution or resolutions to the State
191 Bond Commission. Upon receipt of such resolution, the State Bond
192 Commission, in its discretion, may act as the issuing agent,
193 prescribe the form of the bonds, advertise for and accept bids,
194 issue and sell the bonds so authorized to be sold and do any and
195 all other things necessary and advisable in connection with the
196 issuance and sale of such bonds. The total amount of bonds issued
197 under Sections 57-1-307 through 57-1-335 shall not exceed
198 Ninety-seven Million Five Hundred Thousand Dollars

199 (\$97,500,000.00); provided, however, that an additional amount of
200 bonds may be issued under Sections 57-1-307 and 57-1-335 in an
201 amount not to exceed Thirteen Million Dollars (\$13,000,000.00),
202 and the proceeds of any such additional amount of bonds so issued
203 shall be utilized solely to provide loans for capital improvements
204 that would qualify for the issuance of bonds whose interest is
205 exempt from income taxation under the provisions of the Internal
206 Revenue Code. Of the bonds authorized under this section, Two
207 Million Five Hundred Thousand Dollars (\$2,500,000.00) shall be
208 used only to provide loans to counties and incorporated
209 municipalities for remediation of a brownfield agreement site
210 under Sections 49-35-1 through 49-35-25.

211 (2) Proceeds from the sale of bonds shall be deposited in
212 the special fund created in Section 57-1-303. Any investment
213 earnings on amounts deposited into the special fund created in
214 Section 57-1-303 shall be used to pay debt service on bonds issued
215 under Sections 57-1-307 through 57-1-335, in accordance with the
216 proceedings authorizing issuance of such bonds.

217 **SECTION 6.** Nothing in this act shall affect or defeat any
218 claim, assessment, appeal, suit, right or cause of action for
219 taxes due or accrued under the income tax laws before the date on
220 which this act becomes effective or are begun thereafter. The
221 provisions of the income tax laws are expressly continued in full
222 force, effect and operation for the purpose of the assessment,
223 collection and enrollment of liens for any taxes due or accrued
224 and the execution of any warrant under such laws before the date
225 on which this act becomes effective, and for the imposition of any
226 penalties, forfeitures or claims for failure to comply with such
227 laws.

228 **SECTION 7.** This act shall take effect and be in force from
229 and after January 1, 2005.