

By: Senator(s) Moffatt

To: Environment Prot, Cons
and Water Res; Finance

SENATE BILL NO. 2377

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; AND FOR
11 RELATED PURPOSES.

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

13 **SECTION 1.** This act shall be known and may be cited as the
14 "Mississippi Brownfields Voluntary Cleanup and Redevelopment
15 Incentives Act."

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

17 (a) There are properties in Mississippi, often referred
18 to as "brownfields," that were contaminated or were perceived to
19 have been contaminated by past activities, but are attractive
20 locations for redevelopment.

21 (b) The safe development or redevelopment of
22 brownfields would benefit the citizens of Mississippi in many
23 ways, including improving the tax base of local governments and
24 creating job opportunities for citizens in the vicinity of
25 brownfields.

26 (c) Owners and prospective developers and redevelopers
27 of brownfields, local governments in which brownfields are
28 located, and federal and state government agencies should be
29 encouraged to provide capital and labor to improve brownfields so
30 that the property can be determined to be safe or made safe for
31 appropriate future use.

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

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

41 **SECTION 3.** The following shall be codified as Section
42 27-7-22.16, Mississippi Code of 1972:

43 27-7-22.16. (1) (a) Except as otherwise provided under
44 this subsection, the words and phrases used in this section shall
45 have the meanings ascribed to them in Section 49-35-5, Mississippi
46 Code of 1972.

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

62 (2) Subject to the limitations provided in subsection (4) of
63 this section, upon submission to the State Tax Commission of
64 information provided for in subsection (5) of this section and any

65 other documentation as the State Tax Commission may require, any
66 brownfield party who (a) has conducted remediation at a brownfield
67 agreement site in accordance with Sections 49-35-1 through
68 49-35-25 and (b) has incurred remediation costs for activities
69 under Sections 49-35-1 through 49-35-25, as approved by the
70 Department of Environmental Quality, shall be allowed a credit in
71 an amount equal to twenty-five percent (25%) of the remediation
72 costs at the brownfield agreement site as approved by the
73 department, against the taxes imposed under this chapter for the
74 tax year in which the costs are incurred.

75 (3) (a) Before applying for the tax credit authorized in
76 this section, a brownfield party shall submit an application for
77 review of remediation costs to the Department of Environmental
78 Quality. The application shall be on forms prescribed by the
79 Commission on Environmental Quality and provided by the
80 department. The application shall include the following:

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

84 (ii) An itemization and documentation of the
85 remediation costs incurred;

86 (iii) A demonstration that the costs incurred are
87 remediation costs;

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

90 (v) Any other information which the Commission on
91 Environmental Quality or the State Tax Commission deems
92 appropriate.

93 (b) The department shall review to determine whether
94 the costs submitted are remediation costs and whether the costs
95 incurred are reasonable.

96 (c) Within sixty (60) days after receipt of a completed
97 application by the department, the department shall approve,

98 disapprove or approve with modification the remediation costs
99 submitted in the application. The department shall notify the
100 brownfield party in writing of its decision. If the department
101 approves the remediation costs submitted in the application, the
102 department shall state the amount of remediation costs to be
103 applied toward the tax credit under this section for the given tax
104 year. If the department approves with modification or disapproves
105 the remediation costs contained in the application, the department
106 shall state the reasons for disapproval or approval with
107 modification and shall state the amount of remediation costs, if
108 any, to be applied toward the tax credit under this section for
109 the given tax year.

110 (d) Within thirty (30) days after receipt of the
111 department's decision, the brownfield party may request a hearing
112 before the commission regarding the decision of the department to
113 approve with modification or disapprove the remediation costs
114 contained in the application in the form specified under Section
115 49-17-35. An appeal of the commission's decision may be taken as
116 provided under Section 49-17-41.

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

120 (4) (a) The annual credit provided for in this section
121 shall not exceed the lesser of Forty Thousand Dollars (\$40,000.00)
122 or the amount of the income tax imposed upon the brownfield party
123 at the brownfield agreement site for the taxable year as reduced
124 by the sum of all other credits allowable to the brownfield party
125 under this chapter, except for credit for tax payments made by or
126 on behalf of the brownfield party. Any unused portion of the
127 credit may be carried forward for the succeeding five (5) tax
128 years.

129 (b) The maximum total credit under this section for a
130 brownfield agreement site is One Hundred Fifty Thousand Dollars
131 (\$150,000.00).

132 (5) To be eligible for the tax credit, the brownfield party
133 must submit a copy of the letter from the department stating the
134 amount of remediation costs approved by the department for the
135 given tax year.

136 **SECTION 4.** Nothing in this act shall affect or defeat any
137 claim, assessment, appeal, suit, right or cause of action for
138 taxes due or accrued under the income tax laws before the date on
139 which this act becomes effective or are begun thereafter. The
140 provisions of the income tax laws are expressly continued in full
141 force, effect and operation for the purpose of the assessment,
142 collection and enrollment of liens for any taxes due or accrued
143 and the execution of any warrant under such laws before the date
144 on which this act becomes effective, and for the imposition of any
145 penalties, forfeitures or claims for failure to comply with such
146 laws.

147 **SECTION 5.** This act shall take effect and be in force from
148 and after January 1, 2006.