Regular Session, 2011

HOUSE BILL NO. 371

BY REPRESENTATIVE TUCKER

TAX CREDITS: Authorizes issuance of the Brownfields Investor Tax Credit to eligible taxpayers

AN ACT

To enact R.S. 47:6021.1, relative to tax credits; to authorize issuance of the Brownfields Investor Tax Credit to eligible taxpayers; to provide for the amount of the credit; to provide for eligibility; to provide for definitions; to provide for the tax credit application process; to authorize the recapture and recovery of the tax credit under certain circumstances; to authorize the transfer of tax credits; to provide relative to the applicable tax periods for which the credits may be granted or allowed; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6021.1 is hereby enacted to read as follows:

§6021.1. Brownfields Investor Tax Credit; eligible taxpayers

A.(1) Purpose. The primary objective of this Section is to stimulate environmental economic development in Louisiana by encouraging the cleanup, redevelopment, and productive reuse of Brownfields sites in the state. The legislature hereby finds and declares that unknown environmental liabilities are preventing communities, developers, and investors from restoring Brownfields properties to productive use and revitalizing impacted neighborhoods. Brownfields sites languish because developers, both public and private, face a daunting challenge in the form of exorbitant environmental site assessment study costs, followed by potentially even more expensive cleanup costs. Banks and other traditional financing

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sources have been and remain reluctant to finance the costs involved in the initial assessment of Brownfields sites. These sites may have significant contamination but nonetheless retain strong development or redevelopment potential. Properties that were once used for industrial, manufacturing, or commercial uses are lying abandoned or underused due to the suspicion or actual knowledge of hazardous substance contamination. Additionally, the redevelopment of these properties into residential housing or for other uses that benefit the community by removing financial and environmental impediments to redevelopment will promote more affordable housing and better communities for citizens of this state.

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

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

(1) "Brownfields site" or "state-certified site" means an identified area of immovable property in the state for which a voluntary remediation action or a voluntary remedial investigation concerning the presence or potential presence of a hazardous substance or pollutant is authorized by the secretary pursuant to Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.

(2) "Eligible taxpayer" means a local housing authority as defined in R.S. 40:384, which contracts with a third-party developer or remediation contractor to redevelop a Brownfields site. An eligible taxpayer may transfer or sell a tax credit earned pursuant to the provisions of this Section.

(3) "Investment" shall mean the expenditure for the voluntary remedial investigation or voluntary remediation of a Brownfields site by an eligible taxpayer.

(4) "Responsible person" means responsible person or responsible landowner as those terms are defined in R.S. 30:2285.2. A responsible person shall not be an eligible taxpayer.

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(5) "Voluntary remediation action" means risk-based cleanup of a voluntary remediation site performed in accordance with a voluntary remedial action plan approved by the secretary pursuant to Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.

(6) "Voluntary remedial investigation" means the determination of the nature and extent of potential threats to human health and the environment through data collection and site characterization and the development of remedial action goals, all as authorized and approved by the secretary pursuant to Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.

C. Investor tax credit; specific projects.

(1)(a) There is hereby authorized a credit against state income tax for the investment by an eligible taxpayer in a voluntary remediation action or a voluntary remedial investigation as provided for in this Section, as follows:

Except as provided for in Paragraph (2) of this Subsection:

(i) Any eligible taxpayer who is the holder of investor tax credits shall be allowed a tax credit of fifteen percent of the total investment made in a voluntary remedial investigation at a state-certified site as provided for in this Section.

(ii) Any eligible taxpayer who is the holder of investor tax credits shall be allowed a tax credit of fifty percent of the total investment made in a voluntary remediation action at a state-certified site as provided for in this Section.

(b) A tax credit shall be earned by an eligible taxpayer at the time the expenditures are made in either a voluntary remedial investigation or voluntary remediation action; however, credits cannot be applied against a tax until the expenditures are certified by the secretary of the Department of Environmental Quality as provided for in Items (D)(2)(a)(ii) and (D)(2)(b)(ii) of this Section.

(c) No credit shall be allowed under this Section for any expenditures for which an eligible taxpayer receives a credit, rebate, or other tax incentive granted by the state under any other provision of law.

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(2) Tax credits associated with a state-certified site shall never exceed the total investment in such site.

(3) The credit shall be allowed against the income tax for the taxable period in which the credit is earned as provided for in Paragraph (1) of this Subsection. If the tax credit allowed pursuant to this Section exceeds the amount of such taxes due, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed ten years. In no event shall the amount of the tax credit applied by an eligible taxpayer in a taxable period exceed the amount of such taxes due from the eligible taxpayer for that taxable period.

D. Review of applications; certification and administration.

(1) Any voluntary remedial investigation application and voluntary remediation application for such tax credit shall be submitted to the Department of Environmental Quality. Such applications shall be provided by the Department of Environmental Quality pursuant to the provisions of Part II of Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950, and regulations adopted pursuant thereto, and shall include a requirement that the applicant provide a statement of the projected economic development benefits to the community in which the project is located. Upon receipt of such application, the Department of Environmental Quality shall issue a site specific identification number. Such site identification number shall then be forwarded to the Department of Revenue. The Department of Environmental Quality shall determine whether the information furnished by the applicant is true and correct.

(2)(a)(i) Upon approval by the secretary of the Department of Environmental Quality of a voluntary remedial investigation tax credit application, the applicant may proceed with his voluntary remedial investigation. Any such investigation shall be conducted according to Department of Environmental Quality oversight.

(ii) After a satisfactory demonstration that the voluntary remedial investigation is complete, the Department of Environmental Quality shall approve the remedial investigation report and shall issue a certificate of completion to the

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eligible taxpayer applicant and forward it to the secretary of the Department of Revenue.

(b)(i) Upon approval by the secretary of the Department of Environmental Quality of a voluntary remediation tax credit application, the applicant may proceed with his voluntary remediation action.

(ii) After satisfactory demonstration that the voluntary remediation action has been accomplished and the Department of Environmental Quality approves the voluntary remediation action report, the department shall issue a certificate of completion to the eligible taxpayer applicant and shall forward the same to the secretary of the Department of Revenue.

(3) The secretary of the Department of Environmental Quality shall notify the secretary of the Department of Revenue within fifteen days after notice from an eligible taxpayer applicant where either a voluntary remedial investigation or a voluntary remediation action has been terminated. No further tax credit shall be allowed if either a voluntary remedial investigation or a voluntary remediation action is terminated.

E. Application of the credit.

(1)(a) All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return.

(b) Individuals, estates, and trusts shall claim any credit allowed under this Section on their income tax returns.

(2) Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members as follows:

(a) Corporate partners or members shall claim their share of the credit on their corporate income tax returns.

(b) Individual partners or members shall claim their share of the credit on their individual income tax returns.

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(c) Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

(3) Certification of completion shall be remitted with any income tax return on which a credit is claimed.

(4) The secretary of the Department of Environmental Quality shall be responsible for the submission of the initial certification of a voluntary remedial investigation and the final certification of completion of voluntary remediation action on a state-certified Brownfields site together with the year of completion; taxpayer identification number; type of credit, either voluntary remedial investigation or voluntary remediation action; and the certified total expenditures to the secretary of the Department of Revenue.

(5) The Department of Environmental Quality and the Department of Revenue shall promulgate such rules and regulations as are necessary to carry out the intent and purposes of this Section in accordance with the general guidelines provided herein.

F. Recapture of credits. If the secretary of the Department of Environmental Quality or the secretary of the Department of Revenue finds that funds for which an eligible taxpayer received credits according to this Section are not invested in and expended with respect to a state-certified investigation or remediation, then the eligible taxpayer's state income tax for such taxable period shall be increased by such amount necessary for the recapture of the credit provided by this Section. Any eligible taxpayer applying for the credit shall be required to reimburse the Department of Environmental Quality for audits or expenses related to recapture of credits.

G. Recovery of credits by the Department of Revenue.

(1) Credits previously granted to an eligible taxpayer may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561.

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(2) The only interest that may be assessed and collected on recovered credits is interest at a rate three percentage points above the rate provided in R.S. 9:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

H. Ineligible participants. No corporation or partnership including any company owned, affiliated, or controlled, in whole or in part, by any company or person that is a responsible person or is in default on a loan made by the state or a loan guaranteed by the state, or any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy, shall be eligible to receive any tax credit authorized under this Section. In addition, no responsible person shall be eligible to receive any tax credit pursuant to this Section.

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

(1) A single transfer or sale may involve one or more transferees. The transferee of the tax credits may transfer or sell such tax credits subject to the conditions of this Subsection.

(2) Transferors and transferees shall submit to the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, a copy of any tax credit certification letter(s) issued by the Department of Environmental Quality, the name of the state-certified site, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor for the tax credits, and any other information required by the Department of Revenue. For the purpose of reporting transfer prices, the term "transfer" shall include allocations as provided in R.S. 47:6007(C)(3) and by rule.

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(3) Failure to comply with this Paragraph will result in the disallowance of the tax credit until the taxpayers are in full compliance.

(4) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for a credit that is transferred or sold begins on the date on which the credit was originally earned.

(5) To the extent that the transferor did not have rights to claim or use the credit at the time of the transfer, the Department of Revenue shall either disallow the credit claimed by the transferee or recapture the credit from the transferee through any collection method authorized by R.S. 47:1561. The transferee's recourse is against the transferor.

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

J. The provisions of this Section shall be applicable to all taxable periods beginning on and after January 1, 2012. No tax credits shall be granted pursuant to the provisions of this Section after December 31, 2015; however, the transferability provisions of Subsection I of this Section shall continue to be effective after December 31, 2015, for tax credits authorized prior to such date.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Tucker HB No. 371

Abstract: Authorizes the issuance of the Brownfields Investor Tax Credit to eligible taxpayers for taxable periods beginning on Jan. 1, 2012, and ending Dec. 31, 2015. Tax credits may be earned through investment in a voluntary remedial investigation or a voluntary remedial action at a state-certified site.

Proposed law authorizes an income tax credit for the investment by an eligible taxpayer in a voluntary remediation action or investigation for the cleanup, redevelopment, and productive reuse of Brownfields sites in La.

Proposed law provides that the amount of the credit shall be 15% of the total investment made in a voluntary remedial investigation at a state-certified site or 50% of the total investment made in a voluntary remediation action at a state-certified site. Further provides that the amount of the tax credit shall never exceed the total investment in such site.

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Proposed law defines an eligible taxpayer as a local housing authority, as defined in present law, which contracts with a third-party developer or remediation contractor to redevelop a Brownfields site. An eligible taxpayer may transfer or sell a tax credit earned pursuant to proposed law.

Proposed law provides that the credit shall be allowed against the income tax for the taxable period in which the credit is earned. Further, provides that if the amount of the tax credit exceeds the amount of the eligible taxpayer's tax liability, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed 10 years.

Proposed law provides for the tax credit application process, the recapture of credits, the recovery of credits, and for the transferability of credits.

Proposed law provides that the provisions of proposed law shall be applicable to all taxable periods beginning on and after Jan. 1, 2012. No tax credits shall be granted after Dec. 31, 2015; however, the transferability provisions of proposed law shall continue to be effective after Dec. 31, 2015, for tax credits authorized prior to such date.

(Adds R.S. 47:6021.1)

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