

SENATE BILL NO. 40

BY SENATORS MORRELL, ADLEY, HEITMEIER AND WILLARD-LEWIS AND
REPRESENTATIVES ABRAMSON, ARNOLD, AUSTIN BADON,
BISHOP, BROSSETT, HENDERSON, LEGER, MORENO, STIAES
AND TUCKER

VETOED
Click here for
Veto Message

AN ACT

To amend and reenact R.S. 47:6021(A), (B)(1), (D)(2)(a)(i) and (b)(i), (H), the introductory paragraph of (I), (I)(2), (I)(6), and (J) and to enact R.S. 47:6021(B)(6), (K) and (L) relative to income tax credits; to provide income tax credits for certain brownfields investors; to clarify the applicability of such credit to remediation of public lands; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:6021(A), (B)(1), (D)(2)(a)(i) and (b)(i), (H), the introductory paragraph of (I), (I)(2), (I)(6), and (J) are hereby amended and reenacted and R.S. 47:6021(B)(6), (K) and (L) are hereby enacted to read as follows:

§6021. Brownfields Investor Tax Credit

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 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 under

used due to the suspicion or actual knowledge of hazardous substance contamination.

(2) In furtherance of that purpose, there is hereby established a tax structure which encourages **public and** 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, which may include public parks, playgrounds or other recreational areas, 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.

* * *

(6) "Taxpayer" or "person" means any individual or any public or private entity whether taxable or non-taxable.

* * *

D. Review of applications; certification and administration.

* * *

~~(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.~~ The applicant shall submit to the Department of Environmental Quality an application for the voluntary remedial investigation tax credit. Any such investigation shall be conducted according to Department of Environmental Quality oversight pursuant to the Voluntary Remediation Program, R.S. 30:2285 et seq.

* * *

~~(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.~~ The applicant shall submit to the

* * *

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

* * *

Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

1 reporting ~~transfer prices~~ **transfers**, the term "transfer" shall include allocations
2 pursuant to R.S. 47:6007(C)(3) as provided by rule. **The Department of**
3 **Environment Quality shall notify the transferor and the Department of Revenue**
4 **if any transferee is an ineligible participant under Subsection H of this Section.**

5 * * *

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

8 J. ~~No tax~~ **(1) Tax** credits shall be granted ~~or allowed after December 31,~~
9 ~~2009~~ **during the period beginning July 1, 2011 and ending December 31, 2013.**

10 However, the transferability provisions of Subsection ~~(H)~~ **I** of this Section shall
11 continue to be effective ~~after December 31, 2009~~ for tax credits **properly** authorized
12 ~~on and prior to such date~~ **during the time periods provided for in this Subsection.**

13 **(2) The Department of Environmental Quality may enter into an**
14 **agreement with the federal government to receive federal funding for**
15 **reimbursement of state revenues used to pay tax credits authorized pursuant**
16 **to this Section, hereinafter referred to as "federal monies". Federal monies**
17 **shall be used with respect to specific identifiable brownfields projects for which**
18 **a certificate of completion has been issued and a tax credit has been granted and**
19 **claimed. Any transfer of federal monies to the state general fund for purposes**
20 **of this Section shall be made in accordance with the provisions of Subsection L**
21 **of this Section and any requirements of the agreement.**

22 **K. Notwithstanding the provisions of Subsection J of this Section,**
23 **beginning January 1, 2014, tax credits may be granted only if the Department**
24 **of Environmental Quality enters into an agreement with the federal government**
25 **through which the state shall receive federal monies for purposes of tax credits**
26 **to be granted on and after January 1, 2014. At the discretion of the secretary**
27 **of the Department of Environmental Quality, tax credits may be granted to the**
28 **extent and for the time period authorized for the use of federal monies pursuant**
29 **to the agreement. The provisions of Paragraph (J)(2) of this Section shall apply**
30 **to the use of federal monies for tax credits authorized under this Subsection.**

1 **L. The provisions of this Subsection shall apply only if the Department**
2 **of Environmental Quality has in the current year either received or been**
3 **granted the authority to draw federal monies for purposes of the tax credits**
4 **authorized herein. On June thirtieth in any fiscal year in which brownfields**
5 **investor tax credits were claimed, the secretary of the Department of Revenue**
6 **shall notify the secretary of the Department of Environmental Quality of the**
7 **total value of tax credits claimed during that year. Upon receipt of the**
8 **notification, the secretary of the Department of Environmental Quality shall**
9 **request the state treasurer to transfer from the appropriate federal funding**
10 **allocated for the Department of Environmental Quality for deposit into the state**
11 **general fund an amount equal to that reported by the secretary of the**
12 **Department of Revenue, or as much thereof as is available on that date.**

13 Section 2. This Act shall become effective on July 1, 2011. If vetoed by the
14 governor and subsequently approved by the legislature, this Act shall become effective on
15 July 1, 2011, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

VETO MESSAGE

Senate Bill No. 40 by Senator Morrell recreates the Brownfields Investor Tax Credit, which grants a transferable credit for remediation work at a state certified site.

The Louisiana Department of Environmental Quality has existing programs to address brownfields remediation that are funded by the federal Environmental Protection Agency (EPA). While Senate Bill No. 40 supports the use of these federal funds to absorb the cost of the credits, using EPA or other federal funds to support these credits is not mandatory until 2014. Consequently, the first two years of the program will almost assuredly require state funding in lieu of federal funding. I think that it is important that we protect scarce resources for priorities like healthcare and higher education.

For these reasons, I have vetoed Senate Bill No. 40 and hereby return it to the Senate.