

Regular Session, 2005

SENATE BILL NO. 324

BY SENATOR BAJOIE

TAX/TAXATION. Authorizes tax credits for certain brownsfields investments.

1 AN ACT

2 To enact R.S. 47:6020, relative to income tax credits; to provide relative to environmental
3 economic development incentives; to provide for income tax credits for brownfields
4 investors; to provide for definitions; to provide for certification of such brownfields
5 projects; to provide for the administration, amount, eligibility, use, and other
6 transactions of such credits; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:6020 is hereby enacted to read as follows:

9 **§6020. Brownfields Investor Tax Credit**

10 **A.(1) Purpose. The primary objective of this Section is to stimulate**
11 **environmental economic development in Louisiana by encouraging the cleanup,**
12 **redevelopment, and productive reuse of brownfields sites in the state. The**
13 **Legislature hereby finds and declares that unknown environmental liabilities**
14 **are preventing communities, developers, and investors from restoring**
15 **brownfields properties to productive use and revitalizing impacted**
16 **neighborhoods. Brownfields sites languish because developers, both public and**
17 **private, face a daunting challenge in the form of exorbitant environmental site**

1 assessment study costs, followed by potentially even more expensive cleanup
2 costs. Banks and other traditional financing sources have been and remain
3 reluctant to finance the costs involved in the initial assessment of brownfields
4 sites. These sites may have significant contamination but nonetheless retain
5 strong development or redevelopment potential. Properties that were once used
6 for industrial, manufacturing, or commercial uses are lying abandoned or
7 under used due to the suspicion or actual knowledge of hazardous substance
8 contamination.

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

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

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

21 (2) "Investment" shall mean the expenditure of cash by any corporation,
22 partnership, or individual for the voluntary remedial investigation or voluntary
23 remediation of a brownfields site.

24 (3) "Responsible person" means responsible person or responsible
25 landowner as those terms are defined in R.S. 30:2285.2.

26 (4) "Secretary" means the secretary of the Department of Environmental
27 Quality or his duly authorized designees.

28 (5) "Voluntary remediation action" means risk-based cleanup of a
29 voluntary remediation site performed in accordance with a voluntary remedial

1 action plan approved by the secretary pursuant to Part II of Chapter 12 of
2 Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950.

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

9 C. Investor tax credit; specific projects.

10 (1) There is hereby authorized a credit against individual and corporate
11 income tax for the investment by a taxpayer in a voluntary remediation action
12 or a voluntary remedial investigation as provided for in this Section by any
13 taxpayer domiciled in the state of Louisiana if such taxpayer is not a responsible
14 person, as follows:

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

16 (a) Each taxpayer shall be allowed a tax credit of fifteen percent of the
17 total investment made by that taxpayer upon the date of the issuance of
18 completion by the secretary of a voluntary remedial investigation at a state-
19 certified site as provided for in this Section.

20 (b) Each taxpayer shall be allowed a tax credit of twenty-five percent of
21 the total investment made by that taxpayer upon the date of the issuance of
22 completion by the secretary of a voluntary remediation action at a state-
23 certified site as provided for in this Section.

24 (2)(a) No tax credits shall be allowed on amounts exceeding one million
25 dollars of total investment in either investigation or remediation, or both, at a
26 state-certified site.

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

29 (c) Tax credits taken against tax liability and refunded shall not exceed

1 ten million dollars in each two fiscal year periods beginning with the two fiscal
2 year periods 2005-2006 and 2006-2007. If the tax credit exceeds the amount of
3 taxes due in such year, the excess credit shall be refunded to the taxpayer unless
4 the secretary of the Department of Revenue determines, to the best of her
5 knowledge, that such refund will cause the maximum provided for in Subsection
6 (I) of this Section to be exceeded.

7 (3) The credit shall be allowed against the income tax for the taxable
8 period in which the credit is earned as provided for in Subsection (C)(1).

9 D. Application and transferability of the credit.

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

13 (b) Individuals shall claim any credit allowed under this Section on their
14 individual income tax return.

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

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

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

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

23 E. Certification and administration.

24 (1)(a)(i) Upon receipt of a request for a tax credit and a voluntary
25 remedial investigation application pursuant to the provisions of Part II of
26 Chapter 12 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950,
27 and regulations adopted pursuant thereto, the Department of Environmental
28 Quality shall issue a site specific identification number. Such site identification
29 number shall be forwarded to the Department of Revenue. Any such

1 investigation shall be conducted according to Department of Environmental
2 Quality oversight.

3 (ii) The taxpayer shall be entitled to the tax credit authorized in
4 Subsection (C) of this Section upon certification of the Department of
5 Environmental Quality that such investigation is complete.

6 (b)(i) Upon receipt of a request for a tax credit and a voluntary
7 remediation application pursuant to the provisions of Part II of Chapter 12 of
8 Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950, and regulations
9 adopted pursuant thereto, the Department of Environmental Quality shall issue
10 a site specific identification number. Such site identification number shall be
11 forwarded to the Department of Revenue.

12 (ii) After satisfactory completion of a remedial action demonstrating that
13 the voluntary remediation action has been accomplished and the Department
14 of Environmental Quality has approved the voluntary remediation action
15 report, the department shall issue a certificate of completion to the taxpayer
16 applicant and shall forward the same to the secretary of the Department of
17 Revenue. The taxpayer shall be entitled to the tax credit authorized in
18 Subsection (C) of this Section upon the issuance of such certification of
19 completion of the voluntary remediation action by the Department of
20 Environmental Quality.

21 (2) The secretary of the Department of Environmental Quality shall
22 notify the secretary of the Department of Revenue within fifteen days upon
23 notice from a taxpayer applicant whether either a voluntary remedial
24 investigation or a voluntary remediation is terminated. No tax credit shall be
25 allowed if a voluntary remedial investigation or a voluntary remediation action
26 is terminated.

27 (3) The secretary of the Department of Environmental Quality shall be
28 responsible for the submission of the initial certification of a voluntary remedial
29 investigation and the final certification of completion of voluntary remediation

1 on a state-certified brownfields site to the secretary of the Department of
2 Revenue.

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

7 (5) Any taxpayer applying for the credit shall be required to reimburse
8 the Department of Revenue for any audits required in relation to granting the
9 credit.

10 F. Recapture of credits. If the secretary of the Department of
11 Environmental Quality or the secretary of the Department of Revenue find that
12 funds for which a taxpayer received credits according to this Section are not
13 invested in and expended with respect to a state-certified assessment or
14 remediation then the investor's state income tax for such taxable period shall
15 be increased by such amount necessary for the recapture of credit provided by
16 this Section.

17 G. Recovery of credits by the Department of Revenue.

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

21 (2) The only interest that may be assessed and collected on recovered
22 credits is interest at a rate three percentage points above the rate provided in
23 Civil Code Article 2924(B)(1), which shall be computed from the original due
24 date of the return on which the credit was taken.

25 H. Ineligible participants. No corporation or partnership including any
26 company owned, affiliated, or controlled, in whole or in part, by any company
27 or person which is in default on a loan made by the state or a loan guaranteed
28 by the state, or any company or person who has ever declared bankruptcy
29 under which an obligation of the company or person to pay or repay public

1 **funds or monies was discharged as a part of such bankruptcy shall be eligible**
 2 **to receive any tax incentive authorized under this Section. In addition, no**
 3 **responsible person shall be eligible to receive any tax incentive pursuant to this**
 4 **Section.**

5 **I. Maximum credits. Tax credits taken against tax liability and**
 6 **refunded pursuant to this Section shall not exceed ten million dollars in each**
 7 **two fiscal year periods beginning with the two fiscal year periods 2005-2006 and**
 8 **2006-2007.**

9 Section 2. No tax credit shall be granted pursuant to this Act for any voluntary
 10 remedial investigation or voluntary remediation which was approved by the Department of
 11 Environmental Quality or completed prior to the effective date of this Act.

12 Section 3. This Act shall become effective on July 1, 2005, and shall apply to all tax
 13 years beginning on or after January 1, 2005. If vetoed by the governor and subsequently
 14 approved by the legislature, this Act shall become effective on July 1, 2005, or on the day
 15 following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Cathy R. Wells.

DIGEST

Proposed law authorizes a credit against individual and corporate income tax for investment by a taxpayer in either voluntary remedial investigation or voluntary remediation action, or both in state-certified brownfields sites. The credit is "earned" at the time of certification of either an investigation or remediation, or both by the secretary of DEQ.

Proposed law authorizes a refund if the credit exceeds the amount of taxes due the year taken unless the secretary of DOR determines, to the best of her knowledge, that the refund will cause the \$10 million two fiscal year maximum to be exceeded.

Proposed law prohibits the responsible party or landowner from applying for such credits.

Proposed law defines "brownfields site" or "state-certified site" as 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 of DEQ pursuant to law.

Proposed law defines "voluntary remediation action" as risk-based cleanup of a voluntary remediation site performed in accordance with a voluntary remedial action plan approved by the secretary of DEQ pursuant to law.

Proposed law defines "voluntary remedial investigation" as 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 of DEQ pursuant to law.

Proposed law authorizes each taxpayer a tax credit of 15% of the total investment made by that taxpayer upon the date of the issuance of completion by the secretary of DEQ of a voluntary remedial investigation at a state-certified site.

Proposed law authorizes each taxpayer a tax credit of 25% of the total investment made by that taxpayer upon the date of the issuance of completion by the secretary of DEQ of a voluntary remediation action at a state-certified site.

Proposed law prohibits tax credits on amounts exceeding one million dollars of total investment in either investigation or remediation, or both, at a state-certified site.

Proposed law restricts such tax credits from exceeding the total investment in such sites.

Proposed law establishes procedures for application of the credit as follows:

- (1) Entities taxed as corporations shall claim the credit on their corporate income tax return.
- (2) Individuals shall claim the credit on their individual income tax return.
- (3) Entities not taxed as corporations shall claim the credit on the returns of the partners or members as follows:
 - (a) Corporate partners or members shall claim on their corporate income tax returns.
 - (b) Individual partners or members shall claim on their individual income tax returns.
 - (c) Partners or members that are estates or trusts shall claim on their fiduciary income tax returns.

Proposed law provides for the actual procedure for the DEA and DOR to use for the certification and administration of the voluntary remedial investigation and voluntary remediation applications.

Proposed law prohibits any tax credits on projects where either the voluntary remedial investigation or voluntary remediation action is terminated.

Proposed law requires the secretary of DEQ, in consultation with the DOR to promulgate such rules and regulations as are necessary to carry out the intent and purposes of this Act.

Proposed law provides for the recovery of credits by the DOR under the following conditions:

- (1) The department may recover any credits granted to a taxpayer and later disallowed through any statutorily authorized assessment and collection remedy procedure under the provisions of R.S. 47:1561.
- (2) Interest on recovered credits may be assessed and collected at a rate of 3% above the rates of judicial interest statutorily authorized under the provisions of R.S. 13:4202 through reference of the provisions of C.C. Art. 2924(B)(1).
- (3) The authority of the secretary of the department to statutorily assess and collect shall not be limited by any provisions of this authorization for the recovery of credits.

Proposed law prohibits any corporation or partnership including any company owned, affiliated, or controlled, in whole or in part, by any company or person which 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 from receiving any tax incentive authorized by this Act.

Proposed law prohibits any tax credit authorized by this Act to be granted to any project for any voluntary remedial investigation or voluntary remediation which was approved by DEQ prior to the effective date of this Act.

Limits the total amount of tax credits that may be taken against tax liability and refunded to \$10 million for each two fiscal year periods beginning with the two fiscal year periods 2005-2006 and 2006-2007.

Effective July 1, 2005 and applies to all tax years beginning on and after July 1, 2005.

(Adds R.S. 47:6020)