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3 HB116 HOUSE COMMERCE COMMITTEE ENGROSSED SUBSTITUTE

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 To provide local tax abatement for brownfield
14 development properties that are voluntarily cleaned up
15 pursuant to Chapter 30E of Title 22, Code of Alabama 1975, the
16 Alabama Land Recycling and Economic Redevelopment Act.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. This act shall be known and may be cited
19 as the "Brownfield Development Tax Abatement Act."

20 Section 2. The Legislature recognizes the importance
21 of recovering and reusing previously utilized property to the
22 well-being of the people of the state. The Legislature also
23 recognizes that in some cases additional incentives are
24 required to succeed in recovering brownfield sites and
25 therefore intends to allow county and municipal governments to
26 provide substantial tax incentives as an inducement to
27 recovering land pursuant to Chapter 30E, beginning with

1 Section 22-30E-1, of Title 22, Code of Alabama 1975, the
2 Alabama Land Recycling and Economic Redevelopment Act.

3 Section 3. For purposes of this act, the following
4 words and phrases shall have the following meanings:

5 (1) ABATE, ABATEMENT. A reduction or elimination of
6 a taxpayer's liability for tax. An abatement of local and
7 non-education transaction taxes imposed under Chapter 23 of
8 Title 40, Code of Alabama 1975, shall relieve the seller from
9 the obligation to collect and pay over the local portion of
10 non-education transaction tax as if the sale were to a person
11 exempt, to the extent of the abatement, from the transaction
12 tax local portion of the non-education.

13 (2) BROWNFIELD DEVELOPMENT PROPERTY. Real property
14 which qualifies under Section 22-30E-6 for participation in
15 the voluntary cleanup program established pursuant to Chapter
16 30E of Title 22, Code of Alabama 1975, and any personal
17 property acquired in connection with the cleanup and
18 redevelopment of such real property.

19 (3) CONSTRUCTION RELATED NON-EDUCATION TRANSACTION
20 TAXES. The local portion of the transaction taxes imposed by
21 pursuant to Chapter 23 of Title 40, Code of Alabama 1975, not
22 levied for education purposes or for capital improvements for
23 education on tangible personal property and taxable services
24 incorporated into a brownfield property development pursuant
25 to Chapter 30E of Title 22, the cost of which may be added to
26 capital account with respect to the property, determined
27 without regard to any rule which permits expenditures properly

1 chargeable to capital account to be treated as current
2 expenses.

3 (4) EDUCATION TAXES. Ad valorem taxes that must,
4 pursuant to the Constitution of Alabama of 1901, as amended,
5 or legislative act, or the resolution or other action of the
6 governing board authorizing the tax, be used for educational
7 purposes or for capital improvements for education, the state
8 portion of transactional taxes and local construction related
9 transaction taxes levied for educational purposes or for
10 capital improvements for education.

11 (5) MAJOR ADDITION. Any addition to an existing
12 brownfield development property that equals the lesser of: 30
13 percent of the original cost of the developed property as
14 cleaned up, or two million dollars (\$2,000,000). For purposes
15 of this definition, the original cost of existing brownfield
16 development property shall be the amount of the property with
17 respect to which an abatement is granted under this act when
18 the property is constructed, or if the existing property was
19 constructed before January 1, 2003, the maximum amount that
20 would have been allowed if the provisions of this act had
21 applied at the time it was constructed. Only property that
22 constitutes brownfield development property shall be eligible
23 for the abatement allowance provided in this definition.

24 (6) MAXIMUM EXEMPTION PERIOD. A period of up to 20
25 years following the date on which the voluntary cleanup plan
26 is approved by the Alabama Department of Environmental

1 Management pursuant to rules and regulations adopted by the
2 department.

3 (7) MORTGAGE AND RECORDING TAXES. The taxes imposed
4 by Chapter 22 of Title 40, Code of Alabama 1975.

5 (8) NONEDUCATIONAL AD VALOREM TAXES. Ad valorem
6 taxes imposed by the state, counties, municipalities, and
7 other taxing jurisdictions of Alabama that are not required to
8 be used for educational purposes or for capital improvements
9 for education.

10 (9) PERSON. Includes any individual, partnership,
11 trust, estate, or corporation.

12 (10) PRIVATE USER. Any individual, partnership,
13 corporation, or business entity organized for profit that is
14 or will be treated as the owner of a brownfield development
15 property for federal income tax purposes, even though title
16 may be held by a municipal or county governmental entity.

17 Section 4. (a) Noneducational ad valorem taxes,
18 construction related non-education transaction taxes, except
19 those construction related transaction taxes levied for
20 educational purposes or for capital improvements for
21 education, and mortgage and recording taxes may be abated with
22 respect to brownfield development property and security
23 documents and other recordable documents associated therewith
24 as provided in this act.

25 (b) No abatement of noneducational ad valorem taxes
26 may exceed the maximum exemption period of 20 years. No
27 further abatement with respect to the same brownfield

1 development property may be granted unless there is a major
2 addition to the property, in which event abatement may be
3 granted only with respect to the noneducational ad valorem
4 taxes on the major addition by complying with the procedures
5 set forth in this chapter.

6 (c) An abatement of construction related
7 non-education transaction taxes shall apply only to tangible
8 personal property and taxable services incorporated into a
9 brownfield development property, the cost of which may be
10 added to capital account with respect to the property,
11 determined without regard to any rule which permits
12 expenditures properly chargeable to capital account to be
13 treated as current expenses. No abatement of construction
14 related non-education transaction taxes shall extend beyond
15 the date the property is placed in service for federal income
16 tax purposes. No further abatement may be granted for
17 construction related non-education transaction taxes with
18 respect to the property unless incurred in connection with a
19 major addition, in which event only construction related
20 non-education transaction taxes that may be added to capital
21 account with respect to the major addition, determined without
22 regard to any rule which permits expenditures properly
23 chargeable to capital account to be treated as current
24 expenses, may be abated by complying with the procedures set
25 forth in this act. No construction related state transaction
26 taxes or local construction related transaction taxes levied

1 for educational purposes or capital improvements for education
2 may be abated.

3 (d) Mortgage and recording taxes with respect to
4 mortgages, deeds, and documents relating to issuing or
5 securing obligations and conveying title into or out of a
6 public authority or county or municipal government with
7 respect to a brownfield development property may be abated by
8 complying with the procedures set forth in this act.

9 Section 5. (a) Subject to the geographical or
10 jurisdictional limitations specified in subsection (b), the
11 governing body of a municipality or a county may grant
12 abatements of all of the taxes allowed to be abated under
13 Section 4 with respect to private use brownfield development
14 property.

15 (b) The abatements authorized to be granted pursuant
16 to subsection (a) may be granted:

17 (1) By the governing body of a municipality, with
18 respect to private use brownfield development property located
19 within the limits of the municipality or within the police
20 jurisdiction of the municipality; provided, however, that the
21 governing body shall not grant an abatement of any county
22 taxes unless consented to by resolution of the governing body
23 of the county.

24 (2) By the governing body of a county, with respect
25 to private use brownfield development property located in the
26 county and not within a municipality or the police
27 jurisdiction of a municipality; provided, however, that the

1 governing body shall not grant an abatement of any municipal
2 taxes unless consented to by resolution of the governing body
3 of the municipality.

4 Section 6. (a) Subject to the limitations set out in
5 Section 5, any person who proposes to become a private user of
6 brownfield development property or of a major addition thereto
7 may apply to the governing body of any municipality or county
8 at or about the time a voluntary cleanup plan is approved by
9 the Alabama Department of Environmental Management, for an
10 abatement of all of the taxes allowed to be abated under this
11 act with respect to such property. The application shall
12 contain information that will permit the governing body to
13 which it is submitted to make a reasonable cost/benefit
14 analysis as to the proposed brownfield development property
15 and to determine the maximum exemption period for the
16 abatement of noneducational ad valorem taxes. The application
17 must be accompanied by an approval of the voluntary cleanup
18 plan.

19 (b) The abatements granted by the governing body
20 shall be embodied in an agreement between the governing body
21 and the private user, setting forth the following:

22 (1) The estimated amount of each abatement and the
23 maximum exemption period not exceeding 20 years.

24 (2) Good-faith projections by the private user of:
25 the amount to be invested; the number of individuals to be
26 employed, initially and in the succeeding three years; and the
27 payroll.

1 (c) The private user shall file with the Department
2 of Revenue within 90 days after the granting of the abatements
3 a copy of the agreement required by subsection (b), the
4 contents of which the department shall use solely for its
5 statistical and record-keeping activities but shall otherwise
6 keep confidential unless consented to in writing by the
7 private user.

8 (d) The abatements granted by the governing body
9 shall be subject to termination by the governing body in the
10 event the private user fails to implement the voluntary
11 cleanup plan approved by the Alabama Department of
12 Environmental Management.

13 Section 7. Notwithstanding any other laws, and
14 subject to the limitations set out in Section 5, the gross
15 proceeds of the sale to, or the storage, use, or consumption
16 by, any contractor of any tangible personal property to be
17 incorporated into a brownfield development property or major
18 addition for which a private user is granted a valid abatement
19 of construction related non-education transaction taxes
20 pursuant to this act shall be exempt from ~~all state and~~ local
21 sales and use taxes, except those county and municipal sales
22 and use taxes levied for educational purposes or for capital
23 improvements for education. This exemption shall not apply to
24 any purchase of tangible personal property by a contractor
25 which would not also be exempt if purchased by a private user
26 who has been granted a valid abatement of construction related

1 transaction taxes pursuant to this chapter. The definitions
2 contained in Section 2 are incorporated by reference herein.

3 Section 8. The Department of Revenue shall adopt all
4 necessary rules, regulations, and orders needed to implement
5 and administer this act.

6 Section 9. This act shall become effective October
7 1, 2004.