

By: Representative Moak

To: Ways and Means

HOUSE BILL NO. 143

1 AN ACT TO PROVIDE THAT THE DEPARTMENT OF ECONOMIC AND
2 COMMUNITY DEVELOPMENT SHALL NOT ADMINISTER LOANS OR GRANTS OF
3 FEDERAL OR STATE FUNDS FOR A CERTAIN PERIOD OF TIME TO POULTRY
4 PROCESSORS WHO HAVE BEEN CITED BY THE IMMIGRATION AND
5 NATURALIZATION SERVICE AS KNOWINGLY HAVING EMPLOYED ILLEGAL
6 IMMIGRANTS; TO AMEND SECTION 57-61-14, MISSISSIPPI CODE OF 1972,
7 TO REMOVE THE SALES TAX EXEMPTION FOR CERTAIN COMPANIES IN
8 VIOLATION OF THE FEDERAL IMMIGRATION LAWS; TO AMEND SECTIONS
9 57-61-9 AND 57-61-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
10 CERTAIN PRIVATE COMPANIES THAT ARE IN VIOLATION OF THE FEDERAL
11 IMMIGRATION LAWS SHALL PAY A PENALTY ON THE REMAINING PORTION OF
12 THEIR LOANS UNDER THE MISSISSIPPI BUSINESS INVESTMENT ACT; TO
13 AMEND SECTION 27-65-111, MISSISSIPPI CODE OF 1972, IN CONFORMITY
14 THERETO; AND FOR RELATED PURPOSES.

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

16 SECTION 1. For a period of ten (10) years from the date that
17 a poultry processor is cited by the Immigration and Naturalization
18 Service as knowingly having employed illegal immigrants, the
19 Department of Economic and Community Development shall not
20 administer loans or grants of federal or state funds for the
21 benefit of such processor under the Mississippi Business
22 Investment Act or the Community Development Block Grant Program.
23 After the ten-year period, the department may make loans to such
24 processors but shall assess a penalty of two percent (2%) greater
25 than the current prime rate on the amount of the loan payable by
26 the processor in monthly installments.

27 SECTION 2. Section 57-61-9, Mississippi Code of 1972, is
28 amended as follows:

29 57-61-9. (1) Any private company desiring assistance from a
30 municipality shall submit to the municipality a letter of intent
31 to locate, expand or build a facility entirely or partially within
32 the municipality. The letter of intent shall include:

(a) Except for strategic investments, a commitment that the proposed project will create and maintain a minimum of ten (10) net new full-time equivalent jobs, will create and maintain at least a five percent (5%) increase in full-time equivalent jobs in the case of expansion of an enterprise already located at the site or at least a twenty-five percent (25%) increase in full-time equivalent jobs pursuant to subsection (9) of Section 57-61-15 and will create and maintain at least one (1) net new full-time equivalent job for every Fifteen Thousand Dollars (\$15,000.00) either loaned or granted for the project. The commitment required by this paragraph (a) shall include any jobs created prior to the effective date of this chapter resulting from contracts entered into contingent upon assistance being made available under this chapter. All jobs required to be maintained by this paragraph (a) shall be maintained until such time as any loan made under this chapter for the benefit of a private company is repaid. The letter of intent shall include a statement that the private company understands that if it is cited by the Immigration and Naturalization Service as knowingly having employed illegal immigrants, the company shall be liable for a penalty of two percent (2%) greater than the current prime rate on the remainder of the loan made for its benefit.

(b) A statement that the specific improvements are necessary for the efficient and cost-effective operation of the private company, together with supporting financial and engineering documentation.

(c) Any commitment to pay rental on, or to make loan repayments related to, the improvements to be made with funds loaned to a municipality under this chapter.

(d) If required by the department, a notarized statement of willingness to grant a lien on the facility for which the improvement is being provided, in an amount and a manner to be determined by the department, which lien may be foreclosed in the

66 event that the private company fails to operate in the facility
67 according to the terms of the agreement and/or to collateralize
68 the loan made for the benefit of the private company for which the
69 improvement is being provided in an amount and manner to be
70 determined by the department. In the event the contractual
71 agreement is to be entered into with a department or subsidiary of
72 the United States Government, the department shall determine that
73 the governmental unit will operate the proposed project for a
74 sufficient number of years to retire the loan based on increased
75 revenue estimates by the University Research Center and any
76 agreement entered into shall reflect that the interest paid on any
77 loan for such purpose shall be included in Mississippi's
78 contributory value in the project. In the event the private
79 company requesting the assistance is a subsidiary of another
80 corporation, if required by the department, any contractual
81 agreement entered into shall also require the parent company to
82 unconditionally warrant the performance of the subsidiary in
83 carrying out the terms of the agreement or it shall require the
84 subsidiary and/or the parent company to pledge assets in an amount
85 and a manner to be determined by the department and/or to
86 collateralize the loan in an amount and a manner to be determined
87 by the department to ensure the performance of the terms of the
88 contract.

89 (2) Upon receipt of the letter of intent from a private
90 company, the municipality may apply to the department for a loan
91 or grant. The application from the municipality shall include but
92 not be limited to:

93 (a) A statement of the purpose of the proposed loan or
94 grant, including a list of eligible items and the cost of each.

95 (b) A statement showing the sources of funding for the
96 entire project, including the private company's or governmental
97 unit's investment in the project and any public and other private
98 sources of funding.

99 (c) A certified copy of the signed letter of intent
100 from a private company or governmental unit, as specified in this
101 section.

102 (d) Evidence that there will be a private match of at
103 least Three Dollars (\$3.00) for every One Dollar (\$1.00) of state
104 assistance, except in the case of ports where the private match
105 will be at least Two Dollars (\$2.00) for every One Dollar (\$1.00)
106 of state assistance.

107 (e) Demonstration that the private company is
108 financially sound and is likely to fulfill the commitments made in
109 its letter of intent.

110 (f) A proposed timetable for the provision of the
111 improvements.

112 (g) Evidence that the project will be expeditiously
113 carried out and completed as planned.

114 (h) A demonstration that insufficient local capital
115 improvement funds at reasonable rates and terms are available
116 within the necessary time to provide the needed improvement on
117 public property. This includes local funds available through
118 issuance of bonds or other means, state funds available through
119 existing programs, and available federal program funds such as
120 community development block grant funds, urban development action
121 grant funds, and economic development administration funds.

122 (i) A demonstration that insufficient private funds are
123 available at reasonable rates and terms within the necessary time
124 to fund improvement on property owned by the private company.

125 (3) The department shall consider grant and loan
126 applications based on the following criteria:

127 (a) The number of net new full-time equivalent jobs
128 that will be provided and the amount of additional state and local
129 tax revenue estimated by the University Research Center to be
130 directly generated by the private company's new investment, and
131 additionally, as to loan applications by state agencies, the

132 extent to which shipping through the port will be increased by the
133 proposed port development projects, the degree to which jobs will
134 be increased in the port area and the impact on port revenues.

135 (b) The ability to repay the principal and interest, in
136 the case of a loan, based on increased revenue estimates and any
137 revenue-producing provision of a contractual agreement.

138 (c) The increase in the employment base of the state.

139 The department and the University Research Center may use the
140 resources and capabilities of the planning and development
141 districts in carrying out the provisions of this chapter.

142 (4) No loan shall be made in excess of the amounts which can
143 be repaid with the increased revenues estimated by the University
144 Research Center, provided that this subsection (4) shall not apply
145 to loans in connection with a United States Navy home port.

146 (5) (a) Notwithstanding anything contained in this chapter,
147 an agency of the State of Mississippi operating a state-owned
148 port, and hereinabove identified as a "municipality" and
149 "governmental unit" for purposes of this chapter, may make
150 application for a loan or grant under the terms and provisions of
151 this chapter. In addition, a public agency operating a port
152 bordering on the Gulf of Mexico, which shall be considered to be a
153 "municipality" or a "governmental unit" for the purposes of this
154 chapter, may make application for a loan or grant under the terms
155 and provisions of this chapter from funds other than those funds
156 authorized for a state-owned port under paragraph (e)(iii) of
157 Section 57-61-11. The application shall be initiated by
158 submission of a letter of intent to engage in a project or
159 projects for the purpose of effecting enlargement and improvement
160 in all facilities used and useful in attracting international and
161 foreign commerce through the port. Projects eligible for
162 inclusion in the letter of intent may include but not be
163 restricted to:

164 (i) Dredging and deepening the access channel and

harbor basin of the port;

(ii) Effecting the enlargement of the land area of the port by reclamation;

(iii) Construction and installation of piling, bulkheads, docks, wharves, warehouses and appurtenances; and

(iv) Acquisition of facilities and equipment for handling bulk and containerized cargo.

(b) With respect to a state-owned port bordering on the Gulf of Mexico, the letter of intent shall include the following information and any other information required by the department:

(i) Present and future annual tonnages expected as a result of the improvements.

(ii) Reasons why present facilities are inadequate to enable the port to compete, including limitations imposed by insufficient depth of channel and basin.

(iii) Increased channel and basin depths necessary to accommodate modern shipping.

(iv) Comparison of the percentage of the world's cargo shipping that can now be accommodated with what could be accommodated with project improvements.

(v) Economic contribution to the region and state resulting from increased shipping activity.

(vi) Statement of degree to which port revenues are expected to be increased as a result of projects.

(vii) Financial data of port activities, including cost of project, degree of federal funding available and required local participation.

On or before January 1, 1989, a state-owned port described in this paragraph (b) shall submit to the Senate Finance Committee and the House Ways and Means Committee of the Mississippi Legislature a comprehensive, written report updating for each committee the information listed in items (i) through (vii) of this paragraph (b) with particular emphasis on the economic

198 contribution to the region and state by shipping activity at the
199 port; on financial data with respect to the degree of federal
200 funding available and local participation in funding port
201 activities; and on progress made in dredging and completing other
202 improvements necessary to accommodate modern shipping.

203 (c) The department shall consider grant and loan
204 applications based on the following:

205 (i) The extent to which shipping through the port
206 will be increased by the proposed projects.

207 (ii) The degree to which jobs will be increased in
208 the port area.

209 (iii) Impact on port revenues.

210 (iv) The ability of the port to repay interest and
211 principal in the case of a loan.

212 (6) A municipality may apply to the department for a grant
213 under the terms and provisions of this chapter, and the department
214 may award grants to a municipality subject to limitations
215 contained in this chapter. The application shall be initiated by
216 submission of a letter of intent to engage in a project or
217 projects for the purpose of providing improvements necessary to
218 accommodate a United States Navy home port.

219 (7) The Legislature hereby finds and determines that
220 financing facilities necessary to accommodate a Navy home port
221 serves a valid public purpose in that a Navy home port will
222 significantly contribute to the employment base of the state which
223 is in great need of assistance; provided, that in the event such
224 facilities are no longer required for use by the Navy as a home
225 port, such facilities shall revert as provided in Section 59-9-21.

226 (8) (a) A municipality is authorized to negotiate a
227 contract for the acquisition, construction and erection of a
228 project or any portion of a project hereunder where a municipality
229 finds that, because of the particular nature of a project or any
230 portion thereof, it would be in the best public interest of the

231 municipality to negotiate.

232 (b) Contracts by a private company for the acquisition,
233 construction or erection of a project which receives assistance
234 under this chapter shall be effected in the manner prescribed by
235 law for public contracts, unless the department makes a written
236 finding that, because of special circumstances with respect to the
237 projects or any portion thereof, it would better serve the public
238 interest or more effectively achieve the purposes of this chapter
239 to enter into such contracts based on negotiation.

240 (9) A municipality is authorized upon such terms and
241 conditions as the municipality may deem advisable, provided such
242 terms and conditions shall not be in conflict with the provisions
243 of this chapter, to (a) acquire, whether by construction,
244 purchase, gift or lease, all of or any portion of a project
245 hereunder; (b) to lease or sell to others all of or any portion of
246 a project hereunder; and (c) to lend to the private company the
247 proceeds of the loan from the board to such municipality.

248 (10) All agreements between a municipality and a private
249 company related directly or indirectly to a project or a portion
250 of a project to be funded in whole or in part under this chapter
251 are subject to approval by the department.

252 SECTION 3. Section 57-61-11, Mississippi Code of 1972, is
253 amended as follows:

254 57-61-11. The department shall establish such guidelines,
255 rules and regulations for the repayment of funds loaned pursuant
256 to this chapter as may be necessary. These provisions shall
257 include but not be limited to the following:

258 (a) Funds may be loaned for a maximum of ten (10) years
259 or the estimated useful life of the property as established by the
260 United States Department of Treasury, whichever is greater.

261 (b) The rate of interest charged by the department for
262 improvements not on publicly owned property may be negotiated by
263 the department. Private companies that are cited by the

264 Immigration and Naturalization Service for knowingly having
265 employed illegal immigrants shall be liable for a penalty equal to
266 two percent (2%) greater than the current prime rate for the
267 remainder of the loans made for their benefit. The penalty shall
268 be payable in monthly installments.

269 (c) For all improvements funded through this chapter
270 which occur on publicly owned property, repayment of funds loaned
271 may, in the discretion of the department, involve only the
272 principal amount loaned with no interest charged thereon.

273 (d) An audit by a certified public accountant of all
274 costs of a project hereunder must be submitted to the department
275 not later than ninety (90) days after a project's completion. Such
276 an audit shall certify that all of the funds loaned or granted
277 pursuant to this chapter were disbursed in accordance with the
278 terms of this chapter and shall be paid for by the private company
279 benefited by the project.

280 (e) Notwithstanding the foregoing, in the case of an
281 application under Section 57-61-9(5)(a), the guidelines shall
282 include but not be limited to the following:

283 (i) Funds may be loaned for a maximum of twenty
284 (20) years, or the estimated useful life of improvements on the
285 land areas of the port, whichever is greater.

286 (ii) The rate of interest charged by the
287 department for loans for port projects may be negotiated by the
288 department and shall be consistent with Section 57-61-11(b) and
289 (c).

290 (iii) The total of grants and loans to any one
291 state-owned port made pursuant to an application under Section
292 57-61-9(5)(a) shall not exceed Twenty Million Dollars
293 (\$20,000,000.00).

294 (iv) Before any loan or grant may be made under
295 Section 57-61-9(5)(a) to a state-owned port bordering the Gulf of
296 Mexico, the applicant shall make adequate assurance to the

department that federal participation in the cost of the project or projects has been committed contingent only upon availability of local participation in accordance with federal guidelines.

(v) Notwithstanding any provision of this chapter to the contrary, the department shall utilize not more than Five Million Dollars (\$5,000,000.00) out of the proceeds of bonds authorized to be issued in this chapter to be made available as interest-bearing loans to state-owned ports for the purpose of repairing, renovating, maintaining and improving the state-owned port. The department shall establish an amortization schedule for the repayment of any loans made pursuant to this subparagraph. The state-owned port shall not spend any revenues for other purposes unless payments on the loan are being timely made according to the amortization schedule. The match requirements of this section and Section 57-61-9 shall not apply to any loan made pursuant to this subparagraph.

(f) For a period of ten (10) years from the date that a private company is cited by the Immigration and Naturalization Service as knowingly having employed illegal immigrants, the department shall not make any loan funds available under this chapter to such company.

SECTION 4. Section 57-61-14, Mississippi Code of 1972, is amended as follows:

57-61-14. In accordance with Section 27-65-111, purchases of tangible personal property or services by a private company, as defined in this chapter, with proceeds of bonds issued under this chapter, shall be exempt from sales tax. If the private company is cited by the Immigration and Naturalization Service as knowingly having employed illegal immigrants, the company shall not be exempt from sales tax under this section for a period of ten (10) years from the date of the violation.

SECTION 5. Section 27-65-111, Mississippi Code of 1972, is amended as follows:

27-65-111. The exemptions from the provisions of this chapter which are not industrial, agricultural or governmental, or which do not relate to utilities or taxes, or which are not properly classified as one of the exemption classifications of this chapter, shall be confined to persons or property exempted by this section or by the Constitution of the United States or the State of Mississippi. No exemptions as now provided by any other section, except the classified exemption sections of this chapter set forth herein, shall be valid as against the tax herein levied. Any subsequent exemption from the tax levied hereunder, except as indicated above, shall be provided by amendments to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales of tangible personal property and services to hospitals or infirmaries owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are subject to and governed by Sections 41-7-123 through 41-7-127.

Only sales of tangible personal property or services which are ordinary and necessary to the operation of such hospitals and infirmaries are exempted from tax.

(b) Sales of daily or weekly newspapers, and periodicals or publications of scientific, literary or educational organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as it exists as of March 31, 1975, and subscription sales of all magazines.

(c) Sales of coffins, caskets and other materials used in the preparation of human bodies for burial.

(d) Sales of tangible personal property for immediate export to a foreign country.

(e) Sales of tangible personal property to an

orphanage, old men's or ladies' home, supported wholly or in part by a religious denomination, fraternal nonprofit organization or other nonprofit organization.

(f) Sales of tangible personal property, labor or services taxable under Sections 27-65-17, 27-65-19, and 27-65-23, to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual.

(g) Sales to elementary and secondary grade schools, junior and senior colleges owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are exempt from state income taxation, provided that this exemption does not apply to sales of property or services which are not to be used in the ordinary operation of the school, or which are to be resold to the students or the public.

(h) The gross proceeds of retail sales and the use or consumption in this state of drugs and medicines:

(i) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed or prescription filled by a registered pharmacist in accordance with law; or

(ii) Furnished by a licensed physician, surgeon, dentist or podiatrist to his own patient for treatment of the patient; or

(iii) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, dentist or podiatrist; or

(iv) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being; or

(v) Sold to this state or any political

subdivision or municipal corporation thereof, for use in the treatment of a human being or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

"Medicines," as used in this paragraph, shall mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation intended for such use; provided that "medicines" do not include any auditory, prosthetic, ophthalmic or ocular device or appliance, any dentures or parts thereof or any artificial limbs or their replacement parts, articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof, or any alcoholic beverage or any other drug or medicine not commonly referred to as a prescription drug.

Notwithstanding the preceding sentence of this subsection, "medicines" as used in this subsection, shall mean and include sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve in the body.

"Hospital," as used in this paragraph, shall have the meaning ascribed to it in Section 41-9-3, Mississippi Code of 1972.

Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this subsection.

(i) Retail sales of automobiles, trucks and truck-tractors if exported from this state within forty-eight (48)

429 hours and registered and first used in another state.

430 (j) Sales of tangible personal property or services to
431 the Salvation Army and the Muscular Dystrophy Association, Inc.

432 (k) From July 1, 1985, through December 31, 1992,
433 retail sales of "alcohol blended fuel" as such term is defined in
434 Section 75-55-5. The gasoline-alcohol blend or the straight
435 alcohol eligible for this exemption shall not contain alcohol
436 distilled outside the State of Mississippi.

437 (l) Sales of tangible personal property or services to
438 the Institute for Technology Development.

439 (m) The gross proceeds of retail sales of food and
440 drink for human consumption made through vending machines serviced
441 by full line vendors from and not connected with other taxable
442 businesses.

443 (n) The gross proceeds of sales of motor fuel.

444 (o) Retail sales of food for human consumption
445 purchased with food stamps issued by the United States Department
446 of Agriculture, or other federal agency, from and after October 1,
447 1987, or from and after the expiration of any waiver granted
448 pursuant to federal law, the effect of which waiver is to permit
449 the collection by the state of tax on such retail sales of food
450 for human consumption purchased with food stamps.

451 (p) Sales of cookies for human consumption by the Girl
452 Scouts of America no part of the net earnings from which sales
453 inures to the benefit of any private group or individual.

454 (q) Gifts or sales of tangible personal property or
455 services to public or private nonprofit museums of art.

456 (r) Sales of tangible personal property or services to
457 alumni associations of state-supported colleges or universities.

458 (s) Sales of tangible personal property or services to
459 chapters of the National Association of Junior Auxiliaries, Inc.

460 (t) Sales of tangible personal property or services to
461 domestic violence shelters which qualify for state funding under

Sections 93-21-101 through 93-21-113.

(u) Sales of tangible personal property or services to the National Multiple Sclerosis Society, Mississippi Chapter.

(v) Retail sales of food for human consumption purchased with food instruments issued the Mississippi Band of Choctaw Indians under the Women, Infants and Children Program (WIC) funded by the United States Department of Agriculture.

(w) Sales of tangible personal property or services to a private company, as defined in Section 57-61-5, which is making such purchases with proceeds of bonds issued under Section 57-61-1 et seq., the Mississippi Business Investment Act, except as otherwise provided in Section 57-61-14, as amended by House Bill No. _____, 1999 Regular Session.

(x) The gross collections from the operation of self-service, coin-operated car washing equipment and sales of the service of washing motor vehicles with portable high pressure washing equipment on the premises of the customer.

SECTION 6. This act shall take effect and be in force from and after July 1, 1999.