

By: Representative Morris

To: Ways and Means

## HOUSE BILL NO. 233

1 AN ACT TO CREATE THE MISSISSIPPI BUSINESS INCUBATOR  
2 ASSISTANCE ACT; TO ESTABLISH UNDER THE DIRECTION OF THE DEPARTMENT  
3 OF ECONOMIC AND COMMUNITY DEVELOPMENT THE MISSISSIPPI BUSINESS  
4 INCUBATOR ASSISTANCE PROGRAM FOR THE PURPOSE OF MAKING GRANTS TO  
5 THE MISSISSIPPI BUSINESS INCUBATOR ASSOCIATION FOR ITS USE IN  
6 PROVIDING ASSISTANCE TO SMALL BUSINESSES AND FOR THE PURPOSE OF  
7 PROVIDING FUNDS FOR THE DEVELOPMENT AND EXPANSION OF BUSINESS  
8 INCUBATION CENTERS; TO PROVIDE THAT THE DEPARTMENT OF ECONOMIC AND  
9 COMMUNITY DEVELOPMENT SHALL DETERMINE THE AMOUNT OF THE GRANT TO  
10 THE MISSISSIPPI BUSINESS INCUBATOR ASSOCIATION; TO ESTABLISH THE  
11 TERMS AND CONDITIONS OF SUCH GRANT; TO PROVIDE THAT ANY FUNDS  
12 AVAILABLE PURSUANT TO THE PROVISIONS OF THIS ACT THAT THE  
13 DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT DETERMINES NOT TO  
14 BE NECESSARY FOR GRANTS TO THE MISSISSIPPI BUSINESS INCUBATOR  
15 ASSOCIATION, MAY BE USED BY THE DEPARTMENT FOR GRANTS FOR THE  
16 DEVELOPMENT AND EXPANSION OF SMALL BUSINESS INCUBATION CENTERS AND  
17 THEIR NEEDED SUPPORT ACTIVITIES; TO PROVIDE CRITERIA THAT A  
18 BUSINESS MUST MEET IN ORDER TO BE ELIGIBLE FOR ASSISTANCE; TO  
19 REQUIRE THE MISSISSIPPI BUSINESS INCUBATOR ASSOCIATION TO  
20 ESTABLISH A SMALL BUSINESS ASSISTANCE REVIEW BOARD TO REVIEW  
21 ASSISTANCE APPLICATIONS AND ESTABLISH THE TERMS AND CONDITIONS  
22 UPON WHICH ASSISTANCE MAY BE PROVIDED; TO PROVIDE FOR THE ISSUANCE  
23 OF \$5,000,000.00 IN GENERAL OR LIMITED OBLIGATION BONDS OF THE  
24 STATE TO FUND THE PROGRAM; AND FOR RELATED PURPOSES. BE IT  
25 ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

26  
27 SECTION 1. This act shall be known and may be cited as the  
28 Mississippi Business Incubator Assistance Act.

29 SECTION 2. The following words and phrases when used in this  
30 act shall have the meaning given to them in this section unless  
31 the context clearly indicates otherwise:

32 (a) "Assistance" means a loan to a small business  
33 located in an incubator center in accordance with this act.

34 (b) "Business incubator center" means facilities and  
35 support services that encourage the establishment of successful  
36 small businesses by providing a short-term sheltered environment.

37 (c) "DECD" means the Mississippi Department of Economic  
38 and Community Development.

39 (d) "General Fund" means the General Fund of the State  
40 of Mississippi.

41 (e) "Loan" means a loan by the Mississippi Business  
42 Incubator Association to a small business in accordance with this  
43 act.

44 (f) "MBIA" means the Mississippi Business Incubator  
45 Association.

46 (g) "Program" means the Mississippi Business Incubator  
47 Assistance Program established in this act.

48 (h) "Seller" means the State Bond Commission.

49 (i) "Small business" means a business that is a client  
50 of a business incubator center.

51 SECTION 3. There is established, under the direction of  
52 DECD, a program to be known as the Mississippi Business Incubator  
53 Assistance Program for the purpose of making grants to the MBIA  
54 for its use in providing assistance to small businesses in  
55 accordance with this act and for the purpose of providing funds  
56 for the development and expansion of business incubator centers.

57 SECTION 4. (1) The MBIA shall make application for a grant  
58 to DECD in a form satisfactory to DECD.

59 (2) The application must indicate that the MBIA has  
60 established a small business assistance review board to review  
61 applications for assistance under the program and make  
62 recommendations thereon to the governing board of the MBIA in  
63 accordance with this act. The MBIA shall provide such other  
64 assurances of its ability to administer and manage the program in  
65 accordance with this act as may be reasonably required by DECD.

66 SECTION 5. (1) DECD shall grant funds under this act to the  
67 MBIA in accordance with the following terms and conditions:

68 (a) Grant funds received by the MBIA in accordance with  
69 this act shall be used by the MBIA to establish a revolving  
70 assistance fund for the purpose of providing assistance in  
71 accordance with this act. Except as otherwise allowed in this

72 act, all principal and interest payments by small businesses in  
73 repayment of such assistance shall be eligible for and used by the  
74 MBIA for additional assistance in accordance with this act.

75 (b) The MBIA, after meeting the criteria set forth in  
76 this act, shall receive a grant in such amount as may be  
77 determined proper by DECD for the purpose of establishing the  
78 program in accordance with this act.

79 (c) The MBIA may utilize not more than fifty percent  
80 (50%) of interest earned on assistance provided to small  
81 businesses in accordance with this act for administration and  
82 management of the program, unless specifically authorized to  
83 utilize more by DECD. However, any interest earned on grant funds  
84 held by the MBIA or prior to the utilization of such grant funds  
85 to provide assistance shall be placed in the revolving assistance  
86 fund of the MBIA and shall not be expended for administration or  
87 management costs.

88 (d) If the MBIA experiences losses from assistance  
89 provided pursuant to the program in excess of fifty percent (50%)  
90 of the amount of grant funds received by the MBIA, the MBIA shall  
91 repay the State of Mississippi the amount of such losses in excess  
92 of fifty percent (50%) by delivering that amount to the State  
93 Treasury for deposit in the General Fund.

94 (e) DECD shall assist the MBIA in connection with its  
95 compliance with this act.

96 (f) If DECD determines that the MBIA has provided  
97 assistance in a manner inconsistent with the provisions of this  
98 act, then the DECD may require the MBIA to convey to DECD all  
99 administrative and management control of assistance provided by it  
100 under the program.

101 (2) Any funds available pursuant to the provisions of this  
102 act that DECD determines not to be necessary for grant funds under  
103 subsection (1) of this section, may be used by DECD for grants for  
104 the development and expansion of small business incubator centers

105 and their needed support activities.

106       SECTION 6. The MBIA is authorized, empowered and directed to  
107 deposit all grant funds received pursuant to this act in a  
108 revolving assistance fund and to provide assistance in accordance  
109 with this act and the following criteria, terms and conditions:

110           (a) To be eligible for assistance under this act, the  
111 small business and the project to be assisted must meet the  
112 following criteria:

113                   (i) Assistance must be in connection with an  
114 identifiable business plan, and the principal amount of all  
115 assistance may not exceed fifty percent (50%) of the total cost of  
116 said project or business plan;

117                   (ii) Assistance may be used in connection with the  
118 purchase or lease of equipment and inventory, and for working  
119 capital. However, no more than one-third (1/3) of the total  
120 assistance to a small business pursuant to this act or Fifty  
121 Thousand Dollars (\$50,000.00), whichever is less, may be used for  
122 working capital;

123                   (iii) Assistance may not be provided under the  
124 program to finance or satisfy any existing debt; and

125                   (iv) Assistance may not be provided to a small  
126 business unless at least sixty percent (60%) of the small business  
127 is owned, directly or indirectly, by individuals who have been  
128 residents of the State of Mississippi for at least two (2) years.

129           (b) The interest rate on loans shall not be less than  
130 five percent (5%) per annum or more than four percent (4%) above  
131 the federal discount rate, plus the servicing fees established in  
132 this act.

133           (c) As security for any loan under the program, the  
134 MBIA shall take a security interest in assets of the small  
135 business and require personal guarantees of all persons and  
136 entities owning twenty percent (20%) or more of the small  
137 business. Such security interests may be subordinate to other

138 security interests in such assets.

139 (d) The maximum term of any loan under the program  
140 shall not exceed the following: ten (10) years if used to  
141 purchase or lease equipment, five (5) years if used to provide  
142 working capital and three (3) years if used to purchase inventory.

143 (e) In the event of a default by a small business on a  
144 loan under the program, the MBIA shall foreclose and enforce its  
145 security interests and personal guarantees relating to such loan  
146 and take all necessary and appropriate action to recover all  
147 principal and interest owed, and all amounts so recovered shall be  
148 deposited in the revolving assistance fund administered by it.  
149 Any small business which defaults on a loan under the program  
150 shall not be eligible for any other loan under the program.

151 (f) No small business shall receive assistance under  
152 the program in excess of One Hundred Thousand Dollars  
153 (\$100,000.00).

154 (g) All assistance applications must be reviewed by,  
155 and the terms and conditions of the assistance must be recommended  
156 to the MBIA, by a small business assistance review board  
157 established by the MBIA. The composition of the small business  
158 assistance review board shall meet the approval of DECD.

159 SECTION 7. The MBIA is authorized to engage legal counsel,  
160 accountants, financial advisors, appraisers, consultants and  
161 others as needed in connection with providing assistance to small  
162 businesses pursuant to this act, and to charge the costs of these  
163 services to the small businesses receiving such assistance or  
164 charge the proceeds of such assistance therefor.

165 SECTION 8. DECD shall adopt and publish the eligibility  
166 criteria for MBIA to participate in the program as set forth in  
167 this act, and program report forms, all in accordance with this  
168 act, and such other rules and regulations as may be necessary and  
169 appropriate in carrying out its responsibilities under this act.  
170 However, the MBIA shall have sole authority over the approval of

171 assistance and the management of the assistance provided under  
172 this act.

173 SECTION 9. No assistance shall be provided to a small  
174 business under this act unless the small business certifies to the  
175 MBIA, in a form satisfactory to DECD, that it will not  
176 discriminate against any employee or against any applicant for  
177 employment because of race, religion, color, national origin, sex  
178 or age.

179 SECTION 10. (1) There is created a special fund in the  
180 State Treasury to be known as the Mississippi Business Incubator  
181 Assistance Fund out of which grants and expenditures authorized in  
182 connection with the program shall be disbursed. All monies  
183 received by issuance of bonds to carry out the purposes of this  
184 act shall be deposited into the Mississippi Business Incubator  
185 Assistance Fund.

186 (2) All funds repaid to the State Treasury under this act or  
187 designated hereunder for repayment of any bonds issued under this  
188 act shall be delivered to the State Treasurer for deposit in the  
189 General Fund.

190 SECTION 11. (1) All bonds issued under the authority of  
191 this act shall be redeemed at maturity, together with all interest  
192 due, from time to time, on the bonds, and these principal and  
193 interest payments shall be paid from the General Fund.

194 (2) In the event that all or any part of the bonds and notes  
195 are purchased, they shall be canceled and returned to the loan and  
196 transfer agent as canceled and paid bonds and notes; and  
197 thereafter all payments of interest thereon shall cease and the  
198 canceled bonds, notes and coupons, together with any other  
199 canceled bonds, notes and coupons, shall be destroyed as promptly  
200 as possible after cancellation but not later than two (2) years  
201 after cancellation. A certificate evidencing the destruction of  
202 the canceled bonds, notes and coupons shall be provided by the  
203 loan and transfer agent to the seller.

204           (3) The State Treasurer shall determine and report to the  
205 Department of Finance and Administration and Legislative Budget  
206 Office by September 1 of each year the amount of money necessary  
207 for the payment of the principal of and interest on outstanding  
208 obligations for the following fiscal year and the times and  
209 amounts of the payments. It shall be the duty of the Governor to  
210 include in every executive budget submitted to the Legislature  
211 full information relating to the issuance of bonds and notes under  
212 the provisions of this act and the status of the General Fund for  
213 the payment of the principal of and interest on the bonds and  
214 notes.

215           (4) Except as otherwise provided by law, the rate of  
216 interest on any assistance made using funds from the Mississippi  
217 Business Incubator Assistance Fund shall be in accordance with  
218 Section 6 of this act. Notwithstanding the provisions of any  
219 other law to the contrary, the interest rate charged shall not be  
220 set such that the aggregate of the interest, penalties and other  
221 payments to the MBIA in connection with such assistance made using  
222 funds from the Mississippi Business Incubator Assistance Fund will  
223 cause the bonds issued pursuant to this act to be deemed arbitrage  
224 bonds pursuant to Section 148 of the Internal Revenue Code of 1986  
225 and the regulations promulgated thereunder. In the case of  
226 assistance initially funded from the proceeds of notes and  
227 subsequently funded from renewal bonds and notes, the interest  
228 rate to be charged on the assistance shall be established in  
229 accordance with Section 6 of this act upon the sale of bonds or  
230 notes, as the case may be, for such assistance.

231           SECTION 12. (1) The seller is authorized to borrow, on the  
232 credit of the state, money not exceeding the aggregate sum of Five  
233 Million Dollars (\$5,000,000.00), not including money borrowed to  
234 refund outstanding bonds, notes or replacement notes, as may be  
235 necessary to carry out the purposes of this act. The rate of  
236 interest on any such bonds or notes which are not subject to

237 taxation shall not exceed the rates set forth in Section  
238 75-17-101, Mississippi Code of 1972, for general obligation bonds.

239 (2) As evidence of indebtedness authorized in this act,  
240 general or limited obligation bonds of the state shall be issued  
241 from time to time to provide monies necessary to carry out the  
242 purposes of this act for such total amount, in such form, in such  
243 denominations, payable in such currencies (either domestic or  
244 foreign or both), and subject to such terms and conditions of  
245 issue, redemption and maturity, rate of interest and time of  
246 payment of interest as the seller directs, except that such bonds  
247 shall mature or otherwise be retired in annual installments  
248 beginning not more than five (5) years from date thereof and  
249 extending not more than twenty (20) years from the date thereof.

250 (3) All bonds and notes issued under authority of this act  
251 shall be signed by the chairman of the seller, or by his facsimile  
252 signature, and the official seal of the seller shall be affixed  
253 thereto, attested by the secretary of the seller.

254 (4) All bonds and notes issued under authority of this act  
255 may be general or limited obligations of the state, and the full  
256 faith and credit of the State of Mississippi as to general  
257 obligation bonds, or the revenue derived from projects assisted as  
258 to limited obligation bonds, are hereby pledged for the payment of  
259 the principal of and interest on such bonds and notes.

260 (5) Such bonds and notes and the income therefrom shall be  
261 exempt from all taxation in the State of Mississippi.

262 (6) The bonds may be issued as coupon bonds or registered as  
263 to both principal and interest as the seller may determine. If  
264 interest coupons are attached, they shall contain the facsimile  
265 signature of the chairman and the secretary of the seller.

266 (7) As to bonds issued hereunder and designated as taxable  
267 bonds by the seller, any immunity of the state to taxation by the  
268 United States Government of interest on bonds or notes issued by  
269 the state is hereby waived.



270        SECTION 13. (1) Whenever bonds are issued, they shall be  
271 offered for sale at not less than par value and accrued interest  
272 and shall be sold by the seller at public or private sale, from  
273 time to time, in such manner and at such price as may be  
274 determined by the seller to be most advantageous.

275        (2) Any portion of any bond issue so offered and not sold or  
276 subscribed for at public sale may be disposed of by private sale  
277 by the seller in such manner and at such prices not less than par  
278 and accrued interest, as the seller shall direct.

279        (3) When bonds are issued from time to time, the bonds of  
280 each issue shall constitute a separate series to be designated by  
281 the seller or may be combined for sale as one (1) series with  
282 other general obligation bonds of the State of Mississippi.

283        (4) Until permanent bonds can be prepared, the seller may in  
284 its discretion issue, in lieu of permanent bonds, temporary bonds  
285 in such form and with such privileges as to registration and  
286 exchange for permanent bonds as may be determined by the seller.

287        (5) Pending their application to the purposes authorized,  
288 bond proceeds held or deposited by the State Treasurer may be  
289 invested or reinvested as are other funds in the custody of the  
290 State Treasurer in the manner provided by law. All earnings  
291 received from the investment or deposit of such funds shall be  
292 paid into the State Treasury to the credit of the Mississippi  
293 Business Incubator Assistance Fund.

294        (6) The State Treasurer shall prepare the necessary registry  
295 book to be kept in the office of the duly authorized loan and  
296 transfer agent of the state for the registration of any bonds, at  
297 the request of owners thereof, according to the terms and  
298 conditions of issue directed by the seller.

299        (7) All costs and expenses in connection with the issue of  
300 and sale and registration of the bonds and notes in connection  
301 with this act, and all costs and expenses in connection with  
302 implementation of the program and development of application

303 forms, procedures and requirements for use in connection with the  
304 program may be paid from the proceeds of bonds and notes issued  
305 under this act.

306 (8) The seller may provide in the resolution authorizing the  
307 issuance of such bonds for the employment of one or more persons  
308 or firms to assist in the sale of the bonds; to enter into  
309 contracts with financial institutions located either within or  
310 without the State of Mississippi to act as registrar, paying  
311 agents, transfer agents or otherwise; for rating of the bonds; and  
312 to purchase insurance.

313 SECTION 14. (1) Pending the issuance of bonds of the state  
314 as authorized under this act, the seller is authorized in  
315 accordance with the provisions of this act and on the credit of  
316 the state, to make temporary borrowings not to exceed two (2)  
317 years in anticipation of the issue of bonds in order to provide  
318 funds in such amounts as may, from time to time, be deemed  
319 advisable prior to the issue of bonds. In order to provide for  
320 and in connection with such temporary borrowings, the seller is  
321 authorized in the name and on behalf of the state to enter into  
322 any purchase, loan or credit agreement, or agreements, or other  
323 agreement or agreements with any financial institution or persons  
324 in the United States having power to enter into the same, which  
325 agreements may contain such provisions not inconsistent with the  
326 provisions of this act as may be authorized by the seller.

327 (2) All temporary borrowings made under this section shall  
328 be evidenced by notes of the state which shall be issued, from  
329 time to time, for such amounts not exceeding in the aggregate the  
330 applicable statutory and constitutional debt limitation, in such  
331 form and in such denominations and subject to terms and conditions  
332 of sale and issue, prepayment or redemption and maturity, rate or  
333 rates of sale and time of payment of interest as the seller shall  
334 authorize and direct and in accordance with this act. Such  
335 authorization and direction may provide for the subsequent

336 issuance of replacement notes to refund, upon issuance thereof,  
337 such notes, and may specify such other terms and conditions with  
338 respect to the notes and replacement notes thereby authorized for  
339 issuance as the seller may determine and direct.

340 (3) When the authorization and direction of the seller  
341 provide for the issuance of replacement notes, the seller is  
342 authorized in the name and on behalf of the state to enter into  
343 agreements with any financial institutions or persons in the  
344 United States having the power to enter into the same:

345 (a) To purchase or underwrite an issue or series of  
346 issues of notes.

347 (b) To enter into any purchase, loan or credit  
348 agreements, and to draw monies pursuant to any such agreements on  
349 the terms and conditions set forth therein and to issue notes as  
350 evidence of borrowings made under any such agreements.

351 (c) To appoint or act as issuing and paying agent or  
352 agents with respect to notes.

353 (d) To do such other acts as may be necessary or  
354 appropriate to provide for the payment, when due, of the principal  
355 of and interest on such notes.

356 Such agreements may provide for the compensation of any  
357 purchasers or underwriters of notes or replacement notes by  
358 payment of a fixed fee or commission at the time of issuance  
359 thereof, and for all other costs and expenses, including fees for  
360 agreements related to the notes issuing and paying agent costs.  
361 Costs and expenses of issuance may be paid from the proceeds of  
362 the notes.

363 (4) When the authorization and direction of the seller  
364 provides for the issuance of replacement notes, it shall, at or  
365 prior to the time of delivery of these notes or replacement notes,  
366 determine the principal amounts, dates of issue, interest rate or  
367 rates, rates of discount, denominations and all other terms and  
368 conditions relating to the issuance. The State Treasurer shall

369 perform all acts and things necessary to pay or cause to be paid,  
370 when due, all principal of and interest on the notes being  
371 refunded by replacement notes and to assure that the same may draw  
372 upon any monies available for that purpose pursuant to any  
373 purchase loan or credit agreements established with respect  
374 thereto, all subject to the authorization and direction of the  
375 seller.

376 (5) Outstanding notes evidencing such borrowings may be  
377 funded and retired by the issuance and sale of the bonds of the  
378 state as hereinafter authorized. The refunding bonds must be  
379 issued and sold not later than a date two (2) years after the date  
380 of issuance of the first notes evidencing such borrowings to the  
381 extent that payment of such notes has not otherwise been made or  
382 provided for by sources other than proceeds of replacement notes.

383 (6) The proceeds of all such temporary borrowing shall be  
384 paid to the State Treasurer to be held and disposed of in  
385 accordance with the provisions of Section 10 of this act.

386 SECTION 15. (1) The proceeds realized from the sale of  
387 bonds and notes under this act, other than refunding bonds and  
388 replacement notes, shall be paid to the State Treasurer and  
389 deposited into the Mississippi Business Incubator Assistance Fund  
390 and specifically dedicated to the purposes enumerated in this act.

391 (2) All nonfederal funds which may become available for the  
392 purposes of this act shall be deposited in the Mississippi  
393 Business Incubator Assistance Fund and shall be allocated for the  
394 purposes of this act.

395 (3) The proceeds of the sale of refunding bonds and  
396 replacement notes shall be applied solely to the payment of the  
397 principal of and the accrued interest on and premium, if any, and  
398 costs of redemption of the bonds and notes for which such  
399 obligations have been issued.

400 SECTION 16. The Attorney General of the State of Mississippi  
401 shall represent the seller in issuing, selling and validating

402 bonds or notes herein provided for, and the seller is authorized  
403 and empowered to expend from the proceeds derived from the sale of  
404 the bonds or notes authorized hereunder all necessary  
405 administrative, legal and other expenses incidental and related to  
406 the issuance of bonds or notes authorized under this act.

407 SECTION 17. This act shall take effect and be in force from  
408 and after July 1, 1999.