

By: Senator(s) Hall, Hamilton, Horhn

To: Finance

SENATE BILL NO. 2403

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

25
26 SECTION 1. This act shall be known and may be cited as the
27 Mississippi Business Incubator Assistance Act.

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

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

33 (b) "Business incubator center" means facilities and
34 support services approved by the Mississippi Enterprise for
35 Technology and the Mississippi Department of Economic and
36 Community Development pursuant to guidelines promulgated by the
37 Mississippi Enterprise for Technology and the Mississippi

38 Department of Economic and Community Development that encourage
39 the establishment of successful small businesses by providing a
40 short-term sheltered environment.

41 (c) "DECD" means the Mississippi Department of Economic
42 and Community Development.

43 (d) "General Fund" means the General Fund of the State
44 of Mississippi.

45 (e) "Loan" means a loan by the Mississippi Enterprise
46 for Technology to a small business in accordance with this act.

47 (f) "MBIA" means the Mississippi Business Incubation
48 Association.

49 (g) "MET" means the Mississippi Enterprise for
50 Technology.

51 (h) "Program" means the Mississippi Business Incubator
52 Assistance Program established in this act.

53 (i) "Seller" means the State Bond Commission.

54 (j) "Small business" means a business that is a client
55 of a qualified business incubator center.

56 SECTION 3. There is hereby established, under the direction
57 of DECD, a program to be known as the Mississippi Business
58 Incubator Assistance Program for the purpose of making grants to
59 the MET for its use in providing assistance to small businesses in
60 accordance with this act and for the purpose of providing funds
61 for the development and expansion of business incubator centers.

62 SECTION 4. (1) The MET shall make application for a grant
63 to DECD in a form satisfactory to DECD.

64 (2) The application must indicate that local small business
65 assistance review boards have been established as provided for in
66 this act to review applications for assistance under the program
67 and make recommendations thereon to the MET in accordance with
68 this act. The MET shall provide such other assurances of their
69 ability to administer and manage the program in accordance with
70 this act as may be reasonably required by DECD.

71 SECTION 5. (1) DECD shall grant funds under this act to the
72 MET in accordance with the following terms and conditions:

73 (a) Grant funds received by the MET in accordance with
74 this act shall be used by the MET to establish a revolving

75 assistance fund for the purpose of providing assistance in
76 accordance with this act. Except as otherwise allowed in this
77 act, all principal and interest payments by small businesses in
78 repayment of such assistance shall be eligible for and used by the
79 MET for additional assistance in accordance with this act.

80 (b) The MET, after meeting the criteria set forth in
81 this act, shall receive a grant in such amount as may be
82 determined proper by DECD for the purpose of establishing the
83 program in accordance with this act.

84 (c) The MET may utilize not more than fifty percent
85 (50%) of interest earned on assistance provided to small
86 businesses in accordance with this act for administration and
87 management of the program, unless specifically authorized to
88 utilize more by DECD.

89 (d) If the MET experiences losses from assistance
90 provided pursuant to the program in excess of fifty percent (50%)
91 of the amount of grant funds received by the MET, the MET shall,
92 in the discretion of DECD, return all grant funds that have not
93 been committed for loans to DECD and DECD shall use such funds to
94 provide additional grants to planning and development districts
95 and qualified entities under the Mississippi Small Business
96 Assistance Program established under the Mississippi Small
97 Business Assistance Act. In the event of such losses, MET shall,
98 in the discretion of DECD, forfeit the authority to manage the
99 outstanding loans that it has made pursuant to this act and DECD
100 may assign administrative and management control of such loans to
101 planning and development districts and qualified entities that are
102 eligible for grants under the Mississippi Small Business
103 Assistance Act.

104 (e) DECD shall assist MET in connection with its
105 compliance with this act.

106 (f) The MET shall submit the following reports to DECD:

107 (i) An annual audit of grant funds received in

108 connection with the program; and

109 (ii) A semiannual report on July 15 and January 15
110 of each year, describing all assistance provided pursuant to the
111 program, such reports to include without limitation the following:
112 a description of each small business receiving assistance; the
113 project to be assisted and purpose of assistance; a description of
114 each loan, including the terms and conditions thereof and use of
115 the funds by the small business; and a history of the assistance
116 pool, including principal amount loaned, interest earned, interest
117 expended for administration and management, assistance funds
118 available, and losses. After the expiration of five (5) years
119 from the date of receipt of the grant in accordance with this act,
120 upon satisfaction that such reports are no longer necessary or
121 appropriate to maintain and ensure compliance with the program,
122 DECD may permit the MET to discontinue such semiannual reports.

123 (g) If DECD determines that the MET has provided
124 assistance in a manner inconsistent with the provisions of this
125 act, then DECD may require the MET to convey to DECD (i) all
126 administrative and management control of assistance provided by it
127 under the program, and (ii) all grant funds that have not been
128 committed for loans under this act. In such event, DECD may, in
129 its discretion, assign administrative and management control of
130 outstanding loans to planning and development districts and
131 qualified entities participating in the Mississippi Small Business
132 Assistance Program established under the Mississippi Small
133 Business Assistance Act. DECD may, in its discretion, use any
134 grant funds conveyed to it that have not been committed for loans
135 under this act to provide additional grants to planning and
136 development districts and qualified entities eligible for grants
137 under the Mississippi Small Business Assistance Act.

138 (2) Any funds available pursuant to the provisions of this
139 act that DECD determines not to be necessary for grant funds under
140 subsection (1) of this section may be used by DECD for grants for

141 the development and expansion of small business incubation centers
142 and their needed support activities. DECD shall promulgate such
143 rules and regulations for eligibility for grants under this
144 subsection as it considers necessary.

145 SECTION 6. The MET is authorized, empowered and directed to
146 deposit all grant funds received pursuant to this act in a
147 revolving assistance fund and to provide assistance in accordance
148 with this act and the following criteria, terms and conditions:

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

152 (i) Assistance must be in connection with an
153 identifiable business plan, and the principal amount of all
154 assistance may not exceed fifty percent (50%) of the total cost of
155 the project or business plan;

156 (ii) Assistance may be used in connection with the
157 purchase or lease of equipment and inventory, and for working
158 capital; provided, however, no more than one-third (1/3) of the
159 total assistance to a small business pursuant to this act or
160 Thirty-three Thousand Dollars (\$33,000.00), whichever is less, may
161 be used for working capital;

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

164 (iv) Assistance may not be provided to a small
165 business unless at least sixty percent (60%) of the small business
166 is owned, directly or indirectly, by individuals who are residents
167 of the State of Mississippi.

168 (b) The interest rate on loans shall not be less than
169 five percent (5%) per annum or more than four percent (4%) above
170 the federal discount rate at the time of loan approval, plus the
171 servicing fees established in this act.

172 (c) As security for any loan under the program, the MET
173 shall take a security interest in assets of the small business and

174 require personal guarantees of all persons and entities owning
175 twenty percent (20%) or more of the small business. Such security
176 interests may be subordinate to other security interests in such
177 assets.

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

182 (e) In the event of a default by a small business on a
183 loan under the program, the MET shall foreclose and enforce its
184 security interests and personal guarantees relating to such loan
185 and take all necessary and appropriate action to recover all
186 principal and interest owed, and all amounts so recovered shall be
187 deposited in the revolving assistance fund. Any small business
188 which defaults on a loan under the program shall not be eligible
189 for any other loan under the program.

190 (f) No small business shall receive assistance under
191 the program in excess of One Hundred Thousand Dollars
192 (\$100,000.00).

193 (g) All assistance applications must be reviewed by,
194 and the terms and conditions of the assistance must be recommended
195 to the MET by, a local small business assistance review board,
196 established by the governing board of each business incubator
197 center and approved by the MET, consisting of the following
198 members:

199 (i) A banker not affiliated with the senior
200 lender; and

201 (ii) Two (2) individuals who are members of the
202 governing board of the business incubator center.

203 Local small business assistance review boards shall meet at
204 least quarterly and shall meet anytime there are at least two (2)
205 assistance applications pending that require review.

206 (h) If the local small business assistance review board

207 recommends that assistance be provided, the MET may either approve
208 and provide the assistance on the exact terms and conditions
209 recommended by the local small business assistance review board or
210 determines not to provide such assistance. Under no circumstances
211 may the MET provide such assistance on any terms or conditions not
212 approved and recommended by the local small business assistance
213 review board. If the MET determines not to provide the assistance
214 that the local small business assistance review board has
215 recommended to be provided, the governing body of the MET shall
216 place in its minutes an explanation of the reasons for such
217 refusal. If the local small business assistance review board
218 recommends against providing the assistance, the MET shall not
219 provide such assistance under any terms and conditions.

220 SECTION 7. The MET is hereby authorized to engage legal
221 counsel, accountants, financial advisors, appraisers, consultants
222 and others as needed in connection with providing assistance to
223 small businesses pursuant to this act, and to charge the costs of
224 these services to the small businesses receiving such assistance
225 or charge the proceeds of such assistance therefor.

226 SECTION 8. DECD shall adopt and publish the eligibility
227 criteria for MET to participate in the program as set forth in
228 this act, and program report forms, all in accordance with this
229 act, and such other rules and regulations as may be necessary and
230 appropriate in carrying out its responsibilities under this act;
231 provided, however, that the MET shall have sole authority over the
232 approval of assistance and the management of the assistance
233 provided under this act.

234 SECTION 9. No assistance shall be provided to a small
235 business under this act unless the small business certifies to the
236 MET, in a form satisfactory to DECD, that it will not discriminate
237 against any employee or against any applicant for employment
238 because of race, religion, color, national origin, sex or age.

239 SECTION 10. (1) There is hereby created a special fund in

240 the State Treasury to be known as the Mississippi Business
241 Incubator Assistance Fund out of which grants and expenditures
242 authorized in connection with the program shall be disbursed. All
243 monies received by issuance of bonds to carry out the purposes of
244 this act shall be deposited into the Mississippi Business
245 Incubator Assistance Fund.

246 (2) All funds repaid to the State Treasury under this act or
247 designated hereunder for repayment of any bonds issued under this
248 act shall be delivered to the State Treasurer for deposit in the
249 General Fund.

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

254 (2) In the event that all or any part of the bonds and notes
255 are purchased, they shall be canceled and returned to the loan and
256 transfer agent as canceled and paid bonds and notes; and
257 thereafter all payments of interest thereon shall cease and the
258 canceled bonds, notes and coupons, together with any other
259 canceled bonds, notes and coupons, shall be destroyed as promptly
260 as possible after cancellation but not later than two (2) years
261 after cancellation. A certificate evidencing the destruction of
262 the canceled bonds, notes and coupons shall be provided by the
263 loan and transfer agent to the seller.

264 (3) The State Treasurer shall determine and report to the
265 Department of Finance and Administration and Legislative Budget
266 Office by September 1 of each year the amount of money necessary
267 for the payment of the principal of and interest on outstanding
268 obligations for the following fiscal year and the times and
269 amounts of the payments. It shall be the duty of the Governor to
270 include in every executive budget submitted to the Legislature
271 full information relating to the issuance of bonds and notes under
272 the provisions of this act and the status of the General Fund for

273 the payment of the principal of and interest on the bonds and
274 notes.

275 (4) Except as otherwise provided by law, the rate of
276 interest on any assistance made using funds from the Mississippi
277 Business Incubator Assistance Fund shall be in accordance with
278 Section 6 of this act. Notwithstanding the provisions of any
279 other law to the contrary, the interest rate charged shall not be
280 set such that the aggregate of the interest, penalties and other
281 payments to the MET in connection with such assistance made using
282 funds from the Mississippi Business Incubator Assistance Fund will
283 cause the bonds issued pursuant to this act to be deemed arbitrage
284 bonds pursuant to Section 148 of the Internal Revenue Code of 1986
285 and the regulations promulgated thereunder. In the case of
286 assistance initially funded from the proceeds of notes and
287 subsequently funded from renewal bonds and notes, the interest
288 rate to be charged on the assistance shall be established in
289 accordance with Section 57-10-513 upon the sale of bonds or notes,
290 as the case may be, for such assistance.

291 SECTION 12. (1) The seller is authorized to borrow, on the
292 credit of the state, money not exceeding the aggregate sum of Five
293 Million Dollars (\$5,000,000.00), not including money borrowed to
294 refund outstanding bonds, notes or replacement notes, as may be
295 necessary to carry out the purposes of this act. The rate of
296 interest on any such bonds or notes which are not subject to
297 taxation shall not exceed the rates set forth in Section
298 75-17-101, Mississippi Code of 1972, for general obligation bonds.

299 (2) As evidence of indebtedness authorized in this act,
300 general or limited obligation bonds of the state shall be issued
301 from time to time to provide monies necessary to carry out the
302 purposes of this act for such total amount, in such form, in such
303 denominations, payable in such currencies (either domestic or
304 foreign or both), and subject to such terms and conditions of
305 issue, redemption and maturity, rate of interest and time of

306 payment of interest as the seller directs, except that such bonds
307 shall mature or otherwise be retired in annual installments
308 beginning not more than five (5) years from date thereof and
309 extending not more than twenty (20) years from the date thereof.

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

314 (4) All bonds and notes issued under authority of this act
315 may be general or limited obligations of the state, and the full
316 faith and credit of the State of Mississippi as to general
317 obligation bonds, or the revenue derived from projects assisted as
318 to limited obligation bonds, are hereby pledged for the payment of
319 the principal of and interest on such bonds and notes.

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

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

326 (7) As to bonds issued hereunder and designated as taxable
327 bonds by the seller, any immunity of the state to taxation by the
328 United States government of interest on bonds or notes issued by
329 the state is hereby waived.

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

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

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

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

347 (5) Pending their application to the purposes authorized,
348 bond proceeds held or deposited by the State Treasurer may be
349 invested or reinvested as are other funds in the custody of the
350 State Treasurer in the manner provided by law. All earnings
351 received from the investment or deposit of such funds shall be
352 paid into the State Treasury to the credit of the Mississippi
353 Business Incubator Assistance Fund.

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

359 (7) All costs and expenses in connection with the issue of
360 and sale and registration of the bonds and notes in connection
361 with this act, and all costs and expenses in connection with
362 implementation of the program and development of application
363 forms, procedures and requirements for use in connection with the
364 program may be paid from the proceeds of bonds and notes issued
365 under this act.

366 (8) The seller may provide in the resolution authorizing the
367 issuance of such bonds for the employment of one or more persons
368 or firms to assist in the sale of the bonds; for executing
369 contracts with financial institutions located either within or
370 without the State of Mississippi to act as registrar, paying
371 agents, transfer agents or otherwise; for rating of the bonds; and

372 for purchasing insurance.

373 SECTION 14. (1) Pending the issuance of bonds of the state
374 as authorized under this act, the seller is hereby authorized in
375 accordance with the provisions of this act and on the credit of
376 the state, to make temporary borrowings not to exceed two (2)
377 years in anticipation of the issue of bonds in order to provide
378 funds in such amounts as may, from time to time, be deemed
379 advisable prior to the issue of bonds. In order to provide for
380 and in connection with such temporary borrowings, the seller is
381 hereby authorized in the name and on behalf of the state to enter
382 into any purchase, loan or credit agreement, or agreements, or
383 other agreement or agreements, with any financial institution or
384 persons in the United States having power to enter into the same,
385 which agreements may contain such provisions not inconsistent with
386 the provisions of this act as may be authorized by the seller.

387 (2) All temporary borrowings made under this section shall
388 be evidenced by notes of the state which shall be issued, from
389 time to time, for such amounts not exceeding in the aggregate the
390 applicable statutory and constitutional debt limitation, in such
391 form and in such denominations and subject to terms and conditions
392 of sale and issue, prepayment or redemption and maturity, rate or
393 rates of sale and time of payment of interest as the seller shall
394 authorize and direct and in accordance with this act. Such
395 authorization and direction may provide for the subsequent
396 issuance of replacement notes to refund, upon issuance thereof,
397 such notes, and may specify such other terms and conditions with
398 respect to the notes and replacement notes thereby authorized for
399 issuance as the seller may determine and direct.

400 (3) When the authorization and direction of the seller
401 provide for the issuance of replacement notes, the seller is
402 hereby authorized in the name and on behalf of the state to enter
403 into agreements with any financial institutions or persons in the
404 United States having the power to enter into the same:

405 (a) To purchase or underwrite an issue or series of
406 issues of notes.

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

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

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

416 Such agreements may provide for the compensation of any
417 purchasers or underwriters of notes or replacement notes by
418 payment of a fixed fee or commission at the time of issuance
419 thereof, and for all other costs and expenses, including fees for
420 agreements related to the notes issuing and paying agent costs.
421 Costs and expenses of issuance may be paid from the proceeds of
422 the notes.

423 (4) When the authorization and direction of the seller
424 provides for the issuance of replacement notes, it shall, at or
425 prior to the time of delivery of these notes or replacement notes,
426 determine the principal amounts, dates of issue, interest rate or
427 rates, rates of discount, denominations and all other terms and
428 conditions relating to the issuance. The State Treasurer shall
429 perform all acts and things necessary to pay or cause to be paid,
430 when due, all principal of and interest on the notes being
431 refunded by replacement notes and to assure that the same may draw
432 upon any monies available for that purpose pursuant to any
433 purchase loan or credit agreements established with respect
434 thereto, all subject to the authorization and direction of the
435 seller.

436 (5) Outstanding notes evidencing such borrowings may be
437 funded and retired by the issuance and sale of the bonds of the

438 state as hereinafter authorized. The refunding bonds must be
439 issued and sold not later than a date two (2) years after the date
440 of issuance of the first notes evidencing such borrowings to the
441 extent that payment of such notes has not otherwise been made or
442 provided for by sources other than proceeds of replacement notes.

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

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

451 (2) All nonfederal funds which may become available for the
452 purposes of this act shall be deposited in the Mississippi
453 Business Incubator Assistance Fund and shall be allocated for the
454 purposes of this act.

455 (3) The proceeds of the sale of refunding bonds and
456 replacement notes shall be applied solely to the payment of the
457 principal of and the accrued interest on and premium, if any, and
458 costs of redemption of, the bonds and notes for which such
459 obligations have been issued.

460 SECTION 16. The Attorney General of the State of Mississippi
461 shall represent the seller in issuing, selling and validating
462 bonds or notes herein provided for, and the seller is hereby
463 authorized and empowered to expend from the proceeds derived from
464 the sale of the bonds or notes authorized hereunder all necessary
465 administrative, legal and other expenses incidental and related to
466 the issuance of bonds or notes authorized under this act.

467 SECTION 17. This act shall take effect and be in force from
468 and after its passage.