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To: Ways and Means

HOUSE BILL NO. 838
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 57-61-9, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PROJECTS FOR WHICH A COUNTY OR MUNICIPALITY MAY REQUEST
3 ASSISTANCE UNDER THE MISSISSIPPI BUSINESS INVESTMENT ACT; AND FOR
4 RELATED PURPOSES.

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

6 SECTION 1. Section 57-61-9, Mississippi Code of 1972, is
7 amended as follows:

8 57-61-9. (1) Any private company desiring assistance from a
9 municipality shall submit to the municipality a letter of intent
10 to locate, expand or build a facility entirely or partially within
11 the municipality or on land the municipality is authorized to own
12 or otherwise acquire. The letter of intent shall include:

13 (a) Except for strategic investments, a commitment that
14 the proposed project will create and maintain a minimum of ten
15 (10) net new full-time equivalent jobs, will create and maintain
16 at least a five percent (5%) increase in full-time equivalent jobs
17 in the case of expansion of an enterprise already located at the
18 site or at least a twenty-five percent (25%) increase in full-time
19 equivalent jobs pursuant to subsection (9) of Section 57-61-15 and
20 will create and maintain at least one (1) net new full-time
21 equivalent job for every Fifteen Thousand Dollars (\$15,000.00)
22 either loaned or granted for the project. The commitment required
23 by this paragraph (a) shall include any jobs created prior to the
24 effective date of this chapter resulting from contracts entered
25 into contingent upon assistance being made available under this
26 chapter. All jobs required to be maintained by this paragraph (a)
27 shall be maintained until such time as any loan made under this

28 chapter for the benefit of a private company is repaid.

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

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

36 (d) If required by the department, a notarized
37 statement of willingness to grant a lien on the facility for which
38 the improvement is being provided, in an amount and a manner to be
39 determined by the department, which lien may be foreclosed in the
40 event that the private company fails to operate in the facility
41 according to the terms of the agreement and/or to collateralize
42 the loan made for the benefit of the private company for which the
43 improvement is being provided in an amount and manner to be
44 determined by the department. In the event the contractual
45 agreement is to be entered into with a department or subsidiary of
46 the United States government, the department shall determine that
47 the governmental unit will operate the proposed project for a
48 sufficient number of years to retire the loan based on increased
49 revenue estimates by the University Research Center and any
50 agreement entered into shall reflect that the interest paid on any
51 loan for such purpose shall be included in Mississippi's
52 contributory value in the project. In the event the private
53 company requesting the assistance is a subsidiary of another
54 corporation, if required by the department, any contractual
55 agreement entered into shall also require the parent company to
56 unconditionally warrant the performance of the subsidiary in
57 carrying out the terms of the agreement or it shall require the
58 subsidiary and/or the parent company to pledge assets in an amount
59 and a manner to be determined by the department and/or to
60 collateralize the loan in an amount and a manner to be determined
61 by the department to ensure the performance of the terms of the
62 contract.

63 (2) Upon receipt of the letter of intent from a private
64 company, the municipality may apply to the department for a loan

65 or grant. The application from the municipality shall include but
66 not be limited to:

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

69 (b) A statement showing the sources of funding for the
70 entire project, including the private company's or governmental
71 unit's investment in the project and any public and other private
72 sources of funding.

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

76 (d) Evidence that there will be a private match of at
77 least Three Dollars (\$3.00) for every One Dollar (\$1.00) of state
78 assistance, except in the case of ports where the private match
79 will be at least Two Dollars (\$2.00) for every One Dollar (\$1.00)
80 of state assistance.

81 (e) Demonstration that the private company is
82 financially sound and is likely to fulfill the commitments made in
83 its letter of intent.

84 (f) A proposed timetable for the provision of the
85 improvements.

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

88 (h) A demonstration that insufficient local capital
89 improvement funds at reasonable rates and terms are available
90 within the necessary time to provide the needed improvement on
91 public property. This includes local funds available through
92 issuance of bonds or other means, state funds available through
93 existing programs, and available federal program funds such as
94 community development block grant funds, urban development action
95 grant funds, and economic development administration funds.

96 (i) A demonstration that insufficient private funds are
97 available at reasonable rates and terms within the necessary time

98 to fund improvement on property owned by the private company.

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

101 (a) The number of net new full-time equivalent jobs
102 that will be provided and the amount of additional state and local
103 tax revenue estimated by the University Research Center to be
104 directly generated by the private company's new investment, and
105 additionally, as to loan applications by state agencies, the
106 extent to which shipping through the port will be increased by the
107 proposed port development projects, the degree to which jobs will
108 be increased in the port area and the impact on port revenues.

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

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

113 The department and the University Research Center may use the
114 resources and capabilities of the planning and development
115 districts in carrying out the provisions of this chapter.

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

120 (5) (a) Notwithstanding anything contained in this chapter,
121 an agency of the State of Mississippi operating a state-owned
122 port, and hereinabove identified as a "municipality" and
123 "governmental unit" for purposes of this chapter, may make
124 application for a loan or grant under the terms and provisions of
125 this chapter. In addition, a public agency operating a port
126 bordering on the Gulf of Mexico, which shall be considered to be a
127 "municipality" or a "governmental unit" for the purposes of this
128 chapter, may make application for a loan or grant under the terms
129 and provisions of this chapter from funds other than those funds
130 authorized for a state-owned port under paragraph (e)(iii) of

131 Section 57-61-11. The application shall be initiated by
132 submission of a letter of intent to engage in a project or
133 projects for the purpose of effecting enlargement and improvement
134 in all facilities used and useful in attracting international and
135 foreign commerce through the port. Projects eligible for
136 inclusion in the letter of intent may include, but not be
137 restricted to:

138 (i) Dredging and deepening the access channel and
139 harbor basin of the port;

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

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

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

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

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

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

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

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

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

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

163 (vii) Financial data of port activities, including

164 cost of project, degree of federal funding available and required
165 local participation.

166 On or before January 1, 1989, a state-owned port described in
167 this paragraph (b) shall submit to the Senate Finance Committee
168 and the House Ways and Means Committee of the Mississippi
169 Legislature a comprehensive, written report updating for each
170 committee the information listed in items (i) through (vii) of
171 this paragraph (b) with particular emphasis on the economic
172 contribution to the region and state by shipping activity at the
173 port; on financial data with respect to the degree of federal
174 funding available and local participation in funding port
175 activities; and on progress made in dredging and completing other
176 improvements necessary to accommodate modern shipping.

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

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

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

183 (iii) Impact on port revenues.

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

186 (6) A municipality may apply to the department for a grant
187 under the terms and provisions of this chapter, and the department
188 may award grants to a municipality subject to limitations
189 contained in this chapter. The application shall be initiated by
190 submission of a letter of intent to engage in a project or
191 projects for the purpose of providing improvements necessary to
192 accommodate a United States Navy home port.

193 (7) The Legislature hereby finds and determines that
194 financing facilities necessary to accommodate a Navy home port
195 serves a valid public purpose in that a Navy home port will
196 significantly contribute to the employment base of the state which

197 is in great need of assistance; provided, that in the event such
198 facilities are no longer required for use by the Navy as a home
199 port, such facilities shall revert as provided in Section 59-9-21.

200 (8) Notwithstanding any provision or requirement of this
201 chapter to the contrary, a municipality may make application for a
202 loan under this chapter, in an amount not to exceed Five Million
203 Dollars (\$5,000,000.00), for the purpose of acquiring and
204 developing land to be used as a technology/industrial park for
205 which there is a binding commitment by one or more private
206 companies to create and maintain not less than an aggregate of
207 three hundred (300) jobs meeting minimum criteria established by
208 the department. Such a commitment by a private company shall not
209 disqualify the private company from obtaining assistance under
210 this section. The match requirements of this section shall not
211 apply to any loan made pursuant to this subsection (8).

212 (9) (a) A municipality is authorized to negotiate a
213 contract for the acquisition, construction and erection of a
214 project or any portion of a project hereunder where a municipality
215 finds that, because of the particular nature of a project or any
216 portion thereof, it would be in the best public interest of the
217 municipality to negotiate.

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

226 (10) A municipality is authorized upon such terms and
227 conditions as the municipality may deem advisable, provided such
228 terms and conditions shall not be in conflict with the provisions
229 of this chapter, to (a) acquire, whether by construction,

230 purchase, gift or lease, all of or any portion of a project
231 hereunder; (b) to lease or sell to others all of or any portion of
232 a project hereunder; and (c) to lend to the private company the
233 proceeds of the loan from the board to such municipality.

234 (11) All agreements between a municipality and a private
235 company related directly or indirectly to a project or a portion
236 of a project to be funded in whole or in part under this chapter
237 are subject to approval by the department.

238 SECTION 2. This act shall take effect and be in force from
239 and after its passage.