

By: Moak

To: Conservation and
Water Resources; Ways
and Means

HOUSE BILL NO. 1531

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 UNITED STATES ENVIRONMENTAL
5 PROTECTION AGENCY AS KNOWINGLY HAVING VIOLATED THE FEDERAL CLEAN
6 WATER ACT; TO AMEND SECTION 57-61-14, MISSISSIPPI CODE OF 1972, TO
7 REMOVE THE SALES TAX EXEMPTION FOR CERTAIN COMPANIES IN VIOLATION
8 OF THE FEDERAL CLEAN WATER ACT; TO AMEND SECTIONS 57-61-9 AND
9 57-61-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN
10 PRIVATE COMPANIES THAT ARE IN VIOLATION OF THE FEDERAL CLEAN WATER
11 ACT SHALL PAY A PENALTY ON THE REMAINING PORTION OF THEIR LOANS
12 UNDER THE MISSISSIPPI BUSINESS INVESTMENT ACT; TO AMEND SECTION
13 27-65-111, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND
14 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 United States Environmental
18 Protection Agency as knowingly having violated the Federal Clean
19 Water Act (33 USCS 1251 et seq.), the Department of Economic and
20 Community Development shall not administer loans or grants of
21 federal or state funds for the benefit of such processor under the
22 Mississippi Business Investment Act or the Community Development
23 Block Grant Program. After the ten-year period, the department
24 may make loans to such processors but shall assess a penalty of
25 two percent (2%) greater than the current prime rate on the amount
26 of the loan payable by 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 or on land the municipality is authorized to own

33 or otherwise acquire. The letter of intent shall include:

34 (a) Except for strategic investments, a commitment that
35 the proposed project will create and maintain a minimum of ten
36 (10) net new full-time equivalent jobs, will create and maintain
37 at least a five percent (5%) increase in full-time equivalent jobs
38 in the case of expansion of an enterprise already located at the
39 site or at least a twenty-five percent (25%) increase in full-time
40 equivalent jobs pursuant to subsection (9) of Section 57-61-15 and
41 will create and maintain at least one (1) net new full-time
42 equivalent job for every Fifteen Thousand Dollars (\$15,000.00)
43 either loaned or granted for the project. The commitment required
44 by this paragraph (a) shall include any jobs created prior to the
45 effective date of this chapter resulting from contracts entered
46 into contingent upon assistance being made available under this
47 chapter. All jobs required to be maintained by this paragraph (a)
48 shall be maintained until such time as any loan made under this
49 chapter for the benefit of a private company is repaid. The
50 letter of intent shall include a statement that the private
51 company understands that if it is cited by the United States
52 Environmental Protection Agency as knowingly having violated the
53 federal Clean Water Act, the company shall be liable for a penalty
54 of two percent (2%) greater than the current prime rate on the
55 remainder of the loan made for its benefit.

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

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

63 (d) If required by the department, a notarized
64 statement of willingness to grant a lien on the facility for which
65 the improvement is being provided, in an amount and a manner to be
66 determined by the department, which lien may be foreclosed in the
67 event that the private company fails to operate in the facility
68 according to the terms of the agreement and/or to collateralize
69 the loan made for the benefit of the private company for which the

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

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

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

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

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

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

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

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

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

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

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

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

128 (a) The number of net new full-time equivalent jobs
129 that will be provided and the amount of additional state and local
130 tax revenue estimated by the University Research Center to be
131 directly generated by the private company's new investment, and
132 additionally, as to loan applications by state agencies, the
133 extent to which shipping through the port will be increased by the
134 proposed port development projects, the degree to which jobs will
135 be increased in the port area and the impact on port revenues.

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

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

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

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

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

165 (i) Dredging and deepening the access channel and
166 harbor basin of the port;

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

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

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

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

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

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

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

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

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

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

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

193 On or before January 1, 1989, a state-owned port described in
194 this paragraph (b) shall submit to the Senate Finance Committee
195 and the House Ways and Means Committee of the Mississippi
196 Legislature a comprehensive, written report updating for each
197 committee the information listed in items (i) through (vii) of
198 this paragraph (b) with particular emphasis on the economic
199 contribution to the region and state by shipping activity at the
200 port; on financial data with respect to the degree of federal
201 funding available and local participation in funding port

202 activities; and on progress made in dredging and completing other
203 improvements necessary to accommodate modern shipping.

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

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

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

210 (iii) Impact on port revenues.

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

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

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

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

233 (b) Contracts by a private company for the acquisition,
234 construction or erection of a project which receives assistance

235 under this chapter shall be effected in the manner prescribed by
236 law for public contracts, unless the department makes a written
237 finding that, because of special circumstances with respect to the
238 projects or any portion thereof, it would better serve the public
239 interest or more effectively achieve the purposes of this chapter
240 to enter into such contracts based on negotiation.

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

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

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

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

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

262 (b) The rate of interest charged by the department for
263 improvements not on publicly owned property may be negotiated by
264 the department. Private companies that are cited by the United
265 States Environmental Protection Agency for knowingly having
266 violated the federal Clean Water Act shall be liable for a penalty
267 equal to two percent (2%) greater than the current prime rate for

268 the remainder of the loans made for their benefit. The penalty
269 shall be payable in monthly installments.

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

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

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

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

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

291 (iii) The total of grants and loans to any one
292 state-owned port made pursuant to an application under Section
293 57-61-9(5)(a) shall not exceed Twenty Million Dollars
294 (\$20,000,000.00).

295 (iv) Before any loan or grant may be made under
296 Section 57-61-9(5)(a) to a state-owned port bordering the Gulf of
297 Mexico, the applicant shall make adequate assurance to the
298 department that federal participation in the cost of the project
299 or projects has been committed contingent only upon availability
300 of local participation in accordance with federal guidelines.

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

314 (f) For a period of ten (10) years from the date that a
315 private company is cited by the United States Environmental
316 Protection Agency as knowingly having violated the federal Clean
317 Water Act, the department shall not make any loan funds available
318 under this chapter to such company.

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

321 57-61-14. In accordance with Section 27-65-111, purchases of
322 tangible personal property or services by a private company, as
323 defined in this chapter, with proceeds of bonds issued under this
324 chapter, shall be exempt from sales tax. If the private company
325 is cited by the United States Environmental Protection Agency as
326 knowingly having violated the federal Clean Water Act, the company
327 shall not be exempt from sales tax under this section for a period
328 of ten (10) years from the date of the violation.

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

331 27-65-111. The exemptions from the provisions of this
332 chapter which are not industrial, agricultural or governmental, or
333 which do not relate to utilities or taxes, or which are not

334 properly classified as one of the exemption classifications of
335 this chapter, shall be confined to persons or property exempted by
336 this section or by the Constitution of the United States or the
337 State of Mississippi. No exemptions as now provided by any other
338 section, except the classified exemption sections of this chapter
339 set forth herein, shall be valid as against the tax herein levied.
340 Any subsequent exemption from the tax levied hereunder, except as
341 indicated above, shall be provided by amendments to this section.

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

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

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

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

354 (b) Sales of daily or weekly newspapers, and
355 periodicals or publications of scientific, literary or educational
356 organizations exempt from federal income taxation under Section
357 501(c)(3) of the Internal Revenue Code of 1954, as it exists as of
358 March 31, 1975, and subscription sales of all magazines.

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

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

363 (e) Sales of tangible personal property to an
364 orphanage, old men's or ladies' home, supported wholly or in part
365 by a religious denomination, fraternal nonprofit organization or
366 other nonprofit organization.

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

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

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

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

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

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

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

396 (v) Sold to this state or any political
397 subdivision or municipal corporation thereof, for use in the
398 treatment of a human being or furnished for the treatment of a
399 human being by a medical facility or clinic maintained by this

400 state or any political subdivision or municipal corporation
401 thereof.

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

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

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

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

428 (i) Retail sales of automobiles, trucks and
429 truck-tractors if exported from this state within forty-eight (48)
430 hours and registered and first used in another state.

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

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

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

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

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

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

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

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

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

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

461 (t) Sales of tangible personal property or services to
462 domestic violence shelters which qualify for state funding under
463 Sections 93-21-101 through 93-21-113.

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

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

470 (w) Sales of tangible personal property or services to
471 a private company, as defined in Section 57-61-5, which is making
472 such purchases with proceeds of bonds issued under Section 57-61-1
473 et seq., the Mississippi Business Investment Act, except as
474 otherwise provided in Section 57-61-14, as amended by House Bill
475 No. _____, 2000 Regular Session.

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

480 SECTION 6. This act shall take effect and be in force from
481 and after July 1, 2000.