

By: Horhn, Simmons

To: Finance

SENATE BILL NO. 3230

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107 connection with the program; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

371 for purchasing insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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