

By: Senator(s) Horhn

To: Finance

SENATE BILL NO. 3157

1 AN ACT TO CREATE THE MISSISSIPPI BUSINESS INCUBATOR
2 ASSISTANCE ACT; TO ESTABLISH UNDER THE DIRECTION OF THE
3 MISSISSIPPI DEVELOPMENT AUTHORITY, 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 MISSISSIPPI DEVELOPMENT AUTHORITY
9 SHALL DETERMINE THE AMOUNT OF THE GRANT TO THE MISSISSIPPI
10 ENTERPRISE FOR TECHNOLOGY; TO ESTABLISH THE TERMS AND CONDITIONS
11 OF SUCH GRANT; TO PROVIDE THAT ANY FUNDS AVAILABLE PURSUANT TO THE
12 PROVISIONS OF THIS ACT THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY
13 DETERMINES NOT TO BE NECESSARY FOR GRANTS TO THE MISSISSIPPI
14 ENTERPRISE FOR TECHNOLOGY MAY BE USED BY THE DEPARTMENT FOR GRANTS
15 FOR THE DEVELOPMENT AND EXPANSION OF SMALL BUSINESS INCUBATION
16 CENTERS AND THEIR NEEDED SUPPORT ACTIVITIES; TO PROVIDE CRITERIA
17 THAT A BUSINESS MUST MEET IN ORDER TO BE ELIGIBLE FOR ASSISTANCE;
18 TO REQUIRE THE ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE REVIEW
19 BOARDS TO REVIEW ASSISTANCE APPLICATIONS AND ESTABLISH THE TERMS
20 AND CONDITIONS UPON WHICH ASSISTANCE MAY BE PROVIDED; TO PROVIDE
21 FOR THE ISSUANCE OF \$5,000,000.00 IN GENERAL OR LIMITED OBLIGATION
22 BONDS OF THE STATE TO FUND THE PROGRAM; AND FOR RELATED PURPOSES.

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

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

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

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

31 (b) "Business incubator center" means facilities and
32 support services approved by the Mississippi Enterprise for
33 Technology and the Mississippi Development Authority pursuant to
34 guidelines promulgated by the Mississippi Enterprise for
35 Technology and the Mississippi Development Authority that

36 encourage the establishment of successful small businesses by
37 providing a short-term sheltered environment.

38 (c) "General Fund" means the General Fund of the State
39 of Mississippi.

40 (d) "Loan" means a loan by the Mississippi Enterprise
41 for Technology to a small business in accordance with this act.

42 (e) "MBIA" means the Mississippi Business Incubation
43 Association.

44 (f) "MDA" means the Mississippi Development Authority.

45 (g) "MET" means the Mississippi Enterprise for
46 Technology.

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

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

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

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

58 SECTION 4. (1) The MET shall make application for a grant
59 to MDA in a form satisfactory to MDA.

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

67 SECTION 5. (1) MDA shall grant funds under this act to the
68 MET in accordance with the following terms and conditions:

69 (a) Grant funds received by the MET in accordance with
70 this act shall be used by the MET to establish a revolving
71 assistance fund for the purpose of providing assistance in
72 accordance with this act. Except as otherwise allowed in this
73 act, all principal and interest payments by small businesses in
74 repayment of such assistance shall be eligible for and used by the
75 MET for additional assistance in accordance with this act.

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

80 (c) The MET may utilize not more than fifty percent
81 (50%) of interest earned on assistance provided to small
82 businesses in accordance with this act for administration and
83 management of the program, unless specifically authorized to
84 utilize more by MDA.

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

100 (e) MDA shall assist MET in connection with its
101 compliance with this act.

102 (f) The MET shall submit the following reports to MDA:

103 (i) An annual audit of grant funds received in
104 connection with the program; and

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

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

134 (2) Any funds available pursuant to the provisions of this
135 act that MDA determines not to be necessary for grant funds under
136 subsection (1) of this section may be used by MDA for grants for
137 the development and expansion of small business incubation centers
138 and their needed support activities. MDA shall promulgate such
139 rules and regulations for eligibility for grants under this
140 subsection as it considers necessary.

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

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

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

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

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

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

164 (b) The interest rate on loans shall not be less than
165 five percent (5%) per annum or more than four percent (4%) above

166 the federal discount rate at the time of loan approval, plus the
167 servicing fees established in this act.

168 (c) As security for any loan under the program, the MET
169 shall take a security interest in assets of the small business and
170 require personal guarantees of all persons and entities owning
171 twenty percent (20%) or more of the small business. Such security
172 interests may be subordinate to other security interests in such
173 assets.

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

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

186 (f) No small business shall receive assistance under
187 the program in excess of One Hundred Thousand Dollars
188 (\$100,000.00).

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

195 (i) A banker not affiliated with the senior
196 lender; and

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

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

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

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

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

230 SECTION 9. No assistance shall be provided to a small
231 business under this act unless the small business certifies to the

232 MET, in a form satisfactory to MDA, that it will not discriminate
233 against any employee or against any applicant for employment
234 because of race, religion, color, national origin, sex or age.

235 SECTION 10. (1) There is hereby created a special fund in
236 the State Treasury to be known as the Mississippi Business
237 Incubator Assistance Fund out of which grants and expenditures
238 authorized in connection with the program shall be disbursed. All
239 monies received by issuance of bonds to carry out the purposes of
240 this act shall be deposited into the Mississippi Business
241 Incubator Assistance Fund.

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

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

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

260 (3) The State Treasurer shall determine and report to the
261 Department of Finance and Administration and Legislative Budget
262 Office by September 1 of each year the amount of money necessary
263 for the payment of the principal of and interest on outstanding
264 obligations for the following fiscal year and the times and

265 amounts of the payments. It shall be the duty of the Governor to
266 include in every executive budget submitted to the Legislature
267 full information relating to the issuance of bonds and notes under
268 the provisions of this act and the status of the General Fund for
269 the payment of the principal of and interest on the bonds and
270 notes.

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

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

295 (2) As evidence of indebtedness authorized in this act,
296 general or limited obligation bonds of the state shall be issued
297 from time to time to provide monies necessary to carry out the

298 purposes of this act for such total amount, in such form, in such
299 denominations, payable in such currencies (either domestic or
300 foreign, or both), and subject to such terms and conditions of
301 issue, redemption and maturity, rate of interest and time of
302 payment of interest as the seller directs, except that such bonds
303 shall mature or otherwise be retired in annual installments
304 beginning not more than five (5) years from date thereof and
305 extending not more than twenty (20) years from the date thereof.

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

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

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

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

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

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

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

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

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

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

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

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

362 (8) The seller may provide in the resolution authorizing the
363 issuance of such bonds for the employment of one or more persons

364 or firms to assist in the sale of the bonds; for executing
365 contracts with financial institutions located either within or
366 without the State of Mississippi to act as registrar, paying
367 agents, transfer agents or otherwise; for rating of the bonds; and
368 for purchasing insurance.

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

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

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

401 (a) To purchase or underwrite an issue or series of
402 issues of notes.

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

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

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

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

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

429 purchase loan or credit agreements established with respect
430 thereto, all subject to the authorization and direction of the
431 seller.

432 (5) Outstanding notes evidencing such borrowings may be
433 funded and retired by the issuance and sale of the bonds of the
434 state as hereinafter authorized. The refunding bonds must be
435 issued and sold not later than a date two (2) years after the date
436 of issuance of the first notes evidencing such borrowings to the
437 extent that payment of such notes has not otherwise been made or
438 provided for by sources other than proceeds of replacement notes.

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

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

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

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

456 SECTION 16. The Attorney General of the State of Mississippi
457 shall represent the seller in issuing, selling and validating
458 bonds or notes herein provided for, and the seller is hereby
459 authorized and empowered to expend from the proceeds derived from
460 the sale of the bonds or notes authorized hereunder all necessary

461 administrative, legal and other expenses incidental and related to
462 the issuance of bonds or notes authorized under this act.

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