SENATE BILL NO. 3157  

AN ACT TO CREATE THE MISSISSIPPI BUSINESS INCUBATOR ASSISTANCE ACT; TO ESTABLISH UNDER THE DIRECTION OF THE MISSISSIPPI DEVELOPMENT AUTHORITY, THE MISSISSIPPI BUSINESS INCUBATOR ASSISTANCE PROGRAM FOR THE PURPOSE OF MAKING GRANTS TO THE MISSISSIPPI ENTERPRISE FOR TECHNOLOGY FOR ITS USE IN PROVIDING ASSISTANCE TO SMALL BUSINESSES AND FOR THE PURPOSE OF PROVIDING FUNDS FOR THE DEVELOPMENT AND EXPANSION OF BUSINESS INCUBATION CENTERS; TO PROVIDE THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY SHALL DETERMINE THE AMOUNT OF THE GRANT TO THE MISSISSIPPI ENTERPRISE FOR TECHNOLOGY; TO ESTABLISH THE TERMS AND CONDITIONS OF SUCH GRANT; TO PROVIDE THAT ANY FUNDS AVAILABLE PURSUANT TO THE PROVISIONS OF THIS ACT THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY DETERMINES NOT TO BE NECESSARY FOR GRANTS TO THE MISSISSIPPI ENTERPRISE FOR TECHNOLOGY MAY BE USED BY THE DEPARTMENT FOR GRANTS FOR THE DEVELOPMENT AND EXPANSION OF SMALL BUSINESS INCUBATION CENTERS AND THEIR NEEDED SUPPORT ACTIVITIES; TO PROVIDE CRITERIA THAT A BUSINESS MUST MEET IN ORDER TO BE ELIGIBLE FOR ASSISTANCE; TO REQUIRE THE ESTABLISHMENT OF SMALL BUSINESS ASSISTANCE REVIEW BOARDS TO REVIEW ASSISTANCE APPLICATIONS AND ESTABLISH THE TERMS AND CONDITIONS UPON WHICH ASSISTANCE MAY BE PROVIDED; TO PROVIDE FOR THE ISSUANCE OF $5,000,000.00 IN GENERAL OR LIMITED OBLIGATION BONDS OF THE STATE TO FUND THE PROGRAM; AND FOR RELATED PURPOSES.

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

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

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

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

(b) "Business incubator center" means facilities and support services approved by the Mississippi Enterprise for Technology and the Mississippi Development Authority pursuant to guidelines promulgated by the Mississippi Enterprise for Technology and the Mississippi Development Authority that...
encourage the establishment of successful small businesses by providing a short-term sheltered environment.

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. (1) MDA shall grant funds under this act to the MET in accordance with the following terms and conditions:
(a) Grant funds received by the MET in accordance with this act shall be used by the MET to establish a revolving assistance fund for the purpose of providing assistance in accordance with this act. Except as otherwise allowed in this act, all principal and interest payments by small businesses in repayment of such assistance shall be eligible for and used by the MET for additional assistance in accordance with this act.

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

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

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

(e) MDA shall assist MET in connection with its compliance with this act.
(f) The MET shall submit the following reports to MDA:

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

   (ii) A semiannual report on July 15 and January 15 of each year, describing all assistance provided pursuant to the program, such reports to include without limitation the following:

       a description of each small business receiving assistance; the project to be assisted and purpose of assistance; a description of each loan, including the terms and conditions thereof and use of the funds by the small business; and a history of the assistance pool, including principal amount loaned, interest earned, interest expended for administration and management, assistance funds available and losses. After the expiration of five (5) years from the date of receipt of the grant in accordance with this act, upon satisfaction that such reports are no longer necessary or appropriate to maintain and ensure compliance with the program, MDA may permit the MET to discontinue such semiannual reports.

(g) If MDA determines that the MET has provided assistance in a manner inconsistent with the provisions of this act, then MDA may require the MET to convey to MDA (i) all administrative and management control of assistance provided by it under the program, and (ii) all grant funds that have not been committed for loans under this act. In such event, MDA may, in its discretion, assign administrative and management control of outstanding loans to planning and development districts and qualified entities participating in the Mississippi Small Business Assistance Program established under the Mississippi Small Business Assistance Act. MDA may, in its discretion, use any grant funds conveyed to it that have not been committed for loans under this act to provide additional grants to planning and development districts and qualified entities eligible for grants under the Mississippi Small Business Assistance Act.
Any funds available pursuant to the provisions of this act that MDA determines not to be necessary for grant funds under subsection (1) of this section may be used by MDA for grants for the development and expansion of small business incubation centers and their needed support activities. MDA shall promulgate such rules and regulations for eligibility for grants under this subsection as it considers necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Two (2) individuals who are members of the
governing board of the business incubator center.
Local small business assistance review boards shall meet at least quarterly and shall meet anytime there are at least two (2) assistance applications pending that require review.

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

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

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

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

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

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

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

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

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

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

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

(2) As evidence of indebtedness authorized in this act, general or limited obligation bonds of the state shall be issued from time to time to provide monies necessary to carry out the...
purposes of this act for such total amount, in such form, in such
denominations, payable in such currencies (either domestic or
foreign, or both), and subject to such terms and conditions of
issue, redemption and maturity, rate of interest and time of
payment of interest as the seller directs, except that such bonds
shall mature or otherwise be retired in annual installments
beginning not more than five (5) years from date thereof and
extending not more than twenty (20) years from the date thereof.
(3) All bonds and notes issued under authority of this act
shall be signed by the chairman of the seller, or by his facsimile
signature, and the official seal of the seller shall be affixed
thereto, attested by the secretary of the seller.
(4) All bonds and notes issued under authority of this act
may be general or limited obligations of the state, and the full
faith and credit of the State of Mississippi as to general
obligation bonds, or the revenue derived from projects assisted as
to limited obligation bonds, are hereby pledged for the payment of
the principal of, and interest on, such bonds and notes.
(5) Such bonds and notes and the income therefrom shall be
exempt from all taxation in the State of Mississippi.
(6) The bonds may be issued as coupon bonds or registered as
to both principal and interest, as the seller may determine. If
interest coupons are attached, they shall contain the facsimile
signature of the chairman and the secretary of the seller.
(7) As to bonds issued hereunder and designated as taxable
bonds by the seller, any immunity of the state to taxation by the
United States government of interest on bonds or notes issued by
the state is hereby waived.

SECTION 13. (1) Whenever bonds are issued, they shall be
offered for sale at not less than par value and accrued interest
and shall be sold by the seller at public or private sale, from
time to time, in such manner and at such price as may be
determined by the seller to be most advantageous.
(2) Any portion of any bond issue so offered and not sold or subscribed for at public sale may be disposed of by private sale by the seller in such manner and at such prices not less than par and accrued interest, as the seller shall direct.

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

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

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

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

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

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

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

(2) All temporary borrowings made under this section shall
be evidenced by notes of the state which shall be issued, from
time to time, for such amounts not exceeding in the aggregate the
applicable statutory and constitutional debt limitation, in such
form and in such denominations and subject to terms and conditions
of sale and issue, prepayment or redemption and maturity, rate or
rates of sale and time of payment of interest, as the seller shall
authorize and direct and in accordance with this act. Such
authorization and direction may provide for the subsequent
issuance of replacement notes to refund, upon issuance thereof,
such notes, and may specify such other terms and conditions with
respect to the notes and replacement notes thereby authorized for
issuance as the seller may determine and direct.
(3) When the authorization and direction of the seller provide for the issuance of replacement notes, the seller is hereby authorized in the name and on behalf of the state, to enter into agreements, with any financial institutions or persons in the United States having the power to enter into the same:

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

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

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

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

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

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

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

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

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

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

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

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

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