SENATE BILL NO. 2406

AN ACT TO PROVIDE THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY SHALL NOT ADMINISTER LOANS OR GRANTS OF FEDERAL OR STATE FUNDS FOR A CERTAIN PERIOD OF TIME TO POULTRY PROCESSORS WHO HAVE BEEN CITED BY THE IMMIGRATION AND NATURALIZATION SERVICE AS KNOWINGLY HAVING EMPLOYED ILLEGAL IMMIGRANTS; TO AMEND SECTION 57-61-14, MISSISSIPPI CODE OF 1972, TO REMOVE THE SALES TAX EXEMPTION FOR CERTAIN COMPANIES IN VIOLATION OF THE FEDERAL IMMIGRATION LAWS; TO AMEND SECTIONS 57-61-9 AND 57-61-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN PRIVATE COMPANIES THAT ARE IN VIOLATION OF THE FEDERAL IMMIGRATION LAWS SHALL PAY A PENALTY ON THE REMAINING PORTION OF THEIR LOANS UNDER THE MISSISSIPPI BUSINESS INVESTMENT ACT; TO AMEND SECTION 27-65-111, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. For a period of ten (10) years from the date that a poultry processor is cited by the Immigration and Naturalization Service as knowingly having employed illegal immigrants, the Mississippi Development Authority shall not administer loans or grants of federal or state funds for the benefit of such processor under the Mississippi Business Investment Act or the Community Development Block Grant Program. After the ten-year period, the Mississippi Development Authority may make loans to such processors but shall assess a penalty of two percent (2%) greater than the current prime rate on the amount of the loan payable by the processor in monthly installments.

SECTION 2. Section 57-61-9, Mississippi Code of 1972, is amended as follows:

57-61-9. (1) Any private company desiring assistance from a municipality shall submit to the municipality a letter of intent to locate, expand or build a facility entirely or partially within the municipality or on land the municipality is authorized to own or otherwise acquire. The letter of intent shall include:
(a) Except for strategic investments, a commitment that the proposed project will create and maintain a minimum of ten (10) net new full-time equivalent jobs, will create and maintain at least a five percent (5%) increase in full-time equivalent jobs in the case of expansion of an enterprise already located at the site or at least a twenty-five percent (25%) increase in full-time equivalent jobs pursuant to subsection (9) of Section 57-61-15 and will create and maintain at least one (1) net new full-time equivalent job for every Fifteen Thousand Dollars ($15,000.00) either loaned or granted for the project. The commitment required by this paragraph (a) shall include any jobs created prior to the effective date of this chapter resulting from contracts entered into contingent upon assistance being made available under this chapter. All jobs required to be maintained by this paragraph (a) shall be maintained until such time as any loan made under this chapter for the benefit of a private company is repaid. The letter of intent shall include a statement that the private company understands that if it is cited by the Immigration and Naturalization Service as knowingly having employed illegal immigrants, the company shall be liable for a penalty of two percent (2%) greater than the current prime rate on the remainder of the loan made for its benefit.

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

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

(d) If required by the Mississippi Development Authority, a notarized statement of willingness to grant a lien on the facility for which the improvement is being provided, in an amount and a manner to be determined by the Mississippi Development Authority.
Development Authority, which lien may be foreclosed in the event that the private company fails to operate in the facility according to the terms of the agreement and/or to collateralize the loan made for the benefit of the private company for which the improvement is being provided in an amount and manner to be determined by the Mississippi Development Authority. In the event the contractual agreement is to be entered into with a department or subsidiary of the United States government, the Mississippi Development Authority shall determine that the governmental unit will operate the proposed project for a sufficient number of years to retire the loan based on increased revenue estimates by the University Research Center and any agreement entered into shall reflect that the interest paid on any loan for such purpose shall be included in Mississippi's contributory value in the project. In the event the private company requesting the assistance is a subsidiary of another corporation, if required by the Mississippi Development Authority, any contractual agreement entered into shall also require the parent company to unconditionally warrant the performance of the subsidiary in carrying out the terms of the agreement or it shall require the subsidiary and/or the parent company to pledge assets in an amount and a manner to be determined by the Mississippi Development Authority and/or to collateralize the loan in an amount and a manner to be determined by the Mississippi Development Authority to ensure the performance of the terms of the contract.

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

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

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

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

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

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

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

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

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

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

(3) The Mississippi Development Authority shall consider grant and loan applications based on the following criteria:

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

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

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

The Mississippi Development Authority and the University
Research Center may use the resources and capabilities of the
planning and development districts in carrying out the provisions
of this chapter.

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

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

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

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

(iii) Construction and installation of piling,
bulkheads, docks, wharves, warehouses and appurtenances; and
(iv) Acquisition of facilities and equipment for
handling bulk and containerized cargo.

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

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

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

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

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

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

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

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

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

(c) The Mississippi Development Authority shall consider grant and loan applications based on the following:

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

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

(iii) Impact on port revenues.

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

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

(7) The Legislature hereby finds and determines that financing facilities necessary to accommodate a Navy home port serves a valid public purpose in that a Navy home port will significantly contribute to the employment base of the state which is in great need of assistance; provided, that in the event such facilities are no longer required for use by the Navy as a home port, such facilities shall revert as provided in Section 59-9-21.
(8) Notwithstanding any provision or requirement of this chapter to the contrary, a municipality may make application for a loan under this chapter, in an amount not to exceed Five Million Dollars ($5,000,000.00), for the purpose of acquiring and developing land to be used as a technology/industrial park for which there is a binding commitment by one or more private companies to create and maintain not less than an aggregate of three hundred (300) jobs meeting minimum criteria established by the Mississippi Development Authority. Such a commitment by a private company shall not disqualify the private company from obtaining assistance under this section. The match requirements of this section shall not apply to any loan made pursuant to this subsection (8).

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

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

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

(11) All agreements between a municipality and a private
compamy related directly or indirectly to a project or a portion
of a project to be funded in whole or in part under this chapter
are subject to approval by the Mississippi Development Authority.

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

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

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

(b) The rate of interest charged by the Mississippi
Development Authority for improvements not on publicly owned
property may be negotiated by the Mississippi Development
Authority. Private companies that are cited by the Immigration
and Naturalization Service for knowingly having employed illegal
immigrants shall be liable for a penalty equal to two percent (2%)
greater than the current prime rate for the remainder of the loans
made for their benefit. The penalty shall be payable in monthly
installments.

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

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

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

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

(ii) The rate of interest charged by the Mississippi Development Authority for loans for port projects may be negotiated by the Mississippi Development Authority and shall be consistent with Section 57-61-11(b) and (c).

(iii) The total of grants and loans to any one (1) state-owned port made pursuant to an application under Section 57-61-9(5)(a) shall not exceed Twenty Million Dollars ($20,000,000.00).

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

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

(f) For a period of ten (10) years from the date that a private company is cited by the Immigration and Naturalization Service as knowingly having employed illegal immigrants, the Mississippi Development Authority shall not make any loan funds available under this chapter to such company.

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

57-61-14. In accordance with Section 27-65-111, purchases of tangible personal property or services by a private company, as defined in this chapter, with proceeds of bonds issued under this chapter, shall be exempt from sales tax. If the private company is cited by the Immigration and Naturalization Service as knowingly having employed illegal immigrants, the company shall not be exempt from sales tax under this section for a period of ten (10) years from the date of the violation.

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

27-65-111. The exemptions from the provisions of this chapter which are not industrial, agricultural or governmental, or which do not relate to utilities or taxes, or which are not properly classified as one of the exemption classifications of this chapter, shall be confined to persons or property exempted by this section or by the Constitution of the United States or the State of Mississippi. No exemptions as now provided by any other section, except the classified exemption sections of this chapter set forth herein, shall be valid as against the tax herein levied.
Any subsequent exemption from the tax levied hereunder, except as indicated above, shall be provided by amendments to this section.

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

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

(a) Sales of tangible personal property and services to hospitals or infirmaries owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are subject to and governed by Sections 41-7-123 through 41-7-127. Only sales of tangible personal property or services which are ordinary and necessary to the operation of such hospitals and infirmaries are exempted from tax.

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

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

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

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

(f) Sales of tangible personal property, labor or services taxable under Sections 27-65-17, 27-65-19, and 27-65-23, to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual.
(g) Sales to elementary and secondary grade schools, junior and senior colleges owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are exempt from state income taxation, provided that this exemption does not apply to sales of property or services which are not to be used in the ordinary operation of the school, or which are to be resold to the students or the public.

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

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

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

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

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

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

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

Notwithstanding the preceding sentence of this paragraph (h), "medicines" as used in this paragraph (h), shall mean and include sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve in the body.

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

Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this paragraph (h).

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

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

(k) From July 1, 1985, through December 31, 1992, retail sales of "alcohol blended fuel" as such term is defined in Section 75-55-5. The gasoline-alcohol blend or the straight alcohol eligible for this exemption shall not contain alcohol distilled outside the State of Mississippi.
(l) Sales of tangible personal property or services to the Institute for Technology Development.

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

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

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

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

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

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

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

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

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

(v) Retail sales of food for human consumption purchased with food instruments issued the Mississippi Band of Choctaw Indians under the Women, Infants and Children Program (WIC) funded by the United States Department of Agriculture.
(w) Sales of tangible personal property or services to a private company, as defined in Section 57-61-5, which is making such purchases with proceeds of bonds issued under Section 57-61-1 et seq., the Mississippi Business Investment Act, except as otherwise provided in Section 57-61-14, as amended by Senate Bill No. 2406, 2002 Regular Session.

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

SECTION 6. This act shall take effect and be in force from and after July 1, 2002.