HOUSE BILL NO. 840

AN ACT TO AMEND SECTION 57-61-9, MISSISSIPPI CODE OF 1972, TO REVISE THE MATCHING FUNDS REQUIREMENT UNDER THE MISSISSIPPI BUSINESS INVESTMENT ACT; TO REQUIRE MATCHING FUNDS OF AT LEAST TWO PRIVATE DOLLARS FOR EVERY DOLLAR OF STATE ASSISTANCE FOR COMPANIES THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY DETERMINES TO BE HIGH TECHNOLOGY ENTERPRISES; AND FOR RELATED PURPOSES.

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

SECTION 1. 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.

(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, 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 ** the private match
will be at least Two Dollars ($2.00) for every One Dollar ($1.00)
of state assistance, and in the case where the Mississippi
Development Authority determines that a private company is a high
technology enterprise the private match will be at least Two
Dollars ($2.00) for every One Dollar ($1.00) of state assistance.
The Mississippi Development Authority shall establish criteria for
its use in determining whether a private company is a high
technology enterprise.

(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 company 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 2. This act shall take effect and be in force from and after its passage.