

By: Representatives Morris, McCoy, Smith
(39th)

To: Ways and Means

HOUSE BILL NO. 1337

1 AN ACT TO AMEND SECTION 57-61-9, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PROJECTS FOR WHICH A COUNTY OR MUNICIPALITY MAY REQUEST
3 ASSISTANCE UNDER THE MISSISSIPPI BUSINESS INVESTMENT ACT; TO AMEND
4 SECTION 57-61-11, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
5 MISSISSIPPI DEVELOPMENT AUTHORITY TO USE NOT MORE THAN
6 \$1,500,000.00 OF THE BOND PROCEEDS UNDER THE MISSISSIPPI BUSINESS
7 INVESTMENT ACT FOR THE PURPOSE OF MAKING LOANS FOR COUNTY-OWNED
8 PORT PROJECTS AND MUNICIPALLY OWNED PORT PROJECTS; AND FOR RELATED
9 PURPOSES.

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

11 **SECTION 1.** Section 57-61-9, Mississippi Code of 1972, is
12 amended as follows:

13 57-61-9. (1) Any private company desiring assistance from a
14 municipality shall submit to the municipality a letter of intent
15 to locate, expand or build a facility entirely or partially within
16 the municipality or on land the municipality is authorized to own
17 or otherwise acquire. The letter of intent shall include:

18 (a) Except for strategic investments, a commitment that
19 the proposed project will create and maintain a minimum of ten
20 (10) net new full-time equivalent jobs, will create and maintain
21 at least a five percent (5%) increase in full-time equivalent jobs
22 in the case of expansion of an enterprise already located at the
23 site or at least a twenty-five percent (25%) increase in full-time
24 equivalent jobs pursuant to subsection (9) of Section 57-61-15 and
25 will create and maintain at least one (1) net new full-time
26 equivalent job for every Fifteen Thousand Dollars (\$15,000.00)
27 either loaned or granted for the project. The commitment required
28 by this paragraph (a) shall include any jobs created prior to the
29 effective date of this chapter resulting from contracts entered
30 into contingent upon assistance being made available under this



31 chapter. All jobs required to be maintained by this paragraph (a)
32 shall be maintained until such time as any loan made under this
33 chapter for the benefit of a private company is repaid.

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

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

41 (d) If required by the Mississippi Development
42 Authority, a notarized statement of willingness to grant a lien on
43 the facility for which the improvement is being provided, in an
44 amount and a manner to be determined by the Mississippi
45 Development Authority, which lien may be foreclosed in the event
46 that the private company fails to operate in the facility
47 according to the terms of the agreement and/or to collateralize
48 the loan made for the benefit of the private company for which the
49 improvement is being provided in an amount and manner to be
50 determined by the Mississippi Development Authority. In the event
51 the contractual agreement is to be entered into with a department
52 or subsidiary of the United States government, the Mississippi
53 Development Authority shall determine that the governmental unit
54 will operate the proposed project for a sufficient number of years
55 to retire the loan based on increased revenue estimates by the
56 University Research Center and any agreement entered into shall
57 reflect that the interest paid on any loan for such purpose shall
58 be included in Mississippi's contributory value in the project.
59 In the event the private company requesting the assistance is a
60 subsidiary of another corporation, if required by the Mississippi
61 Development Authority, any contractual agreement entered into
62 shall also require the parent company to unconditionally warrant
63 the performance of the subsidiary in carrying out the terms of the



64 agreement or it shall require the subsidiary and/or the parent
65 company to pledge assets in an amount and a manner to be
66 determined by the Mississippi Development Authority and/or to
67 collateralize the loan in an amount and a manner to be determined
68 by the Mississippi Development Authority to ensure the performance
69 of the terms of the contract.

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

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

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

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

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

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

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

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

95 (h) A demonstration that insufficient local capital
96 improvement funds at reasonable rates and terms are available



97 within the necessary time to provide the needed improvement on
98 public property. This includes local funds available through
99 issuance of bonds or other means, state funds available through
100 existing programs, and available federal program funds such as
101 community development block grant funds, urban development action
102 grant funds, and economic development administration funds.

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

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

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

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

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

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

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

128 (5) (a) Notwithstanding anything contained in this chapter,
129 an agency of the State of Mississippi operating a state-owned



130 port, and hereinabove identified as a "municipality" and
131 "governmental unit" for purposes of this chapter, may make
132 application for a loan or grant under the terms and provisions of
133 this chapter. In addition, a public agency operating a port
134 bordering on the Gulf of Mexico, which shall be considered to be a
135 "municipality" or a "governmental unit" for the purposes of this
136 chapter, may make application for a loan or grant under the terms
137 and provisions of this chapter from funds other than those funds
138 authorized for a state-owned port under paragraph (e)(iii) of
139 Section 57-61-11. The application shall be initiated by
140 submission of a letter of intent to engage in a project or
141 projects for the purpose of effecting enlargement and improvement
142 in all facilities used and useful in attracting international and
143 foreign commerce through the port. Projects eligible for
144 inclusion in the letter of intent may include, but not be
145 restricted to:

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

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

150 (iii) Construction and installation of piling,
151 bulkheads, docks, wharves, warehouses and appurtenances; and

152 (iv) Acquisition of facilities and equipment for
153 handling bulk and containerized cargo.

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

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

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



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

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

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

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

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

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

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

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

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

192 (iii) Impact on port revenues.

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



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

203 (7) The Legislature hereby finds and determines that
204 financing facilities necessary to accommodate a Navy home port
205 serves a valid public purpose in that a Navy home port will
206 significantly contribute to the employment base of the state which
207 is in great need of assistance; provided, that in the event such
208 facilities are no longer required for use by the Navy as a home
209 port, such facilities shall revert as provided in Section 59-9-21.

210 (8) Notwithstanding any provision or requirement of this
211 chapter to the contrary, a municipality may make application for a
212 loan under this chapter, in an amount not to exceed Five Million
213 Dollars (\$5,000,000.00), for the purpose of acquiring and
214 developing land to be used as a technology/industrial park for
215 which there is a binding commitment by one or more private
216 companies to create and maintain not less than an aggregate of
217 three hundred (300) jobs meeting minimum criteria established by
218 the Mississippi Development Authority. Such a commitment by a
219 private company shall not disqualify the private company from
220 obtaining assistance under this section. The match requirements
221 of this section shall not apply to any loan made pursuant to this
222 subsection (8).

223 (9) Notwithstanding any provision or requirement of this
224 chapter to the contrary, a municipality operating a county-owned
225 port or municipally owned port may make application for a loan
226 under this chapter, in an amount not to exceed One Million Five
227 Hundred Thousand Dollars (\$1,500,000.00), for the purpose of



228 acquiring land and for repairing, renovating, maintaining and
229 improving such a port.

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

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

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

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

257 **SECTION 2.** Section 57-61-11, Mississippi Code of 1972, is
258 amended as follows:

259 57-61-11. The Mississippi Development Authority shall
260 establish such guidelines, rules and regulations for the repayment



261 of funds loaned pursuant to this chapter as may be necessary.
262 These provisions shall include, but not be limited to, the
263 following:

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

267 (b) The rate of interest charged by the Mississippi
268 Development Authority for improvements not on publicly owned
269 property may be negotiated by the Mississippi Development
270 Authority.

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

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

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

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

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



293 (iii) The total of grants and loans to any one (1)
294 state-owned port made pursuant to an application under Section
295 57-61-9(5) (a) shall not exceed Twenty Million Dollars
296 (\$20,000,000.00).

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

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

318 (f) Notwithstanding any provision of this chapter to
319 the contrary, the Mississippi Development Authority shall utilize
320 not more than One Million Five Hundred Thousand Dollars
321 (\$1,500,000.00) out of the proceeds of bonds authorized to be
322 issued in this chapter for the purpose of making loans to
323 municipalities operating county-owned ports or municipally owned
324 ports for the purpose of acquiring land and for repairing,
325 renovating, maintaining and improving such ports. The Mississippi



326 Development Authority shall establish an amortization schedule for
327 the repayment of any loans made pursuant to this paragraph (f). A
328 municipality shall not spend any port revenues for other purposes
329 unless payments on the loan are being timely made according to the
330 amortization schedule.

331 **SECTION 3.** This act shall take effect and be in force from
332 and after July 1, 2003.

