

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

To: Ways and Means

COMMITTEE SUBSTITUTE
FOR
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 \$3,000,000.00 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; TO DECREASE THE
9 AMOUNT OF BOND PROCEEDS UNDER THE MISSISSIPPI INVESTMENT BUSINESS
10 ACT THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY MUST USE TO MAKE
11 LOANS FOR STATE-OWNED PORT PROJECTS; AND FOR RELATED PURPOSES.

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

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

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

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



32 into contingent upon assistance being made available under this
33 chapter. All jobs required to be maintained by this paragraph (a)
34 shall be maintained until such time as any loan made under this
35 chapter for the benefit of a private company is repaid.

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

152 (iii) Construction and installation of piling,
153 bulkheads, docks, wharves, warehouses and appurtenances; and

154 (iv) Acquisition of facilities and equipment for
155 handling bulk and containerized cargo.

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

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



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

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

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

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

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

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

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

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

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

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

194 (iii) Impact on port revenues.



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

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

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

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

225 (9) Notwithstanding any provision or requirement of this
226 chapter to the contrary, a municipality operating a county-owned
227 port or municipally owned port may make application for a loan



228 under this chapter, in an amount not to exceed Three Million
229 Dollars (\$3,000,000.00), for the purpose of acquiring land,
230 buildings and other improvements and for repairing, renovating,
231 maintaining and improving such a port.

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

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

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

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

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



261 57-61-11. The Mississippi Development Authority shall
262 establish such guidelines, rules and regulations for the repayment
263 of funds loaned pursuant to this chapter as may be necessary.
264 These provisions shall include, but not be limited to, the
265 following:

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

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

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

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

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

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

291 (ii) The rate of interest charged by the
292 Mississippi Development Authority for loans for port projects may



293 be negotiated by the Mississippi Development Authority and shall
294 be consistent with Section 57-61-11(b) and (c).

295 (iii) The total of grants and loans to any one (1)
296 state-owned port made pursuant to an application under Section
297 57-61-9(5) (a) shall not exceed Twenty Million Dollars
298 (\$20,000,000.00).

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

306 (v) Notwithstanding any provision of this chapter
307 to the contrary, the Mississippi Development Authority shall
308 utilize not more than Four Million Dollars (\$4,000,000.00) out of
309 the proceeds of bonds authorized to be issued in this chapter to
310 be made available as interest-bearing loans to state-owned ports
311 for the purpose of repairing, renovating, maintaining and
312 improving the state-owned port. The Mississippi Development
313 Authority shall establish an amortization schedule for the
314 repayment of any loans made pursuant to this subparagraph. The
315 state-owned port shall not spend any revenues for other purposes
316 unless payments on the loan are being timely made according to the
317 amortization schedule. The match requirements of this section and
318 Section 57-61-9 shall not apply to any loan made pursuant to this
319 subparagraph.

320 (f) Notwithstanding any provision of this chapter to
321 the contrary, the Mississippi Development Authority shall utilize
322 not more than Three Million Dollars (\$3,000,000.00) out of the
323 proceeds of bonds authorized to be issued in this chapter for the
324 purpose of making loans to municipalities operating county-owned
325 ports or municipally owned ports for the purpose of acquiring



326 land, buildings and other improvements and for repairing,
327 renovating, maintaining and improving such ports. The Mississippi
328 Development Authority shall establish an amortization schedule for
329 the repayment of any loans made pursuant to this paragraph (f). A
330 municipality shall not spend any port revenues for other purposes
331 unless payments on the loan are being timely made according to the
332 amortization schedule.

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

