

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

To: Ways and Means

HOUSE BILL NO. 1337
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 57-61-9, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE MATCHING FUNDS REQUIREMENT UNDER THE MISSISSIPPI
3 BUSINESS INVESTMENT ACT TO REQUIRE MATCHING FUNDS OF AT LEAST TWO
4 PRIVATE DOLLARS FOR EVERY DOLLAR OF STATE ASSISTANCE FOR COMPANIES
5 THAT THE MISSISSIPPI DEVELOPMENT AUTHORITY DETERMINES TO BE HIGH
6 TECHNOLOGY ENTERPRISES; TO REVISE THE PROJECTS FOR WHICH A COUNTY
7 OR MUNICIPALITY MAY REQUEST ASSISTANCE UNDER THE MISSISSIPPI
8 BUSINESS INVESTMENT ACT; TO AMEND SECTION 57-61-11, MISSISSIPPI
9 CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI DEVELOPMENT AUTHORITY
10 TO USE NOT MORE THAN \$3,000,000.00 OF THE BOND PROCEEDS UNDER THE
11 MISSISSIPPI BUSINESS INVESTMENT ACT FOR THE PURPOSE OF MAKING
12 LOANS FOR COUNTY-OWNED PORT PROJECTS AND MUNICIPALLY OWNED PORT
13 PROJECTS; TO DECREASE THE AMOUNT OF BOND PROCEEDS UNDER THE
14 MISSISSIPPI INVESTMENT BUSINESS ACT THAT THE MISSISSIPPI
15 DEVELOPMENT AUTHORITY MUST USE TO MAKE LOANS FOR STATE-OWNED PORT
16 PROJECTS; AND FOR RELATED PURPOSES.

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

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

20 57-61-9. (1) Any private company desiring assistance from a
21 municipality shall submit to the municipality a letter of intent
22 to locate, expand or build a facility entirely or partially within
23 the municipality or on land the municipality is authorized to own
24 or otherwise acquire. The letter of intent shall include:

25 (a) Except for strategic investments, a commitment that
26 the proposed project will create and maintain a minimum of ten
27 (10) net new full-time equivalent jobs, will create and maintain
28 at least a five percent (5%) increase in full-time equivalent jobs
29 in the case of expansion of an enterprise already located at the
30 site or at least a twenty-five percent (25%) increase in full-time
31 equivalent jobs pursuant to subsection (9) of Section 57-61-15 and
32 will create and maintain at least one (1) net new full-time
33 equivalent job for every Fifteen Thousand Dollars (\$15,000.00)
34 either loaned or granted for the project. The commitment required



35 by this paragraph (a) shall include any jobs created prior to the
36 effective date of this chapter resulting from contracts entered
37 into contingent upon assistance being made available under this
38 chapter. All jobs required to be maintained by this paragraph (a)
39 shall be maintained until such time as any loan made under this
40 chapter for the benefit of a private company is repaid.

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

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

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



68 Development Authority, any contractual agreement entered into
69 shall also require the parent company to unconditionally warrant
70 the performance of the subsidiary in carrying out the terms of the
71 agreement or it shall require the subsidiary and/or the parent
72 company to pledge assets in an amount and a manner to be
73 determined by the Mississippi Development Authority and/or to
74 collateralize the loan in an amount and a manner to be determined
75 by the Mississippi Development Authority to ensure the performance
76 of the terms of the contract.

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

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

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

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

90 (d) Evidence that there will be a private match of at
91 least Three Dollars (\$3.00) for every One Dollar (\$1.00) of state
92 assistance, except:

93 (i) In the case of ports * * * the private match
94 will be at least Two Dollars (\$2.00) for every One Dollar (\$1.00)
95 of state assistance; and

96 (ii) In the case where the Mississippi Development
97 Authority determines that a private company is a high technology
98 enterprise the private match will be at least Two Dollars (\$2.00)
99 for every One Dollar (\$1.00) of state assistance.



100 The Mississippi Development Authority shall establish
101 criteria for determining whether a private company is a high
102 technology enterprise.

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

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

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

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

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

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

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



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

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

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

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

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

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



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

165 (iii) Construction and installation of piling,
166 bulkheads, docks, wharves, warehouses and appurtenances; and

167 (iv) Acquisition of facilities and equipment for
168 handling bulk and containerized cargo.

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

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

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

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

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

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

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

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

190 On or before January 1, 1989, a state-owned port described in
191 this paragraph (b) shall submit to the Senate Finance Committee
192 and the House Ways and Means Committee of the Mississippi
193 Legislature a comprehensive, written report updating for each
194 committee the information listed in items (i) through (vii) of
195 this paragraph (b) with particular emphasis on the economic



196 contribution to the region and state by shipping activity at the
197 port; on financial data with respect to the degree of federal
198 funding available and local participation in funding port
199 activities; and on progress made in dredging and completing other
200 improvements necessary to accommodate modern shipping.

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

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

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

207 (iii) Impact on port revenues.

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

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

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

225 (8) Notwithstanding any provision or requirement of this
226 chapter to the contrary, a municipality may make application for a
227 loan under this chapter, in an amount not to exceed Five Million
228 Dollars (\$5,000,000.00), for the purpose of acquiring and



229 developing land to be used as a technology/industrial park for
230 which there is a binding commitment by one or more private
231 companies to create and maintain not less than an aggregate of
232 three hundred (300) jobs meeting minimum criteria established by
233 the Mississippi Development Authority. Such a commitment by a
234 private company shall not disqualify the private company from
235 obtaining assistance under this section. The match requirements
236 of this section shall not apply to any loan made pursuant to this
237 subsection (8).

238 (9) Notwithstanding any provision or requirement of this
239 chapter to the contrary, a municipality operating a county-owned
240 port or municipally owned port may make application for a loan
241 under this chapter, in an amount not to exceed Three Million
242 Dollars (\$3,000,000.00), for the purpose of acquiring land,
243 buildings and other improvements and for repairing, renovating,
244 maintaining and improving such a port.

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

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

260 (11) A municipality is authorized upon such terms and
261 conditions as the municipality may deem advisable, provided such



262 terms and conditions shall not be in conflict with the provisions
263 of this chapter, to (a) acquire, whether by construction,
264 purchase, gift or lease, all of or any portion of a project
265 hereunder; (b) to lease or sell to others all of or any portion of
266 a project hereunder; and (c) to lend to the private company the
267 proceeds of the loan from the board to such municipality.

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

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

274 57-61-11. The Mississippi Development Authority shall
275 establish such guidelines, rules and regulations for the repayment
276 of funds loaned pursuant to this chapter as may be necessary.
277 These provisions shall include, but not be limited to, the
278 following:

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

282 (b) The rate of interest charged by the Mississippi
283 Development Authority for improvements not on publicly owned
284 property may be negotiated by the Mississippi Development
285 Authority.

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

291 (d) An audit by a certified public accountant of all
292 costs of a project hereunder must be submitted to the Mississippi
293 Development Authority not later than ninety (90) days after a
294 project's completion. Such an audit shall certify that all of the



295 funds loaned or granted pursuant to this chapter were disbursed in
296 accordance with the terms of this chapter and shall be paid for by
297 the private company benefited by the project.

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

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

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

308 (iii) The total of grants and loans to any one (1)
309 state-owned port made pursuant to an application under Section
310 57-61-9(5)(a) shall not exceed Twenty Million Dollars
311 (\$20,000,000.00).

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

319 (v) Notwithstanding any provision of this chapter
320 to the contrary, the Mississippi Development Authority shall
321 utilize not more than Four Million Dollars (\$4,000,000.00) out of
322 the proceeds of bonds authorized to be issued in this chapter to
323 be made available as interest-bearing loans to state-owned ports
324 for the purpose of repairing, renovating, maintaining and
325 improving the state-owned port. The Mississippi Development
326 Authority shall establish an amortization schedule for the
327 repayment of any loans made pursuant to this subparagraph. The



328 state-owned port shall not spend any revenues for other purposes
329 unless payments on the loan are being timely made according to the
330 amortization schedule. The match requirements of this section and
331 Section 57-61-9 shall not apply to any loan made pursuant to this
332 subparagraph.

333 (f) Notwithstanding any provision of this chapter to
334 the contrary, the Mississippi Development Authority shall utilize
335 not more than Three Million Dollars (\$3,000,000.00) out of the
336 proceeds of bonds authorized to be issued in this chapter for the
337 purpose of making loans to municipalities operating county-owned
338 ports or municipally owned ports for the purpose of acquiring
339 land, buildings and other improvements and for repairing,
340 renovating, maintaining and improving such ports. The Mississippi
341 Development Authority shall establish an amortization schedule for
342 the repayment of any loans made pursuant to this paragraph (f). A
343 municipality shall not spend any port revenues for other purposes
344 unless payments on the loan are being timely made according to the
345 amortization schedule.

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

