

By: Representatives Lamar, White, Clark

To: Ways and Means

HOUSE BILL NO. 1354
(As Passed the House)

1 AN ACT TO AMEND SECTION 7, CHAPTER 483, LAWS OF 2022, TO
2 INCREASE THE AMOUNT OF STATE REVENUE BONDS THAT MAY BE ISSUED TO
3 PROVIDE FUNDS FOR THE ABC WAREHOUSE CONSTRUCTION FUND TO ASSIST IN
4 PAYING THE COSTS ASSOCIATED WITH LAND ACQUISITION FOR, AND THE
5 DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF A NEW WAREHOUSE
6 FOR THE DEPARTMENT OF REVENUE'S ALCOHOLIC BEVERAGE CONTROL
7 DIVISION; TO AMEND SECTION 27-71-11, MISSISSIPPI CODE OF 1972, TO
8 INCREASE THE AMOUNT OF THE BAILMENT FEE CHARGED BY THE DEPARTMENT
9 OF REVENUE ON CASES OF STORED ALCOHOLIC BEVERAGES FOR THE PURPOSE
10 OF PROVIDING FUNDS FOR THE PAYMENT OF THE DEBT SERVICE ON SUCH
11 BONDS; TO AMEND SECTION 67-1-203, TO PROVIDE THAT THE DEPARTMENT
12 OF FINANCE AND ADMINISTRATION SHALL SELECT A SITE AT THE HOLMES
13 COUNTY INDUSTRIAL PARK IN HOLMES COUNTY, MISSISSIPPI, FOR THE
14 CONSTRUCTION OF A NEW WAREHOUSE FOR THE DEPARTMENT OF REVENUE'S
15 ALCOHOLIC BEVERAGE CONTROL DIVISION WAREHOUSE, AND THAT A CONTRACT
16 FOR WAREHOUSE CONSTRUCTION SHALL BE ENTERED INTO NOT LATER THAN
17 SEPTEMBER 1, 2024; TO AMEND SECTION 67-1-205, MISSISSIPPI CODE OF
18 1972, TO REVISE CERTAIN PROVISIONS REGARDING THE OPERATION OF THE
19 WAREHOUSE FOR THE DEPARTMENT OF REVENUE'S ALCOHOLIC BEVERAGE
20 CONTROL DIVISION; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 7, Chapter 483, Laws of 2022, is amended
23 as follows:

24 Section 7. **Revenue bonds.** (1) As used in this section, the
25 following words shall have the meanings ascribed herein unless the
26 context clearly requires otherwise:



27 (a) "Accreted value" of any bond means, as of any date
28 of computation, an amount equal to the sum of (i) the stated
29 initial value of such bond, plus (ii) the interest accrued thereon
30 from the issue date to the date of computation at the rate,
31 compounded semiannually, that is necessary to produce the
32 approximate yield to maturity shown for bonds of the same
33 maturity.

34 (b) "State" means the State of Mississippi.

35 (c) "Commission" means the State Bond Commission.

36 (2) (a) Monies deposited into the ABC Warehouse
37 Construction Fund created in Section 6(1) of this act shall be
38 disbursed, in the discretion of the Department of Finance and
39 Administration, to assist in paying the costs associated with land
40 acquisition for, and the design, construction, furnishing and
41 equipping of, a new warehouse for the Department of Revenue's
42 Alcoholic Beverage Control Division.

43 (b) Amounts deposited into the ABC Warehouse
44 Construction Fund created in Section 6(1) of this act shall be
45 disbursed to pay the costs of the projects described in paragraph
46 (a) of this subsection. Promptly after the commission has
47 certified, by resolution duly adopted, that the projects described
48 in paragraph (a) of this subsection have been completed,
49 abandoned, or cannot be completed in a timely fashion, any amounts
50 remaining in such special fund shall be applied to pay debt
51 service on the bonds issued under this section, in accordance with



52 the proceedings authorizing the issuance of such bonds and as
53 directed by the commission.

54 (3) For the purpose of providing for the payment of the
55 principal of and interest upon bonds issued under this section,
56 there is created a special bond sinking fund in the State
57 Treasury. The special bond sinking fund shall consist of such
58 amounts as may be paid into such fund under this act, by
59 appropriation or by other authorization by the Legislature.
60 Except as otherwise provided in this section, monies in the
61 special bond sinking fund shall be used to pay the debt service
62 requirements of the bonds issued under this section. If the
63 special bond sinking fund has a balance below the minimum amount
64 specified in the resolution providing for the issuance of the
65 bonds, or below one and one-half (1-1/2) times the amount needed
66 to pay the annual debt obligations related to the bonds issued
67 under this section, whichever is the lesser amount, the
68 Commissioner of Revenue shall transfer the deficit amount to the
69 bond sinking fund from revenue derived from the twenty-seven and
70 one-half percent (27-1/2%) markup provided for in Section
71 27-71-11. Unexpended amounts remaining in the special bond
72 sinking fund at the end of a fiscal year shall not lapse into the
73 State General Fund, and any interest earned or investment earnings
74 on amounts in the special bond sinking fund shall be deposited
75 into such sinking fund. If the special bond sinking fund has a
76 balance in excess of the amount needed to pay the debt service and



77 meet the obligations related to the bonds issued under this
78 section, as determined in the resolution providing for the
79 issuance of the bonds, the excess monies shall be transferred to
80 the State General Fund.

81 (4) (a) The commission, at one time, or from time to time,
82 may declare by resolution the necessity for issuance of revenue
83 bonds of the State of Mississippi to provide funds for all costs
84 incurred or to be incurred for the purposes described in
85 subsection (2) of this section. Upon the adoption of a resolution
86 by the Department of Finance and Administration, declaring the
87 necessity for the issuance of any part or all of the revenue bonds
88 authorized by this subsection, the Department of Finance and
89 Administration shall deliver a certified copy of its resolution or
90 resolutions to the commission. Upon receipt of such resolution,
91 the commission, in its discretion, may act as the issuing agent,
92 prescribe the form of the bonds, determine the appropriate method
93 for sale of the bonds, advertise for and accept bids or negotiate
94 the sale of the bonds, issue and sell the bonds so authorized to
95 be sold, and do any and all other things necessary and advisable
96 in connection with the issuance and sale of such bonds. The total
97 amount of bonds issued under this section shall not exceed * * *
98 Ninety-five Million Dollars (\$95,000,000.00).

99 (b) Any investment earnings on amounts deposited into
100 the ABC Warehouse Construction Fund created in Section 6(1) of
101 this act shall be used to pay debt service on bonds issued under



102 this section, in accordance with the proceedings authorizing
103 issuance of such bonds.

104 (5) The principal of and interest on the bonds authorized
105 under this section shall be payable in the manner provided in this
106 subsection. Such bonds shall bear such date or dates, be in such
107 denomination or denominations, bear interest at such rate or rates
108 (not to exceed the limits set forth in Section 75-17-101,
109 Mississippi Code of 1972), be payable at such place or places
110 within or without the State of Mississippi, shall mature
111 absolutely at such time or times not to exceed twenty-five (25)
112 years from date of issue, be redeemable before maturity at such
113 time or times and upon such terms, with or without premium, shall
114 bear such registration privileges, and shall be substantially in
115 such form, all as shall be determined by resolution of the
116 commission.

117 (6) The bonds authorized by this section shall be signed by
118 the chairman of the commission, or by his facsimile signature, and
119 the official seal of the commission shall be affixed thereto,
120 attested by the secretary of the commission. The interest
121 coupons, if any, to be attached to such bonds may be executed by
122 the facsimile signatures of such officers. Whenever any such
123 bonds have been signed by the officials designated to sign the
124 bonds who were in office at the time of such signing, but who may
125 have ceased to be such officers before the sale and delivery of
126 such bonds, or who may not have been in office on the date such



127 bonds may bear, the signatures of such officers upon such bonds
128 and coupons shall nevertheless be valid and sufficient for all
129 purposes and have the same effect as if the person so officially
130 signing such bonds had remained in office until their delivery to
131 the purchaser, or had been in office on the date such bonds may
132 bear. However, notwithstanding anything herein to the contrary,
133 such bonds may be issued as provided in the Registered Bond Act of
134 the State of Mississippi.

135 (7) All bonds and interest coupons issued under the
136 provisions of this section have all the qualities and incidents of
137 negotiable instruments under the provisions of the Uniform
138 Commercial Code, and in exercising the powers granted by this
139 section, the commission shall not be required to and need not
140 comply with the provisions of the Uniform Commercial Code.

141 (8) The commission shall act as issuing agent for the bonds
142 authorized under this section, prescribe the form of the bonds,
143 determine the appropriate method for sale of the bonds, advertise
144 for and accept bids or negotiate the sale of the bonds, issue and
145 sell the bonds so authorized to be sold, pay all fees and costs
146 incurred in such issuance and sale, and do any and all other
147 things necessary and advisable in connection with the issuance and
148 sale of such bonds. The commission is authorized and empowered to
149 pay the costs that are incident to the sale, issuance and delivery
150 of the bonds authorized under this section from the proceeds
151 derived from the sale of such bonds. The commission may sell such



152 bonds on sealed bids at public sale or may negotiate the sale of
153 the bonds for such price as it may determine to be for the best
154 interest of the State of Mississippi. All interest accruing on
155 such bonds so issued shall be payable semiannually or annually.

156 If such bonds are sold by sealed bids at public sale, notice
157 of the sale shall be published at least one time, not less than
158 ten (10) days before the date of sale, and shall be so published
159 in one or more newspapers published or having a general
160 circulation in the City of Jackson, Mississippi, selected by the
161 commission.

162 The commission, when issuing any bonds under the authority of
163 this section, may provide that bonds, at the option of the State
164 of Mississippi, may be called in for payment and redemption at the
165 call price named therein and accrued interest on such date or
166 dates named therein.

167 (9) The bonds issued under the provisions of this section
168 shall be revenue bonds of the state, the principal of and interest
169 on which shall be payable solely from and shall be secured by the
170 special bond sinking fund created in subsection (3) of this
171 section. The bonds shall never constitute an indebtedness of the
172 state within the meaning of any state constitutional provision or
173 statutory limitation, and shall never constitute or give rise to a
174 pecuniary liability of the state, or a charge against its general
175 credit or taxing powers, and such fact shall be plainly stated on
176 the face of each such bond. The bonds shall not be considered



177 when computing any limitation of indebtedness of the state. All
178 bonds issued under the authority of this section and all interest
179 coupons applicable thereto shall be construed to be negotiable
180 instruments, despite the fact that they are payable solely from a
181 specified source.

182 (10) Upon the issuance and sale of bonds under the
183 provisions of this section, the commission shall transfer the
184 proceeds of any such sale or sales to the ABC Warehouse
185 Construction Fund created in Section 6(1) of this act. The
186 proceeds of such bonds shall be disbursed solely upon the order of
187 the Department of Finance and Administration under such
188 restrictions, if any, as may be contained in the resolution
189 providing for the issuance of the bonds.

190 (11) The bonds authorized under this section may be issued
191 without any other proceedings or the happening of any other
192 conditions or things other than those proceedings, conditions and
193 things which are specified or required by this section. Any
194 resolution providing for the issuance of bonds under the
195 provisions of this section shall become effective immediately upon
196 its adoption by the commission, and any such resolution may be
197 adopted at any regular or special meeting of the commission by a
198 majority of its members.

199 (12) The bonds authorized under the authority of this
200 section may be validated in the Chancery Court of the First
201 Judicial District of Hinds County, Mississippi, in the manner and



202 with the force and effect provided by Title 31, Chapter 13,
203 Mississippi Code of 1972, for the validation of county, municipal,
204 school district and other bonds. The notice to taxpayers required
205 by such statutes shall be published in a newspaper published or
206 having a general circulation in the City of Jackson, Mississippi.

207 (13) Any holder of bonds issued under the provisions of this
208 section or of any of the interest coupons pertaining thereto may,
209 either at law or in equity, by suit, action, mandamus or other
210 proceeding, protect and enforce any and all rights granted under
211 this section, or under such resolution, and may enforce and compel
212 performance of all duties required by this section to be
213 performed, in order to provide for the payment of bonds and
214 interest thereon.

215 (14) All bonds issued under the provisions of this section
216 shall be legal investments for trustees and other fiduciaries, and
217 for savings banks, trust companies and insurance companies
218 organized under the laws of the State of Mississippi, and such
219 bonds shall be legal securities which may be deposited with and
220 shall be received by all public officers and bodies of this state
221 and all municipalities and political subdivisions for the purpose
222 of securing the deposit of public funds.

223 (15) Bonds issued under the provisions of this section and
224 income therefrom shall be exempt from all taxation in the State of
225 Mississippi.



226 (16) The proceeds of the bonds issued under this section
227 shall be used solely for the purposes herein provided, including
228 the costs incident to the issuance and sale of such bonds.

229 (17) The State Treasurer is authorized, without further
230 process of law, to certify to the Department of Finance and
231 Administration the necessity for warrants. The Department of
232 Finance and Administration is authorized and directed to issue
233 such warrants, in such amounts as may be necessary to pay when due
234 the principal of, premium, if any, and interest on, or the
235 accreted value of, all bonds issued under this section. The State
236 Treasurer shall forward the necessary amount to the designated
237 place or places of payment of such bonds in ample time to
238 discharge such bonds, or the interest thereon, on the due dates
239 thereof.

240 (18) This section shall be deemed to be full and complete
241 authority for the exercise of the powers herein granted, but this
242 section shall not be deemed to repeal or to be in derogation of
243 any existing law of this state.

244 **SECTION 2.** Section 27-71-11, Mississippi Code of 1972, is
245 amended as follows:

246 27-71-11. (1) The department shall from time to time by
247 resolution request the State Bond Commission to provide sufficient
248 funds required to maintain an adequate alcoholic beverage
249 inventory. Said funds shall be provided under the provisions of
250 Chapter 557, Laws of 1966.



251 (2) The department shall add to the cost of all alcoholic
252 beverages a markup of twenty-seven and one-half percent (27-1/2%),
253 inclusive of the three percent (3%) markup imposed by Section
254 27-71-7(2).

255 (3) In addition to other excise taxes and markups imposed in
256 this section and in Section 27-71-7, the department shall add to
257 the cost of all alcoholic beverages shipped a charge of
258 Twenty-five Cents (25¢) per case, to be deposited into the ABC
259 Warehouse Improvements Fund created in Section 67-1-211(2).
260 However, any unobligated amounts above Ten Million Dollars
261 (\$10,000,000.00) remaining in the ABC Warehouse Improvements Fund
262 at the end of a fiscal year shall be transferred to the State
263 General Fund.

264 (4) Notwithstanding the contract for warehouse and
265 distribution operations under Section 67-1-205, the department
266 shall remain responsible for purchasing and selling alcoholic
267 beverages. The department shall sell alcoholic beverages at
268 uniform prices throughout the state. Pricing for all alcoholic
269 beverages shall be set by the addition of the markup and taxes to
270 the price at which the beverages were purchased by the department.

271 (5) A permittee's order shall qualify for shipping when it
272 includes the minimum number of cases of alcoholic beverages as set
273 by the department. The department shall place qualifying orders
274 in a queue for shipment in the order in which the orders are made.
275 An order of fewer than the minimum number of cases, and special



276 orders, shall be added to the permittee's next qualified shipment.
277 The department shall give sufficient notice of any change in the
278 minimum number of cases for shipping and shall allow the
279 opportunity for comment.

280 (6) The department shall set a per-case shipping fee to be
281 charged to permittees. The department shall adjust the fee to
282 match, as closely as possible, the shipping costs as defined in
283 Section 67-1-201. The shipping fee charged under this subsection
284 shall be deposited to the credit of the ABC Shipping Fund created
285 in Section 27-71-29.

286 (7) The department shall charge manufacturers a bailment fee
287 of * * * One Dollar and Seventy-three Cents (\$1.73) per case of
288 alcoholic beverages stored in the warehouse, to be deposited to
289 the credit of the bond sinking fund created in Section 7(3) of
290 Chapter 483, Laws of 2022.

291 **SECTION 3.** Section 67-1-203, Mississippi Code of 1972, is
292 amended as follows:

293 67-1-203. **Warehouse construction.** (1) The Department of
294 Finance and Administration, using the monies available in the ABC
295 Warehouse Construction Fund created in Section 67-1-211(1) and
296 such other monies as the Legislature may make available, shall
297 purchase land for and shall provide for the design and
298 construction of a warehouse for the division in the most expedient
299 and cost-effective manner practicable as determined by the



300 Executive Director of the Department of Finance and
301 Administration.

302 (2) The Department of Finance and Administration shall
303 select a * * * site for the warehouse * * * at the Holmes County
304 Industrial Park located west of Interstate 55 on Mississippi
305 Highway 12 in Holmes County, Mississippi, as such location is the
306 approximate geographical center of the State of Mississippi.

307 * * *

308 (3) The contract for design and construction shall provide
309 that the operator shall be consulted so that the warehouse may, so
310 far as possible, suit the preferences of the operator in
311 furtherance of effective operations. The contract shall also
312 provide that the design shall aim to fill demand for the next
313 twenty-five (25) years.

314 (4) A contract for warehouse construction shall not be
315 entered into unless the construction contractor has demonstrated:

316 (a) The qualifications, experience and management
317 personnel necessary to carry out the terms of the contract;

318 (b) The ability to comply with applicable federal and
319 state laws; and

320 (c) The ability to expedite the design and construction
321 of facilities comparable to the warehouse.

322 (5) A contract for warehouse construction shall be entered
323 into not later than September 1, 2024.



324 **SECTION 4.** Section 67-1-205, Mississippi Code of 1972, is
325 amended as follows:

326 67-1-205. **Warehouse and distribution operations.** (1) The
327 department shall contract for warehouse and distribution
328 operations. The shipping contract in effect on July 1, 2022,
329 shall remain in effect until the expiration of its term.

330 (2) The department shall pay regular maintenance expenses
331 and shall reimburse the operator for services performed under the
332 contract out of monies appropriated by the Legislature.

333 (3) The contract shall include the following terms:

334 (a) The department shall pay the operator cost-plus on
335 these operations at a set dollar amount per case of alcoholic
336 beverages sold. Otherwise, the contract shall not alter the
337 current cash flow of operations;

338 (b) The operator shall be allotted a monthly spending
339 limit for occasional improvements. The state may, at any time,
340 review the operator's spending. The operator shall obtain prior
341 state approval for any spending over the monthly limit set in the
342 contract. The contract shall allow the operator to pay out of
343 pocket, in which case the state will reimburse the operator on a
344 monthly basis out of monies in the ABC Warehouse Improvements Fund
345 created in Section 67-1-211(2);

346 (c) Shipping costs, where the contract encompasses
347 shipping, shall be based on a set dollar amount per case of



348 alcoholic beverages shipped from the warehouse to the permittee's
349 premises;

350 (d) The department and the operator may provide for the
351 operator's software to interface with the department's TAP system
352 in a manner allowing for information sharing in furtherance of
353 efficient operations while also protecting the security of the TAP
354 system;

355 (e) The department shall develop quality and efficiency
356 criteria for determining whether to renew a contract for warehouse
357 and distribution operations;

358 (f) The obligation of the department to proceed under
359 the contract is conditioned upon the appropriation of funds by the
360 Legislature and the receipt of state or federal funds. If the
361 funds anticipated for the continuing time fulfillment of the
362 agreement are, at any time, not forthcoming or insufficient,
363 either through the failure of the federal government to provide
364 funds or of the State of Mississippi to appropriate funds, or the
365 discontinuance or material alteration of the program under which
366 funds were provided, or if funds are not otherwise available to
367 the department, the department shall have the right, upon ten (10)
368 working days' written notice to the operator, to terminate this
369 agreement without damage, penalty, cost or other expenses to the
370 department of any kind whatsoever. The effective date of
371 termination shall be as specified in the notice of termination;



372 (g) The state and the operator as parties to the
373 contract and all terms of the contract shall be subject to and
374 governed by the laws of the state at the time the contract is
375 entered into, and any later amendments to such laws, through the
376 duration of the contract; and

377 (h) The operator shall be required to comply with any
378 duties, responsibilities, conditions or other provisions required
379 by state law during the duration of the contract, regardless of
380 whether such duties, responsibilities, conditions or other
381 provisions were required by state law at the time the contract was
382 entered into.

383 (4) The initial contract for operations shall terminate on
384 the earlier of: (a) four (4) years from the date it commences; or
385 (b) the last day of the use of the warehouse that is in service on
386 July 1, 2022. The contract may be renewed for four (4) years,
387 with another option to renew at the end of that four-year term.
388 The department shall issue requests for proposals before entering
389 any subsequent contract. Requests for proposals shall be required
390 whenever a contract is not renewed, but no less frequently than
391 every twelve (12) years.

392 (5) The contract shall provide that all employees needed for
393 operations shall be employees of the operator. Unless otherwise
394 provided for in the contract in existence on the effective date of
395 this act, employees of the operator needed for operations shall
396 work no less than five (5) days a week. In addition, any contract



397 entered into or renewed on or after the effective date of this
398 act, shall provide that employees of the operator needed for
399 operations shall work no less than five (5) days a week.

400 (6) A contract for warehouse and distribution operations
401 shall not be entered into unless the operator has demonstrated:

402 (a) The qualifications, experience and management
403 personnel necessary to carry out the terms of the contract; and

404 (b) The ability to comply with applicable federal and
405 state laws.

406 (7) A contract for operations shall not be entered into
407 unless the following requirements are met:

408 (a) In addition to fire and casualty insurance, the
409 operator provides at least Ten Million Dollars (\$10,000,000.00) of
410 liability insurance. The liability insurance shall be issued by
411 an insurance company with a rating of at least an A- according to
412 AM Best standards. In determining the adequacy of such insurance,
413 the Department of Finance and Administration shall determine
414 whether:

415 (i) The insurance is adequate to protect the state
416 from any and all actions by a third party against the operator or
417 the state as a result of the contract;

418 (ii) The insurance is adequate to protect the
419 state against any and all claims arising as a result of any
420 occurrence during the term of the contract;



421 (iii) The insurance is adequate to assure the
422 operator's ability to fulfill its contract with the state in all
423 respects, and to assure that the operator is not limited in this
424 ability because of financial liability which results from
425 judgments; and

426 (iv) The insurance is adequate to satisfy such
427 other requirements specified by the independent risk
428 management/actuarial firm.

429 (b) The sovereign immunity of the state shall not apply
430 to the operator. Neither the operator nor the operator's insurer
431 may plead the defense of sovereign immunity in any action arising
432 out of the performance of the contract.

433 (c) The operator shall post a performance bond to
434 assure the operator's faithful performance of the specifications
435 and conditions of the contract. The bond is required throughout
436 the term of the contract. The terms and conditions must be
437 approved by the department and the Department of Finance and
438 Administration, and such approval is a condition precedent to the
439 contract taking effect.

440 (d) The operator shall defend any suit or claim brought
441 against the state arising out of any act or omission in
442 operations, and shall hold the state harmless from such claim or
443 suit. The operator shall be solely responsible for the payment of
444 any legal or other costs relative to any such claim or suit. The
445 operator shall reimburse the state for any costs that it may incur



446 as a result of such claim or suit immediately upon being submitted
447 a statement therefor by the Attorney General.

448 Any suit brought or claim made arising out of any act or
449 omission in operations shall be made or brought against the
450 operator and not the state.

451 The Attorney General retains all rights and emoluments of his
452 or her office which include direction and control over any
453 litigation or claim involving the state.

454 **SECTION 5.** This act shall take effect and be in force from
455 and after its passage.

