

By: Representatives Lamar, White, Clark

To: Ways and Means

HOUSE BILL NO. 1354
(As Sent to Governor)

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 SUITABLE SITE, WITHIN
13 50 MILES OF THE NEW STATE CAPITOL BUILDING, FOR THE CONSTRUCTION
14 OF A NEW WAREHOUSE FOR THE DEPARTMENT OF REVENUE'S ALCOHOLIC
15 BEVERAGE CONTROL DIVISION, AND THAT A CONTRACT FOR WAREHOUSE
16 CONSTRUCTION SHALL BE ENTERED INTO NOT LATER THAN OCTOBER 1, 2024;
17 TO BRING FORWARD SECTION 67-1-205, MISSISSIPPI CODE OF 1972, FOR
18 THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

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

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

25 (a) "Accreted value" of any bond means, as of any date
26 of computation, an amount equal to the sum of (i) the stated



27 initial value of such bond, plus (ii) the interest accrued thereon
28 from the issue date to the date of computation at the rate,
29 compounded semiannually, that is necessary to produce the
30 approximate yield to maturity shown for bonds of the same
31 maturity.

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

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

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

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



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



77 issuance of the bonds, the excess monies shall be transferred to
78 the State General Fund.

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

97 (b) Any investment earnings on amounts deposited into
98 the ABC Warehouse Construction Fund created in Section 6(1) of
99 this act shall be used to pay debt service on bonds issued under
100 this section, in accordance with the proceedings authorizing
101 issuance of such bonds.



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

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



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

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

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



152 interest of the State of Mississippi. All interest accruing on
153 such bonds so issued shall be payable semiannually or annually.

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

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

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



177 coupons applicable thereto shall be construed to be negotiable
178 instruments, despite the fact that they are payable solely from a
179 specified source.

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

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

197 (12) The bonds authorized under the authority of this
198 section may be validated in the Chancery Court of the First
199 Judicial District of Hinds County, Mississippi, in the manner and
200 with the force and effect provided by Title 31, Chapter 13,
201 Mississippi Code of 1972, for the validation of county, municipal,



202 school district and other bonds. The notice to taxpayers required
203 by such statutes shall be published in a newspaper published or
204 having a general circulation in the City of Jackson, Mississippi.

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

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

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

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



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

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

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

244 27-71-11. (1) The department shall from time to time by
245 resolution request the State Bond Commission to provide sufficient
246 funds required to maintain an adequate alcoholic beverage
247 inventory. Said funds shall be provided under the provisions of
248 Chapter 557, Laws of 1966.

249 (2) The department shall add to the cost of all alcoholic
250 beverages a markup of twenty-seven and one-half percent (27-1/2%),



251 inclusive of the three percent (3%) markup imposed by Section
252 27-71-7(2).

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

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

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



276 minimum number of cases for shipping and shall allow the
277 opportunity for comment.

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

284 (7) The department shall charge manufacturers a bailment fee
285 of * * * One Dollar and Fifty Cents (\$1.50) per case of alcoholic
286 beverages stored in the warehouse, to be deposited to the credit
287 of the bond sinking fund created in Section 7(3) of Chapter 483,
288 Laws of 2022.

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

291 67-1-203. (1) The Department of Finance and Administration,
292 using the monies available in the ABC Warehouse Construction Fund
293 created in Section 67-1-211(1) and such other monies as the
294 Legislature may make available, shall purchase land for and shall
295 provide for the design and construction of a warehouse for the
296 division in the most expedient and cost-effective manner
297 practicable as determined by the Executive Director of the
298 Department of Finance and Administration.

299 (2) The Department of Finance and Administration shall
300 select a suitable site for the warehouse within fifty (50) miles



301 of the new state capitol building. In selecting a site, the
302 Department of Finance and Administration shall consider the
303 feasibility of selecting state-owned land by comparing the cost of
304 preparing the state-owned land for construction to the cost of
305 acquiring other land and preparing such other land for
306 construction.

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

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

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

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

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

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

323 **SECTION 4.** Section 67-1-205, Mississippi Code of 1972, is
324 brought forward as follows:



325 67-1-205. (1) The department shall contract for warehouse
326 and distribution operations. The shipping contract in effect on
327 July 1, 2022, shall remain in effect until the expiration of its
328 term.

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

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

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

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

345 (c) Shipping costs, where the contract encompasses
346 shipping, shall be based on a set dollar amount per case of
347 alcoholic beverages shipped from the warehouse to the permittee's
348 premises;



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

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

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

371 (g) The state and the operator as parties to the
372 contract and all terms of the contract shall be subject to and
373 governed by the laws of the state at the time the contract is



374 entered into, and any later amendments to such laws, through the
375 duration of the contract; and

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

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

391 (5) The contract shall provide that all employees needed for
392 operations shall be employees of the operator.

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

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

397 (b) The ability to comply with applicable federal and
398 state laws.



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

401 (a) In addition to fire and casualty insurance, the
402 operator provides at least Ten Million Dollars (\$10,000,000.00) of
403 liability insurance. The liability insurance shall be issued by
404 an insurance company with a rating of at least an A- according to
405 AM Best standards. In determining the adequacy of such insurance,
406 the Department of Finance and Administration shall determine
407 whether:

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

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

414 (iii) The insurance is adequate to assure the
415 operator's ability to fulfill its contract with the state in all
416 respects, and to assure that the operator is not limited in this
417 ability because of financial liability which results from
418 judgments; and

419 (iv) The insurance is adequate to satisfy such
420 other requirements specified by the independent risk
421 management/actuarial firm.

422 (b) The sovereign immunity of the state shall not apply
423 to the operator. Neither the operator nor the operator's insurer



424 may plead the defense of sovereign immunity in any action arising
425 out of the performance of the contract.

426 (c) The operator shall post a performance bond to
427 assure the operator's faithful performance of the specifications
428 and conditions of the contract. The bond is required throughout
429 the term of the contract. The terms and conditions must be
430 approved by the department and the Department of Finance and
431 Administration, and such approval is a condition precedent to the
432 contract taking effect.

433 (d) The operator shall defend any suit or claim brought
434 against the state arising out of any act or omission in
435 operations, and shall hold the state harmless from such claim or
436 suit. The operator shall be solely responsible for the payment of
437 any legal or other costs relative to any such claim or suit. The
438 operator shall reimburse the state for any costs that it may incur
439 as a result of such claim or suit immediately upon being submitted
440 a statement therefor by the Attorney General.

441 Any suit brought or claim made arising out of any act or
442 omission in operations shall be made or brought against the
443 operator and not the state.

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

447 **SECTION 5.** This act shall take effect and be in force from
448 and after July 1, 2024.

