

Senate Amendments to House Bill No. 1354

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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 design, construction, furnishing and
39 equipping of, a new warehouse for the Department of Revenue's
40 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 Twenty-five Cents (\$1.25) per case of
286 alcoholic beverages stored in the warehouse, to be deposited to
287 the credit of the bond sinking fund created in Section 7(3) of
288 Chapter 483, Laws of 2022.

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

291 67-1-203. **Warehouse construction.** (1) The Department of
292 Finance and Administration, using the monies available in the ABC
293 Warehouse Construction Fund created in Section 67-1-211(1) and
294 such other monies as the Legislature may make available, shall

295 purchase land for and shall provide for the design and
296 construction of a warehouse for the division in the most expedient
297 and cost-effective manner practicable as determined by the
298 Executive Director of the Department of Finance and
299 Administration.

300 (2) The Department of Finance and Administration shall
301 select a suitable site for the warehouse within * * * seventy (70)
302 miles of the new state capitol building. In selecting a site, the
303 Department of Finance and Administration shall consider the
304 feasibility of selecting state-owned land by comparing the cost of
305 preparing the state-owned land for construction to the cost of
306 acquiring other land and preparing such other land for
307 construction.

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 November 30, 2024.

324 **SECTION 4.** Section 67-1-205, Mississippi Code of 1972, is
325 brought forward 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.

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

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

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

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

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

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

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

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

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

423 (b) The sovereign immunity of the state shall not apply
424 to the operator. Neither the operator nor the operator's insurer
425 may plead the defense of sovereign immunity in any action arising
426 out of the performance of the contract.

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

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

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

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

448 **SECTION 5.** This act shall take effect and be in force from
449 and after its passage, and shall stand repealed the day before its
450 passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 70 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 NOVEMBER 30,
17 2024; TO BRING FORWARD SECTION 67-1-205, MISSISSIPPI CODE OF 1972,
18 FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

SS36\HB1354A.1J

Amanda White
Secretary of the Senate