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Chapter No. 519
11/SS02/R804SG
NJN / CC/TB/LRHJ

SENATE BILL NO. 2921

Originated in Senate _____ Secretary

SENATE BILL NO. 2921

AN ACT TO REENACT SECTIONS 57-10-401 THROUGH 57-10-445, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE ISSUANCE OF BONDS BY THE MISSISSIPPI BUSINESS FINANCE CORPORATION TO FINANCE ECONOMIC DEVELOPMENT PROJECTS IN ORDER TO INDUCE THE LOCATION OR EXPANSION OF CERTAIN BUSINESSES WITHIN THIS STATE; TO REENACT SECTION 27-7-22.3, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR A CREDIT AGAINST STATE INCOME TAXES FOR CERTAIN COMPANIES FOR DEBT SERVICE PAID BY SUCH COMPANIES UNDER FINANCING AGREEMENTS ENTERED INTO WITH THE MISSISSIPPI BUSINESS FINANCE CORPORATION UNDER SECTION 57-10-409; TO AMEND SECTION 57-10-449, MISSISSIPPI CODE OF 1972, TO EXTEND UNTIL OCTOBER 1, 2015, THE REPEAL DATE ON SECTIONS 57-10-401 THROUGH 57-10-445 AND SECTION 27-7-22.3; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 57-10-401, Mississippi Code of 1972, is reenacted as follows:

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, this section shall read as follows:]

57-10-401. As used in Sections 57-10-401 through 57-10-445 the following terms shall have the meanings ascribed to them herein unless the context clearly indicates otherwise:

(a) "Approved company" means any eligible company seeking to locate an economic development project in a county, which eligible company is approved by the corporation.

(b) "Approved costs" means:

(i) Obligations incurred for equipment and labor and to contractors, subcontractors, builders and materialmen in connection with the acquisition, construction and installation of an economic development project;

(ii) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction and installation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(iv) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction and installation of an economic development project;

(v) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction and installation of an economic development project;

(vi) All costs, expenses and fees incurred in connection with the issuance of bonds pursuant to Sections 57-10-401 through 57-10-445;

(vii) All costs funded by a loan made under the Mississippi Small Enterprise Development Finance Act; and

(viii) All costs of professionals permitted to be engaged under the Mississippi Small Enterprise Development Finance Act for a loan made under such act.

(c) "Assessment" means the job development assessment fee authorized in Section 57-10-413.

(d) "Bonds" means the revenue bonds, notes or other debt obligations of the corporation authorized to be issued by the corporation on behalf of an eligible company or other state agency.

(e) "Corporation" means the Mississippi Business Finance Corporation created under Section 57-10-167, Mississippi Code of 1972.

(f) "Economic development project" means and includes the acquisition of any equipment or real estate in a county and the construction and installation thereon, and with respect thereto, of improvements and facilities necessary or desirable for improvement of the real estate, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications and similar facilities, off-site construction of utility extensions to the boundaries of the real estate, and the acquisition, construction and installation of manufacturing, telecommunications, data processing, distribution or warehouse facilities on the real estate, for lease or financial arrangement by the corporation to an approved company for use and occupancy by the approved company or its affiliates for manufacturing, telecommunications, data processing, distribution or warehouse purposes. Such term also includes, without limitation, any project the financing of which has been approved under the Mississippi Small Enterprise Development Finance Act.

(g) "Eligible company" means any corporation, partnership, sole proprietorship, business trust, or other entity which is:

(i) Engaged in manufacturing which meets the standards promulgated by the corporation under Sections 57-10-401 through 57-10-445;

(ii) A private company approved by the corporation for a loan under the Mississippi Small Enterprise Development Finance Act;

(iii) A distribution or warehouse facility employing a minimum of fifty (50) people or employing a minimum of twenty (20) people and having a capital investment in such facility of at least Five Million Dollars ($5,000,000.00); or

(iv) A telecommunications or data processing business.

(h) "Executive director" means the Executive Director of the Mississippi Business Finance Corporation.

(i) "Financing agreement" means any financing documents and agreements, indentures, loan agreements, lease agreements, security agreements and the like, entered into by and among the corporation, private lenders and an approved company with respect to an economic development project.

(j) "Manufacturing" means any activity involving the manufacturing, processing, assembling or production of any property, including the processing resulting in a change in the conditions of the property and any activity functionally related thereto, together with the storage, warehousing, distribution and related office facilities in respect thereof as determined by the Mississippi Business Finance Corporation; however, in no event shall "manufacturing" include mining, coal or mineral processing, or extraction of Mississippi minerals.

(k) "State agency" means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or laws of this state.

(l) "Revenues" shall not be considered state funds.

(m) "State" means the State of Mississippi.

(n) "Mississippi Small Enterprise Development Finance Act" means the provisions of law contained in Section 57-71-1 et seq.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, this section shall read as follows:]

57-10-401. As used in Sections 57-10-401 through 57-10-445 the following terms shall have the meanings ascribed to them herein unless the context clearly indicates otherwise:

(a) "Approved company" means any eligible company seeking to locate an economic development project in a county, which eligible company is approved by the corporation.

(b) "Approved costs" means:

(i) Obligations incurred for equipment and labor and to contractors, subcontractors, builders and materialmen in connection with the acquisition, construction and installation of an economic development project;

(ii) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction and installation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

(iv) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction and installation of an economic development project;

(v) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction and installation of an economic development project;

(vi) All costs, expenses and fees incurred in connection with the issuance of bonds pursuant to Sections 57-10-401 through 57-10-445;

(vii) All costs funded by a loan made under the Mississippi Small Enterprise Development Finance Act; and

(viii) All costs of professionals permitted to be engaged under the Mississippi Small Enterprise Development Finance Act for a loan made under such act.

(c) "Assessment" means the job development assessment fee authorized in Section 57-10-413.

(d) "Bonds" means the revenue bonds, notes or other debt obligations of the corporation authorized to be issued by the corporation on behalf of an eligible company or other state agency.

(e) "Corporation" means the Mississippi Business Finance Corporation created under Section 57-10-167, Mississippi Code of 1972.

(f) "Economic development project" means and includes the acquisition of any equipment or real estate in a county and the construction and installation thereon, and with respect thereto, of improvements and facilities necessary or desirable for improvement of the real estate, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications and similar facilities, off-site construction of utility extensions to the boundaries of the real estate, and the acquisition, construction and installation of manufacturing, telecommunications, data processing, distribution or warehouse facilities on the real estate, for lease or financial arrangement by the corporation to an approved company for use and occupancy by the approved company or its affiliates for manufacturing, telecommunications, data processing, distribution or warehouse purposes. Such term also includes, without limitation, any project the financing of which has been approved under the Mississippi Small Enterprise Development Finance Act.

If an eligible company closes a facility in this state and becomes an approved company under the provisions of Sections 57-10-401 through 57-10-449, only that portion of the project for which such company is attempting to obtain financing that is in

excess of the value of the closed facility shall be included within the definition of the term "economic development project." The Mississippi Business Finance Corporation shall promulgate rules and regulations to govern the determination of the difference between the value of the closed facility and the new facility.

(g) "Eligible company" means any corporation, partnership, sole proprietorship, business trust, or other entity which:

(i) Engaged in manufacturing which meets the standards promulgated by the corporation under Sections 57-10-401 through 57-10-445;

(ii) A private company approved by the corporation for a loan under the Mississippi Small Enterprise Development Finance Act;

(iii) A distribution or warehouse facility employing a minimum of fifty (50) people or employing a minimum of twenty (20) people and having a capital investment in such facility of at least Five Million Dollars ($5,000,000.00);

(iv) A telecommunications or data/information processing business meeting criteria established by the Mississippi Business Finance Corporation;

(v) National or regional headquarters meeting criteria established by the Mississippi Business Finance Corporation;

(vi) Research and development facilities meeting criteria established by the Mississippi Business Finance Corporation; or

(vii) Technology intensive enterprises or facilities meeting criteria established by the Mississippi Business Finance Corporation.

(h) "Executive director" means the Executive Director of the Mississippi Business Finance Corporation.

(i) "Financing agreement" means any financing documents and agreements, indentures, loan agreements, lease agreements, security agreements and the like, entered into by and among the corporation, private lenders and an approved company with respect to an economic development project.

(j) "Manufacturing" means any activity involving the manufacturing, processing, assembling or production of any property, including the processing resulting in a change in the conditions of the property and any activity functionally related thereto, together with the storage, warehousing, distribution and related office facilities in respect thereof as determined by the Mississippi Business Finance Corporation; however, in no event shall "manufacturing" include mining, coal or mineral processing, or extraction of Mississippi minerals.

(k) "State agency" means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or laws of this state.

(l) "Revenues" shall not be considered state funds.

(m) "State" means the State of Mississippi.

(n) "Mississippi Small Enterprise Development Finance Act" means the provisions of law contained in Section 57-71-1 et seq.

SECTION 2. Section 57-10-403, Mississippi Code of 1972, is reenacted as follows:

57-10-403. (1) The Legislature finds and declares that the general welfare and material well-being of citizens of the state depend in large measure upon the development and growth of industry in the state.

(2) The Legislature finds and declares further that it is in the best interest of the state to induce the location or expansion of manufacturing facilities within this state in order to advance the public purposes of relieving unemployment by creating new jobs within this state that, but for the inducements to be offered by

the corporation to approved companies as herein provided, would not exist, and of creating new sources of tax revenues for the support of the public services provided by this state and country.

(3) The Legislature finds and declares further that the authority granted by this article and the purposes to be accomplished hereby are proper governmental and public purposes for which public monies may be expended, and that the inducement of the location or expansion of manufacturing facilities within the state is of paramount importance, mandating that the provisions of this article be liberally construed and applied in order to advance the public purposes.

SECTION 3. Section 57-10-405, Mississippi Code of 1972, is reenacted as follows:

57-10-405. In addition to its other powers and duties, the corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of Sections 57-10-401 through 57-10-445, including, but without limiting the generality of the foregoing, the power:

(a) To provide and finance economic development projects under the provisions of Sections 57-10-401 through 57-10-445, and cooperate with counties, municipalities and eligible companies in order to promote, foster and support economic development within the counties and municipalities;

(b) To conduct hearings and inquiries, in the manner and by the methods as it deems desirable, including, without limitation, appointment of special committees, for the purpose of gathering information with respect to counties, municipalities, eligible companies and economic development projects, for the purpose of making any determinations necessary or desirable in the furtherance of Sections 57-10-401 through 57-10-445;

(c) To negotiate the terms of, and enter into financing agreements with, approved companies, and in connection therewith to acquire, convey, sell, own, lease, mortgage, finance, foreclose

or otherwise dispose of any property, real or personal, in connection with an economic development project, and to pay, or cause to be paid, in accordance with the provisions of a financing agreement, the approved costs of an economic development project from any funds available therefor, including, without limitation, funds available as the result of the issuance of bonds under the Mississippi Small Enterprise Development Finance Act;

(d) To delegate to the executive director the rights and powers of the corporation required for the proper and desirable execution of the purposes of this article;

(e) To consent, if it deems it necessary or desirable in the fulfillment of its purposes, to the modification of the terms of any financing agreements of any kind to which the corporation is a party;

(f) To include in any borrowing the amounts deemed necessary by the corporation to pay financing charges, consultant, advisory and legal fees, fees for bond insurance, letters of credit or other forms of credit enhancement, investment advisory fees, trustees' fees and other expenses necessary or incident to the borrowing;

(g) To make and publish administrative regulations respecting its programs and other administrative regulations necessary or appropriate to effectuate the purposes of Sections 57-10-401 through 57-10-445, and necessary to administer the procedures and program as provided for in Sections 57-10-401 through 57-10-445;

(h) To make, execute and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary or appropriate to accomplish the purposes of Sections 57-10-401 through 57-10-445, including any financing agreements with state agencies or any political

subdivisions of the state under which funds may be pledged by or to the corporation for the payment of its bonds;

(i) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance and any other aid from any source and to agree to, and to comply with, conditions attached thereto;

(j) To sue and be sued in its own name, plead and be impleaded; and

(k) To invest any funds held by the corporation or its agents or trustees, under Sections 57-10-401 through 57-10-445, including, but not limited to, the proceeds of bonds issued under Sections 57-10-401 through 57-10-445, reserve or other funds, or any monies not required for immediate disbursement, and the investment income on any of the foregoing, in obligations authorized by Sections 57-10-401 through 57-10-445.

SECTION 4. Section 57-10-407, Mississippi Code of 1972, is reenacted as follows:

57-10-407. The corporation may accept and expend: (a) monies which may be appropriated from time to time by the Legislature; (b) monies which may be available under the Mississippi Small Enterprise Development Finance Act; or (c) monies which may be received from any source, including income from the corporation's operations, under Sections 57-10-401 through 57-10-445, for effectuating the purposes of Sections 57-10-401 through 57-10-445, including, without limitation, the payment of the expenses of administration and operation incurred pursuant to Sections 57-10-401 through 57-10-445 and the establishment and, if deemed desirable, maintenance of a reserve or contingency fund for the administration of Sections 57-10-401 through 57-10-445.

SECTION 5. Section 57-10-409, Mississippi Code of 1972, is reenacted as follows:

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, this section shall read as follows:]

57-10-409. The corporation may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each financing agreement shall be determined by negotiations between the corporation and the approved company, except that each financing agreement shall include the following provisions:

(a) If the corporation issues any bonds in connection with an economic development project, the term of the financing agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and may grant to the approved company an option to purchase the economic development project from the corporation upon the termination of the financing agreement for such consideration and under such terms and conditions the corporation may approve. Nothing in this paragraph shall limit the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise.

(b) If the corporation issues any bonds in connection with an economic development project, the financing agreement shall specify that the annual obligations of the approved company under Sections 57-10-401 through 57-10-445 shall equal in each year at least the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.

(c) If the corporation loans funds to an approved company that is a private company under the Mississippi Small Enterprise Development Finance Act, the financing agreement shall include the terms and conditions of the loan required by Section 57-71-1 et seq.

(d) (i) In consideration for financing agreement payment, the approved company may be permitted the following during the period of time in which the financing agreement is in effect, not to exceed twenty-five (25) years:

1. A tax credit on the amount provided for in Section 27-7-22.3(2), Mississippi Code of 1972; plus

2. The aggregate assessment withheld by the approved company in each year.

(ii) The income tax credited to the approved company referred to herein shall be credited in the fiscal year of the financing agreement in which the tax return of the approved company is filed. The approved company shall not be required to pay estimated tax payments under Section 27-7-319, Mississippi Code of 1972.

(e) (i) The financing agreement shall provide that the assessments, when added to the credit for the state corporate income tax herein granted, shall not exceed the total financing agreement annual payment by the approved company in any year; however, to the extent that financing agreement annual payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years.

(ii) If during any fiscal year of the financing agreement the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the

assessment collected from the wages of the employees shall cease for the remainder of the fiscal year of the financing agreement.

(f) The financing agreement shall provide that:

(i) It may be assigned by the approved company only upon the prior written consent of the corporation following the adoption of a resolution by the corporation to such effect; and

(ii) Upon the default by the approved company in the obligation to render its annual payment, the corporation shall have the right, at its option, to declare the financing agreement in default and to accelerate the total of all annual payments that are to be made or to terminate the financing agreement and cause to be sold the economic development project at public or private sale, or to pursue any other remedies available under the Uniform Commercial Code, as from time to time amended, or otherwise available in law or equity.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, but has issued bonds for such project prior to July 1, 1997, or in cases involving an economic development project which has been induced by a resolution of the Board of Directors of the Mississippi Business Finance Corporation that has been filed with the State Tax Commission prior to July 1, 1997, this section shall read as follows:]

57-10-409. The corporation may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each financing agreement shall be determined by negotiations between the corporation and the approved company, except that each financing agreement shall include the following provisions:

(a) If the corporation issues any bonds in connection with an economic development project, the term of the financing

agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and may grant to the approved company an option to purchase the economic development project from the corporation upon the termination of the financing agreement for such consideration and under such terms and conditions the corporation may approve. Nothing in this paragraph shall limit the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise.

(b) If the corporation issues any bonds in connection with an economic development project, the financing agreement shall specify that the annual obligations of the approved company under Sections 57-10-401 through 57-10-445 shall equal in each year at least the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.

(c) If the corporation loans funds to an approved company that is a private company under the Mississippi Small Enterprise Development Finance Act, the financing agreement shall include the terms and conditions of the loan required by Section 57-71-1 et seq.

(d) (i) In consideration for financing agreement payment, the approved company may be permitted the following during the period of time in which the financing agreement is in effect, not to exceed twenty-five (25) years:

1. A tax credit on the amount provided for in Section 27-7-22.3(2), Mississippi Code of 1972; plus

2. The aggregate assessment withheld by the approved company in each year.

(ii) The income tax credited to the approved company referred to herein shall be credited in the fiscal year of the financing agreement in which the tax return of the approved company is filed. The approved company shall not be required to pay estimated tax payments under Section 27-7-319, Mississippi Code of 1972.

(e) (i) The financing agreement shall provide that the assessments, when added to the credit for the state corporate income tax herein granted, shall not exceed the total financing agreement annual payment by the approved company in any year; however, to the extent that financing agreement annual payments exceed credits received and assessments collected in any year, the excess payment may be recouped from excess credits or assessment collections in succeeding years not to exceed three (3) years following the termination of the period of time during which the financing agreement is in effect.

(ii) If during any fiscal year of the financing agreement the total of the income tax credit granted to the approved company plus the assessment collected from the wages of the employees equals the annual payment pursuant to the financing agreement, and if all excess payments pursuant to the financing agreement accumulated in prior years have been recouped, the assessment collected from the wages of the employees shall cease for the remainder of the fiscal year of the financing agreement.

(f) The financing agreement shall provide that:

(i) It may be assigned by the approved company only upon the prior written consent of the corporation following the adoption of a resolution by the corporation to such effect; and

(ii) Upon the default by the approved company in the obligation to render its annual payment, the corporation shall

have the right, at its option, to declare the financing agreement in default and to accelerate the total of all annual payments that are to be made or to terminate the financing agreement and cause to be sold the economic development project at public or private sale, or to pursue any other remedies available under the Uniform Commercial Code, as from time to time amended, or otherwise available in law or equity.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1997, or in cases involving an economic development project which has not been induced by a resolution of the Board of Directors of the Mississippi Business Finance Corporation that has been filed with the State Tax Commission prior to July 1, 1997, this section shall read as follows:]

57-10-409. The corporation may enter into, with any approved company, a financing agreement with respect to its economic development project. The terms and provisions of each financing agreement shall be determined by negotiations between the corporation and the approved company, except that each financing agreement shall include the following provisions:

(a) If the corporation issues any bonds in connection with an economic development project, the term of the financing agreement shall not be less than the last maturity of the bonds issued with respect to the economic development project, except that the financing agreement may terminate upon the earlier redemption of all of the bonds issued with respect to the economic development project and may grant to the approved company an option to purchase the economic development project from the corporation upon the termination of the financing agreement for such consideration and under such terms and conditions the corporation may approve. Nothing in this paragraph shall limit

the extension of the term of a financing agreement if there is a refunding of the correlative bonds or otherwise.

(b) If the corporation issues any bonds in connection with an economic development project, the financing agreement shall specify that the annual obligations of the approved company under Sections 57-10-401 through 57-10-445 shall equal in each year at least the annual debt service for that year on the bonds issued with respect to the economic development project; and the approved company shall pay such obligation of the financing agreement to the trustee for bonds issued for the benefit of the approved company, at such time and in such amounts sufficient to amortize such bonds.

(c) If the corporation loans funds to an approved company that is a private company under the Mississippi Small Enterprise Development Finance Act, the financing agreement shall include the terms and conditions of the loan required by Section 57-71-1 et seq.

(d) (i) In consideration for financing agreement payment, the approved company may be permitted a tax credit on the amount provided for in Section 27-7-22.3(2), Mississippi Code of 1972, during the period of time in which the financing agreement is in effect, not to exceed twenty-five (25) years.

(ii) The income tax credited to the approved company referred to herein shall be credited in the fiscal year of the financing agreement in which the tax return of the approved company is filed. The approved company shall not be required to pay estimated tax payments under Section 27-7-319, Mississippi Code of 1972.

(e) The financing agreement shall provide that:

(i) It may be assigned by the approved company only upon the prior written consent of the corporation following the adoption of a resolution by the corporation to such effect; and

(ii) Upon the default by the approved company in the obligation to render its annual payment, the corporation shall have the right, at its option, to declare the financing agreement in default and to accelerate the total of all annual payments that are to be made or to terminate the financing agreement and cause to be sold the economic development project at public or private sale, or to pursue any other remedies available under the Uniform Commercial Code, as from time to time amended, or otherwise available in law or equity.

SECTION 6. Section 57-10-411, Mississippi Code of 1972, is reenacted as follows:

57-10-411. Ninety (90) days after the filing of the tax return of the approved company, the State Tax Commission shall certify to the corporation the state income tax liability for the preceding year of each approved company with respect to an economic development project financed under Sections 57-10-401 through 57-10-445, and the amounts of any tax credits taken under Sections 57-10-401 through 57-10-445.

SECTION 7. Section 57-10-413, Mississippi Code of 1972, is reenacted as follows:

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, this section shall read as follows:]

57-10-413. (1) The approved company may require that each employee whose gross wages are equivalent to Five Dollars ($5.00) or more per hour, as a condition of employment, agrees to pay a job development assessment fee not to exceed a certain percentage of the gross wages of each such employee whose job was created as a result of the economic development project, for the purpose of retiring the bonds which fund the economic development project or other indebtedness. The job development assessment fee shall not

exceed the following percentages of the gross wages of the employee:

(a) Two percent (2%), if the gross wages of the employee are equivalent to Five Dollars ($5.00) or more per hour but less than Seven Dollars ($7.00) per hour;

(b) Four percent (4%), if the gross wages of the employee are equivalent to Seven Dollars ($7.00) or more per hour but less than Nine Dollars ($9.00) per hour; and

(c) Six percent (6%), if the gross wages of the employee are equivalent to Nine Dollars ($9.00) or more per hour.

(2) Each employee so assessed shall be entitled to credits against Mississippi income taxes as provided in Section 27-7-22.3.

(3) If an approved company shall elect to impose the assessment as a condition of employment, it shall deduct the assessment from each paycheck of each employee.

(4) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the corporation at such reasonable times as the corporation shall request and shall file with the corporation documentation respecting the assessment as the corporation may require.

(5) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project under subsection (1) of this section shall lapse on the date the bonds are retired.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, but has issued bonds for such project prior to July 1, 1997, or in cases involving an economic development project which has been induced by a resolution of the Board of Directors of the Mississippi Business Finance Corporation that has

been filed with the State Tax Commission prior to July 1, 1997, this section shall read as follows:]

57-10-413. (1) Except as otherwise provided for in subsection (6) of this section, the approved company may require that each employee whose gross wages are equivalent to Five Dollars ($5.00) or more per hour, as a condition of employment, agrees to pay a job development assessment fee not to exceed a certain percentage of the gross wages of each such employee whose job was created as a result of the economic development project, for the purpose of retiring the bonds which fund the economic development project or other indebtedness. The job development assessment fee shall not exceed the following percentages of the gross wages of the employee:

(a) Two percent (2%), if the gross wages of the employee are equivalent to Five Dollars ($5.00) or more per hour but less than Seven Dollars ($7.00) per hour;

(b) Four percent (4%), if the gross wages of the employee are equivalent to Seven Dollars ($7.00) or more per hour but less than Nine Dollars ($9.00) per hour; and

(c) Six percent (6%), if the gross wages of the employee are equivalent to Nine Dollars ($9.00) or more per hour.

(2) Each employee so assessed shall be entitled to credits against Mississippi income taxes as provided in Section 27-7-22.3.

(3) If an approved company shall elect to impose the assessment as a condition of employment, it shall deduct the assessment from each paycheck of each employee.

(4) Any approved company collecting an assessment as provided in subsection (1) of this section shall make its payroll books and records available to the corporation at such reasonable times as the corporation shall request and shall file with the corporation documentation respecting the assessment as the corporation may require.

(5) Any assessment of the wages of employees of an approved company in connection with their employment at an economic development project under subsection (1) of this section shall lapse on the date the bonds are retired.

(6) If an eligible company closes a facility in this state and becomes an approved company under the provisions of Sections 57-10-401 through 57-10-449, only those jobs created in excess of those that existed at the closed facility at the time of the closure shall be eligible for the imposition of the job development assessment fee. The Mississippi Business Finance Corporation shall promulgate rules and regulations to govern the determination of the number of jobs upon which the job development assessment fee may be imposed.

SECTION 8. Section 57-10-415, Mississippi Code of 1972, is reenacted as follows:

57-10-415. Every issue of bonds under Sections 57-10-401 through 57-10-445 shall be payable solely out of any revenues of the corporation as provided in Sections 57-10-401 through 57-10-445. The bonds additionally may be secured by a pledge of any grant, contribution or guarantee from the federal government or any person or a pledge by the corporation of any revenues from any source.

SECTION 9. Section 57-10-417, Mississippi Code of 1972, is reenacted as follows:

57-10-417. The bonds issued by the corporation under Sections 57-10-401 through 57-10-445 shall be limited obligations of the corporation and shall not constitute a debt, liability or general obligation of the state or any political subdivision thereof (other than the corporation), or a pledge of the faith and credit of the state or any political subdivision thereof (other than the corporation), but shall be payable solely as provided by the corporation under Sections 57-10-401 through 57-10-445. No member or officer of the board of directors of the corporation nor

any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. Each bond issued under Sections 57-10-401 through 57-10-445 shall contain on the face thereof a statement that neither the state, nor any other political subdivision thereof, shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenue or money pledged by the corporation and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of, or the interest on, such bond.

SECTION 10. Section 57-10-419, Mississippi Code of 1972, is reenacted as follows:

57-10-419. (1) The corporation may issue in its own name, from time to time, for the purpose of financing the approved costs of an economic development project, its bonds and may pledge for the payment thereof funds derived in respect of any financing agreement or other arrangement entered into by the corporation and an approved company under Sections 57-10-401 through 57-10-445.

(2) In anticipation of the issuance of bonds, the corporation may provide for the issuance, at one time or from time to time, of bond anticipation notes. The principal of and the interest on the notes shall be payable solely from the funds herein provided for the payment. Any notes may be made payable from the proceeds of bonds or renewal notes; or, if bond or renewal note proceeds are not available, the notes may be paid from any available revenues or assets of the corporation.

(3) The bonds issued under Sections 57-10-401 through 57-10-445 shall be authorized by a resolution of the corporation, shall bear such date or dates, and shall mature at such time or times as such resolution may provide, except that no bond shall mature more than twenty-five (25) years from the date of issue. Bonds which are not subject to taxation shall bear interest at such rate or rates, be in such denominations, be in such form,

carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, including redemption before maturity, as such resolution may provide. Except as expressly provided otherwise in Sections 57-10-401 through 57-10-445, the provisions of other laws of the state relating to the issuance of revenue bonds shall not apply to bonds issued by the corporation. As to bonds issued hereunder and designated as taxable bonds by the corporation, any immunity to taxation by the United States government of interest on such bonds or notes is hereby waived. Bonds of the corporation may be sold by the corporation at public or private sale, from time to time, and at such price or prices as the corporation shall determine.

(4) The proceeds of any bonds shall be used solely for the purposes for which issued and shall be disbursed in the manner and under the restrictions, if any, that the corporation may provide in the resolution authorizing the issuance of the bonds or in a trust indenture securing the same.

(5) The principal and interest on the bonds issued by the corporation shall be payable solely and only from proceeds derived under a financing agreement and shall be secured solely by the economic development project, the proceeds of the financing agreement, and such other assets as may be available, but not including revenues of the state.

(6) Before the preparation of definitive certificates evidencing the bonds, the corporation may issue, under like restrictions, interim receipts or temporary certificates, with or without coupons, exchangeable for definitive certificates when the certificates have been executed and are available for delivery. The corporation may also provide for the replacement of any certificates which become mutilated or are destroyed or lost.

SECTION 11. Section 57-10-421, Mississippi Code of 1972, is reenacted as follows:

57-10-421. In addition to the requirements provided for in Section 57-10-419, any resolution authorizing the issuance of bonds under Sections 57-10-401 through 57-10-445 may contain provisions as to:

(a) The setting aside of reserves or sinking funds and the regulations and disposition thereof;

(b) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(c) The procedure, if any, by which the terms of any of the proceedings under which the bonds are being issued may be amended or abrogated, the number or percentage of bondholders who or which must consent thereto, and the manner in which the consent may be given;

(d) The vesting in a trustee or trustees of such property, rights, powers and duties in trust as the company may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers and duties of the trustee;

(e) Defining the act or omissions to act which shall constitute a default and the obligations or duties of the corporation to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, which rights and remedies may include the general laws of the state and other provisions of Sections 57-10-401 through 57-10-445; or

(f) Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

SECTION 12. Section 57-10-423, Mississippi Code of 1972, is reenacted as follows:

57-10-423. Any pledge made by the corporation shall be valid and binding from the time when the pledge was made. The revenues

or properties so pledged and thereafter received by the corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the corporation, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

SECTION 13. Section 57-10-425, Mississippi Code of 1972, is reenacted as follows:

57-10-425. The corporation, subject to the provisions in proceedings relating to outstanding bonds as may then exist, may purchase bonds out of any funds available therefor, which shall thereupon be canceled, at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price (and premium, if any) then applicable plus accrued interest to the redemption date thereof.

SECTION 14. Section 57-10-427, Mississippi Code of 1972, is reenacted as follows:

57-10-427. The bonds may be secured by an indenture by and between the corporation and a corporate trustee which may be any bank or other corporation having the power of a trust company or any trust company within or without this state. Such indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the corporation in relation to the exercise of its powers and the custody, safekeeping and application of all money. The corporation may provide by the indenture for the payment of the proceeds of the bonds and revenues to the trustee under the indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the corporation may determine. If the bonds shall be secured by an

indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

SECTION 15. Section 57-10-429, Mississippi Code of 1972, is reenacted as follows:

57-10-429. In the event that any of the members or officers of the board of directors of the corporation shall cease to be members or officers of the board prior to the delivery of any bonds signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

SECTION 16. Section 57-10-431, Mississippi Code of 1972, is reenacted as follows:

57-10-431. The corporation may create and establish such funds and accounts as may be necessary or desirable for its purposes under Sections 57-10-401 through 57-10-445.

SECTION 17. Section 57-10-433, Mississippi Code of 1972, is reenacted as follows:

57-10-433. The corporation shall have the power to contract with the holders of any of its bonds issued under Sections 57-10-401 through 57-10-445 as to the custody, collection, securing, investment and payment of any money of the corporation, and of any money held in trust or otherwise for the payment of bonds, and to carry out such contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the corporation, and all banks and trust companies are authorized to give security for the deposits.

SECTION 18. Section 57-10-435, Mississippi Code of 1972, is reenacted as follows:

57-10-435. Amendments to Sections 57-10-401 through 57-10-445, enacted after July 1, 1993, shall not limit the rights vested in the corporation with respect to any agreements made

with, or remedies available to, the holders of bonds issued under this article or Section 27-7-22.3 prior to the enactment of the amendments until the bonds, together with all interest thereon, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged.

SECTION 19. Section 57-10-437, Mississippi Code of 1972, is reenacted as follows:

57-10-437. All expenses incurred by the corporation in carrying out the provisions of Sections 57-10-401 through 57-10-445 shall be payable solely from funds provided under Sections 57-10-401 through 57-10-445, or other funds of the corporation. Nothing in Sections 57-10-401 through 57-10-445 shall be construed to authorize the corporation to incur indebtedness or liability on behalf of or payable by the state or any other political subdivision thereof.

SECTION 20. Section 57-10-439, Mississippi Code of 1972, is reenacted as follows:

57-10-439. (1) The corporation is hereby declared to be performing a public function and to be a public body corporate and a political subdivision of the state. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the corporation, shall at all times be exempt from all taxation by the state or any political subdivision thereof. If, after all indebtedness and other obligations of the corporation are discharged, the corporation is dissolved, its remaining assets shall inure to the benefit of the state.

(2) With the approval of the appropriate local taxing authority, all mortgages or deeds of trust executed as security therefor, all lease or purchase agreements made pursuant to the provisions hereof, and all purchases required to establish the industrial enterprise and financed by proceeds from bonds issued under Sections 57-10-401 through 57-10-445, shall likewise be exempt from all taxation in the State of Mississippi except the

contractors' tax imposed by Section 27-65-21 and the tax levied by Section 27-65-24(1)(b), and except ad valorem taxes levied for school district purposes. All projects and the revenue derived therefrom from any lease thereof shall be exempt from all taxation in the State of Mississippi, except the tax levied by Sections 27-65-21 and 27-65-24(1)(b), except the tax levied under Chapter 7, Title 27, Mississippi Code of 1972, and except ad valorem taxes levied for school district purposes.

SECTION 21. Section 57-10-441, Mississippi Code of 1972, is reenacted as follows:

57-10-441. The bonds issued by and under the authority of Sections 57-10-401 through 57-10-445 by the corporation are declared to be legal investments in which all public officers or public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations, and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of the state, may invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and received by all public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may be later authorized by law.

SECTION 22. Section 57-10-443, Mississippi Code of 1972, is reenacted as follows:

57-10-443. The corporation, within one hundred twenty (120) days of the close of each fiscal year, shall submit an annual report of its activities in regard to Sections 57-10-401 through 57-10-445 for the preceding year to the Governor. The Clerk of the House of Representatives and the Secretary of the Senate each shall receive a copy of the report by making a request for it to the corporation. Each report shall set forth a complete operating and financial statement in regard to Sections 57-10-401 through 57-10-445 for the corporation during the fiscal year it covers.

SECTION 23. Section 57-10-445, Mississippi Code of 1972, is reenacted as follows:

57-10-445. Nothing contained in Sections 57-10-401 through 57-10-445 is to be construed as a restriction or limitation upon any powers which the corporation might otherwise have under any other law of the state. Insofar as the provisions of Sections 57-10-401 through 57-10-445 are inconsistent with the provisions of any other law, the provisions of Sections 57-10-401 through 57-10-445 shall be controlling, and the powers conferred by Sections 57-10-401 through 57-10-445 shall be regarded as supplemental and additional to powers conferred by any other laws. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in Sections 57-10-401 through 57-10-445.

The provisions of Sections 57-10-401 through 57-10-445 shall be liberally construed to accomplish the purposes of Sections 57-10-401 through 57-10-445.

The powers granted and the duties imposed in Sections 57-10-401 through 57-10-445 shall be construed to be independent and severable. If any one or more sections, subsections, sentences or parts of any of Sections 57-10-401 through 57-10-445 shall be adjudged unconstitutional or invalid, such adjudication shall not affect, impair or invalidate the remaining provisions

thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.

SECTION 24. Section 27-7-22.3, Mississippi Code of 1972, is reenacted as follows:

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, this section shall read as follows:]

27-7-22.3. (1) For taxpayers who are required to pay a job assessment fee as provided in Section 57-10-413, there shall be allowed as a credit against the taxes imposed by this chapter, an amount equal to the amount of the job assessment fee imposed upon such taxpayer pursuant to Section 57-10-413. If the amount allowable as a credit exceeds the tax imposed by this article and Section 27-7-22.3, the amount of such excess shall not be refundable or carried forward to any other taxable year.

(2) For any approved company as defined in Section 57-10-401, there shall be allowed against the taxes imposed by this chapter on the income of the approved company generated by or arising out of the economic development project (as defined in Section 57-10-401), a credit in an amount not to exceed the total debt service paid under a financing agreement entered into under Section 57-10-409. The tax credit allowed in this subsection shall not exceed the amount of taxes due the State of Mississippi.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, but has issued bonds for such project prior to July 1, 1997, or in cases involving an economic development project which has been induced by a resolution of the Board of Directors of the Mississippi Business Finance Corporation that has been filed with the State Tax Commission prior to July 1, 1997, this section shall read as follows:]

27-7-22.3. (1) For taxpayers who are required to pay a job assessment fee as provided in Section 57-10-413, there shall be allowed as a credit against the taxes imposed by this chapter, an amount equal to the amount of the job assessment fee imposed upon such taxpayer pursuant to Section 57-10-413. If the amount allowable as a credit exceeds the tax imposed by this article and Section 27-7-22.3, the amount of such excess shall not be refundable or carried forward to any other taxable year.

(2) For any approved company as defined in Section 57-10-401, there shall be allowed against the taxes imposed by this chapter on the income of the approved company generated by or arising out of the economic development project (as defined in Section 57-10-401), a credit in an amount not to exceed the total debt service paid under a financing agreement entered into under Section 57-10-409. The tax credit allowed in this subsection shall not exceed the amount of taxes due the State of Mississippi. The amount of income of the approved company generated by or arising out of the economic development project shall be determined by a formula adopted by the Mississippi Business Finance Corporation.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1997, or in cases involving an economic development project which has not been induced by a resolution of the Board of Directors of the Mississippi Business Finance Corporation that has been filed with the State Tax Commission prior to July 1, 1997, this section shall read as follows:]

27-7-22.3. For any approved company as defined in Section 57-10-401, there shall be allowed against the taxes imposed by this chapter on the income of the approved company generated by or arising out of the economic development project (as defined in Section 57-10-401), a credit in an amount not to exceed the total

debt service paid under a financing agreement entered into under Section 57-10-409; provided, however, that the tax credit allowed in this subsection shall not exceed eighty percent (80%) of the amount of taxes due the State of Mississippi prior to the application of the credit. To the extent that financing agreement annual payments exceed the amount of the credit authorized pursuant to this section in any taxable year, such excess payment may be recouped from excess credits in succeeding years not to exceed three (3) years following the date upon which the credit was earned. The amount of income of the approved company generated by or arising out of the economic development project shall be determined by a formula adopted by the Mississippi Business Finance Corporation.

SECTION 25. Section 57-10-449, Mississippi Code of 1972, is amended as follows:

57-10-449. Sections 57-10-401 through 57-10-445 and 27-7-22.3 shall be repealed from and after October 1, 2015.

SECTION 26. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE SENATE
March 27, 2011

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

4/26/11 6:20p