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Performance Audit Division Brief:
Economic Development Bond Monitoring Quarterly Report
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Introduction

The Office of the State Auditor (OSA), Performance Audit Division (PAD) monitors the expenditure, employment, construction, and in some cases, the productivity of a number of State-funded major economic development projects. The Legislature supports these projects because they promise to bring and keep jobs and industry in the State. Chapter 75, Title 57 of the Mississippi Code of 1972, Annotated, is the Mississippi Major Economic Impact Act (MMEIA); which, historically, has been used by the Legislature to structure major economic projects.

In recent years, the Legislature has begun using alternate avenues to codify economic development bond projects—the Mississippi Industry Incentive Financing Revolving Fund (MIIFRF) (§57-1-221) and the Mississippi Advantage Jobs Act (§57-62 et al, MS Code of 1972, Annotated). Neither the Act nor the establishment of the MIIFRF provides the authority for the OSA to audit any of these projects. During the 2013 Regular Session, two pieces of legislation (HB 473 and SB 2686) was introduced (but died in the Senate Accountability, Efficiency, Transparency committee) that would have provided the authority for OSA to better monitor and audit the economic development incentives provided by the State. Failure to provide OSA with the authority to audit such private recipients of taxpayer dollars was how the MS Beef Processors failure occurred without warning.

The Legislature established the MMEIA to assist with the recruitment of major economic projects into the State and to provide incentives to those companies choosing to conduct business in Mississippi. Under MMEIA, the State Bond Commission is given the power to borrow money and issue general obligation bonds to the projects the State declares as major economic projects. Bonds are defined in MS Code §57-75-5 as *...general obligation bonds, interim notes, and other evidences of debt of the State of Mississippi...* Borrowing money and issuing bonds for the purpose of these projects should serve valid public purposes that significantly contribute to the employment base and growth in the State revenue and employment opportunities. These projects are to be designed to benefit the people of

the State to improve and promote community welfare and prosperity.

Under MS Code §57-75-5, 27 economic development projects were approved to receive general obligation bonds. To date, there are 11 active programs under MS Code §57-75-5. Some of these projects have consisted of industrial, pharmaceutical, and automotive manufacturing, etc. Which are expected to create jobs and make an initial capital investment into the project sites.

The Legislature has given the OSA the responsibility and authority to conduct audits; to ensure the taxpayers' funds expended for these projects have been used appropriately; jobs promised have been created; and private investment commitments have been made. This specific duty was authorized by the Legislature under §§57-75-5 and -15, MS Code of 1972, annotated. The PAD's ultimate goal and responsibility is to provide objective oversight and monitoring of these projects.

Prior to the review of each company, the PAD tailors an audit plan for each project based on authorizing statutes; an entity's specific memorandum of understandings (MOU); all amendments created related to the MOU; and Generally Accepted Government Auditing Standards. Periodically, and throughout the legislative process and later, throughout the life of a bond project, the PAD bond monitoring staff:

- Analyzes and summarizes legislative bills;
- Reviews components of the project to ensure all requirements for the bond authorization have been met and/or maintained;
- Examines the Mississippi Development Authority (MDA) internal controls and accounting features;
- Inspects project sites and conducts announced and unannounced site visits;
- Requests documentation, including internal controls, financials, and other data as necessary to adequately monitor the project;
- Monitors and verifies a variety of targeted outcomes or deliverables specified in the MOU and other documents throughout the life of the project;
- Verifies third party audits and certifies accounting and invoicing procedures;
- Requests certified verification letters for completed requirements;



- Constructs various summaries and reports as applicable and/or requested;
- Reviews incentives and their long term impact; and
- Provides conclusive findings and recommendations to the Governor and Legislature for review.

As the Mississippi Development Authority finalizes MOU's; amendments; and other legal documents, PAD formally requests signed copies for analytical purposes and reference. In addition, as the State sells the bonds (thus borrowing money) to fund these projects, OSA monitors the process and documents of the State Bond Commission. After reviewing all legal documents related to the bond projects, and noting all performance dates, timelines for completion or output, and other activities, OSA begins design of the audit plan. If auditors note any serious discrepancies during the review period or during the audit, they will make recommendations and/or turn the project over to additional audit personnel for additional investigation. Each audit plan is unique to that projects' incentives and requirements.

Mississippi Development Authority

The Mississippi Development Authority is the State economic and community development agency. As the lead agency, MDA is responsible for creating opportunities that bring economic development to communities, and greater employment opportunities to workers and businesses throughout the State. Depending on the bond objectives, funding opportunities are tailored to the specific need of the project. Furthermore, the State incentives are awarded to increase businesses' productivity and the ability to compete within its industry and to help keep jobs in our State.

In recent years, the Legislature has begun using alternate avenues to codify economic development bond projects such as the Mississippi Industry Incentive Financing Revolving Fund (§57-1-221), the Mississippi Job Protection Act (§57-95-1), the ACE Fund (§57-1-16), and the Mississippi Advantage Jobs Act (§57-62 et al, MS Code of 1972, Annotated) to name a few. Currently, under these programs, there are over 80 projects not being monitoring by OSA (or any other oversight agency).

OSA's findings and recommendations are derived from various audit programs that have been designed based on a bond monitoring manual created in 2004 as a joint effort between the OSA and Horne CPA firm. These findings and recommendations offer ways that both MDA and the private entity might improve transparency within the State. Based on the review of past projects, including the ones named in this report, the OSA makes the following recommendations to MDA to help improve its management processes for these and future projects.

The chart below lists the OSA recommendations previously made to MDA:

MDA Recommendations	
1	The OSA believes it is imperative for MOUs to be specific and detailed in defining all terms and requirements of the project. Providing comprehensive MOUs will minimize the opportunity for confusion and lack of understanding of contractual requirements. It will strengthen oversight control mechanisms by providing clarity and specificity and will better protect the money that comes from taxpayers in Mississippi.
2	Regularly (at least annually) verify and require certification for all employment information and records that pertain to the employment requirements listed in the MOU for each project prior to OSA conducting its audits.
3	Require entities to submit semi-annually qualified employment information to determine true employment figures.
4	Verify all prior employment information and records that pertain to the MOU before contracts are signed. For all future projects, MDA should no longer sign a contract without conducting its due diligence on a company.
5	Closely monitor all project obligations to ensure all aspects of the MOU and other incentives provided are being met, and establish penalties for those obligations or warrants, such as employment figures and capital investments etc., that are not met.
6	Notify all parties (especially other State agencies mentioned in contracts) in writing of their obligations to the projects. The OSA further recommends the Mississippi Department of Revenue, which has created an economic development division, maintain any employment information on all State supported economic development projects for future auditing purposes. Without this notice and outreach by MDA, many of the listed agencies never know they are expected to do anything related to the projects until OSA tries to conduct an audit.
7	Ensure the entities that receive bond funds are following General Auditing Standards for financial and other record retention and make sure that they are aware of their long-term obligations to the State for auditing and reporting purposes as stated in the MOU .



Mississippi Employment Protection Act

The PAD also verifies the compliance with the Mississippi Employment Protection Act (MEPA) by reviewing companies' E-Verify Program for Employment Verification Memorandum of Understanding (E-Verify MOU) to determine registration with the program and form I-9 with case verifications to determine employment eligibility.

The MEPA became law during the 2008 Regular Session (SB 2988). As stated in law *...every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees...* Under MEPA, employers were required to use and registered by the following effective dates by:

- July 1, 2008: All Mississippi agencies and political subdivisions, public contractors, and private employers with 250 or more employees;
- July 1, 2009: Private employers with 100 or more employees;
- July 1, 2010: Private employers with 30 or more employees; and
- July 1, 2011: All employers should have met the requirement.

Any employer convicted of violating this law is subject to sanctions, which include the cancellation of State or public contracts; a debarment from State or public contracts for up to three years; and the loss of business license for up to one year. To date, the State of Mississippi has not imposed any of the sanctions listed above.

In conjunction with State law, employers are also required to sign the E-Verify MOU, which list specific responsibilities of the Social Security Administration, the Department of Homeland Security, and the employer. Nonetheless, on several occasions, *OSA has found employers are not following the requirements listed in the E-Verify MOU. OSA recommends MDA include in their MOU the following requirements and responsibilities of employers:*

- *Display the E-Verify participation posters (English & Spanish) in prominent places that are visible to prospective employees and all employees who are to be verified through the system,*
- *Comply with the most recent version of the E-Verify Manual,*
- *Comply with the current Form I-9 procedures,*

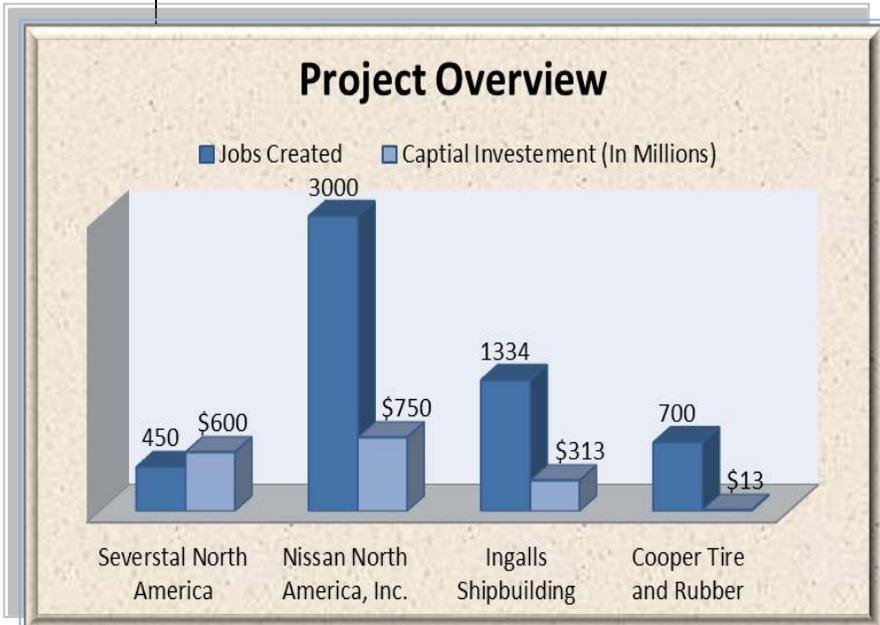
- *Initiate E-verify verification procedures for new employees within 3 business days after each employee has been hired, and*
- *Record the case verification number on the employee's Form I-9 or print the screen containing verification number and attach it to the employee's Form I-9.*

It is the opinion of the PAD the possible omittance of this requirement by some entity is the lack of a clear interpretation/understanding of the law. In addition, OSA further recommends MDA warrant Mississippi employers to enroll in the E-Verify program, emphasize the importance of the program, and audit the Form I-9 documents to identify any potential issues to ensure compliance with the Mississippi Employment Protection Act.

Current Bond Projects

The PAD completed the review of four (4) major economic development projects under the MMEIA during the fourth quarter of calendar year 2012, which are listed in the table below. During the audits, the PAD identified various components of these companies' data elements such as:

- The creation and maintenance of full-time jobs (employees),
- Annual salary requirements,
- Initial capital investments,
- Workforce training, and
- Compliance with the MEPA.





The four (4) companies listed in the preceding table, are the focus of this brief, have invested approximately \$1.7 billion of non-state capital in Mississippi. These companies have also created approximately 5,800 jobs in this State.

In most cases, each company agrees and commits to employment creation and an initial capital investment. The chart also illustrates each company’s initial capital investment and the employment creation required by law and covenanted in the MOUs in order to receive general obligation bond funds from the State. *According to the OSA’s test analysis, initial capital investments for these projects were achieved and employment figures were met and maintained by the companies, despite the poor economy.*

The following discussion provides a brief onsite analysis for each project. Audit work determined the accuracy and reliability of the data the companies provided for review to ensure the company’s commitments and threshold dates were achieved accurately for receiving tax incentives and additional funding from the State of Mississippi as agreed upon in the MOU. The PAD also determined if obligations mentioned in the MOUs were met and/or maintained. Primarily, with each project, the PAD examined and verified the date of hire and if evidence of employment was traceable to the company’s payroll documents, and W-2/W-4 tax forms, and compliance with MEPA component.

Severstal North America



Severstal North America, originally known as SeverCorr, is a steel mill located in Columbus, Mississippi, Lowndes County. It is one of the largest steel producers in the United States and is owned by a Russian based company. Among its numerous products, Severstal is known for producing high quality, flat-rolled, carbon steel products for the automotive, appliance, and construction industry. They also provide steel that is used for pipe and tubing, ceiling grids, grain systems, HVAC equipment, machinery, metal buildings, water heaters, and many other similar uses.

In April 2012, the PAD audited the 2009 employee data and capital investment. As a legislatively approved, MMEIA bond project (§57-75-5(f)(xvii)), the State Bond Commission authorized a total of \$35 million in general obligation bonds for the Severstal project. The MOU (signed in July 2005) required Severstal to create at least 450 new full-time jobs with an average annual salary of at least \$70,000 for a period of ten years. The company was also required to make a capital investment from any source or combination of sources in items such as land, buildings, equipment, depreciable fixed assets, and any capitalized costs in an amount not less than \$600 million.

From Severstal’s employee listing, as indicated earlier, the PAD examined and verified a 30% sample of the following employee components: date of hire, evidence the employee was employed as of September 30, 2009. *Based on the OSA’s test procedures, Severstal met its obligation to create at least 450 new full-time jobs with an average annual salary of at least \$70,000.* PAD’s procedures verified Severstal employed 645 persons as of May 14, 2012, which exceeded the requisite minimum number of employees per the MOU by 195 individuals.

Additionally, the audit utilized Severstal’s capital investment log from October 2005 through April 2006 to verify the company’s capital investment of \$600 million. The PAD examined and verified 14% of the total initial capital investment by using the following data elements: financial statements, payment vouchers and invoice details provided by the company and the MDA. *Based on the OSA’s test procedures, Severstal met its capital investment obligation to invest not less than \$600 million in facility, machinery, and equipment for the project.* Severstal’s Phase I portion of the project is to be maintained for a period of ten (10) years.

Ingalls Shipbuilding

Ingalls Shipbuilding—a division of Huntington Ingalls Industries (Ingalls), formerly known as Northrop Grumman Ship Systems, is located in Pascagoula, Mississippi, Jackson County. The company serves as a full-service supplier of ships to the United States Navy, Coast Guard, Marine Corp, etc. It has the capability of building warships that can reach weight capacity of 24,000 tons. The PAD has been auditing the shipyard since 2003. On August 29, 2005, Hurricane Katrina damaged the shipyard. Even though this natural disaster caused the shipbuilding to come to a halt for a time, the facility has recovered and continues to run today. Additionally, the shipyard has continued to maintain and exceed its required employment numbers.

The State project include the West Bay 6&7 Phase 1 and the Blast & Paint Facilities upgrades and additions.

The PAD performed an audit of the 2007, 2008, and 2011 employee data and capital investment requirement of



Ingalls. The audit determined if Ingalls met its employee threshold, complied with MEPA, and met its capital investment obligation as mentioned in the MOU. The Legislature approved this project under MMEIA during the 2003 Regular Legislative Session (SB 2886). A total of \$156 million in general obligation bonds were issued. The breakdown of issuance is as followed:

- 2002 Act (SB 3197) provided \$12 million and required a capital investment of \$25 million by December 31, 2007
- 2003 Act (SB 2886) provided \$48 million and required a capital investment of \$96 million by December 31, 2007
- 2004 Act (SB 2010) provided \$40 million and required a capital investment of \$80 million by December 31, 2008
- 2006 Act (SB 2993) provided \$56 million and required a capital investment of \$112 million by December 31, 2011



In addition, the project required the following new, full-time job creations in Mississippi:

- The MOU signed in July 2003 affirms, in Article III, Section 3.2, the creation of an additional 667 new full-time direct jobs on or before December 31, 2007.
- The First Addendum to the MOU enacted in June 2005 affirms, in Article III, Section 3.10, the creation of an additional 667 new full-time direct jobs on or before December 31, 2008.
- The Second Addendum to the MOU enacted in August 2008 affirms the creation of an additional 366 new full-time direct jobs on or before December 31, 2011.

The new full-time jobs stated in the First and Second Addendum to the MOU were in addition to the job commitments mentioned in the original MOU dated July 23, 2003.

In September 2010, the PAD reviewed the 2007 and 2008 employee information of Ingalls. The audit consisted of utilizing Ingalls' employee listing that was submitted to the OSA. From this listing, a random sample was selected for review. ***OSA found Ingalls met the commitment of creating an additional 1334 new full-time direct jobs in Mississippi on or before December 31, 2007 and December 31, 2008, respectively.***

In July 2012, the PAD reviewed the 2011 employee information of Ingalls. Once again, from Ingalls' employee listing a random sample was selected. ***OSA found Ingalls met the commitment of creating an additional 366 new full-time direct jobs in Mississippi on or before December***

31, 2011. PAD's procedures verified Ingalls employed over 14,800 persons at the Project site as of December 2011, which exceeds the requisite minimum job requirement. In conjunction with employee verification, the PAD confirmed the company compliance with the MEPA by reviewing the company's E-Verify MOU, Form I-9s, and confirmations.

Based on the OSA's audit test procedures, the company complies with the MEPA by registering and using the Federal Government's E-Verify System to determine employee's eligibility to legally work in the United States. However, 22 out of 94 employees did not have a Form I-9 maintained, 29 out of 94 employees were not E-verified within three (3) business days after the hire date, and 12 out of 94 employees had issues with the hire date.

The company stated the reasons for discrepancies with E-Verify were due to the company's severe spike in hiring activity and some employee's records were destroyed during Hurricane Katrina.

This audit too, reviewed Ingalls' capital investment records to determine the company's capital investment. ***Based on the OSA's audit test procedures, Ingalls met its capital investment obligation to add at least \$313 million in capital assets and improvements to the Project; investing a total in excess of \$661.8 million in capital expenditures to the Project site during the period of 2002 through November 2012.***

Nissan North America

Nissan North America, Inc. (Nissan) is an automotive manufacturing plant located in Canton, Mississippi, Madison County. Currently, the Canton facility builds: the 2013 Altima, the Armada full-size SUV, the Xterra mid-size SUV, the Titan full-size pickup truck, the Frontier pickup truck, and the NV Cargo van for commercial and passenger use. Recently, Nissan has announced the Canton facility will manufacture the Murano Crossover and the 2013 Sentra as its newest additions to the assembly line. Nissan is known as one of the largest private-sector employers in the State with more than 3,000 employees.

In June 2012, the PAD conducted an audit of the 2010-2011 employee data of Nissan located at the corporate office located in Franklin, Tennessee. As a legislatively approved, major economic impact bond project (§57-75-5(f) (iv)), the State Bond Commission authorized a total of \$364 million in general obligation bonds, during the 2000 Third Extraordinary Legislative Session, for the Nissan project. The PAD conducted an audit of the automobile



manufacture to determine whether Nissan met its obligations according to the Delta I and II Project MOU signed in 2001 and 2002, respectively. The MOUs required Nissan to maintain 3,000 new direct jobs until April 1, 2021.

From Nissan’s employee listing, the PAD examined and verified a 20% sample of evidence the employee was



employed as of December 31, 2010 and December 31, 2011. **Based on the OSA’s test procedures, Nissan has met its obligation to the MOU mentioned above and has maintain 3,000 direct jobs.** PAD’s procedures verified Nissan had more than 4,100 employees as of December 2011, which exceeds the requisite minimum in the MOU.

Cooper Tire and Rubber Company

Cooper Tire and Rubber Company (Cooper) is a rubber tire manufacturer located in Tupelo, MS in Lee County and one of the largest employers in North Mississippi. The company specializes in the design, manufacture, marketing, and sales of passenger car and light truck tires with subsidiaries that specialize in medium truck, motorcycle, and racing tires. Company headquarters are in Findlay, Ohio with manufacturing, sales, distribution, technical and design facilities in 10 countries around the world.

In May 2012, the PAD performed an audit of the 2010 and 2011 employee data, compliance with MEPA, capital investment, and workforce training at the Tupelo facility. As a legislatively approved, major economic impact project (§57-75-5(f) (xxiv)) designed to maintain and expand the existing plant, the State Bond Commission authorized a total of \$13 million dollars in general obligation bonds. Cooper’s financial investment commitment for this project was \$25 million.

To ensure the company appropriately expended the bond issuance, the PAD verified the company employed and maintained at least 1,200 new full-time jobs with an annual average salary of at least \$45,000 for a minimum of 10 years. The PAD also verified Cooper created an additional 50 new full-time jobs by the threshold achievement date of March 1, 2012 with an annual average salary of \$27,500.

From Cooper’s employee listing dated March 1, 2009-May 2, 2011, the PAD examined and verified a 20% sample of the 1,200 retained full-time staff employed as of March 1, 2009 and the 50 new full-time staff employed as of March 1, 2012. **Based on OSA’s audit test procedures, Cooper has met its obligation to maintain 1,200 full-time jobs and created 50 new full-time jobs. OSA determined the company maintained the appropriate documentation to prove compliance with the MEPA and E-verify program guidelines.** PAD’s procedures verified Cooper currently employs 1,468 employees to date.

In addition, the PAD utilized Cooper’s capital investment log from January 1, 2009-March 1, 2011 to determine the company’s capital investment. The PAD observed and confirmed a 5% sample of the investment to locate additional capital assets of at least \$25 million. **Based on the OSA’s test procedures, Cooper met its capital investment obligation to add \$25 million in capital assets by investing a total in excess of \$53.6 million into the project site.**

Furthermore, in an attempt to offset training expenses in a cost effective manner and become a part of the State’s workforce training initiative the company partnered with Itawamba Community College. This initiative helped to



improve area workforce and develops specific skills for employee enhancement. The PAD examined three (3) years of reimbursements from 2009-2011. **Based on the OSA’s test procedures and due to discrepancies in more than one reimbursement, the PAD ultimately examined 100% of reimbursement transactions for three (3) years as agreed upon in the MOU. 9 out of 19 (47%) requested reimbursement amounts differed from the disbursed**



amount totaling \$11,256 to the company without explanations. In 2009, 2 out of 6 disbursements were less than requested and 1 out of 6 disbursements was more than requested. In 2010, 2 out of 8 disbursements were less than requested and 2 out of 8 disbursements were more than requested. In 2011, 1 out of 5 disbursements were less than requested and 1 out of 5 disbursements were more than requested. OSA recommends that MDA and the Mississippi Community College Board collaborate to ensure the expenditures are only disbursed with valid documentation to support each payment.

Conclusion

The primary purpose of the Mississippi Major Economic Impact Act mentioned in this brief is to enhance the well-being of the State's communities and economic conditions through the attraction, retention, and expansion of businesses. At the conclusion of these audits, the OSA believes each project reviewed herein has been successful fulfilling the general expectations of the State's overall economic plan.

However, as mentioned earlier, the PAD found the MDA appeared to provide a limited monitoring and oversight process to these projects that did not actually ensure that all goals were being met. MDA monitoring and oversight should be a regular activity to ensure—on the front-end—that they are safeguarding the taxpayers' money from fraudulent special interest and to ensure adherence to the terms created throughout the life of the bonds. Therefore, MDA should actively seek certifications and verifications of job creation, investments, salary information, etc., from each of its projects.

The process of routinely gathering information on all aspects of the project will lessen systematic problems that show up in the post-audit process. Due to the fact that since OSA has been involved in economic development project monitoring, the State has seen several key failures, most notably the Mississippi Beef Processor's plant, the We-Gel fish processing plant, and mostly recently Twin Creeks Technology. It is evident that closer monitoring by all the necessary entities will provide stronger controls and a higher level of assurance of successful projects.

In conclusion, the overall accomplishments of the projects appear to be a success to the State of Mississippi. Ultimately, the OSA notes the Legislature's economic goal for all of these projects were met and there was significant business growth in the areas where the projects were located. Hence, it appears to be beneficial to continue to encourage the interest of the State's counties, towns, and prospective industries' continual involvement with the economic growth, retention, development, and interest of upcoming or existing projects through Legislative actions.

If it is the Legislature's intent that the Office of the State Auditor should continue to audit State economic development efforts, the Advantage Jobs Act should also be amended to provide the authority currently found in the MMEIA for OSA to continue its work on new projects.



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