



**Stacey E. Pickering**  
State Auditor

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

The Office of the State Auditor (OSA) monitors the expenditure, employment, construction, and in some cases, the productivity of a number of state-funded major economic development projects. The Legislature approves these projects to bring jobs and industry into the State. Chapter 75 Title 57 of the Mississippi Code of 1972, Annotated, is the Mississippi Major Economic Impact Act (MMEIA). For the last decade, the MMEIA has been the framework used by the Legislature to structure these projects. Recently, the Legislature has begun using an alternate vehicle to codify economic development bond projects—the older Advantage Jobs Act (§57-62 et al, MS Code of 1972, Annotated). This Act does not provide the authority for OSA to audit the projects that are approved and funded by the State that is found in the MMEIA. This may prove to be a move away from accountability if OSA is not able to audit these projects.

The Legislature established the MMEIA to assist in the recruitment of major economic projects into the State and to provide incentives to those entities choosing to conduct business in Mississippi. Under this act, the State Bond Commission is given the power to borrow money and issue general obligation bonds for 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. These projects are designed to benefit the people of the State

and to improve and otherwise promote community welfare and prosperity.

Under MS Code §57-75-5, 26 projects have been approved to receive general obligation bonds. Currently, projects consist of industrial manufacturing, regional retail shopping malls, pharmaceutical manufacturing, coal gasification, and automotive manufacturing with the exception to create jobs and make an initial capital investment into the project sites.

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

Before and during the review of each company, OSA tailors audit plans for each project based on authorizing statutes; the specific memorandums of understanding (MOU) and any amendments; and Generally Accepted Auditing Standards. Periodically, throughout the life of a bond project and during the introduction into law, the OSA bond monitoring staff:

- Reviews elements of the project to ensure that 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 all 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;
- Analyzes and summarize legislative bills;
- Requests certified verification letters for completed requirements;
- Constructs various summaries and reports as applicable and/or requested; and
- Provides conclusive findings and recommendations to the Governor and Legislature.

As the Mississippi Development Authority finalizes MOU's, amendments, and other legal documents, OSA requests signed copies for analytical purposes and reference. After reviewing all legal documents related to the bond projects, and noting all performance dates, timelines for project 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.

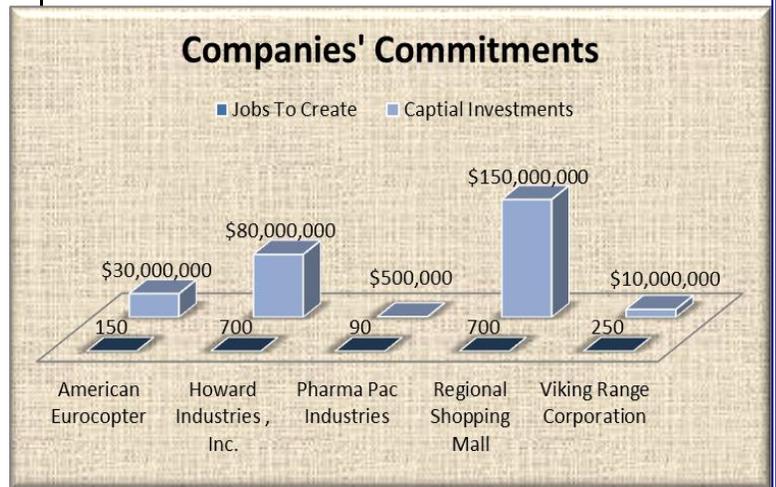
The OSA's bond monitoring program currently provides oversight to approximately 26 major economic development projects approved by the Legislature. During the first half of fiscal year 2012, audit staff completed a review of five (5) major economic development projects under the MMEIA, which are listed in the table below:

Projects Reviewed	County Location
American Eurocopter	Lowndes
Howard Industries , Inc.	Jones
Pharma Pac Industries	Kemper
Regional Shopping Mall	Desoto
Viking Range Corporation	Leflore

During the audits, the PAD identified various components of the companies such as the creation and

maintenance of full-time jobs (employees), annual salary requirements, initial capital investments, workforce training, and the compliance with the Mississippi Employment Protection Act. The five (5) companies listed above have nearly invested or will invest a total of \$284.9 million in Mississippi. Further, these companies have created at least 2,000 jobs for citizens of this State.

In most cases, each company agrees and commits to employment creation and an initial capital investment. The chart above 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 generally were met and maintained by the companies, despite the poor economy.*



Following is a snap shot of each project's onsite analysis. With the projects below, the OSA reviewed the accuracy and reliability of the data that the companies provided to determine if obligations mention in the MOUs were met and/or maintained. Primarily, with each project the OSA examined and verified if date of hire and evidence of employment was traceable back to the company's payroll documents and W-2 and W-4 tax forms.



### American Eurocopter

The American Eurocopter bond project (Eurocopter) is located in Lowndes County in Columbus, MS at the Golden Triangle Regional Airport. It is the production site for the United States Army's military Light Utility Helicopter (LUH), UH-72A Lakota. The Legislature authorized the project in July 2006, with the State Bond Commission issuing \$4.5 million in general obligation bonds. In return, Eurocopter agreed to commit \$30 million of its own money.

Beginning on December 1, 2011, OSA reviewed Eurocopter's 2006 - 2010 employee information utilizing the company's employee listing from August 14, 2006 - November 29, 2010. Auditors identified a 10% sample from the employee data list to verify evidence of maintenance of employment for the 150 new full-time jobs as of August 8, 2006. ***Based on the OSA's test procedures, Eurocopter met its obligation to create and maintain 150 new full-time jobs and had no significant findings related to their employment figures.*** During the onsite review, OSA determined that Eurocopter employed 336 new persons and 114 employees prior to the MOU, which exceeded the requisite minimum number of employees per the MOU by more than 72.

Additionally, the audit utilized Eurocopter's capital investment register from August 2006 to determine if the company's initial capital investment was met in an amount not less than \$30 million. The OSA examined and verified a 5% sample of 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, Eurocopter met its capital investment obligation to invest approximately \$30 million with a total investment in excess of \$36.5 million in the facility, machinery, and equipment for the LUH project.***

Each year, OSA will retest the jobs figures to ensure that the company continues to employ at least the minimum number of employees.

### Howard Industries, Inc.

The Howard Industries, Inc. bond project (Howard) is located in Jones County with locations in Ellisville and Laurel, MS. It is the largest employer in Laurel, MS employing approximately 4,000 people. Since its opening in Jones County, it has had a tremendous effect on the economic industry of the county. Howard produces and distributes power products for a number of utility companies; it distributes medical technology products for hospitals and clinics; it creates lighting products and ballasts for the energy industry. Additionally, they provide transportation services within the continental United States for their goods. The State bond project was authorized and established in May 2003. During this time, the State Bond Commission authorized a total of \$31.5 million in general obligation bonds to be utilized in the project.

Beginning on November 14, 2011, the OSA audited the 2008 employee information at Howard. The audit had originally been scheduled for the fall of 2008, but due to unforeseen circumstances outside of the control of either Howard or the OSA, the review was delayed.

During the 2011 review, the audit accessed Howard's employee listing for July 1, 2008. A 5% sample was chosen from this listing to determine whether Howard met its obligation to employ no fewer than 700 additional persons by July 1, 2008. This employment figure was in addition to their base employment of 2,039 persons reported at the effective date of the MOU dated April 15, 2003. ***Based on the OSA's test procedures, Howard had no significant findings related to their employment figures. The OSA's procedures verified Howard employed 3,373 persons on June 30, 2008; which exceeded the requisite minimum number of employees per the MOU by more than 634 people.***

In the future, no later than July 1, 2013, Howard has an obligation to make a capital investment of \$80 million in connection to the project. The capital investment amount can consist of the Mississippi Business Investment Act Loan (MBIA), which the State makes available to manufacturing companies to provide for public infrastructure. Howard can also utilize the Industrial Development Revenue Bonds (the "RED Bonds"). The proceeds of the "Red Bonds"



may be used for the acquisition and construction of real property, machinery and equipment, and capitalized interest, etc. Also, to receive these funds, a company must be a private entity located in the State of Mississippi. The OSA will return to Howard after the July 1, 2013 deadline to ensure the capital investment has been met.

**Pharma Pac, LLC**

Pharma Pac, LLC is a “Full Service” manufacturing and packaging company of topical pharmaceutical products. The company emphasis is on both “over the counter” medications and topical creams such as analgesics, acne treatments, anti-inflammatories, wound care products, cough and cold products, skin cleansers, exfoliators, and many others. This bond project was originally authorized and approved in November 2005, and is located in Kemper County in DeKalb, MS. The State Bond Commission approved and sold \$500,000 in general obligation bonds to the project.

Beginning on September 26, 2011, OSA reviewed the 2009-2011 employee information for Pharma Pac. This review was originally scheduled for the fall of 2009, but once again, due to unforeseen circumstances outside of the control of either Pharma Pac or the OSA, the review was delayed.

During the 2011 review, the audit utilized Pharma Pac’s employee listing dated September 26, 2011. A 15% sample was chosen to identify evidence of employment of the 115 persons warranted as direct full-time employees prior to the signing of the MOU as of October 1, 2005. Additionally, the OSA confirmed the creation and maintenance of 90 new full-time direct jobs at the project site on or before September 1, 2009. ***Based on the OSA’s test procedures, Pharma Pac was unable to create and maintain the 90 new full-time jobs by the measurement date of September 1, 2009.*** In October 2009, Pharma Pac certified to the MDA it did not create 52 of the 90 new full-time jobs by the deadline

***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.***

as mentioned in the MOU. The penalty imposed according to Article IV section 4.1 of the MOU provided the State bond proceeds of \$500,000 would be divided by six (6) years for an annual total of \$83,333. This amount was then divided by the net new job requirement and multiplied by the number of jobs fallen short for the total amount owed. Therefore, Pharma Pac paid a penalty totaling \$48,152. This penalty payment was declared paid in full in December 2010 by the MDA who is responsible for managing economic development funds.

In September 2010, Pharma Pac once again certified it did not create 48 of the 90 new full-time jobs by the expressed deadline mentioned in the MOU. At that time, utilizing the identical formula mentioned above, the computed penalty was \$44,448, and Pharma Pac made quarterly payments to cover the penalty for the 2010 default. Documents provided by the MDA indicated Pharma Pac had repaid the State \$166,666 of the \$500,000 provided in incentives. Pharma Pac officials communicated its inability to create the required jobs was due to the poor economy facing the nation. Secondly, it

was the OSA’s observation that a number of the jobs in the facility required specialized, skilled education and training i.e. chemists, laboratory technicians, and computational scientists.

Due to the specialized requirements, a number of the positions were difficult to recruit and fill for the Kemper County project. A third reason given for the failure to create the new positions was the delay in actually occupying the facility due to architectural, engineering, and construction issues. The MOU was signed in 2005, but the company did not enter the facility until 2008, three years later. Until this time, Pharma Pac has been responsible for the additional penalties, as it appears there was a misinterpretation between Pharma Pac and the MDA on the warranted total number of current employees prior to the signing of the MOU.

Finally, in September 2011 Pharma Pac was successful in meeting the job requirement by the measurement date stated in the original MOU and had created a total of 116 new full-time jobs between



January 3, 2006 through September 6, 2011. OSA's procedures verified Pharma Pac employed 177 employees as of the date of the audit. A year later, the MDA informed the OSA the company's MOU had been modified to extend its deadline for meeting the requisite amount of 90 new full-time jobs.

As stated in the MOU, Pharma Pac was to make an initial capital investment of \$500,000 from local or federal sources to the project. ***Based on the OSA's test procedures, Pharma Pac met its capital investment obligation to invest approximately \$500,000 for capital expenditures.***

### Regional Shopping Mall

The Regional Shopping Mall bond project (the Mall) is also known as the Southaven Towne Center, located in Desoto County in Southaven, MS. This is an open-air regional shopping center with 42 plus stores. The 800,000 square foot mall, which consists of two phases, has been owned and managed by CBL & Associates Properties Inc. a Delaware Corporation (CBL) who developed the property in October 2005. The Legislature authorized and the State Bond Commission approved a total of \$5 million in general obligation bonds for this project.

Phase I of the Project was to create 450 full-time jobs and Phase II was to create 250 full-time jobs; with both paying an average salary of \$11.00 per hour. The audit utilized employee information, provided by CBL, from 33 plus stores. The OSA reviewed the information to verify if the above requirements were met at the project site. ***During the review, the OSA found the MDA failed to notify all entities of the employment requirements as stated in the MOU. Due to this failure, OSA was unable to determine whether the Mall and CBL met the job creation requirements as set forth in the MOU.*** At the time of the audit, CBL self-reported the Mall employed 1,527 employees: 536 full-time and 991 part-time positions. Because not all retailers had been notified of the employee data requirements by the MDA, several employers were unable to provide reliable employment data.

CBL agreed to make an initial capital investment into the project from private sources in excess of \$150

million for building and operating a regional shopping mall. During Phase I, approximately \$100 million was invested. An investment of \$50 million was made during Phase II to construct and/or operate commercial facilities on the site. ***During the review of the Mall, the OSA found CBL met the capital investment requirement; investing a total of \$152.5 million.***

The Mall has generated over \$14.2 million in sales tax revenue for the State in just under three years (based on a sample of 33 retailers from January 2008 through December 2010).

### Viking Range Corporation

The Viking Range Corporation bond project (Viking) is located in Leflore County in Greenwood, MS. This facility produces high-end professional kitchen appliances such as stoves, ovens, dishwashers, refrigerators, etc. for home and commercial use. Viking's appliances capture the professional performance of a commercial range and place it in homes and businesses. As an incentive to capture the economic benefit of having such a company in Mississippi, the State Bond Commission sold a total of \$3 million in general obligation bonds for this project. In June 2005, Viking established the dishwasher manufacturing facility and engineering design center at the Greenwood location.

On September 20, 2011, the OSA reviewed Viking's 2011 employee information to determine whether it met its obligation to create an additional 250 new full-time direct jobs on or before May 1, 2008. The employment figure was an addition to the company warranted base employment of 1,148 persons reported as of the original MOU dated July 26, 2005.

The audit review utilized Viking's employee listing from May 1, 2011. A 15% sample was chosen to identify evidence of employment as of May 1, 2011. ***Based on the OSA's test procedures, Viking was unable to meet its job requirement of creating 250 new full-time jobs by the measurement date of May 1, 2008.*** Per the MDA, this was due to poor economic times. In December 2008, Viking certified it had defaulted on the statutory job creation and failed to



create 130 of the 250 new full-time jobs. The penalty imposed according to Article IV section 4.1 of the MOU provided the State bond proceeds of \$3 million be divided by five (5) years for an annual total of \$600,000. This amount was then divided by the net new job requirement and multiplied by the number of jobs Viking failed to create, resulting in the total amount owed. Thus, their penalty was \$312,000. This penalty payment was declared paid in full January 2009 by the MDA (as maintaining the same responsibility as mentioned above). Due to the failure to meet the job requirements in 2008, Viking’s MOU was amended in April 2009 with a new measurement date for job creation of May 1, 2011.

*For a second time, based on the OSA’s test procedures, Viking was unable to create the 250 new full-time jobs by the measurement date of May 1, 2011 as stated in the First Addendum MOU.* Viking defaulted on the statutory job creation and failed to create 165 of the 250 new full-time jobs. The OSA’s procedures verified Viking directly employed 644 employees as of the date of the audit. *The OSA recommended, at the time of the audit, Viking seek to have its agreement with the State modified.* During FY 2012, Viking’s First Addendum MOU was amended extending the measurement date to obtain employment levels to May 1, 2015.

While conducting the audit, *OSA found a lack of monitoring and verification done with this project by the MDA.* In the MOU, Viking warranted it directly employed 1,148 full-time employees in Mississippi as of July 26, 2005. However, there was no evidence the MDA verified this number prior to the MOU being signed and additionally, the OSA was unable to determine if Viking directly employed 1,148 full-time persons at the signing of the MOU.

An initial capital investment of \$10 million from any sources or combination of sources was made to the project by May 1, 2008. *OSA found Viking did meet the capital investment requirement by investing \$15.4 million at the project site.*

Mississippi Development Authority

The Mississippi Development Authority is the State economic and community development agency. As

the lead agency, the MDA is responsible for creating opportunities that bring economic development to communities, and greater employment 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 bond incentives are awarded to increase businesses’ productivity and the ability to compete within its industry and to help keep jobs in our State.

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 the 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 the MDA to help improve its monitoring and oversight process for these and future projects. The OSA believes it is imperative for the MOUs to be specific and detailed in defining all terms and requirements of the project. By providing comprehensive MOUs, this will minimize the opportunity for confusion and lack of understanding of contractual requirements. It will strengthen oversight control mechanisms by providing clarity and specificity. In addition, the OSA recommends the MDA make a better effort at notifying and reminding other State agencies listed in any MOUs of their expected obligations. Without this notice and outreach, many of the listed agencies never know they are expected to do anything related to the projects.

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

MDA Recommendations	
1	Regularly (at least annually) verify all employment information and records that pertain to the employment requirements listed in the MOU.
2	Require entities to submit semi-annually qualified employment information to determine true employment figures.
3	Verify all prior employment information and records that pertain to the MOU <u>before</u> contracts are signed. The MDA should not sign a contract without conducting its due diligence on a company.



4 Closely monitor all project obligations to ensure all aspects of the MOU are being met, and establish penalties for those obligations or warrants that are not met, such as employment figures and capital investments etc.

5 Notify all parties (especially other State agencies mentioned in contracts) in writing of their obligations to the projects. The OSA further recommends the Mississippi State Tax Commission, which has created an economic development division, maintain any employment information on all State supported economic development projects for future auditing purposes.

6 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.**

Because the State has seen several important failures, most notable the Mississippi Beef Processor’s plant and the We-Gel fish processing plant, 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 adequate. 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 perspective industries continual involvement with the economic growth, retention, development, and interest of upcoming or existing projects through Legislative actions.

**Conclusion**

The primary purposes of the Mississippi Major Economic Impact Act projects mentioned in this brief are 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 has been successful at fulfilling the general expectations of the State’s overall economic plan. Despite the fact that two (2) of the above-mentioned projects were unable to meet their obligations according the MOU, the broader intention of the economic success was accomplished. In at least one case, the company had created other jobs not able to be counted as part of the MOU approved job creation requirement.

However, as mentioned earlier, the OSA found the MDA appeared to provide a limited monitoring and oversight process in these projects that did not do enough to ensure that goals were being met. Monitoring and oversight should be a regular activity once the taxpayers’ money is provided to the company. The MDA should actively seek certifications and verifications of job creation from each of its projects.

The process of routinely gathering information on all aspects of the project will eliminate systematic problems that show up in the post-audit process.



For more information about this issue, contact

The Office of the State Auditor  
Post Office Box 956  
Jackson, MS 39205-0956  
Phone: 601-576-2800 in the Jackson area or  
800-321-1275 Statewide  
Fax: 601-576-2687  
Website: <http://www.osa.state.ms.us>

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