

By: Senator(s) Gordon

To: Appropriations

SENATE BILL NO. 3032

1 AN ACT TO CREATE A SPECIAL FUND TO BE KNOWN AS THE WORKFORCE
 2 TRAINING RESERVE FUND INTO WHICH SHALL BE DEPOSITED 35% OF THE
 3 CONTRIBUTIONS MADE BY EMPLOYERS FOR UNEMPLOYMENT COMPENSATION
 4 UNTIL SUCH TIME AS THE BALANCE IN THE FUND REACHES
 5 \$200,000,000.00; TO PROVIDE THAT THE ENTIRE AMOUNT OF THE
 6 INVESTMENT EARNINGS ON MONEY IN THE FUND SHALL BE APPROPRIATED
 7 ANNUALLY BY THE LEGISLATURE TO THE STATE BOARD FOR COMMUNITY AND
 8 JUNIOR COLLEGES FOR USE IN THE WORKFORCE TRAINING PROGRAMS AT THE
 9 VARIOUS COMMUNITY AND JUNIOR COLLEGES; TO AUTHORIZE THE TREASURER
 10 TO TRANSFER CERTAIN AMOUNTS TO THE STATE'S ACCOUNT IN THE
 11 UNEMPLOYMENT TRUST FUND UNDER CERTAIN CONDITIONS; TO AMEND
 12 SECTIONS 71-5-357 AND 71-5-453, MISSISSIPPI CODE OF 1972, IN
 13 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** (1) There is created in the State Treasury a
 16 special fund to be known as the Workforce Training Reserve Fund
 17 into which shall be deposited the funds required to be deposited
 18 pursuant to subsection (2) of this section. Money in the fund at
 19 the end of a fiscal year shall not lapse into the General Fund.
 20 Beginning with the 2005 state fiscal year, the entire amount of
 21 the investment earnings on money in the fund shall be appropriated
 22 annually by the Legislature to the State Board for Community and
 23 Junior Colleges for use in the workforce training programs at the
 24 various community and junior colleges.

25 (2) From and after July 1, 2004, thirty-five percent (35%)
 26 of the contributions made by employers pursuant to Section
 27 71-5-351 and reimbursements in lieu of contributions shall be
 28 deposited into the Workforce Training Reserve Fund until such time
 29 as the balance in the fund reaches Two Hundred Million Dollars
 30 (\$200,000,000.00). If the total amount withdrawn from the state's
 31 account in the Unemployment Trust Fund within any consecutive
 32 twelve-month period is forty percent (40%) or more of the balance

33 in such period, amounts in the Workforce Training Reserve Fund
34 shall be transferred by the State Treasurer to the state's account
35 in the Unemployment Trust Fund until the transfers are no longer
36 considered necessary to maintain an adequate balance. Once the
37 necessity for the transfers ends, thirty-five percent (35%) of the
38 contributions made by employers pursuant to Section 71-5-351 shall
39 be deposited into the Workforce Training Reserve Fund until such
40 time as the balance in the fund again reaches Two Hundred Million
41 Dollars (\$200,000,000.00).

42 **SECTION 2.** Section 71-5-357, Mississippi Code of 1972, is
43 amended as follows:

44 71-5-357. Benefits paid to employees of nonprofit
45 organizations shall be financed in accordance with the provisions
46 of this section. For the purpose of this section, a nonprofit
47 organization is an organization (or group of organizations)
48 described in Section 501(c)(3) of the Internal Revenue Code of
49 1954 which is exempt from income tax under Section 501(a) of such
50 code (26 USCS Section 501).

51 (a) Any nonprofit organization which, pursuant to
52 Section 71-5-11, subsection H(3), is or becomes subject to this
53 chapter shall pay contributions under the provisions of Sections
54 71-5-351 through 71-5-355 unless it elects, in accordance with
55 this paragraph, to pay to the commission for the unemployment fund
56 an amount equal to the amount of regular benefits and one-half
57 (1/2) of the extended benefits paid, that is attributable to
58 service in the employ of such nonprofit organization, to
59 individuals for weeks of unemployment which begin during the
60 effective period of such election.

61 (i) Any nonprofit organization which becomes
62 subject to this chapter may elect to become liable for payments in
63 lieu of contributions for a period of not less than twelve (12)
64 months, beginning with the date on which such subjectivity begins,
65 by filing a written notice of its election with the commission not

66 later than thirty (30) days immediately following the date of the
67 determination of such subjectivity.

68 (ii) Any nonprofit organization which makes an
69 election in accordance with subparagraph (i) of this paragraph
70 will continue to be liable for payments in lieu of contributions
71 unless it files with the commission a written termination notice
72 not later than thirty (30) days prior to the beginning of the tax
73 year for which such termination shall first be effective.

74 (iii) Any nonprofit organization which has been
75 paying contributions under this chapter may change to a
76 reimbursable basis by filing with the commission, not later than
77 thirty (30) days prior to the beginning of any tax year, a written
78 notice of election to become liable for payments in lieu of
79 contributions. Such election shall not be terminable by the
80 organization for that and the next tax year.

81 (iv) The commission may for good cause extend the
82 period within which a notice of election or a notice of
83 termination must be filed, and may permit an election to be
84 retroactive.

85 (v) The commission, in accordance with such
86 regulations as it may prescribe, shall notify each nonprofit
87 organization of any determination which it may make of its status
88 as an employer, of the effective date of any election which it
89 makes and of any termination of such election. Such
90 determinations shall be subject to reconsideration, appeal and
91 review in accordance with the provisions of Sections 71-5-351
92 through 71-5-355.

93 (b) Payments in lieu of contributions shall be made in
94 accordance with the provisions of subparagraph (i) of this
95 paragraph.

96 (i) At the end of each calendar quarter, or at the
97 end of any other period as determined by the commission, the
98 commission shall bill each nonprofit organization (or group of

99 such organizations) which has elected to make payments in lieu of
100 contributions, for an amount equal to the full amount of regular
101 benefits plus one-half (1/2) of the amount of extended benefits
102 paid during such quarter or other prescribed period that is
103 attributable to service in the employ of such organization.

104 (ii) Payment of any bill rendered under
105 subparagraph (i) of this paragraph shall be made not later than
106 forty-five (45) days after such bill was mailed to the last known
107 address of the nonprofit organization or was otherwise delivered
108 to it, unless there has been an application for review and
109 redetermination in accordance with subparagraph (v) of this
110 paragraph.

111 1. All of the enforcement procedures for the
112 collection of delinquent contributions contained in Sections
113 71-5-363 through 71-5-383 shall be applicable in all respects for
114 the collection of delinquent payments due by nonprofit
115 organizations who have elected to become liable for payments in
116 lieu of contributions.

117 2. If any nonprofit organization is
118 delinquent in making payments in lieu of contributions, the
119 commission may terminate such organization's election to make
120 payments in lieu of contributions as of the beginning of the next
121 tax year, and such termination shall be effective for the balance
122 of such tax year.

123 (iii) Payments made by any nonprofit organization
124 under the provisions of this paragraph shall not be deducted or
125 deductible, in whole or in part, from the remuneration of
126 individuals in the employ of the organization.

127 (iv) Payments due by employers who elect to
128 reimburse the fund in lieu of contributions as provided in this
129 paragraph may not be noncharged under any condition. The
130 reimbursement must be on a dollar-for-dollar basis (One Dollar
131 (\$1.00) reimbursement for each dollar paid in benefits) in every

132 case, so that, except as otherwise provided in Section 1 of Senate
133 Bill No. 2947, 2004 Regular Session, the trust fund shall be
134 reimbursed in full, such reimbursement to include, but not be
135 limited to, benefits or payments erroneously or incorrectly paid,
136 or paid as a result of a determination of eligibility which is
137 subsequently reversed, or paid as a result of claimant fraud.
138 Provided that political subdivisions who are reimbursing employers
139 may elect to pay to the fund an amount equal to five-tenths
140 percent (.5%) of the taxable wages paid during the calendar year
141 with respect to employment, and those employers who so elect shall
142 be relieved of liability for reimbursement of benefits paid under
143 the same conditions that benefits are not charged to the
144 experience rating record of a contributing employer as provided in
145 Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits
146 paid in such circumstances for which reimbursing employers are
147 relieved of liability for reimbursement shall not be considered
148 attributable to service in the employment of such reimbursing
149 employer.

150 (v) The amount due specified in any bill from the
151 commission shall be conclusive on the organization unless, not
152 later than fifteen (15) days after the bill was mailed to its last
153 known address or otherwise delivered to it, the organization files
154 an application for redetermination by the commission, setting
155 forth the grounds for such application or appeal. The commission
156 shall promptly review and reconsider the amount due specified in
157 the bill and shall thereafter issue a redetermination in any case
158 in which such application for redetermination has been filed. Any
159 such redetermination shall be conclusive on the organization
160 unless, not later than fifteen (15) days after the redetermination
161 was mailed to its last known address or otherwise delivered to it,
162 the organization files an appeal to the Circuit Court of the First
163 Judicial District of Hinds County, Mississippi, in accordance with

164 the provisions of law with respect to review of civil causes by
165 certiorari.

166 (vi) Past due payments of amounts in lieu of
167 contributions shall be subject to the same interest and penalties
168 that, pursuant to Section 71-5-363, apply to past due
169 contributions.

170 (c) Each employer that is liable for payments in lieu
171 of contributions shall pay to the commission for the fund the
172 amount of regular benefits plus the amount of one-half (1/2) of
173 extended benefits paid are attributable to service in the employ
174 of such employer. If benefits paid to an individual are based on
175 wages paid by more than one (1) employer and one or more of such
176 employers are liable for payments in lieu of contributions, the
177 amount payable to the fund by each employer that is liable for
178 such payments shall be determined in accordance with the
179 provisions of subparagraph (i) or subparagraph (ii) of this
180 paragraph.

181 (i) If benefits paid to an individual are based on
182 wages paid by one or more employers that are liable for payment in
183 lieu of contributions and on wages paid by one or more employers
184 who are liable for contributions, the amount of benefits payable
185 by each employer that is liable for payments in lieu of
186 contributions shall be an amount which bears the same ratio to the
187 total benefits paid to the individual as the total base-period
188 wages paid to the individual by such employer bear to the total
189 base-period wages paid to the individual by all of his base-period
190 employers.

191 (ii) If benefits paid to an individual are based
192 on wages paid by two (2) or more employers that are liable for
193 payments in lieu of contributions, the amount of benefits payable
194 by each such employer shall be an amount which bears the same
195 ratio to the total benefits paid to the individual as the total
196 base-period wages paid to the individual by such employer bear to

197 the total base-period wages paid to the individual by all of his
198 base-period employers.

199 (d) In the discretion of the commission, any nonprofit
200 organization that elects to become liable for payments in lieu of
201 contributions shall be required, within thirty (30) days after the
202 effective date of its election, to execute and file with the
203 commission a surety bond approved by the commission, or it may
204 elect instead to deposit with the commission money or securities.
205 The amount of such bond or deposit shall be determined in
206 accordance with the provisions of this paragraph.

207 (i) The amount of the bond or deposit required by
208 paragraph (d) shall be equal to two and seven-tenths percent
209 (2.7%) of the organization's taxable wages paid for employment as
210 defined in Section 71-5-11, subsection I(4), for the four (4)
211 calendar quarters immediately preceding the effective date of the
212 election, the renewal date in the case of a bond, or the biennial
213 anniversary of the effective date of election in the case of a
214 deposit of money or securities, whichever date shall be most
215 recent and applicable. If the nonprofit organization did not pay
216 wages in each of such four (4) calendar quarters, the amount of
217 the bond or deposit shall be as determined by the commission.

218 (ii) Any bond deposited under paragraph (d) shall
219 be in force for a period of not less than two (2) tax years and
220 shall be renewed with the approval of the commission at such times
221 as the commission may prescribe, but not less frequently than at
222 intervals of two (2) years as long as the organization continues
223 to be liable for payments in lieu of contributions. The
224 commission shall require adjustments to be made in a previously
225 filed bond as it deems appropriate. If the bond is to be
226 increased, the adjusted bond shall be filed by the organization
227 within thirty (30) days of the date notice of the required
228 adjustment was mailed or otherwise delivered to it. Failure by
229 any organization covered by such bond to pay the full amount of

230 payments in lieu of contributions when due, together with any
231 applicable interest and penalties provided in paragraph (b)(v) of
232 this section, shall render the surety liable on said bond to the
233 extent of the bond, as though the surety was such organization.

234 (iii) Any deposit of money or securities in
235 accordance with paragraph (d) shall be retained by the commission
236 in an escrow account until liability under the election is
237 terminated, at which time it shall be returned to the
238 organization, less any deductions as hereinafter provided. The
239 commission may deduct from the money deposited under paragraph (d)
240 by a nonprofit organization, or sell the securities it has so
241 deposited, to the extent necessary to satisfy any due and unpaid
242 payments in lieu of contributions and any applicable interest and
243 penalties provided for in paragraph (b)(v) of this section. The
244 commission shall require the organization, within thirty (30) days
245 following any deduction from a money deposit or sale of deposited
246 securities under the provisions hereof, to deposit sufficient
247 additional money or securities to make whole the organization's
248 deposit at the prior level. Any cash remaining from the sale of
249 such securities shall be a part of the organization's escrow
250 account. The commission may, at any time, review the adequacy of
251 the deposit made by any organization. If, as a result of such
252 review, it determines that an adjustment is necessary, it shall
253 require the organization to make additional deposit within thirty
254 (30) days of written notice of its determination or shall return
255 to it such portion of the deposit as it no longer considers
256 necessary, whichever action is appropriate. Disposition of income
257 from securities held in escrow shall be governed by the applicable
258 provisions of the state law.

259 (iv) If any nonprofit organization fails to file a
260 bond or make a deposit, or to file a bond in an increased amount,
261 or to increase or make whole the amount of a previously made
262 deposit as provided under this subparagraph, the commission may

263 terminate such organization's election to make payments in lieu of
264 contributions, and such termination shall continue for not less
265 than the four (4) consecutive calendar-quarter periods beginning
266 with the quarter in which such termination becomes effective;
267 provided, that the commission may extend for good cause the
268 applicable filing, deposit or adjustment period by not more than
269 thirty (30) days.

270 (v) Group account shall be established according
271 to regulations prescribed by the commission.

272 (e) Any employer which elects to make payments in lieu
273 of contributions into the Unemployment Compensation Fund as
274 provided in this paragraph shall not be liable to make such
275 payments with respect to the benefits paid to any individual whose
276 base-period wages include wages for previously uncovered services
277 as defined in Section 71-5-511(e) to the extent that the
278 Unemployment Compensation Fund is reimbursed for such benefits
279 pursuant to Section 121 of Public Law 94-566.

280 **SECTION 3.** Section 71-5-453, Mississippi Code of 1972, is
281 amended as follows:

282 71-5-453. The State Treasurer shall be the ex officio
283 treasurer and custodian of the fund, and shall administer such
284 fund in accordance with the directions of the commission, and
285 shall issue his warrants upon it in accordance with such
286 regulations as the commission shall prescribe. He shall maintain
287 within the fund three (3) separate accounts: (a) a clearing
288 account, (b) an unemployment trust fund account, and (c) a benefit
289 account. All monies payable to the fund, upon receipt thereof by
290 the commission, shall be forwarded to the Treasurer, who shall
291 immediately deposit them in the clearing account. Refunds payable
292 pursuant to Section 71-5-383 may be paid from the clearing account
293 upon warrants issued by the Treasurer under the direction of the
294 commission. Transfers pursuant to Section 71-5-114 of all
295 interest, penalties and damages collected shall be made to the

296 Special Employment Security Administration Fund as soon as
297 practicable after the end of each calendar quarter. Except as
298 otherwise provided in Section 1 of Senate Bill No. 2947, 2004
299 Regular Session, all other monies in the clearing account shall be
300 immediately deposited with the Secretary of the Treasury of the
301 United States of America to the credit of the account of this
302 state in the Unemployment Trust Fund, established and maintained
303 pursuant to Section 904 of the Social Security Act, as amended,
304 any provisions of law in this state relating to the deposit,
305 administration, release, or disbursement of monies in the
306 possession or custody of this state to the contrary
307 notwithstanding. The benefit account shall consist of all monies
308 requisitioned from this state's account in the Unemployment Trust
309 Fund. Except as herein otherwise provided, monies in the clearing
310 and benefit accounts may be deposited by the Treasurer, under the
311 direction of the commission, in any bank or public depository in
312 which general funds of the state may be deposited, but no public
313 deposit insurance charge or premium shall be paid out of the fund.
314 The State Treasurer shall be liable on his official bond for the
315 faithful performance of his duties in connection with the
316 Unemployment Compensation Fund under this chapter.

317 **SECTION 4.** This act shall take effect and be in force from
318 and after July 1, 2004.