

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2480

1 AN ACT TO AMEND SECTION 71-5-353, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE FOR A REDUCTION IN THE UNEMPLOYMENT COMPENSATION
 3 CONTRIBUTION RATE FOR CERTAIN EMPLOYERS; TO PROVIDE FOR THE REPEAL
 4 OF THE RATE REDUCTION UNDER CERTAIN CONDITIONS RELATING TO THE
 5 SIZE OF THE UNEMPLOYMENT COMPENSATION TRUST FUND; TO PROVIDE FOR A
 6 WORKFORCE TRAINING ENHANCEMENT CONTRIBUTION FOR CERTAIN EMPLOYERS
 7 SUBJECT TO THE UNEMPLOYMENT COMPENSATION LAW; TO ESTABLISH THE
 8 WORKFORCE TRAINING ENHANCEMENT FUND AND TO AUTHORIZE EXPENDITURES
 9 FROM THE FUND FOR EMPLOYEE TRAINING TO BE ADMINISTERED BY THE
 10 STATE BOARD FOR COMMUNITY AND JUNIOR COLLEGES AND THE GOVERNOR'S
 11 STATE WORKFORCE INVESTMENT BOARD; TO PROVIDE FOR THE REPEAL OF THE
 12 WORKFORCE CONTRIBUTION UNDER CERTAIN CONDITIONS RELATING TO THE
 13 SIZE OF THE UNEMPLOYMENT COMPENSATION TRUST FUND; TO AMEND SECTION
 14 71-5-355, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN DEFINITIONS,
 15 REFERENCES AND TABLES IN THE MISSISSIPPI EMPLOYMENT SECURITY LAW
 16 WHICH ARE APPLICABLE TO EMPLOYER CONTRIBUTION COST RATE CRITERION
 17 AND SIZE OF FUND INDEX TO CONFORM TO THE CONTRIBUTION RATE
 18 REDUCTION; TO AMEND SECTION 71-5-453, MISSISSIPPI CODE OF 1972, TO
 19 PROVIDE FOR A WORKFORCE TRAINING ENHANCEMENT FUND HOLDING ACCOUNT
 20 MAINTAINED BY THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY;
 21 TO AMEND SECTION 71-5-351, MISSISSIPPI CODE OF 1972, IN
 22 CONFORMITY; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** Section 71-5-353, Mississippi Code of 1972, is
 25 amended as follows:

26 71-5-353. (1) Each employer shall pay contributions equal
 27 to five and four-tenths percent (5.4%) of taxable wages paid by
 28 him each calendar year, except as may be otherwise provided in
 29 Section 71-5-361 and except that each newly subject employer shall
 30 pay contributions at the rate of two and seven-tenths percent
 31 (2.7%) of taxable wages until his experience-rating record has
 32 been chargeable throughout not less than the twelve (12)
 33 consecutive calendar months ending on the computation date;
 34 thereafter his contribution rate shall be determined in accordance
 35 with the provisions of Section 71-5-355.

36 (2) Unless eligible for a modified rate as described in
 37 Section 71-5-355 of this chapter, each employer, as defined by

38 Section 71-5-11(H) of this chapter, engaged in an employee leasing
39 arrangement, with an employee leasing firm, on June 30, 1998, will
40 be assigned a contributions rate of one and five-tenths percent
41 (1.50%) for the calendar year 1999, and subsequent calendar years,
42 until the employer is eligible for a modified rate, as described
43 in Section 71-5-355 of this chapter, based on experience
44 accumulated subsequent to December 31, 1998.

45 The department shall notify all employers, active in the
46 department files and currently reporting, of the provisions of
47 this paragraph, at their last known mailing address on or before
48 August 15, 1998. All employee leasing firms shall report to the
49 department the name, the federal identification number, mailing
50 address, physical location address and telephone number of all
51 their clients on or before October 15, 1998. Any employee leasing
52 firm failing to comply with the provisions of this paragraph may
53 be assessed an amount equal to one-half of one percent (1/2 of 1%)
54 of total wages, or Five Hundred Dollars (\$500.00), whichever is
55 greater, for each client that the employee leasing firm fails to
56 report. Collection of the above mentioned penalty shall be in
57 conformity with department regulations.

58 (3) From and after January 1, 2005, contribution rates
59 assigned to employers by the department, as determined pursuant to
60 Sections 71-5-351, 71-5-353 and 71-5-355, shall be reduced by
61 three tenths of one percent (.3%). Such reduction shall only
62 apply to employers whose contribution rate, determined in
63 accordance with Sections 71-5-353 and 71-5-355, is equal to or
64 less than five and four tenths percent (5.4%), and shall include a
65 three tenths of one percent (.3%) reduction to the rate as a
66 result of violation of provisions of this chapter. The reduction
67 in rates provided for herein shall not apply to state boards,
68 instrumentalities and political subdivisions of the State of
69 Mississippi referred to in Sections 71-5-357 and 71-5-359, or to
70 nonprofit employers providing reimbursement to the department for

71 the unemployment fund pursuant to Section 71-5-357(a). This
72 reduction applies to all other employers. This subsection (3)
73 shall be repealed and the size of fund and cost rate criterion
74 shall be fixed for future years at the levels for the last rate
75 computation:

76 (a) The average high cost multiple is equal to or less
77 than 1.0. The average high cost multiple shall be computed as
78 follows: The result of the unobligated balance of the
79 Unemployment Compensation Fund at November 1 immediately preceding
80 the new rate year divided by the total wages for the twelve (12)
81 months ending on the June 30 immediately preceding the new rate
82 year shall be the numerator and shall be divided by the simple
83 average of the value of the three (3) highest cost rate criterion
84 computations since 1974. The result rounded to the next lower one
85 (1) decimal place will be the average high cost multiple; or

86 (b) The computed size of fund (average exposure
87 criterion divided by cost rate criterion) defined in Section
88 71-5-355 reaches 1.0 and the cost rate criterion reaches the
89 average for the highest value of the cost rate criterion
90 computations during each of the economic cycles (economic cycles
91 shall be those defined by the National Bureau of Economic
92 Research) subsequent to the calendar year 1974. The reduction
93 shall be accomplished as described in Section 71-5-355(1)(j) and
94 (k); or

95 (c) The Unemployment Compensation Fund falls below Five
96 Hundred Million Dollars (\$500,000,000.00).

97 (4) (a) From and after January 1, 2005, the workforce
98 enhancement contributions shall be applied at a rate of three
99 tenths of one percent (.3%) upon the taxable wages as defined by
100 Section 71-5-351, however, the workforce enhancement contribution
101 shall not be applied to state boards, instrumentalities and
102 political subdivisions of the State of Mississippi referred to in
103 Sections 71-5-357 and 71-5-359, or to nonprofit employers

104 providing reimbursement to the department for the unemployment
105 fund pursuant to Section 71-5-357(a) or employers who are assigned
106 a rate in accordance with Section 71-5-3.

107 (b) There is hereby created in the Treasury of the
108 State of Mississippi a special fund to be known as the "Workforce
109 Training Enhancement Fund," which consists of funds collected
110 pursuant to subsection (1) of this section. Funds collected shall
111 initially be deposited into the Clearing Account and subsequently
112 transferred to the Workforce Training Enhancement Fund described
113 in Section 71-5-453. In the event any employer pays an amount
114 insufficient to cover the total contributions due, the amounts due
115 shall be satisfied in the following order:

116 (i) Unemployment contributions; then
117 (ii) Workforce training enhancement contributions;
118 then
119 (iii) Interest and damages.

120 (c) All monies deposited in the Workforce Training
121 Enhancement Fund will be held by the Mississippi Department of
122 Employment Security in such account for a period of not less than
123 sixty (60) days. After such period, funds shall be transferred
124 within thirty (30) days to the Workforce Enhancement Training Fund
125 in a manner determined by the department. Interest earnings or
126 interest credits on deposit amounts shall be retained in the
127 account to pay the costs of the account. If after the period of
128 twelve (12) months interest earnings less banking costs exceeds
129 Ten Thousand Dollars (\$10,000.00), such excess amounts shall be
130 transferred to the Workforce Enhancement Training Fund within
131 thirty (30) days. Such transfers shall occur once annually,
132 during the month of January.

133 (d) All monies deposited into the Workforce Enhancement
134 Training Fund shall be used exclusively for the following
135 purposes: to provide training at no cost to employers in order to
136 enhance employee productivity. The initial priority of these

137 funds shall be for the benefit of existing businesses located
138 within the state. Twenty percent (20%) of the funds allocate in
139 the Workforce Enhancement Training Fund shall be utilized by the
140 State Board for Community and Junior Colleges for nontraditional
141 training, with an emphasis on short-term courses and flexible
142 scheduling. Employers may request training for existing employees
143 and/or newly hired employees from the State Board for Community
144 and Junior Colleges. The State Board for Community and Junior
145 Colleges will be responsible for providing the training. The
146 Governor's State Workforce Investment Board will approve the
147 annual plan and will review the results on a semiannual basis.

148 (e) All enforcement procedures for the collection of
149 delinquent contributions contained in Sections 71-5-363 through
150 71-5-383 shall be applicable in all respects for collections of
151 delinquent contributions designated for the Unemployment
152 Compensation Fund and the Workforce Training Enhancement Fund.

153 (f) This subsection (4) shall be repealed and the size
154 of fund and cost rate criterion shall be fixed at the levels
155 computed for the last rate computation at the end of any calendar
156 year in which the following has occurred:

157 (i) The average high cost multiple is equal to or
158 less than 1.0. The average high cost multiple shall be computed
159 as follows: The result of the unobligated balance of the
160 unemployment compensation at November 1 immediately preceding the
161 new rate year divided by the total wages for the twelve (12)
162 months ending on the June 30 immediately preceding the new rate
163 year shall be the numerator and shall be divided by the simple
164 average of the value of the three (3) highest cost rate criterion
165 computations since 1974. The result rounded to the next lower one
166 (1) decimal place will be the average high cost multiple; or

167 (ii) The computed size of fund (average exposure
168 criterion divided by cost rate criterion) defined in Section
169 71-5-355 reaches 1.0 and the cost rate criterion reaches the

170 average for the highest value of the cost rate criterion
171 computations during each of the economic cycles (economic cycles
172 shall be those defined by the National Bureau of Economic
173 Research) subsequent to the calendar year 1974. The reduction
174 shall be accomplished as described in Section 71-3-355(1)(j) and
175 (k); or

176 (iii) The Unemployment Compensation Fund falls
177 below Five Hundred Million Dollars (\$500,000,000.00).

178 **SECTION 2.** Section 71-5-355, Mississippi Code of 1972, is
179 amended as follows:

180 71-5-355. (1) As used in this section, the following words
181 and phrases shall have the following meanings, unless the context
182 clearly requires otherwise:

183 (a) "Tax year" means any period beginning on January 1
184 and ending on December 31 of a year.

185 (b) "Computation date" means June 30 of any calendar
186 year immediately preceding the tax year during which the
187 particular contribution rates are effective.

188 (c) "Effective date" means January 1 of the tax year.

189 (d) Except as hereinafter provided, "payroll" means the
190 total of all wages paid for employment by an employer as defined
191 in Section 71-5-11, subsection H, plus the total of all
192 remuneration paid by such employer excluded from the definition of
193 wages by Section 71-5-351. For the computation of modified rates,
194 "payroll" means the total of all wages paid for employment by an
195 employer as defined in Section 71-5-11, subsection H.

196 (e) For the computation of modified rates, "eligible
197 employer" means an employer whose experience-rating record has
198 been chargeable with benefits throughout the thirty-six (36)
199 consecutive calendar-month period ending on the computation date,
200 except that any employer who has not been subject to the
201 Mississippi Employment Security Law for a period of time
202 sufficient to meet the thirty-six (36) consecutive calendar-month

203 requirement shall be an eligible employer if his experience-rating
204 record has been chargeable throughout not less than the twelve
205 (12) consecutive calendar-month period ending on the computation
206 date. No employer shall be considered eligible for a contribution
207 rate less than five and four-tenths percent (5.4%) with respect to
208 any tax year, who has failed to file any two (2) quarterly reports
209 within the qualifying period by September 30 following the
210 computation date. No employer or employing unit shall be eligible
211 for a contribution rate of less than five and four-tenths percent
212 (5.4%) for the tax year in which the employing unit is found by
213 the department to be in violation of Section 71-5-19(2) or (3) and
214 for the next two (2) succeeding tax years. No representative of
215 such employing unit who was a party to a violation as described in
216 Section 71-5-19(2) or (3), if such representative was or is an
217 employing unit in this state, shall be eligible for a
218 contributions rate of less than five and four-tenths percent
219 (5.4%) for the tax year in which such violation was detected by
220 the department and for the next two (2) succeeding tax years.

221 (f) With respect to any tax year, "reserve ratio" means
222 the ratio which the total amount available for the payment of
223 benefits in the Unemployment Compensation Fund, excluding any
224 amount which has been credited to the account of this state under
225 Section 903 of the Social Security Act, as amended, and which has
226 been appropriated for the expenses of administration pursuant to
227 Section 71-5-457 whether or not withdrawn from such account, on
228 November 1 of each calendar year bears to the aggregate of the
229 taxable payrolls of all employers for the twelve (12) calendar
230 months ending on June 30 next preceding.

231 (g) "Modified rates" means the rates of employer
232 contributions determined under the provisions of this chapter and
233 the rates of newly subject employers, as provided in Section
234 71-5-353.

235 (h) For the computation of modified rates, "qualifying
236 period" means a period of not less than the thirty-six (36)
237 consecutive calendar months ending on the computation date
238 throughout which an employer's experience-rating record has been
239 chargeable with benefits; except that with respect to any eligible
240 employer who has not been subject to this article for a period of
241 time sufficient to meet the thirty-six (36) consecutive
242 calendar-month requirement, "qualifying period" means the period
243 ending on the computation date throughout which his
244 experience-rating record has been chargeable with benefits, but in
245 no event less than the twelve (12) consecutive calendar-month
246 period ending on the computation date throughout which his
247 experience-rating record has been so chargeable.

248 (i) The "exposure criterion" (EC) is defined as the
249 cash balance of the Unemployment Compensation Fund which is
250 available for the payment of benefits as of November 1 of each
251 calendar year, divided by the total wages, exclusive of wages paid
252 by all state agencies, all political subdivisions, reimbursable
253 nonprofit corporations, and tax exempt public service employment,
254 for the twelve-month period ending June 30 immediately preceding
255 such date. The EC shall be computed to four (4) decimal places.

256 (j) The "cost rate criterion" (CRC) is defined as
257 follows: Beginning with January 1974, the benefits paid for the
258 twelve-month period ending December 1974 are summed and divided by
259 the total wages for the twelve-month period ending on June 30,
260 1975. Similar ratios are computed by subtracting the earliest
261 month's benefit payments and adding the benefits of the next month
262 in the sequence and dividing each sum of twelve (12) months'
263 benefits by the total wages for the twelve-month period ending on
264 the June 30 which is nearest to the final month of the period used
265 to compute the numerator. If December is the final month of the
266 period used to compute the numerator, then the twelve-month period
267 ending the following June 30 will be used for the denominator.

268 The highest value of these ratios beginning with the ratio for
269 benefits paid in calendar year 1974 is the cost rate criterion.
270 The cost rate criterion shall be computed to four (4) decimal
271 places. Benefits and total wages used in the computation of the
272 cost rate criterion shall exclude all benefits and total wages
273 applicable to state agencies, political subdivisions, reimbursable
274 nonprofit corporations, and tax exempt PSE employment. For rate
275 years 2005 and 2006, the CRC shall be adjusted downward by an
276 amount necessary to satisfy one-half (1/2) the reductions required
277 to maintain a general experience rate of nine tenths of one
278 percent (.9%). For rate year 2007 and subsequent years, the CRC
279 shall be adjusted downward by an amount necessary to satisfy
280 one-half (1/2) the reductions required to maintain a general
281 experience rate of seven tenths of one percent (.7%) until such
282 time as the CRC equals the average for the highest value of the
283 cost rate criterion computations during each of the economic
284 cycles (economic cycles shall be those defined by the National
285 Bureau of Economic Research) since the calendar year 1974, except
286 as provided in subsection (3) of Section 71-5-353. When the
287 remaining reduction is insufficient to cause the reductions as
288 specified in this paragraph, additional reductions specified in
289 subsection (1)(k) of this section may be made to the size of fund
290 index to achieve the general experience rate specified in this
291 paragraph, except as provided in Section 71-3-353. The CRC shall
292 not be raised except as provided through annual computations and
293 additions of future economic cycles.

294 (k) "Size of fund index" (SOFI) is defined as the ratio
295 of the EC to the CRC. For the rate years 2005 and 2006, the SOFI
296 shall be adjusted downward by an amount necessary to satisfy
297 one-half (1/2) the reductions required to maintain a general
298 experience rate of nine tenths of one percent (.9%). For rate
299 year 2007 and subsequent years, the SOFI shall be adjusted
300 downward by an amount necessary to satisfy one-half (1/2) the

301 reductions required to maintain a minimum general experience rate
302 of seven tenths of one percent (.7%) until such time as the SOFI
303 is reduced from a target size of 1.5 to 1.0, except as provided in
304 subsection (3) of Section 71-5-353. The SOFI shall not be raised
305 in any event.

306 (1) No employer's contribution rate shall exceed five
307 and four-tenths percent (5.4%), nor be less than four-tenths of
308 one percent (.4%). However, from and after January 1, 2005, and
309 continuing until Section 71-5-353(3) shall be repealed, the
310 reduction shall be accomplished as described in Section
311 71-5-355(1)(j) and (k), no employer's unemployment contribution
312 rate shall be less than one tenth of one percent (.1%).

313 (2) Modified rates:

314 (a) For any tax year, when the reserve ratio on the
315 preceding November 1, in the case of any tax year, equals or
316 exceeds four percent (4%), the modified rates, as hereinafter
317 prescribed, shall be in effect.

318 (b) Modified rates shall be determined for the tax year
319 for each eligible employer on the basis of his experience-rating
320 record in the following manner:

321 (i) The department shall maintain an
322 experience-rating record for each employer. Nothing in this
323 chapter shall be construed to grant any employer or individuals
324 performing services for him any prior claim or rights to the
325 amounts paid by the employer into the fund.

326 (ii) Benefits paid to an eligible individual shall
327 be charged against the experience-rating record of his base period
328 employers in the proportion to which the wages paid by each base
329 period employer bears to the total wages paid to the individual by
330 all the base period employers, provided that benefits shall not be
331 charged to an employer's experience-rating record if the
332 department finds that the individual:

- 333 1. Voluntarily left the employ of such
334 employer without good cause attributable to the employer;
335 2. Was discharged by such employer for
336 misconduct connected with his work;
337 3. Refused an offer of suitable work by such
338 employer without good cause, and the department further finds that
339 such benefits are based on wages for employment for such employer
340 prior to such voluntary leaving, discharge or refusal of suitable
341 work, as the case may be; * * *
342 4. Had base period wages which included wages
343 for previously uncovered services as defined in Section
344 71-5-511(e) to the extent that the Unemployment Compensation Fund
345 is reimbursed for such benefits pursuant to Section 121 of Public
346 Law 94-566;
347 5. Extended benefits paid under the
348 provisions of Section 71-5-541 which are not reimbursable from
349 federal funds shall be charged to the experience-rating record of
350 base period employers;
351 6. Is still working for such employer on a
352 regular part-time basis under the same employment conditions as
353 hired. Provided, however, that benefits shall be charged against
354 an employer if an eligible individual is paid benefits who is
355 still working for such employer on a part-time "as-needed" basis;
356 7. Was hired to replace a United States
357 serviceman or servicewoman called into active duty and was laid
358 off upon the return to work by that serviceman or servicewoman,
359 unless such employer is a state agency or other political
360 subdivision or instrumentality of the state;
361 8. Was paid benefits during any week while in
362 training with the approval of the department, under the provisions
363 of Section 71-5-513B, or for any week while in training approved
364 under Section 236(a)(1) of the Trade Act of 1974, under the
365 provisions of Section 71-5-513C; or

366 9. Is not required to serve the one-week
367 waiting period as described in Section 71-5-505(2). In that
368 event, only the benefits paid in lieu of the waiting period week
369 may be noncharged.

370 (iii) The department shall compute a benefit ratio
371 for each eligible employer, which shall be the quotient obtained
372 by dividing the total benefits charged to his experience-rating
373 record during the period his experience-rating record has been
374 chargeable, but not less than the twelve (12) consecutive
375 calendar-month period nor more than the thirty-six (36)
376 consecutive calendar-month period ending on the computation date,
377 by his total taxable payroll for the same period on which all
378 contributions due have been paid on or before the September 30
379 immediately following the computation date. Such benefit ratio
380 shall be computed to the tenth of a percent (.1%), rounding any
381 remainder to the next higher tenth.

382 The following table shall be applied to reduce contribution
383 rates until Section 71-5-353(3) and (4) is repealed:

	<u>Benefit Ratio</u>	<u>Individual Experience Rate:</u>
385	<u>0.0%</u>	<u>- 0.3%</u>
386	<u>0.1</u>	<u>- 0.2</u>
387	<u>0.2</u>	<u>- 0.10</u>
388	<u>0.3</u>	<u>0.0</u>
389	<u>0.4</u>	<u>0.1</u>
390	<u>0.5</u>	<u>0.2</u>
391	<u>0.6</u>	<u>0.3</u>
392	<u>0.7</u>	<u>0.4</u>
393	<u>0.8</u>	<u>0.5</u>
394	<u>0.9</u>	<u>0.6</u>
395	<u>1.0</u>	<u>0.7</u>
396	<u>1.1</u>	<u>0.8</u>
397	<u>1.2</u>	<u>0.9</u>
398	<u>1.3</u>	<u>1.0</u>

399	<u>1.4</u>	<u>1.1</u>
400	<u>1.5</u>	<u>1.2</u>
401	<u>1.6</u>	<u>1.3</u>
402	<u>1.7</u>	<u>1.4</u>
403	<u>1.8</u>	<u>1.5</u>
404	<u>1.9</u>	<u>1.6</u>
405	<u>2.0</u>	<u>1.7</u>
406	<u>2.1</u>	<u>1.8</u>
407	<u>2.2</u>	<u>1.9</u>
408	<u>2.3</u>	<u>2.0</u>
409	<u>2.4</u>	<u>2.1</u>
410	<u>2.5</u>	<u>2.2</u>
411	<u>2.6</u>	<u>2.3</u>
412	<u>2.7</u>	<u>2.4</u>
413	<u>2.8</u>	<u>2.5</u>
414	<u>2.9</u>	<u>2.6</u>
415	<u>3.0</u>	<u>2.7</u>
416	<u>3.1</u>	<u>2.8</u>
417	<u>3.2</u>	<u>2.9</u>
418	<u>3.3</u>	<u>3.0</u>
419	<u>3.4</u>	<u>3.1</u>
420	<u>3.5</u>	<u>3.2</u>
421	<u>3.6</u>	<u>3.3</u>
422	<u>3.7</u>	<u>3.4</u>
423	<u>3.8</u>	<u>3.5</u>
424	<u>3.9</u>	<u>3.6</u>
425	<u>4.0</u>	<u>3.7</u>
426	<u>4.1</u>	<u>3.8</u>
427	<u>4.2</u>	<u>3.9</u>
428	<u>4.3</u>	<u>4.0</u>
429	<u>4.4</u>	<u>4.1</u>
430	<u>4.5</u>	<u>4.2</u>
431	<u>4.6</u>	<u>4.3</u>

432	<u>4.7</u>	<u>4.4</u>
433	<u>4.8</u>	<u>4.5</u>
434	<u>4.9</u>	<u>4.6</u>
435	<u>5.0</u>	<u>4.7</u>
436	<u>5.1</u>	<u>4.8</u>
437	<u>5.2</u>	<u>4.9</u>
438	<u>5.3</u>	<u>5.0</u>
439	<u>5.4</u>	<u>5.1</u>
440	<u>5.5</u>	<u>5.2</u>
441	<u>5.6</u>	<u>5.3</u>
442	<u>5.7 and above</u>	<u>5.4</u>

443 * * *

444 (iv) 1. The contribution rate for each eligible
445 employer shall be the sum of two (2) rates: His individual
446 experience rate in the range from zero percent (0%) to five and
447 four-tenths percent (5.4%), plus a general experience rate. In no
448 event shall the resulting rate be in excess of five and
449 four-tenths percent (5.4%).

450 2. The employer's individual experience rate
451 shall be equal to his benefit ratio as computed under subsection
452 (2)(b)(iii) above.

453 3. The general experience rate shall be
454 determined in the following manner: The department shall
455 determine annually, for the thirty-six (36) consecutive
456 calendar-month period ending on the computation date, the amount
457 of benefits which were not charged to the record of any employer
458 and of benefits which were ineffectively charged to the employer's
459 experience-rating record. For the purposes of subsection
460 (2)(b)(iv)3, the term "ineffectively charged benefits" shall
461 include:

462 The total of the amounts of benefits charged to the
463 experience-rating records of all eligible employers which caused
464 their benefit ratios to exceed five and four-tenths percent

465 (5.4%), the total of the amounts of benefits charged to the
466 experience-rating records of all ineligible employers which would
467 cause their benefit ratios to exceed five and four-tenths percent
468 (5.4%) if they were eligible employers, and the total of the
469 amounts of benefits charged or chargeable to the experience-rating
470 record of any employer who has discontinued his business or whose
471 coverage has been terminated within such period; provided, that
472 solely for the purposes of determining the amounts of
473 ineffectively charged benefits as herein defined, a "benefit
474 ratio" shall be computed for each ineligible employer, which shall
475 be the quotient obtained by dividing the total benefits charged to
476 his experience-rating record throughout the period ending on the
477 computation date, during which his experience-rating record has
478 been chargeable with benefits, by his total taxable payroll for
479 the same period on which all contributions due have been paid on
480 or before the September 30 immediately following the computation
481 date; and provided further, that such benefit ratio shall be
482 computed to the tenth of one percent (.1%) and any remainder shall
483 be rounded to the next higher tenth. The ratio of the sum of
484 these amounts to the taxable wages paid during the same period by
485 all eligible employers whose benefit ratio did not exceed five and
486 four-tenths percent (5.4%), computed to the next higher tenth of
487 one percent (.1%), shall be the general experience rate.

488 4. The general experience rate shall be
489 adjusted by use of the size of fund index factor. This factor may
490 be positive or negative, and shall be determined as follows: From
491 the target SOFI, as defined in subsection (1)(k) of this section,
492 subtract the simple average of the current and preceding years'
493 exposure criterions divided by the cost rate criterion, as defined
494 in subsection (1)(j) of this section. The result is then
495 multiplied by the product of the CRC, as defined in subsection
496 (1)(j) of this section, and total wages for the twelve-month
497 period ending June 30 divided by the taxable wages for the

498 twelve-month period ending June 30. This is the percentage
499 positive or negative added to the general experience rate. This
500 percentage is computed to one (1) decimal place, and rounded to
501 the next higher tenth.

502 5. Notwithstanding any other provisions of
503 subsection (2)(b)(iv), if the general experience rate for any tax
504 year as computed and adjusted on the basis of the size of fund
505 index is a negative percentage, it shall be disregarded.

506 6. The department shall include in its annual
507 rate notice to employers a brief explanation of the elements of
508 the general experience rate, and shall include in its regular
509 publications an annual analysis of benefits not charged to the
510 record of any employer, and of the benefit experience of employers
511 by industry group whose benefit ratio exceeds four percent (4%),
512 and of any other factors which may affect the size of the general
513 experience rate.

514 (v) When any employing unit in any manner succeeds
515 to or acquires the organization, trade, business or substantially
516 all the assets thereof of an employer, excepting any assets
517 retained by such employer incident to the liquidation of his
518 obligations, whether or not such acquiring employing unit was an
519 employer within the meaning of Section 71-5-11, subsection H,
520 prior to such acquisition, and continues such organization, trade
521 or business, the experience-rating and payroll records of the
522 predecessor employer shall be transferred as of the date of
523 acquisition to the successor employer for the purpose of rate
524 determination.

525 (vi) When any employing unit succeeds to or
526 acquires a distinct and severable portion of an organization,
527 trade or business, the experience-rating and payroll records of
528 such portion, if separately identifiable, shall be transferred to
529 the successor upon:

530 1. The mutual consent of the predecessor and
531 the successor;

532 2. Approval of the department;

533 3. Continued operation of the transferred
534 portion by the successor after transfer; and

535 4. The execution and the filing with the
536 department by the predecessor employer of a waiver relinquishing
537 all rights to have the experience-rating and payroll records of
538 the transferred portion used for the purpose of determining
539 modified rates of contribution for such predecessor.

540 (vii) If the successor was an employer subject to
541 this chapter prior to the date of acquisition, it shall continue
542 to pay contributions at the rate applicable to it from the date
543 the acquisition occurred until the end of the then current tax
544 year. If the successor was not an employer prior to the date of
545 acquisition, it shall pay contributions at the rate applicable to
546 the predecessor or, if more than one (1) predecessor and the same
547 rate is applicable to both, the rate applicable to the predecessor
548 or predecessors, from the date the acquisition occurred until the
549 end of the then current tax year. If the successor was not an
550 employer prior to the date the acquisition occurred and
551 simultaneously acquires the businesses of two (2) or more
552 employers to whom different rates of contributions are applicable,
553 it shall pay contributions from the date of the acquisition until
554 the end of the current tax year at a rate computed on the basis of
555 the combined experience-rating and payroll records of the
556 predecessors as of the computation date for such tax year. In all
557 cases the rate of contributions applicable to such successor for
558 each succeeding tax year shall be computed on the basis of the
559 combined experience-rating and payroll records of the successor
560 and the predecessor or predecessors.

561 (viii) The department shall notify each employer
562 quarterly of the benefits paid and charged to his

563 experience-rating record; and such notification, in the absence of
564 an application for redetermination filed within thirty (30) days
565 after the date of the mailing of such notice, shall be final,
566 conclusive and binding upon the employer for all purposes. A
567 redetermination, made after notice and opportunity for a fair
568 hearing, by a hearing officer designated by the department who
569 shall consider and decide these and related applications and
570 protests; and the finding of fact in connection therewith may be
571 introduced into any subsequent administrative or judicial
572 proceedings involving the determination of the rate of
573 contributions of any employer for any tax year, and shall be
574 entitled to the same finality as is provided in this subsection
575 with respect to the findings of fact in proceedings to redetermine
576 the contribution rate of an employer.

577 (ix) The department shall notify each employer of
578 his rate of contribution as determined for any tax year as soon as
579 reasonably possible after November 1 of the preceding year. Such
580 determination shall be final, conclusive and binding upon such
581 employer unless, within thirty (30) days after the date of the
582 mailing of such notice to his last known address, the employer
583 files with the department an application for review and
584 redetermination of his contribution rate, setting forth his
585 reasons therefor. If the department grants such review, the
586 employer shall be promptly notified thereof and shall be afforded
587 an opportunity for a fair hearing by a hearing officer designated
588 by the department who shall consider and decide these and related
589 applications and protests; but no employer shall be allowed, in
590 any proceeding involving his rate of contributions or contribution
591 liability, to contest the chargeability to his account of any
592 benefits paid in accordance with a determination, redetermination
593 or decision pursuant to Sections 71-5-515 through 71-5-533 except
594 upon the ground that the services on the basis of which such
595 benefits were found to be chargeable did not constitute services

596 performed in employment for him, and then only in the event that
597 he was not a party to such determination, redetermination,
598 decision or to any other proceedings provided in this chapter in
599 which the character of such services was determined. The employer
600 shall be promptly notified of the denial of this application or of
601 the redetermination, both of which shall become final unless,
602 within ten (10) days after the date of mailing of notice thereof,
603 there shall be an appeal to the department itself. Any such
604 appeal shall be on the record before said designated hearing
605 officer, and the decision of said department shall become final
606 unless, within thirty (30) days after the date of mailing of
607 notice thereof to the employer's last known address, there shall
608 be an appeal to the Circuit Court of the First Judicial District
609 of Hinds County, Mississippi, in accordance with the provisions of
610 law with respect to review of civil causes by certiorari.

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

613 71-5-453. The State Treasurer shall be the ex officio
614 treasurer and custodian of the fund, and shall administer such
615 fund in accordance with the directions of the department, and
616 shall issue his warrants upon it in accordance with such
617 regulations as the department shall prescribe. He shall maintain
618 within the fund three (3) separate accounts: (a) a clearing
619 account, (b) an unemployment trust fund account, and (c) a benefit
620 account. All monies payable to the fund, upon receipt thereof by
621 the department, shall be forwarded to the Treasurer, who shall
622 immediately deposit them in the clearing account. Refunds payable
623 pursuant to Section 71-5-383 may be paid from the clearing account
624 upon warrants issued by the Treasurer under the direction of the
625 department. Transfers pursuant to Section 71-5-114 of all
626 interest, penalties and damages collected shall be made to the
627 Special Employment Security Administration Fund as soon as
628 practicable after the end of each calendar quarter. Workforce

629 training enhancement contributions shall be deposited into the
630 workforce enhancement training holding fund account as described
631 in this section. All other monies in the clearing account shall
632 be immediately deposited with the Secretary of the Treasury of the
633 United States of America to the credit of the account of this
634 state in the Unemployment Trust Fund, established and maintained
635 pursuant to Section 904 of the Social Security Act, as amended,
636 any provisions of law in this state relating to the deposit,
637 administration, release, or disbursement of monies in the
638 possession or custody of this state to the contrary
639 notwithstanding. The benefit account shall consist of all monies
640 requisitioned from this state's account in the Unemployment Trust
641 Fund. Except as herein otherwise provided, monies in the clearing
642 and benefit accounts may be deposited by the Treasurer, under the
643 direction of the department, in any bank or public depository in
644 which general funds of the state may be deposited, but no public
645 deposit insurance charge or premium shall be paid out of the fund.
646 The State Treasurer shall be liable on his official bond for the
647 faithful performance of his duties in connection with the
648 Unemployment Compensation Fund under this chapter. A workforce
649 training enhancement fund holding account shall be established by
650 and maintained under the control of the Mississippi Department of
651 Employment Security. The workforce training enhancement
652 contributions collected pursuant to the provisions in this chapter
653 shall be transferred from the clearing account into the workforce
654 training enhancement fund holding account on the same schedule and
655 under the same conditions as funds transferred to the Unemployment
656 Compensation Fund. Such funds shall remain on deposit in the
657 workforce training enhancement fund account for a period of sixty
658 (60) days. After such period, contributions will be transferred
659 to the Workforce Enhancement Training Fund by the Mississippi
660 Department of Employment Security, within thirty (30) days. One
661 such transfer shall be made monthly, but the department, in its

662 discretion, may make additional transfers in any month. In the
663 event such funds transferred are subsequently determined to be
664 erroneously paid or collected, or if deposit of such funds is
665 denied or rejected by the banking institution for any reason, or
666 deposits are unable to clear drawer's account for any reason, the
667 funds must be reimbursed by the recipient of such funds within
668 thirty (30) days of mailing of notice by the Mississippi
669 Department of Employment Security demanding such refund, unless
670 funds are available in the workforce training enhancement fund
671 holding account. In that event such amounts shall be immediately
672 withdrawn from the workforce enhancement training holding fund
673 account by the Mississippi Department of Employment Security and
674 redeposited into the clearing account.

675 **SECTION 4.** Section 71-5-351, Mississippi Code of 1972, is
676 amended as follows:

677 71-5-351. Contributions shall accrue and become payable by
678 each employer for each calendar year in which he is subject to
679 this chapter. Such contributions shall become due and be paid by
680 each employer to the department for the fund each calendar quarter
681 on or before the last day of the month next succeeding each
682 calendar quarter in which the contributions accrue. The
683 department may extend the due date of such contributions if the
684 due date falls on a Saturday, Sunday or state or federal holiday.
685 Such contributions shall not be deducted, in whole or in part,
686 from the wages of individuals in such employer's employ.

687 For purposes of payment of contributions on remuneration paid
688 to individuals, if two (2) or more related corporations
689 concurrently employ the same individual and compensate such
690 individual through a common paymaster which is one of such
691 corporations, each such corporation shall be considered to have
692 paid as remuneration to such individual only the amounts actually
693 disbursed by it to such individual and shall not be considered to

694 have paid as remuneration to such individual such amounts actually
695 disbursed to such individual by another of such corporations.

696 In the payment of any contributions, a fractional part of a
697 cent shall be disregarded unless it amounts to One-half Cent
698 (1/2¢) or more, in which case it shall be increased to One Cent
699 (1¢).

700 For the purposes of this section and Section 71-5-353,
701 taxable wages shall not include that part of remuneration which,
702 after remuneration equal to Seven Thousand Dollars (\$7,000.00) has
703 been paid in a calendar year to an individual by an employer or
704 his predecessor with respect to employment during any calendar
705 year, is paid to such individual by such employer during such
706 calendar year unless that part of the remuneration is subject to a
707 tax under a federal law imposing a tax against which credit may be
708 taken for contributions required to be paid into a state
709 employment fund. For the purposes of this section, the term
710 "employment" shall include service constituting employment under
711 any unemployment compensation law of another state.

712 Provided, however, that, absent evidence of willful or
713 fraudulent attempt to avoid taxation, the effective date of
714 liability of an employer or assessment of liability for covered
715 employment against an employer shall not occur for any period
716 preceding the three (3) calendar years before the date of
717 registration or assessment, unless said three-year limitations
718 period is waived by the employer.

719 **SECTION 5.** This act shall take effect and be in force from
720 and after July 1, 2005.