

By: Senator(s) Robertson

To: Finance

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

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

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

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

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

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

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

70 Mississippi referred to in Sections 71-5-357 and 71-5-359, or to  
71 nonprofit employers providing reimbursement to the department for  
72 the unemployment fund pursuant to Section 71-5-357(a). This  
73 subsection (3) shall be suspended and the size of fund and cost  
74 rate criterion shall be fixed for future years at the levels for  
75 the last rate computation, if any of the following occur:

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) described 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 to  
93 the size of the fund index and the cost rate criteria shall be  
94 accomplished as described in Section 71-5-355(1)(j) and (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).

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

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

120 Cost of collection and administration of the workforce  
121 enhancement training contribution shall be allocated based on a  
122 plan approved by the United States Department of Labor (USDOL) and  
123 shall be paid to the Mississippi Department of Employment Security  
124 semiannually by the State Board for Community and Junior Colleges  
125 for periods ending in December and June of each year. Payment  
126 shall be made to the department no later than sixty (60) days  
127 after the billing date.

128 (c) All monies deposited in the Mississippi Workforce  
129 Training Enhancement Fund will be held by the Mississippi  
130 Department of Employment Security in such account for a period of  
131 not less than sixty (60) days. After such period, funds shall be  
132 transferred within thirty (30) days to the Mississippi Workforce  
133 Enhancement Training Fund in a manner determined by the  
134 department. Interest earnings or interest credits on deposit  
135 amounts shall be retained in the account to pay the costs of the

136 account. If after the period of twelve (12) months interest  
137 earnings less banking costs exceeds Ten Thousand Dollars  
138 (\$10,000.00), such excess amounts shall be transferred to the  
139 Mississippi Workforce Enhancement Training Fund within thirty (30)  
140 days. Such transfers shall occur once annually, during the month  
141 of January.

142 (d) All enforcement procedures for the collection of  
143 delinquent contributions contained in Sections 71-5-363 through  
144 71-5-383 shall be applicable in all respects for collections of  
145 delinquent contributions designated for the Unemployment  
146 Compensation Fund and the Mississippi Workforce Training  
147 Enhancement Fund.

148 (e) All monies deposited into the Mississippi Workforce  
149 Enhancement Training Fund shall be utilized exclusively by the  
150 State Board for Community and Junior Colleges in accordance with  
151 the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and  
152 the annual plan developed by the State Workforce Investment Board  
153 for the following purposes: to provide training at no charge to  
154 employers and employees in order to enhance employee productivity.  
155 Such training may be subject to a minimal administrative fee to be  
156 paid from the Mississippi Workforce Enhancement Trust Fund as  
157 established by the State Workforce Investment Board subject to the  
158 advice of the State Board for Community and Junior Colleges. The  
159 initial priority of these funds shall be for the benefit of  
160 existing businesses located within the state. Employers may  
161 request training for existing employees and/or newly hired  
162 employees from the State Board for Community and Junior Colleges.  
163 The State Board for Community and Junior Colleges will be  
164 responsible for approving the training.

165 (f) This subsection (4) shall be suspended and the size  
166 of fund and cost rate criterion shall be fixed at the levels  
167 computed for the last rate computation at the end of any calendar  
168 year in which the following has occurred:

169                   (i) The average high cost multiple is equal to or  
170 less than 1.0. The average high cost multiple shall be computed  
171 as follows: The result of the unobligated balance of the  
172 unemployment compensation at November 1 immediately preceding the  
173 new rate year divided by the total wages for the twelve (12)  
174 months ending on the June 30 immediately preceding the new rate  
175 year shall be the numerator and shall be divided by the simple  
176 average of the value of the three (3) highest cost rate criterion  
177 computations since 1974. The result rounded to the next lower one  
178 (1) decimal place will be the average high cost multiple; or  
179                   (ii) The computed size of fund (average exposure  
180 criterion divided by cost rate criterion) described in Section  
181 71-5-355 reaches 1.0 and the cost rate criterion reaches the  
182 average for the highest value of the cost rate criterion  
183 computations during each of the economic cycles (economic cycles  
184 shall be those defined by the National Bureau of Economic  
185 Research) subsequent to the calendar year 1974. The reduction to  
186 the size of the fund index and the cost rate criteria shall be  
187 accomplished as described in Section 71-3-355(1)(j) and (k); or  
188                   (iii) The Unemployment Compensation Fund falls  
189 below Five Hundred Million Dollars (\$500,000,000.00).

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

192           71-5-355. (1) As used in this section, the following words  
193 and phrases shall have the following meanings, unless the context  
194 clearly requires otherwise:

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

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

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

201           (d) Except as hereinafter provided, "payroll" means the  
202 total of all wages paid for employment by an employer as defined  
203 in Section 71-5-11, subsection H, plus the total of all  
204 remuneration paid by such employer excluded from the definition of  
205 wages by Section 71-5-351. For the computation of modified rates,  
206 "payroll" means the total of all wages paid for employment by an  
207 employer as defined in Section 71-5-11, subsection H.

208           (e) For the computation of modified rates, "eligible  
209 employer" means an employer whose experience-rating record has  
210 been chargeable with benefits throughout the thirty-six (36)  
211 consecutive calendar-month period ending on the computation date,  
212 except that any employer who has not been subject to the  
213 Mississippi Employment Security Law for a period of time  
214 sufficient to meet the thirty-six (36) consecutive calendar-month  
215 requirement shall be an eligible employer if his experience-rating  
216 record has been chargeable throughout not less than the twelve  
217 (12) consecutive calendar-month period ending on the computation  
218 date. No employer shall be considered eligible for a contribution  
219 rate less than five and four-tenths percent (5.4%) with respect to  
220 any tax year, who has failed to file any two (2) quarterly reports  
221 within the qualifying period by September 30 following the  
222 computation date. No employer or employing unit shall be eligible  
223 for a contribution rate of less than five and four-tenths percent  
224 (5.4%) for the tax year in which the employing unit is found by  
225 the department to be in violation of Section 71-5-19(2) or (3) and  
226 for the next two (2) succeeding tax years. No representative of  
227 such employing unit who was a party to a violation as described in  
228 Section 71-5-19(2) or (3), if such representative was or is an  
229 employing unit in this state, shall be eligible for a  
230 contributions rate of less than five and four-tenths percent  
231 (5.4%) for the tax year in which such violation was detected by  
232 the department and for the next two (2) succeeding tax years.

233           (f) With respect to any tax year, "reserve ratio" means  
234 the ratio which the total amount available for the payment of  
235 benefits in the Unemployment Compensation Fund, excluding any  
236 amount which has been credited to the account of this state under  
237 Section 903 of the Social Security Act, as amended, and which has  
238 been appropriated for the expenses of administration pursuant to  
239 Section 71-5-457 whether or not withdrawn from such account, on  
240 November 1 of each calendar year bears to the aggregate of the  
241 taxable payrolls of all employers for the twelve (12) calendar  
242 months ending on June 30 next preceding.

243           (g) "Modified rates" means the rates of employer  
244 contributions determined under the provisions of this chapter and  
245 the rates of newly subject employers, as provided in Section  
246 71-5-353.

247           (h) For the computation of modified rates, "qualifying  
248 period" means a period of not less than the thirty-six (36)  
249 consecutive calendar months ending on the computation date  
250 throughout which an employer's experience-rating record has been  
251 chargeable with benefits; except that with respect to any eligible  
252 employer who has not been subject to this article for a period of  
253 time sufficient to meet the thirty-six (36) consecutive  
254 calendar-month requirement, "qualifying period" means the period  
255 ending on the computation date throughout which his  
256 experience-rating record has been chargeable with benefits, but in  
257 no event less than the twelve (12) consecutive calendar-month  
258 period ending on the computation date throughout which his  
259 experience-rating record has been so chargeable.

260           (i) The "exposure criterion" (EC) is defined as the  
261 cash balance of the Unemployment Compensation Fund which is  
262 available for the payment of benefits as of November 1 of each  
263 calendar year, divided by the total wages, exclusive of wages paid  
264 by all state agencies, all political subdivisions, reimbursable  
265 nonprofit corporations, and tax exempt public service employment,



266 for the twelve-month period ending June 30 immediately preceding  
267 such date. The EC shall be computed to four (4) decimal places.

268 (j) The "cost rate criterion" (CRC) is defined as  
269 follows: Beginning with January 1974, the benefits paid for the  
270 twelve-month period ending December 1974 are summed and divided by  
271 the total wages for the twelve-month period ending on June 30,  
272 1975. Similar ratios are computed by subtracting the earliest  
273 month's benefit payments and adding the benefits of the next month  
274 in the sequence and dividing each sum of twelve (12) months'  
275 benefits by the total wages for the twelve-month period ending on  
276 the June 30 which is nearest to the final month of the period used  
277 to compute the numerator. If December is the final month of the  
278 period used to compute the numerator, then the twelve-month period  
279 ending the following June 30 will be used for the denominator.  
280 The highest value of these ratios beginning with the ratio for  
281 benefits paid in calendar year 1974 is the cost rate criterion.  
282 The cost rate criterion shall be computed to four (4) decimal  
283 places. Benefits and total wages used in the computation of the  
284 cost rate criterion shall exclude all benefits and total wages  
285 applicable to state agencies, political subdivisions, reimbursable  
286 nonprofit corporations, and tax exempt PSE employment. For rate  
287 years 2005 and 2006, the CRC shall be adjusted downward by an  
288 amount necessary to satisfy one-half (1/2) the reductions required  
289 to maintain a general experience rate of nine tenths of one  
290 percent (.9%). For rate year 2007 and subsequent years, the CRC  
291 shall be adjusted downward by an amount necessary to satisfy  
292 one-half (1/2) the reductions required to maintain a general  
293 experience rate of seven tenths of one percent (.7%) until such  
294 time as the CRC equals the average for the highest value of the  
295 cost rate criterion computations during each of the economic  
296 cycles (economic cycles shall be those defined by the National  
297 Bureau of Economic Research) since the calendar year 1974, except  
298 as provided in subsection (3) of Section 71-5-353. When the

299 remaining reduction is insufficient to cause the reductions as  
300 specified in this paragraph, additional reductions specified in  
301 subsection (1)(k) of this section may be made to the size of fund  
302 index to achieve the general experience rate specified in this  
303 paragraph, except as provided in Section 71-3-353. The CRC shall  
304 not be raised except as provided through annual computations and  
305 additions of future economic cycles.

306 (k) "Size of fund index" (SOFI) is defined as the ratio  
307 of the EC to the CRC. For the rate years 2005 and 2006, the SOFI  
308 shall be adjusted downward by an amount necessary to satisfy  
309 one-half (1/2) the reductions required to maintain a general  
310 experience rate of nine tenths of one percent (.9%). For rate  
311 year 2007 and subsequent years, the SOFI shall be adjusted  
312 downward by an amount necessary to satisfy one-half (1/2) the  
313 reductions required to maintain a minimum general experience rate  
314 of seven tenths of one percent (.7%) until such time as the SOFI  
315 is reduced from a target size of 1.5 to 1.0, except as provided in  
316 subsection (3) of Section 71-5-353. The SOFI shall not be raised  
317 in any event. In the event Section 71-5-353 is suspended, the  
318 SOFI shall remain at the current level until the suspension is  
319 lifted.

320 (1) No employer's contribution rate shall exceed five  
321 and four-tenths percent (5.4%), nor be less than four-tenths of  
322 one percent (.4%). However, from and after January 1, 2005, and  
323 continuing unless Section 71-5-353(3) shall be suspended, the  
324 reduction shall be accomplished as described in Section 71-5-355  
325 (1) (j) and (k), no employer's unemployment contribution rate  
326 shall be less than one tenth of one percent (.1%).

327 (2) Modified rates:

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

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

335 (i) The department shall maintain an  
336 experience-rating record for each employer. Nothing in this  
337 chapter shall be construed to grant any employer or individuals  
338 performing services for him any prior claim or rights to the  
339 amounts paid by the employer into the fund.

340 (ii) Benefits paid to an eligible individual shall  
341 be charged against the experience-rating record of his base period  
342 employers in the proportion to which the wages paid by each base  
343 period employer bears to the total wages paid to the individual by  
344 all the base period employers, provided that benefits shall not be  
345 charged to an employer's experience-rating record if the  
346 department finds that the individual:

347 1. Voluntarily left the employ of such  
348 employer without good cause attributable to the employer;

349 2. Was discharged by such employer for  
350 misconduct connected with his work;

351 3. Refused an offer of suitable work by such  
352 employer without good cause, and the department further finds that  
353 such benefits are based on wages for employment for such employer  
354 prior to such voluntary leaving, discharge or refusal of suitable  
355 work, as the case may be; \* \* \*

356 4. Had base period wages which included wages  
357 for previously uncovered services as defined in Section  
358 71-5-511(e) to the extent that the Unemployment Compensation Fund  
359 is reimbursed for such benefits pursuant to Section 121 of Public  
360 Law 94-566;

361 5. Extended benefits paid under the  
362 provisions of Section 71-5-541 which are not reimbursable from  
363 federal funds shall be charged to the experience-rating record of  
364 base period employers;

365                   6. Is still working for such employer on a  
366 regular part-time basis under the same employment conditions as  
367 hired. Provided, however, that benefits shall be charged against  
368 an employer if an eligible individual is paid benefits who is  
369 still working for such employer on a part-time "as-needed" basis;

370                   7. Was hired to replace a United States  
371 serviceman or servicewoman called into active duty and was laid  
372 off upon the return to work by that serviceman or servicewoman,  
373 unless such employer is a state agency or other political  
374 subdivision or instrumentality of the state;

375                   8. Was paid benefits during any week while in  
376 training with the approval of the department, under the provisions  
377 of Section 71-5-513B, or for any week while in training approved  
378 under Section 236(a)(1) of the Trade Act of 1974, under the  
379 provisions of Section 71-5-513C; or

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

384                   (iii) The department shall compute a benefit ratio  
385 for each eligible employer, which shall be the quotient obtained  
386 by dividing the total benefits charged to his experience-rating  
387 record during the period his experience-rating record has been  
388 chargeable, but not less than the twelve (12) consecutive  
389 calendar-month period nor more than the thirty-six (36)  
390 consecutive calendar-month period ending on the computation date,  
391 by his total taxable payroll for the same period on which all  
392 contributions due have been paid on or before the September 30  
393 immediately following the computation date. Such benefit ratio  
394 shall be computed to the tenth of a percent (.1%), rounding any  
395 remainder to the next higher tenth.

396                   The following table shall be applied to reduce contribution  
397 rates until Section 71-5-353(3) and (4) is suspended:

	<u>Benefit Ratio</u>	<u>Individual Experience Rate:</u>
398		
399	<u>0.0%</u>	<u>- 0.3%</u>
400	<u>0.1</u>	<u>- 0.2</u>
401	<u>0.2</u>	<u>- 0.10</u>
402	<u>0.3</u>	<u>0.0</u>
403	<u>0.4</u>	<u>0.1</u>
404	<u>0.5</u>	<u>0.2</u>
405	<u>0.6</u>	<u>0.3</u>
406	<u>0.7</u>	<u>0.4</u>
407	<u>0.8</u>	<u>0.5</u>
408	<u>0.9</u>	<u>0.6</u>
409	<u>1.0</u>	<u>0.7</u>
410	<u>1.1</u>	<u>0.8</u>
411	<u>1.2</u>	<u>0.9</u>
412	<u>1.3</u>	<u>1.0</u>
413	<u>1.4</u>	<u>1.1</u>
414	<u>1.5</u>	<u>1.2</u>
415	<u>1.6</u>	<u>1.3</u>
416	<u>1.7</u>	<u>1.4</u>
417	<u>1.8</u>	<u>1.5</u>
418	<u>1.9</u>	<u>1.6</u>
419	<u>2.0</u>	<u>1.7</u>
420	<u>2.1</u>	<u>1.8</u>
421	<u>2.2</u>	<u>1.9</u>
422	<u>2.3</u>	<u>2.0</u>
423	<u>2.4</u>	<u>2.1</u>
424	<u>2.5</u>	<u>2.2</u>
425	<u>2.6</u>	<u>2.3</u>
426	<u>2.7</u>	<u>2.4</u>
427	<u>2.8</u>	<u>2.5</u>
428	<u>2.9</u>	<u>2.6</u>
429	<u>3.0</u>	<u>2.7</u>
430	<u>3.1</u>	<u>2.8</u>

431	<u>3.2</u>	<u>2.9</u>
432	<u>3.3</u>	<u>3.0</u>
433	<u>3.4</u>	<u>3.1</u>
434	<u>3.5</u>	<u>3.2</u>
435	<u>3.6</u>	<u>3.3</u>
436	<u>3.7</u>	<u>3.4</u>
437	<u>3.8</u>	<u>3.5</u>
438	<u>3.9</u>	<u>3.6</u>
439	<u>4.0</u>	<u>3.7</u>
440	<u>4.1</u>	<u>3.8</u>
441	<u>4.2</u>	<u>3.9</u>
442	<u>4.3</u>	<u>4.0</u>
443	<u>4.4</u>	<u>4.1</u>
444	<u>4.5</u>	<u>4.2</u>
445	<u>4.6</u>	<u>4.3</u>
446	<u>4.7</u>	<u>4.4</u>
447	<u>4.8</u>	<u>4.5</u>
448	<u>4.9</u>	<u>4.6</u>
449	<u>5.0</u>	<u>4.7</u>
450	<u>5.1</u>	<u>4.8</u>
451	<u>5.2</u>	<u>4.9</u>
452	<u>5.3</u>	<u>5.0</u>
453	<u>5.4</u>	<u>5.1</u>
454	<u>5.5</u>	<u>5.2</u>
455	<u>5.6</u>	<u>5.3</u>
456	<u>5.7 and above</u>	<u>5.4</u>

457 \* \* \*

458 (iv) 1. The contribution rate for each eligible  
459 employer shall be the sum of two (2) rates: His individual  
460 experience rate in the range from zero percent (0%) to five and  
461 four-tenths percent (5.4%), plus a general experience rate. In no  
462 event shall the resulting rate be in excess of five and  
463 four-tenths percent (5.4%).

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

467                   3. The general experience rate shall be  
468 determined in the following manner: The department shall  
469 determine annually, for the thirty-six (36) consecutive  
470 calendar-month period ending on the computation date, the amount  
471 of benefits which were not charged to the record of any employer  
472 and of benefits which were ineffectively charged to the employer's  
473 experience-rating record. For the purposes of subsection  
474 (2)(b)(iv)3, the term "ineffectively charged benefits" shall  
475 include:

476           The total of the amounts of benefits charged to the  
477 experience-rating records of all eligible employers which caused  
478 their benefit ratios to exceed five and four-tenths percent  
479 (5.4%), the total of the amounts of benefits charged to the  
480 experience-rating records of all ineligible employers which would  
481 cause their benefit ratios to exceed five and four-tenths percent  
482 (5.4%) if they were eligible employers, and the total of the  
483 amounts of benefits charged or chargeable to the experience-rating  
484 record of any employer who has discontinued his business or whose  
485 coverage has been terminated within such period; provided, that  
486 solely for the purposes of determining the amounts of  
487 ineffectively charged benefits as herein defined, a "benefit  
488 ratio" shall be computed for each ineligible employer, which shall  
489 be the quotient obtained by dividing the total benefits charged to  
490 his experience-rating record throughout the period ending on the  
491 computation date, during which his experience-rating record has  
492 been chargeable with benefits, by his total taxable payroll for  
493 the same period on which all contributions due have been paid on  
494 or before the September 30 immediately following the computation  
495 date; and provided further, that such benefit ratio shall be  
496 computed to the tenth of one percent (.1%) and any remainder shall

497 be rounded to the next higher tenth. The ratio of the sum of  
498 these amounts to the taxable wages paid during the same period by  
499 all eligible employers whose benefit ratio did not exceed five and  
500 four-tenths percent (5.4%), computed to the next higher tenth of  
501 one percent (.1%), shall be the general experience rate.

502 4. The general experience rate shall be  
503 adjusted by use of the size of fund index factor. This factor may  
504 be positive or negative, and shall be determined as follows: From  
505 the target SOFI, as defined in subsection (1)(k) of this section,  
506 subtract the simple average of the current and preceding years'  
507 exposure criterions divided by the cost rate criterion, as defined  
508 in subsection (1)(j) of this section. The result is then  
509 multiplied by the product of the CRC, as defined in subsection  
510 (1)(j) of this section, and total wages for the twelve-month  
511 period ending June 30 divided by the taxable wages for the  
512 twelve-month period ending June 30. This is the percentage  
513 positive or negative added to the general experience rate. This  
514 percentage is computed to one (1) decimal place, and rounded to  
515 the next higher tenth.

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

520 6. The department shall include in its annual  
521 rate notice to employers a brief explanation of the elements of  
522 the general experience rate, and shall include in its regular  
523 publications an annual analysis of benefits not charged to the  
524 record of any employer, and of the benefit experience of employers  
525 by industry group whose benefit ratio exceeds four percent (4%),  
526 and of any other factors which may affect the size of the general  
527 experience rate.

528 (v) When any employing unit in any manner succeeds  
529 to or acquires the organization, trade, business or substantially



530 all the assets thereof of an employer, excepting any assets  
531 retained by such employer incident to the liquidation of his  
532 obligations, whether or not such acquiring employing unit was an  
533 employer within the meaning of Section 71-5-11, subsection H,  
534 prior to such acquisition, and continues such organization, trade  
535 or business, the experience-rating and payroll records of the  
536 predecessor employer shall be transferred as of the date of  
537 acquisition to the successor employer for the purpose of rate  
538 determination.

539 (vi) When any employing unit succeeds to or  
540 acquires a distinct and severable portion of an organization,  
541 trade or business, the experience-rating and payroll records of  
542 such portion, if separately identifiable, shall be transferred to  
543 the successor upon:

544 1. The mutual consent of the predecessor and  
545 the successor;

546 2. Approval of the department;

547 3. Continued operation of the transferred  
548 portion by the successor after transfer; and

549 4. The execution and the filing with the  
550 department by the predecessor employer of a waiver relinquishing  
551 all rights to have the experience-rating and payroll records of  
552 the transferred portion used for the purpose of determining  
553 modified rates of contribution for such predecessor.

554 (vii) If the successor was an employer subject to  
555 this chapter prior to the date of acquisition, it shall continue  
556 to pay contributions at the rate applicable to it from the date  
557 the acquisition occurred until the end of the then current tax  
558 year. If the successor was not an employer prior to the date of  
559 acquisition, it shall pay contributions at the rate applicable to  
560 the predecessor or, if more than one (1) predecessor and the same  
561 rate is applicable to both, the rate applicable to the predecessor  
562 or predecessors, from the date the acquisition occurred until the

563 end of the then current tax year. If the successor was not an  
564 employer prior to the date the acquisition occurred and  
565 simultaneously acquires the businesses of two (2) or more  
566 employers to whom different rates of contributions are applicable,  
567 it shall pay contributions from the date of the acquisition until  
568 the end of the current tax year at a rate computed on the basis of  
569 the combined experience-rating and payroll records of the  
570 predecessors as of the computation date for such tax year. In all  
571 cases the rate of contributions applicable to such successor for  
572 each succeeding tax year shall be computed on the basis of the  
573 combined experience-rating and payroll records of the successor  
574 and the predecessor or predecessors.

575 (viii) The department shall notify each employer  
576 quarterly of the benefits paid and charged to his  
577 experience-rating record; and such notification, in the absence of  
578 an application for redetermination filed within thirty (30) days  
579 after the date of the mailing of such notice, shall be final,  
580 conclusive and binding upon the employer for all purposes. A  
581 redetermination, made after notice and opportunity for a fair  
582 hearing, by a hearing officer designated by the department who  
583 shall consider and decide these and related applications and  
584 protests; and the finding of fact in connection therewith may be  
585 introduced into any subsequent administrative or judicial  
586 proceedings involving the determination of the rate of  
587 contributions of any employer for any tax year, and shall be  
588 entitled to the same finality as is provided in this subsection  
589 with respect to the findings of fact in proceedings to redetermine  
590 the contribution rate of an employer.

591 (ix) The department shall notify each employer of  
592 his rate of contribution as determined for any tax year as soon as  
593 reasonably possible after November 1 of the preceding year. Such  
594 determination shall be final, conclusive and binding upon such  
595 employer unless, within thirty (30) days after the date of the

596 mailing of such notice to his last known address, the employer  
597 files with the department an application for review and  
598 redetermination of his contribution rate, setting forth his  
599 reasons therefor. If the department grants such review, the  
600 employer shall be promptly notified thereof and shall be afforded  
601 an opportunity for a fair hearing by a hearing officer designated  
602 by the department who shall consider and decide these and related  
603 applications and protests; but no employer shall be allowed, in  
604 any proceeding involving his rate of contributions or contribution  
605 liability, to contest the chargeability to his account of any  
606 benefits paid in accordance with a determination, redetermination  
607 or decision pursuant to Sections 71-5-515 through 71-5-533 except  
608 upon the ground that the services on the basis of which such  
609 benefits were found to be chargeable did not constitute services  
610 performed in employment for him, and then only in the event that  
611 he was not a party to such determination, redetermination,  
612 decision or to any other proceedings provided in this chapter in  
613 which the character of such services was determined. The employer  
614 shall be promptly notified of the denial of this application or of  
615 the redetermination, both of which shall become final unless,  
616 within ten (10) days after the date of mailing of notice thereof,  
617 there shall be an appeal to the department itself. Any such  
618 appeal shall be on the record before said designated hearing  
619 officer, and the decision of said department shall become final  
620 unless, within thirty (30) days after the date of mailing of  
621 notice thereof to the employer's last known address, there shall  
622 be an appeal to the Circuit Court of the First Judicial District  
623 of Hinds County, Mississippi, in accordance with the provisions of  
624 law with respect to review of civil causes by certiorari.

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

627 71-5-453. The State Treasurer shall be the ex officio  
628 treasurer and custodian of the fund, and shall administer such

629 fund in accordance with the directions of the department, and  
630 shall issue his warrants upon it in accordance with such  
631 regulations as the department shall prescribe. He shall maintain  
632 within the fund three (3) separate accounts: (a) a clearing  
633 account, (b) an unemployment trust fund account, and (c) a benefit  
634 account. All monies payable to the fund, upon receipt thereof by  
635 the department, shall be forwarded to the Treasurer, who shall  
636 immediately deposit them in the clearing account. Refunds payable  
637 pursuant to Section 71-5-383 may be paid from the clearing account  
638 upon warrants issued by the Treasurer under the direction of the  
639 department. Transfers pursuant to Section 71-5-114 of all  
640 interest, penalties and damages collected shall be made to the  
641 Special Employment Security Administration Fund as soon as  
642 practicable after the end of each calendar quarter. Workforce  
643 training enhancement contributions shall be deposited into the  
644 workforce enhancement training holding fund account as described  
645 in this section. All other monies in the clearing account shall  
646 be immediately deposited with the Secretary of the Treasury of the  
647 United States of America to the credit of the account of this  
648 state in the Unemployment Trust Fund, established and maintained  
649 pursuant to Section 904 of the Social Security Act, as amended,  
650 any provisions of law in this state relating to the deposit,  
651 administration, release, or disbursement of monies in the  
652 possession or custody of this state to the contrary  
653 notwithstanding. The benefit account shall consist of all monies  
654 requisitioned from this state's account in the Unemployment Trust  
655 Fund. Except as herein otherwise provided, monies in the clearing  
656 and benefit accounts may be deposited by the Treasurer, under the  
657 direction of the department, in any bank or public depository in  
658 which general funds of the state may be deposited, but no public  
659 deposit insurance charge or premium shall be paid out of the fund.  
660 The State Treasurer shall be liable on his official bond for the  
661 faithful performance of his duties in connection with the

662 Unemployment Compensation Fund under this chapter. A Mississippi  
663 Workforce Training Enhancement Fund holding account shall be  
664 established by and maintained under the control of the Mississippi  
665 Department of Employment Security. The workforce training  
666 enhancement contributions collected pursuant to the provisions in  
667 this chapter shall be transferred from the clearing account into  
668 the Mississippi Workforce Training Enhancement Fund holding  
669 account on the same schedule and under the same conditions as  
670 funds transferred to the Unemployment Compensation Fund. Such  
671 funds shall remain on deposit in the workforce training  
672 enhancement fund account for a period of sixty (60) days. After  
673 such period, contributions will be transferred to the Mississippi  
674 Workforce Enhancement Training Fund by the Mississippi Department  
675 of Employment Security, within thirty (30) days. One such  
676 transfer shall be made monthly, but the department, in its  
677 discretion, may make additional transfers in any month. In the  
678 event such funds transferred are subsequently determined to be  
679 erroneously paid or collected, or if deposit of such funds is  
680 denied or rejected by the banking institution for any reason, or  
681 deposits are unable to clear drawer's account for any reason, the  
682 funds must be reimbursed by the recipient of such funds within  
683 thirty (30) days of mailing of notice by the Mississippi  
684 Department of Employment Security demanding such refund, unless  
685 funds are available in the workforce training enhancement fund  
686 holding account. In that event such amounts shall be immediately  
687 withdrawn from the workforce enhancement training holding fund  
688 account by the Mississippi Department of Employment Security and  
689 redeposited into the clearing account.

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

692 71-5-351. Contributions shall accrue and become payable by  
693 each employer for each calendar year in which he is subject to  
694 this chapter. Such contributions shall become due and be paid by

695 each employer to the department for the fund each calendar quarter  
696 on or before the last day of the month next succeeding each  
697 calendar quarter in which the contributions accrue. The  
698 department may extend the due date of such contributions if the  
699 due date falls on a Saturday, Sunday or state or federal holiday.  
700 Such contributions shall not be deducted, in whole or in part,  
701 from the wages of individuals in such employer's employ.

702 For purposes of payment of contributions on remuneration paid  
703 to individuals, if two (2) or more related corporations  
704 concurrently employ the same individual and compensate such  
705 individual through a common paymaster which is one of such  
706 corporations, each such corporation shall be considered to have  
707 paid as remuneration to such individual only the amounts actually  
708 disbursed by it to such individual and shall not be considered to  
709 have paid as remuneration to such individual such amounts actually  
710 disbursed to such individual by another of such corporations.

711 In the payment of any contributions, a fractional part of a  
712 cent shall be disregarded unless it amounts to One-half Cent  
713 (1/2¢) or more, in which case it shall be increased to One Cent  
714 (1¢).

715 For the purposes of this section and Section 71-5-353,  
716 taxable wages shall not include that part of remuneration which,  
717 after remuneration equal to Seven Thousand Dollars (\$7,000.00) has  
718 been paid in a calendar year to an individual by an employer or  
719 his predecessor with respect to employment during any calendar  
720 year, is paid to such individual by such employer during such  
721 calendar year unless that part of the remuneration is subject to a  
722 tax under a federal law imposing a tax against which credit may be  
723 taken for contributions required to be paid into a state  
724 employment fund. For the purposes of this section, the term  
725 "employment" shall include service constituting employment under  
726 any unemployment compensation law of another state.

727            Provided, however, that, absent evidence of willful or  
728 fraudulent attempt to avoid taxation, the effective date of  
729 liability of an employer or assessment of liability for covered  
730 employment against an employer shall not occur for any period  
731 preceding the three (3) calendar years before the date of  
732 registration or assessment, unless said three-year limitations  
733 period is waived by the employer.

734            **SECTION 5.** This act shall take effect and be in force from  
735 and after January 1, 2005.