

By: Representative Watson

To: Ways and Means

## HOUSE BILL NO. 1047

1 AN ACT TO AMEND SECTIONS 57-62-9 AND 57-62-13, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT IF A BUSINESS OR INDUSTRY IS LOCATED  
3 IN A DISASTER AREA AND AS A RESULT OF THE DISASTER IS UNABLE TO  
4 MEET THE REQUIREMENTS OF THE MISSISSIPPI ADVANTAGE JOBS ACT, THE  
5 CHAIRMAN OF THE STATE TAX COMMISSION MAY EXTEND THE TIME WITHIN  
6 WHICH A QUALIFIED BUSINESS OR INDUSTRY MAY RECEIVE INCENTIVE  
7 PAYMENTS UNDER THE ACT AND MAY WAIVE THE JOB MAINTENANCE  
8 REQUIREMENTS OF THE ACT, AND THE MISSISSIPPI DEVELOPMENT AUTHORITY  
9 MAY WAIVE THE JOB CREATION REQUIREMENTS OF THE ACT; TO PROVIDE  
10 THAT SUCH EXTENSIONS AND WAIVERS SHALL NOT EXCEED 36 MONTHS; AND  
11 FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 57-62-9, Mississippi Code of 1972, is  
14 amended as follows:

15 **[For businesses or industries that received or applied for**  
16 **incentive payments prior to July 1, 2005, this section shall read**  
17 **as follows:]**

18 57-62-9. (1) Except as otherwise provided in this section,  
19 a qualified business or industry that meets the qualifications  
20 specified in the Mississippi Advantage Jobs Act may receive  
21 quarterly incentive payments for a period not to exceed ten (10)  
22 years from the State Tax Commission pursuant to the provisions of  
23 the Mississippi Advantage Jobs Act in an amount which shall be  
24 equal to the net benefit rate multiplied by the actual gross  
25 payroll of new direct jobs for a calendar quarter as verified by  
26 the Mississippi Department of Employment Security, but not to  
27 exceed the amount of money previously paid into the fund by the  
28 employer. A qualified business or industry that is a project as  
29 defined in Section 57-75-5(f)(iv)1 may elect the date upon which  
30 the ten-year period will begin. Such date may not be later than

31 sixty (60) months after the date the business or industry applied  
32 for incentive payments.

33 (2) (a) A qualified business or industry that is a project  
34 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to  
35 receive incentive payments for an additional period not to exceed  
36 five (5) years beyond the expiration date of the initial ten-year  
37 period if:

38 (i) The qualified business or industry creates at  
39 least three thousand (3,000) new direct jobs within five (5) years  
40 after the date the business or industry commences commercial  
41 production;

42 (ii) Within five (5) years after the date the  
43 business or industry commences commercial production, the average  
44 annual wage of the jobs is at least one hundred fifty percent  
45 (150%) of the most recently published state average annual wage or  
46 the most recently published average annual wage of the county in  
47 which the qualified business or industry is located as determined  
48 by the Mississippi Department of Employment Security, whichever is  
49 the lesser. The criteria for the average annual wage requirement  
50 shall be based upon the state average annual wage or the average  
51 annual wage of the county whichever is appropriate, at the time of  
52 creation of the minimum number of jobs, and the threshold  
53 established at that time will remain constant for the duration of  
54 the additional period; and

55 (iii) The qualified business or industry meets and  
56 maintains the job and wage requirements of subparagraphs (i) and  
57 (ii) of this paragraph (a) for four (4) consecutive calendar  
58 quarters.

59 (b) A qualified business or industry that is a project  
60 as defined in Section 57-75-5(f)(iv)1 and qualified to receive  
61 incentive payments for the additional period provided in paragraph  
62 (a) of this subsection (2) may apply to the MDA to receive  
63 incentive payments for an additional period not to exceed ten (10)

64 years beyond the expiration date of the additional period provided  
65 in paragraph (a) of this subsection (2) if:

66 (i) The qualified business or industry creates at  
67 least four thousand (4,000) new direct jobs after qualifying for  
68 the additional incentive period provided in paragraph (a) of this  
69 subsection (2) but before the expiration of the additional period.  
70 For purposes of determining whether the business or industry meets  
71 the minimum jobs requirement of this subparagraph (i), the number  
72 of jobs the business or industry created in order to meet the  
73 minimum jobs requirement of paragraph (a) of this subsection (2)  
74 shall be subtracted from the minimum jobs requirement of this  
75 subparagraph (i);

76 (ii) The average annual wage of the jobs is at  
77 least one hundred fifty percent (150%) of the most recently  
78 published state average annual wage or the most recently published  
79 average annual wage of the county in which the qualified business  
80 or industry is located as determined by the Mississippi Department  
81 of Employment Security, whichever is the lesser. The criteria for  
82 the average annual wage requirement shall be based upon the state  
83 average annual wage or the average annual wage of the county  
84 whichever is appropriate, at the time of creation of the minimum  
85 number of jobs, and the threshold established at that time will  
86 remain constant for the duration of the additional period; and

87 (iii) The qualified business or industry meets and  
88 maintains the job and wage requirements of subparagraphs (i) and  
89 (ii) of this paragraph (b) for four (4) consecutive calendar  
90 quarters.

91 (3) In order to receive incentive payments, an establishment  
92 shall apply to the MDA. The application shall be on a form  
93 prescribed by the MDA and shall contain such information as may be  
94 required by the MDA to determine if the applicant is qualified.

95 (4) In order to qualify to receive such payments, the  
96 establishment applying shall be required to:

97 (a) Be engaged in a qualified business or industry;

98 (b) Provide an average salary, excluding benefits which  
99 are not subject to Mississippi income taxes, of at least one  
100 hundred twenty-five percent (125%) of the most recently published  
101 state average annual wage or the most recently published average  
102 annual wage of the county in which the qualified business or  
103 industry is located as determined by the Mississippi Department of  
104 Employment Security, whichever is the lesser. The criteria for  
105 this requirement shall be based upon the state average annual wage  
106 or the average annual wage of the county whichever is appropriate,  
107 at the time of application, and the threshold established upon  
108 application will remain constant for the duration of the project;

109 (c) The business or industry must create and maintain a  
110 minimum of ten (10) full-time jobs in counties that have an  
111 average unemployment rate over the previous twelve-month period  
112 which is at least one hundred fifty percent (150%) of the most  
113 recently published state unemployment rate, as determined by the  
114 Mississippi Department of Employment Security or in Tier Three  
115 counties as determined under Section 57-73-21. In all other  
116 counties, the business or industry must create and maintain a  
117 minimum of twenty-five (25) full-time jobs. The criteria for this  
118 requirement shall be based on the designation of the county at the  
119 time of the application. The threshold established upon the  
120 application will remain constant for the duration of the project.  
121 The business or industry must meet its job creation commitment  
122 within twenty-four (24) months of the application approval.  
123 However, if the qualified business or industry is applying for  
124 incentive payments for an additional period under subsection (2)  
125 of this section, the business or industry must comply with the  
126 applicable job and wage requirements of subsection (2) of this  
127 section.

128 (5) The MDA shall determine if the applicant is qualified to  
129 receive incentive payments. If the applicant is determined to be

130 qualified by the MDA, the MDA shall conduct a cost/benefit  
131 analysis to determine the estimated net direct state benefits and  
132 the net benefit rate applicable for a period not to exceed ten  
133 (10) years and to estimate the amount of gross payroll for the  
134 period. If the applicant is determined to be qualified to receive  
135 incentive payments for an additional period under subsection (2)  
136 of this section, the MDA shall conduct a cost/benefit analysis to  
137 determine the estimated net direct state benefits and the net  
138 benefit rate applicable for the appropriate additional period and  
139 to estimate the amount of gross payroll for the additional period.  
140 In conducting such cost/benefit analysis, the MDA shall consider  
141 quantitative factors, such as the anticipated level of new tax  
142 revenues to the state along with the cost to the state of the  
143 qualified business or industry, and such other criteria as deemed  
144 appropriate by the MDA, including the adequacy of retirement  
145 benefits that the business or industry provides to individuals it  
146 employs in new direct jobs in this state. In no event shall  
147 incentive payments, cumulatively, exceed the estimated net direct  
148 state benefits. Once the qualified business or industry is  
149 approved by the MDA, an agreement shall be deemed to exist between  
150 the qualified business or industry and the State of Mississippi,  
151 requiring the continued incentive payment to be made as long as  
152 the qualified business or industry retains its eligibility.

153 (6) Upon approval of such an application, the MDA shall  
154 notify the State Tax Commission and shall provide it with a copy  
155 of the approved application and the estimated net direct state  
156 benefits. The State Tax Commission may require the qualified  
157 business or industry to submit such additional information as may  
158 be necessary to administer the provisions of this chapter. The  
159 qualified business or industry shall report to the State Tax  
160 Commission periodically to show its continued eligibility for  
161 incentive payments. The qualified business or industry may be  
162 audited by the State Tax Commission to verify such eligibility.

163       (7) If the qualified business or industry is located in an  
164 area that has been declared by the Governor to be a disaster area  
165 and as a result of the disaster the business or industry is unable  
166 to create or maintain the full-time jobs required by this section:

167           (a) The Chairman of the State Tax Commission may extend  
168 the period of time that the business or industry may receive  
169 incentive payments for a period of time not to exceed three (3)  
170 years;

171           (b) The Chairman of the State Tax Commission may waive  
172 the requirement that a certain number of jobs be maintained for a  
173 period of time not to exceed thirty-six (36) months; and

174           (c) The MDA may extend the period of time within which  
175 the jobs must be created for a period of time not to exceed  
176 thirty-six (36) months.

177       **[For businesses or industries that apply for incentive**  
178 **payments from and after July 1, 2005, this section shall read as**  
179 **follows:]**

180       57-62-9. (1) (a) Except as otherwise provided in this  
181 section, a qualified business or industry that meets the  
182 qualifications specified in the Mississippi Advantage Jobs Act may  
183 receive quarterly incentive payments for a period not to exceed  
184 ten (10) years from the State Tax Commission pursuant to the  
185 provisions of the Mississippi Advantage Jobs Act in an amount  
186 which shall be equal to the net benefit rate multiplied by the  
187 actual gross payroll of new direct jobs for a calendar quarter as  
188 verified by the Mississippi Department of Employment Security, but  
189 not to exceed:

190           (i) Ninety percent (90%) of the amount of money  
191 previously paid into the fund by the employer if the employer  
192 provides an average annual salary, excluding benefits which are  
193 not subject to Mississippi income taxes, of at least one hundred  
194 seventy-five percent (175%) of the most recently published state  
195 average annual wage or the most recently published average annual

196 wage of the county in which the qualified business or industry is  
197 located as determined by the Mississippi Department of Employment  
198 Security, whichever is the lesser;

199           (ii) Eighty percent (80%) of the amount of money  
200 previously paid into the fund by the employer if the employer  
201 provides an average annual salary, excluding benefits which are  
202 not subject to Mississippi income taxes, of at least one hundred  
203 twenty-five percent (125%) but less than one hundred seventy-five  
204 percent (175%) of the most recently published state average annual  
205 wage or the most recently published average annual wage of the  
206 county in which the qualified business or industry is located as  
207 determined by the Mississippi Department of Employment Security,  
208 whichever is the lesser; or

209           (iii) Seventy percent (70%) of the amount of money  
210 previously paid into the fund by the employer if the employer  
211 provides an average annual salary, excluding benefits which are  
212 not subject to Mississippi income taxes, of less than one hundred  
213 twenty-five percent (125%) of the most recently published state  
214 average annual wage or the most recently published average annual  
215 wage of the county in which the qualified business or industry is  
216 located as determined by the Mississippi Department of Employment  
217 Security, whichever is the lesser.

218           (b) A qualified business or industry that is a project  
219 as defined in Section 57-75-5(f)(iv)1 may elect the date upon  
220 which the ten-year period will begin. Such date may not be later  
221 than sixty (60) months after the date the business or industry  
222 applied for incentive payments.

223           (2) (a) A qualified business or industry that is a project  
224 as defined in Section 57-75-5(f)(iv)1 may apply to the MDA to  
225 receive incentive payments for an additional period not to exceed  
226 five (5) years beyond the expiration date of the initial ten-year  
227 period if:

228 (i) The qualified business or industry creates at  
229 least three thousand (3,000) new direct jobs within five (5) years  
230 after the date the business or industry commences commercial  
231 production;

232 (ii) Within five (5) years after the date the  
233 business or industry commences commercial production, the average  
234 annual wage of the jobs is at least one hundred fifty percent  
235 (150%) of the most recently published state average annual wage or  
236 the most recently published average annual wage of the county in  
237 which the qualified business or industry is located as determined  
238 by the Mississippi Department of Employment Security, whichever is  
239 the lesser. The criteria for the average annual wage requirement  
240 shall be based upon the state average annual wage or the average  
241 annual wage of the county whichever is appropriate, at the time of  
242 creation of the minimum number of jobs, and the threshold  
243 established at that time will remain constant for the duration of  
244 the additional period; and

245 (iii) The qualified business or industry meets and  
246 maintains the job and wage requirements of subparagraphs (i) and  
247 (ii) of this paragraph (a) for four (4) consecutive calendar  
248 quarters.

249 (b) A qualified business or industry that is a project  
250 as defined in Section 57-75-5(f)(iv)1 and qualified to receive  
251 incentive payments for the additional period provided in paragraph  
252 (a) of this subsection (2) may apply to the MDA to receive  
253 incentive payments for an additional period not to exceed ten (10)  
254 years beyond the expiration date of the additional period provided  
255 in paragraph (a) of this subsection (2) if:

256 (i) The qualified business or industry creates at  
257 least four thousand (4,000) new direct jobs after qualifying for  
258 the additional incentive period provided in paragraph (a) of this  
259 subsection (2) but before the expiration of the additional period.  
260 For purposes of determining whether the business or industry meets

261 the minimum jobs requirement of this subparagraph (i), the number  
262 of jobs the business or industry created in order to meet the  
263 minimum jobs requirement of paragraph (a) of this subsection (2)  
264 shall be subtracted from the minimum jobs requirement of this  
265 subparagraph (i);

266 (ii) The average annual wage of the jobs is at  
267 least one hundred fifty percent (150%) of the most recently  
268 published state average annual wage or the most recently published  
269 average annual wage of the county in which the qualified business  
270 or industry is located as determined by the Mississippi Department  
271 of Employment Security, whichever is the lesser. The criteria for  
272 the average annual wage requirement shall be based upon the state  
273 average annual wage or the average annual wage of the county  
274 whichever is appropriate, at the time of creation of the minimum  
275 number of jobs, and the threshold established at that time will  
276 remain constant for the duration of the additional period; and

277 (iii) The qualified business or industry meets and  
278 maintains the job and wage requirements of subparagraphs (i) and  
279 (ii) of this paragraph (b) for four (4) consecutive calendar  
280 quarters.

281 (3) In order to receive incentive payments, an establishment  
282 shall apply to the MDA. The application shall be on a form  
283 prescribed by the MDA and shall contain such information as may be  
284 required by the MDA to determine if the applicant is qualified.

285 (4) (a) In order to qualify to receive such payments, the  
286 establishment applying shall be required to meet the definition of  
287 the term "qualified business or industry";

288 (b) The criteria for the average annual salary  
289 requirement shall be based upon the state average annual wage or  
290 the average annual wage of the county whichever is appropriate, at  
291 the time of application, and the threshold established upon  
292 application will remain constant for the duration of the project;

293           (c) The business or industry must meet its job creation  
294 commitment within twenty-four (24) months of the application  
295 approval. However, if the qualified business or industry is  
296 applying for incentive payments for an additional period under  
297 subsection (2) of this section, the business or industry must  
298 comply with the applicable job and wage requirements of subsection  
299 (2) of this section.

300           (5) (a) The MDA shall determine if the applicant is  
301 qualified to receive incentive payments. If the applicant is  
302 determined to be qualified by the MDA, the MDA shall:

303                   (i) Conduct a cost/benefit analysis to determine  
304 the estimated net direct state benefits and the net benefit rate  
305 applicable for a period not to exceed ten (10) years and to  
306 estimate the amount of gross payroll for the period; and

307                   (ii) Require the applicant to execute a  
308 performance agreement with the MDA that specifies the manner in  
309 which the applicant will utilize the incentive payments made to it  
310 under this chapter.

311           (b) If the applicant is determined to be qualified to  
312 receive incentive payments for an additional period under  
313 subsection (2) of this section, the MDA shall conduct a  
314 cost/benefit analysis to determine the estimated net direct state  
315 benefits and the net benefit rate applicable for the appropriate  
316 additional period and to estimate the amount of gross payroll for  
317 the additional period. In conducting such cost/benefit analysis,  
318 the MDA shall consider quantitative factors, such as the  
319 anticipated level of new tax revenues to the state along with the  
320 cost to the state of the qualified business or industry, and such  
321 other criteria as deemed appropriate by the MDA, including the  
322 adequacy of retirement benefits that the business or industry  
323 provides to individuals it employs in new direct jobs in this  
324 state. In no event shall incentive payments, cumulatively, exceed  
325 the estimated net direct state benefits. Once the qualified

326 business or industry is approved by the MDA, an agreement shall be  
327 deemed to exist between the qualified business or industry and the  
328 State of Mississippi, requiring the continued incentive payment to  
329 be made as long as the qualified business or industry retains its  
330 eligibility.

331 (6) Upon approval of such an application, the MDA shall  
332 notify the State Tax Commission and shall provide it with a copy  
333 of the approved application and the estimated net direct state  
334 benefits. The State Tax Commission may require the qualified  
335 business or industry to submit such additional information as may  
336 be necessary to administer the provisions of this chapter. The  
337 qualified business or industry shall report to the State Tax  
338 Commission periodically to show its continued eligibility for  
339 incentive payments. The qualified business or industry may be  
340 audited by the State Tax Commission to verify such eligibility.

341 (7) If the qualified business or industry is located in an  
342 area that has been declared by the Governor to be a disaster area  
343 and as a result of the disaster the business or industry is unable  
344 to create or maintain the full-time jobs required by this section:

345 (a) The Chairman of the State Tax Commission may extend  
346 the period of time that the business or industry may receive  
347 incentive payments for a period of time not to exceed three (3)  
348 years;

349 (b) The Chairman of the State Tax Commission may waive  
350 the requirement that a certain number of jobs be maintained for a  
351 period of time not to exceed thirty-six (36) months; and

352 (c) The MDA may extend the period of time within which  
353 the jobs must be created for a period of time not to exceed  
354 thirty-six (36) months.

355 **SECTION 2.** Section 57-62-13, Mississippi Code of 1972, is  
356 amended as follows:

357 57-62-13. (1) As soon as practicable after the end of a  
358 calendar quarter for which a qualified business or industry has

359 qualified to receive an incentive payment, the qualified business  
360 or industry shall file a claim for the payment with the State Tax  
361 Commission and shall specify the actual number of new direct jobs  
362 created and maintained by the business or industry for the  
363 calendar quarter and the gross payroll thereof. The State Tax  
364 Commission shall verify the actual number of new direct jobs  
365 created and maintained by the business or industry and compliance  
366 with the average annual wage requirements for such business or  
367 industry under this chapter. If the qualified business or  
368 industry files a claim for an incentive payment during an  
369 additional incentive period provided under Section 57-62-9(2), the  
370 State Tax Commission shall verify the actual number of new direct  
371 jobs created and maintained by the business or industry and  
372 compliance with the average annual wage requirements for such  
373 business or industry under this chapter. If the State Tax  
374 Commission is not able to provide such verification utilizing all  
375 available resources, the State Tax Commission may request such  
376 additional information from the business or industry as may be  
377 necessary.

378       (2) (a) The business or industry must meet the salary and  
379 job requirements of this chapter for four (4) consecutive calendar  
380 quarters prior to payment of the first incentive payment. Except  
381 as otherwise provided in Section 57-62-9, if the business or  
382 industry does not maintain the salary or job requirements of this  
383 chapter at any other time during the ten-year period after the  
384 date the first payment was made, the incentive payments shall not  
385 be made and shall not be resumed until such time as the actual  
386 verified number of new direct jobs created and maintained by the  
387 business or industry equals or exceeds the requirements of this  
388 chapter for one (1) calendar quarter.

389       (b) If the business or industry is qualified to receive  
390 incentive payments for an additional period provided under Section  
391 57-62-9(2), the business or industry must meet the wage and job

392 requirements of Section 57-62-9(2), for four (4) consecutive  
393 calendar quarters prior to payment of the first incentive payment.  
394 If the business or industry does not maintain the wage or job  
395 requirements of Section 57-62-9(2), at any other time during the  
396 appropriate additional period after the date the first payment was  
397 made, the incentive payments shall not be made and shall not be  
398 resumed until such time as the actual verified number of new  
399 direct jobs created and maintained by the business or industry  
400 equals or exceeds the amounts specified in Section 57-62-9(2), for  
401 one (1) calendar quarter.

402 (3) An establishment that has qualified pursuant to this  
403 chapter may receive payments only in accordance with the provision  
404 under which it initially applied and was approved. If an  
405 establishment that is receiving incentive payments expands, it may  
406 apply for additional incentive payments based on the new gross  
407 payroll for new direct jobs anticipated from the expansion only,  
408 pursuant to this chapter.

409 (4) As soon as practicable after verification of the  
410 qualified business or industry meeting the requirements of this  
411 chapter and all rules and regulations, the Department of Finance  
412 and Administration, upon requisition of the State Tax Commission,  
413 shall issue a warrant drawn on the Mississippi Advantage Jobs  
414 Incentive Payment Fund to the establishment in the amount of the  
415 net benefit rate multiplied by the actual gross payroll as  
416 determined pursuant to subsection (1) of this section for the  
417 calendar quarter.

418 **SECTION 3.** This act shall take effect and be in force from  
419 and after July 1, 2007.