

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 1621

1 AN ACT TO AMEND SECTION 57-114-3, MISSISSIPPI CODE OF 1972,  
 2 TO REVISE THE DEFINITION OF THE TERM "QUALIFIED BUSINESS OR  
 3 INDUSTRY" UNDER THE MISSISSIPPI FLEXIBLE TAX INCENTIVE ACT; TO  
 4 AMEND SECTION 57-114-13, TO REVISE THE TIME WITHIN WHICH A  
 5 QUALIFIED BUSINESS OR INDUSTRY MUST FILE AN ANNUAL REPORT WITH THE  
 6 MISSISSIPPI DEVELOPMENT AUTHORITY FOR EACH QUALIFIED ECONOMIC  
 7 DEVELOPMENT PROJECT WHICH HAS BEEN CERTIFIED, AND FOR WHICH ANY  
 8 MISSISSIPPI FLEXIBLE TAX INCENTIVE ACT TAX INCENTIVE HAS BEEN  
 9 AWARDED, BY THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO AMEND  
 10 SECTION 57-114-15, MISSISSIPPI CODE OF 1972, WHICH IS A SECTION OF  
 11 THE MISSISSIPPI FLEXIBLE TAX INCENTIVE ACT, FOR THE PURPOSE OF  
 12 CHANGING A REFERENCE TO THE DEPARTMENT OF REVENUE TO THE  
 13 DEPARTMENT OF EMPLOYMENT SECURITY; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 57-114-3, Mississippi Code of 1972, is  
 16 amended as follows:

17 57-114-3. For purposes of this chapter, the following words  
 18 shall have the meanings ascribed herein unless the context  
 19 otherwise requires:

20 (a) "Affiliate" means, with respect to a specified  
 21 entity, (i) another person or entity that directly or indirectly,  
 22 through one or more intermediaries, controls or is controlled by  
 23 or is under common control with the specified person or entity,



24 where the term "control" means the ownership or possession,  
25 directly or indirectly, of the power to direct more than fifty  
26 percent (50%) of the voting equity securities or a similar  
27 ownership interest in the specified controlled entity, or (ii) any  
28 member of an affiliated group of corporations, of which the  
29 specified entity is also a member, which are each subject to  
30 income taxation in Mississippi and may elect to file a combined  
31 Mississippi income tax return in accordance with state law.

32 (b) "Authority" means the Mississippi Development  
33 Authority.

34 (c) "Annual report" means the report described in  
35 Section 57-114-13.

36 (d) "Applicable accounting rules" shall mean the  
37 accounting principles generally recognized as applicable to a  
38 qualified business or industry and pursuant to which such  
39 qualified business or industry regularly prepares and maintains  
40 its financial and accounting books and records, and which  
41 specifically incorporate Generally Accepted Accounting Principles  
42 or International Financial Reporting Standards, as appropriate.

43 (e) "Applicant" means any corporation, limited  
44 liability company, partnership, person or sole proprietorship,  
45 business trust or other legal entity and subunit or affiliate  
46 thereof that applies to the authority, in the manner prescribed by  
47 this chapter, seeking (i) certification by the authority that such  
48 applicant is a qualified business or industry and that its



49 proposed new project or expansion of an existing business or  
50 industrial operation is a qualified economic development project,  
51 and (ii) an award in connection therewith of an mFlex tax  
52 incentive.

53 (f) "Average state or county wage" shall mean, as of  
54 the project certification date, the lesser of the most recently  
55 published average annual wage per person as determined and  
56 published by the Mississippi Department of Employment Security for  
57 the state or the county in which the qualified project is or will  
58 be located; provided that, if a qualified project is or will be  
59 located in two (2) or more counties, the average state or county  
60 wage, as used in this chapter, shall mean, as of the project  
61 certification date, only the most recently published average  
62 annual wage per person as determined and published by the  
63 Mississippi Department of Employment Security for the state.

64 (g) "Average employer wage" means the qualified annual  
65 payroll for all new full-time jobs created in the State of  
66 Mississippi by a qualified business or industry divided by the  
67 number of new full-time jobs thereof for which such qualified  
68 annual payroll was paid or is otherwise payable.

69 (h) "Base full-time job" means a job (i) for which an  
70 employee was already hired by the qualified business or industry  
71 before, and is employed as of, the project certification date;  
72 (ii) that offers a minimum of one thousand eight hundred twenty  
73 (1,820) hours of an employee's time per year (i.e., thirty-five



74 (35) hours per week on average) for a normal four (4) consecutive  
75 quarter period of the qualified business or industry's operations  
76 or a job for which the employee was hired before, and is employed  
77 as of, the project certification date and is compensated based on  
78 one thousand eight hundred twenty (1,820) hours for such annual  
79 period (including in each case an employee who, after hiring,  
80 elects to take unpaid time off or is on short-term or long-term  
81 disability); and (iii) the employee holding such job receives  
82 salary or wages subject to state income tax withholdings. The  
83 term "base full-time job" also means a base-leased employee.  
84 Part-time jobs may not be combined to add up to a base full-time  
85 job.

86 (i) "Base-leased employee" means a nontemporary  
87 employee:

88 (i) Who was leased by the qualified business or  
89 industry before the project certification date from another  
90 business or enterprise that is 1. in the business of leasing  
91 employees, and 2. is registered with the Office of the Secretary  
92 of State and qualified to do business in the state;

93 (ii) Who is leased as of the project certification  
94 date;

95 (iii) Who is not otherwise an employee of such  
96 qualified business or industry;

97 (iv) Who, as of the project certification date,  
98 was already performing services for, and under the supervision of,



99 the qualified business or industry pursuant to a leasing agreement  
100 between the qualified business or industry and such other employee  
101 leasing firm;

102 (v) Whose job-performing services for the  
103 qualified business or industry offers a minimum of one thousand  
104 eight hundred twenty (1,820) hours of an employee's time per year  
105 (i.e., thirty-five (35) hours per week on average) for an entire  
106 normal work year of the qualified business or industry's  
107 operations or a job for which the employee is leased before the  
108 project certification date and is compensated based on one  
109 thousand eight hundred twenty (1,820) hours for such annual period  
110 (including in each case an employee who, after being leased,  
111 elects to take unpaid time off or is on short-term or long-term  
112 disability); and

113 (vi) Whose job receives salary or wages subject to  
114 state income tax withholdings. Individuals employed by an  
115 independent contractor performing one or more services for the  
116 qualified business or industry pursuant to a services or  
117 management agreement (e.g., security services, landscaping  
118 services, and cafeteria management and food services) shall not be  
119 considered as base-leased employees.

120 (j) "Contractor tax" shall mean the tax levied by  
121 Section 27-65-21, except for the tax upon the sale of  
122 manufacturing or processing machinery for a manufacturer or custom  
123 processor.



124 (k) "Construction contract" shall mean any contract or  
125 portion of any contract for any one or more of the activities  
126 described in Section 27-65-21 for which the contractor tax applies  
127 and is payable by the contractor that is party thereto.

128 (l) "Manufacturing machinery," as used in this chapter,  
129 shall have the same meaning ascribed to such term in Section  
130 27-65-11, as interpreted by any regulations promulgated by the  
131 Department of Revenue with respect to such section.

132 (m) "mFlex agreement" means the written agreement  
133 entered into between a qualified business or industry and the  
134 authority in accordance with Section 57-114-7(4)(c).

135 (n) "mFlex tax incentive" means the tax incentive  
136 authorized by this chapter to be calculated and awarded by the  
137 authority, and thereafter applied as a credit to offset state  
138 taxes, in accordance with, and subject to, this chapter.

139 (o) "Minimum job creation requirement" means the  
140 creation by the qualified business or industry, following the  
141 project certification date, of at least ten (10) new full-time  
142 jobs in the state.

143 (p) "Minimum qualified investment" means a qualified  
144 investment of not less than Two Million Five Hundred Thousand  
145 Dollars (\$2,500,000.00).

146 (q) "New full-time job" means a job:



147 (i) For which an employee is hired by the  
148 qualified business or industry after the project certification  
149 date;

150 (ii) That offers a minimum of one thousand eight  
151 hundred twenty (1,820) hours of an employee's time per year (i.e.,  
152 thirty-five (35) hours per week on average) for a normal four (4)  
153 consecutive quarter period of the qualified business or industry's  
154 operations or a job for which the employee is hired after the  
155 project certification date and is compensated based on one  
156 thousand eight hundred twenty (1,820) hours for such annual period  
157 (including in each case an employee who, after hiring, elects to  
158 take unpaid time off or is on short-term or long-term disability);  
159 and

160 (iii) The employee holding such job receives  
161 salary or wages subject to state income tax withholdings. The  
162 term "new full-time job" also means new-leased employee.  
163 Part-time jobs may not be combined to add up to a new full-time  
164 job.

165 (r) "New-leased employee" means a nontemporary  
166 employee:

167 (i) Who is leased by the qualified business or  
168 industry after the project certification date from another  
169 business or enterprise that is 1. in the business of leasing  
170 employees, and 2. is registered with the Office of the Secretary  
171 of State and qualified to do business in the state;



172                   (ii) Who is not otherwise an employee of such  
173 qualified business or industry;

174                   (iii) Who performs services for the qualified  
175 business or industry pursuant to a leasing agreement between the  
176 qualified business or industry and such other employee-leasing  
177 firm;

178                   (iv) Whose job-performing services for the  
179 qualified business or industry offers a minimum of one thousand  
180 eight hundred twenty (1,820) hours of an employee's time per year  
181 (i.e., thirty-five (35) hours per week on average) for an entire  
182 normal work year of the qualified business or industry's  
183 operations or a job for which the employee is leased after the  
184 project certification date and is compensated based on one  
185 thousand eight hundred twenty (1,820) hours for such annual period  
186 (including in each case an employee who, after being leased,  
187 elects to take unpaid time off or is on short-term or long-term  
188 disability); and

189                   (v) Whose job receives salary or wages subject to  
190 state income tax withholdings. Individuals employed by an  
191 independent contractor performing one or more services for the  
192 qualified business or industry pursuant to a services or  
193 management agreement (e.g., security services, landscaping  
194 services, and cafeteria management and food services) shall not be  
195 considered as \* \* \* new-leased employees.





196 (s) "Nonmanufacturing equipment" means all tangible  
197 personal property that is not manufacturing machinery, including,  
198 but not limited to, office furniture, fixtures, office computers  
199 and communications equipment, and warehouse equipment such as  
200 racking and shelving.

201 (t) "Part-time job" means a job (i) for which an  
202 employee is hired by the qualified business or industry that  
203 requires fewer than one thousand eight hundred twenty (1,820)  
204 hours of an employee's time per year (i.e., requires fewer than  
205 thirty-five (35) hours per week on average) for an entire normal  
206 work year of the qualified business or industry's operations or a  
207 job for which the employee is hired and is compensated based on  
208 fewer than one thousand eight hundred twenty (1,820) hours for  
209 such annual period; and (iii) for which the employee holding such  
210 job receives salary or wages subject to state income tax  
211 withholdings.

212 (u) "Project certification date" means the actual date  
213 of the authority's certification, or the effective date of  
214 certification determined and prescribed by the authority, of the  
215 qualified business or industry and its qualified economic  
216 development project as eligible for the state tax credits  
217 determined and awarded by the authority, as authorized by, and in  
218 accordance with, this chapter.

219 (v) "Qualified annual payroll" means the sum of the  
220 annual salary and wages for new full-time jobs of the qualified



221 business or industry, excluding the amount or value of any  
222 benefits that are not subject to state income taxes.

223 (w) "Qualified business or industry" means any  
224 corporation, limited liability company, partnership, person or  
225 sole proprietorship, business trust or other legal entity and  
226 subunit or affiliate thereof, which makes a qualified minimum  
227 investment in a qualified economic development project and/or  
228 satisfies or causes to be satisfied the minimum job creation  
229 requirement.

230 (x) "Qualified economic development project" or  
231 "qualified project" means the location in the state of one or more  
232 of the following enumerated enterprises for which a corporation,  
233 limited liability company, partnership, sole proprietorship,  
234 business trust or other legal entity, or subunit or affiliate  
235 thereof, makes or causes to be made from the minimum qualified  
236 investment and/or satisfies or causes to be satisfied the minimum  
237 job creation requirement:

238 (i) A new warehouse and/or distribution enterprise  
239 or an expansion of an existing warehouse and/or distribution  
240 enterprise; provided that, in any such instance, such warehouse  
241 and/or distribution enterprise or expansion thereof is certified  
242 by the authority to qualify as such;

243 (ii) A new manufacturing, remanufacturing,  
244 assembly, processing and/or refinery enterprise or an expansion of  
245 an existing manufacturing, remanufacturing, assembly, processing



246 and/or refinery enterprise; provided that, in any such instance,  
247 such manufacturing, remanufacturing, assembly, processing and/or  
248 refinery enterprise or expansion thereof is certified by the  
249 authority to qualify as such;

250 (iii) A new research or research and development  
251 enterprise or an expansion of an existing research or research and  
252 development enterprise; provided that, in any such instance, such  
253 research and development enterprise or an expansion thereof is  
254 certified by the authority to qualify as such;

255 (iv) A new regional or national headquarters of  
256 the qualified business or industry or an expansion of an existing  
257 regional or national headquarters of the qualified business or  
258 industry; provided that, in any such instance, such regional or  
259 national headquarters or expansion thereof is certified by the  
260 authority to qualify as such;

261 (v) An air transportation, repair and/or  
262 maintenance enterprise or an expansion of an existing air  
263 transportation, repair and/or maintenance enterprise; provided  
264 that, in either instance, such air transportation, repair and/or  
265 maintenance enterprise or expansion thereof is certified by the  
266 authority to qualify as such;

267 (vi) A ship or other maritime vessel or barge  
268 transportation, repair and/or maintenance enterprise or an  
269 expansion of an existing ship or other maritime vessel or barge  
270 transportation, repair and/or maintenance enterprise; provided



271 that, in either instance, the ship or other maritime vessel or  
272 barge transportation, repair and/or maintenance enterprise or  
273 expansion thereof is certified by the authority to qualify as  
274 such;

275 (vii) A new data/information processing enterprise  
276 or an expansion of an existing new data/information processing  
277 enterprise; provided that, in any such instance such  
278 data/information processing enterprise or expansion thereof is  
279 certified by the authority to qualify as such;

280 (viii) A new technology intensive enterprise or an  
281 expansion of an existing technology intensive enterprise; provided  
282 that, in either instance, the technology intensive enterprise or  
283 expansion thereof is certified by the authority to qualify as  
284 such; provided further, that a business or enterprise primarily  
285 engaged in creating computer programming codes to develop  
286 applications, websites and/or software shall qualify as a  
287 technology intensive enterprise;

288 (ix) A new telecommunications enterprise  
289 principally engaged in the creation, display, management, storage,  
290 processing, transmission and/or distribution, for compensation, of  
291 images, text, voice, video or data by wire or by wireless means,  
292 or engaged in the construction, design, development, manufacture,  
293 maintenance or distribution for compensation of devices, products,  
294 software or structures used in the above activities, or an  
295 expansion of an existing telecommunications enterprise as herein



296 described; provided that, in any such instance, any such  
297 telecommunications enterprise or expansion thereof is certified by  
298 the authority to qualify as such; provided further, that  
299 commercial broadcast radio stations, television stations or news  
300 organizations primarily serving in-state markets shall not be  
301 included within the definition of the term "telecommunications  
302 enterprise";

303                   (x) A new data center enterprise principally  
304 engaged in the utilization of hardware, software, technology,  
305 infrastructure and/or workforce, to store, manage or manipulate  
306 digital data, or an expansion of an existing data center  
307 enterprise as herein described; provided that, in such instance,  
308 any such data center enterprise or expansion thereof is certified  
309 by the authority to qualify as such.

310                   (y) "Qualified investment" means any expenditures made  
311 or caused to be made by the qualified business or industry  
312 following the project certification date for construction,  
313 installation, equipping and operation of a qualified economic  
314 development project from any source or combination of sources,  
315 excluding any funds contributed by the state or any agency or  
316 other political subdivision thereof, or by any local government or  
317 any agency or other political subdivision thereof, to the extent  
318 such expenditures can be capitalized under applicable accounting  
319 rules or otherwise by the Internal Revenue Code, whether or not  
320 the qualified business or industry elects to capitalize the same,



321 as reflected in its financial statements, including, but not  
322 limited to, all costs associated with the acquisition,  
323 installation and/or construction of, or capital leasehold interest  
324 in, any buildings and other real property improvements, fixtures,  
325 equipment, machinery, landscaping, fire protection, depreciable  
326 fixed assets, engineering and design costs.

327 (z) "Reporting year" means the twelve-month period  
328 ending on the last day of the month during which the annual  
329 anniversary of a project certification date occurs, and for which  
330 an annual report must be filed with the authority by a qualified  
331 business or industry in accordance with Section 57-114-13.

332 (aa) "State" means the State of Mississippi.

333 (bb) "State tax" means:

334 (i) Any sales and use tax imposed on, and payable  
335 directly to the Department of Revenue by, the qualified business  
336 or industry in accordance with state law, except for contractor's  
337 tax and the taxes levied by Section 27-65-24(1)(b);

338 (ii) All income tax imposed pursuant to law on  
339 income earned by the qualified business or industry pursuant to  
340 state law;

341 (iii) Franchise tax imposed pursuant to state law  
342 on the value of capital used, invested or employed by the business  
343 enterprise certified by the Mississippi Development Authority; and

344 (iv) Withholding tax required to be deducted and  
345 withheld from employee wages pursuant to Section 27-7-301 et seq.



346           **SECTION 2.** Section 57-114-13, Mississippi Code of 1972, is  
347 amended as follows:

348           57-114-13. **Taxpayer annual performance reporting to, and**  
349 **reviews by, the Mississippi Development Authority; subsequent**  
350 **adjustments by the Mississippi Development Authority to mFlex tax**  
351 **incentive award; deadline for mFlex tax incentive utilization.**

352           (1) Unless its mFlex agreement prescribes a longer reporting  
353 period or additional reporting requirements, each qualified  
354 business or industry shall file an annual report with the  
355 authority for each qualified economic development project which  
356 has been certified, and for which any mFlex tax incentive has been  
357 awarded, by the authority in accordance with this chapter, for the  
358 longer of the following periods: (a) until the reporting year  
359 during which all or any remaining portion of the mFlex tax  
360 incentive amount awarded to such qualified business or industry  
361 has been applied to offset state taxes, or (b) until the seventh  
362 reporting year, provided that an annual report shall in either  
363 instance be due in the final reporting year prescribed hereby or  
364 by the mFlex agreement. Each annual report shall be due to the  
365 authority no later than the last business day of the \* \* \* quarter  
366 following the month during which the annual anniversary of its  
367 project certification date occurred. Each annual report shall  
368 include the information set forth in this section, together with  
369 any other information required to be provided by the qualified  
370 business or industry pursuant to its mFlex agreement, for the



371 immediately preceding twelve-month period ending on the last day  
372 of the month during which the annual anniversary of its project  
373 certification date occurred.

374 (2) Each annual report submitted to the authority by a  
375 qualified business or industry shall, at a minimum, contain the  
376 following information:

377 (a) The total qualified investment made between the  
378 project certification date through the end of the reporting year,  
379 including a breakout of actual expenditures made by the qualified  
380 business or industry for manufacturing machinery, nonmanufacturing  
381 equipment and component building materials to establish and equip  
382 the qualified economic development project;

383 (b) The incremental qualified investment made during  
384 the reporting year, including a breakout of actual expenditures  
385 made by the qualified business or industry for manufacturing  
386 machinery, nonmanufacturing equipment and component building  
387 materials to establish and equip the qualified economic  
388 development project;

389 (c) If applicable, the total number of base full-time  
390 jobs;

391 (d) The total number of people employed in new  
392 full-time jobs as of the last day the year preceding the reporting  
393 year;

394 (e) The total number of people employed in new  
395 full-time jobs as of the last day the year of the reporting year;





396 (f) The average employer wage for the reporting year;

397 (g) The percentage and number, as of the last day of  
398 the reporting year, of new full-time employees who are eligible  
399 for and offered a health insurance coverage funded in whole or at  
400 least fifty percent (50%) by the qualified business or industry  
401 (or by a leasing company with respect to leased employees);

402 (h) A description of employee benefits, including but  
403 not limited to, health, dental and/or vision insurance, retirement  
404 savings account, etc. made available to employees, as well as a  
405 description of any employees to whom the benefits are not made  
406 available (e.g., part-time employees);

407 (i) The total amount of the mFlex tax incentive awarded  
408 thereto, which the qualified business or industry has already  
409 applied and taken as a credit to offset state taxes through the  
410 end of the reporting period;

411 (j) A list of all affiliates of the qualified business  
412 or industry, including the Federal Employer Identification Number  
413 for each affiliate, for which any state tax liability thereof has  
414 been or is expected to be offset by all or some portion of the  
415 mFlex tax incentives awarded to the qualified business or  
416 industry, which list shall further identify (i) any affiliate of  
417 the qualified business or industry that was not disclosed as such  
418 on its application or annual report submitted for the prior  
419 reporting period, whichever was more recent, but which has either  
420 become an affiliate of the qualified business or industry as of



421 the date the current annual report or which the qualified business  
422 or industry desires to utilize all or a portion of its mFlex tax  
423 incentive as a credit to offset the affiliate's state tax  
424 liability following the date of the current annual report; (ii)  
425 any change in the name of any previously disclosed affiliate since  
426 the date the qualified business or industry filed its application  
427 or annual report for the prior reporting period, whichever was  
428 more recent; (iii) any prior affiliate of the qualified business  
429 or industry disclosed as such on its application or annual report  
430 for the prior reporting period, whichever was more recent, and  
431 which is no longer an affiliate of the qualified business or  
432 industry as of the date the current annual report; and (iv) any  
433 affiliate of the qualified business or industry disclosed as such  
434 on its application or annual report for the prior reporting  
435 period, whichever was more recent, and which the qualified  
436 business or industry no longer desires that the affiliate utilize  
437 all or a portion of its mFlex tax incentive as a credit to offset  
438 the affiliate's state tax liability following the date of the  
439 current annual report.

440 (3) The authority shall prescribe a form or forms for the  
441 annual report.

442 (4) Notwithstanding the obligation of a qualified business  
443 or industry to file an annual report with the authority for each  
444 qualified economic development project which has been certified,  
445 and for which any mFlex tax incentive has been awarded, the



446 authority is authorized to request from the qualified business or  
447 industry at any other time any of the information set forth herein  
448 that must be included in an annual report for purposes of  
449 determining whether a qualified business or industry has met any  
450 of the project performance measures set forth in its mFlex  
451 agreement on or before the respective deadlines imposed with  
452 respect thereto. Upon any such written request by the authority,  
453 the qualified business or industry shall, within thirty (30) days  
454 after receipt of the request, provide to the authority a certified  
455 copy of the information requested.

456 (5) If a qualified business or industry fails to either file  
457 an annual report with the authority on or before the deadline  
458 mandated by subsection (1) of this section, or provide any  
459 information requested by the authority pursuant to subsection (4)  
460 of this section within the time period mandated by such  
461 subsection, the authority shall provide written notice to the  
462 qualified business or industry of the failure to report, and the  
463 qualified business or industry shall have thirty (30) additional  
464 days to cure the reporting failure following its receipt of the  
465 notice. If the qualified business or industry thereafter fails to  
466 file its annual report with the authority, or provide such  
467 information requested by the authority within the thirty-day-cure  
468 period, the authority is authorized to suspend or revoke, at the  
469 discretion thereof, all or a portion of the amount of the mFlex



470 tax incentive previously awarded to the qualified business or  
471 industry for its qualified economic development project.

472 (6) If a qualified business or industry either fails to  
473 achieve or exceeds any project performance measure set forth in  
474 its mFlex agreement within or for any time period required by such  
475 agreement, the authority shall, following its (a) review of any  
476 annual report filed by the qualified business or industry or of  
477 any certified information provided by the qualified business or  
478 industry pursuant to subsection (4) of this section, and (b)  
479 verification based upon such information that the qualified  
480 business or industry either failed to achieve or exceeded any of  
481 the project performance measures set forth in its mFlex agreement  
482 within or for any time period required by such agreement, adjust  
483 the mFlex tax incentive awarded thereto for its qualified economic  
484 development project such that the award is no longer based upon  
485 any one or more of the performance measures set forth in its mFlex  
486 agreement, but is instead based upon one or more of the following,  
487 as applicable, as of the end of the most recent reporting year for  
488 which the annual report was filed: (a) the actual expenditures  
489 made by the qualified business or industry for purposes of the  
490 calculation prescribed by Section 57-114-9(a), (b) and (c); and  
491 (b) (i) the actual number of new full-time jobs created by the  
492 qualified business or industry, together with (ii) the actual  
493 average employer wage associated therewith, for purposes of the  
494 calculations prescribed by Section 57-114-9(d) and (e).



495 (7) A qualified business or industry and the authority may,  
496 at any time, amend or restate an mFlex agreement in order to  
497 modify the performance measures of the qualified business or  
498 industry with respect to its qualified economic development  
499 project, and in connection with such amendment or amendment and  
500 restatement, the authority shall modify the amount of the mFlex  
501 tax incentive awarded for the qualified economic development  
502 project to comport with the modified performance measures;  
503 provided that the modified award amount shall thereafter be  
504 subject to the adjustment requirements of subsection (6) of this  
505 section.

506 (8) If the authority adjusts any mFlex tax incentive award  
507 pursuant to subsection (6) or subsection (7) of this section, the  
508 authority shall issue an amended certification of the  
509 corresponding qualified economic development project, which shall  
510 specify the amount of mFlex tax incentive award adjustment. The  
511 authority shall forward the amended certification, along with any  
512 other necessary information, to the Department of Revenue so that  
513 the mFlex tax incentive award adjustment for the qualified  
514 business or industry can be recorded by the Department of Revenue  
515 and used to verify each state tax credit subsequently applied by  
516 the qualified business or industry.

517 (9) If at any time the authority reduces the mFlex tax  
518 incentive award granted for the qualified economic development  
519 project to an amount less than the total amount of credits already



520 applied and taken by the qualified business or industry, or by one  
521 or more affiliates thereof eligible to utilize such credit, to  
522 offset state taxes thereof, the Department of Revenue shall charge  
523 the qualified business or industry, or such affiliate or  
524 affiliates, with an assessment for the amount of state taxes for  
525 which no mFlex tax incentive is available, following such  
526 reduction by the authority, for application as a tax credit,  
527 beginning with those state taxes against which the qualified  
528 business or industry most recently applied the credit, and such  
529 state tax assessment shall be immediately due and payable.

530 (10) Any portion of an mFlex tax incentive awarded to the  
531 qualified business or industry by the authority for its qualified  
532 economic development project pursuant to this chapter that has not  
533 been applied, on or before the tenth annual anniversary of the  
534 project certificate date, as a credit by such qualified business  
535 or industry, or by one or more affiliates thereof eligible to  
536 utilize such credit, to offset state taxes otherwise payable,  
537 shall expire.

538 (11) Within thirty (30) days following the end of each  
539 calendar quarter, the authority shall provide to the Governor,  
540 Lieutenant Governor and the Speaker of the House of  
541 Representatives a copy of each amendment to any certification  
542 made, together with a copy of each amendment to any mFlex  
543 agreement approved and executed, during the immediately preceding  
544 calendar quarter.



545           **SECTION 3.** Section 57-114-15, Mississippi Code of 1972, is  
546 amended as follows:

547           57-114-15. **Audits and interagency cooperation.** (1) No  
548 provisions of this chapter shall in any way limit or restrict the  
549 authority of the Department of Revenue to perform audits for all  
550 state tax liabilities for any qualified business or industry that  
551 is awarded any mFlex tax incentives by the authority.

552           (2) The Department of Revenue is authorized to provide to  
553 the authority any information received, obtained or produced, or  
554 findings or determinations made, thereby as a result of the  
555 performance by Department of Revenue of any audit of state tax  
556 liabilities of any qualified business or industry that is awarded  
557 any mFlex tax incentives by the authority, and any such  
558 information, findings or determinations provided to the authority  
559 by the Department of Revenue shall be exempt from the provisions  
560 of the Mississippi Public Records Act of 1983, as amended.

561           (3) If any audit by the Department of Revenue results in a  
562 reclassification of component building materials, manufacturing  
563 equipment or nonmanufacturing equipment, as previously reported by  
564 a qualified business or industry, to a different property  
565 classification, or a change in the number of new full-time  
566 employees or average employer wage, as previously reported by a  
567 qualified business or industry, the authority is authorized to  
568 adjust the amount of the mFlex tax incentive awarded to the  
569 qualified business or industry for a qualified economic



570 development project to comport with any property reclassification  
571 or change in the number of new full-time employees or average  
572 employer wage in the manner prescribed by Section 57-114-13.

573 (4) The Department of Employment Security is authorized to  
574 provide to the authority any information received, obtained or  
575 produced, or findings or determinations made \* \* \* thereby, with  
576 respect to any qualified business or industry that is awarded any  
577 mFlex tax incentives by the authority, and any such information,  
578 findings or determinations provided to the authority by the \* \* \*  
579 Department of Employment Security shall be exempt from the  
580 provisions of the Mississippi Public Records Act of 1983, Section  
581 25-61-1 et seq.

582 (5) The State Auditor may conduct performance and compliance  
583 audits under this chapter according to Section 7-72-11(o).

584 (6) Upon written request made by the Director of the  
585 University Research Center Division of the Mississippi  
586 Institutions of Higher Learning, the authority shall provide to  
587 the director a copy of any certification, together with any  
588 amendments thereto, made by the authority, and/or any mFlex  
589 agreement, together with any amendments thereto, approved and  
590 executed by the authority pursuant to this chapter, described in  
591 such request for the purpose of the University Research Center  
592 conducting an economic impact analysis and other analyses  
593 performed by the University Research Center with respect thereto;  
594 provided that any such analyses conducted by the University





595 Research Center with respect to one or more particular qualified  
596 economic development projects shall be communicated and provided  
597 only to the Governor, Lieutenant Governor, Speaker of the House of  
598 Representatives and/or the authority.

599         **SECTION 4.** This act shall take effect and be in force from  
600 and after July 1, 2024.

