

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.

