

By: Senator(s) Parker

To: Finance

SENATE BILL NO. 2830

1 AN ACT TO AMEND SECTION 57-114-3, MISSISSIPPI CODE OF 1972,
 2 TO REVISE THE DEFINITION OF "QUALIFIED BUSINESS OR INDUSTRY" TO
 3 MAKE IT CONFORM TO THE DEFINITION OF "QUALIFIED ECONOMIC
 4 DEVELOPMENT PROJECT"; TO AMEND SECTION 57-114-13, MISSISSIPPI CODE
 5 OF 1972, TO MODIFY THE DATE ON WHICH AN ANNUAL REPORT BY A
 6 QUALIFIED BUSINESS OR INDUSTRY IS DUE TO BE FILED WITH THE
 7 MISSISSIPPI DEVELOPMENT AUTHORITY; TO AMEND SECTION 57-114-15,
 8 MISSISSIPPI CODE OF 1972, TO CORRECT A REFERENCE TO THE DEPARTMENT
 9 OF REVENUE TO CONFORM TO THE APPLICABLE REFERENCE TO THE
 10 DEPARTMENT OF EMPLOYMENT SECURITY; AND FOR RELATED PURPOSES.

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

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

14 57-114-3. For purposes of this chapter, the following words
 15 shall have the meanings ascribed herein unless the context
 16 otherwise requires:

17 (a) "Affiliate" means, with respect to a specified
 18 entity, (i) another person or entity that directly or indirectly,
 19 through one or more intermediaries, controls or is controlled by
 20 or is under common control with the specified person or entity,
 21 where the term "control" means the ownership or possession,
 22 directly or indirectly, of the power to direct more than fifty



23 percent (50%) of the voting equity securities or a similar
24 ownership interest in the specified controlled entity, or (ii) any
25 member of an affiliated group of corporations, of which the
26 specified entity is also a member, which are each subject to
27 income taxation in Mississippi and may elect to file a combined
28 Mississippi income tax return in accordance with state law.

29 (b) "Authority" means the Mississippi Development
30 Authority.

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

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

40 (e) "Applicant" means any corporation, limited
41 liability company, partnership, person or sole proprietorship,
42 business trust or other legal entity and subunit or affiliate
43 thereof that applies to the authority, in the manner prescribed by
44 this chapter, seeking (i) certification by the authority that such
45 applicant is a qualified business or industry and that its
46 proposed new project or expansion of an existing business or
47 industrial operation is a qualified economic development project,



48 and (ii) an award in connection therewith of an mFlex tax
49 incentive.

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

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

66 (h) "Base full-time job" means a job (i) for which an
67 employee was already hired by the qualified business or industry
68 before, and is employed as of, the project certification date;
69 (ii) that offers a minimum of one thousand eight hundred twenty
70 (1,820) hours of an employee's time per year (i.e., thirty-five
71 (35) hours per week on average) for a normal four (4) consecutive
72 quarter period of the qualified business or industry's operations



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

83 (i) "Base-leased employee" means a nontemporary
84 employee:

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

90 (ii) Who is leased as of the project certification
91 date;

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

94 (iv) Who, as of the project certification date,
95 was already performing services for, and under the supervision of,
96 the qualified business or industry pursuant to a leasing agreement



97 between the qualified business or industry and such other employee
98 leasing firm;

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

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

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



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

125 (l) "Manufacturing machinery," as used in this chapter,
126 shall have the same meaning ascribed to such term in Section
127 27-65-11, as interpreted by any regulations promulgated by the
128 Department of Revenue with respect to such section.

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

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

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

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

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



144 (i) For which an employee is hired by the
145 qualified business or industry after the project certification
146 date;

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

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

162 (r) "New-leased employee" means a nontemporary
163 employee:

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



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

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

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

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



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

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

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

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



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

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

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

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

240 (ii) A new manufacturing, remanufacturing,
241 assembly, processing and/or refinery enterprise or an expansion of
242 an existing manufacturing, remanufacturing, assembly, processing



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

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

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

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

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



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

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

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

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



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

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

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



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

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

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

330 (bb) "State tax" means:

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

335 (ii) All income tax imposed pursuant to law on
336 income earned by the qualified business or industry pursuant to
337 state law;

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

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



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

345 57-114-13. (1) Unless its mFlex agreement prescribes a
346 longer reporting period or additional reporting requirements, each
347 qualified business or industry shall file an annual report with
348 the authority for each qualified economic development project
349 which has been certified, and for which any mFlex tax incentive
350 has been awarded, by the authority in accordance with this
351 chapter, for the longer of the following periods: (a) until the
352 reporting year during which all or any remaining portion of the
353 mFlex tax incentive amount awarded to such qualified business or
354 industry has been applied to offset state taxes, or (b) until the
355 seventh reporting year, provided that an annual report shall in
356 either instance be due in the final reporting year prescribed
357 hereby or by the mFlex agreement. Each annual report shall be due
358 to the authority no later than the last business day of the month
359 following the * * * quarter during which the annual anniversary of
360 its project certification date occurred. Each annual report shall
361 include the information set forth in this section, together with
362 any other information required to be provided by the qualified
363 business or industry pursuant to its mFlex agreement, for the
364 immediately preceding twelve-month period ending on the last day
365 of the month during which the annual anniversary of its project
366 certification date occurred.



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

370 (a) The total qualified investment made between the
371 project certification date through the end of the reporting year,
372 including a breakout of actual expenditures made by the qualified
373 business or industry for manufacturing machinery, nonmanufacturing
374 equipment and component building materials to establish and equip
375 the qualified economic development project;

376 (b) The incremental qualified investment made during
377 the reporting year, including a breakout of actual expenditures
378 made by the qualified business or industry for manufacturing
379 machinery, nonmanufacturing equipment and component building
380 materials to establish and equip the qualified economic
381 development project;

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

384 (d) The total number of people employed in new
385 full-time jobs as of the last day the year preceding the reporting
386 year;

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

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

390 (g) The percentage and number, as of the last day of
391 the reporting year, of new full-time employees who are eligible



392 for and offered a health insurance coverage funded in whole or at
393 least fifty percent (50%) by the qualified business or industry
394 (or by a leasing company with respect to leased employees);

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

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

404 (j) A list of all affiliates of the qualified business
405 or industry, including the Federal Employer Identification Number
406 for each affiliate, for which any state tax liability thereof has
407 been or is expected to be offset by all or some portion of the
408 mFlex tax incentives awarded to the qualified business or
409 industry, which list shall further identify (i) any affiliate of
410 the qualified business or industry that was not disclosed as such
411 on its application or annual report submitted for the prior
412 reporting period, whichever was more recent, but which has either
413 become an affiliate of the qualified business or industry as of
414 the date the current annual report or which the qualified business
415 or industry desires to utilize all or a portion of its mFlex tax
416 incentive as a credit to offset the affiliate's state tax



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

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

435 (4) Notwithstanding the obligation of a qualified business
436 or industry to file an annual report with the authority for each
437 qualified economic development project which has been certified,
438 and for which any mFlex tax incentive has been awarded, the
439 authority is authorized to request from the qualified business or
440 industry at any other time any of the information set forth herein
441 that must be included in an annual report for purposes of



442 determining whether a qualified business or industry has met any
443 of the project performance measures set forth in its mFlex
444 agreement on or before the respective deadlines imposed with
445 respect thereto. Upon any such written request by the authority,
446 the qualified business or industry shall, within thirty (30) days
447 after receipt of the request, provide to the authority a certified
448 copy of the information requested.

449 (5) If a qualified business or industry fails to either file
450 an annual report with the authority on or before the deadline
451 mandated by subsection (1) of this section, or provide any
452 information requested by the authority pursuant to subsection (4)
453 of this section within the time period mandated by such
454 subsection, the authority shall provide written notice to the
455 qualified business or industry of the failure to report, and the
456 qualified business or industry shall have thirty (30) additional
457 days to cure the reporting failure following its receipt of the
458 notice. If the qualified business or industry thereafter fails to
459 file its annual report with the authority, or provide such
460 information requested by the authority within the thirty-day-cure
461 period, the authority is authorized to suspend or revoke, at the
462 discretion thereof, all or a portion of the amount of the mFlex
463 tax incentive previously awarded to the qualified business or
464 industry for its qualified economic development project.

465 (6) If a qualified business or industry either fails to
466 achieve or exceeds any project performance measure set forth in



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

488 (7) A qualified business or industry and the authority may,
489 at any time, amend or restate an mFlex agreement in order to
490 modify the performance measures of the qualified business or
491 industry with respect to its qualified economic development



492 project, and in connection with such amendment or amendment and
493 restatement, the authority shall modify the amount of the mFlex
494 tax incentive awarded for the qualified economic development
495 project to comport with the modified performance measures;
496 provided that the modified award amount shall thereafter be
497 subject to the adjustment requirements of subsection (6) of this
498 section.

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

510 (9) If at any time the authority reduces the mFlex tax
511 incentive award granted for the qualified economic development
512 project to an amount less than the total amount of credits already
513 applied and taken by the qualified business or industry, or by one
514 or more affiliates thereof eligible to utilize such credit, to
515 offset state taxes thereof, the Department of Revenue shall charge
516 the qualified business or industry, or such affiliate or



517 affiliates, with an assessment for the amount of state taxes for
518 which no mFlex tax incentive is available, following such
519 reduction by the authority, for application as a tax credit,
520 beginning with those state taxes against which the qualified
521 business or industry most recently applied the credit, and such
522 state tax assessment shall be immediately due and payable.

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

531 (11) Within thirty (30) days following the end of each
532 calendar quarter, the authority shall provide to the Governor,
533 Lieutenant Governor and the Speaker of the House of
534 Representatives a copy of each amendment to any certification
535 made, together with a copy of each amendment to any mFlex
536 agreement approved and executed, during the immediately preceding
537 calendar quarter.

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

540 57-114-15. (1) No provisions of this chapter shall in any
541 way limit or restrict the authority of the Department of Revenue



542 to perform audits for all state tax liabilities for any qualified
543 business or industry that is awarded any mFlex tax incentives by
544 the authority.

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

554 (3) If any audit by the Department of Revenue results in a
555 reclassification of component building materials, manufacturing
556 equipment or nonmanufacturing equipment, as previously reported by
557 a qualified business or industry, to a different property
558 classification, or a change in the number of new full-time
559 employees or average employer wage, as previously reported by a
560 qualified business or industry, the authority is authorized to
561 adjust the amount of the mFlex tax incentive awarded to the
562 qualified business or industry for a qualified economic
563 development project to comport with any property reclassification
564 or change in the number of new full-time employees or average
565 employer wage in the manner prescribed by Section 57-114-13.



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

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

577 (6) Upon written request made by the Director of the
578 University Research Center Division of the Mississippi
579 Institutions of Higher Learning, the authority shall provide to
580 the director a copy of any certification, together with any
581 amendments thereto, made by the authority, and/or any mFlex
582 agreement, together with any amendments thereto, approved and
583 executed by the authority pursuant to this chapter, described in
584 such request for the purpose of the University Research Center
585 conducting an economic impact analysis and other analyses
586 performed by the University Research Center with respect thereto;
587 provided that any such analyses conducted by the University
588 Research Center with respect to one or more particular qualified
589 economic development projects shall be communicated and provided



590 only to the Governor, Lieutenant Governor, Speaker of the House of
591 Representatives and/or the authority.

592 **SECTION 4.** This act shall take effect and be in force from
593 and after its passage.

