

By: Senator(s) Robertson

To: Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2524

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (a) The Chairman of the State Tax Commission may extend
169 the period of time that the business or industry may receive
170 incentive payments for a period of time not to exceed two (2)
171 years;

172 (b) The Chairman of the State Tax Commission may waive
173 the requirement that a certain number of jobs be maintained for a
174 period of time not to exceed twenty-four (24) months; and

175 (c) The MDA may extend the period of time within which
176 the jobs must be created for a period of time not to exceed
177 twenty-four (24) months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Chairman of the State Tax Commission may extend the period of time that the business or industry may receive incentive payments for a period of time not to exceed two (2) years;

(b) The Chairman of the State Tax Commission may waive the requirement that a certain number of jobs be maintained for a period of time not to exceed twenty-four (24) months; and

(c) The MDA may extend the period of time within which the jobs must be created for a period of time not to exceed twenty-four (24) months.

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

57-62-13. (1) As soon as practicable after the end of a calendar quarter for which a qualified business or industry has qualified to receive an incentive payment, the qualified business or industry shall file a claim for the payment with the State Tax Commission and shall specify the actual number of new direct jobs created and maintained by the business or industry for the calendar quarter and the gross payroll thereof. The State Tax Commission shall verify the actual number of new direct jobs created and maintained by the business or industry and compliance with the average annual wage requirements for such business or industry under this chapter. If the qualified business or industry files a claim for an incentive payment during an additional incentive period provided under Section 57-62-9(2), the State Tax Commission shall verify the actual number of new direct jobs created and maintained by the business or industry and compliance with the average annual wage requirements for such business or industry under this chapter. If the State Tax Commission is not able to provide such verification utilizing all available resources, the State Tax Commission may request such additional information from the business or industry as may be necessary.

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

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

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

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

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