

By: Senator(s) Robertson

To: Finance

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 36 MONTHS; AND
11 FOR RELATED PURPOSES.

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

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

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

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

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.

(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 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 three (3) 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 thirty-six (36) 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 thirty-six (36) months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 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 three (3) 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 thirty-six (36) 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 thirty-six (36) 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

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

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

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

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

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

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

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