

By: Senator(s) Parker

To: Economic and Workforce
Development

SENATE BILL NO. 2808

1 AN ACT TO AMEND SECTIONS 57-114-3 AND 57-114-15, MISSISSIPPI
2 CODE OF 1972, TO MAKE MINOR TECHNICAL CORRECTIONS; TO BRING
3 FORWARD SECTIONS 57-114-1, 57-114-5, 57-114-7, 57-114-9,
4 57-114-11, 57-114-13, 57-114-17, 57-114-19 AND 57-114-21,
5 MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT;
6 AND FOR RELATED PURPOSES.

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

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

10 57-114-3. For purposes of this chapter, the following words
11 shall have the meanings ascribed herein unless the context
12 otherwise requires:

13 (a) "Affiliate" means, with respect to a specified
14 entity, (i) another person or entity that directly or indirectly,
15 through one or more intermediaries, controls or is controlled by
16 or is under common control with the specified person or entity,
17 where the term "control" means the ownership or possession,
18 directly or indirectly, of the power to direct more than fifty
19 percent (50%) of the voting equity securities or a similar
20 ownership interest in the specified controlled entity, or (ii) any



21 member of an affiliated group of corporations, of which the
22 specified entity is also a member, which are each subject to
23 income taxation in Mississippi and may elect to file a combined
24 Mississippi income tax return in accordance with state law.

25 (b) "Authority" means the Mississippi Development
26 Authority.

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

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

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



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

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

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



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

79 (i) "Base-leased employee" means a nontemporary
80 employee:

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

86 (ii) Who is leased as of the project certification
87 date;

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

90 (iv) Who, as of the project certification date,
91 was already performing services for, and under the supervision of,
92 the qualified business or industry pursuant to a leasing agreement
93 between the qualified business or industry and such other employee
94 leasing firm;



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

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

113 (j) "Contractor tax" shall mean the tax levied by
114 Section 27-65-21, except for the tax upon the sale of
115 manufacturing or processing machinery for a manufacturer or custom
116 processor.

117 (k) "Construction contract" shall mean any contract or
118 portion of any contract for any one or more of the activities



119 described in Section 27-65-21 for which the contractor tax applies
120 and is payable by the contractor that is party thereto.

121 (l) "Manufacturing machinery," as used in this chapter,
122 shall have the same meaning ascribed to such term in Section
123 27-65-11, as interpreted by any regulations promulgated by the
124 Department of Revenue with respect to such section.

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

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

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

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

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

140 (i) For which an employee is hired by the
141 qualified business or industry after the project certification
142 date;



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

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

158 (r) "New-leased employee" means a nontemporary
159 employee:

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

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



167 (iii) Who performs services for the qualified
168 business or industry pursuant to a leasing agreement between the
169 qualified business or industry and such other employee-leasing
170 firm;

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

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

189 (s) "Nonmanufacturing equipment" means all tangible
190 personal property that is not manufacturing machinery, including,
191 but not limited to, office furniture, fixtures, office computers



192 and communications equipment, and warehouse equipment such as
193 racking and shelving.

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

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

212 (v) "Qualified annual payroll" means the sum of the
213 annual salary and wages for new full-time jobs of the qualified
214 business or industry, excluding the amount or value of any
215 benefits that are not subject to state income taxes.



216 (w) "Qualified business or industry" means any
217 corporation, limited liability company, partnership, person or
218 sole proprietorship, business trust or other legal entity and
219 subunit or affiliate thereof, which makes a qualified minimum
220 investment in a qualified economic development project.

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

229 (i) A new warehouse and/or distribution enterprise
230 or an expansion of an existing warehouse and/or distribution
231 enterprise; provided that, in any such instance, such warehouse
232 and/or distribution enterprise or expansion thereof is certified
233 by the authority to qualify as such;

234 (ii) A new manufacturing, remanufacturing,
235 assembly, processing and/or refinery enterprise or an expansion of
236 an existing manufacturing, remanufacturing, assembly, processing
237 and/or refinery enterprise; provided that, in any such instance,
238 such manufacturing, remanufacturing, assembly, processing and/or
239 refinery enterprise or expansion thereof is certified by the
240 authority to qualify as such;



241 (iii) A new research or research and development
242 enterprise or an expansion of an existing research or research and
243 development enterprise; provided that, in any such instance, such
244 research and development enterprise or an expansion thereof is
245 certified by the authority to qualify as such;

246 (iv) A new regional or national headquarters of
247 the qualified business or industry or an expansion of an existing
248 regional or national headquarters of the qualified business or
249 industry; provided that, in any such instance, such regional or
250 national headquarters or expansion thereof is certified by the
251 authority to qualify as such;

252 (v) An air transportation, repair and/or
253 maintenance enterprise or an expansion of an existing air
254 transportation, repair and/or maintenance enterprise; provided
255 that, in either instance, such air transportation, repair and/or
256 maintenance enterprise or expansion thereof is certified by the
257 authority to qualify as such;

258 (vi) A ship or other maritime vessel or barge
259 transportation, repair and/or maintenance enterprise or an
260 expansion of an existing ship or other maritime vessel or barge
261 transportation, repair and/or maintenance enterprise; provided
262 that, in either instance, the ship or other maritime vessel or
263 barge transportation, repair and/or maintenance enterprise or
264 expansion thereof is certified by the authority to qualify as
265 such;



266 (vii) A new data/information processing enterprise
267 or an expansion of an existing new data/information processing
268 enterprise; provided that, in any such instance such
269 data/information processing enterprise or expansion thereof is
270 certified by the authority to qualify as such;

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

279 (ix) A new telecommunications enterprise
280 principally engaged in the creation, display, management, storage,
281 processing, transmission and/or distribution, for compensation, of
282 images, text, voice, video or data by wire or by wireless means,
283 or engaged in the construction, design, development, manufacture,
284 maintenance or distribution for compensation of devices, products,
285 software or structures used in the above activities, or an
286 expansion of an existing telecommunications enterprise as herein
287 described; provided that, in any such instance, any such
288 telecommunications enterprise or expansion thereof is certified by
289 the authority to qualify as such; provided further, that
290 commercial broadcast radio stations, television stations or news



291 organizations primarily serving in-state markets shall not be
292 included within the definition of the term "telecommunications
293 enterprise";

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

301 (y) "Qualified investment" means any expenditures made
302 or caused to be made by the qualified business or industry
303 following the project certification date for construction,
304 installation, equipping and operation of a qualified economic
305 development project from any source or combination of sources,
306 excluding any funds contributed by the state or any agency or
307 other political subdivision thereof, or by any local government or
308 any agency or other political subdivision thereof, to the extent
309 such expenditures can be capitalized under applicable accounting
310 rules or otherwise by the Internal Revenue Code, whether or not
311 the qualified business or industry elects to capitalize the same,
312 as reflected in its financial statements, including, but not
313 limited to, all costs associated with the acquisition,
314 installation and/or construction of, or capital leasehold interest
315 in, any buildings and other real property improvements, fixtures,



316 equipment, machinery, landscaping, fire protection, depreciable
317 fixed assets, engineering and design costs.

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

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

324 (bb) "State tax" means:

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

329 (ii) All income tax imposed pursuant to law on
330 income earned by the qualified business or industry pursuant to
331 state law;

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

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

337 **SECTION 2.** Section 57-114-15, Mississippi Code of 1972, is
338 amended as follows:

339 57-114-15. **Audits and interagency cooperation.** (1) No
340 provisions of this chapter shall in any way limit or restrict the



341 authority of the Department of Revenue to perform audits for all
342 state tax liabilities for any qualified business or industry that
343 is awarded any mFlex tax incentives by the authority.

344 (2) The Department of Revenue is authorized to provide to
345 the authority any information received, obtained or produced, or
346 findings or determinations made, thereby as a result of the
347 performance by Department of Revenue of any audit of state tax
348 liabilities of any qualified business or industry that is awarded
349 any mFlex tax incentives by the authority, and any such
350 information, findings or determinations provided to the authority
351 by the Department of Revenue shall be exempt from the provisions
352 of the Mississippi Public Records Act of 1983, as amended.

353 (3) If any audit by the Department of Revenue results in a
354 reclassification of component building materials, manufacturing
355 equipment or nonmanufacturing equipment, as previously reported by
356 a qualified business or industry, to a different property
357 classification, or a change in the number of new full-time
358 employees or average employer wage, as previously reported by a
359 qualified business or industry, the authority is authorized to
360 adjust the amount of the mFlex tax incentive awarded to the
361 qualified business or industry for a qualified economic
362 development project to comport with any property reclassification
363 or change in the number of new full-time employees or average
364 employer wage in the manner prescribed by Section 57-114-13.



365 (4) The Department of Employment Security is authorized to
366 provide to the authority any information received, obtained or
367 produced, or findings or determinations made * * * thereby, with
368 respect to any qualified business or industry that is awarded any
369 mFlex tax incentives by the authority, and any such information,
370 findings or determinations provided to the authority by the
371 Department of Revenue shall be exempt from the provisions of the
372 Mississippi Public Records Act of 1983, Section 25-61-1 et seq.

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

375 (6) Upon written request made by the Director of the
376 University Research Center Division of the Mississippi
377 Institutions of Higher Learning, the authority shall provide to
378 the director a copy of any certification, together with any
379 amendments thereto, made by the authority, and/or any mFlex
380 agreement, together with any amendments thereto, approved and
381 executed by the authority pursuant to this chapter, described in
382 such request for the purpose of the University Research Center
383 conducting an economic impact analysis and other analyses
384 performed by the University Research Center with respect thereto;
385 provided that any such analyses conducted by the University
386 Research Center with respect to one or more particular qualified
387 economic development projects shall be communicated and provided
388 only to the Governor, Lieutenant Governor, Speaker of the House of
389 Representatives and/or the authority.



390 **SECTION 3.** Section 57-114-1, Mississippi Code of 1972, is
391 brought forward as follows:

392 57-114-1. **Short title.** This chapter shall be known and may
393 be cited as the "Mississippi Flexible Tax Incentive Act."

394 **SECTION 4.** Section 57-114-5, Mississippi Code of 1972, is
395 brought forward as follows:

396 57-114-5. **Application for the mFlex tax incentive.** Business
397 or industrial enterprises wishing to apply for the mFlex tax
398 incentive authorized by this chapter shall make application to the
399 authority, on a form prescribed thereby; provided that the
400 application shall, at a minimum, contain:

401 (a) A brief overview of the applicant's business or
402 industry, including its formation type (e.g., corporation, limited
403 liability company, limited partnership, etc.), its date of
404 incorporation or formation thereof, and the location of its
405 principal headquarters, together with its principal place of
406 business in the state, if the applicant already has one or more
407 facilities located in the state;

408 (b) The location of the selected project site or
409 locations of selected project sites, if multiple locations will be
410 involved;

411 (c) A description of the proposed project;

412 (d) The amount of the qualified investment proposed to
413 be made as a result of the proposed project, including a breakout
414 of projected expenditures for manufacturing machinery,



415 nonmanufacturing equipment and component building materials to
416 establish and equip the proposed project;

417 (e) If the proposed project will be an expansion of an
418 existing business or industrial operation, the current number of
419 base full-time jobs;

420 (f) The number of new full-time jobs proposed to be
421 created as a result of the proposed project;

422 (g) The average employer wage proposed to be paid by
423 the applicant for new full-time jobs disclosed in the application;

424 (h) A description of benefits, including but not
425 limited to, health, dental and/or vision insurance, retirement
426 savings account, etc. made available to employees, as well as a
427 description of any employees to whom such benefits are not made
428 available (e.g., part-time employees);

429 (i) The length of time necessary for the applicant to
430 meet its qualified investment and new full-time job creation
431 projections;

432 (j) A list of all affiliates of the qualified business
433 or industry known at the time of the application, including the
434 Federal Employer Identification Number for each such affiliate,
435 which have or are expected to have any state tax liability that
436 may be offset by all or some portion of the mFlex tax incentives
437 awarded to the qualified business or industry;

438 (k) An acknowledgment that the applicant, if awarded an
439 mFlex tax incentive pursuant to this chapter, will be required to



440 provide the annual report prescribed by Section 57-114-13 to
441 demonstrate the actual amount of its qualified investment,
442 including actual expenditures on manufacturing machinery,
443 nonmanufacturing equipment and component building materials, and
444 the number of new full-time jobs created and maintained as a
445 result of the project; and

446 (1) Any other information as may be requested by the
447 authority.

448 **SECTION 5.** Section 57-114-7, Mississippi Code of 1972, is
449 brought forward as follows:

450 57-114-7. (1) The authority shall evaluate an application
451 to determine whether the applicant's proposed project is a
452 qualified economic development project and whether it is therefore
453 eligible for an award by the authority of an mFlex tax incentive,
454 as calculated in accordance with Section 57-114-9.

455 (2) Upon approval of an applicant's application, the
456 authority shall issue a certification (a) designating the
457 applicant's project as a "qualified economic development project"
458 and eligible for the mFlex tax incentive authorized by this
459 chapter; (b) awarding the initial mFlex tax incentive calculated
460 pursuant to Section 57-114-9; and (c) imposing those mandatory
461 conditions pursuant to subsection (4) of this section and any
462 discretionary conditions otherwise imposed by the authority.

463 (3) Upon the issuance of the certification and execution of
464 the mFlex agreement by a qualified business or industry and the



465 authority, the qualified business or industry may apply the amount
466 of its mFlex tax incentive as a credit to offset (a) any state
467 taxes (except for withholding tax required to be deducted and
468 withheld from employee wages pursuant to Section 27-7-301 et
469 seq.), as incurred thereby, up to the full amount of the mFlex tax
470 incentive awarded by the authority for the associated qualified
471 economic development project, and (b) only up to twenty percent
472 (20%) of the mFlex tax incentive amount may be applied as a credit
473 during the course of any reporting year to offset withholding tax
474 deducted and withheld from employee wages pursuant to Section
475 27-7-301 et seq.; provided that the amount of the mFlex tax
476 incentive available to be applied as a credit to offset such state
477 taxes shall be subject to any subsequent adjustments made by the
478 authority to such award pursuant to Section 57-114-13, and any
479 performance requirements set out in the mFlex agreement. The
480 amount of the mFlex tax incentive available to be applied as a
481 credit to offset any state taxes described in Section
482 57-114-3(bb) (i) shall be limited to those such taxes payable
483 directly by the qualified business or industry to the Department
484 of Revenue pursuant to a direct pay permit issued by the
485 Department of Revenue under Section 27-65-93. The amount of the
486 mFlex tax incentive available to be applied as a credit to offset
487 any state taxes may not be applied as a credit to offset any state
488 taxes incurred prior to the issuance of the certification by the



489 authority and execution of the mFlex agreement by the qualified
490 business or industry and the authority.

491 (4) The following conditions shall apply to each such
492 certification made, and each mFlex tax incentive awarded, by the
493 authority in accordance with this chapter:

494 (a) Any certification and mFlex tax incentive award
495 issued by the authority under this chapter is nontransferable and
496 cannot be applied, used or assigned to any other person or
497 business or tax account without prior approval by the authority,
498 except for one or more affiliates of the qualified business or
499 industry disclosed thereby on its application or in a subsequent
500 annual report submitted to the authority in accordance with this
501 chapter;

502 (b) No qualified business or industry may claim or use
503 the mFlex tax incentive awarded thereto under this chapter unless
504 the qualified business or industry is in full compliance with all
505 state and local tax laws, and related ordinances, permits and
506 other applicable governmental approvals; and

507 (c) Each qualified business or industry must enter into
508 an mFlex agreement with the authority which sets out, at a
509 minimum, (i) the obligation of the business or industry to provide
510 an annual report to the authority pursuant to Section 57-114-13
511 that demonstrates the actual amount of its qualified investment,
512 including actual expenditures on manufacturing machinery,
513 nonmanufacturing equipment and component building materials, the



514 number of new full-time jobs created and maintained as a result of
515 the project, and any other relevant information as may be required
516 by the authority; and (ii) terms for readjustment or recapture of
517 all or a portion of the mFlex tax incentive awarded thereto
518 pursuant to Section 57-114-13 if the applicant 1. fails to satisfy
519 the minimum job creation requirement if certification of the
520 project is predicated on satisfaction of the minimum job creation
521 requirement and not the minimum qualified investment, or 2. fails
522 to satisfy the minimum qualified investment if certification of
523 the project is predicated on satisfaction of the minimum job
524 creation requirement and not the minimum qualified investment,
525 and/or 3. fails to otherwise satisfy any other additional
526 performance requirements of the qualified business or industry or
527 its qualified economic development project that are imposed by the
528 authority.

529 (5) In addition to those mandatory conditions prescribed by
530 this chapter that apply to each certification and award of an
531 mFlex tax incentive made by the authority in accordance herewith,
532 the authority is authorized to impose any other conditions upon
533 any certification and award of an mFlex tax incentive made by the
534 authority as it shall find best promotes economic development in
535 the state.

536 (6) Upon certifying a qualified business or industry as
537 eligible for, and awarding, an mFlex tax incentive under this
538 chapter, the authority shall forward the certification along with



539 any other necessary information to the Department of Revenue so
540 that the mFlex tax incentive awarded to the qualified business or
541 industry can be recorded by the Department of Revenue and used to
542 verify each state tax credit subsequently applied by the qualified
543 business or industry.

544 (7) Within thirty (30) days following the end of each
545 calendar quarter, the authority shall provide to the Governor,
546 Lieutenant Governor and the Speaker of the House of
547 Representatives a copy of each certification made, together with a
548 copy of each mFlex agreement approved and executed, during the
549 immediately preceding calendar quarter.

550 **SECTION 6.** Section 57-114-9, Mississippi Code of 1972, is
551 brought forward as follows:

552 57-114-9. **Calculation and application of an mFlex tax**
553 **incentive award.** The total amount of the initial mFlex tax
554 incentive determined and awarded by the authority to the certified
555 applicant shall be calculated by the authority as follows:

556 (a) Subject to paragraph (f) below, one and one-half
557 percent (1.5%) of the total purchase or sales price, or value,
558 including any installation costs thereof, as applicable, of all
559 manufacturing or processing machinery acquired, leased or
560 otherwise moved into the state following the project certification
561 date to establish and equip the qualified economic development
562 project; plus



563 (b) Subject to paragraph (f) below, seven percent (7%)
564 of the total purchase or sales price, or value, including any
565 installation costs thereof, as applicable, of all nonmanufacturing
566 equipment, other than tagged over-the-road vehicles, acquired,
567 leased or otherwise moved into the state following the project
568 certification date to establish and equip the qualified economic
569 development project; plus

570 (c) Subject to paragraph (f) below, two percent (2%) of
571 the total contract price or compensation paid to any contractor
572 pursuant to any construction contract entered into following the
573 project certification date by the qualified business or industry
574 or any affiliate thereof, to construct, build, erect, repair or
575 add to any building, facility, structure or other improvement to
576 real property described in Section 27-65-21(1)(a)(i) to establish
577 and construct the qualified economic development project; plus, if
578 applicable;

579 (d) To the extent that the average employer wage is
580 equal to or more than seventy-five percent (75%) of the average
581 state or county wage, then an additional fifteen percent (15%) of
582 the product derived by multiplying the average employer wage by
583 the number of new full-time jobs; plus, if applicable;

584 (e) (i) To the extent that 1. the qualified economic
585 development project is an enterprise enumerated in Section
586 57-114-3(x)(i) or (x)(ii); 2. the number of new full-time jobs
587 totals fifty (50) or more; 3. the qualified investment totals Ten



588 Million Dollars (\$10,000,000) or more; 4. the average employer
589 wage is equal to or more than one hundred ten percent (110%) of
590 the average state or county wage; and 5. all full-time employees
591 are eligible for and offered health insurance coverage funded in
592 whole or at least fifty percent (50%) by the qualified business or
593 industry (or by a leasing company with respect to leased
594 employees), then an additional thirty percent (30%) of the product
595 derived by multiplying the average employer wage by the number of
596 new full-time jobs; or

597 (ii) To the extent that subparagraph (i) of this
598 paragraph (e) does not apply, but 1. the number of new full-time
599 jobs totals twenty-five (25) or more; 2. the average employer wage
600 is equal to or more than one hundred twenty-five percent (125%) of
601 the average state or county wage; and 3. all full-time employees
602 are eligible for and offered health insurance coverage funded in
603 whole or at least fifty percent (50%) by the qualified business or
604 industry (or by a leasing company with respect to leased
605 employees), then an additional thirty percent (30%) of the product
606 derived by multiplying the average employer wage by the number of
607 new full-time jobs; provided, however, that the initial mFlex tax
608 incentive award amount determined by the authority and awarded on
609 the project certification date shall be based upon estimates
610 provided by the qualified business or industry to the authority
611 with respect to paragraphs (a) through (d) of this section, which
612 estimates shall be memorialized as project performance measures



613 agreed to by the qualified business or industry in the mFlex
614 agreement; provided, further, that such initial award amount shall
615 be subject to any subsequent adjustments made by the authority
616 pursuant to Section 57-114-13;

617 (f) To the extent that all or any portion of the
618 purchases to establish a qualified economic development project
619 which are financed by proceeds from bonds issued pursuant to
620 Section 57-10-201 et seq. or Section 57-10-401 et seq., the mFlex
621 tax incentive determined in accordance with this section shall
622 exclude the amount calculated in accordance with paragraphs (a),
623 (b) and (c) above; provided that, this paragraph (f) shall not
624 apply in determining the mFlex tax incentive for a qualified
625 economic development project to the extent that (i) the qualified
626 economic development project is an expansion of an existing
627 project, (ii) all or any portion of the purchases to establish the
628 existing project were financed by proceeds from bonds issued
629 pursuant to Section 57-10-201 et seq. or Section 57-10-401 et
630 seq., and (iii) no purchases to establish the expansion
631 constituting a qualified economic development project are financed
632 by proceeds from bonds issued pursuant to Section 57-10-201 et
633 seq. or Section 57-10-401 et seq.

634 **SECTION 7.** Section 57-114-11, Mississippi Code of 1972, is
635 brought forward as follows:

636 57-114-11. (1) A qualified business or industry awarded any
637 mFlex tax incentive by the authority for its qualified economic



638 development project pursuant to this chapter shall not be eligible
639 for, nor shall it apply for or claim, any one or more of the
640 following tax credits, exemptions or incentives for such qualified
641 project:

642 (a) For any new full-time job, any state income tax
643 credit authorized by Sections 27-7-22.17, 27-7-22.18, 27-7-22.19,
644 27-7-22.27, 27-7-22.29, 27-7-22.34, 27-7-22.36 and 57-73-21(2)
645 through (5);

646 (b) For any new full-time job, any withholding tax
647 rebate authorized by Sections 57-62-1 through 57-62-7 or Sections
648 57-100-1 through 57-100-9;

649 (c) Any exemption from state income tax authorized by
650 Section 27-7-30, Sections 57-80-1 through 57-80-11, Sections
651 57-113-1 through 57-113-7, and Sections 57-113-21 through
652 57-113-27;

653 (d) Any state income tax credit authorized by Section
654 27-7-22.20 or Section 27-7-22.35;

655 (e) Any exemption from state sales or use tax
656 authorized by Section 27-65-101(1)(q), (r), (v), (w), (x), (y),
657 (cc), (dd), (ff), (gg), (hh), (kk), (ll), (mm), (nn), (qq), (uu),
658 (vv), (2) or (3); Sections 57-80-1 through 57-80-11; Sections
659 57-113-1 through 57-113-7; and Sections 57-113-21 through
660 57-113-27;

661 (f) Any exemption from state franchise tax authorized
662 by Section 27-13-5(4), Section 27-13-7(4), Sections 57-80-1



663 through 57-80-11, Sections 57-113-1 through 57-113-7, and Sections
664 57-113-21 through 57-113-27.

665 (2) Notwithstanding subsection (1) of this section, a
666 qualified business or industry shall not be prohibited from
667 applying for or receiving any of the tax credits, exemptions or
668 incentives described in paragraphs (a) through (f) of subsection
669 (1) of this section for any project or expansion which is not
670 certified by the authority as a qualified economic development
671 project and for which no mFlex tax incentive is awarded by the
672 authority, notwithstanding the fact the qualified business or
673 industry is awarded an mFlex tax incentive by the authority for a
674 specific qualified economic development project undertaken
675 thereby.

676 **SECTION 8.** Section 57-114-13, Mississippi Code of 1972, is
677 brought forward as follows:

678 57-114-13. **Taxpayer annual performance reporting to, and**
679 **reviews by, the Mississippi Development Authority; subsequent**
680 **adjustments by the Mississippi Development Authority to mFlex tax**
681 **incentive award; deadline for mFlex tax incentive utilization.**

682 (1) Unless its mFlex agreement prescribes a longer reporting
683 period or additional reporting requirements, each qualified
684 business or industry shall file an annual report with the
685 authority for each qualified economic development project which
686 has been certified, and for which any mFlex tax incentive has been
687 awarded, by the authority in accordance with this chapter, for the



688 longer of the following periods: (a) until the reporting year
689 during which all or any remaining portion of the mFlex tax
690 incentive amount awarded to such qualified business or industry
691 has been applied to offset state taxes, or (b) until the seventh
692 reporting year, provided that an annual report shall in either
693 instance be due in the final reporting year prescribed hereby or
694 by the mFlex agreement. Each annual report shall be due to the
695 authority no later than the last business day of the month
696 following the month during which the annual anniversary of its
697 project certification date occurred. Each annual report shall
698 include the information set forth in this section, together with
699 any other information required to be provided by the qualified
700 business or industry pursuant to its mFlex agreement, for the
701 immediately preceding twelve-month period ending on the last day
702 of the month during which the annual anniversary of its project
703 certification date occurred.

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

707 (a) The total qualified investment made between the
708 project certification date through the end of the reporting year,
709 including a breakout of actual expenditures made by the qualified
710 business or industry for manufacturing machinery, nonmanufacturing
711 equipment and component building materials to establish and equip
712 the qualified economic development project;



713 (b) The incremental qualified investment made during
714 the reporting year, including a breakout of actual expenditures
715 made by the qualified business or industry for manufacturing
716 machinery, nonmanufacturing equipment and component building
717 materials to establish and equip the qualified economic
718 development project;

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

721 (d) The total number of people employed in new
722 full-time jobs as of the last day the year preceding the reporting
723 year;

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

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

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

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



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

741 (j) A list of all affiliates of the qualified business
742 or industry, including the Federal Employer Identification Number
743 for each affiliate, for which any state tax liability thereof has
744 been or is expected to be offset by all or some portion of the
745 mFlex tax incentives awarded to the qualified business or
746 industry, which list shall further identify (i) any affiliate of
747 the qualified business or industry that was not disclosed as such
748 on its application or annual report submitted for the prior
749 reporting period, whichever was more recent, but which has either
750 become an affiliate of the qualified business or industry as of
751 the date the current annual report or which the qualified business
752 or industry desires to utilize all or a portion of its mFlex tax
753 incentive as a credit to offset the affiliate's state tax
754 liability following the date of the current annual report; (ii)
755 any change in the name of any previously disclosed affiliate since
756 the date the qualified business or industry filed its application
757 or annual report for the prior reporting period, whichever was
758 more recent; (iii) any prior affiliate of the qualified business
759 or industry disclosed as such on its application or annual report
760 for the prior reporting period, whichever was more recent, and
761 which is no longer an affiliate of the qualified business or



762 industry as of the date the current annual report; and (iv) any
763 affiliate of the qualified business or industry disclosed as such
764 on its application or annual report for the prior reporting
765 period, whichever was more recent, and which the qualified
766 business or industry no longer desires that the affiliate utilize
767 all or a portion of its mFlex tax incentive as a credit to offset
768 the affiliate's state tax liability following the date of the
769 current annual report.

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

772 (4) Notwithstanding the obligation of a qualified business
773 or industry to file an annual report with the authority for each
774 qualified economic development project which has been certified,
775 and for which any mFlex tax incentive has been awarded, the
776 authority is authorized to request from the qualified business or
777 industry at any other time any of the information set forth herein
778 that must be included in an annual report for purposes of
779 determining whether a qualified business or industry has met any
780 of the project performance measures set forth in its mFlex
781 agreement on or before the respective deadlines imposed with
782 respect thereto. Upon any such written request by the authority,
783 the qualified business or industry shall, within thirty (30) days
784 after receipt of the request, provide to the authority a certified
785 copy of the information requested.



786 (5) If a qualified business or industry fails to either file
787 an annual report with the authority on or before the deadline
788 mandated by subsection (1) of this section, or provide any
789 information requested by the authority pursuant to subsection (4)
790 of this section within the time period mandated by such
791 subsection, the authority shall provide written notice to the
792 qualified business or industry of the failure to report, and the
793 qualified business or industry shall have thirty (30) additional
794 days to cure the reporting failure following its receipt of the
795 notice. If the qualified business or industry thereafter fails to
796 file its annual report with the authority, or provide such
797 information requested by the authority within the thirty-day-cure
798 period, the authority is authorized to suspend or revoke, at the
799 discretion thereof, all or a portion of the amount of the mFlex
800 tax incentive previously awarded to the qualified business or
801 industry for its qualified economic development project.

802 (6) If a qualified business or industry either fails to
803 achieve or exceeds any project performance measure set forth in
804 its mFlex agreement within or for any time period required by such
805 agreement, the authority shall, following its (a) review of any
806 annual report filed by the qualified business or industry or of
807 any certified information provided by the qualified business or
808 industry pursuant to subsection (4) of this section, and (b)
809 verification based upon such information that the qualified
810 business or industry either failed to achieve or exceeded any of



811 the project performance measures set forth in its mFlex agreement
812 within or for any time period required by such agreement, adjust
813 the mFlex tax incentive awarded thereto for its qualified economic
814 development project such that the award is no longer based upon
815 any one or more of the performance measures set forth in its mFlex
816 agreement, but is instead based upon one or more of the following,
817 as applicable, as of the end of the most recent reporting year for
818 which the annual report was filed: (a) the actual expenditures
819 made by the qualified business or industry for purposes of the
820 calculation prescribed by Section 57-114-9(a), (b) and (c); and
821 (b) (i) the actual number of new full-time jobs created by the
822 qualified business or industry, together with (ii) the actual
823 average employer wage associated therewith, for purposes of the
824 calculations prescribed by Section 57-114-9(d) and (e).

825 (7) A qualified business or industry and the authority may,
826 at any time, amend or restate an mFlex agreement in order to
827 modify the performance measures of the qualified business or
828 industry with respect to its qualified economic development
829 project, and in connection with such amendment or amendment and
830 restatement, the authority shall modify the amount of the mFlex
831 tax incentive awarded for the qualified economic development
832 project to comport with the modified performance measures;
833 provided that the modified award amount shall thereafter be
834 subject to the adjustment requirements of subsection (6) of this
835 section.



836 (8) If the authority adjusts any mFlex tax incentive award
837 pursuant to subsection (6) or subsection (7) of this section, the
838 authority shall issue an amended certification of the
839 corresponding qualified economic development project, which shall
840 specify the amount of mFlex tax incentive award adjustment. The
841 authority shall forward the amended certification, along with any
842 other necessary information, to the Department of Revenue so that
843 the mFlex tax incentive award adjustment for the qualified
844 business or industry can be recorded by the Department of Revenue
845 and used to verify each state tax credit subsequently applied by
846 the qualified business or industry.

847 (9) If at any time the authority reduces the mFlex tax
848 incentive award granted for the qualified economic development
849 project to an amount less than the total amount of credits already
850 applied and taken by the qualified business or industry, or by one
851 or more affiliates thereof eligible to utilize such credit, to
852 offset state taxes thereof, the Department of Revenue shall charge
853 the qualified business or industry, or such affiliate or
854 affiliates, with an assessment for the amount of state taxes for
855 which no mFlex tax incentive is available, following such
856 reduction by the authority, for application as a tax credit,
857 beginning with those state taxes against which the qualified
858 business or industry most recently applied the credit, and such
859 state tax assessment shall be immediately due and payable.



860 (10) Any portion of an mFlex tax incentive awarded to the
861 qualified business or industry by the authority for its qualified
862 economic development project pursuant to this chapter that has not
863 been applied, on or before the tenth annual anniversary of the
864 project certificate date, as a credit by such qualified business
865 or industry, or by one or more affiliates thereof eligible to
866 utilize such credit, to offset state taxes otherwise payable,
867 shall expire.

868 (11) Within thirty (30) days following the end of each
869 calendar quarter, the authority shall provide to the Governor,
870 Lieutenant Governor and the Speaker of the House of
871 Representatives a copy of each amendment to any certification
872 made, together with a copy of each amendment to any mFlex
873 agreement approved and executed, during the immediately preceding
874 calendar quarter.

875 **SECTION 9.** Section 57-114-17, Mississippi Code of 1972, is
876 brought forward as follows:

877 57-114-17. **Implementation and exclusive jurisdiction.** (1)
878 The authority and the Department of Revenue shall implement the
879 provisions of this chapter and exercise all powers as authorized
880 in this chapter; however, the application of this chapter and the
881 offering and awarding of any mFlex tax incentive as to any
882 particular qualified business or industry shall be carried out at
883 the discretion of the authority subject to, and in compliance
884 with, this chapter. The exercise of powers conferred by this



885 chapter shall be deemed and held to be the performance of
886 essential public purposes.

887 (2) The authority shall have sole and exclusive jurisdiction
888 and authority to determine whether an applicant qualifies as a
889 qualified business or industry, whether an applicant's project
890 qualifies as a qualified economic development project, whether to
891 certify an applicant and its project as a qualified business or
892 industry undertaking a qualified economic development project and
893 the eligibility thereof for the mFlex tax incentive, the initial
894 calculation of any mFlex tax incentive award, any terms or
895 conditions or further requirements to be included in any mFlex
896 agreement, and any subsequent adjustments to any mFlex tax
897 incentive award or any revocation thereof, in all instances in
898 accordance with this chapter.

899 (3) Nothing in this chapter shall be construed to constitute
900 a guarantee or assumption by the State of Mississippi of any debt
901 of any corporation, limited liability company, partnership, person
902 or sole proprietorship, business trust or other legal entity and
903 subunit or affiliate thereof nor to authorize the credit of the
904 state to be given, pledged or loaned to any corporation, limited
905 liability company, partnership, person or sole proprietorship,
906 business trust or other legal entity and subunit or affiliate
907 thereof. Further, nothing in this chapter gives any right to any
908 qualified business or industry to the tax incentives authorized by
909 this chapter unless such incentive is awarded by this chapter.



910 **SECTION 10.** Section 57-114-19, Mississippi Code of 1972, is
911 brought forward as follows:

912 57-114-19. **Promulgation of rules and regulations.** The
913 authority and the Department of Revenue shall promulgate rules and
914 regulations, in accordance with the Mississippi Administrative
915 Procedures Law, Section 25-43-1.101 et seq. and all application
916 forms and other forms necessary to implement their respective
917 duties and responsibilities under the provisions of this chapter.

918 **SECTION 11.** Section 57-114-21, Mississippi Code of 1972, is
919 brought forward as follows:

920 57-114-21. From and after January 1, 2023, if the amount of
921 any mFlex tax incentive or other incentive that a qualified
922 business or other entity is eligible to receive under the
923 Mississippi Flexible Tax Incentive Act is less than the amount of
924 the mFlex tax incentive or other incentive that the qualified
925 business or other entity would have been eligible to receive or to
926 use if the mFlex tax incentive or other incentive had been
927 calculated using any applicable income tax rates in Section
928 27-7-5, Mississippi Code of 1972, that were in effect before
929 January 1, 2023, then the qualified business or other entity shall
930 receive a grant from the Mississippi Development Authority equal
931 to the difference between such two amounts.

932 **SECTION 12.** This act shall take effect and be in force from
933 and after July 1, 2023.

