

By: Martinson, Moore (60th)

To: Ways and Means

HOUSE BILL NO. 1253

1 AN ACT TO CREATE THE "MISSISSIPPI QUALITY JOBS PROGRAM ACT";
2 TO AUTHORIZE THE STATE TAX COMMISSION TO MAKE INCENTIVE PAYMENTS
3 FOR ESTABLISHMENTS ENGAGING IN CERTAIN BASIC INDUSTRIES; TO CREATE
4 THE INCENTIVE APPROVAL COMMITTEE WHOSE DUTY SHALL BE TO DETERMINE
5 WHETHER AN ESTABLISHMENT IS A BASIC INDUSTRY AS DEFINED IN THIS
6 ACT; TO PROVIDE THAT QUALIFIED ESTABLISHMENTS MAY RECEIVE
7 QUARTERLY INCENTIVE PAYMENTS FOR A TEN-YEAR PERIOD IN AN AMOUNT
8 EQUAL TO THE TAX BENEFITS THAT ACCRUE TO THE STATE AS A RESULT OF
9 NEW DIRECT JOBS MINUS THE ESTIMATED DIRECT STATE COSTS COMPUTED AS
10 A PERCENTAGE OF GROSS PAYROLL OF THE ESTABLISHMENT, MULTIPLIED BY
11 THE ACTUAL GROSS PAYROLL OF NEW DIRECT JOBS FOR A CALENDAR QUARTER
12 AS VERIFIED BY THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION; TO
13 PROVIDE THAT APPLICATION FOR INCENTIVE PAYMENTS SHALL BE MADE TO
14 THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT; TO PROVIDE
15 THE CRITERIA FOR ELIGIBILITY FOR INCENTIVE PAYMENTS; TO CREATE THE
16 MISSISSIPPI QUALITY JOBS PROGRAM INCENTIVE PAYMENT FUND FROM WHICH
17 INCENTIVE PAYMENTS SHALL BE MADE PURSUANT TO THIS ACT; TO PROVIDE
18 THAT SUCH FUND SHALL BE FUNDED BY LEGISLATIVE APPROPRIATION; TO
19 PROVIDE THAT THE LIABILITY OF THE STATE TO MAKE INCENTIVE PAYMENTS
20 UNDER THIS ACT SHALL BE LIMITED TO THE BALANCE CONTAINED IN SUCH
21 FUND; TO PROVIDE FOR CRIMINAL PENALTIES FOR WILLFULLY MAKING A
22 FALSE OR FRAUDULENT APPLICATION, CLAIM, REPORT, RETURN, STATEMENT,
23 INVOICE OR OTHER INSTRUMENT OR FOR WILLFULLY MAKING A FALSE OR
24 FRAUDULENT STATEMENT IN CONNECTION WITH THIS ACT; AND FOR RELATED
25 PURPOSES.

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

27 SECTION 1. This act shall be known and may be cited as the
28 "Mississippi Quality Jobs Program Act."

29 SECTION 2. It is the intent of the Legislature that:

30 (a) The State of Mississippi provide appropriate
31 incentives to support establishments of basic industries that hold
32 the promise of significant development of the economy of the State
33 of Mississippi;

34 (b) The amount of incentives provided under this act in
35 connection with a particular establishment:

36 (i) Be directly related to the jobs created as a
37 result of the establishment locating in the State of Mississippi;

38 and

39 (ii) Not exceed the estimated net direct state
40 benefits that will accrue to the state as a result of the
41 establishment locating in the State of Mississippi;

42 (c) The Department of Economic and Community
43 Development and the State Tax Commission shall implement the
44 provisions of this act and exercise all powers as authorized in
45 this act. The exercise of powers conferred by this act shall be
46 deemed and held to be the performance of essential public
47 purposes; and

48 (d) Nothing in this act shall be construed to
49 constitute a guarantee or assumption by the State of Mississippi
50 of any debt of any individual, company, corporation or association
51 nor to authorize the credit of the State of Mississippi to be
52 given, pledged or loaned to any individual, company, corporation
53 or association.

54 SECTION 3. (1) As used in this act, the following words and
55 phrases shall have the meanings ascribed in this section unless
56 the context clearly indicates otherwise:

57 (a) "Basic industry" means:

58 (i) Manufacturing, as defined or classified under
59 Division D of the Standard Industrial Classification Manual,
60 latest version;

61 (ii) An activity related to electric services as
62 described by Industry Number 4911 of Major Group 49, Division E of
63 the Standard Industrial Classification Manual, latest version, if:

64 1. An establishment engaged therein qualifies
65 as an exempt wholesale generator as defined by 15 USCS, Section
66 79z-5a;

67 2. The exempt wholesale generator facility
68 consumes from sources located within the state at least ninety
69 percent (90%) of the total energy used to produce the electrical
70 output which qualifies for the specialized treatment provided by

71 the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as
72 amended, and federal regulations adopted pursuant thereto;

73 3. The exempt wholesale generator facility
74 sells to purchasers located outside the state for consumption in
75 activities located outside the state at least ninety percent (90%)
76 of the total electrical energy output which qualifies for the
77 specialized treatment provided by the Energy Policy Act of 1992,
78 P.L. 102-486, 106 Stat. 2776, as amended, and federal regulations
79 adopted pursuant thereto; and

80 4. The facility is constructed on or after
81 July 1, 2000;

82 (iii) Administrative and auxiliary services that
83 are assigned a one-digit auxiliary code in the Standard Industrial
84 Classification Manual, and are described therein as Central
85 Administrative Offices, which means central centers that influence
86 the environment in which data processing, customer service, credit
87 accounting, telemarketing, claims processing and other
88 administrative functions are accomplished;

89 (iv) Research, Development and Testing
90 Laboratories;

91 (v) An activity described by Industry Group Number
92 873 of Major Group 87, Division I of the Standard Industrial
93 Classification Manual, latest revision, Industry Numbers 8731,
94 8732, 8733 and 8734;

95 (vi) An activity related to research and
96 development as described by Auxiliary Code Number 2 of the
97 Standard Industrial Classification Manual, latest revision;

98 (vii) Warehouses that serve as distribution
99 centers for retail or wholesale businesses, if seventy-five
100 percent (75%) of the inventory processed through such warehouse is
101 shipped out-of-state;

102 (viii) Adjustment and collection services, as
103 defined or classified under Industry Number 7322 of Major Group 73

104 of the Standard Industrial Classification Manual, latest version,
105 if seventy-five percent (75%) of the loans to be serviced were
106 made by out-of-state debtors;

107 (ix) 1. Transportation by air, as defined or
108 classified under Major Group 45 of the Standard Industrial
109 Classification Manual, latest version, if the following facilities
110 are located in this state:

111 a. The corporate headquarters of an
112 establishment classified therein; and

113 b. A facility or facilities at which
114 reservations for transportation provided by such an establishment
115 are processed, whether such services are performed by employees of
116 the establishment, by employees of a subsidiary of or other entity
117 affiliated with the establishment or by employees of an entity
118 with whom the establishment has contracted for the performance of
119 such services. This provision shall not disqualify an
120 establishment that uses an out-of-state entity or employees for
121 some reservations services; or

122 2. Transportation by air, as defined or
123 classified under Major Group 45 of the Standard Industrial
124 Classification Manual, latest version, if an establishment
125 classified therein has or will have within one (1) year sales of
126 at least seventy-five percent (75%) of its total sales, as
127 determined by the Incentive Approval Committee, to out-of-state
128 customers or buyers, to in-state customers or buyers if the
129 product or service is resold by the purchaser to an out-of-state
130 customer or buyer for ultimate use, or to the federal government;
131 or

132 (x) The following, if an establishment classified
133 therein has or will have within one (1) year sales of at least
134 seventy-five percent (75%) of its total sales, as determined by
135 the Incentive Approval Committee, to out-of-state customers or
136 buyers, to in-state customers or buyers if the product or service

137 is resold by the purchaser to an out-of-state customer or buyer
138 for ultimate use, or to the federal government:

139 1. Motor freight transportation and
140 warehousing, as defined or classified under Major Group 42 of the
141 Standard Industrial Classification Manual, latest version;

142 2. Arrangement of passenger transportation,
143 as defined or classified under Industry Group 472 of the Standard
144 Industrial Classification Manual, latest version;

145 3. Arrangement of transportation of freight
146 or cargo, as defined or classified under Industry Group 473 of the
147 Standard Industrial Classification Manual, latest version;

148 4. Insurance carriers, as defined or
149 classified under Major Group 63 of the Standard Industrial
150 Classification Manual, latest version;

151 5. Mailing, reproduction, commercial art and
152 photography and stenographic services, as defined or classified
153 under Industry Group 733 of the Standard Industrial Classification
154 Manual, latest version;

155 6. Services to dwellings and other buildings,
156 as defined or classified under Industry Group 734 of the Standard
157 Industrial Classification Manual, latest version;

158 7. Miscellaneous equipment rental and
159 leasing, as defined or classified under Industry Group 735 of the
160 Standard Industrial Classification Manual, latest version;

161 8. Personnel supply services, as defined or
162 classified under Industry Group 736 of the Standard Industrial
163 Classification Manual, latest version;

164 9. Computer programming, data processing and
165 other computer-related services, as defined or classified under
166 Industry Group 737 of the Standard Industrial Classification
167 Manual, latest version;

168 10. Miscellaneous business services, as
169 defined or classified under Industry Group 738 of the Standard

170 Industrial Classification Manual, latest version;

171 11. Medical and dental laboratories, as
172 defined or classified under Industry Group 807 of the Standard
173 Industrial Classification Manual, latest version;

174 12. Engineering and management services, as
175 defined or classified under Major Group 87 of the Standard
176 Industrial Classification Manual, latest version;

177 13. Communication services, as defined or
178 classified under Industrial Number 4899 of Major Group 48 of the
179 Standard Industrial Classification Manual, latest version;

180 14. Refuse systems, as defined or classified
181 under Industrial Number 4953 of Major Group 49 of the Standard
182 Industrial Classification Manual, latest version, provided that
183 the establishment is primarily engaged in the capture and
184 distribution of methane gas produced within a landfill;

185 15. General wholesale distribution of
186 groceries, as described in Industry Number 5141 of the Standard
187 Industrial Classification Manual, latest version; and

188 16. Processing of insurance claims, as
189 described in Industry Number 6411 of the Standard Industrial
190 Classification Manual, latest version; provided, activities
191 described in Industry Number 6411 of the Standard Industrial
192 Classification Manual, latest version, other than processing of
193 insurance claims shall not be included for purposes of this
194 subdivision.

195 An establishment shall not be considered to be engaged in a
196 basic industry unless it offers, or will offer within one hundred
197 eighty (180) days of the date it receives the first incentive
198 payment pursuant to the provisions of this act, a basic health
199 benefits plan to the individuals it employs in new direct jobs in
200 this state which is determined by the Department of Economic and
201 Community Development to consist of the following elements or
202 elements substantially equivalent thereto:

203 (i) Not less than fifty percent (50%) of the
204 premium shall be paid by the employer;

205 (ii) Coverage for basic hospital care;

206 (iii) Coverage for physician care;

207 (iv) Coverage for mental health care;

208 (v) Coverage for substance abuse treatment;

209 (vi) Coverage for prescription drugs; and

210 (vii) Coverage for prenatal care;

211 (b) "New direct job" means full-time-equivalent
212 employment in this state in an establishment that has qualified to
213 receive an incentive payment pursuant to this act, which
214 employment did not exist in this state before the date of approval
215 by the Department of Economic and Community Development of the
216 application of the establishment pursuant to the provisions of
217 this act. "New direct job" shall include full-time-equivalent
218 employment in this state of employees who are employed by an
219 entity other than the establishment that has qualified to receive
220 an incentive payment and who are leased or otherwise provided to
221 the qualified establishment, if such employment did not exist in
222 this state before the date of approval by the Department of
223 Economic and Community Development of the application of the
224 establishment. A job shall be deemed to exist in this state
225 before approval of an application if the activities and functions
226 for which the particular job exists have been ongoing at any time
227 within six (6) months before such approval;

228 (c) "Estimated direct state benefits" means the tax
229 revenues projected by the Department of Economic and Community
230 Development to accrue to the state as a result of new direct jobs;

231 (d) "Estimated direct state costs" means the costs
232 projected by the Department of Economic and Community Development
233 to accrue to the state as a result of new direct jobs. Such costs
234 shall include, but not be limited to:

235 (i) The costs of education of new state resident

236 children;

237 (ii) The costs of public health, public safety and
238 transportation services to be provided to new state residents;

239 (iii) The costs of other state services to be
240 provided to new state residents; and

241 (iv) The costs of other state services;

242 (e) "Estimated net direct state benefits" means the
243 estimated direct state benefits less the estimated direct state
244 costs;

245 (f) "Net benefit rate" means the estimated net direct
246 state benefits computed as a percentage of gross payroll, provided
247 that:

248 (i) Except as otherwise provided in this paragraph
249 (f), the net benefit rate may be variable and shall not exceed
250 five percent (5%);

251 (ii) The net benefit rate shall not exceed six
252 percent (6%) in connection with an establishment that is owned and
253 operated by an entity that has been awarded a United States
254 Department of Defense contract for which:

255 1. Bids were solicited and accepted by the
256 United States Department of Defense from facilities located
257 outside this state;

258 2. The term is or is renewable for not less
259 than twenty (20) years; and

260 3. The average annual salary, excluding
261 benefits which are not subject to Mississippi income taxes, for
262 new direct jobs created as a direct result of the awarding of the
263 contract is projected by the Department of Economic and Community
264 Development to equal or exceed Forty Thousand Dollars (\$40,000.00)
265 within three (3) years of the date of the first incentive payment;
266 and

267 (iii) In no event shall incentive payments,
268 cumulatively, exceed the estimated net direct state benefits;

269 (g) "Gross payroll" means wages for new direct jobs;
270 and

271 (h) "Establishment" means any business or governmental
272 entity, no matter what legal form, including, but not limited to,
273 a sole proprietorship; partnership; corporation or combination of
274 corporations which have a central parent corporation which makes
275 corporate management decisions such as those involving
276 consolidation, acquisition, merger or expansion; federal agency;
277 political subdivision of the State of Mississippi; or trust
278 authority; provided, distinct, identifiable subunits of such
279 entities may be determined to be an establishment, for all
280 purposes of this act, by the Department of Economic and Community
281 Development subject to the following conditions:

282 (i) The entity must have a minimum payroll of Two
283 Million Five Hundred Thousand Dollars (\$2,500,000.00) and the
284 subunit must also have or will have a minimum payroll of Two
285 Million Five Hundred Thousand Dollars (\$2,500,000.00);

286 (ii) The subunit is engaged in an activity or
287 service or produces a product which is demonstratively independent
288 and separate from the entity's other activities, services or
289 products and could be conducted or produced in the absence of any
290 other activity, service or production of the entity;

291 (iii) The entity has an accounting system capable
292 of tracking or facilitating an audit of the subunit's payroll,
293 expenses, revenue and production. Limited interunit overlap of
294 administrative and purchasing functions shall not disqualify a
295 subunit from consideration as an establishment by the Department
296 of Economic and Community Development;

297 (iv) The entity has not previously had a subunit
298 determined to be an establishment pursuant to this act; and

299 (v) It is determined by the Department of Economic
300 and Community Development that the entity will have a probable net
301 gain in total employment within the incentive period.

302 The Department of Economic and Community Development may
303 promulgate rules to further limit the circumstances under which a
304 subunit may be considered an establishment. The Department of
305 Economic and Community Development shall promulgate rules to
306 determine whether a subunit of an entity achieves a net gain in
307 total employment. The Department of Economic and Community
308 Development shall establish criteria for determining the period of
309 time within which such gain must be demonstrated and a method for
310 determining net gain in total employment.

311 SECTION 4. There is created the Incentive Approval Committee
312 which shall consist of the Executive Director of the Department of
313 Economic and Community Development, the Executive Director of the
314 Department of Finance and Administration and the Chairman of the
315 State Tax Commission. The committee shall determine, upon initial
316 application on a form approved by the committee, if an
317 establishment is engaged in a basic industry as defined in Section
318 3 of this act.

319 SECTION 5. (1) Except as otherwise provided in subsection
320 (8) of this section, an establishment that meets the
321 qualifications specified in the Mississippi Quality Jobs Program
322 Act may receive quarterly incentive payments for a ten-year period
323 from the State Tax Commission pursuant to the provisions of the
324 Mississippi Quality Jobs Program Act in an amount which shall be
325 equal to the net benefit rate multiplied by the actual gross
326 payroll of new direct jobs for a calendar quarter as verified by
327 the Mississippi Employment Security Commission.

328 (2) In order to receive incentive payments, an establishment
329 shall apply to the Department of Economic and Community
330 Development. The application shall be on a form prescribed by the
331 department and shall contain such information as may be required
332 by the department to determine if the applicant is qualified.

333 (3) Except as otherwise provided by subsection (4) or (5) of
334 this section, in order to qualify to receive such payments, the

335 establishment applying shall be required to:

336 (a) Be engaged in a basic industry;

337 (b) Have an annual gross payroll for new direct jobs
338 projected by the Department of Economic and Community Development
339 to equal or exceed Two Million Five Hundred Thousand Dollars
340 (\$2,500,000.00) within three (3) years of the anticipated date on
341 which the establishment will receive its first incentive payment;
342 and

343 (c) Have a number of full-time-equivalent employees
344 working an average of twenty-five (25) or more hours per week in
345 new direct jobs equal to or in excess of eighty percent (80%) of
346 the total number of new direct jobs.

347 (4) In order to qualify to receive incentive payments as
348 authorized by the Mississippi Quality Jobs Program Act, an
349 establishment engaged in an activity described under:

350 (a) Any Industry Group Number under Major Group 20 of
351 Division D of the Standard Industrial Classification Manual, and
352 Major Group 87 of the Standard Industrial Classification Manual as
353 described in Section 3(1)(a)(iv) shall be required to:

354 (i) Have an annual gross payroll for new direct
355 jobs projected by the Department of Economic and Community
356 Development to equal or exceed One Million Five Hundred Thousand
357 Dollars (\$1,500,000.00) within three (3) years of the anticipated
358 date on which the establishment will receive its first incentive
359 payment and make, or which will make within one (1) year, at least
360 seventy-five percent (75%) of its total sales, as determined by
361 the Incentive Approval Committee, to out-of-state customers or
362 buyers, to in-state customers or buyers if the product or service
363 is resold by the purchaser to an out-of-state customer or buyer
364 for ultimate use, or to the federal government, unless the annual
365 gross payroll equals or exceeds Two Million Five Hundred Thousand
366 Dollars (\$2,500,000.00) in which case the requirements for
367 purchase of output provided by this subparagraph (i) shall not

368 apply; and

369 (ii) Have a number of full-time-equivalent
370 employees working an average of twenty-five (25) or more hours per
371 week in new direct jobs equal to or in excess of eighty percent
372 (80%) of the total number of new direct jobs;

373 (b) Auxiliary Code Number 2 of the Standard Industrial
374 Classification Manual, as described in Section 3(1)(a)(v) of this
375 act, shall be required to:

376 (i) Have an annual gross payroll for new direct
377 jobs projected by the Department of Economic and Community
378 Development to equal or exceed One Million Five Hundred Thousand
379 Dollars (\$1,500,000.00) within three (3) years of the anticipated
380 date on which the establishment will receive its first incentive
381 payment; and

382 (ii) Have a number of full-time-equivalent
383 employees working an average of twenty-five (25) or more hours per
384 week in new direct jobs equal to or in excess of eighty percent
385 (80%) of the total number of new direct jobs.

386 (5) An establishment that locates its principal business
387 activity on a site consisting of at least ten (10) acres which has
388 been determined to be contaminated by any substance regulated by a
389 federal or state statute governing environmental conditions for
390 real property and which:

391 (a) Is a federal Superfund removal site;

392 (b) Is listed on the National Priorities List
393 established under Section 9605 of Title 42 of the United States
394 Code;

395 (c) Has been formally deferred to the state in lieu of
396 listing on the National Priorities List; or

397 (d) Has been remediated pursuant to an order of the
398 Department of Environmental Quality,
399 shall qualify for incentive payments irrespective of its actual
400 gross payroll or the number of full-time-equivalent employees

401 engaged in new direct jobs.

402 In order to qualify for the incentive payments pursuant to
403 this subsection (5), the establishment shall conduct the activity
404 resulting in at least eighty percent (80%) of its total annual
405 gross revenue, whether from the sale of products or services or
406 both products and services, at the physical location which has
407 been determined not to comply with the federal or state statutes
408 described in this subsection (5) with respect to environmental
409 conditions for real property. The establishment shall be subject
410 to all other requirements of the Mississippi Quality Jobs Program
411 Act other than the exemptions provided by this subsection (5).

412 (6) The Department of Economic and Community Development
413 shall determine if the applicant is qualified to receive incentive
414 payments. If the applicant is determined to be qualified by the
415 department, the department shall conduct a cost/benefit analysis
416 to determine the estimated net direct state benefits and the net
417 benefit rate applicable for a ten-year period and to estimate the
418 amount of gross payroll for a ten-year period. In conducting such
419 cost/benefit analysis, the department shall consider quantitative
420 factors, such as the anticipated level of new tax revenues to the
421 state along with the added cost to the state of providing
422 services, and such other criteria as deemed appropriate by the
423 department. In no event shall incentive payments, cumulatively,
424 exceed the estimated net direct state benefits.

425 (7) Upon approval of such an application, the Department of
426 Economic and Community Development shall notify the State Tax
427 Commission and shall provide it with a copy of the application and
428 the results of the cost/benefit analysis. The State Tax
429 Commission may require the qualified establishment to submit such
430 additional information as may be necessary to administer the
431 provisions of this act. The approved establishment shall report
432 to the State Tax Commission periodically to show its continued
433 eligibility for incentive payments. The establishment may be

434 audited by the State Tax Commission to verify such eligibility.
435 Once the establishment is approved, an agreement shall be deemed
436 to exist between the establishment and the State of Mississippi,
437 requiring the continued incentive payment to be made as long as
438 the establishment retains its eligibility.

439 (8) A municipality with a population of less than one
440 hundred thousand (100,000) persons in which an establishment
441 eligible to receive quarterly incentive payments pursuant to the
442 provisions of this section is located may file a claim with the
443 State Tax Commission for up to twenty-five percent (25%) of the
444 amount of such payment. The amount of such claim shall not exceed
445 amounts paid by the municipality for direct costs of municipal
446 infrastructure improvements to provide water and sewer service to
447 the establishment. Such claim shall not be approved by the State
448 Tax Commission unless the municipality and the establishment have
449 entered into a written agreement for such claims to be filed by
450 the municipality prior to submission of the application of the
451 establishment pursuant to the provisions of this section. If such
452 claim is approved, the amount of the payment to the establishment
453 made under Section 7 of this act shall be reduced by the amount of
454 the approved claim by the municipality and the State Tax
455 Commission shall issue a warrant to the municipality in the amount
456 of the approved claim in the same manner as warrants are issued to
457 qualifying establishments.

458 SECTION 6. (1) There is created in the State Treasury a
459 special fund to be known as the Mississippi Quality Jobs Program
460 Incentive Payment Fund, into which shall be deposited such money
461 as the Legislature may provide by appropriation. The money in the
462 fund shall be used for the purpose of making the incentive
463 payments authorized under this act.

464 (2) The Mississippi Quality Jobs Program Incentive Payment
465 Fund shall be administered by the State Tax Commission, and monies
466 in the fund shall be expended upon appropriation by the

467 Legislature. Unexpended amounts remaining in the fund at the end
468 of the fiscal year shall not lapse into the General Fund, and any
469 interest earned on amounts in the fund shall be deposited to the
470 credit of the fund.

471 (3) The liability of the State of Mississippi to make the
472 incentive payments authorized under this act shall be limited to
473 the balance contained in the fund.

474 SECTION 7. (1) As soon as practicable after the end of a
475 calendar quarter for which an establishment has qualified to
476 receive an incentive payment, the establishment shall file a claim
477 for the payment with the State Tax Commission and shall specify
478 the actual number and gross payroll of new direct jobs for the
479 establishment for the calendar quarter. The State Tax Commission
480 shall verify the actual gross payroll for new direct jobs for the
481 establishment for such calendar quarter. If the State Tax
482 Commission is not able to provide such verification utilizing all
483 available resources, the State Tax Commission may request such
484 additional information from the establishment as may be necessary
485 or may request the establishment to revise its claim.

486 (2) If the actual verified gross payroll for four (4)
487 consecutive calendar quarters does not equal or exceed the
488 applicable total required by Section 5 of this act within three
489 (3) years of the date of the first incentive payment, or does not
490 equal or exceed the applicable total required by Section 5 of this
491 act at any other time during the ten-year period after the date
492 the first payment was made, the incentive payments shall not be
493 made and shall not be resumed until such time as the actual
494 verified gross payroll equals or exceeds the amounts specified in
495 Section 5 of this act.

496 (3) If the average annualized wage required for an
497 establishment locating its principal business activity in a
498 high-employment county subject to the provisions of Section 5(6)
499 of this act does not equal or exceed Eighteen Thousand Seven

500 Hundred Twenty Dollars (\$18,720.00) within three (3) years of the
501 date of the first incentive payment, the incentive payments shall
502 not be made and shall not be resumed until such time as such
503 requirements are met.

504 (4) In no event shall incentive payments, cumulatively,
505 exceed the estimated net direct state benefits.

506 (5) An establishment that has qualified pursuant to Section
507 5 of this act may receive payments only in accordance with the
508 provisions under which it initially applied and was approved. If
509 an establishment that is receiving incentive payments expands, it
510 may apply for additional incentive payments based on the gross
511 payroll anticipated from the expansion only, pursuant to Section 5
512 of this act.

513 (6) An establishment that is receiving incentive payments
514 may not apply for additional incentive payments for any new
515 projects until twelve (12) quarters after receipt of the first
516 incentive payment, or until the establishment's actual verified
517 gross payroll for new direct jobs equals or exceeds Two Million
518 Five Hundred Thousand Dollars (\$2,500,000.00) during any four (4)
519 consecutive calendar quarter period, whichever comes first. After
520 meeting the requirements of this subsection, an establishment may
521 apply for additional incentive payments based upon the gross
522 payroll anticipated from an expansion only.

523 (7) As soon as practicable after verification of the actual
524 gross payroll as required by this section and except as otherwise
525 provided by Section 5(8) of this act, the State Tax Commission
526 shall issue a warrant to the establishment in the amount of the
527 net benefit rate multiplied by the actual gross payroll as
528 determined pursuant to subsection (1) of this section for the
529 calendar quarter.

530 SECTION 8. The Department of Economic and Community
531 Development and the State Tax Commission shall promulgate rules
532 necessary to implement their respective duties and

533 responsibilities under the provisions of this act.

534 SECTION 9. Any person making an application, claim for
535 payment or any report, return, statement or other instrument or
536 providing any other information pursuant to the provisions of this
537 act who willfully makes a false or fraudulent application, claim,
538 report, return, statement, invoice or other instrument or who
539 willfully provides any false or fraudulent information, or any
540 person who willfully aids or abets another in making such false or
541 fraudulent application, claim, report, return, statement, invoice
542 or other instrument or who willfully aids or abets another in
543 providing any false or fraudulent information, upon conviction,
544 shall be guilty of a felony punishable by the imposition of a fine
545 of not less than One Thousand Dollars (\$1,000.00) and not more
546 than Fifty Thousand Dollars (\$50,000.00), or imprisonment in the
547 State Penitentiary for not less than two (2) years and not more
548 than five (5) years, or by both such fine and imprisonment. Any
549 person convicted of a violation of this section shall be liable
550 for the repayment of all incentive payments which were paid to the
551 establishment. Interest shall be due on such payments at the rate
552 of ten percent (10%) per annum.

553 SECTION 10. The Department of Economic and Community
554 Development shall prepare triennially a report which shall
555 include, but not be limited to, documentation of the new direct
556 jobs created under this act and a fiscal analysis of the costs and
557 benefits of the program to the state. The report shall be
558 submitted to the Speaker of the House of Representatives, the
559 President Pro Tempore of the Senate and the Governor of this state
560 no later than March 1, 2003, and every three (3) years thereafter.
561 The report may be used for the purpose of determining whether to
562 continue the program.

563 SECTION 11. This act shall take effect and be in force from
564 and after July 1, 2000.