

By: Smith

To: Finance;
Appropriations

SENATE BILL NO. 2438

1 AN ACT TO CREATE THE "MISSISSIPPI CREATE JOBS PROGRAM ACT; TO
2 AUTHORIZE THE STATE TAX COMMISSION TO MAKE INCENTIVE PAYMENTS FOR
3 ESTABLISHMENTS ENGAGING IN CERTAIN BASIC INDUSTRIES; TO CREATE THE
4 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 MISSISSIPPI DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT;
15 TO PROVIDE THE CRITERIA FOR ELIGIBILITY FOR INCENTIVE PAYMENTS; TO
16 CREATE THE MISSISSIPPI CREATE JOBS PROGRAM INCENTIVE PAYMENT FUND
17 FROM WHICH INCENTIVE PAYMENTS SHALL BE MADE PURSUANT TO THIS ACT;
18 TO PROVIDE THAT SUCH FUND SHALL BE FUNDED BY LEGISLATIVE
19 APPROPRIATION; TO PROVIDE THAT THE LIABILITY OF THE STATE TO MAKE
20 INCENTIVE PAYMENTS UNDER THIS ACT SHALL BE LIMITED TO THE BALANCE
21 CONTAINED IN SUCH FUND; TO PROVIDE FOR CRIMINAL PENALTIES FOR
22 WILLFULLY MAKING A FALSE OR FRAUDULENT APPLICATION, CLAIM, REPORT,
23 RETURN, STATEMENT, INVOICE OR OTHER INSTRUMENT OR FOR WILLFULLY
24 MAKING A FALSE OR FRAUDULENT STATEMENT IN CONNECTION WITH THIS
25 ACT; AND FOR RELATED 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 Create 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 pursuant to this
35 act in 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 herein shall be construed to constitute a
49 guarantee or assumption by the State of Mississippi of any debt of
50 any individual, company, corporation or association nor to
51 authorize the credit of the State of Mississippi to be given,
52 pledged or loaned to any individual, company, corporation or
53 association.

54 SECTION 3. (1) As used in this act:

55 (a) "Basic industry" means:

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

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

63 (A) An establishment engaged therein

64 qualifies as an exempt wholesale generator as defined by 15 USCS,
65 Section 79z-5a;

66 (B) The exempt wholesale generator facility
67 consumes from sources located within the state at least ninety
68 percent (90%) of the total energy used to produce the electrical
69 output which qualifies for the specialized treatment provided by
70 the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, as
71 amended, and federal regulations adopted pursuant thereto;

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

79 (D) The facility is constructed on or after
80 July 1, 2000;

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

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

90 (v) An activity described by Industry Group Number
91 873 of Major Group 87, Division I of the Standard Industrial

92 Classification (SIC) Manual, latest revision, Industry Numbers
93 8731, 8732, 8733 and 8734;

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

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

101 (viii) Adjustment and collection services, as
102 defined or classified under Industry Number 7322 of Major Group 73
103 of the Standard Industrial Classification (SIC) Manual, latest
104 version, if seventy-five percent (75%) of the loans to be serviced
105 were made by out-of-state debtors;

106 (ix) Transportation by air, as defined or
107 classified under Major Group 45 of the SIC Manual, latest version,
108 if the following facilities are located in this state:

109 (A) The corporate headquarters of an
110 establishment classified therein; and

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

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

129 (xi) The following, if an establishment classified
130 therein has or will have within one (1) year sales of at least
131 seventy-five percent (75%) of its total sales, as determined by
132 the Incentive Approval Committee, to out-of-state customers or
133 buyers, to in-state customers or buyers if the product or service
134 is resold by the purchaser to an out-of-state customer or buyer
135 for ultimate use, or to the federal government:

136 (A) Motor freight transportation and
137 warehousing, as defined or classified under Major Group 42 of the
138 SIC Manual, latest version;

139 (B) Arrangement of passenger transportation,
140 as defined or classified under Industry Group 472 of the SIC
141 Manual, latest version;

142 (C) Arrangement of transportation of freight
143 or cargo, as defined or classified under Industry Group 473 of the
144 SIC Manual, latest version;

145 (D) Insurance carriers, as defined or
146 classified under Major Group 63 of the SIC Manual, latest version;

147 (E) Mailing, reproduction, commercial art and

148 photography and stenographic services, as defined or classified
149 under Industry Group 733 of the SIC Manual, latest version;

150 (F) Services to dwellings and other
151 buildings, as defined or classified under Industry Group 734 of
152 the SIC Manual, latest version;

153 (G) Miscellaneous equipment rental and
154 leasing, as defined or classified under Industry Group 735 of the
155 SIC Manual, latest version;

156 (H) Personnel supply services, as defined or
157 classified under Industry Group 736 of the SIC Manual, latest
158 version;

159 (I) Computer programming, data processing and
160 other computer-related services, as defined or classified under
161 Industry Group 737 of the SIC Manual, latest version;

162 (J) Miscellaneous business services, as
163 defined or classified under Industry Group 738 of the SIC Manual,
164 latest version;

165 (K) Medical and dental laboratories, as
166 defined or classified under Industry Group 807 of the SIC Manual,
167 latest version;

168 (L) Engineering and management services, as
169 defined or classified under Major Group 87 of the SIC Manual,
170 latest version;

171 (M) Communication services, as defined or
172 classified under Industrial Number 4899 of Major Group 48 of the
173 SIC Manual, latest version;

174 (N) Refuse systems, as defined or classified
175 under Industrial Number 4953 of Major Group 49 of the SIC Manual,

176 latest version, provided that the establishment is primarily
177 engaged in the capture and distribution of methane gas produced
178 within a landfill;

179 (O) General wholesale distribution of
180 groceries, as described in Industry Number 5141 of the SIC Manual,
181 latest version; and

182 (P) Processing of insurance claims, as
183 described in Industry Number 6411 of the SIC Manual, latest
184 version; provided, activities described in Industry Number 6411 of
185 the SIC Manual, latest version, other than processing of insurance
186 claims shall not be included for purposes of this subdivision.

187 An establishment shall not be considered to be engaged in a
188 basic industry unless it offers, or will offer within one hundred
189 eighty (180) days of the date it receives the first incentive
190 payment pursuant to the provisions of this act, a basic health
191 benefits plan to the individuals it employs in new direct jobs in
192 this state which is determined by the Department of Economic and
193 Community Development to consist of the following elements or
194 elements substantially equivalent thereto:

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

197 (ii) Coverage for basic hospital care;

198 (iii) Coverage for physician care;

199 (iv) Coverage for mental health care;

200 (v) Coverage for substance abuse treatment;

201 (vi) Coverage for prescription drugs; and

202 (vii) Coverage for prenatal care;

203 (b) "New direct job" means full-time-equivalent

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

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

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

227 (i) The costs of education of new state resident
228 children;

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

231 (iii) The costs of other state services to be

232 provided to new state residents; and

233 (iv) The costs of other state services.

234 (e) "Estimated net direct state benefits" means the
235 estimated direct state benefits less the estimated direct state
236 costs;

237 (f) "Net benefit rate" means the estimated net direct
238 state benefits computed as a percentage of gross payroll; provided
239 that:

240 (i) Except as otherwise provided in this
241 paragraph, the net benefit rate may be variable and shall not
242 exceed five percent (5%);

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

247 (A) Bids were solicited and accepted by the
248 United States Department of Defense from facilities located
249 outside this state;

250 (B) The term is or is renewable for not less
251 than twenty (20) years; and

252 (C) The average annual salary, excluding
253 benefits which are not subject to Mississippi income taxes, for
254 new direct jobs created as a direct result of the awarding of the
255 contract is projected by the Department of Economic and Community
256 Development to equal or exceed Forty Thousand Dollars (\$40,000.00)
257 within three (3) years of the date of the first incentive payment;
258 and

259 (iii) In no event shall incentive payments,

260 cumulatively, exceed the estimated net direct state benefits;

261 (g) "Gross payroll" means wages for new direct jobs;

262 and

263 (h) "Establishment" means any business or governmental

264 entity, no matter what legal form, including, but not limited to,

265 a sole proprietorship; partnership; corporation or combination of

266 corporations which have a central parent corporation which makes

267 corporate management decisions such as those involving

268 consolidation, acquisition, merger or expansion; federal agency;

269 political subdivision of the State of Mississippi; or trust

270 authority; provided, distinct, identifiable subunits of such

271 entities may be determined to be an establishment, for all

272 purposes of this act, by the Department of Economic and Community

273 Development subject to the following conditions:

274 (i) The entity must have a minimum payroll of Two

275 Million Five Hundred Thousand Dollars (\$2,500,000.00) and the

276 subunit must also have or will have a minimum payroll of Two

277 Million Five Hundred Thousand Dollars (\$2,500,000.00);

278 (ii) The subunit is engaged in an activity or

279 service or produces a product which is demonstratively independent

280 and separate from the entity's other activities, services or

281 products and could be conducted or produced in the absence of any

282 other activity, service or production of the entity;

283 (iii) The entity has an accounting system capable

284 of tracking or facilitating an audit of the subunit's payroll,

285 expenses, revenue and production. Limited interunit overlap of

286 administrative and purchasing functions shall not disqualify a

287 subunit from consideration as an establishment by the Department

288 of Economic and Community Development;

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

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

294 The Department of Economic and Community Development may
295 promulgate rules to further limit the circumstances under which a
296 subunit may be considered an establishment. The Department of
297 Economic and Community Development shall promulgate rules to
298 determine whether a subunit of an entity achieves a net gain in
299 total employment. The Department of Economic and Community
300 Development shall establish criteria for determining the period of
301 time within which such gain must be demonstrated and a method for
302 determining net gain in total employment.

303 SECTION 4. There is created the Incentive Approval Committee
304 which shall consist of the Executive Director of the Department of
305 Economic and Community Development, the Executive Director of the
306 Department of Finance and Administration and the Chairman of the
307 State Tax Commission. The committee shall determine, upon initial
308 application on a form approved by the committee, if an
309 establishment is engaged in a basic industry as defined in Section
310 3 of this act.

311 SECTION 5. (1) Except as otherwise provided in subsection
312 (8) of this section, an establishment which meets the
313 qualifications specified in the Mississippi Create Jobs Program
314 Act may receive quarterly incentive payments for a ten-year period
315 from the State Tax Commission pursuant to the provisions of the

316 Mississippi Create Jobs Program Act in an amount which shall be
317 equal to the net benefit rate multiplied by the actual gross
318 payroll of new direct jobs for a calendar quarter as verified by
319 the Mississippi Employment Security Commission.

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

325 (3) Except as otherwise provided by subsection (4) or (5) of
326 this section, in order to qualify to receive such payments, the
327 establishment applying shall be required to:

328 (a) Be engaged in a basic industry;

329 (b) Have an annual gross payroll for new direct jobs
330 projected by the department to equal or exceed Two Million Five
331 Hundred Thousand Dollars (\$2,500,000.00) within three (3) years of
332 the anticipated date on which the establishment will receive its
333 first incentive payment; and

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

338 (4) In order to qualify to receive incentive payments as
339 authorized by the Mississippi Create Jobs Program Act, an
340 establishment engaged in an activity described under:

341 (a) Any Industry Group Number under Major Group 20 of
342 Division D of the Standard Industrial Classification (SIC) Manual
343 and Major Group 87 of the Standard Industrial Classification (SIC)

344 Manual as described in Section 3(1)(a)(iv) shall be required to:

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

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

363 (b) Auxiliary Code Number 2 of the Standard Industrial
364 Classification (SIC) Manual, as described in Section 3(1)(a)(x) of
365 this act, shall be required to:

366 (i) Have an annual gross payroll for new direct
367 jobs projected by the department to equal or exceed One Million
368 Five Hundred Thousand Dollars (\$1,500,000.00) within three (3)
369 years of the anticipated date on which the establishment will
370 receive its first incentive payment; and

371 (ii) Have a number of full-time equivalent

372 employees working an average of twenty-five (25) or more hours per
373 week in new direct jobs equal to or in excess of eighty percent
374 (80%) of the total number of new direct jobs.

375 (5) An establishment which locates its principal business
376 activity on a site consisting of at least ten (10) acres which has
377 been determined to be contaminated by any substance regulated by a
378 federal or state statute governing environmental conditions for
379 real property and which:

380 (a) Is a federal Superfund removal site;

381 (b) Is listed on the National Priorities List
382 established under Section 9605 of Title 42 of the United States
383 Code;

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

386 (d) Has been remediated pursuant to an order of the
387 Department of Environmental Quality,

388 shall qualify for incentive payments irrespective of its actual
389 gross payroll or the number of full-time-equivalent employees
390 engaged in new direct jobs.

391 In order to qualify for the incentive payments pursuant to
392 this subsection, the establishment shall conduct the activity
393 resulting in at least eighty percent (80%) of its total annual
394 gross revenue, whether from the sale of products or services or
395 both products and services, at the physical location which has
396 been determined not to comply with the federal or state statutes
397 described in this subsection with respect to environmental
398 conditions for real property. The establishment shall be subject
399 to all other requirements of the Mississippi Create Jobs Program

400 Act other than the exemptions provided by this subsection.

401 (6) The Department of Economic and Community Development
402 shall determine if the applicant is qualified to receive incentive
403 payments. If the applicant is determined to be qualified by the
404 department, the department shall conduct a cost/benefit analysis
405 to determine the estimated net direct state benefits and the net
406 benefit rate applicable for a ten-year period and to estimate the
407 amount of gross payroll for a ten-year period. In conducting such
408 cost/benefit analysis, the department shall consider quantitative
409 factors, such as the anticipated level of new tax revenues to the
410 state along with the added cost to the state of providing
411 services, and such other criteria as deemed appropriate by the
412 department. In no event shall incentive payments, cumulatively,
413 exceed the estimated net direct state benefits.

414 (7) Upon approval of such an application, the Department of
415 Economic and Community Development shall notify the State Tax
416 Commission and shall provide it with a copy of the application and
417 the results of the cost/benefit analysis. The State Tax
418 Commission may require the qualified establishment to submit such
419 additional information as may be necessary to administer the
420 provisions of this act. The approved establishment shall report
421 to the State Tax Commission periodically to show its continued
422 eligibility for incentive payments. The establishment may be
423 audited by the State Tax Commission to verify such eligibility.
424 Once the establishment is approved, an agreement shall be deemed
425 to exist between the establishment and the State of Mississippi,
426 requiring the continued incentive payment to be made as long as
427 the establishment retains its eligibility.

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

447 SECTION 6. (1) There is created in the State Treasury a
448 special fund to be known as the Mississippi Create Jobs Program
449 Incentive Payment Fund, into which shall be deposited such money
450 as the Legislature may provide by appropriation. The money in the
451 fund shall be used for the purpose of making the incentive
452 payments authorized under this act.

453 (2) The Mississippi Create Jobs Program Incentive Payment
454 Fund shall be administered by the State Tax Commission, and monies
455 in the fund shall be expended upon appropriation by the

456 Legislature. Unexpended amounts remaining in the fund at the end
457 of the fiscal year shall not lapse into the General Fund, and any
458 interest earned on amounts in the fund shall be deposited to the
459 credit of the fund.

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

463 SECTION 7. (1) As soon as practicable after the end of a
464 calendar quarter for which an establishment has qualified to
465 receive an incentive payment, the establishment shall file a claim
466 for the payment with the State Tax Commission and shall specify
467 the actual number and gross payroll of new direct jobs for the
468 establishment for the calendar quarter. The State Tax Commission
469 shall verify the actual gross payroll for new direct jobs for the
470 establishment for such calendar quarter. If the State Tax
471 Commission is not able to provide such verification utilizing all
472 available resources, the State Tax Commission may request such
473 additional information from the establishment as may be necessary
474 or may request the establishment to revise its claim.

475 (2) If the actual verified gross payroll for four (4)
476 consecutive calendar quarters does not equal or exceed the
477 applicable total required by Section 5 of this act within three
478 (3) years of the date of the first incentive payment, or does not
479 equal or exceed the applicable total required by Section 5 of this
480 act at any other time during the ten-year period after the date
481 the first payment was made, the incentive payments shall not be
482 made and shall not be resumed until such time as the actual
483 verified gross payroll equals or exceeds the amounts specified in

484 Section 5 of this act.

485 (3) If the average annualized wage required for an
486 establishment locating its principal business activity in a
487 high-employment county subject to the provisions of Section 5(6)
488 of this act does not equal or exceed Eighteen Thousand Seven
489 Hundred Twenty Dollars (\$18,720.00) within three (3) years of the
490 date of the first incentive payment, the incentive payments shall
491 not be made and shall not be resumed until such time as such
492 requirements are met.

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

495 (5) An establishment that has qualified pursuant to Section
496 5 of this act may receive payments only in accordance with the
497 provisions under which it initially applied and was approved. If
498 an establishment that is receiving incentive payments expands, it
499 may apply for additional incentive payments based on the gross
500 payroll anticipated from the expansion only, pursuant to Section
501 3604 of this title.

502 (6) An establishment that is receiving incentive payments
503 may not apply for additional incentive payments for any new
504 projects until twelve (12) quarters after receipt of the first
505 incentive payment, or until the establishment's actual verified
506 gross payroll for new direct jobs equals or exceeds Two Million
507 Five Hundred Thousand Dollars (\$2,500,000.00) during any four (4)
508 consecutive calendar quarter period, whichever comes first. After
509 meeting the requirements of this subsection, an establishment may
510 apply for additional incentive payments based upon the gross
511 payroll anticipated from an expansion only.

512 (7) As soon as practicable after verification of the actual
513 gross payroll as required by this section and except as otherwise
514 provided by Section 5(8) of this act, the State Tax Commission
515 shall issue a warrant to the establishment in the amount of the
516 net benefit rate multiplied by the actual gross payroll as
517 determined pursuant to subsection (1) of this section for the
518 calendar quarter.

519 SECTION 8. The Department of Economic and Community
520 Development and the State Tax Commission shall promulgate rules
521 necessary to implement their respective duties and
522 responsibilities under the provisions of this act.

523 SECTION 9. Any person making an application, claim for
524 payment or any report, return, statement or other instrument or
525 providing any other information pursuant to the provisions of this
526 act who willfully makes a false or fraudulent application, claim,
527 report, return, statement, invoice or other instrument or who
528 willfully provides any false or fraudulent information, or any
529 person who willfully aids or abets another in making such false or
530 fraudulent application, claim, report, return, statement, invoice
531 or other instrument or who willfully aids or abets another in
532 providing any false or fraudulent information, upon conviction,
533 shall be guilty of a felony punishable by the imposition of a fine
534 of not less than One Thousand Dollars (\$1,000.00) and not more
535 than Fifty Thousand Dollars (\$50,000.00), or imprisonment in the
536 State Penitentiary for not less than two (2) years and not more
537 than five (5) years, or by both such fine and imprisonment. Any
538 person convicted of a violation of this section shall be liable
539 for the repayment of all incentive payments which were paid to the

540 establishment. Interest shall be due on such payments at the rate
541 of ten percent (10%) per annum.

542 SECTION 10. The Department of Economic and Community
543 Development shall prepare triennially a report which shall
544 include, but not be limited to, documentation of the new direct
545 jobs created under this act and a fiscal analysis of the costs and
546 benefits of the program to the state. The report shall be
547 submitted to the President Pro Tempore of the Senate, the Speaker
548 of the House of Representatives and the Governor of this state no
549 later than March 1, 2000, and every three (3) years thereafter.
550 The report may be used for the purpose of determining whether to
551 continue the program.

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