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To: Economic and Workforce
Development

SENATE BILL NO. 2563
(As Sent to Governor)

1 AN ACT TO CREATE "THE INCENTIVES TRANSPARENCY FOR A
2 PROSPEROUS MISSISSIPPI ACT"; TO DEFINE TERMS; TO SET INITIAL
3 REQUIREMENTS FOR THE AWARDING OF AN ECONOMIC INCENTIVE BY THE
4 MISSISSIPPI DEVELOPMENT AUTHORITY TO A CERTIFIED APPLICANT FOR A
5 QUALIFIED ECONOMIC DEVELOPMENT PROJECT, INCLUDING A FINDING BY THE
6 AUTHORITY THAT THE PROJECT IS IN THE BEST INTERESTS OF THE STATE;
7 TO REQUIRE THAT A CERTIFIED APPLICANT AWARDED AN ECONOMIC
8 INCENTIVE ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE STATE
9 THROUGH THE AUTHORITY, CONTAINING PERFORMANCE MEASURES FOR
10 ATTAINMENT WITHIN A PERIOD OF TIME DETERMINED BY THE MDA; TO
11 PROVIDE THAT FAILURE TO MEET THE MEASURES WILL DISQUALIFY AN
12 APPLICANT FROM THE AWARD OF AN ECONOMIC INCENTIVE FOR FIVE YEARS
13 OR UNTIL THE RECIPIENT EITHER CURES THE DEFAULT OR REPAYS THE
14 INCENTIVE, WHICHEVER OCCURS FIRST; TO REQUIRE THAT A CERTIFIED
15 APPLICANT FILE AN ANNUAL REPORT WITH THE AUTHORITY FOR ANY
16 QUALIFIED ECONOMIC DEVELOPMENT PROJECT FOR THE TAX YEAR ENDING
17 DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR; TO SPECIFY THE
18 CONTENT OF THE CERTIFIED APPLICANT'S ANNUAL REPORT; TO REQUIRE
19 THAT THE EXECUTIVE DIRECTOR OF THE AUTHORITY FILE A REPORT WITH
20 THE STATE CONTAINING DATA FOR EACH YEAR THAT THE CERTIFIED
21 APPLICANT RECEIVED AN ECONOMIC INCENTIVE; TO SPECIFY THE CONTENT
22 OF THE AUTHORITY'S ANNUAL REPORT; TO CLARIFY THAT SECTIONS 2
23 THROUGH 6 OF THIS ACT APPLY ONLY TO CERTIFIED APPLICANTS FOR
24 ECONOMIC INCENTIVES AWARDED AFTER JULY 1, 2020, WITH APPLICANTS
25 AWARDED ECONOMIC INCENTIVES BEFORE THAT DATE HAVING THE OPTION OF
26 FILING THE APPLICABLE INFORMATION VOLUNTARILY; TO AMEND SECTION
27 57-1-14, MISSISSIPPI CODE OF 1972, TO EXCLUDE FROM CONFIDENTIALITY
28 INFORMATION REQUIRED TO BE INCLUDED IN THE ANNUAL REPORT; AND FOR
29 RELATED PURPOSES.

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



31 **SECTION 1. Short title.** Sections 1 through 6 of this act
32 shall be known and may be cited as the "Incentives Transparency
33 for a Prosperous Mississippi Act."

34 **SECTION 2. Definitions.** For purposes of Sections 2 through
35 6 of this act, the following words shall have the meanings
36 ascribed herein unless the context otherwise requires:

37 (a) "Certified applicant" or "applicant" means any
38 privately owned corporation, partnership, company or other
39 for-profit business enterprise or any individual receiving one or
40 more economic incentives worth, in total, in excess of Five
41 Million Dollars (\$5,000,000.00).

42 (b) "Economic incentive" or "incentive" means any
43 grants and/or loans awarded by the department to the certified
44 applicant, and in exchange the certified applicant agrees to take
45 some action that contributes to economic development.

46 (c) "Qualified economic development project" means a
47 business or other economic development project receiving one or
48 more economic incentives worth, in total, in excess of Five
49 Million Dollars (\$5,000,000.00).

50 (d) "Full-time employee" means an individual who is
51 employed for consideration for an average of at least thirty-five
52 (35) hours each week or who renders any other standard of service
53 generally accepted by custom or specified by contract as full-time
54 employment.



55 (e) "Part-time employee" means an individual who is
56 employed for consideration for an average of less than thirty-five
57 (35) hours each week or who renders any other standard of service
58 generally accepted by custom or specified by contract as part-time
59 employment.

60 (f) "Employee of a temporary employment agency" means
61 an individual who is hired by a temporary employment agency
62 providing temporary or contract jobs, where the individual
63 performing the work is either an independent contractor or an
64 employee of the temporary employment agency, rather than an
65 employee of the certified applicant or qualified economic
66 development project receiving an economic incentive.

67 (g) "New employee" means a full-time employee first
68 employed by a certified applicant after the applicant enters into
69 an agreement to receive the economic incentive.

70 (h) "Annual report" means the report described in
71 Section 5 of this act.

72 **SECTION 3. Initial requirements.** (1) The awarding of an
73 economic incentive to a certified applicant is contingent on a
74 finding by the department that the applicant's qualified economic
75 development project, including, but not limited to, the retention,
76 expansion or location of the applicant's business is clearly in
77 the best interests of this state. This finding shall be contained
78 in a resolution adopted by the department. The resolution shall



79 set forth the evidence and reasons supporting this finding,
80 including, but not limited to:

81 (a) Supporting evidence such as a feasibility study,
82 market trends or other data demonstrating that the qualified
83 economic development project will reach the department's stated
84 goal of the economic incentive;

85 (b) The general impact the qualified economic
86 development project will have on the statewide and local economy
87 and community;

88 (c) The number of full-time, part-time or temporary
89 jobs the qualified economic development project is expected to
90 bring in to the statewide economy;

91 (d) Information on direct and indirect public and
92 private costs of the qualified economic development project; and

93 (e) Negative effects from the qualified economic
94 development project, and the assumptions on which the information
95 is based.

96 (2) The department shall share the resolution and supporting
97 evidence described in this section with the University Research
98 Center and, upon request, with the Governor, Speaker of the House
99 and President of the Senate.

100 **SECTION 4. Performance measures.** (1) A certified applicant
101 awarded an economic incentive shall enter into a memorandum of
102 understanding with the state through the department. The
103 memorandum shall contain performance measures, determined by the



104 department, that the applicant's qualified economic development
105 project is expected to meet within a specified period of time
106 determined by the department after the incentive is awarded. The
107 performance measures shall align with the department's resolution
108 and supporting evidence for the certified applicant's qualified
109 economic development project as described in Section 3 of this
110 act. The memorandum shall contain provisions allowing the state,
111 through the department or the State Auditor's office, to stop,
112 readjust or recapture all or part of the economic incentive given
113 to the applicant on noncompliance with the terms of the
114 memorandum.

115 (2) A certified applicant that fails to meet performance
116 measures as described in this section may not receive or be
117 awarded an economic incentive from the department for a period of
118 five (5) years from the date of the notice of default by the
119 department, or until a recipient either cures such default in
120 accordance with the agreement prescribed in subsection (1) of this
121 section, or satisfies the repayment of the economic incentive,
122 whichever occurs first. For purposes of this subsection (2), if
123 the applicant is an individual, the disqualification attaches to
124 the individual, and if the applicant is a business entity, the
125 disqualification attaches to the entity and to each owner or
126 shareholder of twenty percent (20%) or more of the business.

127 **SECTION 5. Annual report.** (1) On or before March 1 of each
128 year, a certified applicant shall file an annual report with the



129 department for any qualified economic development project for the
130 tax year ending during the immediately preceding calendar year,
131 referred to in this paragraph as "the report year," containing the
132 following information:

133 (a) The name and county of operation of the recipient;

134 (b) The amount of the economic incentive awarded to the
135 certified applicant;

136 (c) The purpose of the economic incentive;

137 (d) The number of full-time employees, part-time
138 employees and employees of a temporary employment agency that the
139 certified applicant agreed to hire, retain or train when the
140 economic incentive was awarded;

141 (e) The amount of the investment the certified
142 applicant expects to make in the state as a result of the
143 qualified economic development project;

144 (f) The number of all full-time employees, part-time
145 employees and employees of a temporary employment agency employed
146 by the certified applicant and based in the state on the last day
147 of the report year;

148 (g) The incremental amount of qualified investment made
149 in the report year;

150 (h) The average and median wages of all additional
151 full-time employees and part-time employees above the certified
152 applicant's base level of employment in the state whose jobs were



153 added since the first day of the first tax year in which the
154 economic incentive was awarded;

155 (i) The percentage and number of all additional
156 full-time employees and part-time employees above the certified
157 applicant's base level of employment who have access to retirement
158 benefits and health benefits; and

159 (j) The number of Mississippi-based companies included
160 in the certified applicant's supply chain.

161 (2) The department may prescribe forms for the annual
162 report.

163 (3) By October 1 of each year, the executive director of the
164 department shall file a report with the Governor, the Speaker of
165 the House, the President of the Senate, the Joint Legislative
166 Budget Committee and the members of the committees in the
167 Mississippi House and Senate having jurisdiction over taxation
168 matters, containing data on employment levels, wages and other
169 information described in this section and reported by certified
170 applicants to the department, for each year that the applicant
171 received an economic incentive. In addition to the data on
172 individual qualified economic development projects, the report
173 shall contain the following aggregate information:

174 (a) The total amount of incentives approved or awarded;

175 (b) The total amount of loans made by the department;

176 (c) The total amount of grants awarded by the

177 department;



178 (d) A description of standard terms for each loan
179 program;

180 (e) A list of projects that have met contractual
181 requirements and have been closed out by the department.

182 (4) The Department of Revenue shall provide the department
183 with the tax information required to be included in this report.

184 **SECTION 6. Limitations.** Sections 2 through 6 of this act
185 shall apply only to certified applicants for economic incentives
186 awarded by the department after July 1, 2020. Applicants awarded
187 economic incentives prior to July 1, 2020, may file the applicable
188 information voluntarily.

189 **SECTION 7.** Section 57-1-14, Mississippi Code of 1972, is
190 amended as follows:

191 57-1-14. (1) Any records of the * * * Mississippi
192 Development Authority which contain client information concerning
193 development projects shall be exempt from the provisions of the
194 Mississippi Public Records Act of 1983 for a period of two (2)
195 years after receipt of the information by the department.
196 Confidential client information as described in this section shall
197 not include the information which must be disclosed by the
198 certified applicant related to a qualified economic development
199 project in the annual report described in Section 5 of this act.

200 (2) Confidential client information in public records held
201 by the department shall be exempt from the provisions of the
202 Mississippi Public Records Act of 1983 during the period of review



203 and negotiation on a project proposal and for a period of thirty
204 (30) days after approval, disapproval or abandonment of the
205 proposal not to exceed one (1) year by the department in writing.

206 **SECTION 8.** Sections 1 through 6 of this act shall be
207 codified in Title 57, Chapter 1, Mississippi Code of 1972.

208 **SECTION 9.** This act shall take effect and be in force from
209 and after July 1, 2020.

