

*****Lost*****

AMENDMENT No. 9 PROPOSED TO

House Bill NO. 1

By Representative(s) Martinson

AN ACT TO CREATE THE "MISSISSIPPI QUALITY JOBS PROGRAM ACT"; TO AUTHORIZE THE STATE TAX COMMISSION TO MAKE INCENTIVE PAYMENTS FOR ESTABLISHMENTS ENGAGING IN CERTAIN BASIC INDUSTRIES; TO CREATE THE INCENTIVE APPROVAL COMMITTEE WHOSE DUTY SHALL BE TO DETERMINE WHETHER AN ESTABLISHMENT IS A BASIC INDUSTRY AS DEFINED IN THIS ACT; TO PROVIDE THAT QUALIFIED ESTABLISHMENTS MAY RECEIVE QUARTERLY INCENTIVE PAYMENTS FOR A TEN-YEAR PERIOD IN AN AMOUNT EQUAL TO THE TAX BENEFITS THAT ACCRUE TO THE STATE AS A RESULT OF NEW DIRECT JOBS MINUS THE ESTIMATED DIRECT STATE COSTS COMPUTED AS A PERCENTAGE OF GROSS PAYROLL OF THE ESTABLISHMENT, MULTIPLIED BY THE ACTUAL GROSS PAYROLL OF NEW DIRECT JOBS FOR A CALENDAR QUARTER AS VERIFIED BY THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION; TO PROVIDE THAT APPLICATION FOR INCENTIVE PAYMENTS SHALL BE MADE TO THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT; TO PROVIDE THE CRITERIA FOR ELIGIBILITY FOR INCENTIVE PAYMENTS; TO CREATE THE MISSISSIPPI QUALITY JOBS PROGRAM INCENTIVE PAYMENT FUND FROM WHICH INCENTIVE PAYMENTS SHALL BE MADE PURSUANT TO THIS ACT; TO PROVIDE THAT SUCH FUND SHALL BE FUNDED BY LEGISLATIVE APPROPRIATION; TO PROVIDE THAT THE LIABILITY OF THE STATE TO MAKE INCENTIVE PAYMENTS UNDER THIS ACT SHALL BE LIMITED TO THE BALANCE CONTAINED IN SUCH FUND; TO PROVIDE FOR CRIMINAL PENALTIES FOR WILLFULLY MAKING A FALSE OR FRAUDULENT APPLICATION, CLAIM, REPORT, RETURN, STATEMENT, INVOICE OR OTHER INSTRUMENT OR FOR WILLFULLY MAKING A FALSE OR

FRAUDULENT STATEMENT IN CONNECTION WITH THIS ACT; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

(a) "Basic industry" means:

(i) Manufacturing, as defined or classified under

Division D of the Standard Industrial Classification Manual,
latest version;

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

(iii) Research, development and testing laboratories;

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

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

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

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

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

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

b. A facility or facilities at which reservations for transportation provided by such an establishment

are processed, whether such services are performed by employees of the establishment, by employees of a subsidiary of or other entity affiliated with the establishment or by employees of an entity with whom the establishment has contracted for the performance of such services. This provision shall not disqualify an establishment that uses an out-of-state entity or employees for some reservations services; or

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

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

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

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

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

4. Insurance carriers, as defined or classified under Major Group 63 of the Standard Industrial

Classification Manual, latest version;

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

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

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

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

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

10. Miscellaneous business services, as defined or classified under Industry Group 738 of the Standard Industrial Classification Manual, latest version;

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

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

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

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

15. Processing of insurance claims, as described in Industry Number 6411 of the Standard Industrial

Classification Manual, latest version; provided, activities described in Industry Number 6411 of the Standard Industrial Classification Manual, latest version, other than processing of insurance claims shall not be included for purposes of this subdivision.

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

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

(ii) Coverage for basic hospital care;

(iii) Coverage for physician care;

(iv) Coverage for mental health care;

(v) Coverage for substance abuse treatment;

(vi) Coverage for prescription drugs; and

(vii) Coverage for prenatal care;

(b) "New direct job" means full-time-equivalent employment in this state in an establishment that has qualified to receive an incentive payment pursuant to this act, which employment did not exist in this state before the date of approval by the Department of Economic and Community Development of the application of the establishment pursuant to the provisions of this act. "New direct job" shall include full-time-equivalent employment in this state of employees who are employed by an entity other than the establishment that has qualified to receive an incentive payment and who are leased or otherwise provided to the qualified establishment, if such employment did not exist in this state before the date of approval by the Department of Economic and Community Development of the application of the establishment. A job shall be deemed to exist in this state

before approval of an application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months before such approval;

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

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

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

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

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

(iv) The costs of other state services;

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

(f) "Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll. In no event shall incentive payments, cumulatively, exceed the estimated net direct state benefits;

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

(h) "Establishment" means any business or governmental entity, no matter what legal form, including, but not limited to, a sole proprietorship; partnership; corporation or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger or expansion; federal agency; political subdivision of the State of Mississippi; or trust authority; provided, distinct, identifiable subunits of such entities may be determined to be an establishment, for all

purposes of this act, by the Department of Economic and Community Development subject to the following conditions:

(i) The entity shall have certain minimum payroll levels depending upon their location within the state in order to qualify for Mississippi Quality Jobs Program. Such minimum payroll levels shall be based on one (1) classification of the county in which the entity is located as established in Section 57-73-21. In counties designated as developed areas entities shall have or will create a minimum new payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00). In counties that are designated as moderately developed areas entities shall have or will create a minimum payroll of One Million Five Hundred Thousand Dollars (\$1,500,000.00). In counties designated as less developed areas entities shall have or will create a minimum new payroll of One Million Dollars (\$1,000,000.00). Payroll requirements shall be based on the designation of the county at the time of the application. The threshold established upon application will remain constant for the duration of the project;

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

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

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

The Department of Economic and Community Development may promulgate rules to further limit the circumstances under which a subunit may be considered an establishment. The Department of

Economic and Community Development shall promulgate rules to determine whether a subunit of an entity achieves a net gain in total employment. The Department of Economic and Community Development shall establish criteria for determining the period of time within which such gain must be demonstrated and a method for determining net gain in total employment.

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

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

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

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

- (a) Be engaged in a basic industry;
- (b) Have certain minimum payroll levels depending upon their location within the state in order to qualify for Mississippi Quality Jobs Program. Those minimum payroll levels

shall be based on the classification of the county in which the entity is located as established in Section 57-73-21. In counties designated as developed areas entities shall have or will create a minimum new payroll of Two Million Five Hundred Thousand Dollars (\$2,500,000.00). In counties that are designated as moderately developed areas entities shall have or will create a minimum payroll of One Million Five Hundred Thousand Dollars (\$1,500,000.00). In counties designated as less developed areas entities shall have or will create a minimum new payroll of One Million Dollars (\$1,000,000.00). The criteria for this requirement shall be based on the designation of the county at the time of the application. The threshold established upon application will remain constant for the duration of the project; and

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

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

(a) Any industry group number and division of the Standard Industrial Classification Manual set forth in Section 3 of this act and meeting the requirement as set forth shall be required to:

(i) Have an annual gross payroll for new direct jobs projected by the Department of Economic and Community Development to equal or exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) if located in a county designated as a developed area under Section 57-73-21, or a payroll equal or exceeding One Million Five Hundred Thousand Dollars (\$1,500,000.00) if located in an county designated as a moderately developed area under Section 57-73-21, or a payroll equal or exceeding One Million Dollars (\$1,000,000.00) if located in a county designated as a less developed area under Section 57-71-21,

within three (3) years of the anticipated date on which the establishment will receive its first incentive payment.

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

(b) Any Industry Group Number and Division of the Standard Industrial Classification Manual, including those identified in paragraph (a) of this subsection which are identified as the "Targeted Industry Groups" of the Mississippi Department of Economic and Community Development for the State of Mississippi shall receive an automatic additional one percent (1%) priority to be added to the base payroll incentive, provided, however, that the net benefit rate shall not exceed five percent (5%) of total benefit and shall be required to meet the requirements of paragraphs (a)(i) and (ii) of this subsection.

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

(a) Is a federal Superfund removal site;

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

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

(d) Has been remediated pursuant to an order of the Department of Environmental Quality, shall qualify for incentive payments irrespective of its actual gross payroll or the number of full-time-equivalent employees engaged in new direct jobs.

In order to qualify for the incentive payments pursuant to this subsection (5), the establishment shall conduct the activity resulting in at least eighty percent (80%) of its total annual

gross revenue, whether from the sale of products or services or both products and services, at the physical location which has been determined not to comply with the federal or state statutes described in this subsection (5) with respect to environmental conditions for real property. The establishment shall be subject to all other requirements of the Mississippi Quality Jobs Program Act other than the exemptions provided by this subsection (5).

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

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

(8) An establishment in a county designated as a less

developed area under Section 57-71-21, in which is eligible to receive quarterly incentive payments pursuant to the provision of this section shall receive the maximum total benefit; provided, however, the net benefit rate shall not exceed five percent (5%) of the total benefit.

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

(2) The Mississippi Quality Jobs Program Incentive Payment Fund shall be administered by the State Tax Commission, and monies in the fund shall be expended upon appropriation by the Legislature. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

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

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

(2) If the actual verified gross payroll for four (4) consecutive calendar quarters does not equal or exceed the

applicable total required by Section 5 of this act within three (3) years of the date of the first incentive payment, or does not equal or exceed the applicable total required by Section 5 of this act at any other time during the ten-year period after the date the first payment was made, the incentive payments shall not be made and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in Section 5 of this act.

(3) If the average annualized wage required for an establishment locating its principal business activity in a county developed area under Section 57-73-21 and subject to the provisions of Section 5(6) of this act does not equal or exceed Twenty Thousand Dollars (\$20,000.00) within three (3) years of the date of the first incentive payment, the incentive payments shall not be made and shall not be resumed until such time as such requirements are met.

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

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

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

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

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

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

SECTION 10. The Department of Economic and Community Development shall prepare triennially a report which shall include, but not be limited to, documentation of the new direct jobs created under this act and a fiscal analysis of the costs and benefits of the program to the state. The report shall be

submitted to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor of this state no later than March 1, 2004, and every three (3) years thereafter.

The report may be used for the purpose of determining whether to continue the program.

SECTION 11. This act shall take effect and be in force from and after January 1, 2001.