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"AN ACT TO AUTHORIZE THE ESTABLISHMENT OF ENTERPRISE ZONES; TO PROVIDE FOR THE QUALIFICATIONS NECESSARY FOR DESIGNATION AS AN ENTERPRISE ZONE; TO PROVIDE FOR TAX EXEMPTIONS AND TAX CREDITS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This Act may be referred to and cited as "Arkansas Enterprise Zone Act of 1989."

SECTION 2. The General Assembly of the State of Arkansas hereby finds and declares that the health, safety and welfare of the people of this state are dependent upon the continued encouragement, growth and expansion of the private sector within the State and that there are certain depressed areas in the State that need the particular attention of State Government to help attract private sector investment into these areas. Therefore, it is declared to be the intent of this Act to stimulate business and industrial growth in the depressed areas of the State by providing assistance to business and industries and by providing tax incentives in these areas.

SECTION 3. As hereinafter used in this Act:

- (a) "Commission" means the Arkansas Industrial Development Commission.
- (b) "Department" means the Department of Industrial Development.
- (c) "Director" is the Director of the Department.
- (d) "Governing authority" means the Quorum Court of a county or the governing body of a municipality within which a qualified enterprise zone lies.
- (e) "Enterprise zone" means an economically distressed United States Census Department enumeration district or block group in need of expansion of business and industry and the creation of jobs, and which is designated to be eligible for the benefits afforded by this subchapter.
- (f) "Public assistance" means any contribution, monetary or otherwise, made by federal, state, county, and/or local governments to individuals who qualify therefor by reason of indigence and/or unemployment, as determined by the applicable rules, regulations, or guidelines of each public assistance program.
- (g) "Unemployable by traditional standards" means any individual that was unemployed at least 13 weeks prior to employment by a firm wishing to claim income tax credits.
- (h) "Lacking in basic skills" means any individual employed by the firm who does not have the necessary skills to perform their particular task, and must complete an established company training program, above and beyond

on-the-job training.

(i) "Project" means all activities and costs associated with the construction of a new plant or facility; or, the expansion of an established plant or facility by adding to the building or production equipment and/or support infrastructure; or, the replacement of production or processing equipment and/or support infrastructure.

SECTION 4 (a). The department shall establish criteria for which an enumeration district or block group may qualify as an enterprise zone. In establishing such criteria, the department may consider those factors measures, and indices commonly recognized as indicia of economic condition, including, but not limited to:

- a. Population
- b. Extent of poverty
- c. Rate of unemployment
- d. Rate of youth unemployment
- e. Business vacancy rate
- f. Need for capital improvements

(b) Local jurisdictions may expand their enterprise zones to include annexed properties, provided:

1. the annexed property is adjacent to an active enterprise zone, and
2. the expansion is approved by the Department.

(c) The Director will have the discretion of qualifying additional enterprise zones provided these zones can only be placed in counties having an annual unemployment rate of 2 percentage points above the previous years state annual average, and the jurisdiction makes application to the Department and otherwise meets the requirements to become an enterprise zone. After a proposed new Enterprise Zone is qualified by the Director, the Director shall recommend to the Governor that this proposed zone be accepted as an additional Enterprise Zone. No such zone shall be accepted as an additional Enterprise Zone until approved and designated by the Governor. No more than fifteen (15) additional Enterprise Zones shall be designated per year.

(d) Not more than twenty-five percent (25%) of the total number of enumeration districts and block groups in the state shall be eligible for designation as an enterprise zone.

SECTION 5. The Department shall designate qualified United States Census Department enumeration districts and block groups as enterprise zones only after receiving notice from the appropriate governing authority that the governing authority agrees to:

(a) analyze the adequacy of police protection within the zone and, if necessary, devise and implement a plan for improvement thereof,

(b) give priority to the use, within the zone, of any employment training or community development funds received from the state or federal government;

(c) adopt ordinances to supersede any local regulations or ordinances which may serve to discourage economic development within an enterprise zone.

(d) assist the department in evaluating progress made in any enterprise zone within its jurisdiction.

(e) conduct an informational session targeting business and industry within each zone to inform them of the benefits available under the program.

The governing authority must:

(1) advertise the informational session, at least one week prior to the meeting, in a local paper, or by posting at local establishments, and

(2) hold this informational session prior to zone designation, or in the case of currently active zones, within 1989.

SECTION 6. The Department shall administer the provisions of this Act and shall have the following powers and duties, in addition to those mentioned in this Act, and in other laws of this state:

(a) to monitor the implementation and operation of this act and conduct a continuing evaluation of the progress made in the enterprise zones;

(b) to assist the governing authority of an enterprise zone in obtaining assistance from any other department of state government, including assistance in providing training, technical assistance and wage subsidies to new businesses and industries within an enterprise zone;

(c) to assist any employer or prospective employer within an enterprise zone in obtaining the benefits of any incentive or inducement program authorized by state law;

(d) to act as liaison between other state agencies and the zone and business and industry to assure that both the spirit and the intent of this Act are met.

(e) to submit an annual written report, evaluating the effectiveness of the program and presenting any suggestions for improving the program, to be submitted to the Governor no later than March 1 of each year;

(f) to promulgate rules and regulations, in accordance with the Administrative Procedure Act, as amended, 25-15-201 et seq., necessary to carry out the provisions of the subchapter; and

(g) to notify each member of the General Assembly whose district includes any portion of the enterprise zone when the department designates such a zone.

SECTION 7. (a) The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use tax imposed by the State, and upon approval of the governing authority of the enterprise zone, from sales tax imposed by it, on the purchases of the material used in the construction of a building or buildings, or any addition or improvement thereon, for housing any legitimate business enterprise, and machinery and equipment to be located in or in connection with such building.

(b) A sales and use tax refund as provided for in subsection (a) of this section shall be authorized provided that:

(1) the qualified business is an industry that fits into Standard Industrial Classification (SIC) numbers 20 through 39, 7375 or 7376 or is a distribution center located within Arkansas. The term "distribution center" shall mean a facility for the reception, storage or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets. For a distribution center to qualify for the benefits provided in this Section it must meet the following requirements:

(A) The distribution center must not make retail sales to the general public; and

(B) The distribution center must employ 100 or more employees. These employees must be employed by the distribution center within 18 months of the date distribution actually begins.

(C) If a distribution center does not meet the requirements of subparagraphs (A) and (B) above, then the distribution center will automatically be disqualified from receiving any benefits under this Section and will be required to repay any tax benefits already received under this Act, plus penalty and interest as allowed by law.

(2) the firm and its contractors give preference and priority to Arkansas manufacturers, suppliers, contractors and labor, except where it is not reasonably possible to do so without added expense, substantial inconvenience or sacrifice in operation efficiency, and

(3) the firm is physically located within an enterprise zone, and

(4) the firm certifies that at least 35 percent of its net new employees will be:

(A) residents of the same county as the location of the business or counties adjacent thereto, and

(B) (i) are or were receiving some form of public assistance immediately prior to employment; or

(ii) are or were considered unemployable by traditional standards or lacking in basic skills at the time of employment with the business;

(5) the request for such refund is accompanied by an endorsement resolution approved by the governing body of a municipality or county in whose jurisdiction the facility is located; and

(6) in the event it is found that any business receiving the benefits contained in subsection (a) of this section has failed to comply with the conditions contained in subsection (b) of this section, that business will be liable for the payment of all sales and use tax which were refunded under subsection (a) of this section.

(c) The Revenue Division of the Department of Finance and Administration shall authorize a two thousand dollar (\$2,000.00) income tax credit per net new employee of a business qualifying under Section 7(b) of this act as determined by the company's average annual employment as reported to the Employment Security Division. This tax credit shall be used for the taxable year in which the increase in average annual employment occurred. However, if the entire credit cannot be used in the year earned, the remainder may be applied against the income tax for the succeeding two years, or until the credit is entirely used, whichever occurs first.

(d) An income tax credit as provided for in subsection (c) of this section shall be authorized provided that:

(1) The request for such credit is accompanied by an endorsement resolution approved by the governing body of the appropriate municipality or county in whose jurisdiction the establishment is to be located, and

(2) The facility is located within the boundaries of an enterprise zone;

(3) All of the net new employees are employed at the facility, and

(4) The business certifies that at least thirty-five percent of its employees:

(a) Are residents of the same county as the location of the business or counties adjacent thereto, and

(b) (i) are or were receiving some form of public assistance immediately prior to employment; or

(ii) are or were considered unemployable by traditional standards or lacking in basic skills at the time of employment with the business.

(4) In the event it is found that any business receiving the benefits contained in subsection (c) of this section has failed to comply with the conditions contained in subsection (d) of this section, that business shall be liable for the payment of such additional income taxes as may be due after the income tax credits provided for in subsection (c) are disallowed, plus penalty and interest.

(5) In the event the company has a short tax year, its average annual employment shall be calculated using the number of months the firm was in operation during that tax year.

SECTION 8. A business electing to change its tax status to that of Small Business Corporation may carry-forward any unused tax credits earned under this Act to the stockholders in the Small Business Corporation on a pro-rata

basis, provided that the unused tax credit was earned during an income year which ended prior to January 1, 1989 and which unused tax credit was earned under the Arkansas Enterprise Zone Act of 1983 (Arkansas Code 15-4-801 et seq.)

SECTION 9. No person or entity may file for benefits under this Act if an application for benefits has been filed and approved under the Manufacturer's Sales and Use Tax Credit Act of 1985 (Arkansas Code 26-52-701 et seq.) for the same project. Provided, however, that an application for benefits under the Manufacturer's Sales and Use Tax Credit Act of 1985 may be withdrawn if no tax credits have been taken under that Act. When a project has been approved under the Manufacturer's Sales and Use Tax Credit Act of 1985, no application for a project under this Act will be accepted until the expiration of one (1) year after the date of approval of the application under the Manufacturer's Sales and Use Tax Credit Act of 1985. When a project has been approved under this Act, no application for projects under the Manufacturer's Sales and Use Tax Credit Act of 1985 shall be accepted until the expiration of one (1) year after the date of approval of the application under this Act.

SECTION 10. The Department is authorized to substitute, as an enterprise zone, an enumeration district or block group that does not meet the qualifications for an enterprise zone as established under Section 4 of this Act, subject to the following conditions:

(a) The substitute enterprise zone is being substituted for an enumeration district or block group that does meet the specifications established under Section 4 of this act, and

(b) The request for substitution is made in writing to the Department by the governing body of the enumeration district or block group for which substitution is sought, and such writing contains the reasons for the request, and

(c) The reasons for seeking substitution meet the guidelines and criteria established by the Department for substituting enterprise zones, and

(d) The substitute enterprise zone is located in the same county as the enumeration district or block group for which substitution is being sought. Nothing in this section shall be construed to permit an increase in the number of

enterprise zones in any county or the State. If substitution is allowed, the enumeration district or block group for which the substitution was sought shall be designated as no longer qualifying for enterprise zone status. Nothing in this section shall be construed to exempt the governing body or bodies of the substitute enterprise zone from complying with the provisions of Section 5 of this act. Nothing in this section shall be construed to exempt businesses located in the substitute enterprise zone from complying with the requirements contained in Sections 6 and 7 of this act, to the extent that such businesses are seeking the benefits accorded under those sections.

SECTION 11. Preference on public financing and assistance will be given to businesses within an enterprise zone.

SECTION 12.(a). The quorum court of a county or governing body of a city or town within which is located an enterprise zone designated as such by the Department of Industrial Development may petition the Department of Industrial

Development to decertify the area as an enterprise zone if no business located within the area has applied for the tax credits provided by this subchapter.

(b) If the department decertifies the area, it may designate another area within the county or city as an enterprise zone under the subchapter.

SECTION 13. The provisions of this Act are hereby declared to be severable.

If any provision of this Act should be declared to be invalid or to be inapplicable to any person or circumstances, such determination shall not affect the validity or applicability of the other provisions of this Act.

SECTION 14. Unless affirmatively reenacted by the General Assembly, this Act shall expire on June 30, 1995.

SECTION 15. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 16. In order to provide a clear and orderly transition between Act 813 of 1983 and this Act, the following shall apply:

(a) Currently active enterprise zones will remain effective until such time

as the local jurisdiction decides they no longer wish to have the area as a zone or until the end of the program, whichever occurs first, and

(b) Enterprise Zone businesses which qualified under Act 813 of 1983 but do not qualify under this act shall not be entitled to any income tax credit for employees hired after June 30, 1991, and shall not be entitled to any sales or use tax refund for purchases made after June 30, 1989. Enterprise Zone businesses which qualified under Act 813 of 1983 but do not qualify under the provisions of this Act may continue to carry forward existing income tax credits or claims for refund pursuant to Act 813 of 1983. Enterprise Zone businesses which qualified under Act 813 of 1983 and qualify pursuant to this Act shall continue to participate as an Enterprise Zone business under this act.

SECTION 17. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 18. It is hereby found and determined by the General Assembly of this State that unemployment and economic underdevelopment has reached intolerable levels in certain portions of this state, and that the establishment and designation of enterprise zones and the tax incentives afforded by this Act are critical to the development and expansion of job opportunities in those areas. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

APPROVED: March 10, 1989
