Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas *As Engrossed: H2/3/99 H2/17/99*
82nd General Assembly **A Bill** **Act 976 of 1999**
Regular Session, 1999 HOUSE BILL 1359

By: Representatives Magnus, *Cleveland, Milum*
By: Senator Gordon

For An Act To Be Entitled

"THE ARKANSAS EMERGING ENERGY TECHNOLOGY DEVELOPMENT ACT OF 1999; AND FOR OTHER PURPOSES."

Subtitle

"THE ARKANSAS EMERGING ENERGY TECHNOLOGY DEVELOPMENT ACT OF 1999."

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

SECTION 1. <u>This act shall be known and may be cited as the "Arkansas Emerging Energy Technology Development Act of 1999."</u>

SECTION 2. <u>(a) All sectors of the Arkansas economy, job creation potential, and the physical environment are driven by the flow of energy in our economy and society, which in turn is heavily influenced by the level and use of energy technology. Energy technology plays an essential role in the efficient consumption and wise utilization of energy resources, has dramatic impacts on all state and national economies, and can help to improve environmental conditions. These facts along with the technical and economic conditions around the world have resulted in the demand for improved energy technologies.</u>

<u>(b) Leading-edge energy technologies are being developed, demonstrated, and manufactured in other states in order to meet their own energy needs, as well as to support economic development by responding to the rapidly expanding world-wide export market for these technologies. Arkansas has been slow to recognize the potential economic and technical benefits of these and other</u>

emerging energy technologies.

(c) Therefore, the General Assembly finds that it is in Arkansas' long-term interest to establish a foothold in the Arkansas economy for manufacturers of advanced energy technologies that are magnets for capital investment and which spin off jobs that are characteristically knowledge-based.

SECTION 3. For the purposes of this act:

(1) "Electric powered vehicle" may include vehicles powered only by electric batteries, vehicles powered by a combination of electric batteries and internal combustion engines, and vehicles powered by fuel cell equipment;

(2) "Electric vehicle equipment" means those products designed, manufactured, and produced as original equipment components and intended for express use in an electric powered vehicle which may qualify for registration and licensure as a passenger vehicle by the State of Arkansas;

(3) "Fuel cells" means those products designed, manufactured, and produced to convert hydrocarbon fuel to heat and electricity by electrochemical means; and

(4) "Photovoltaic devices" means those products designed, manufactured, and produced to convert sunlight directly into electricity.

SECTION 4. (a) There shall be allowed a credit against the income tax imposed by § 26-51-101 through 26-51-1801 in an amount as determined in subsection (b) of this section for any Arkansas taxpayer for the cost of a facility located in Arkansas which designs, develops, or produces photovoltaic devices, electric vehicle equipment, or fuel cells.

(b) The amount of the credit allowed shall be equal to fifty percent (50%) of the amount spent during the taxable year to purchase or construct the facility, including land acquisition, infrastructure improvements, renovation, building improvements, machinery, and other manufacturing equipment.

(c) The costs of service contracts unrelated to the construction of the facility and sales tax shall not be included in determining the amount of the credit.

(d) No income tax credit shall be claimed by any taxpayer for any facility or equipment which is in use on or before January 1, 2000, or for which a tax credit was previously claimed by any other taxpayer for any other tax year. Provided, however, that the provisions of this subsection shall not apply if any entity is sold and the entity is entitled to an income tax credit under this act.

(e) This credit shall not be allowed for any portion of facility costs which were provided by federal, State, or local grants.

SECTION 5. (a) The credit allowed by section 4 may not exceed the amount of the tax imposed for the taxable year reduced by the sum of all state credits allowable, except payments of tax made by or on behalf of the taxpayer. Any unused credit may be carried forward for a maximum of six (6) taxable years after the credit year in which the credit originated.

(b) The taxpayer shall refund the amount of the income tax credit determined by subsection (c) of this section if, within six (6) years of the taxable year for which the credit is originated:

(1) The facility subject to this tax credit ceases to be used or operated in the manner required by this section; and

(2) The Arkansas Department of Economic Development and the Department of Finance and Administration find that the taxpayer has ceased to qualify for tax credits under the provisions of this act.

(c)(1) In the event it is determined that any taxpayer receiving the benefits under this act has failed to comply with the conditions contained herein, that taxpayer shall be liable for the payment of such additional income taxes as may be due after the income tax credits provided for in this act are disallowed, plus penalty and interest.

(2) In accordance with § 26-18-208(2)(B) there shall be added to the original tax due a penalty of one percent (1%) of the additional tax due for not more than one (1) month, with an additional one percent (1%) for each additional month or fraction thereof, from the original due date of the tax year in question until date of payment not to exceed thirty-five percent (35%) in the aggregate.

(3) In accordance with § 26-18-508, interest shall be assessed at ten percent (10%) per annum from the date the original tax would have been due until date of payment.

(d) A taxpayer who receives a credit under this act for the purchase of machinery or equipment shall not be entitled to claim any other state income tax credit or deduction based on the purchase of the machinery or equipment, except the deduction for normal depreciation.

SECTION 6. (a) Under this act in the case of a proprietorship, partnership, or Subchapter S corporation, the amount of credit determined shall be apportioned to each proprietor, partner, or Subchapter S corporation shareholder in proportion to the amount of income from the entity which the proprietor, partner, or Subchapter S corporation shareholder is required to include as gross income.

(b) In the case of an estate or trust:

(1) The amount of the credit determined for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(2) Any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to limitations contained in this act, to a credit under this act for that amount.

SECTION 7. (a) To claim the benefits of this act, a taxpayer must obtain certification from the Director of the Arkansas Department of Economic Development certifying to the Revenue Division of the Department of Finance and Administration that the taxpayer is engaged in activities identified in section 2.

(b) The Arkansas Department of Economic Development, or its successor, shall promulgate regulations as necessary to administer this act. These rules or regulations may include, but are not limited to, the establishment of technical specifications and requirements for information and documentation for taxpayers seeking a credit under this act.

(c) In order to determine eligibility for the credit or to ensure that the facility or equipment is being utilized in the required manner, each agency shall have the right to inspect the facility and records of a taxpayer requesting or receiving a credit under this act.

SECTION 8. The provisions of this act shall be effective for tax years beginning on and after January 1, 2000.

SECTION 9. 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 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 11. All laws and parts of laws in conflict with this act are hereby repealed.

/s/ Magnus, et al

APPROVED: 3/31/1999