State of Arkansas
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A Bill

Act 182 of 2003

HOUSE BILL 1179

By: Representative Ferguson
By: Senators Bryles, J. Bookout

For An Act To Be Entitled

AN ACT TO PROVIDE VARIOUS ECONOMIC DEVELOPMENT INCENTIVES FOR THE CREATION OF JOBS AND ECONOMIC OPPORTUNITY; TO CONSOLIDATE EXISTING ECONOMIC DEVELOPMENT INCENTIVES INTO ONE ACT; AND FOR OTHER PURPOSES.

Subtitle

CONSOLIDATED INCENTIVE ACT OF 2003.

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

SECTION 1. Arkansas Code Title 15, Chapter 4, is amended to add an additional subchapter to read as follows:

15-4-2701. Legislative Intent.

(a) The Arkansas General Assembly recognizes that job creation and capital investment in Arkansas is dependent upon being competitive with other states for business locations and expansions.

(b) Act 757 of 2001 authorized the Bureau of Legislative Research to conduct a study of business development incentives in Arkansas and states with which Arkansas frequently competes for business locations.

(c) This subchapter incorporates many of the findings of that study in an effort to make our state more competitive for the creation of new and better jobs for the citizens of Arkansas.

15-4-2702. Title.

This subchapter shall be known and may be cited as the "Consolidated Incentive Act of 2003".

15-4-2703. Definitions.

As used in this subchapter:

(1) "Applied research" means any activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specific problem, question, or issue;

(2) "Average hourly wage" means the weekly earnings, excluding overtime, bonuses, and company paid benefits, of all new full time permanent employees hired after the date of the signed financial incentive agreement, divided by forty (40);

(3) "Basic research" means any original investigation for the advancement of scientific or technological knowledge;

(4) "Contractual employee" means an employee who:

(A) May be included in the payroll calculations of a business qualifying for benefits under this subchapter and is under the direct supervision of the business receiving benefits under this subchapter, but is an employee of a business other than the one receiving benefits under this subchapter;

(B) Otherwise meets the requirements of a new full time permanent employee of the business receiving benefits under this subchapter; and

(C) Receives a benefits package comparable to direct employees of the business receiving benefits under this subchapter;

(5)(A) "Corporate headquarters" means the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's financial, personnel, legal, planning, information technology, or other headquarters related functions are handled either on a regional basis or national basis.

(B) A corporate headquarters must be a regional corporate headquarters or a national corporate headquarters;

(6) "County or state average hourly wage" means the weighted average weekly earnings for Arkansans in all industries, both statewide and county wide, as calculated by the Arkansas Employment Security Department in their most recent Annual Covered Employment and Earnings publication, divided by

forty (40);

(7) "Department" means the Department of Economic Development;

(8) "Director" means the Director of the Department of Economic Development;

(9) "Distribution center" means a facility for the reception, storage, or shipping of:

(A) A business' own products or products that the business wholesales to retail businesses or ships to its own retail outlets;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues of the product owner are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(10) "Eligible businesses" means non-retail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this subchapter, and fall into one (1) or more of the following categories:

(A) Manufacturers classified in sectors 31-33 in the North American Industrial Classification System, as in effect January 1, 2003;

(B)(i) Businesses primarily engaged in the design and development of prepackaged software, digital content production and preservation, computer processing and data preparation services, or information retrieval services.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their revenue from out-of-state sales;

(C)(i) Businesses primarily engaged in motion picture productions.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their revenue from out-of-state sales;

(D) A distribution center;

(E) An office sector business;

(F) A national or regional corporate headquarters;

(G) Firms primarily engaged in commercial, physical and biological research as classified in the North American Industrial Classification System, as in effect January 1, 2003; and

(H)(i) Scientific and technical services business.

(ii)(a) All businesses in this group shall derive at least seventy-five percent (75%) of their revenue from out-of-state sales; and

(b) The average hourly wages paid by businesses in this group shall exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less;

(11) "Equity investment" means capital invested in common or preferred stock, royalty or intellectual property rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses, including a federal agency's award of a Small Business Innovative Research or Small Business Technology Transfer grant;

(12)(A) "Existing employees" means those employees hired by the business before the date the financial incentive agreement was signed.

(B)(i) Existing employees may be considered new full time permanent employees only if:

(ii)(a) The position or job filled by the existing employee was created in accordance with the signed financial incentive agreement; and

(b) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring that classification;

(13) "Financial incentive agreement" means an agreement entered into by an eligible business and the department to provide the business an incentive to locate a new business or expand an existing business in Arkansas;

(14) "Fund" means the Arkansas Economic Development Incentive Fund;

(15) "Governing authority" means the quorum court of a county or the governing body of a municipality;

(16)(A)(i) "In-house research" means applied research supported by the business through the purchase of supplies for research activities and payment of wages and usual fringe benefits for employees of the business who conduct research activities in research facilities:

(a) Dedicated to the conduct of research activities;

(b) Operated by the business; and

(c) Performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea to practice, or to advance a concept or idea, or improvement thereon, to the point of practical application.

(ii) "In-house research" includes experimental or laboratory activity to develop new products, improve existing products, or develop new uses of products, but only to the extent that activity is conducted in Arkansas.

(B) "In-house research" does not include tests or inspection of materials or products for quality control, efficiency surveys, management studies, other market research, or any other ordinary and necessary expenses of conducting business;

(17) "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has decided to legally protect for possible commercial gain, based on the disclosure of the creator;

(18)(A) "Modernization" means an increase in efficiency or productivity of a business through investment in machinery, equipment, or both.

(B) "Modernization" does not include costs for routine maintenance or the installation of equipment that does not improve efficiency or productivity, except for expenditures for pollution control equipment mandated by state or federal laws or regulations;

(19) "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters related functions on a national basis;

(20)(A)(i) "New full time permanent employee" means a position or job that was created pursuant to the signed financial incentive agreement and that is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.

(ii) The position or job held by the employee or employees shall have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(B) However, to qualify under this subchapter, a contractual employee shall be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(21) "Non-retail business" means a business that derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;

(22)(A) "Office sector business" means business operations that support primary business needs, including, but not limited to, customer service, credit accounting, telemarketing, claims processing, and other administrative functions;

(B) All businesses in this group must be non-retail businesses and derive at least seventy-five percent (75%) of their revenue from out-of-state sales;

(23) "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible business to new full time permanent employees hired after the date of the signed financial incentive agreement;

(24)(A) "Person" means an individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(B) "Person" includes:

(i) The directors, officers, agents, and employees of any person;

(ii) Beneficiaries, members, managers, and partners; and

(iii) Any county or municipal subdivision of the state;

(25)(A) "Project" means, if costs are incurred within four (4) years from the date a financial incentive agreement was signed by the department:

(i) All activities and costs associated with the construction of a new plant or facility;

(ii) The expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(iii) Modernization through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(B) "Project" does not include:

(i) Expenditures for routine repair and maintenance that do not result in new construction or expansion; or

(ii) Routine operating expenditures;

(26) "Project plan" means a plan:

(A) Submitted to the department containing such information as may be required by the director to determine eligibility for benefits; and

(B) That, if approved, is a supplement to the financial incentive agreement;

(27) "Qualified business" means an eligible business that:

(A) Has met the qualifications for one (1) or more economic development incentives authorized by this subchapter; and

(B)(i) Has signed a financial incentive agreement with the department; or

(ii) Is involved in a research and development program administered by the Arkansas Science and Technology Authority;

(28) "Qualified research expenditures" means the sum of any amounts which are paid or incurred by an Arkansas taxpayer during the taxable year in funding a qualified research program which has been approved for tax credit treatment under rules and regulations promulgated by the department;

(29) "Region" or "regional" means a geographic area comprised of two (2) or more states, including this state;

(30) "Regional corporate headquarters" means a site that:

(A) Is the sole corporate headquarters within the region; and

(B) Handles headquarters related functions on a regional basis;

(31) "Research and development programs of the Arkansas Science and Technology Authority" means statutory programs operated by the Arkansas Science and Technology Authority under §§ 15-3-101 to 15-3-135;

(32) "Research area of strategic value" means research in fields having long-term economic or commercial value to the state, and that have been identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

(33) "Scientific and technical services business" means a business:

(A) Primarily engaged in performing scientific and technical *activities for others, including:*

(i) Architectural and engineering design;

(ii) Computer programming and computer systems design; and

(iii) Scientific research and development in the physical, biological and engineering sciences;

(B) Selling expertise;

(C) Having production processes that are almost wholly dependent on worker skills;

(D) Deriving at least seventy-five percent (75%) of their revenue from out-of-state sales; and

(E) Paying average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less;

(34) "Start of construction" means any activity that causes a physical change to the building, property, or both, identified as the site of the approved project, but excluding engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site;

(35) "Strategic research" means research that has strategic economic or long-term commercial value to the state and that is identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

(36) "Support infrastructure" means physical assets necessary for the business to operate, including, but not limited to, water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots and communication infrastructure;

(37)(A) "Targeted businesses" means a grouping of growing business *sectors, not to exceed six (6), that include the following:*

(i) Advanced materials and manufacturing systems;

(ii) Agriculture, food, and environmental sciences;

(iii) Biotechnology, bioengineering, and life sciences;

(iv) Information technology;

(v) Transportation logistics; and

(vi) Bio-based products.

(B) In order to receive benefits as a targeted business, the business must:

(i) Have been operating in the state for less than five (5) years;

(ii) Pay not less than one hundred fifty percent (150%) of the lesser of the county or state average wage; and

(iii) Have been selected to receive special benefits and;

(38) "Tiers" means the ranking of the seventy-five (75) counties of Arkansas into four (4) divisions that delineate the economic prosperity of the counties and allow for different levels of benefits.

15-4-2704. Tier System.

(a) The Department of Economic Development shall establish a tier system which shall rank all seventy-five (75) counties of this state into four (4) divisions on the basis of economic prosperity.

(b) Tier 4 will be the least prosperous division and Tier 1 will be the most prosperous division.

(c) The assignment of a county to a tier shall be based on a ranking of:

(1) Unemployment rate;

(2) Poverty rate;

(3) Per capita income; and

(4) Population growth.

(d) The department shall:

(1) Update ranking statistics annually; and

(2) Place counties into tiers based on the updated statistics.

(e) For a project located in multiple tiers, the eligible business shall:

(1) Receive the benefit of the county with the lower benefits; or

(2) Submit separate applications, each of which shall meet the incentive requirements of the county in which the project is located.

(f)(1) A county that has experienced a sudden and severe period of economic distress caused by the closing of a business entity that results in the loss of a minimum of five percent (5%) of the employed labor force, as determined by the most recent Labor Market Information publication published by the Arkansas Employment Security Department, may be moved up one (1) tier upon submitting a request to and being approved by the Arkansas Economic Development Commission.

(2) If the Arkansas Economic Development Commission approves a county's move to a higher tier, any qualified business having signed a financial incentive agreement with the department dated before the commission's action, shall receive the benefits, for the duration of the term of the agreement, that were assigned to the county in which it located at the time their financial incentive agreement was signed by the department, regardless of any subsequent change to the tier in which the county is assigned.

15-4-2705. Job-Creation Tax Credit.

(a) There is established a job-creation tax credit to encourage:

(1) The creation of new jobs; and

(2) Business growth and expansion.

(b) After receiving an approved financial incentive agreement from the Department of Economic Development, the Revenue Division of the Department of Finance and Administration shall authorize an income tax credit, for tax years beginning after December 31, 2002, as follows:

(1)(A) For tier 1 counties, qualified businesses are eligible to receive a tax credit equal to one percent (1%) of the payroll for new full time permanent employees of the business for each of the first sixty (60) months, following the date of the approved financial incentive agreement.

(B) The tax credits may offset fifty percent (50%) of the business' tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.

(C) To qualify for this tax credit, a business must have a payroll for new full time permanent employees in excess of two hundred thousand dollars ($200,000) annually;

(2)(A) For tier 2 counties, qualified businesses are eligible to receive a tax credit equal to two percent (2%) of the payroll for new full time permanent employees of the business for each of the first sixty (60) months, following the date of the approved financial incentive agreement.

(B) The tax credits may offset fifty percent (50%) of the business' tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.

(C) To qualify for this tax credit, a business must have a payroll for new full time permanent employees in excess of one hundred fifty thousand dollars ($150,000) annually;

(3)(A) For tier 3 counties, qualified businesses are eligible to receive a tax credit equal to three percent (3%) of the payroll for new full time permanent employees of the business for each of the first sixty (60) months, following the date of the approved financial incentive agreement.

(B) The tax credits may offset fifty percent (50%) of the business' tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.

(C) To qualify for this tax credit, a business must have a payroll for new full time permanent employees in excess of one hundred twenty-five thousand dollars ($125,000) annually; and

(4)(A) For tier 4 counties, qualified businesses are eligible to receive a tax credit equal to four percent (4%) of the payroll for new full time permanent employees of the business for each of the first sixty (60) months, following the date of the approved financial incentive agreement.

(B) The tax credits may offset fifty percent (50%) of the business' tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.

(C) To qualify for this tax credit, a business must have a payroll for new full time permanent employees in excess of one hundred thousand dollars ($100,000) annually.

(c)(1) If a business fails to meet the payroll threshold within two (2) years after the signing of the financial incentive agreement, or within the time period established by an extension approved by the directors of the Department of Finance and Administration and the Department of Economic Development, that business will be liable for repayment of all benefits previously received by the business.

(2)(A) After a business has failed to reach the payroll threshold of this section in a timely manner, the Department of Finance and *Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

15-4-2706. Investment Tax Incentives.

(a) There are established investment tax incentives to:

(1) Encourage capital investment for the long-term viability of businesses in the state; and

(2) Create new jobs.

(b)(1)(A) An application for an income tax credit under this subsection (b) shall be submitted to the Department of Economic Development.

(B) An award of this credit shall be at the discretion of the Director of the Department of Economic Development.

(2) The director may offer this incentive if a business meets at least one (1) of the following criteria:

(A) For tier 1 counties, the business invests five million dollars ($5,000,000) or more and has an annual payroll for new full time permanent employees in excess of two million dollars ($2,000,000);

(B) For tier 2 counties, the business invests four million dollars ($4,000,000) or more and has an annual payroll for new full time permanent employees in excess of one million five hundred thousand dollars ($1,500,000);

(C) For tier 3 counties, the business invests three million dollars ($3,000,000) or more and has an annual payroll for new full time permanent employees in excess of one million two hundred fifty thousand dollars ($1,250,000); or

(D) For tier 4 counties, the business invests two million dollars ($2,000,000) or more and has an annual payroll for new full time permanent employees in excess of one million dollars ($1,000,000).

(3) If the director offers this credit, the director shall transmit an approved financial incentive agreement to the Revenue Division of the Department of Finance and Administration.

(4) If the director offers this credit, a business must reach the investment threshold within four (4) years from the date of the signing of the financial incentive agreement.

(5)(A) After receiving an approved financial incentive agreement from the Department of Economic Development, the Revenue Division of the Department of Finance and Administration shall authorize an income tax credit of ten percent (10%) based on the total investment in land, buildings, equipment, and costs related to licensing and protecting intellectual property.

(B) The amount of income tax credit taken during any tax year shall not exceed fifty percent (50%) of the business' income tax liability resulting from the project or facility.

(C) Unused tax credits may be carried forward for up to nine (9) years after the year in which the credit was first earned.

(c)(1)(A) An application for a retention tax credit under this subsection (c) shall be submitted to the Department of Economic Development.

(B) The application must be accompanied by a project plan at least thirty (30) days before the start of construction.

(2) The tax credit against sales and use tax liability is available only to Arkansas businesses that:

(A) Have been in continuous operation in the state for at least two (2) years;

(B) Invest a minimum of five million dollars ($5,000,000) in a project, including land, buildings and equipment used in the construction, expansion or modernization; and

(C) Hold a direct-pay sales and use tax permit from the Revenue Division of the Department of Finance and Administration before submitting an application for benefits.

(3)(A) If allowed, the credit shall be a percentage of the eligible project costs.

(B) The amount of the credit shall be one-half percent (½%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed with the Department of Economic Development.

(C) In any one (1) year, following the year of the expenditures, credits taken cannot exceed fifty percent (50%) of the direct *pay sales and use tax liability of the business for taxable purchases.*

(D) Unused credits may be carried forward for a period of up to five (5) years beyond the year in which the credit was first earned.

(4)(A) Upon determination by the Director of the Department of Economic Development that the project qualifies for credit under this subsection, the director shall certify to the Director of the Department of Finance and Administration that the project qualifies and shall transmit with his or her certification the documents or copies of the documents upon which the certification was based.

(B) The Director of the Department of Finance and Administration shall provide forms to the qualified business on which to claim the credit.

(C) At the end of the calendar year in which the application is made and at the end of each calendar year thereafter until the project is completed, the qualified business shall certify, on the form provided by the Director of the Department of Finance and Administration, the amount of expenditures on the project during the preceding calendar year.

(D) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the qualified business.

(E) The credit against sales and use tax liability shall be a percentage of the eligible project costs equal to one-half percent (1/2%) above the state sales and use tax rate in effect at the time the financial incentive agreement was signed by the Department of Economic Development.

(5) If a business plans to apply for benefits under subsection (c) of this section and also plans to apply for benefits under § 15-4-2705, the § 15-4-2705 financial incentive agreement must be signed within twenty-four (24) months after signing the financial incentive agreement under subsection (c) of this section.

(d)(1)(A) An application for a sales and use tax refund from a new and expanding eligible business shall include an endorsement resolution from the governing authority of a municipality or county in whose jurisdiction the business will be located.

(B) The resolution shall:

(i) Endorse the applicants participation in this sales and use tax refund program; and

(ii) Specify whether the municipality or county authorizes the refund of all or part of any sales tax levied by the municipality or county.

(2)(A) A sales and use tax refund on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business, and machinery and equipment to be located in, or in connection with, such a building, shall be authorized by the Director of the Department of Finance and Administration and a refund of sales and use taxes imposed by a municipality or a county, if the municipality or county has authorized the refund in an endorsement resolution that was submitted along with the application to the Department of Economic Development.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacements of items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(3) Subject to the approval of the Department of Economic Development, a program participant may make changes in a project by written amendment to the project plan filed with the department.

(4) All claims for sales and use tax refunds under this subsection (d) shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(5)(A) In order to be eligible for the benefits under this subsection (d), a business shall sign a job creation financial incentive agreement under §§ 15-4-2705, 15-4-2707 or subsection (b) of this section.

(B) The financial incentive agreement under §§ 15-4-2705, 15-4-2707, or subsection (b) of this section shall be signed within twenty-four (24) months after signing the financial incentive agreement under this subsection (d).

(6) To qualify for the sales and use tax refund authorized by this subsection (d), the eligible business must meet the following criteria:

(A) For tier 1 counties, the business must have an annual payroll for new full time permanent employees of two hundred thousand dollars ($200,000) or more and invest in excess of one hundred thousand dollars ($100,000);

(B) For tier 2 counties, the business must have an annual payroll for new full time permanent employees of one hundred fifty thousand dollars ($150,000) or more and invest in excess of one hundred thousand dollars ($100,000);

(C) For tier 3 counties, the business must have an annual payroll of new full time permanent employees of one hundred twenty-five thousand dollars ($125,000) or more and invest in excess of one hundred thousand dollars ($100,000); and

(D) For tier 4 counties, the business must have an annual payroll for new full time permanent employees of one hundred thousand dollars ($100,000) or more and invest in excess of one hundred thousand dollars ($100,000).

(e)(1) A new targeted business shall be eligible for a refund of sales and use taxes for qualified expenditures identified in the project plan if:

(A) The annual payroll of the business, for Arkansas taxpayers, is greater than two hundred thousand dollars ($200,000); and

(B) The business shows proof of an equity investment of at least five hundred thousand dollars ($500,000).

(2)(A) An application for the targeted business sales and use tax refund program from a new targeted business shall include an endorsement resolution from the governing authority of a municipality or county in whose jurisdiction the business will be located.

(B) The resolution shall:

(i) Endorse the applicants participation in this sales and use tax refund program; and

(ii) Specify whether the municipality or county authorizes the refund of all or part of any sales tax levied by the municipality or county.

(3) After the Director of the Department of Economic Development has determined that the project is eligible for the sales and use tax refund, this determination, accompanied by the financial incentive agreement and any other pertinent documentation, shall be forwarded to the Director of the Department of Finance and Administration.

(4)(A) A sales and use tax refund on the purchases of the material used in the construction of a building or buildings, or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building, shall be authorized by the Director of the Department of Finance and Administration and a refund of sales and use taxes imposed by a municipality or a county, if the municipality or county has authorized the refund in an endorsement resolution that was submitted along with the application to the department.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacements of items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(5) Subject to the approval of the Department of Economic

Development, a program participant may make changes in a project by written amendment to the project plan filed with the department.

(6) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years after the date of the qualified purchase or purchases.

(7) If a targeted business plans to apply for benefits under this subsection (e) and also plans to apply for benefits under § 15-4-2709, the § 15-4-2709 financial incentive agreement must be signed within twenty-four (24) months of signing the financial incentive agreement under this subsection (e).

(8) The Revenue Division of the Department of Finance and Administration shall authorize a refund for all eligible expenditures, if the Director of the Department of Economic Development approves the project and if the project provides at least one (1) of the following:

(A) For tier 1 counties, average hourly wages in excess of one hundred and eighty percent (180%) of the county or state average hourly wage, whichever is less;

(B) For tier 2 counties, average hourly wages in excess of one hundred and seventy percent (170%) of the county or state average hourly wage, whichever is less;

(C) For tier 3 counties, average hourly wages in excess of one hundred and sixty percent (160%) of the county or state average hourly wage, whichever is less; and

(D) For tier 4 counties, average hourly wages in excess of one hundred and fifty percent (150%) of the county or state average hourly wage, whichever is less.

15-4-2707. Payroll Rebate.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of State a fund to be known as the "Economic Development Incentive Fund" of the Department of Economic Development.

(b) The fund shall consist of revenues designated for this fund by the Revenue Division of the Department of Finance and Administration pursuant to agreements entered into by the Department of Economic Development with eligible businesses.

(c) After the Department of Finance and Administration has received the certification of the payrolls of the businesses that have entered into financial incentive agreements with the Department of Economic Development for the payroll rebate authorized by this section, the Department of Finance and Administration shall transfer the appropriate amount of money designated by the financial incentive agreements out of general revenues into a special account designated as special revenue for the Economic Development Incentive Fund.

(d)(1) The award of this incentive is at the discretion of the Director of the Department of Economic Development.

(2) Benefits are conditioned upon the hiring of new full time permanent employees and certifying to the Department of Finance and Administration that the requisite payroll thresholds have been met.

(3) Payments are subject to the following conditions:

(A)(i) For tier 1 counties, for qualified businesses with an annual payroll for new full time permanent employees in excess of two million dollars ($2,000,000), three and nine-tenths percent (3.90%) of the annual payroll of new full time permanent employees.

(ii) The Director of the Department of Economic Development may authorize this benefit for up to ten (10) years.

(B)(i) For tier 2 counties, for qualified businesses with an annual payroll for new full time permanent employees in excess of two million dollars ($2,000,000), four and one quarter percent (4.25%) of the annual payroll of new full time permanent employees.

(ii) The director may authorize this benefit for up to ten (10) years.

(C)(i) For tier 3 counties, for qualified businesses with an annual payroll for new full time permanent employees in excess of two million dollars ($2,000,000), four and one-half percent (4.50%) of the annual payroll of new full time permanent employees.

(ii) The director may authorize this benefit for up to ten (10) years.

(D)(i) For tier 4 counties, for qualified businesses with an annual payroll for new full-time permanent employees in excess of two million dollars ($2,000,000), five percent (5.00%) of the annual payroll of new full time permanent employees.

(ii) The director may authorize this benefit for up to ten (10) years.

15-4-2708. Research and development tax credits.

(a) A taxpayer who contracts with one (1) or more Arkansas colleges or universities in performing basic research may qualify for the tax credit established under § 26-51-1102(b) for qualified research expenditures, subject to the limitations established under § 26-51-1103 and the documentation requirements of § 26-51-1104.

(b)(1) Eligible businesses that conduct in-house research in a research facility operated by the business may qualify for an income tax credit equal to ten percent (10%) of the amount spent on in-house research, subject to the limitations established under § 26-51-1103.

(2) However, the maximum tax credit for in-house research for each qualified business shall not exceed ten thousand dollars ($10,000) per *year.*

(3) A business claiming tax credits earned under this subsection may not receive the credit granted by § 26-51-1102(b) for the same expenditures.

(c)(1) Targeted businesses may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on in-house research per year, for the first five (5) tax years following the business' signing a financial incentive agreement with the Department of Economic Development, *subject to the limitations established under § 26-51-1103.*

(2) The credits earned by targeted businesses may be sold as authorized in § 15-4-2709.

(d)(1) An Arkansas taxpayer may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on the research, for the first five (5) tax years following the business' signing a financial incentive agreement with the Department of Economic Development, subject to the limitations established under § 26-51-1103, if the taxpayer invests in:

(A) In-house research in a strategic research area; or

(B) Projects under the research and development programs of the Arkansas Science and Technology Authority, which projects directly involve an Arkansas business and are approved by the Board of Directors of the Arkansas

<u>Science and Technology Authority under rules promulgated by the authority for those programs.</u>

<u>(2) However, the maximum tax credit for businesses engaged in a research area of strategic value or involved in research and development programs sponsored by the Arkansas Science and Technology Authority shall not</u> <u>*exceed fifty thousand dollars ($50,000) per year.*</u>

<u>*(3) A business claiming tax credits earned under this subsection shall be prohibited from receiving the credit granted by § 26-51-1102(b) for the same expenditures.*</u>

<u>(e) To claim the credit granted under subsections (b) through (d) of this section, the taxpayer shall file with his return, as an attachment to the form prescribed by the Director of the Department of Finance and Administration, copies of documentation to show that the Arkansas Science and Technology Authority has approved the research expenditure, as a part of a qualified in-house research program or under the research and development programs of the Arkansas Science and Technology Authority.</u>

<u>15-4-2709. Targeted business special incentive.</u>

<u>(a) A special incentive for job creation by new targeted businesses in the state is established to:</u>

<u>(1) Encourage the development of jobs that pay significantly more than the county average wage in the county in which the business locates, or the state average wage if the state average wage is less than the county average wage; and</u>

<u>(2) Provide an incentive to assist with the start up of businesses targeted for growth.</u>

<u>*(b) In order to qualify for the special incentive provided by subsection (c) of this section, a new business:*</u>

<u>(1) Shall be identified by the Department of Economic Development as being one of those business sectors targeted for growth as under § 15-4-2703;</u>

<u>(2) Shall have an annual payroll of the business, for Arkansas taxpayers, of not less than two hundred thousand dollars ($200,000) or more than one million dollars ($1,000,000);</u>

<u>(3) Show proof of an equity investment of five hundred thousand</u> <u>*dollars ($500,000) or more; and*</u>

(4) Shall pay average hourly wages as follows:

(A) For tier 1 counties, average hourly wages in excess of one hundred eighty percent (180%) of the county or state average hourly wage, whichever is less;

(B) For tier 2 counties, average hourly wages in excess of one hundred seventy percent (170%) of the county or state average hourly wage, whichever is less;

(C) For tier 3 counties, average hourly wages in excess of one hundred sixty percent (160%) of the county or state average hourly wage whichever is less; and

(D) For tier 4 counties, average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.

(c)(1) A new, targeted business may earn an income tax credit equal to ten percent (10%) of its annual payroll, with the maximum payroll credit not to exceed one hundred thousand dollars ($100,000) in any year during the term of the financial incentive agreement.

(2)(A) The term of the financial incentive agreement shall be established by the Director of the Department of Economic Development for a period not to exceed five (5) years.

(B) The director may allow a qualified targeted business to sell any income tax credits earned through one (1) or more incentives authorized by this subchapter.

(d)(1) In order to sell income tax credits earned through incentives authorized by this subchapter, the new, targeted business must apply to the department and furnish information necessary to facilitate the sale of income tax credits.

(2) The income tax credit shall be sold within *one (1) year of issuance and may only be sold one (1) time.*

(3)(A) The limitations established in § 26-51-1103 shall apply to the tax credits sold by targeted businesses under this section or § 15-4-2708.

(B) The ultimate recipient of the tax credits shall be subject to the same provisions for carry forward as the targeted business that earned the credits.

(C) The purchase of the tax credits will not establish a

new carry forward period for the ultimate recipient.

(e) A targeted business claiming or selling tax credits earned under this section, or § 15-4-2708, shall be prohibited from receiving the credit granted by § 26-51-1102(b) for the same expenditures.

15-4-2710. Powers and duties of the Department of Economic Development.

The Department of Economic Development shall administer this subchapter and may, in addition to powers and duties mentioned in other laws:

(1) Promulgate rules and regulations in accordance with the Administrative Procedures Act, § 25-15-201 et seq., necessary to carry out the provisions of this subchapter;

(2) Provide the Department of Finance and Administration with a copy of each financial incentive agreement entered into by the Department of Economic Development with each qualifying business;

(3) Assist the governing authority in obtaining assistance from any other agency of state government, including assistance to new businesses and industries;

(4) Assist any employer or prospective employer with a qualifying project in obtaining the benefits of any incentive or inducement program authorized by state law;

(5) Act as a liaison between other state agencies and businesses and industries to ensure that both the spirit and intent of this subchapter are met;

(6) Make disbursements from the Economic Development Incentive Fund to qualified businesses as authorized in § 15-4-2707; and

(7) Negotiate proposals on behalf of the state with prospective businesses that are considering locating a new facility or expanding an existing facility that would seek the benefits of §§ 15-4-2706(b), 15-4-2706(e), 15-4-2707, 15-4-2708(c) or 15-4-2709.

15-4-2711. Administration.

(a) A person claiming credit under the provisions of § 15-4-2706(c) is a “taxpayer” within the meaning of § 26-18-104(14) and shall be subject to all applicable provisions of that statute.

(b) Administration of the provisions of § 15-4-2706(c) shall be under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c)(1) All claims for sales and use tax refunds under §§ 15-4-2706(d) and 15-4-2706(e) shall be filed annually with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(2) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed.

(d)(1) The time limitation for §§ 15-4-2706(d) and 15-4-2706(e) for filing claims shall be tolled if:

(A) A program participant fails to pay sales tax on an item that was taxable; and

(B) The applicable tax is subsequently assessed as a result of an audit by the Revenue Division of the Department of Finance and Administration.

(2) All claims for sales and use tax refunds relating to an audited purchase shall be entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.

(e) A business must reach the investment thresholds under § 15-4-2706 within four (4) years from the date of the signed financial incentive agreement.

(f)(1) All claims for payroll rebate payments under § 15-4-2707 shall be certified to the Department of Finance and Administration and shall be recertified annually thereafter during the term of the financial incentive agreement.

(2) Failure to certify payroll figures and recertify those figures annually may result in a denial of payments.

(g)(1) If the annual payroll of the business applying for benefits under this subchapter does not reach the payroll threshold necessary to qualify for benefits authorized under this subchapter within twenty-four (24) months after the signing of the financial incentive agreement, the applicant may request, in writing, an extension of time to reach the required payroll threshold.

(2)(A) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that the applicant business has presented compelling reasons for an extension of time, the Director of the Department of Economic Development may grant an extension of time not to exceed forty-eight (48) months.

(B) However, the extension on projects applying for benefits under § 15-4-2705 are limited to a twenty-four (24) month extension.

(3)(A) If a business fails to reach the payroll threshold before the expiration of the twenty-four (24) months, or the time period established by a subsequent extension of time, that business will be liable for the repayment of all benefits previously received by the business.

(B)(i) After a business has failed to reach the payroll threshold in a timely manner, the Department of Finance and Administration *shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

(h)(1) If a business fails to reach the investment threshold before the expiration of the four (4) year time limit, that business will be liable for the repayment of all benefits previously received by the business.

(2)(A) After a business has failed to reach the investment threshold of this subchapter in a timely manner, the Department of Finance *and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

(i)(1) If the annual payroll of a business receiving benefits under this subchapter falls below the threshold for qualification in a year subsequent to the one in which it initially qualified for the incentive, the benefits outlined in the financial incentive agreement will be terminated unless the business files a written application for an extension of benefits with the Department of Economic Development explaining why the payroll has fallen below the level required for qualification.

(2) The Director of the Department of Economic Development and the Director of the Department of Finance and Administration may approve the request for extension of benefits, not to exceed twenty-four (24) months, and may authorize an extension of time for the business to meet the payroll requirements of the incentive received.

(j)(1) If a business fails to reach the average hourly wage requirement for benefits under this subchapter, the business will be liable for the repayment of all benefits previously received by the business.

(2)(A) After a business has failed to meet the hourly wage requirements, the Department of Finance and Administration shall *have two (2)* *years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

(k)(1) If a business fails to meet the nonretail business requirements of this subchapter, the business will be liable for the repayment of all benefits previously received by the business.

(2)(A) After a business has failed to meet the nonretail business requirements, the Department of Finance and Administration shall *have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

(l)(1) Eligible businesses whose qualification depends on receiving seventy-five percent (75%) of their revenue from out-of-state customers shall meet this requirement within three (3) years from the date of their financial incentive agreement.

(2)(A) If the requirement is not met within three (3) years of the signed financial incentive agreement, the applicant may request, in writing, an extension of time to reach the required sales threshold.

(B) If the Director of the Department of Economic Development finds that the applicant business has presented compelling reasons for an extension of time, the director may grant an extension of time not to exceed twenty-four (24) months.

(m)(1) If a business fails to timely meet the out-of-state revenue requirements of this subchapter, the business will be liable for the repayment of all benefits previously received by the business.

(2)(A) After a business has failed to meet the out-of-state revenue requirements, the Department of Finance and Administration shall *have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

(n)(1) If a business fails to notify the Department of Finance and Administration that the annual payroll of the business has fallen below the threshold for qualification for and retention of any incentive authorized by this subchapter, that business will be liable for the repayment of all benefits which were paid to the business after it no longer qualified for the benefits.

(2)(A) After a business has failed to notify the Department of Finance and Administration that the business has fallen below the payroll threshold, the Department of Finance and Administration shall *have two (2)* *years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

(3) Interest shall also be due at the rate of ten percent (10%) per annum.

(o)(1) For a qualified business taking advantage of one (1) or more of the investment incentives offered in § 15-4-2706, if the project costs exceed the initial project cost estimate included in the approved financial incentive agreement, the business shall submit an amended project plan, as soon as the cost overrun is recognized, to include updated cost figures.

(2)(A) Amendments that exceed twenty-five percent (25%) of the original financial incentive agreement estimate will not be considered and shall be submitted as a new project.

(B) An amendment shall not change the start date of the original project.

(p) The Department of Finance and Administration may obtain whatever information is necessary from a participating business and from the Arkansas Employment Security Department to verify that a business that has entered into financial incentive agreements with the Department of Economic Development is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments, payrolls, and out-of-state revenues to the Department of Finance and Administration.

(q) The Department of Finance and Administration may file a lawsuit in the Circuit Court of Pulaski County, or the circuit court in any county where a program participant is located, to enforce the repayment provisions of this subchapter.

(r)(1) If a business fails to satisfy or maintain any other requirement or threshold of this subchapter, that business will be liable for the repayment of all benefits previously received by the business.

(2)(A) After a business has failed to comply with the requirements or thresholds of this subchapter, the Department of Finance and *Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.*

(s) If a repayment is required as a result of not complying with the requirements or thresholds of this subchapter, interest shall be due at the rate of ten percent (10%) per annum.

15-4-2712. Restrictions.

(a) The incentives established by this subchapter may be combined.

(b) However:

(1) The investment tax credit authorized in § 15-4-2706(c) and the sales and use tax refund authorized in § 15-4-2706(d) may not be combined with each other;

(2) The job creation tax credits authorized in § 15-4-2709, the sales and use tax refund authorized in § 15-4-2706(e), and the research and development tax credit authorized in § 15-4-2708(c) may be combined with each other, but may not be combined with any other incentives authorized in this subchapter during the period in which the business qualifies for benefits under section § 15-4-2709; and

(3) The job creation tax credit authorized in § 15-4-2705 may not be combined with the investment tax credit authorized in § 15-4-2706(b).

(c) The payroll rebate program authorized in § 15-4-2707, the job creation tax credit authorized in § 15-4-2709, the investment tax credit authorized in § 15-4-2706(b), the sales and use tax refund authorized in § 15-4-2706(e), and the research and development tax credit authorized in § 15-4-2708(c) are discretionary incentives and are not available unless offered by the Department of Economic Development.

15-4-2713. Industrial development compacts.

(a) If four (4) or more contiguous counties establish an industrial development compact, as authorized by section 9 of Amendment 62 of the Arkansas Constitution, counties participating in the compact may be eligible for special benefits under this subchapter.

(b) Each of the four (4) or more contiguous counties that enter into an industrial development compact, in accordance with Amendment 62, may apply the benefits of the tier of the most impoverished county participating in the compact.

(c)(1) For the counties within a compact to share property tax revenues from new business locations or expansions, the businesses shall qualify for and receive benefits from one (1) or more of the incentives offered under this subchapter.

(2) A business subject to the benefits of this subsection may

not be offered Act 9 bond financing as a means to abate any portion of the property taxes that would otherwise apply, unless the property tax abatement agreement is approved by each of the parties participating in the compact.

(d) A county may not be a member of more than one (1) regional compact under this section.

15-4-2714. Coordination with other economic development programs.

(a) Eligible businesses that sign a financial incentive agreement with the Department of Economic Development before the effective date of this subchapter shall be *provided only the* benefits for which they are qualified under any of the following:

(1) Biotechnology Training and Development Act, §§ 2-8-101 to 2-8-109;

(2) Economic Development Incentive Act of 1993, §§ 15-4-1601 to 15-4-1609;

(3) Arkansas Enterprise Zone Act of 1993, §§ 15-4-1701 to 15-4-1709;

(4) Arkansas Economic Development Act of 1995, §§ 15-4-1901 to 15-4-1908;

(5) Economic Investment Tax Credit Act, §§ 26-52-701 to 26-52-706; and

(6) Arkansas Emerging Technology Development Act of 1999, §§ 15-4-2101 to 15-4-2107.

(b) Eligible businesses signing a financial incentive agreement with the Department after the date of enactment of this subchapter shall *receive only the benefits for which they are qualified under this subchapter.*

(c)(1) Under no circumstances shall an eligible business be entitled to receive incentives or benefits for a project under this subchapter and the programs listed in subsection (a) of this section.

(2) It is the specific intent of this subchapter that the incentives provided and the incentives provided by prior laws are mutually exclusive.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this act on July 1, 2003, is essential to the economic incentives of the Department of Economic Development provided in this act, and that in the event of an extension of the regular session, the delay in the effective date of this act beyond July 1, 2003, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on March 3, 2003.

/s/ Ferguson

APPROVED: 2/20/2003