Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1277 of the Regular Session

State of Arkansas

As Engrossed: H3/17/05

85th General Assembly

A Bill

Regular Session, 2005

HOUSE BILL 2783

By: Representatives D. Evans, Berry, Blair, Bond, Boyd, Bradford, Bright, Cowling, Dangeau, Everett, Hardwick, J. Johnson, Maloch, Mathis, Pate, Pickett, Reep, Roebuck, Thomason

By: Senator Higginbothom

For An Act To Be Entitled

AN ACT TO CREATE NEW INCENTIVES TO ENCOURAGE CERTAIN NONPROFIT ORGANIZATIONS TO LOCATE IN THE STATE OF ARKANSAS; TO PRESCRIBE THE CONDITIONS UNDER WHICH A NONPROFIT ORGANIZATION WOULD QUALIFY FOR THESE INCENTIVES; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO CREATE NEW INCENTIVES TO ENCOURAGE CERTAIN NONPROFIT ORGANIZATIONS TO LOCATE IN THE STATE OF ARKANSAS.

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:

<u>15-4-3201. Title.</u>

<u>This subchapter shall be known and may be cited as the "Nonprofit Incentive Act of 2005".</u>

<u>15-4-3202. Legislative intent.</u>

<u>The General Assembly finds that:</u>

<u>(1) Nonprofit organizations can make a significant contribution</u>

to the local economy of Arkansas communities;

(2) In many instances, a nonprofit organization can locate its operations in any number of states, creating a situation in which an Arkansas community may be in the position of competing for the location with another community located out of state;

(3) In situations in which a nonprofit organization is considering whether to locate its operations in Arkansas, it is important to have an inducement to help the nonprofit organization decide to locate in Arkansas; and

(4) The offering of incentives to a nonprofit organization should occur only where the eligibility requirements in § 15-4-3204 are met.

15-4-3203. Definitions.

As used in this subchapter:

(1) "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 the number of new full-time permanent employees, divided by forty (40);

(2) "County or state average hourly wage" means the weighted average weekly earnings for Arkansas residents in all industries, both statewide and countywide, as calculated by the Arkansas Employment Security Department in its most recent Annual Covered Employment and Earnings publication, divided by forty (40);

(3) "Financial incentive agreement" means an agreement entered into by an eligible nonprofit organization and the Department of Economic Development to provide the organization an incentive to locate or stay in Arkansas;

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

(5) "Income" means the moneys received by a nonprofit organization for operations of the organization and shall include donations, revenue from sales or memberships, grants, or legislative appropriations;

(6)(A)(i) "New full-time permanent employee" means a position or job that is created pursuant to the signed financial incentive agreement and which 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, in order to qualify for the incentives authorized by this subchapter, a contractual employee shall be offered a benefits package comparable to that of a direct employee of the nonprofit organization seeking incentives under this subchapter;

(7) "Nonprofit organization" means an entity that has filed required documents with and been approved by the Secretary of State as having met the qualifications for a nonprofit organization in Arkansas and that has also received a § 501(c)(3) designation from the Internal Revenue Service prior to applying for the benefits afforded under this subchapter;

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

(9)(A) "Project" means:

(i) Preconstruction costs, including project planning costs, architectural or engineering fees, right-of-way purchases, utility extensions, site preparations, purchase of mineral rights, building demolition, builders' risk insurance, capitalized start-up costs, deposits and process payments on eligible machinery and equipment, and other costs necessary to prepare for the start of construction;

(ii) Costs associated with the construction of a new plant or facility, including, but not limited to, land, building, production equipment, or support infrastructure;

(iii) Costs associated with the expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(iv) Costs associated with modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(B) "Project" does not mean:

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

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

(iv) The purchase or acquisition of an existing business unless there is sufficient documentation that the existing business was closed and the purchase of the existing business will result in the retention of the jobs that would have been lost due to the closure.

(C) In order to receive credit for or refunds related to project costs, the costs shall be incurred within four (4) years from the date the financial incentive agreement was signed by the Department of Economic Development.

(D) Routine operating expenditures are ineligible for benefits under this subchapter;

(10) "Project plan" means the plan submitted to the department containing such information as may be required by the Director of the Department of Economic Development to determine eligibility for benefits, and if approved, it becomes a supplement to the financial incentive agreement; and

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

15-4-3204. Eligibility.

(a) Only those nonprofit organizations that have a payroll of new full-time permanent employees in excess of one million dollars ($1,000,000) annually may apply for and receive any benefits authorized by this subchapter.

(b) In order to qualify for any benefits authorized by this subchapter, the nonprofit organization shall:

(1) Pay wages that average in excess of one hundred ten percent (110%) of the lesser of the county or state average wage; and

(2) Receive a minimum of seventy-five (75%) of its income from out-of-state sources.

(c) Hospitals, medical clinics, accredited academic educational institutions, and churches are specifically excluded from receiving the benefits authorized by this subchapter.

(d)(1)(A) Nonprofit organizations shall apply and qualify for benefits under § 15-4-3206 in order to receive the benefits under § 15-4-3205.

(B) A nonprofit organization cannot receive the sales and use tax refund without meeting the job creation requirements of this subchapter.

(2) A sales and use tax refund shall be made only if after the audit of expenditures and payroll by the Revenue Division of the Department of Finance and Administration, the division determines that the nonprofit organization is in compliance with all qualifications to receive benefits *under this subchapter.*

(e) In order to receive the benefits authorized by this subchapter, the nonprofit organization applying for benefits shall sign a financial incentive agreement with the Department of Economic Development prior to the start of any construction.

15-4-3205. Sales and use tax refund.

(a)(1) An application for a sales and use tax refund under this subchapter shall be filed with the Department of Economic Development and shall include an endorsement resolution from the governing authority of a municipality or county where the nonprofit organization is or will be located.

(2) The resolution shall:

(A) Endorse the applicant's participation in the sales and use tax refund program; and

(B) Authorize the refund or any sales and use tax levied by the municipality or county.

(b)(1) The Director of the Department of Finance and Administration shall authorize a sales and use tax refund of state and local sales and use taxes, excepting the sales and use tax dedicated to the Educational Adequacy Fund as authorized by Acts 2003, Second Extraordinary Session, Number 107, and the Conservation Tax Fund as authorized by § 19-6-484, on the purchases by the nonprofit organization of the material used in the construction of a building or buildings or any addition, modernization, or improvement for housing any new or expanding nonprofit organization and machinery and equipment to be located in or in connection with a building.

(2) To qualify for the sales and use tax refund authorized by this section, a qualified nonprofit organization shall spend in excess of five hundred thousand dollars ($500,000) on buildings, machinery, and equipment in the new or improved facility.

(3) A refund shall not be authorized for:

(A) Routine operating expenditures; or

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

(c) 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, provided that the amendment complies with § 15-4-3207(h)(2).

(d) All claims for sales and use tax refunds under this section 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.

15-4-3206. Payroll rebate.

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

(b) The fund shall consist of revenues designated for this fund by the Director of the Department of Finance and Administration pursuant to agreements entered into by the Department of Economic Development with qualified nonprofit organizations.

(c) After the Department of Finance and Administration has received the certification of the payroll of a nonprofit organization that has entered into financial incentive agreements with the Department of Economic Development for the payroll rebate authorized by this section, the Director of the Department of Finance and Administration shall transfer the appropriate amount of money for the payroll rebate designated by the financial incentive agreement from the General Revenue Fund Account of the State Apportionment Fund to the Economic Development Incentive Fund.

(d)(1) The award of the incentive authorized by this section 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) The requisite annual payroll of one million dollars ($1,000,000) shall be reached within twenty-four (24) months of the signing of the financial incentive agreement for the benefits of this section to be approved.

(4) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that the nonprofit organization 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 twenty-four (24) months to reach the requisite annual payroll of one million dollars ($1,000,000).

(5) In addition to having an annual payroll of one million dollars ($1,000,000) or more, the nonprofit organization applying for benefits under this subchapter shall pay average hourly wages in excess of one hundred ten percent (110%) of the lesser of the state or county average wage for the county in which the organization locates or expands.

(6) Payments to nonprofit organizations with an annual payroll in excess of one million dollars ($1,000,000) shall be considered and may be authorized by the Director of the Department of Economic Development, after the Director of the Department of Economic Development has signed a financial incentive agreement with the nonprofit organization, in the amount of four percent (4%) of the annual payroll of the new full-time permanent employees.

(7) The Director of the Department of Economic Development may authorize a payroll rebate for up to five (5) years.

15-4-3207. Administration.

(a)(1) All claims for sales and use tax refunds under § 15-4-3205 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.

(b)(1) The time limitation imposed by § 15-4-3205 for filing claims shall be tolled if:

(A) A nonprofit organization fails to pay sales or use 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.

(c) A nonprofit organization must reach the investment threshold under § 15-4-3205(b)(2) within four (4) years from the date of the signed financial incentive agreement.

(d)(1) All claims for payroll rebates under § 15-4-3206 shall be certified to the Department of Finance and Administration and shall be recertified annually 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.

(3)(A) If the annual payroll of the nonprofit organization applying for benefits under this subchapter is not met within twenty-four (24) months after the signing of the financial incentive agreement, the nonprofit organization may request in writing an extension of time to reach the required payroll threshold.

(B) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that the nonprofit organization 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 twenty-four (24) months.

(e)(1) If the annual payroll of a nonprofit organization 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 shall be terminated unless the nonprofit organization 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 time, not to exceed twenty-four (24) months, for the nonprofit organization to bring the payroll back up to the requisite payroll threshold amount and may approve the continuation of benefits during the period the extension is granted.

(3) If a nonprofit organization 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, the nonprofit organization shall be liable for repayment of all payroll benefits previously received by the nonprofit organization.

(f)(1) If a nonprofit organization fails to maintain the average hourly wage requirements for benefits under this subchapter, the nonprofit organization shall be liable for the repayment of all payroll benefits previously received by the nonprofit organization.

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

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

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

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

(h)(1) If the project costs of a qualified nonprofit organization taking advantage of the sales and use tax refund offered in § 15-4-3205 exceed the initial project cost estimate included in the approved financial incentive agreement, the nonprofit organization shall submit an amended project plan as soon as the cost overrun is recognized, to include the updated cost figures.

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

(B) An amendment shall not change the start date as specified in the original project.

(i) The Department of Finance and Administration may obtain necessary information from a participating nonprofit organization and from the Arkansas Employment Security Department to verify that a nonprofit organization 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 and payrolls to the Department of Finance and Administration.

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

(k) The Department of Economic Development shall have the power to promulgate rules necessary to implement, enforce, and administer this subchapter.

/s/ D. Evans, et al

APPROVED: 3/29/2005