

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

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/19/99

A Bill

Act 1367 of 1999
HOUSE BILL 2153

5 By: Representatives Cleveland, *Magnus, Milum, Davis, Simmons*
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND THE BIOTECHNOLOGY DEVELOPMENT AND
10 TRAINING ACT, ARKANSAS CODE 2-8-101 ET SEQ., TO ADD A
11 PROVISION THAT WOULD ALLOW AN INCOME TAX CREDIT FOR
12 MANUFACTURERS OF ADVANCED BIOFUELS; TO DEFINE ADVANCED
13 BIOFUELS; TO DECLARE AN EMERGENCY; AND FOR OTHER
14 PURPOSES. "

Subtitle

15
16 "AN ACT TO PROVIDE AN INCOME TAX CREDIT
17 FOR THE MANUFACTURERS OF ADVANCED
18 BIOFUELS; TO DEFINE ADVANCED BIOFUELS;
19 AND FOR OTHER PURPOSES. "
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code 2-8-101 is amended to read as follows:

26 "2-8-101. Legislative Findings.

27 (a) Agriculture and economic development are dependent on biotechnology,
28 which affects every Arkansas farmer from the smallest tomato grower to the
29 largest poultry producer. Furthermore, intellectual property developed at
30 Arkansas' state-supported colleges and universities is being exported to other
31 states for exploitation. Development of biotechnology in Arkansas is required
32 for the state's medical, agricultural, and other industries to remain
33 competitive in the twenty-first century.

34 (b) Biotechnology develops uses of biochemistry, molecular biology,
35 genetics, and bioengineering to meet the needs of agriculture, aquaculture,
36 forestry, energy, and environmental industries, as well as developing products

1 useful for modern medicine and pharmaceuticals. Biotechnology provides high-
 2 paying jobs and develops high value-added products, which require an educated
 3 workforce with advanced technical skills. Moreover, the growth of the
 4 biotechnology industry in agriculture and other areas will enable Arkansas to
 5 maintain a competitive advantage in the marketplace.

6 (c) The General Assembly finds that the biotechnology industry is at a
 7 competitive disadvantage compared to other industries in Arkansas. The
 8 biotechnology industry takes a longer period than other companies between
 9 research, product development, and marketing. Therefore, it is determined and
 10 declared that research, development and education in biotechnology are within
 11 the public interest.

12 (d) It is further determined and declared that it is in the best
 13 interest of the state to encourage the manufacturing of products derived from
 14 biotechnology."

15
 16 SECTION 2. Arkansas Code 2-8-102 is amended to read as follows:

17 "For the purposes of this chapter:

18 (1) 'Advanced biofuels' means ethanol, methanol, or any derivatives
 19 thereof, which are produced through biological means other than direct
 20 fermentation of a food crop.

21 (2) 'Biomass' means any organic material, including solid waste, but
 22 excluding oil, natural gas, coal and lignite or any other product thereof.

23 ~~(1)~~(3) 'Biotechnology' means the uses of biochemistry, molecular
 24 biology, genetics, and bioengineering to meet the needs of agriculture,
 25 aquaculture, forestry, energy, and environmental industries, as well as
 26 developing products useful for modern medicine, veterinary science, and
 27 pharmaceuticals.

28 ~~(2)~~(4) 'Cost' means expenditures on or after the tax year beginning
 29 January 1, 1997:

30 (A) In the case of biotechnology facilities and advanced biofuels
 31 facilities, all activities and cost associated with site, construction,
 32 expansion, improvement, renovation, or purchase of such facilities, including
 33 costs incurred in the purchase and installation of equipment, and support
 34 infrastructure;

35 (B) For the purpose of 'higher education partnerships,' costs and
 36 expenses of conducting qualified research through a cooperative research

1 project with one or more state-supported institutions of higher education in
2 Arkansas for the conduct of qualified research;

3 (C) For the purpose of 'training,' costs shall be limited to:

4 (i) A six-month period of training at the facility; or

5 (ii) The cost of tuition, books and fees for a program of
6 secondary, undergraduate or post-graduate education in an accredited
7 institution of higher learning.

8 (iii) The costs associated with subdivisions (C)(i) and
9 (C)(ii) of this section eligible for the income tax credit shall not include
10 salaries and wages of the employees being trained. Total costs for training
11 shall not exceed ten thousand dollars (\$10,000) per employee;

12 (D) In the case of transfer of title or finance lease, the amount
13 of the purchase price; or

14 (E) In the case of a lease which is not a finance lease but which
15 otherwise qualifies as a purchase under this section, the amount of the lease
16 payments due to be paid during the term of the lease after deducting any
17 portion of the lease payments attributable to interest, insurance and taxes.

18 ~~(3)~~(5) 'Finance lease' means a lease agreement which is treated as a
19 purchase by a lessee for Arkansas income tax purposes.

20 ~~(4)~~(6) 'Higher education partnerships' means any cooperative research
21 project defined by terms of a written agreement whereby companies engaged in
22 the business of biotechnology contract with state-supported institutions of
23 higher learning in Arkansas for the conduct of qualified research.

24 ~~(5)~~(7) 'Intellectual property' means patents, trade secrets, copyrights
25 and trademarks used in biotechnology.

26 ~~(6)~~(8) 'Purchase' means a transaction under which title to an item is
27 transferred for consideration or a lease contract for a period of at least
28 three (3) years regardless of whether title to the item is transferred at the
29 end of such period.

30 ~~(7)~~(9) 'Qualified research' means scientific research and development in
31 the field of biotechnology, including experimental or laboratory activity to
32 develop new products, improve existing products, or develop new uses of
33 products, but only to the extent that activity is conducted in Arkansas, or is
34 required by federal authorities to be conducted elsewhere. It shall be
35 performed primarily under laboratory, clinical, or field experimental
36 conditions for the purpose of reducing a concept or idea to practice, or to

1 advance a concept or idea or improvement thereon to the point of practical
 2 application. Qualified research does not include tests or inspection of
 3 materials or products for quality control, efficiency surveys, management
 4 studies, or other market research, or any other ordinary and necessary
 5 expenses of conducting business.

6 (10) 'Solid waste' means any garbage, or sludge from a wastewater
 7 treatment plant, water supply treatment plant or air pollution control
 8 facility and other discarded material, including solid, liquid, semi-solid, or
 9 contained gaseous material resulting from industrial, commercial, mining,
 10 agricultural, residential and other community activities, but does not include
 11 solid or dissolved materials in domestic sewage, or solid or dissolved
 12 materials in irrigation return flows or industrial discharges that are point
 13 sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or
 14 by-product materials as defined by the Atomic Energy Act of 1954, as amended
 15 (68 Stat. 923).

16 ~~(8)~~(11) 'Training' means employer-paid training within Arkansas that is
 17 necessary to prepare employees for work in biotechnology.

18 ~~(9)~~(12) 'Base year qualified research costs' means the costs of
 19 qualified research for the 1996 tax year. For any new taxpayer or taxpayer
 20 not required to file an Arkansas tax return in 1996, the base year qualified
 21 research costs shall be zero dollars (\$0).

22 ~~(10)~~(13) 'Credit year' means the tax year in which costs are incurred.

23 ~~(11)~~(14) 'Biotechnology facilities' means facilities and equipment
 24 required to carry out qualified research.

25 (15) 'Advanced biofuels facilities' means the buildings and equipment
 26 necessary to produce advanced biofuels."

27
 28 SECTION 3. Title 2, Chapter 8, Subchapter 1 of the Arkansas Code is
 29 amended to add a new section to be appropriately numbered by the Arkansas Code
 30 Revision Commission:

31 "Tax credit for advanced biofuels facility.

32 (a) There shall be allowed a credit against the income tax imposed by
 33 §26-51-101 et seq. in an amount as determined in subsection (b) of this
 34 section for any Arkansas taxpayer engaged in the business of producing
 35 advanced biofuels for the cost of:

36 (1) Buildings;

- 1 (2) Equipment;
- 2 (3) Higher education partnerships; and
- 3 (4) Purchasing, licensing or protecting intellectual property
- 4 necessary to manufacture advanced biofuels.

5 (b) The amount of the credit allowed shall be equal to thirty percent
 6 (30%) of the cost of buildings, equipment, higher education partnerships and
 7 licenses for intellectual property necessary to manufacture advanced
 8 biofuels."

10 SECTION 4. Arkansas Code 2-8-106(a) and (b) is amended to read as
 11 follows:

12 “(a) The income tax credits provided in this section shall be used to
 13 offset the first fifty thousand dollars (\$50,000) of income tax liability
 14 arising during the credit year, and fifty percent (50%) of any remaining
 15 income tax liability for the year. Any unused credit may be carried forward
 16 for a maximum of nine (9) taxable years after the credit year in which the
 17 credit originated.

18 (b) The taxpayer shall refund the amount of the income tax credit
 19 determined by subsection (c) of this section if, within nine (9) years of the
 20 taxable year for which the credit is originated:

21 ~~(A)(1)~~ The biotechnology or advanced biofuels facility ceases to
 22 be used or operated in the manner required by this section; and

23 ~~(B)(2)~~ The Arkansas ~~Industrial Development Commission~~ Department
 24 of Economic Development and the Department of Finance and Administration find
 25 that the taxpayer has ceased to qualify for tax credits under the provisions
 26 of this chapter.”

28 SECTION 5. Arkansas Code 2-8-108(a) and (b) is amended to read as
 29 follows:

30 “(a) To claim the benefits of this chapter, a taxpayer must obtain
 31 certification from the Director of the Arkansas ~~Industrial Development~~
 32 ~~Commission~~ Department of Economic Development certifying to the Revenue
 33 Division of the Department of Finance and Administration that the taxpayer is
 34 engaged in qualified research in biotechnology or the manufacturing of
 35 advanced biofuels.

36 (b) The Arkansas ~~Industrial Development Commission~~ Department of

1 Economic Development, or its successor, shall promulgate regulations as
2 necessary to administer this chapter. These rules or regulations may include,
3 but are not limited to, the establishment of technical specifications and
4 requirements for information and documentation for taxpayers seeking a credit
5 under this chapter.”

6
7 SECTION 6. All provisions of this act of a general and permanent nature
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
9 Revision Commission shall incorporate the same in the Code.

10
11 SECTION 7. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.

16
17 SECTION 8. All laws and parts of laws in conflict with this act are
18 hereby repealed.

19
20 SECTION 9. EMERGENCY CLAUSE. It is hereby found and determined by the
21 Eighty-second General Assembly that Arkansas exports approximately one billion
22 dollars (\$1,000,000,000) to two billion dollars (\$2,000,000,000) each year for
23 motor fuels; that Arkansas ranks number one (1) among the states in per
24 vehicle consumption of motor fuels; that Arkansas possesses vast quantities of
25 feedstocks appropriate for advanced biofuels; that these feedstocks present
26 both an economic and an environmental detriment to the state if not used or
27 disposed of in an acceptable manner; that intellectual property exists in the
28 state to address the production of advanced biofuels; that advanced biofuels
29 generally offer cleaner burning characteristics than conventional motor fuels;
30 and that it is necessary to provide mobility to the citizens of the state and
31 to address the need for the increased production of motor fuels within the
32 state. Therefore, an emergency is declared to exist and this act being
33 immediately necessary for the preservation of the public peace, health and
34 safety shall become effective on the date of its approval by the Governor. If
35 the bill is neither approved nor vetoed by the Governor, it shall become
36 effective on the expiration of the period of time during which the Governor

1 may veto the bill. If the bill is vetoed by the Governor and the veto is
2 overridden, it shall become effective on the date the last house overrides the
3 veto.

4 */s/ Cleveland, et al*

7 APPROVED: 4/12/1999

5
6
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36