

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 2308 of the Regular Session

1 State of Arkansas *As Engrossed: H2/24/05 H3/18/05 H4/1/05 S4/11/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1899

4

5 By: Representative Ragland

6 By: *Senator Trusty*

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For An Act To Be Entitled

10

AN ACT TO AMEND THE ARKANSAS TOURISM DEVELOPMENT

11

ACT; TO CHANGE QUALIFICATION REQUIREMENTS; TO ADD

12

DEFINITIONS; TO CHANGE INCOME TAX BENEFITS FOR

13

JOB CREATION; AND FOR OTHER PURPOSES.

14

15

Subtitle

16

AN ACT TO AMEND THE ARKANSAS TOURISM

17

DEVELOPMENT ACT.

18

19

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

21

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SECTION 1. Arkansas Code § 15-11-503 is amended to read as follows:

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15-11-503. Definitions.

24

As used in this subchapter:

25

(1) "Agreement" means an agreement entered into pursuant to §

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15-11-506 by and between the Director of the Department of Economic

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Development and an approved company with respect to a tourism attraction

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project;

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(2) "Approved company" means any eligible company that is

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seeking to undertake a tourism attraction project and is approved by the

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director pursuant to §§ 15-11-505 and 15-11-506;

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(3) "Approved costs" means:

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(A) Obligations incurred for labor and to vendors,

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contractors, subcontractors, builders, suppliers, deliverymen, and

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materialmen in connection with the acquisition, construction, equipping, and



1 installation of a tourism attraction project;

2 (B) The costs of acquiring real property or rights in real
3 property in connection with a tourism attraction project and any costs
4 incidental thereto;

5 (C) The cost of contract bonds and insurance of all kinds
6 that may be required or necessary during the course of the acquisition,
7 construction, equipping, and installation of a tourism attraction project
8 which is not paid by the vendor, supplier, deliveryman, contractor, or
9 otherwise provided;

10 (D) All costs of architectural and engineering services,
11 including, but not limited to, estimates, plans and specifications,
12 preliminary investigations, and supervision of construction and installation,
13 as well as for the performance of all the duties required by or consequent to
14 the acquisition, construction, equipping, and installation of a tourism
15 attraction project;

16 (E) All costs required to be paid under the terms of any
17 contract for the acquisition, construction, equipping, and installation of a
18 tourism attraction project;

19 (F) All costs required for the installation of utilities
20 in connection with a tourism attraction project, including, but not limited
21 to, water, sewer, sewage treatment, gas, electricity, and communications, and
22 including off-site construction of utility extensions paid for by the
23 approved company; and

24 (G) All other costs comparable with those described in
25 this section;

26 (4) "Director" means the Director of the Department of Economic
27 Development or the director's designated representative;

28 (5) "Eligible company" means any corporation, limited liability
29 company, partnership, registered limited liability partnership, sole
30 proprietorship, business trust, or any other entity that invests a minimum of
31 five hundred thousand dollars (\$500,000) in a high unemployment county or one
32 million dollars (\$1,000,000) in any other county for the purpose of
33 constructing, operating, or intending to operate a tourism attraction
34 project, whether owned or leased, within the state that meets the standards
35 promulgated by the director pursuant to § 15-11-504;

36 (6) "Final approval" means the action taken by the director

1 authorizing the eligible company to receive inducements under §§ 15-11-507
2 and 15-11-509;

3 (7)(A) *"High unemployment" means an unemployment rate equal to*
4 *or in excess of one hundred fifty percent (150%) of the state's average*
5 *unemployment rate for the preceding calendar year as specified by statewide*
6 *annual labor force statistics compiled by the Arkansas Employment Security*
7 *Department when the state's annual average unemployment rate is six percent*
8 *(6%) or below.*

9 (B) *When the state's annual average unemployment rate is*
10 *above six percent (6%), "high unemployment" means equal to or in excess of*
11 *three percent (3%) above the state's average unemployment rate for the*
12 *preceding calendar year as specified by statewide annual labor force*
13 *statistics compiled by the Arkansas Employment Security Department;*

14 (8)(A) *"Increased state sales tax liability" means that portion*
15 *of an approved company's reported state sales, i.e., gross receipts tax*
16 *liability resulting from taxable sales of goods and services to its customers*
17 *at the tourist attraction for any monthly sales tax reporting period after*
18 *the approved company provides the certification required by § 15-11-507(b),*
19 *which exceeds that reported state sales tax liability for sales to its*
20 *customers for the same month in the calendar year immediately preceding that*
21 *certification.*

22 (B) *If an approved company purchases an existing tourism*
23 *attraction which was selling goods and services at the time of purchase and*
24 *which may or may not have been entitled to the benefits of this subchapter*
25 *prior to such a purchase, the "increased state sales tax liability" resulting*
26 *from any investments in the tourism attraction by the new owners means that*
27 *portion of the approved company's reported state sales, or gross receipts,*
28 *tax liability resulting from taxable sales of goods and services to its*
29 *customers at the tourism attraction for any monthly sales tax reporting*
30 *period after the approved company provides the certification required by §*
31 *15-11-507(b) which exceeds the reported state sales tax liability for sales*
32 *made by the seller of the tourism attraction for the same month in the*
33 *calendar year immediately preceding that certification.*

34 (C) *The prohibitions against disclosure of confidential*
35 *tax information provided in § 26-18-303 shall not apply for purposes of*
36 *computing the credit available under this subchapter;*

1 (9) "Inducements" means the Arkansas sales tax credit as
2 prescribed in § 15-11-507 or the Arkansas income tax credit as prescribed in
3 § 15-11-509, or both;

4 (10) "Investment threshold" means the minimum amount of approved
5 costs that must be incurred in order to qualify for eligibility;

6 ~~(10)(A)(i)~~ (11)(A)(i) "New full-time permanent employee" means a
7 position or job which was created as a result of a tourism attraction project
8 and which is filled by one (1) or more employees or contractual employees who
9 were Arkansas taxpayers during the year in which the tax credits or
10 incentives were earned or claimed.

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

14 (B) However, in order to qualify for the provisions of
15 this subchapter, a contractual employee must be offered a ~~benefit~~ benefits
16 package comparable to a direct employee of the business seeking incentives
17 under this subchapter;

18 (12) "Payroll" means the total taxable wages, including overtime
19 and bonuses, paid during the preceding tax year of the approved company to
20 new full-time permanent employees hired after the date of the signed
21 financial incentive agreement; and

22 ~~(11)(A)~~ (13)(A) "Tourism attraction" means:

- 23 (i) Cultural or historical sites;
24 (ii) Recreational or entertainment facilities;
25 (iii) Areas of natural phenomena or scenic beauty;
26 (iv) Theme parks;
27 (v) Amusement or entertainment parks;
28 (vi) Indoor or outdoor plays or music shows;
29 (vii) Botanical gardens; and
30 (viii) Cultural or educational centers.

31 (B) A tourism attraction shall not include:

32 (i) Lodging facilities, unless the facilities
33 constitute a portion of a tourism attraction project and represent less than
34 sixty percent (60%) of the total approved costs of the tourism attraction
35 project or unless the project meets the special rules outlined in § 15-11-
36 510;

1 (ii) Facilities that are primarily devoted to the
2 retail sale of goods, unless the goods are created at the site of the tourism
3 attraction project or if the sale of goods is incidental to the tourism
4 attraction project;

5 (iii) Facilities that are not open to the general
6 public;

7 (iv) Facilities that do not serve as a likely
8 destination where individuals who are not residents of the state would remain
9 overnight in commercial lodging at or near the tourism attraction project;

10 (v) Facilities owned by the State of Arkansas or a
11 political subdivision of the state; or

12 (vi)(a) Facilities established for the purpose of
13 conducting legalized gambling.

14 (b) However, a facility regulated under the
15 Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound
16 Racing Law, § 23-111-101 et seq., shall be a tourism attraction for purposes
17 of this subchapter for any approved project as outlined in subdivision
18 (10)(A) of this section or for an approved project relating to pari-mutuel
19 racing at the facility and not for establishing a casino or for offering
20 casino-style gambling; ~~and~~

21 ~~(12)~~(14) "Tourism attraction project" or "project" means the:

22 (A) Acquisition, including the acquisition of real estate
23 by leasehold interest with a minimum term of ten (10) years, construction,
24 and equipping of a tourism attraction; and

25 (B) Construction and installation of improvements to
26 facilities necessary or desirable for the acquisition, construction, and
27 installation of a tourism attraction, including, but not limited to:

28 (i) Surveys;

29 (ii) Installation of utilities, which may include
30 water, sewer, sewage treatment, gas, electricity, communications, and similar
31 facilities; and

32 (iii) Off-site construction of utility extensions to
33 the boundaries of the real estate on which the facilities are located, all of
34 which are to be used to improve the economic situation of the approved
35 company in a manner that will allow the approved company to attract persons.

36

1 SECTION 2. Arkansas Code § 15-11-504 is amended to read as follows:
2 15-11-504. Evaluation standards - Tourism attraction project
3 applications.

4 (a) The Director of the Department of Economic Development shall
5 establish standards for the making of applications for inducements to
6 eligible companies and their tourism attraction projects by the promulgation
7 of administrative regulations in accordance with the Arkansas Administrative
8 Procedure Act, § 25-15-201 et seq.

9 (b) With respect to each eligible company making an application to the
10 director for inducements and with respect to the tourism attraction project
11 described in the application, the director shall make inquiries and request
12 materials of the applicant that shall include, but shall not be limited to:

13 (1) Marketing plans for the project that target individuals who
14 are not residents of the state;

15 (2) A description and location of the project;

16 (3) Capital and other anticipated expenditures for the project
17 *that indicate that the total cost of the project shall exceed five hundred*
18 *thousand dollars (\$500,000) in a high unemployment county and one million*
19 *dollars (\$1,000,000) in all other counties and the anticipated sources of*
20 *funding ~~therefor~~ for the project;*

21 (4) The anticipated employment and wages to be paid at the
22 project;

23 (5) Business plans which indicate the average number of days in
24 a year in which the project will be in operation and open to the public; and

25 (6) The anticipated revenues and expenses generated by the
26 project.

27 (c) The Department of Economic Development shall analyze the data made
28 available by the eligible company and collect and analyze additional
29 information as is necessary to determine that the tourism attraction project
30 will:

31 (1) Develop a marketing plan that targets at least twenty-five
32 percent (25%) of its visitors from among persons who are not residents of the
33 state;

34 (2) *Have costs in excess of five hundred thousand dollars*
35 *(\$500,000) in a high unemployment county and one million dollars (\$1,000,000)*
36 *in all other counties;*

1 (3) Have a significant and positive economic impact on the state
2 considering, among other factors, the extent to which the tourism attraction
3 project will compete directly with existing tourism attractions in the state
4 and the amount by which increased tax revenues from the tourism attraction
5 project will exceed the sales tax credit allowed pursuant to § 15-11-507;

6 (4) Produce sufficient revenues and public demand to be
7 operating and open to the public on a regular and persistent basis; and

8 (5) Not adversely affect existing employment in the state.

9
10 SECTION 3. Arkansas Code § 15-11-505(e), concerning standards for
11 preliminary and final approval of tourism companies and projects, is amended
12 to read as follows:

13 (e) After a review of the relevant materials, other information made
14 available to the director, and the completion of other inquiries, the
15 director may give final approval to the eligible company's application for a
16 tourism attraction project and may grant the approval to the eligible company
17 ~~the status of an approved company~~ in the form of a financial incentive
18 agreement.

19
20 SECTION 4. Arkansas Code § 15-11-506(b) and (c), concerning contracts
21 for tourism attraction projects, are amended to read as follows:

22 (b) The terms and provisions of each agreement shall include, but
23 shall not be limited to:

24 (1) The amount of approved costs, which shall be determined by
25 negotiations between the Director of the Department of Economic Development
26 and the approved company;

27 (2)(A)(i) The eligibility date for incurring project costs.
28 ~~(ii) A date certain~~ The eligibility date shall be
29 the date by which the approved company shall have completed the tourism
30 attraction project.

31 (B) Within three (3) months of the completion date, the
32 approved company shall document the actual cost of the tourism attraction
33 project through a certification of such costs by an independent certified
34 public accountant acceptable to the Director of the Department of Economic
35 Development; and

36 (3) The following provisions:

1 (A)(i) The term shall be ten (10) years from the later of:

2 (a) The date of the final approval of the
3 tourism attraction project; or

4 (b) The completion date specified in the
5 agreement, if the completion date is within two (2) years of the date of the
6 final approval of the tourism attraction project.

7 (ii) However, the term of the agreement may be
8 extended for up to two (2) additional years by the Director of the Department
9 of Economic Development, with the advice and consent of the Director of the
10 Department of Finance and Administration, if the Director of the Department
11 of Economic Development determines that the failure to complete the tourism
12 attraction project within two (2) years resulted from unanticipated and
13 unavoidable delay in the construction of the tourism attraction project, the
14 project as originally planned will require more than two (2) years to
15 complete, or resulted from a merger, acquisition, or other change in business
16 ownership or business structure;

17 (B) In any sales tax reporting period during which an
18 agreement is in effect, if the increased state sales tax liability of the
19 approved company exceeds the state sales tax credit available to the approved
20 company, then the approved company shall pay the excess to the state as sales
21 tax;

22 (C) Within forty-five (45) days after the end of each
23 calendar year ~~of the approved company~~, the approved company shall supply the
24 Director of the Department of Economic Development with such reports and
25 certifications as the Director of the Department of Economic Development may
26 request, demonstrating to the satisfaction of the Director of the Department
27 of Economic Development that the approved company is in compliance with the
28 provisions of this subchapter; and

29 (D) The approved company shall not receive a credit
30 against the Arkansas sales tax imposed by § 26-52-301 et seq., with respect
31 to any calendar year if in any calendar year following the first year of the
32 agreement the tourism attraction project is not operating and open to the
33 public on a regular and persistent basis.

34 (c) The agreement shall not be ~~transferrable~~ transferable or
35 assignable by the approved company without the written consent of the
36 Director of the Department of Economic Development.

1
2 SECTION 5. Arkansas Code § 15-11-507(b) and (c), concerning tourism
3 attraction project sales tax credits, are amended to read as follows:

4 (b)(1)(A)(i)(a) An approved company ~~whose agreement provides that it~~
5 ~~shall expend approved costs of more than five hundred thousand dollars~~
6 ~~(\$500,000) but less than one million dollars (\$1,000,000)~~ shall be entitled
7 to a credit if the company certifies to the Director of the Department of
8 *Finance and Administration that it has expended at least five hundred*
9 *thousand dollars (\$500,000) in a high unemployment county and one million*
10 *dollars (\$1,000,000) in all other counties* in approved costs and the Director
11 of the Department of Economic Development certifies that the approved company
12 is in compliance with this subchapter.

13 *(b)(1) The Director of the Department of*
14 *Finance and Administration shall then issue a sales tax credit memorandum to*
15 *the approved company equal to ~~ten percent (10%)~~ fifteen percent (15%) of the*
16 *approved costs.*

17 *(2) However, in high unemployment*
18 *counties the Director of the Department of Finance and Administration shall*
19 *issue a credit memorandum to the approved company equal to twenty-five*
20 *percent (25%) of the approved costs.*

21 *(c) The sales tax credit memorandum shall not*
22 *include an offset of the tourism tax levied under § 26-52-1001-26-52-1006.*

23
24 ~~*(b)(ii) Subsequent requests for credit for*~~
25 ~~*additional certified approved costs in excess of five hundred thousand*~~
26 ~~*dollars (\$500,000) but less than one million dollars (\$1,000,000) shall*~~
27 ~~*result in a sales tax credit equal to ten percent (10%) of the approved costs*~~
28 ~~*shall be filed with the Department of Finance and Administration during the*~~
29 ~~*term of the agreement.*~~

30 ~~*(ii) If the company subsequently expends additional*~~
31 ~~*certified approved costs so that the total amount of expended approved costs*~~
32 ~~*exceeds one million dollars (\$1,000,000), then the sales tax credit*~~
33 ~~*memorandum shall equal twenty five percent (25%) of the approved costs in*~~
34 ~~*excess of one million dollars (\$1,000,000).*~~

35 ~~*(B)(i) An approved company whose agreement provides that*~~
36 ~~*it shall expend approved costs in excess of one million dollars (\$1,000,000)*~~

1 shall be entitled to a credit if the company certifies to the Director of the
2 Department of Finance and Administration that it has expended at least one
3 million dollars (\$1,000,000) in approved costs and the Director of the
4 Department of Economic Development certifies that the approved company is in
5 compliance with this subchapter.

6 (ii) The Director of the Department of Finance and
7 Administration shall then issue a sales tax credit memorandum to the approved
8 company equal to twenty five percent (25%) of the approved costs.

9 (iii) The credit on all subsequent additional
10 certified approved costs shall be equal to twenty five percent (25%) of the
11 costs.

12 (C)(i)(B)(i) The Director of the Department of Finance and
13 Administration may require proof of expenditures.

14 (ii) Additional credit memoranda may be issued as
15 the approved company certifies additional expenditures of approved costs.

16 (2)(A) No sales tax credit memorandum shall be issued for any
17 approved costs expended after the expiration of two (2) years from the date
18 the agreement was signed by the Director of the Department of Economic
19 Development and the approved company.

20 (B) However, the Director of the Department of Economic
21 Development, with the advice and consent of the Director of the Department of
22 Finance and Administration, may authorize sales tax credits for approved
23 costs expended up to four (4) years from the date the agreement was signed if
24 the Director of the Department of Economic Development determines that the
25 failure to complete the tourism attraction project within two (2) years
26 resulted from:

27 (i) Unanticipated and unavoidable delay in the
28 construction of the tourism attraction project;

29 (ii) The tourism attraction project, as originally
30 planned, will require more than two (2) years to complete; or

31 (iii) A change in business ownership or business
32 structure resulting from a merger or acquisition.

33 (c) The credit memorandum issued pursuant to subsection (b) of this
34 section may be used to offset a portion of the reported state sales, or gross
35 receipts, tax liability of the approved company for all sales tax reporting
36 periods following the issuance of the credit memorandum, subject to the

1 following limitations:

2 (1) Only increased state sales tax liability as defined in this
3 subchapter may be offset by the issued credit;

4 (2)(A)~~(i)~~ An approved company whose agreement provides that it
5 *shall expend approved costs in excess of five hundred thousand dollars*
6 *(\$500,000) in a high unemployment county and one million dollars (\$1,000,000)*
7 *in all other counties* shall be entitled to use one hundred percent (100%) of
8 the issued credit to offset increased state sales tax liability during the
9 first year if its tax liability is equal to or greater than the amount issued
10 in the state sales tax credit memorandum.

11 ~~(ii)(B)~~ Unused credits may be carried forward for a period
12 of nine (9) years; and

13 ~~(B)(i)~~ An approved company whose agreement provides that
14 ~~it shall expend approved costs of more than five hundred thousand dollars~~
15 ~~(\$500,000) but less than one million dollars (\$1,000,000) shall be entitled~~
16 ~~to use one hundred percent (100%) of the issued credit to offset increased~~
17 ~~sales tax liability during the first year if its tax liability is equal to or~~
18 ~~greater than the amount issued in the state sales tax credit memorandum.~~

19 ~~(ii)~~ Unused credits may be carried forward for a
20 period of nine (9) years; and

21 (3) All issued credit memoranda shall expire at the end of the
22 month following the expiration of the agreement as provided in § 15-11-506.

23 (4) Except as provided in § 15-11-511, credit memoranda shall
24 not be used to offset any tax other than state sales tax.

25

26 SECTION 6. Arkansas Code § 15-11-509 is amended to read as follows:

27 15-11-509. Tourism attraction project income tax credit.

28 (a) Tourism attraction projects meeting the eligibility requirements
29 under § 15-11-503(12)(A) are entitled to receive an income tax credit based
30 upon a percentage of the payroll of the new full-time permanent employees
31 working at the tourism attraction project.

32 ~~(a)(b)~~ Upon notification from the Director of the Department of
33 Economic Development that an approved company has entered into a tourism
34 attraction project agreement and is entitled to the income tax credit
35 provided by this section, the Director of the Department of Finance and
36 Administration shall provide the approved company with such forms and

1 instructions as are necessary to claim those credits.

2 ~~(b)(c)(1)~~ The approved company shall certify the number and payroll of
3 the new full-time permanent employees to the Revenue Division of the
4 Department of Finance and Administration.

5 (2) Upon certification by the company, the Department of Finance
6 and Administration shall authorize an income tax credit equal to ~~one hundred~~
7 ~~(100) times the average hourly wage paid, with a maximum of three thousand~~
8 ~~dollars (\$3,000) per net new full-time permanent employee of an~~ four percent
9 (4%) of the payroll of the new full-time permanent employees of the approved
10 tourism attraction project qualifying for benefits under this act.

11 ~~(e) The division shall authorize an income tax credit allowed under~~
12 ~~this section that shall increase by a factor of four (4) equal to four~~
13 ~~hundred (400) multiplied by the average hourly wage paid, with a maximum~~
14 ~~credit of six thousand dollars (\$6,000) if the business is located in a high-~~
15 ~~unemployment county.~~

16 (d) To be counted as a net new full-time permanent employee for the
17 purpose of qualifying for the tax credits provided by this section, the
18 employee in the position or job must have been an Arkansas taxpayer during
19 the year in which the tax credits were earned.

20 (e) In the event it is found that any approved company receiving the
21 benefits contained in this section has failed to comply with the conditions
22 contained in this act, that company shall be disqualified from receiving any
23 further benefits under this act and shall be liable for payment of such
24 additional income taxes as may be due after the income tax credits provided
25 for in this section are disallowed, plus interest.

26 (f) If the Department of Finance and Administration determines that an
27 approved company is no longer qualified to participate in this act, it shall
28 decertify the company. Any company so decertified shall not receive any
29 benefits under this act.

30 (g) For projects receiving final approval after March 1, 1999, the
31 credit may be applied against the approved company's income tax liability for
32 the succeeding nine (9) years or until the credit is entirely used, whichever
33 occurs first.

34
35 SECTION 7. Arkansas Code § 15-11-510(b)(1), concerning special rules
36 for certain tourism lodging facilities, is amended to read as follows:

1 (b)(1) A lodging facility qualifying as a tourism attraction project
2 under this section shall be entitled to the sales tax benefits as provided in
3 ~~§ 15-11-507(b)(1)(B)~~ § 15-11-507(b)(1)(A), provided that all other
4 requirements of this subchapter regarding tourism attraction projects are
5 satisfied.

6
7 /s/ Ragland

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10 APPROVED: 4/14/2005
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