

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: H2/18/99

# A Bill

Act 584 of 1999  
HOUSE BILL 1527

5 By: Representative Sheppard  
6 By: Senator Hill  
7  
8

## For An Act To Be Entitled

9  
10 "AN ACT TO AMEND THE ARKANSAS ECONOMIC DEVELOPMENT  
11 INCENTIVE ACT OF 1993 TO REDEFINE THE SCOPE OF  
12 ELIGIBLE BUSINESSES WHICH MAY QUALIFY FOR BENEFITS  
13 UNDER THIS ACT; TO CLARIFY THE DEFINITION OF 'NET NEW  
14 FULL-TIME PERMANENT EMPLOYEE;' TO DECLARE AN  
15 EMERGENCY; AND FOR OTHER PURPOSES."

## Subtitle

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17  
18 "AN ACT TO AMEND THE ARKANSAS ECONOMIC  
19 DEVELOPMENT INCENTIVE ACT OF 1993."  
20  
21

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

24 SECTION 1. Arkansas Code 15-4-1602 is amended to read as follows:

25 "15-4-1602. Definitions.

26 As herein used in this subchapter:

27 ~~(1) 'Commission' means the Arkansas Economic Development Commission;~~

28 ~~(3)(1) 'Department' means the Department of Economic Development;~~

29 ~~(4)(2) 'Director' is the director of the department;~~

30 ~~(2)(3) 'Corporate or regional headquarters' means the home or center of~~  
31 ~~operations, including research and development, of a national or multinational~~  
32 ~~corporation;~~

33 ~~(5)(4) 'Office sector business' means control centers that influence~~  
34 ~~the environment in which data processing, customer service, credit accounting,~~  
35 ~~telemarketing, claims processing, and other administrative functions that act~~  
36 ~~as production centers. 'Office sector business' is also referred to as 'back~~

1 ~~office industry~~;

2 ~~(11)(5)~~ 'Distribution center' means a facility for the reception,  
3 storage, or shipping of a business' own products or products which the  
4 business wholesales to retail businesses or ships to its own retail outlets;

5 ~~(6)~~ 'New Net new full-time permanent employee' means a position or job  
6 which was created ~~as a result of the project~~ pursuant to the signed financial  
7 incentive plan and which is filled by one (1) or more employees or contractual  
8 employees who were Arkansas taxpayers during the year in which the tax credits  
9 or incentives were earned;

10 (A) The position or job held by such employee or employees must  
11 have ~~had someone working in it~~ been filled for at least twenty-six (26)  
12 consecutive weeks with an average of at least thirty (30) hours per week;

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

17 (7) 'Existing employees' means those employees hired by the business  
18 prior to the date of the signed financial incentive plan. Existing employees  
19 may be considered 'net new full-time permanent employees' only if:

20 (A) The position or job filled by the existing employee was  
21 created in accordance with the signed financial incentive plan; and

22 (B) The position vacated by the existing employee was either  
23 filled by a subsequent employee or no subsequent employee will be hired  
24 because the business no longer conducts the particular business activity  
25 requiring such classification;

26 ~~(7)(8)~~ 'High unemployment' means an unemployment rate in excess of ten  
27 percent (10%), or more than three percent (3%) above the state's average  
28 unemployment rate, for the preceding calendar year as specified by statewide  
29 annual labor force statistics compiled by the Arkansas Employment Security  
30 Department;

31 ~~(8)(9)~~ 'Fund' means the Economic Development Incentive Fund;

32 ~~(9)(10)~~ 'Financial incentive plan' means an agreement entered into by a  
33 business and the department to provide the business an incentive to locate a  
34 new facility or expand an existing facility in Arkansas; and

35 ~~(10)(11)~~ 'Annual payroll' means the wages of the net new full-time  
36 permanent employees based on the payroll for the previous twelve (12) months

1 reported to the Arkansas Employment Security Department and is computed by  
 2 using the total of the net new full-time permanent employees' reported taxable  
 3 earnings, including overtime pay; ~~and.~~"

4  
 5 SECTION 2. Arkansas Code 15-4-1603 is amended to read as follows:

6 "15-4-1603. Economic development incentive fund.

7 There is hereby established on the books of the Treasurer of State,  
 8 Auditor of State, and Chief Fiscal Officer of the State, a fund to be known as  
 9 the 'Economic Development Incentive Fund' of the Arkansas ~~Economic Development~~  
 10 ~~Commission~~ Department of Economic Development. The Economic Development  
 11 Incentive Fund shall consist of revenues designated for this fund by the  
 12 Revenue Division of the Department of Finance and Administration pursuant to  
 13 agreements entered into by the Arkansas ~~Economic Development Commission~~  
 14 Department of Economic Development with qualified businesses."

15  
 16 SECTION 3. Arkansas Code 15-4-1604 is amended to read as follows:

17 "15-4-1604. Powers and duties of the department.

18 The department shall administer the provisions of this subchapter and  
 19 shall have the following powers and duties, in addition to those mentioned in  
 20 this subchapter and in other laws of this state:

21 (1) To promulgate rules and regulations in accordance with the Arkansas  
 22 Administrative Procedure Act, as amended, § 25-15-201 et seq., necessary to  
 23 carry out the provisions of this subchapter;

24 (2)(A) ~~To~~ In highly competitive situations, the director of the  
 25 Arkansas Department of Economic Development is authorized to negotiate  
 26 proposals on behalf of the state with prospective businesses which are  
 27 considering locating a new facility, or expanding an existing facility, that  
 28 would employ the requisite number of net new full-time permanent employees  
 29 provided by § 15-4-1606.

30 (B) The department is authorized to negotiate with the business a  
 31 financial incentive plan up to an amount equal to three and nine-tenths  
 32 percent (3.9%) of the ~~company's~~ business' annual payroll for the net new full-  
 33 time permanent employees, and may negotiate with the business a financial  
 34 incentive plan up to an amount equal to five percent (5%) of the annual  
 35 payroll for the net new full-time permanent employees if the business locates  
 36 in an area of high unemployment as defined by § 15-4-1602;

1           (3) To provide the Department of Finance and Administration with a copy  
2 of each formal agreement entered into by the department with each of the  
3 qualifying businesses, so that the Department of Finance and Administration  
4 will know how much money is to be designated for the Economic Development  
5 Incentive Fund each quarter; and

6           (4) To make disbursement from the fund to qualified businesses which  
7 have entered into financial incentive plans.”

8  
9           SECTION 4. Arkansas Code 15-4-1605 is amended to read as follows:

10          “15-4-1605. Qualifications.

11          To qualify for the benefits of this subchapter, the entity applying  
12 must:

13          ~~(1) Be either:~~

14          ~~(A) An industry that comes within the Standard Industrial~~  
15 ~~Classification numbers 20-39 which will employ one hundred (100) or more new~~  
16 ~~permanent employees;~~

17          ~~(B) An office sector business which will employ fifty (50) or more new~~  
18 ~~permanent employees and not make retail sales to the general public; or~~

19          ~~(C) A corporate headquarters which will employ fifty (50) or more new~~  
20 ~~permanent employees and not make retail sales to the general public; or~~

21          ~~(D) A distribution center which will employ one hundred (100) or more~~  
22 ~~new permanent employees and not make retail sales to the general public;~~

23          (1) Be classified as one or more of the following types of businesses:

24                 (A) Manufacturers classified in Federal Standard Industrial  
25 Classification (SIC) codes 20-39, including semiconductor and microelectronic  
26 manufacturers which will employ one hundred (100) or more net new full-time  
27 permanent employees;

28                 (B) Computer businesses primarily engaged in providing computer  
29 programming services; the design and development of prepackaged software;  
30 businesses engaged in digital content production and preservation; computer  
31 processing and data preparation services; information retrieval services;  
32 computer and data processing consultants and developers. All businesses in  
33 this group must employ twenty-five (25) or more net new full-time permanent  
34 employees, derive at least sixty percent (60%) of their revenue from out of  
35 state sales and have no retail sales to the general public;

36                 (C) Businesses primarily engaged in commercial physical and

1 biological research as classified by SIC code 8731, which will employ fifty  
 2 (50) or more net new full-time permanent employees;

3 (D) Businesses primarily engaged in motion picture production  
 4 which will employ fifty (50) or more net new full-time permanent employees.

5 All businesses in this group must derive at least sixty percent (60%) of their  
 6 revenue from out of state sales and have no retail sales to the general  
 7 public;

8 (E) A distribution center, with no retail sales to the general  
 9 public, which will employ one hundred (100) or more net new full-time  
 10 permanent employees;

11 (F) An office sector business, with no retail sales to the  
 12 general public, which will employ fifty (50) or more net new full-time  
 13 permanent employees; and

14 (G) A national, corporate or regional headquarters, with no  
 15 retail sales to the general public which will employ fifty (50) or more net  
 16 new full-time permanent employees.

17 (2) Hire the requisite number of net new full-time permanent employees  
 18 within twenty-four (24) months ~~of~~ following the date the financial incentive  
 19 plan was entered into with the department;

20 (3) Agree to certify to the Department of Finance and Administration  
 21 the number of net new full-time permanent employees and the net new full-time  
 22 permanent employees' payroll once the number of net new full-time permanent  
 23 employees reaches the requisite number provided in subdivision (1) of this  
 24 section, and recertify the number and payroll of the net new employees  
 25 annually thereafter during the term of the financial incentive plan, so that  
 26 the Department of Finance and Administration can determine the amount of money  
 27 to be deposited into the fund; and

28 (4) Agree to certify to the Department of Finance and Administration  
 29 within thirty (30) days after the number of net new full-time permanent  
 30 employees falls below:-

31 ~~(A) One hundred (100) for an industry;~~

32 ~~(B) Fifty (50) for an office sector business;~~

33 ~~(C) Fifty (50) for a corporate headquarters; or~~

34 ~~(D) One hundred (100) for a distribution center.~~ the required numbers  
 35 enumerated in paragraph (1) above."

36

1 SECTION 5. Arkansas Code 15-4-1606 is amended to read as follows:

2 "15-4-1606. Limitations.

3 The following limitations shall apply to all financial incentive plans  
4 negotiated by the department:

5 (1)(A) The term of a financial incentive plan shall not exceed one  
6 hundred twenty-six (126) months.

7 (B) The one hundred twenty-six (126) months shall be calculated  
8 forward from the date of the financial incentive plan entered into by the  
9 business and the department;

10 (2) The business shall not be entitled to the benefits of a financial  
11 incentive plan entered into with the department until twelve (12) months after  
12 it has hired the requisite number of net new full-time permanent employees and  
13 has certified that fact to the Department of Finance and Administration as  
14 required by this subchapter;

15 (3)(A) If the number of net new full-time permanent employees drops  
16 below the requisite number provided in § 15-4-1605, all benefits under the  
17 financial incentive plan entered into with the department shall be terminated,  
18 unless the director and the Chief Fiscal Officer of the State ~~approves~~ approve  
19 a written request filed by the business explaining why the number of net new  
20 full-time permanent employees fell below the requisite number. The director  
21 and the Chief Fiscal Officer may grant the business up to twenty-four (24)  
22 months to bring the number of net new full-time permanent employees back up to  
23 the requisite number and may approve the continuation of benefits during that  
24 period.

25 (B) (i) In the event that the requisite number of net new full-  
26 time permanent employees cannot be employed within the twenty-four (24) month  
27 period, the business can file a written application with the department  
28 explaining why additional time is necessary. The business can be afforded up  
29 to twenty-four (24) more months to hire the requisite number of employees if  
30 the director and the Chief Fiscal Officer of the State agree.

31 (ii) In the event that a business fails to notify the  
32 Department of Finance and Administration that the number of employees has  
33 fallen below the required number to continue to receive benefits under a  
34 financial incentive plan, that business will be liable for the repayment of  
35 all benefits which were paid to the business after it no longer qualified for  
36 the benefits. Interest shall also be due at the rate of ten percent (10%) per

1 ~~annum.~~ ~~and~~

2 (4)(A) The financial benefits received by a business shall be used in  
3 accordance with the financial incentive plan entered into with the department.

4 (B)(i) Financial incentive plans shall designate how the funds  
5 are to be used by the business.

6 (ii) A plan may designate funds for employee training,  
7 infrastructure, or other purposes ~~set out by legislation~~ agreed to by the  
8 business and the director.

9 (5) Recipients of benefits under this act are precluded from receiving  
10 benefits under the Arkansas Biotechnology Development and Training Act of 1997  
11 and the Arkansas Economic Development Act of 1995, as amended."

12  
13 SECTION 6. Arkansas Code 15-4-1609 is amended to read as follows:

14 "15-4-1609. Effect of participation.

15 Receiving benefits pursuant to this subchapter will ~~not~~ preclude a  
16 business from participating in ~~any other tax incentive program~~ the Arkansas  
17 Economic Development Act incentive program."

18  
19 SECTION 7. Arkansas Code 15-4-1610 is hereby repealed.

20 ~~15-4-1610. Effective date.~~

21 ~~The provisions of this subchapter shall be in full force and effect for~~  
22 ~~all tax years beginning on and after January 1, 1993.~~

23 SECTION 8. All provisions of the Act of a general and permanent nature  
24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
25 Revision Commission shall incorporate the same in the Code.

26  
27 SECTION 9. If any provision of this Act or the application thereof to  
28 any person or circumstance is held invalid, such invalidity shall not affect  
29 other provisions or applications of the Act which can be given effect without  
30 the invalid provision or application, and to this end the provisions of this  
31 Act are declared to be severable.

32  
33 SECTION 10. All laws and parts of laws in conflict with this Act are  
34 hereby repealed.

35  
36 SECTION 11. EMERGENCY CLAUSE. It is hereby found and determined by the

1 Eighty-second General Assembly that existing Arkansas businesses must remain  
2 competitive in today's global economy; that the tax incentive provided by this  
3 Act is necessary to provide businesses with the incentive to invest in  
4 Arkansas and hire Arkansans; that other states compete with Arkansas for the  
5 location or expansion of business activity and this incentive is also  
6 necessary to offer the companies a business environment compatible with other  
7 states; and that without this incentive companies considering locations or  
8 expansions of their businesses may choose to locate in another state,  
9 depriving Arkansas of these jobs and the economic benefit that the jobs bring  
10 to the state. Therefore, an emergency is declared to exist and this act being  
11 immediately necessary for the preservation of the public peace, health and  
12 safety shall become effective on the date of its approval by the Governor. If  
13 the bill is neither approved nor vetoed by the Governor, it shall become  
14 effective on the expiration of the period of time during which the Governor  
15 may veto the bill. If the bill is vetoed by the Governor and the veto is  
16 overridden, it shall become effective on the date the last house overrides the  
17 veto.

18 /s/ Sheppard, et a

APPROVED: 3/15/1999