

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/22/11

A Bill

HOUSE BILL 1955

5 By: Representative McCrary
6

For An Act To Be Entitled

8 *AN ACT TO AMEND ENABLING LEGISLATION FOR AMENDMENT 82*
9 *TO THE ARKANSAS CONSTITUTION; TO MAKE CHANGES*
10 *CONSISTENT WITH CHANGES TO AMENDMENT 82 ENACTED BY*
11 *THE VOTERS IN NOVEMBER 2010; AND FOR OTHER PURPOSES.*
12
13

Subtitle

14 *AN ACT TO AMEND ENABLING LEGISLATION FOR*
15 *AMENDMENT 82.*
16
17
18

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

21 *SECTION 1. Arkansas Code § 15-4-3202(1), concerning the definition of*
22 *"Amendment 82 agreement" is amended to read as follows:*

23 *(1) "Amendment 82 agreement" means a contract between the state*
24 *and a sponsor under which the state is to provide Amendment 82 bond financing*
25 *in exchange for the sponsor's agreeing to make an investment and to locate a*
26 *new business or substantially expand an existing business in the State of*
27 *Arkansas in accordance with the requirements of Arkansas Constitution,*
28 *Amendment 82, and this subchapter. At a minimum, the agreement shall contain*
29 *the following provisions:*

30 *(A) The infrastructure needs to be provided by the state*
31 *in support of the qualified Amendment 82 project and financed under Arkansas*
32 *Constitution, Amendment 82, and this subchapter;*

33 *(B) A description of all other economic incentives to be*
34 *provided by the state in connection with the qualified Amendment 82 project;*

35 *(C) The commitments of the sponsor, if any, with regard to*
36 *investment and job creation associated with the qualified Amendment 82*



1 project, including timetables for meeting and maintaining any ~~the~~ investment
2 and job creation requirements;

3 (D) The agreement of the sponsor to make all specified
4 records pertaining to the sponsor's commitments ~~investment and job creation~~
5 ~~requirements under Arkansas Constitution, Amendment 82~~ available for annual
6 audit by the Chief Fiscal Officer of the State and, upon request, but no more
7 often than annually, by the Office of Economic and Tax Policy of the Bureau
8 of Legislative Research or a person or entity retained by the office;

9 (E) Performance benchmarks and economic goals of the
10 qualified Amendment 82 project; and

11 (F) The penalties to be applied if the sponsor does not
12 satisfy its commitments under the Amendment 82 agreement;

13
14 SECTION 2. Arkansas Code § 15-4-3202(13), concerning the definition of
15 "Letter of commitment" is amended to read as follows:

16 (13) "Letter of commitment" means a binding agreement signed by
17 a sponsor and the Arkansas Economic Development Commission, ~~which~~ that at
18 minimum contains the following provisions:

19 (A) A determination by the commission that the sponsor has
20 the financial capability, business history, and corporate intent to implement
21 and maintain a qualified Amendment 82 project;

22 (B) A commitment by the sponsor that the sponsor intends
23 to locate a new business or substantially expand an existing business in the
24 State of Arkansas, and a description of any other commitments made by the
25 sponsor; that will require an investment by the sponsor of more than five
26 hundred million dollars (\$500,000,000) and will create more than five hundred
27 (500) new jobs;

28 (C) A tentative timetable for development of the proposed
29 project;

30 (D) The consequences if the sponsor does not satisfy its
31 obligations under the letter of commitment; and

32 (E) A statement from the commission that its obligation
33 under the letter of commitment is limited to presenting the letter of
34 commitment and supporting documentation to the Governor, who may or may not
35 elect to present the proposal to the General Assembly for its consideration;

36

1 SECTION 3. Arkansas Code § 15-4-3203(a), concerning Amendment 82
2 project qualifications, is amended to read as follows:

3 (a)(1)(A) Constitution Amendment 82, the General Assembly delegates,
4 in exercising its responsibilities under Section 1 of Amendment 82 to the
5 Arkansas Constitution Amendment 82, the General Assembly delegates,
6 authorizes, and directs the Arkansas Economic Development Commission, the
7 Arkansas Development Finance Authority, and the Chief Fiscal Officer of the
8 State to undertake a review of all proposed projects following the procedures
9 described in this section.

10 (B) In order to be considered for qualification, a sponsor must
11 fall within the definition of an "eligible business", as defined in § 15-4-
12 2703.

13 (2) If the Governor refers a proposed project to the General
14 Assembly under subsection (h) of this section, the commission and the
15 authority shall prepare and provide to each member of the General Assembly
16 the reports described in subsection (i) of this section, after which the
17 General Assembly shall make the final and definitive decisions concerning the
18 proposed project as set forth in subsection (j) of this section.

19
20 SECTION 4. Arkansas Code § 15-4-3203(i)(2), concerning Amendment 82
21 project qualifications, is amended to read as follows:

22 (2) The commission's report shall include:

23 (A) A description of the proposed project;

24 (B)(i) An itemization of the proposed infrastructure needs
25 and other needs to be financed with the proceeds derived from the sale of
26 Amendment 82 bonds.

27 (ii) The itemization shall include estimated costs
28 and details to the maximum extent available at the time of the report;

29 (C) A description of all other economic incentives to be
30 provided by the state in connection with the proposed project;

31 (D) A description of the economic impact and cost-benefit
32 analyses of the proposed project for a period of at least ten (10) years that
33 includes:

34 (i) The annual projected benefit to the state from
35 increased sales and use tax and income tax revenue;

36 (ii) The annual projected cost to the state for each

1 economic incentive offered to the sponsor in connection with the proposed
2 project; and

3 (iii) The overall net present value benefit-to-cost
4 ratio for the period of at least ten (10) years;

5 (E) The amount of bonds necessary to be issued to defray
6 project costs and a budget of the project costs;

7 (F) A tentative time schedule setting forth the period of
8 time during which the proceeds of the Amendment 82 bonds are to be expended;

9 (G) A ~~certification~~ statement by the Director of the
10 Arkansas Economic Development Commission ~~that, under~~ based on and outlining
11 the;

12 (i) ~~Terms~~ terms of the letter of the commitment;

13 (ii) Estimated dollar amount of investment in the
14 state from the proposed project shall consist of an investment in the state
15 of not less than five hundred million dollars (\$500,000,000); and

16 (iii) Estimated number of new jobs to be created by
17 the proposed project shall create no fewer than five hundred (500) new jobs;

18 (H) A copy of the signed letter of commitment for the
19 proposed project; and

20 (I) A copy of the unexecuted Amendment 82 agreement for
21 the proposed project.

22
23 SECTION 5. Arkansas Code § 15-4-3206 is amended to read as follows:
24 15-4-3206. Compliance time period – Audit requirements.

25 (a)(1) The Amendment 82 agreement shall specify a time period in which
26 the sponsor must comply with the ~~investment and job creation thresholds~~ terms
27 and conditions specified in the Amendment 82 agreement.

28 (2) Except as provided in subsection (b) of this section, the
29 time period shall not exceed four (4) years from the date of enactment of
30 related legislation under § 15-4-3203(j).

31 (3) ~~If In the event that~~ the sponsor does not comply with the
32 applicable time period, then the penalty provisions set forth in the
33 ~~Arkansas Constitution, Amendment 82, and agreement and enacted in related~~
34 ~~legislation~~ under § 15-4-3203(j) shall apply.

35 (b)(1)(A) The sponsor may request a one-year extension of the time
36 period specified in the Amendment 82 agreement by submitting to the Director

1 of the Arkansas Economic Development Commission a written request with an
2 explanation as to why the extension is necessary.

3 (B) The request shall be submitted at least ninety (90)
4 days ~~prior to~~ before the expiration of the time period specified in the
5 Amendment 82 agreement.

6 (2)(A) Upon receipt of a request to extend the applicable time
7 period, the director shall immediately notify the President of the Arkansas
8 Development Finance Authority, the Chief Fiscal Officer of the State, and the
9 Governor.

10 (B) The director, the president, and the Chief Fiscal
11 Officer of the State may approve a request for a one-year extension upon a
12 determination that there is a valid economic reason for granting the
13 extension.

14 (3) The sponsor shall ~~not~~ be granted not more than three (3)
15 one-year extensions of the applicable time period.

16 (c)(1) The sponsor shall maintain and make available records
17 pertaining to ~~investment and job creation requirements~~ items contained in the
18 terms and agreements of the Amendment 82 agreement for annual audit by the
19 Chief Fiscal Officer of the State and upon request no more often than
20 annually by the Office of Economic and Tax Policy of the Bureau of
21 Legislative Research or a person or entity retained by the office.

22 (2) The Arkansas Tax Procedure Act, § 26-18-101 et seq., shall
23 apply to records maintained under this subsection and any audits conducted of
24 the records, including any audit conducted through the office.

25 (3)(A) Records obtained or reviewed by the office under this
26 section:

27 (i) Shall be considered working papers of the
28 President Pro Tempore of the Senate and the Speaker of the House of
29 Representatives under § 25-19-105(b)(7) and shall not be open to inspection
30 and copying by any citizen of the State of Arkansas; and

31 (ii) Are specifically exempt from the requirements
32 of § 25-19-105(a).

33 (B) However, a report of the audit shall be presented to
34 the Legislative Council with respect to the status of the applicable
35 qualified Amendment 82 project which details the sponsor's compliance with
36 the provisions of the Amendment 82 agreement.

1
2
3
4
5
6
7
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

SECTION 6. Arkansas Code § 15-4-3221(b), concerning monitoring and reporting, is amended to read as follows:

(b) The commission ~~shall be~~ is responsible for monitoring and reporting to the Arkansas Development Finance Authority, the Governor, and the General Assembly on the ongoing economic impact of the project and the sponsor's progress in meeting the terms and conditions under the Amendment 82 agreement ~~economic development investment requirements under Arkansas Constitution, Amendment 82,~~ and this subchapter.

/s/McCrary

APPROVED: 04/01/2011