

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 831 OF 1995
SENATE BILL 774

4 **By: Senators Cassady and Fitch**
5 **By: Representatives Brown and Miller**

For An Act To Be Entitled

8 "THE ARKANSAS ECONOMIC DEVELOPMENT ACT OF 1995."

Subtitle

11 "THE ARKANSAS ECONOMIC DEVELOPMENT ACT
12 OF 1995."

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

16 SECTION 1. Title. This act may be referred to and cited as the
17 "Arkansas Economic Development Act of 1995".

19 SECTION 2. Definitions. As herein used in this act:

20 (1) "Average hourly wage" means the average wage of the new permanent
21 employees based on payroll for the most recent quarter reported to the
22 Employment Security Department, and is computed by using the total of the new
23 permanent employees' reported taxable earnings, including overtime pay,
24 divided by the number of weeks worked, divided by the average hours worked per
25 week per new permanent employee;

26 (2) "Corporate headquarters" means the home or center of operations,
27 including research and development, of a national or multinational
28 corporation;

29 (3) "Department" means the Department of Industrial Development;

30 (4) "Director" means the director of the department;

31 (5) "Distribution center" means a facility for the reception, storage,
32 or shipping of a business' own products or products which the business
33 wholesales to retail businesses or ships to its own retail outlets;

34 (6) "Financial incentive plan" means an agreement entered into by a
35 business and the department to provide the business an incentive to locate a
36 new facility or expand an existing facility in Arkansas;

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

3 (8) "High unemployment" means an unemployment rate in excess of ten
4 percent (10%), or more than three percent (3%) above the state's average
5 unemployment rate, for the preceding calendar year;

6 (9) "New permanent employee" means a position or job which was created
7 as a result of a project and which is filled by one or more employees or
8 contractual employees who were Arkansas residents when hired, as well as
9 during the year in which the tax credits or incentives were earned or claimed.
10 The position or job held by such employee or employees must have had someone
11 working in it for at least twenty-six (26) consecutive weeks with an average
12 of at least thirty (30) hours per week. Provided however, in order to qualify
13 for the provisions of this act a contractual employee must be offered a
14 benefits package comparable to a direct employee of the business seeking
15 incentives under this act;

16 (10) "Office sector business" means control centers that influence the
17 environment in which data processing, customer service, credit accounting,
18 telemarketing, claims processing, and other administrative functions that act
19 as production centers. "Office sector business" is also referred to as "back
20 office industry";

21 (11) "Program" means the Arkansas Economic Development Act of 1995;

22 (12) "Project" means the construction or expansion of a plant or
23 facility in Arkansas costing at least five million dollars (\$5,000,000),
24 including the cost of land, buildings, and equipment used in the construction
25 or expansion, which has been approved by the department as a construction or
26 expansion qualifying for tax benefits under this act. The project cost shall
27 include:

28 (A) All activities and costs associated with the construction of a new
29 plant or facility;

30 (B) All activities and costs associated with the expansion of an
31 established plant or facility by adding to the building or production
32 equipment or support infrastructure, or both;

33 (C) All activities and costs associated with the replacement of
34 production or processing equipment or support infrastructure, or both.

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1 SECTION 3. Powers and duties of the department. The department shall
 2 administer the provisions of this act and shall have the following powers and
 3 duties, in addition to those mentioned in this act and in other laws of this
 4 state:

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

8 (2) (A) To negotiate proposals on behalf of the state with prospective
 9 businesses which are considering locating a new facility, or expanding an
 10 existing facility, that would employ at least one hundred (100) new permanent
 11 employees and expend at least five million dollars (\$5,000,000) on the
 12 project.

13 (B) The department is authorized to negotiate with a business a
 14 financial incentive plan granting an income tax credit based upon the
 15 business' annual amount of debt service (principal and interest) paid to a
 16 lender in connection with the project financing. The amount of credit that may
 17 be claimed each year will depend on the average hourly wage of the new
 18 permanent employees. The amount of the income tax credit that may be claimed
 19 each year shall be negotiated in accordance with the following :

20	Average	Annual
21	Hourly Wage	Income Tax Credit
22	less than \$7.00 per hour	None
23	\$7.00 to \$7.99 per hour	up to 70 percent of the income tax liability
24	\$8.00 to \$8.99 per hour	up to 85 percent of the income tax liability
25	\$9.00 per hour and above	up to 100 percent of the income tax liability
26		
27		
28		

29 If the project is located in a high unemployment area and the average hourly
 30 wage exceeds seven dollars (\$7.00) per hour the department may authorize the
 31 business to claim the income tax credit in an amount up to one hundred percent
 32 (100%) of the state income tax liability.

33 (3) To provide the Department of Finance and Administration with a copy
 34 of each financial incentive plan entered into by the department with each of
 35 the qualifying businesses, so that the Department of Finance and

1 Administration will know the maximum amount of income tax credit the qualified
2 business may claim during the term of the agreement. The financial incentive
3 plan shall specify the annual amount of payments, including principal and
4 interest, the business will make to the lender in connection with the project
5 financing, and attach copies of the business' loan documents which reflect the
6 amount of the annual payments.

7 (4) To collect a one time fee of two thousand five hundred dollars
8 (\$2,500) for the department's administrative and legal fees associated with
9 the preparation of the financial incentive plan.

10

11 SECTION 4. Qualifications. To qualify for the benefits of this act,
12 the business must:

13 (1) Be either:

14 (A) An industry that comes within the Standard Industrial
15 Classification numbers 20 - 39, 7375, or 7376 ; or

16 (B) An office sector business, corporate headquarters or
17 distribution center which will not make retail sales to the general public;

18 (2) Hire at least one hundred (100) new permanent employees within
19 twenty-four (24) months of the date the financial incentive plan was signed by
20 the department and the business;

21 (3) Expend at least five million dollars (\$5,000,000) on the project
22 covered by the financial incentive plan;

23 (4) Agree to certify to the Department of Finance and Administration
24 the number of new permanent employees and the average hourly wage of the new
25 permanent employees once the number of new permanent employees reaches one
26 hundred (100);

27 (5) Agree to certify to the Department of Finance and Administration
28 within thirty (30) days after the number of new permanent employees falls
29 below one hundred (100), or the average hourly wage falls below the amount
30 specified in the financial incentive plan.

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32 SECTION 5. Financial Incentive Plan. The financial incentive plan
33 shall:

34 (1) Specify the tax incentives the business is to receive, including the
35 maximum amount of income tax credit the business may claim for each tax year

1 covered by the financial incentive plan;

2 (2) Specify the term of the plan, which cannot exceed ten (10) years.

3 The ten (10) years shall be calculated from the date of the financial
4 incentive plan is signed by the business and the department;

5 (3) Specify the annual amount of payments, including principal and
6 interest, the business will make to the lender in connection with the project
7 financing, and attach copies of the business' loan documents which reflect the
8 amount of the annual payments;

9 (4) Specify the amount of the average hourly wage the business must
10 maintain to receive benefits under the plan;

11 (5) Specify the percentage of income tax liability against which the
12 income tax credit may be claimed;

13 (6) Specify that the tax credits can never exceed the total amount of
14 the debt service;

15 (7) Specify that after the term of the plan expires the business may not
16 claim any unused credit against income tax liability for subsequent tax years.

17 SECTION 6. Refund of sales and use tax - Income tax credit.

18 (a) The Revenue Division of the Department of Finance and
19 Administration shall authorize a refund of sales and use taxes imposed by the
20 state and a municipality or county, if the municipality or county authorized
21 the refund of its local tax, on the purchases of the material used in the
22 construction of a building or buildings, or any addition or improvement
23 thereon, for housing any legitimate business enterprise, and machinery and
24 equipment to be located in or in connection with such building.

25 (b) (1) A sales and use tax refund as provided for in subsection (a) of
26 this section shall be authorized, provided that:

27 (A) The qualified business is an industry that fits into Standard
28 Industrial Classification numbers 20 - 39, 7375, or 7376, is a distribution
29 center, corporate headquarters, or office sector business located within
30 Arkansas;

31 (B) The business and its contractors give preference and priority to
32 Arkansas manufacturers, suppliers, contractors, and labor, except where it is
33 not reasonably possible to do so without added expense, substantial
34 inconvenience, or sacrifice in operational efficiency;

35 (C) The business files an endorsement resolution with the department

1 and the Department of Finance and Administration, and also files with the
2 Department of Finance and Administration a copy of the financial incentive
3 plan the business entered into with the department. The endorsement
4 resolution must be approved by the governing body of a municipality or county
5 in whose jurisdiction the facility is located and must:

6 (i) Approve the specific entity's participation in the program;
7 and

8 (ii) Specifically state whether the municipality or county
9 authorizes the Department of Finance and Administration to refund local sales
10 and use taxes to the entity under the program. A municipality or county can
11 authorize the refund of all or part of a tax levied by it, but cannot
12 authorize the refund of any tax not levied by it.

13 (2) For an office sector business, a corporate headquarters, or a
14 distribution center to qualify for the benefits of this act it must not make
15 retail sales to the general public.

16 (3)(A) The requisite number of new permanent employees must be employed
17 by the business within twenty-four (24) months of the date the financial
18 incentive plan was signed.

19 (B) In the event that the requisite number of new permanent employees
20 cannot be employed within the twenty-four-month period, the business can file
21 a written application with the department explaining why additional time is
22 necessary. The business can be afforded up to twenty-four (24) more months to
23 hire the requisite number of employees if the director and the Chief Fiscal
24 Officer of the State determine that the need for additional time is due to:

25 (i) Unanticipated and unavoidable delay in the construction of a
26 facility that must be completed before the employees can be hired; or

27 (ii) The project as originally planned will require more than
28 twenty-four (24) months to complete; or

29 (iii) A change in the business ownership or business structure
30 due to a merger or acquisition.

31 (c)(1) The Revenue Division of the Department of Finance and
32 Administration shall authorize an income tax credit for the project debt
33 service payments made by the business during that tax year, which will be
34 specified in the financial incentive plan. However, the amount of the credit
35 shall not exceed the amount specified in the financial incentive plan, which

1 will be designated as percentage of the business' annual income tax liability.

2 (2) However, if the entire credit cannot be used in the year earned,
3 the remainder may be applied against the income tax for the succeeding nine
4 (9) tax years, or until the financial incentive plan expires, whichever occurs
5 first.

6 (d) An income tax credit as provided for in subsection (c) of this
7 section shall be authorized provided that:

8 (1) The request for such credit is accompanied by an endorsement
9 resolution approved by the governing body of the appropriate municipality or
10 county in whose jurisdiction the establishment is to be located, and a copy of
11 the financial incentive plan the business entered into with the department;
12 and

13 (2) All of the new employees are employed at the facility.

14 (e) (1) If the number of new permanent employees drops below one hundred
15 (100) after twenty-four (24) months from the date the financial incentive plan
16 is signed, all benefits under the financial incentive plan will be terminated,
17 unless the Chief Fiscal Officer approves a written request filed by the
18 business explaining why the number of new permanent employees fell below one
19 hundred (100). The Chief Fiscal Officer may grant the business up to twenty-
20 four months to bring the number of new permanent employees back up to at least
21 one hundred (100), and may approve the continuation of the benefits during
22 that period.

23 (2) In the event that a business fails to notify the Department of
24 Finance and Administration that the number of employees has fallen below one
25 hundred (100), or that the average hourly wage has fallen below the amount
26 specified in the financial incentive plan, the business will be liable for the
27 repayment of all benefits which were received by the business, plus penalty
28 and interest.

29 (f) Any business receiving benefits under this program shall be liable
30 for the repayment of any benefits received, plus penalty and interest, if it
31 does not comply with the terms of the financial incentive plan, the
32 requirements of this act, or any rule or regulation promulgated pursuant to
33 this act. The Chief Fiscal Officer may bring any lawful action to recover any
34 amount for which the recipient is liable.

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1 SECTION 7. Verification.

2 (a) The Department of Finance and Administration shall have the
3 authority to obtain whatever information necessary from the participating
4 businesses and from the Arkansas Employment Security Department to verify that
5 businesses which have entered into financial incentive plans with the
6 department are complying with the terms of the financial incentive plans and
7 reporting accurate information concerning the number of employees and their
8 payroll to the Department of Finance and Administration.

9 (b) The Department of Finance and Administration may promulgate rules
10 and regulations necessary for the proper administration of the provisions of
11 this act.

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13 SECTION 8. Effect of participation. Receiving benefits for a project
14 pursuant to this act will preclude a business from receiving benefits under
15 any other tax incentive program for that same project.

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17 SECTION 9. Effective date. The provisions of this act shall be in full
18 force and effect for all tax years beginning on and after January 1, 1995.

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20 SECTION 10. All provisions of this act of a general and permanent
21 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
22 Code Revision Commission shall incorporate the same in the Code.

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24 SECTION 11. If any provision of this act or the application thereof to
25 any person or circumstance is held invalid, such invalidity shall not affect
26 other provisions or applications of the act which can be given effect without
27 the invalid provision or application, and to this end the provisions of this
28 act are declared to be severable.

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30 SECTION 12. All laws and parts of laws in conflict with this act are
31 hereby repealed.

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33 SECTION 13. EMERGENCY CLAUSE. It is hereby found and determined by the
34 General Assembly of this State that economic underdevelopment has reached
35 intolerable levels in this state and the state as a whole has been unable to

1 compete with other state's incentive programs for economic development; and,
2 that the incentives afforded by this act are critical to the development and
3 expansion of job opportunities in the state. Therefore, an emergency is
4 declared to exist and this act, being necessary for the preservation of the
5 public peace, health and safety, shall be in full force and effect from and
6 after its passage and approval.

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APPROVED: 3-29-95

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