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4

A Bill

HOUSE BILL 1706

5 By: Representatives Wardlaw, Beaty Jr., Bentley, M. Berry, Bragg, Brown, Deffenbaugh, Dotson, Eaves,
6 Evans, Fielding, V. Flowers, Fortner, Gonzales, M. Gray, Hillman, Holcomb, Jean, Jett, L. Johnson,
7 Love, Lowery, Lynch, Maddox, Magie, McClure, M. McElroy, Richmond, Rye, Scott, Tollett, Tosh,
8 Vaught, Watson, Womack
9 By: Senators J. Dismang, Beckham, L. Chesterfield, J. English, T. Garner, Gilmore, Hill, Rapert, B.
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11

For An Act To Be Entitled

12 AN ACT TO CREATE THE LOGGING AND WOOD FIBER
13 TRANSPORTATION JOB CREATION INCENTIVE ACT; TO CREATE
14 THE ARKANSAS WOOD ENERGY PRODUCTS AND FOREST
15 MAINTENANCE INCOME TAX CREDIT; AND FOR OTHER
16 PURPOSES.
17
18
19

Subtitle

20 TO CREATE THE LOGGING AND WOOD FIBER
21 TRANSPORTATION JOB CREATION INCENTIVE
22 ACT; AND TO CREATE THE ARKANSAS WOOD
23 ENERGY PRODUCTS AND FOREST MAINTENANCE
24 INCOME TAX CREDIT.
25
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27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. DO NOT CODIFY. Title.

31 This act shall be known and may be cited as the "Logging and Wood Fiber
32 Transportation Job Creation Incentive Act".
33

34 SECTION 2. DO NOT CODIFY. Legislative findings.

35 The General Assembly finds that:

36 (1) Arkansas is a timber-rich state with over one-half (1/2) of



1 the total area of the state, or nineteen million (19,000,000) acres, as
 2 forestland;

3 (2) In the southern United States, Arkansas ranks first for the
 4 number of hardwood seedlings grown and fourth for the number of total
 5 seedlings grown;

6 (3) Approximately one (1) in every eight (8) Arkansans, equating
 7 to about three hundred forty-five thousand (345,000) Arkansans, own
 8 forestland;

9 (4) The forest products industry in Arkansas provides more than
 10 twenty-eight thousand (28,000) jobs, largely in rural areas;

11 (5) Though the state is rich in timber, the growth of the
 12 Arkansas pine forest currently exceeds harvest by eleven million (11,000,000)
 13 tons per year;

14 (6) The unharvested Arkansas timber causes innumerable potential
 15 jobs to be unfulfilled and the loss of state and local tax revenue and other
 16 economic revenue; and

17 (7) In order to attract industry to use the available fiber
 18 resources, support healthy timberland, encourage capital investment in the
 19 Arkansas timber industry, and provide well-paying jobs, the creation of a
 20 logging and wood fiber transportation job creation income tax credit should
 21 be established.

22
 23 SECTION 3. Arkansas Code § 19-6-301(181), concerning the enumeration
 24 of special revenues, is amended to read as follows:

25 (181) ~~Arkansas Economic Development Incentive Act of 1993~~
 26 ~~transfers~~ Transfers from general revenues for financial incentive plans, and
 27 incentive agreements under § 15-4-1607, § 26-51-506(c)(2)(B)(vii), ~~and~~ § 26-
 28 51-506(c)(3)(D)(vi), and § 26-51-2704(c)(7)(A);

29
 30 SECTION 4. Arkansas Code Title 26, Chapter 51, is amended to add an
 31 additional subchapter to read as follows:

32 Subchapter 27 – Arkansas Wood Energy Products and Forest Maintenance Income
 33 Tax Credit

34
 35 26-51-2701. Title.

36 This subchapter shall be known and may be cited as the "Arkansas Wood

1 Energy Products and Forest Maintenance Income Tax Credit".

2
3 26-51-2702. Legislative purpose and intent.

4 The purpose and intent of this subchapter is to increase capacity in
5 the state for the use of sawmill residuals, including sawdust and wood chips,
6 thinnings to maintain a healthy forest, unwanted treetops, and damaged or
7 diseased trees not wanted by sawmills.

8
9 26-51-2703. Definitions.

10 As used in this subchapter:

11 (1) "Cost" means:

12 (A) In the case of a transfer of title or a lease
13 agreement that is treated as a purchase by a lessee for Arkansas income tax
14 purposes, the amount of the purchase price; and

15 (B) In the case of a lease that is not a lease agreement
16 that is treated as a purchase by a lessee for Arkansas income tax purposes
17 but that otherwise qualifies as a purchase under this section, the amount of
18 lease payments due to be paid during the term of the lease after deducting
19 any portion of the lease payments attributable to interest, insurance, and
20 taxes;

21 (2) "Incentive agreement" means an agreement entered into by a
22 business and the Arkansas Economic Development Commission to provide the
23 business an incentive to locate a new qualified wood energy products and
24 forest maintenance project or expand an existing qualified wood energy
25 products and forest maintenance project in Arkansas;

26 (3)(A) "New full-time permanent employee" means a position or
27 job that:

28 (i) Is created pursuant to an executed incentive
29 agreement;

30 (ii) Is filled by one (1) or more employees or
31 contractual employees who:

32 (a) Were Arkansas taxpayers during the year in
33 which the tax credits or incentives were earned;

34 (b)(1) Work at the facility identified in the
35 incentive agreement.

36 (2) New employees of the taxpayer that

1 enters into the incentive agreement who do not work at the facility may be
 2 counted if they:

3 (A) Otherwise meet the definition
 4 of a new full-time permanent employee;

5 (B) Are subject to the Arkansas
 6 Income Tax Withholding Act of 1965, § 26-51-901 et seq.;

7 (C) Meet an average hourly wage
 8 threshold equal to or greater than the state average hourly wage for the
 9 preceding calendar year; and

10 (D) Are verified by reports and
 11 methods established as required by the incentive agreement; and

12 (c)(1) Are not employees hired by a business
 13 before the date the incentive agreement was executed unless:

14 (A) The position or job filled by
 15 the existing employee was created in accordance with the incentive agreement;
 16 and

17 (B) The position vacated by the
 18 existing employee was either filled by a subsequent employee or no subsequent
 19 employee will be hired because the business no longer conducts the particular
 20 business activity requiring that classification.

21 (2) If the Director of the Arkansas
 22 Economic Development Commission and the Secretary of the Department of
 23 Finance and Administration find that a significant impairment of Arkansas job
 24 opportunities for existing employees will otherwise occur, they may jointly
 25 authorize the counting of existing employees as new full-time permanent
 26 employees; and

27 (iii) Has been filled for at least twenty-six (26)
 28 consecutive weeks with an average of at least thirty (30) hours worked per
 29 week.

30 (B) "New full-time permanent employee" includes a
 31 contractual employee who works at the facility identified in the incentive
 32 agreement only if the contractual employee is offered a benefits package
 33 comparable to a direct employee of the business seeking incentives under this
 34 subchapter;

35 (4) "Purchase" means:

36 (A) A transaction under which title to an item is

1 transferred for consideration; or

2 (B) A lease contract that is entered into for a period of
3 at least three (3) years regardless of whether title to the item is
4 transferred at the end of the period;

5 (5) "Qualified wood energy products and forest maintenance
6 project" means a project specified in the incentive agreement to include one
7 (1) or more Arkansas facilities in the same ownership group:

8 (A) For which the taxpayer commenced construction by the
9 date specified in the incentive agreement, but no earlier than January 1,
10 2020;

11 (B) That supports the Arkansas timber industry by using
12 low-value wood, including without limitation sawmill residuals, unwanted
13 treetops, and damaged or diseased trees, to produce high-efficiency, high-
14 energy wood energy products;

15 (C) In which the taxpayer has a total investment in excess
16 of fifty million dollars (\$50,000,000);

17 (D) That is undertaken by a taxpayer who has entered into
18 an incentive agreement with the State of Arkansas in which the taxpayer
19 commits to creating at least one hundred (100) net new full-time permanent
20 employees with an average annual wage of at least sixty thousand dollars
21 (\$60,000);

22 (E) That will provide a positive cost-benefit analysis to
23 the state as determined by the commission and the Office of Economic Analysis
24 and Tax Research;

25 (F) That is certified as having a closing date before
26 December 31, 2023, for all facilities, by which the taxpayer has certified
27 and the state has verified that necessary capital acquisition and borrowing
28 for the facilities has occurred to ensure that funds will be available to:

29 (i) Secure a site for the facilities;

30 (ii) Obtain engineering services for the facilities;

31 (iii) Purchase equipment for the facilities; and

32 (iv) Commence construction on the facilities; and

33 (G) That is undertaken by a taxpayer that has elected by
34 agreement with the State of Arkansas for the taxpayer's facilities to be
35 classified as a qualified wood energy products and forest maintenance
36 project; and

1 (6)(A) "Wood energy products equipment" means:

2 (i) New or used machinery or equipment located in
 3 Arkansas on the last day of the taxable year that is operated or used
 4 exclusively in Arkansas to collect, separate, treat, pulverize, dry, modify,
 5 or convert wood fiber so the resulting product may be used as a raw material,
 6 for productive energy use, or to manufacture other materials;

7 (ii) Devices that are directly connected with or are
 8 an integral and necessary part of machinery or equipment operated or used
 9 exclusively in Arkansas to collect, separate, treat, pulverize, dry, modify,
 10 or convert wood fiber and are necessary for the collection, separation,
 11 treatment, pulverization, drying, modification, or manufacturing of wood
 12 fiber;

13 (iii) Equipment that produces energy with wood
 14 power; and

15 (iv) A device that is directly connected with or is
 16 an integral and necessary part of machinery or equipment operated or used
 17 exclusively in Arkansas to produce energy with wood power.

18 (B) "Wood energy products equipment" does not include a
 19 vehicle or trailer that is licensed or that normally would be licensed for
 20 use on highways in Arkansas.

21
 22 26-51-2704. Arkansas wood energy products and forest maintenance
 23 income tax credit.

24 (a) There is allowed a tax credit against the tax imposed by this
 25 chapter in an amount equal to thirty percent (30%) of the costs of wood
 26 energy products equipment purchased for use in Arkansas after the date
 27 specified in the incentive agreement by a taxpayer that:

28 (1) Is engaged in the business of collecting, separating,
 29 treating, pulverizing, drying, modifying, or manufacturing wood energy
 30 products; and

31 (2) Has been certified as owning a qualified wood energy
 32 products and forest maintenance project.

33 (b)(1) If a tax credit is allowed under this section and, as of the
 34 end of the taxable year in which the tax credit is first allowed, the
 35 taxpayer does not have a public retirement system of the State of Arkansas as
 36 a proprietor, partner member, shareholder, or holding an interest, the lesser

1 of five million dollars (\$5,000,000) or the amount of income tax due by the
2 taxpayer may be claimed each year.

3 (2)(A) Any unused tax credit that cannot be claimed in a tax
4 year under subdivision (b)(1) of this section may be carried forward
5 indefinitely to apply the unused tax credit to future tax liability.

6 (B) Beginning July 1, 2021, and by July 15 of each
7 subsequent year, a taxpayer shall provide notice to the Department of Finance
8 and Administration of the amount of tax credits, including without limitation
9 tax credits the taxpayer expects will receive certification during the fiscal
10 year by the Department of Energy and Environment, subject to the limitation
11 in subdivision (b)(1) of this section, that will be sold or transferred for
12 value.

13 (c)(1) If at the time of the execution of the incentive agreement the
14 taxpayer that owns a qualified wood energy products and forest maintenance
15 project is a proprietorship, partnership, limited liability company, or other
16 business organization and any portion of the tax credits allowed under this
17 section would be apportioned to a public retirement system of the State of
18 Arkansas as proprietor, partner, member, or shareholder of the taxpayer, the
19 public retirement system shall have the possession and control of all tax
20 credits, including without limitation any tax credits allowed under this
21 section and otherwise apportioned to the other proprietors, partners,
22 members, shareholders, or beneficiaries.

23 (2) The possession and control of tax credits by a public
24 retirement system under this subsection shall be confirmed in writing by the
25 office of the Department of Finance and Administration charged with the
26 administration of the tax credits allowed under this section.

27 (3) A public retirement system that has possession and control
28 of tax credits under this subsection shall sell or transfer for value the tax
29 credits allowed under this section to the State of Arkansas for eighty
30 percent (80%) of the face value in lieu of the right of a proprietor,
31 partner, member, shareholder, or beneficiary of the qualified wood energy
32 products and forest maintenance project to claim the tax credits as otherwise
33 allowed under applicable state law.

34 (4) Subject to the total tax credit allowed under this section
35 for a qualified wood energy products and forest maintenance project, the
36 maximum amount of tax credits allowed under an incentive agreement between

1 the taxpayer and the state, and the annual transfer by the commission as
2 agreed by the state and the taxpayer, no more than five million dollars
3 (\$5,000,000) of the tax credits in the possession and control of the public
4 retirement system with respect to a qualified wood energy products and forest
5 maintenance project under this subsection may be sold or transferred each
6 year.

7 (5) Any unused tax credit that cannot be sold or transferred in
8 a tax year by the operation of subdivision (c)(4) of this section may be
9 carried forward indefinitely to be sold or transferred by future operation of
10 subdivision (c)(4) of this section.

11 (6) Beginning July 1, 2021, by July 15 of each year, a public
12 retirement system with possession and control of tax credits under this
13 subsection shall provide notice to the Department of Finance and
14 Administration of the amount of tax credits, including without limitation tax
15 credits the public retirement system expects will receive certification
16 during the fiscal year by the Department of Energy and Environment, subject
17 to the limitation in subdivision (c)(4) of this section, to be sold or
18 transferred for value.

19 (7)(A) The State of Arkansas shall pay the purchase price equal
20 to eighty percent (80%) of the face value of all the tax credits included in
21 the notice required under subdivision (c)(6) of this section on or before
22 June 30 of the calendar year following the calendar year in which the notice
23 was provided for all tax credits certified by the Department of Energy and
24 Environment by warrant from the Economic Development Incentive Fund funded by
25 a transfer from general revenue.

26 (B) Tax credits under this subsection sold or transferred
27 for value to the State of Arkansas are extinguished upon payment of the
28 purchase price as if claimed against the tax imposed by this chapter.

29 (C)(i) In the event the State of Arkansas fails to timely
30 pay the purchase price required under subdivision (c)(7)(A) of this section
31 for the tax credits included in the notice required under subdivision (c)(6)
32 of this section, the public retirement system may, before the end of the
33 taxable year following the taxable year in which failure to pay occurs, sell
34 or transfer for value such tax credits to one (1) or more persons.

35 (ii) The person or persons to whom the tax credits
36 are sold or transferred under subdivision (c)(7)(C)(i) of this section may

1 claim the tax credits in accordance with applicable law.

2 (iii) Any tax credits sold or transferred for value
3 under subdivision (c)(7)(C)(i) of this section shall not expire before the
4 end of the third taxable year following the year in which the tax credits
5 were sold or transferred for value under this section.

6 (D) The sale or transfer of tax credits under this
7 subdivision (c)(7) shall be confirmed in writing by the office of the
8 Department of Finance and Administration charged with the administration of
9 the tax credit allowed under this section.

10 (d) A tax credit under this section shall not be authorized without:

11 (1) A cost-benefit analysis, including without limitation an
12 analysis of other incentives offered by the State of Arkansas with respect to
13 the qualified wood energy products and forest maintenance project subject to
14 the tax credit, as certified by the director in consultation with the Chief
15 Fiscal Officer of the State; and

16 (2) An incentive agreement with performance criteria and claw
17 back provisions as required under subsection (e) of this section.

18 (e) The issuance, sale, and transfer of a tax credit authorized under
19 this section shall be subject to an incentive agreement with performance
20 criteria and claw back provisions between the taxpayer and the commission
21 that:

22 (1)(A) Is subject to the approval of the Chief Fiscal Officer of
23 the State to ensure that the cost-benefit analysis required under subsection
24 (d) of this section is met and maintained for a test period that is the
25 longer of the life of the tax credits or twelve (12) years, subject to the
26 limitation stated in subdivision (e)(1)(B) of this section.

27 (B) The test period described in subdivision (e)(1)(A) of
28 this section shall not be longer than fifteen (15) years; and

29 (2) Shall include without limitation the:

30 (A) Capital investment for the qualified wood energy
31 products and forest maintenance project;

32 (B) New full-time permanent employee positions created by
33 the qualified wood energy products and forest maintenance project;

34 (C) Annual salary requirements for the new full-time
35 permanent employee positions created by the qualified wood energy products
36 and forest maintenance project;

1 (D) Timeline for fulfilling the investment of job creation
2 targets stated in the performance and claw back agreement; and

3 (E) Conditions for the claw back provisions, which are
4 triggered if, during the test period stated in subdivision (e)(1) of this
5 section, the taxpayer:

6 (i) Does not meet the required targets of the
7 qualified wood energy products and forest maintenance project related to
8 capital investment, job creation, timeline, or annual salary amounts; or

9 (ii) Fails to maintain a positive cost-benefit
10 analysis.

11
12 SECTION 5. EFFECTIVE DATE. Sections 1-4 of this act are effective for
13 tax years beginning on or after January 1, 2021.