

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

A Bill

HOUSE BILL 1429

5 By: Representative English
6

For An Act To Be Entitled

8 AN ACT TO EXEMPT FROM AD VALOREM TAXATION INDUSTRIAL
9 FACILITIES OWNED AND FINANCED BY THE ARKANSAS
10 DEVELOPMENT FINANCE AUTHORITY; TO PROVIDE FOR
11 AGREEMENTS FOR PAYMENTS IN LIEU OF TAXES AS TO
12 INDUSTRIAL FACILITIES OWNED AND FINANCED BY THE
13 ARKANSAS DEVELOPMENT FINANCE AUTHORITY; TO MAKE
14 TECHNICAL CORRECTIONS; AND FOR OTHER PURPOSES.
15

Subtitle

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17
18 TO EXEMPT FROM AD VALOREM TAXATION
19 INDUSTRIAL FACILITIES OWNED AND FINANCED
20 BY THE ARKANSAS DEVELOPMENT FINANCE
21 AUTHORITY AND TO PROVIDE FOR AGREEMENTS
22 FOR PAYMENTS IN LIEU OF TAXES AS TO THESE
23 INDUSTRIAL FACILITIES.
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25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code Title 14, Chapter 164, Subchapter 7 is
29 amended to read as follows:

30 Subchapter 7— Exemptions from Ad Valorem Taxation
31

32 14-164-701. Legislative intent.

33 (a) It is declared and confirmed that the securing and developing of
34 industry is vital to the economic welfare of the ~~State of Arkansas~~ state and
35 its people. To this end, it is necessary that ~~the~~ maximum flexibility be
36 given to the Arkansas Development Finance Authority and to the counties and



1 municipalities in the state in their efforts to retain and expand existing,
 2 industrial facilities and locate new, industrial facilities. This task
 3 involves the opportunity for the full utilization of the benefits of
 4 financing industrial facilities under Arkansas Constitution, Amendment 49
 5 [repealed], and §§ 14-164-201 – 14-164-206, §§ 14-164-208 – 14-164-224, and
 6 §§ 14-267-101 – 14-267-113, §§ 15-5-101 – 15-5-105, § 15-5-207, §§ 15-5-301 –
 7 15-5-317, and §§ 15-5-401 – 15-5-422, including the exemption from ad valorem
 8 taxation of all industrial facilities ~~which~~ that were exempt under Arkansas
 9 Constitution, Article 16, § 5, as interpreted by the Supreme Court of
 10 Arkansas in Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 633 (1960).

11 (b) While concerns using industrial bond financing should be
 12 encouraged to make payments in lieu of ad valorem taxes, and that is declared
 13 to be the general policy of the General Assembly, the final determination of
 14 whether these payments are to be made and, if made, in what amounts should be
 15 negotiated and contracted by the counties or municipalities in the state and
 16 by the industrial concerns involved under § 14-164-704.

17
 18 14-164-702. Applicability.

19 (a) Pursuant to the findings and declarations of the state in § 14-
 20 164-701, it is found and declared that not only are the industrial facilities
 21 ~~themselves, as such facilities are defined in~~ owned by a municipality,
 22 county, or the Arkansas Development Finance Authority financed with bonds
 23 issued under §§ 14-164-201 – 14-164-206, §§ 14-164-208 – 14-164-224, and §§
 24 14-267-101 – 14-267-113, §§ 15-5-101 – 15-5-105, § 15-5-207, §§ 15-5-301 –
 25 15-5-317, and §§ 15-5-401 – 15-5-422, to be exempt from ad valorem taxation,
 26 but the interest of a lessee or of a purchaser under a contract ~~of~~ for sale
 27 of industrial facilities ~~which~~ that are so exempt ~~shall~~ are also be exempt
 28 from ad valorem taxation. To this end, the interest of a lessee or of a
 29 purchaser is ~~found and declared to be, and shall be considered~~ intangible
 30 personal property for all purposes of ad valorem taxation, ~~intangible~~
 31 ~~personal property~~. This finding and declaration is made ~~pursuant to~~ under the
 32 authority granted to the General Assembly by, and in implementation of the
 33 provisions and purposes of, Arkansas Constitution, Amendment 57.

34 (b) The findings and declarations made in § 14-164-701 and the policy
 35 declared in this section ~~shall be applicable~~ apply to all existing industrial
 36 facilities and to all future industrial facilities involved in Arkansas

1 Constitution, Amendment 49 [repealed], §§ 14-164-201 – 14-164-206, §§ 14-164-
 2 208 – 14-164-224, ~~and §§ 14-267-101 – 14-267-113, §§ 15-5-101 – 15-5-105, §~~
 3 ~~15-5-207, §§ 15-5-301 – 15-5-317, and §§ 15-5-401 – 15-5-422~~ financings, and
 4 to all existing and future interests in leases or purchase contracts
 5 pertaining to these industrial facilities.

6
 7 14-164-703. Payments in lieu of taxes.

8 (a) ~~In the event that~~ If the Arkansas Development Finance Authority or
 9 a county or municipality in the state and a lessee under a lease or a
 10 purchaser under a contract ~~of~~ for sale enter into an agreement for payments
 11 in lieu of ad valorem taxes, each agreement shall provide, or ~~by virtue of~~
 12 under this subchapter shall be interpreted as providing, that all in-lieu-of-
 13 taxes payments shall be distributed to the local political subdivisions that
 14 would have received ad valorem tax payments on the industrial facilities if
 15 the interest involved had not been exempt from ad valorem taxes in the
 16 proportions that the millage levied by each affected local political
 17 subdivision bears to the millage levied by all affected political
 18 subdivisions, unless all such local political subdivisions, including without
 19 limitation the affected school district or districts, shall otherwise agree.

20 (b) ~~Nothing in this section shall be construed as affecting in any~~
 21 ~~manner~~ This section does not affect the rights or obligations of any of the
 22 parties to ~~any such agreements existing~~ an agreement under this subchapter
 23 that exists on the date of enactment of this subchapter providing for
 24 payments in lieu of ad valorem taxes.

25
 26 14-164-704. Sale of ~~city or county~~ property.

27 (a)(1)(A) ~~When any city~~ the Arkansas Development Finance Authority or
 28 a municipality or county in the state enters into a lease of ~~city or county~~
 29 property owned by the authority, a municipality, or a county or enters into a
 30 contract for sale of ~~city or county~~ property by the authority, a
 31 municipality, or a county to a private for-profit entity under this
 32 subchapter or any other ~~provision of~~ law or the Constitution of Arkansas for
 33 the purpose of securing and developing industry, the lease or contract for
 34 sale shall, except as otherwise provided in this section, include an
 35 obligation that the lessee or purchaser make payments in lieu of property
 36 taxes in an amount as negotiated between the parties except the aggregate

1 amount of the payments during the initial term of the lease or contract for
 2 sale shall be not less than thirty-five percent (35%) of the aggregate amount
 3 of ad valorem taxes that would be paid if the property were on the tax rolls,
 4 unless the Director of the Arkansas Economic Development Commission and the
 5 Chief Fiscal Officer of the State approve a lesser amount.

6 (B) If the authority is the owner of the property, there
 7 shall be a separate agreement for payment in lieu of taxes among the
 8 authority, the lessee or purchaser, the county in which the industrial
 9 facilities are located, and, if applicable, the municipality in which the
 10 industrial facilities are located.

11 (2)(A) The aggregate amount of ad valorem taxes that would be
 12 paid if the property were on the tax rolls during the initial term of the
 13 lease or contract for sale may be determined based on:

14 (i) The millage and assessment rates in effect at
 15 the time the obligation to make payments in lieu of property taxes is entered
 16 into;

17 (ii) The projected installed costs of the taxable
 18 real and personal property subject to or to be subject to the lease or
 19 contract for sale, which may be evidenced by an affidavit of ~~a duly an~~
 20 authorized officer of the private for-profit entity; and

21 (iii) Depreciation guidelines for personal property
 22 published by the Arkansas Assessment Coordination Department.

23 (B) The aggregate amount determined under subdivision
 24 (a)(2) of this section shall be adjusted based on the actual installed costs
 25 of the taxable real and personal property at the time the lease or contract
 26 for sale is entered into or the time of completion of the project subject to
 27 the lease or contract for sale, whichever is later.

28 (3) The In cases in which the municipality or county is the
 29 lessor or seller, the obligation may be contained in a separate agreement at
 30 the option of the parties to the lease or contract for sale.

31 (b) ~~Prior to~~ Before a meeting of ~~city~~ municipal or county officials
 32 ~~where~~ or officials of the authority in which action might be taken regarding
 33 approval of in-lieu-of-tax payments, the ~~city~~ authority, municipality, or
 34 county shall give at least ten (10) days' notice of the date, time, and place
 35 of the meeting to the ~~superintendent~~;

36 (1) Superintendent of each school district in which all or any

1 part of the property that is subject to the lease or contract of sale is
 2 located,; and to the

3 (2) Chief Fiscal Officer of the State ~~as to the date, time, and~~
 4 ~~place of the meeting.~~

5 (c) Subsections (a) and (b) of this section ~~shall~~ do not apply to:

6 (1) ~~Any~~ An agreement existing ~~prior to~~ before July 1, 2001;

7 (2) ~~Any~~ An agreement entered into on or after July 1, 2001,
 8 ~~pursuant to~~ under a memorandum of intent or agreement to issue bonds
 9 authorized by ~~any city~~ a municipality or county before July 1, 2001;

10 (3) ~~Any~~ An agreement entered into on or after July 1, 2001,
 11 related to a project covered by a financial incentive proposal from the
 12 Arkansas Economic Development Commission, or by resolution of the governing
 13 body of a ~~city~~ municipality or a county designating the project by name for
 14 the purposes of this exemption, dated before July 1, 2001;

15 (4) ~~Any~~ A reissue or refinancing of bonds that are subject to an
 16 existing in-lieu-of-tax agreement; and

17 (5) ~~Any~~ A lease or contract for sale with a qualified
 18 manufacturer of steel as defined in § 26-52-901 or in Act 541 of 2001 entered
 19 into before June 30, 2009.

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