

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H3/16/17
A Bill

SENATE BILL 581

5 By: Senators J. Hendren, Irvin
6 By: Representatives Boyd, Johnson, *Lemons*
7

For An Act To Be Entitled

9 AN ACT TO ENHANCE LOCAL ECONOMIC DEVELOPMENT EFFORTS;
10 AND FOR OTHER PURPOSES.

Subtitle

14 TO ENHANCE LOCAL ECONOMIC DEVELOPMENT
15 EFFORTS.

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

20 SECTION 1. Arkansas Code Title 14 is amended to add an additional
21 chapter to read as follows:

CHAPTER 176

LOCAL JOB CREATION, JOB EXPANSION, AND ECONOMIC DEVELOPMENT ACT OF 2017

14-176-101. Title.

26 This chapter shall be known and may be cited as the "Local Job
27 Creation, Job Expansion, and Economic Development Act of 2017".

14-176-102. Definitions.

As used in this chapter:

31 (1) "Chief executive" means the:

32 (A) Mayor, city administrator, or city manager of a
33 municipality; or

34 (B) County judge of a county;

35 (2)(A) "County" means a county in the State of Arkansas.

36 (B) "County" does not mean a public corporation for



1 economic development;

2 (3) "Economic development project" means the land, buildings,
3 furnishings, equipment, facilities, infrastructure, and improvements that are
4 required or suitable for the development, retention, or expansion of:

5 (A) Manufacturing, production, and industrial facilities;

6 (B) Research, technology, and development facilities;

7 (C) Recycling facilities;

8 (D) Distribution centers;

9 (E) Call centers;

10 (F) Warehouse facilities;

11 (G) Job training facilities; or

12 (H) Regional or national corporate headquarters
13 facilities;

14 (4) "Economic development service" means:

15 (A) Planning, marketing, and strategic advice and counsel
16 regarding job recruitment, job development, job retention, and job expansion;

17 (B) Supervision and operation of industrial parks or other
18 such properties; and

19 (C) Negotiation of contracts for the sale or lease of
20 industrial parks or other such properties;

21 (5) "Economic impact and cost-benefit analysis" means an
22 economic analysis created with an economic modeling software program or
23 industry-recognized software program that measures the anticipated local or
24 regional economic benefits of an economic development project against the
25 costs of the incentive proposal of the economic development project and
26 prepared by a nationally or regionally recognized independent economic
27 forecasting firm or an Arkansas-based four-year institution of higher
28 education with an active economic research or analysis department;

29 (6) "Financial forecast" means a written report prepared by an
30 independent certified public accountant of the general revenue and expenses
31 and any other sources of funds to be appropriated by the governing body;

32 (7) "General revenue" means:

33 (A) Unobligated current-year budgeted moneys in the
34 general fund of the municipality or county; and

35 (B) Other unobligated general tax moneys of the
36 municipality or county;

1 (8) "Governing body" means the:

2 (A) Quorum court of a county; or

3 (B) City council or board of directors of a municipality;

4 (9) "Infrastructure" means:

5 (A) Land acquisition;

6 (B) Site preparation;

7 (C) Road and highway improvements;

8 (D) Rail spur, railroad, and railport construction;

9 (E) Water service;

10 (F) Wastewater treatment;

11 (G) Employee training, which may include equipment for
12 employee training; and

13 (H) Environmental mitigation or reclamation;

14 (10)(A) "Municipality" means a city of the first class, a city
15 of the second class, or an incorporated town.

16 (B) "Municipality" does not mean a public corporation for
17 economic development;

18 (11) "Public corporation for economic development" means a
19 corporation created and authorized under § 14-174-101 et seq. and the Public
20 Corporations for Economic Development Act, § 14-175-101 et seq.; and

21 (12) "Reserves" means:

22 (A) The unassigned fund balance in the general fund of a
23 municipality or a county at the beginning of the fiscal year; and

24 (B) The beginning fund balance in a capital improvement
25 fund that is available for appropriation to capital improvement projects at
26 the discretion of the governing body of the municipality or county by
27 ordinance or resolution.

28
29 14-176-103. Authorization for obtaining and appropriating money.

30 (a) A municipality or county may obtain or appropriate money for a
31 corporation, association, institution, political subdivision of the state,
32 the federal government, or an individual to:

33 (1) Finance economic development projects; or

34 (2) Provide economic development services.

35 (b) Funds appropriated by a municipality or county under the authority
36 of this section shall be deemed to further the public purpose of economic

1 development.

2
3 14-176-104. Economic development projects – Control, restrictions,
4 prohibitions, and recapture.

5 (a)(1) Before entering into a contract for an economic development
6 project, the governing body shall review and approve an economic impact and
7 cost-benefit analysis of the economic development project.

8 (2) The economic impact and cost-benefit analysis under
9 subdivision (a)(1) of this section may be paid for by the governing body.

10 (3) The requirement for an economic impact and cost-benefit
11 analysis under subdivision (a)(1) of this section does not apply to an
12 economic development project in which the total appropriation does not exceed
13 one hundred thousand dollars (\$100,000).

14 (b) Economic development project contracts shall:

15 (1) Be approved by the governing body in ordinance or resolution
16 form after following applicable bidding, procurement, and professional
17 services procedures in accordance with state law or local ordinance;

18 (2) Be memorialized in writing;

19 (3) Not exceed one (1) year in length unless there is a public
20 finding by the governing body that multiple years are necessary for the
21 success of the economic development project and that multiple years are both
22 lawful and a matter of public benefit;

23 (4) Not be renewed automatically without a vote of the governing
24 body;

25 (5) State a proper public purpose, such as the creation of new
26 jobs, job retention, or the expansion of the tax base by construction or
27 improvements to real property;

28 (6) Articulate specific criteria to measure the progress toward,
29 or achievement of, the proper public purpose; and

30 (7) Contain a recapture provision, including without limitation:

31 (A) A specific time frame in which the recipient of the
32 funding shall provide a written financial accounting to the chief executive
33 and governing body of the use of the moneys with documentation generally
34 acceptable to Arkansas Legislative Audit's requirements and a report
35 detailing the recipient's progress toward, or achievement of, the specific
36 criteria in the economic development project contract;

1 (B) A specific time frame in which the governing body may
2 formally demand by resolution the refunding of the moneys by the recipient
3 upon the governing body's decision that the reporting in subdivision
4 (b)(7)(A) of this section was insufficient and without merit or that the
5 agreed-upon progress or criteria has not been made or achieved in a timely
6 manner as provided for in the economic development project contract; and

7 (C) If the moneys are not returned when demand is made by
8 the municipality or county, the governing body may authorize a cause of
9 action to recapture the moneys in the circuit court of the county with proper
10 jurisdiction and venue.

11 (c)(1) The following are exempt from the Freedom of Information Act of
12 1967, § 25-19-101 et seq., as related to economic development projects:

13 (A) Files and materials that if disclosed would give
14 advantage to the competitors or bidders; and

15 (B) Records maintained by the municipality or county
16 related to an economic development project's:

17 (i) Planning;

18 (ii) Site location;

19 (iii) Expansion;

20 (iv) Operations; or

21 (v) Product development and marketing.

22 (2)(A) However, quarterly reports shall be provided to the
23 governing body by parties to the economic development project contract and
24 shall be available to the public.

25 (B) The reports shall include a statement of the specific
26 items contained in the economic development project contract and articulation
27 of compliance as to each of those items.

28
29 14-176-105. Economic development services – Control, restrictions, and
30 prohibitions.

31 (a) Economic development service contracts shall:

32 (1) Be approved by the governing body in ordinance or resolution
33 form after following applicable bidding, procurement, and professional
34 services procedures in accordance with state law or local ordinance;

35 (2) Be recorded in writing;

36 (3) Not exceed one (1) year in length unless there is a public

1 finding by the governing body that multiple years are necessary for the
2 success of the economic development service and that multiple years are both
3 lawful and a matter of public benefit;

4 (4) Not be renewed automatically without a vote of the governing
5 body;

6 (5) State a proper public purpose, such as the creation of new
7 jobs, job retention, or the expansion of the tax base by construction or
8 improvements to real property; and

9 (6) Articulate specific criteria to measure the progress toward,
10 or achievement of, the proper public purpose.

11 (b)(1) The following are exempt from the Freedom of Information Act of
12 1967, § 25-19-101 et seq., as related to economic development services:

13 (A) Files and materials that if disclosed would give
14 advantage to the competitors or bidders; and

15 (B) Records maintained by an economic development service
16 provider for a municipality or county related to any economic development
17 project.

18 (2)(A) However, quarterly reports shall be provided to the
19 governing body by parties to the economic development service contract and
20 shall be available to the public.

21 (B) The reports shall include a statement of the specific
22 items contained in the economic development service contract and articulation
23 of compliance as to each of those items.

24
25 14-176-106. Tax exemption.

26 Contracts, agreements, and actions taken under this chapter do not
27 affect the tax-exempt status of the state or any municipality or county
28 engaged in work under this chapter.

29
30 14-176-107. Immunity and liability.

31 (a) Section 21-9-301 et seq. applies to this chapter.

32 (b) A municipality or county is not liable for any action related to
33 the providing of, or contractual agreement to enter into, an economic
34 development project or economic development service, except as provided by
35 law.

36

1 14-176-108. Limitation on budget – Due diligence.

2 (a) Except as provided in this section, appropriations for economic
3 development projects by a governing body under this chapter shall not exceed
4 in a fiscal year five percent (5%) of the total of the municipality's or
5 county's unobligated general revenue and reserves of the previous fiscal
6 year, without regard to the number of economic development projects.

7 (b)(1) If a governing body chooses to participate in an economic
8 development project that exceeds the five percent (5%) level under subsection
9 (a) of this section in a fiscal year, the governing body shall secure a
10 financial forecast and then determine whether the municipality or county will
11 participate in the economic development project or projects.

12 (2) A financial forecast under subdivision (b)(1) of this
13 section shall be undertaken each time the five percent (5%) level under
14 subsection (a) of this section is exceeded.

15 (c) The use of the whole or partial amount of revenue specifically
16 dedicated by law, ordinance, or resolution and public vote for economic
17 development for the purposes in this chapter are excluded from the
18 restrictions and limitations of this section.

19
20 14-176-109. Singular contract methodology.

21 A municipality or county may engage the services of a singular entity
22 to administer economic development projects and economic development services
23 under this chapter.

24
25 14-176-110. Bonds.

26 This chapter does not prohibit or restrict the use of funding economic
27 development projects through the proceeds of:

28 (1) Revenue bonds issued in accordance with Arkansas
29 Constitution, Amendment 65; or

30 (2) Capital improvement or economic development bonds issued in
31 accordance with Arkansas Constitution, Amendment 62.

32
33 14-176-111. Federal and state grants.

34 The use of federal and state grants are excluded from the restrictions
35 and limitations of this chapter.

36

1 14-176-112. Interlocal agreements.

2 The use of interlocal agreements under the Interlocal Cooperation Act,
 3 § 25-20-101 et seq., is excluded from the restrictions and limitations of
 4 this chapter.

5
 6 14-176-113. Current economic development projects.

7 Economic development projects that are under way on January 1, 2017,
 8 are exempt from the restrictions and limitations of this chapter.

9
 10 SECTION 2. Arkansas Code § 15-4-3202(11), concerning the definitions
 11 to be used under the Arkansas Amendment 82 Implementation Act, is amended to
 12 read as follows:

13 (11) "Infrastructure needs" means:

- 14 (A) Land acquisition;
 15 (B) Site preparation;
 16 (C) Road and highway improvements;
 17 (D) Rail spur, railroad, and railport construction;
 18 (E) Water service;
 19 (F) Wastewater treatment;
 20 (G) Employee training, which may include equipment used
 21 for the training;
 22 (H) Environmental mitigation or reclamation;
 23 (I) Training and research facilities and the necessary
 24 equipment for the facilities; or
 25 (J) Any other facility, activity, or infrastructure
 26 determined by the General Assembly to fall within the parameters of Arkansas
 27 Constitution, Amendment 82;

28
 29 SECTION 3. Arkansas Code § 15-4-3207 is amended to read as follows:

30 ~~15-4-3207. Maximum ceiling on bond~~ Bond principal.

31 ~~(a) In determining the maximum amount of Amendment 82 bonds that may~~
 32 ~~be issued, the sum of the outstanding bonded indebtedness plus the principal~~
 33 ~~amount of the proposed Amendment 82 bonds shall not exceed five percent (5%)~~
 34 ~~of the general revenues collected during the most recent fiscal year for~~
 35 ~~which revenue calculations are available.~~

36 ~~(b) It is not a violation of Arkansas Constitution, Amendment 82, or~~

1 ~~this subchapter and does not affect the validity of Amendment 82 bonds that~~
2 ~~were properly issued if:~~

3 ~~(1) General revenues decline after Amendment 82 bonds are~~
4 ~~issued; and~~

5 ~~(2) The outstanding bonded indebtedness exceeds five percent~~
6 ~~(5%) of the general revenues collected during the most recent fiscal year for~~
7 ~~which revenue calculations are available.~~

8 ~~(c) Amendment 82 bonds that when issued complied with the five percent~~
9 ~~limitation may be refunded under Arkansas Constitution, Amendment 82, and~~
10 ~~this subchapter even if the outstanding bonded indebtedness before or after~~
11 ~~the refunding exceeds five percent (5%) of the general revenues collected~~
12 ~~during the most recent fiscal year for which revenue calculations are~~
13 ~~available.~~

14 Amendment 82 bonds may be issued to:

15 (1) Finance project costs in an aggregate principal amount
16 approved by the General Assembly without regard to any debt limitation; and

17 (b) Refund outstanding Amendment 82 bonds in an aggregate
18 principal amount approved by the Arkansas Development Finance Authority
19 without regard to any debt limitation.

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21 */s/J. Hendren*
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24 **APPROVED: 03/27/2017**
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