

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

# A Bill

SENATE BILL 774

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

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## For An Act To Be Entitled

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"THE ARKANSAS ECONOMIC DEVELOPMENT ACT OF 1995."

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## Subtitle

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"THE ARKANSAS ECONOMIC DEVELOPMENT ACT

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OF 1995."

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

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16 SECTION 1. Title. This act may be referred to and cited as the

17 "Arkansas Economic Development Act of 1995".

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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  
25 per 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

1 new facility or expand an existing facility in Arkansas;

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

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

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

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

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

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

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

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

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

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

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

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

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

| Average                   | Annual  |
|---------------------------|---|
| Hourly Wage               | Income Tax Credit                             |
| less than \$7.00 per hour | None  |
| \$7.00 to \$7.99 per hour | up to 70 percent of the income tax liability  |
| \$8.00 to \$8.99 per hour | up to 85 percent of the income tax liability  |
| \$9.00 per hour and above | up to 100 percent of the income tax liability |

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

(3) To provide the Department of Finance and Administration with a copy of each financial incentive plan entered into by the department with

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

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

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

14 (1) Be either:

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

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

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

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

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

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

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

35 (1) Specify the tax incentives the business is to receive, including the

1 maximum amount of income tax credit the business may claim for each tax year  
2 covered by the financial incentive plan;

3 (2) Specify the term of the plan, which cannot exceed ten (10) years.  
4 The ten (10) years shall be calculated from the date of the financial  
5 incentive plan is signed by the business and the department;

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

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

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

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

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

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

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

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

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

33 (B) The business and its contractors give preference and priority to  
34 Arkansas manufacturers, suppliers, contractors, and labor, except where it is  
35 not reasonably possible to do so without added expense, substantial

1 inconvenience, or sacrifice in operational efficiency;

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

8 (i) Approve the specific entity's participation in the program;  
9 and

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

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

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

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

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

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

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

34 (c)(1) The Revenue Division of the Department of Finance and  
35 Administration shall authorize an income tax credit for the project debt

1 service payments made by the business during that tax year, which will be  
2 specified in the financial incentive plan. However, the amount of the credit  
3 shall not exceed the amount specified in the financial incentive plan, which  
4 will be designated as percentage of the business' annual income tax  
5 liability. (2) However, if the entire credit cannot be used in the  
6 year earned, the remainder may be applied against the income tax for the  
7 succeeding nine (9) tax years, or until the financial incentive plan expires,  
8 whichever occurs first.

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

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

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

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

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

32 (f) Any business receiving benefits under this program shall be liable  
33 for the repayment of any benefits received, plus penalty and interest, if it  
34 does not comply with the terms of the financial incentive plan, the  
35 requirements of this act, or any rule or regulation promulgated pursuant to

1 this act. The Chief Fiscal Officer may bring any lawful action to recover any  
2 amount for which the recipient is liable.

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4       SECTION 7. Verification.

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

12       (b) The Department of Finance and Administration may promulgate rules  
13 and regulations necessary for the proper administration of the provisions of  
14 this act.

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

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20       SECTION 9. Effective date. The provisions of this act shall be in  
21 full force and effect for all tax years beginning on and after January 1,  
22 1995.

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

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

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



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2           SECTION 13. EMERGENCY CLAUSE. It is hereby found and determined by  
3 the General Assembly of this State that economic underdevelopment has reached  
4 intolerable levels in this state and the state as a whole has been unable to  
5 compete with other state's incentive programs for economic development; and,  
6 that the incentives afforded by this act are critical to the development and  
7 expansion of job opportunities in the state. Therefore, an emergency is  
8 declared to exist and this act, being necessary for the preservation of the  
9 public peace, health and safety, shall be in full force and effect from and  
10 after its passage and approval.