

Stricken language would be deleted from present law. Underlined language would be added to present law.

As Engrossed: H2/5/97 H2/6/97

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1338

4
5 *By: Representatives Mullenix, Baker, Wallis, Milum, Hale, Terry Smith, Thomas, Bryant, Joe Hudson, Simmons, Purdom, Laverty,*
6 *Broadway and Northcutt*
7 *By: Senators Fitch, Hunter, and Canada*

For An Act To Be Entitled

10 "AN ACT TO PROMOTE TOURISM PROJECT DEVELOPMENT IN THE
11 STATE OF ARKANSAS; TO PROVIDE STATE SALES TAX CREDITS TO
12 QUALIFIED TOURISM PROJECTS; AND FOR OTHER PURPOSES."

Subtitle

15 "AN ACT TO PROMOTE DEVELOPMENT OF
16 TOURIST ATTRACTIONS."

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

20 SECTION 1. TITLE. This act shall be referred to, and may be cited as,
21 the "Arkansas Tourism Development Act."

23 SECTION 2. LEGISLATIVE INTENT. The General Assembly finds and declares
24 that the general welfare and material well-being of the citizens of the State
25 of Arkansas depend, in large measure, upon the development of tourism
26 attractions in the state, and that it is in the best interests of the state to
27 induce the creation of new or the expansion of existing tourism attractions
28 within the state in order to advance the public purposes of relieving
29 unemployment by preserving and creating jobs that would not exist if not for
30 the inducements to be offered by the state to approved companies, and by
31 preserving and creating sources of tax revenues for the support of public
32 services provided by the state; and that the authority prescribed by this act,
33 and the purposes to be accomplished under the provisions of this act, are
34 proper governmental and public purposes for which public moneys may be
35 expended; and that the inducement of the creation or expansion of tourism
36 attraction projects is of paramount importance, mandating that the provisions

1 of this act be liberally construed and applied in order to advance public
2 purposes.

3

4 SECTION 3. DEFINITIONS. Whenever used or referred to in this act,
5 unless the context clearly indicates otherwise:

6 (a) "Agreement" means an agreement entered into pursuant to Section 6
7 of this act, by and between the Director and an approved company, with respect
8 to a tourism attraction project;

9 (b) "Approved Company" means any eligible company that is seeking to
10 undertake a tourism attraction project and is approved by the Director
11 pursuant to Sections 5 and 6 of this act;

12 (c) "Approved Costs" mean:

13 (1) Obligations incurred for labor and to vendors, contractors,
14 subcontractors, builders, suppliers, delivery men, and materialmen in
15 connection with the acquisition, construction, equipping, and installation of
16 a tourism attraction project;

17 (2) The costs of acquiring real property or rights in real
18 property in connection with a tourism attraction project, and any costs
19 incidental thereto;

20 (3) The cost of contract bonds and of insurance of all kinds that
21 may be required or necessary during the course of the acquisition,
22 construction, equipping, and installation of a tourism attraction project
23 which is not paid by the vendor, supplier, delivery man, contractor, or
24 otherwise provided;

25 (4) All costs of architectural and engineering services,
26 including, but not limited to, estimates, plans and specifications,
27 preliminary investigations, and supervision of construction and installation,
28 as well as for the performance of all the duties required by or consequent to
29 the acquisition, construction, equipping, and installation of a tourism
30 attraction project;

31 (5) All costs required to be paid under the terms of any contract
32 for the acquisition, construction, equipping, and installation of a tourism
33 attraction project;

34 (6) All costs required for the installation of utilities in
35 connection with a tourism attraction project, including, but not limited to,
36 water, sewer, sewage treatment, gas, electricity, and communications, and

1 including off-site construction of utility extensions paid for by the approved
2 company; and

3 (7) All other costs comparable with those described in this
4 subsection.

5 (d) "Director" means the Director of the Department of Parks and
6 Tourism of the State of Arkansas or his designated representative;

7 (e) "Eligible Company" means any corporation, limited liability
8 company, partnership, registered limited liability partnership, sole
9 proprietorship, or business trust, or any other entity operating or intending
10 to operate a tourism attraction project, whether owned or leased, within the
11 state that meets the standards promulgated by the Director pursuant to Section
12 4 of this act;

13 (f) "Final Approval" means the action taken by the Director authorizing
14 the eligible company to receive inducements under Section 7 of this act;

15 (g) "Increased state sales tax liability" means that portion of an
16 approved company's reported state sales (gross receipts) tax liability
17 resulting from taxable sales of goods and services to its customers at the
18 tourist attraction for any monthly sales tax reporting period after the
19 approved company provides the certification required by Section 7(b) of this
20 section, which exceeds the reported state sales tax liability for sales to its
21 customers for the same month in the calendar year immediately preceding such
22 certification.

23 (h) "Inducements" means the Arkansas sales tax credit as prescribed in
24 Section 7 of this act;

25 (i) "Preliminary Approval" means the action taken by the Director
26 conditioning final approval by the Director upon satisfaction by the eligible
27 company of the requirements of this act;

28 (j)(1) "Tourism Attraction" means:

29 (A) Cultural or historical site;

30 (B) A recreational or entertainment facility;

31 (C) An area of natural phenomenon or scenic beauty;

32 (D) A theme park;

33 (E) An amusement or entertainment park;

34 (F) An indoor or outdoor play or music show;

35 (G) Botanical gardens;

36 (H) Cultural or educational centers.

- 1 (2) A tourism attraction shall not include:
2 (A) Lodging facilities, unless the facilities constitute a
3 portion of a tourism attraction project and represent less than fifty percent
4 (50%) of the total approved costs of the tourism attraction project;
5 (B) Facilities that are primarily devoted to the retail
6 sale of goods, unless the goods are created at the site of the tourism
7 attraction project or if the sale of goods is incidental to the tourism
8 attraction project;
9 (C) Facilities that are not open to the general public;
10 (D) Facilities that do not serve as a likely destination
11 where individuals who are not residents of the state would remain overnight in
12 commercial lodging at or near the tourism attraction project;
13 (E) Facilities owned by the State of Arkansas or a
14 political subdivision of the state; or
15 (F) Facilities established for the purpose of conducting
16 legalized gambling. However, a facility regulated under Ark. Code Ann. §23-
17 110-101 et seq. or §23-111-101 et seq. shall be a tourism attraction for
18 purposes of this Act for any approval project as outlined in subsection (j)(1)
19 of this section or for an approved project relating to parimutuel racing at
20 the facility and not for establishing a casino or for offering casino-style
21 gambling.

22 (k) "Tourism Attraction Project" or "Project" means the acquisition,
23 including the acquisition of real estate by leasehold interest with a minimum
24 term of ten (10) years, construction, and equipping of a tourism attraction;
25 the construction and installation of improvements to facilities necessary or
26 desirable for the acquisition, construction, and installation of a tourism
27 attraction, including, but not limited to, surveys; installation of utilities,
28 which may include, water, sewer, sewage treatment, gas, electricity,
29 communications, and similar facilities; and off-site construction of utility
30 extensions to the boundaries of the real estate on which the facilities are
31 located, all of which are to be used to improve the economic situation of the
32 approved company in a manner that shall allow the approved company to attract
33 persons.

34
35 SECTION 4. EVALUATION STANDARDS; TOURISM ATTRACTION PROJECT
36 APPLICATIONS; AND CONSULTING SERVICES.

1 (a) The Director, with the approval of the State Parks, Recreation and
2 Travel Commission, shall establish standards for the making of applications
3 for inducements to eligible companies and their tourism attraction projects by
4 the promulgation of administrative regulations in accordance with §25-15-201,
5 et seq..

6 (b) With respect to each eligible company making an application to the
7 Director for inducements, and with respect to the tourism attraction project
8 described in the application, the Director shall make inquiries and request
9 materials of the applicant that shall include, but shall not be limited to,
10 marketing plans for the project that target individuals who are not residents
11 of the state; a description and location of the project; capital and other
12 anticipated expenditures for the project that indicate that the total cost of
13 the project shall exceed five hundred thousand dollars (\$500,000) and the
14 anticipated sources of funding therefor; the anticipated employment and wages
15 to be paid at the project; business plans which indicate the average number of
16 days in a year in which the project will be in operation and open to the
17 public; and the anticipated revenues and expenses generated by the project.
18 Based upon a review of these materials, if the Director determines that the
19 eligible company and the tourism attraction project may reasonably satisfy the
20 criteria for final approval in subsection (c) of this section, then the
21 Director may consider granting a preliminary approval of the eligible company
22 and the tourism attraction project pursuant to Section 5(b).

23 (c) After granting a preliminary approval, the Director shall engage
24 the services of a competent consulting firm to analyze the data made available
25 by the eligible company and to collect and analyze additional information
26 necessary to determine that, in the independent judgment of the consultant,
27 the tourism attraction project:

28 (1) Shall attract at least twenty-five percent (25%) of its
29 visitors from among persons who are not residents of the state;

30 (2) Shall have costs in excess of five hundred thousand dollars
31 (\$500,000);

32 (3) Shall have a significant and positive economic impact on the
33 state considering, among other factors, the extent to which the tourism
34 attraction project will compete directly with existing tourism attractions in
35 the state, and the amount by which increased tax revenues from the tourism
36 attraction project will exceed the sales tax credit allowed pursuant to

1 Section 7 of this act;

2 (4) Shall produce sufficient revenues and public demand to be
3 operating and open to the public on a regular and persistent basis; and

4 (5) Shall not adversely affect existing employment in the state.

5 (d) The eligible company shall pay for the cost of the consultant's
6 report and shall cooperate with the consultant and provide all of the data
7 that the consultant deems necessary to make its determination under subsection
8 (c) of this section.

9

10 SECTION 5. STANDARDS FOR PRELIMINARY AND FINAL APPROVAL OF COMPANIES
11 AND PROJECTS.

12 (a) The Director, with the approval of the State Parks, Recreation and
13 Travel Commission, shall establish standards for preliminary approval and
14 final approval of eligible companies and their projects by the promulgation of
15 administrative regulations in accordance with §25-15-201, et seq..

16 (b) The Director may give its preliminary approval by designating an
17 eligible company as a preliminarily approved company and preliminarily
18 authorizing the undertaking of the tourism attraction project.

19 (c) The Director shall review the report of the consultant prepared
20 pursuant to Section 4(c) of this act and other information that has been made
21 available to the Director in order to assist the Director in determining
22 whether the tourism attraction project will further the purposes of this act.

23 (d) The criteria for final approval of eligible companies and tourism
24 attraction projects shall include, but shall not be limited to, the criteria
25 set forth in Section 4(c) of this act.

26 (e) After a review of the relevant materials, the consultant's report,
27 other information made available to the Director, and completion of other
28 inquiries, the Director may give its final approval to the eligible company's
29 application for a tourism attraction project and may grant to the eligible
30 company the status of an approved company. The decision reached by the
31 Director may be appealed by the eligible company to the State Parks,
32 Recreation and Travel Commission. The decision of the State Parks, Recreation
33 and Travel Commission shall constitute the final administrative decision of
34 the Department of Parks and Tourism.

35

36 SECTION 6. CONTRACTS.

1 (a) Upon granting final approval, the Director may enter into an
2 agreement with an approved company with respect to its tourism attraction
3 project. The terms and provisions of each agreement shall include, but shall
4 not be limited to:

5 (1) The amount of approved costs, which shall be determined by
6 negotiations between the Director and the approved company;

7 (2) A date certain by which the approved company shall have
8 completed the tourism attraction project. Within three (3) months of the
9 completion date, the approved company shall document the actual cost of the
10 tourism attraction project through a certification of such costs by an
11 independent certified public accountant acceptable to the Director; and

12 (3) The following provisions:

13 (A) The term shall be ten (10) years from the later of:

14 (1) The date of the final approval of the tourism
15 attraction project; or

16 (2) The completion date specified in the agreement,
17 if such completion date is within two (2) years of the date of the final
18 approval of the tourism attraction project. However, the term of the
19 agreement may be extended for up to two (2) additional years by the Director,
20 with the advice and consent of the Director of the Department of Finance and
21 Administration, if the Director determines that the failure to complete the
22 tourism attraction project within two (2) years resulted from unanticipated
23 and unavoidable delay in the construction of the tourism attraction project,
24 the project as originally planned will require more than two (2) years to
25 complete, or resulted from a merger, acquisition or other change in business
26 ownership or business structure.

27 (B) In any sales tax reporting period during which an
28 agreement is in effect, if the increased state sales tax liability of the
29 approved company exceeds the state sales tax credit available to the approved
30 company, then the approved company shall pay the excess to the state as sales
31 tax;

32 (C) Within forty-five (45) days after the end of each
33 calendar year of the approved company, the approved company shall supply the
34 Director with such reports and certifications as the Director may request
35 demonstrating to the satisfaction of the Director that the approved company is
36 in compliance with the provisions of this act; and

1 (D) The approved company shall not receive a credit against
2 the Arkansas sales tax imposed by Ark. Code Ann. §26-52-301 et seq. with
3 respect to any calendar year if:

4 (1) In any calendar year following the fourth year of
5 the agreement, the tourism attraction project fails to attract at least
6 twenty-five percent (25%) of its visitors from among persons who are not
7 residents of the state; or

8 (2) In any calendar year following the first year of
9 the agreement, the tourism attraction project is not operating and open to the
10 public on a regular and persistent basis.

11 (b) The Agreement shall not be transferrable or assignable by the
12 approved company without the written consent of the Director.

13 (c) If the approved company utilizes sales tax credits which are
14 subsequently disallowed, then the approved company will be liable for the
15 payment to the Director of the Department of Finance and Administration of all
16 taxes resulting from the disallowance of the credits plus applicable penalties
17 and interest.

18 (d) The Director shall provide a copy of each agreement entered into
19 with an approved company to the Director of the Department of Finance and
20 Administration.

21

22 SECTION 7. TOURISM ATTRACTION PROJECT SALES TAX CREDIT.

23 (a) Upon receiving notification from the Director that an approved
24 company has entered into a tourism project agreement and is entitled to the
25 sales tax credits provided by this act, the Director of the Department of
26 Finance and Administration shall provide the approved company with such forms
27 and instructions as are necessary to claim those credits.

28 (b)(1)(A)(i) An approved company whose agreement provides that it shall
29 expend approved costs of more than five hundred thousand dollars (\$500,000)
30 but less than one million dollars (\$1,000,000) shall be entitled to a credit
31 if the company certifies to the Director of the Department of Finance and
32 Administration that it has expended at least \$500,000 in approved costs, and
33 the Director certifies that the approved company is in compliance with this
34 Act. The Director of the Department of Finance and Administration shall then
35 issue a sales tax credit memorandum to the approved company equal to 10% of
36 the approved costs. Subsequent requests for credit for additional certified

1 approved costs in excess of \$500,000 but less than \$1 million shall result in
2 a sales tax credit equal to 10% of the approved costs.

3 (ii) If the company subsequently expends additional certified
4 approved costs so that the total amount of expended approved costs exceeds
5 \$1,000,000, then the sales tax credit memorandum shall equal 25% of the
6 approved costs in excess of \$1,000,000.

7 (B) An approved company whose agreement provides that it shall
8 expend approved costs in excess of one million dollars (\$1,000,000) shall be
9 entitled to a credit if the company certifies to the Director of the
10 Department of Finance and Administration that it has expended at least one
11 million dollars (\$1,000,000) in approved costs and the Director certifies that
12 the approved company is in compliance with this Act. The Director of the
13 Department of Finance and Administration shall then issue a sales tax credit
14 memorandum to the approved company equal to 25% of the approved costs. The
15 credit on all subsequent additional certified approved costs shall be equal to
16 25% of the costs.

17 (C) The Director of the Department of Finance and Administration
18 may require proof of expenditures. Additional credit memorandum may be issued
19 as the approved company certifies additional expenditures of approved costs.

20 (2) No sales tax credit memorandum shall be issued for any
21 approved costs expended after the expiration of two (2) years from the date
22 the agreement was signed by the Director and the approved company. However,
23 the Director, with the advice and consent of the Director of the Department of
24 Finance and Administration, may authorize sales tax credits for approved costs
25 expended up to four (4) years from the date the agreement was signed if the
26 Director determines that the failure to complete the tourism attraction
27 project within two (2) years resulted from:

28 (i) Unanticipated and unavoidable delay in the construction
29 of the tourism attraction project;

30 (ii) The tourism attraction project, as originally planned,
31 will require more than two (2) years to complete; or

32 (iii) A change in business ownership or business structure
33 resulting from a merger or acquisition.

34 (c) The credit memorandum issued pursuant to paragraph (b) above may be
35 used to offset a portion of the reported state sales (gross receipts) tax
36 liability of the approved company for all sales tax reporting periods

1 following the issuance of the credit memorandum subject to the following
2 limitations:

3 (1) Only increased state sales tax liability as defined in this
4 act may be offset by the issued credit;

5 (2)(A) An approved company whose agreement provides that it shall
6 expend approved costs in excess of one million dollars (\$1,000,000) shall be
7 entitled to use only 10% of the amount of each issued credit to offset
8 increased state sales tax liability during each calendar year, plus the amount
9 of any unused credit carried forward from a prior calendar year; and,

10 (B) An approved company whose agreement provides that it shall
11 expend approved costs of more than five hundred thousand dollars (\$500,000)
12 but less than one million dollars (\$1,000,000) shall be entitled to use only
13 20% of the amount of each issued credit to offset increased state sales tax
14 liability during each calendar year, plus the amount of any unused credit
15 carried forward from a prior calendar year; and,

16 (3) All issued credit memoranda shall expire at the end of the
17 month following the expiration of the Agreement as provided in Section 6 of
18 this act.

19 (d) The approved company shall have no obligation to refund or
20 otherwise return any amount of this credit to the person from whom the sales
21 tax was collected.

22 (e) By April 1 of each year, the Director of the Department of Finance
23 and Administration shall certify to the Director the state sales tax liability
24 of the approved companies receiving inducements under this section, and the
25 amount of state sales tax credits taken during the preceding calendar year.

26 (f) The Director of the Department of Finance and Administration may
27 promulgate administrative regulations as are necessary for the proper
28 administration of this act. The Director of the Department of Finance and
29 Administration may also develop such form and instructions as are necessary
30 for an approved company to claim the sales tax credit provided by this act.

31 (g) The Director of the Department of Finance and Administration shall
32 have the authority to obtain any information necessary from the approved
33 company and the Director of the Department of Parks and Tourism to verify that
34 approved companies have received the proper amounts of sales tax credits as
35 authorized by this act; The Director of the Department of Finance and
36 Administration shall demand the repayment of any credits taken in excess of

1 the credit allowed by this act.

2

3 SECTION 8. LIBERAL CONSTRUCTION. This act shall be construed liberally
4 to effectuate the legislative intent, and the purpose of this act is complete
5 and independent authority for the performance of each and every act and thing
6 herein authorized, and all powers herein granted shall be broadly interpreted
7 to effectuate such intent and purposes and not as a limitation of powers.

8

9 SECTION 9. All provisions of this act of a general and permanent nature
10 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
11 Revision Commission shall incorporate the same in the Code.

12

13 SECTION 10. If any provision of this act or the application thereof to
14 any person or circumstance is held invalid, such invalidity shall not affect
15 other provisions or applications of the act which can be given effect without
16 the invalid provision or application, and to this end the provisions of this
17 act are declared to be severable.

18

19 SECTION 11. All laws and parts of laws in conflict with this act are
20 hereby repealed.

21

22 SECTION 12. EMERGENCY CLAUSE. It is hereby found and declared that
23 tourism related industries and businesses are suffering severe and irreparable
24 harm due to a decline in the number of tourists visiting this state; that the
25 preservation of these tourist related industries and businesses is vitally
26 important to the economy of this state; that unless additional tourist
27 attractions are built and developed in Arkansas many current jobs in these
28 tourist related industries and businesses will be lost forever and causing
29 severe economic hardship in this state; that this act is designed to encourage
30 the development and construction of tourist attractions in Arkansas and to
31 preserve the jobs of those Arkansans who earn their livelihood from tourist
32 related industries and businesses. Therefore, an emergency is declared to
33 exist, and this act being necessary for the preservation of the public peace,
34 health, and safety, shall take effect and be in force from the date of its
35 approval.

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/s/Rep. Mullenix, et al