

State of Arkansas

82nd General Assembly

Regular Session, 1999

# A Bill

HOUSE BILL 1595

By: Representative Sheppard

By: Senator Hill

## For An Act To Be Entitled

"AN ACT TO AMEND THE ARKANSAS ECONOMIC DEVELOPMENT INCENTIVE ACT OF 1993 TO REDEFINE THE SCOPE OF ELIGIBLE BUSINESSES WHICH MAY QUALIFY FOR BENEFITS UNDER THIS ACT; TO CLARIFY THE DEFINITION OF 'NET NEW FULL-TIME PERMANENT EMPLOYEE'; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

## Subtitle

"TO AMEND THE ARKANSAS ECONOMIC DEVELOPMENT INCENTIVE ACT OF 1993."

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

SECTION 1. Arkansas Code 15-4-1602 is amended to read as follows:

"15-4-1602. Definitions.

As herein used in this subchapter:

~~(1) 'Commission' means the Arkansas Economic Development Commission;~~

~~(3)~~(1) 'Department' means the Department of Economic Development;

~~(4)~~(2) 'Director' is the director of the department;

~~(2)~~(3) 'Corporate or regional headquarters' means the home or center of operations, including research and development, of a national or multinational corporation;

~~(5)~~(4) 'Office sector business' means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers. ~~'Office sector business' is also referred to as 'back~~

~~office industry~~;

~~(11)~~(5) 'Distribution center' means a facility for the reception, storage, or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets;

(6) '~~New~~ Net new full-time permanent employee' means a position or job which was created ~~as a result of the project~~ pursuant to the signed financial incentive plan and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned;

(A) The position or job held by such employee or employees must have ~~had someone working in it~~ been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week;

(B) Provided, however, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(7) 'Existing employees' means those employees hired by the business prior to the date of the signed financial incentive plan. Existing employees may be considered 'net new full-time permanent employees' only if:

(A) The position or job filled by the existing employee was created in accordance with the signed financial incentive plan; and

(B) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring such classification;

~~(7)~~(8) 'High unemployment' means an unemployment rate in excess of ten percent (10%), or more than three percent (3%) above the state's average unemployment rate, for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Employment Security Department;

~~(8)~~(9) 'Fund' means the Economic Development Incentive Fund;

~~(9)~~(10) 'Financial incentive plan' means an agreement entered into by a business and the department to provide the business an incentive to locate a new facility or expand an existing facility in Arkansas; and

~~(10)~~(11) 'Annual payroll' means the wages of the net new full-time permanent employees based on the payroll for the previous twelve (12) months

1 reported to the Arkansas Employment Security Department and is computed by  
 2 using the total of the new permanent employees' reported taxable earnings,  
 3 including overtime pay; ~~and.~~"

4  
 5 SECTION 2. Arkansas Code 15-4-1603 is amended to read as follows:

6 "15-4-1603. Economic development incentive fund.

7 There is hereby established on the books of the Treasurer of State,  
 8 Auditor of State, and Chief Fiscal Officer of the State, a fund to be known as  
 9 the 'Economic Development Incentive Fund' of the Arkansas ~~Economic Development~~  
 10 ~~Commission~~ Department of Economic Development. The Economic Development  
 11 Incentive Fund shall consist of revenues designated for this fund by the  
 12 Revenue Division of the Department of Finance and Administration pursuant to  
 13 agreements entered into by the Arkansas ~~Economic Development Commission~~  
 14 Department of Economic Development with qualified businesses."

15  
 16 SECTION 3. Arkansas Code 15-4-1604 is amended to read as follows:

17 "15-4-1604. Powers and duties of the department.

18 The department shall administer the provisions of this subchapter and  
 19 shall have the following powers and duties, in addition to those mentioned in  
 20 this subchapter and in other laws of this state:

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

24 (2)(A) ~~To~~ In highly competitive situations, the director of the  
 25 Arkansas Department of Economic Development is authorized to negotiate  
 26 proposals on behalf of the state with prospective businesses which are  
 27 considering locating a new facility, or expanding an existing facility, that  
 28 would employ the requisite number of net new full-time permanent employees  
 29 provided by § 15-4-1606.

30 (B) The department is authorized to negotiate with the business a  
 31 financial incentive plan up to an amount equal to three and nine-tenths  
 32 percent (3.9%) of the ~~company's business'~~ annual payroll for the net new full-  
 33 time permanent employees, and may negotiate with the business a financial  
 34 incentive plan up to an amount equal to five percent (5%) of the annual  
 35 payroll for the net new full-time permanent employees if the business locates  
 36 in an area of high unemployment as defined by § 15-4-1602;

(3) To provide the Department of Finance and Administration with a copy of each formal agreement entered into by the department with each of the qualifying businesses, so that the Department of Finance and Administration will know how much money is to be designated for the Economic Development Incentive Fund each quarter; and

(4) To make disbursement from the fund to qualified businesses which have entered into financial incentive plans."

SECTION 4. Arkansas Code 15-4-1605 is amended to read as follows:

"15-4-1605. Qualifications.

To qualify for the benefits of this subchapter, the entity applying must:

~~(1) Be either:~~

~~(A) An industry that comes within the Standard Industrial Classification numbers 20-39 which will employ one hundred (100) or more new permanent employees;~~

~~(B) An office sector business which will employ fifty (50) or more new permanent employees and not make retail sales to the general public; or~~

~~(C) A corporate headquarters which will employ fifty (50) or more new permanent employees and not make retail sales to the general public; or~~

~~(D) A distribution center which will employ one hundred (100) or more new permanent employees and not make retail sales to the general public;~~

(1) Be classified as one or more of the following types of businesses:

(A) Manufacturers classified in Federal Standard Industrial Classification (SIC) codes 20-39, including semiconductor and microelectronic manufacturers which will employ one hundred (100) or more net new full-time permanent employees;

(B) Computer businesses primarily engaged in providing computer programming services; the design and development of prepackaged software; businesses engaged in digital content production and preservation; computer processing and data preparation services; information retrieval services; computer and data processing consultants and developers. All businesses in this group must employ twenty-five (25) or more net new full-time permanent employees, derive at least sixty percent (60%) of their revenue from out of state sales and have no retail sales to the general public;

(C) Businesses primarily engaged in commercial physical and

biological research as classified by SIC code 8731, which will employ fifty (50) or more net new full-time permanent employees;

(D) Businesses primarily engaged in motion picture production which will employ fifty (50) or more net new full-time permanent employees. All businesses in this group must derive at least sixty percent (60%) of their revenue from out of state sales and have no retail sales to the general public;

(E) A distribution center, with no retail sales to the general public, which will employ one hundred (100) or more net new full-time permanent employees;

(F) An office sector business, with no retail sales to the general public, which will employ fifty (50) or more net new full-time permanent employees;

(G) A national, corporate or regional headquarters, with no retail sales to the general public which will employ fifty (50) or more net new full-time permanent employees; and

(H) A trucking/distribution terminal, as classified by SIC code 4231, with no retail sales to the general public, which will employ one hundred (100) or more net new full-time permanent employees.

(2) Hire the requisite number of net new full-time permanent employees within twenty-four (24) months ~~of~~ following the date the financial incentive plan was entered into with the department;

(3) Agree to certify to the Department of Finance and Administration the number of net new full-time permanent employees and the net new full-time permanent employees' payroll once the number of net new full-time permanent employees reaches the requisite number provided in subdivision (1) of this section, and recertify the number and payroll of the net new employees annually thereafter during the term of the financial incentive plan, so that the Department of Finance and Administration can determine the amount of money to be deposited into the fund; and

(4) Agree to certify to the Department of Finance and Administration within thirty (30) days after the number of net new full-time permanent employees falls below:-

~~(A) One hundred (100) for an industry;~~

~~(B) Fifty (50) for an office sector business;~~

~~(C) Fifty (50) for a corporate headquarters; or~~

~~(D) One hundred (100) for a distribution center. the required numbers~~  
~~enumerated in paragraph (1) above."~~

SECTION 5. Arkansas Code 15-4-1606 is amended to read as follows:

"15-4-1606. Limitations.

The following limitations shall apply to all financial incentive plans negotiated by the department:

(1)(A) The term of a financial incentive plan shall not exceed one hundred twenty-six (126) months.

(B) The one hundred twenty-six (126) months shall be calculated from the date of the financial incentive plan entered into by the business and the department;

(2) The business shall not be entitled to the benefits of a financial incentive plan entered into with the department until twelve (12) months after it has hired the requisite number of new permanent employees and has certified that fact to the Department of Finance and Administration as required by this subchapter;

(3)(A) If the number of net new permanent full-time employees drops below the requisite number provided in § 15-4-1605, all benefits under the financial incentive plan entered into with the department shall be terminated, unless the director and the Chief Fiscal Officer of the State ~~approves~~ approve a written request filed by the business explaining why the number of new permanent full-time employees fell below the requisite number. The director and the Chief Fiscal Officer may grant the business up to twenty-four (24) months to bring the number of new permanent employees back up to the requisite number and may approve the continuation of full-time benefits during that period.

(B) (i) In the event that the requisite number of net new full-time permanent employees cannot be employed within the twenty-four (24) month period, the business can file a written application with the department explaining why additional time is necessary. The business can be afforded up to twenty-four (24) more months to hire the requisite number of employees if the director and the Chief Fiscal Officer of the State agree.

(ii) In the event that a business fails to notify the Department of Finance and Administration that the number of employees has fallen below the required number to continue to receive benefits under a

1 financial incentive plan, that business will be liable for the repayment of  
 2 all benefits which were paid to the business after it no longer qualified for  
 3 the benefits. Interest shall also be due at the rate of ten percent (10%) per  
 4 annum; ~~and~~

5 (4)(A) The financial benefits received by a business shall be used in  
 6 accordance with the financial incentive plan entered into with the department.

7 (B)(i) Financial incentive plans shall designate how the funds  
 8 are to be used by the business.

9 (ii) A plan may designate funds for employee training,  
 10 infrastructure, or other purposes ~~set out by legislation~~ agreed to by the  
 11 business and the director.

12 (5) Recipients of benefits under this act are precluded from receiving  
 13 benefits under the Arkansas Biotechnology Development and Training Act of 1997  
 14 and the Arkansas Economic Development Act of 1995, as amended."

15  
 16 SECTION 6. Arkansas Code 15-4-1609 is amended to read as follows:

17 "15-4-1609. Effect of participation.

18 Receiving benefits pursuant to this subchapter will not preclude a  
 19 business from participating in ~~any other tax incentive program~~ the Arkansas  
 20 Economic Development Act incentive program."

21  
 22 SECTION 7. Arkansas Code 15-4-1610 is hereby repealed.

23 ~~15-4-1610. Effective date.~~

24 ~~The provisions of this subchapter shall be in full force and effect for~~  
 25 ~~all tax years beginning on and after January 1, 1993.~~

26  
 27 SECTION 8. All provisions of this act of a general and permanent nature  
 28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 29 Revision Commission shall incorporate the same in the Code.

30  
 31 SECTION 9. If any provision of this act or the application thereof to  
 32 any person or circumstance is held invalid, such invalidity shall not affect  
 33 other provisions or applications of the act which can be given effect without  
 34 the invalid provision or application, and to this end the provisions of this  
 35 act are declared to be severable.

1           SECTION 10. All laws and parts of laws in conflict with this act are  
2 hereby repealed.

3  
4           SECTION 11. EMERGENCY CLAUSE. It is hereby found and determined by the  
5 Eighty-second General Assembly that existing Arkansas businesses must remain  
6 competitive in today's global economy; that the tax incentive provided by this  
7 act is necessary to provide businesses with the incentive to invest in  
8 Arkansas and hire Arkansans; that other states compete with Arkansas for the  
9 location or expansion of business activity and this incentive is also  
10 necessary to offer the companies a business environment compatible with other  
11 states; and that without this incentive companies considering locations or  
12 expansions of their businesses may choose to locate in another state,  
13 depriving Arkansans of these jobs and the economic benefit that the jobs bring  
14 to the state. Therefore, an emergency is declared to exist and this act being  
15 immediately necessary for the preservation of the public peace, health and  
16 safety shall become effective on the date of its approval by the Governor. If  
17 the bill is neither approved nor vetoed by the Governor, it shall become  
18 effective on the expiration of the period of time during which the Governor  
19 may veto the bill. If the bill is vetoed by the Governor and the veto is  
20 overridden, it shall become effective on the date the last house overrides the  
21 veto.