

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 1899

4
5 By: Representative Ragland
6
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE ARKANSAS TOURISM DEVELOPMENT
10 ACT; TO CHANGE QUALIFICATION REQUIREMENTS; TO ADD
11 DEFINITIONS; TO CHANGE INCOME TAX BENEFITS FOR
12 JOB CREATION; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 AN ACT TO AMEND THE ARKANSAS TOURISM
16 DEVELOPMENT ACT.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 15-11-503 is amended to read as follows:
22 15-11-503. Definitions.

23 As used in this subchapter:

24 (1) "Agreement" means an agreement entered into pursuant to §
25 15-11-506 by and between the Director of the Department of Economic
26 Development and an approved company with respect to a tourism attraction
27 project;

28 (2) "Approved company" means any eligible company that is
29 seeking to undertake a tourism attraction project and is approved by the
30 director pursuant to §§ 15-11-505 and 15-11-506;

31 (3) "Approved costs" means:

32 (A) Obligations incurred for labor and to vendors,
33 contractors, subcontractors, builders, suppliers, deliverymen, and
34 materialmen in connection with the acquisition, construction, equipping, and
35 installation of a tourism attraction project;

36 (B) The costs of acquiring real property or rights in real



1 property in connection with a tourism attraction project and any costs
2 incidental thereto;

3 (C) The cost of contract bonds and insurance of all kinds
4 that may be required or necessary during the course of the acquisition,
5 construction, equipping, and installation of a tourism attraction project
6 which is not paid by the vendor, supplier, deliveryman, contractor, or
7 otherwise provided;

8 (D) All costs of architectural and engineering services,
9 including, but not limited to, estimates, plans and specifications,
10 preliminary investigations, and supervision of construction and installation,
11 as well as for the performance of all the duties required by or consequent to
12 the acquisition, construction, equipping, and installation of a tourism
13 attraction project;

14 (E) All costs required to be paid under the terms of any
15 contract for the acquisition, construction, equipping, and installation of a
16 tourism attraction project;

17 (F) All costs required for the installation of utilities
18 in connection with a tourism attraction project, including, but not limited
19 to, water, sewer, sewage treatment, gas, electricity, and communications, and
20 including off-site construction of utility extensions paid for by the
21 approved company; and

22 (G) All other costs comparable with those described in
23 this section;

24 (4) "Director" means the Director of the Department of Economic
25 Development or the director's designated representative;

26 (5) "Eligible company" means any corporation, limited liability
27 company, partnership, registered limited liability partnership, sole
28 proprietorship, business trust, or any other entity that invests a minimum of
29 one million dollars (\$1,000,000) for the purpose of constructing, operating,
30 or intending to operate a tourism attraction project, whether owned or
31 leased, within the state that meets the standards promulgated by the director
32 pursuant to § 15-11-504;

33 (6) "Final approval" means the action taken by the director
34 authorizing the eligible company to receive inducements under §§ 15-11-507
35 and 15-11-509;

36 ~~(7)(A) "High unemployment" means an unemployment rate equal to~~

1 ~~or in excess of one hundred fifty percent (150%) of the state's average~~
2 ~~unemployment rate for the preceding calendar year as specified by statewide~~
3 ~~annual labor force statistics compiled by the Arkansas Employment Security~~
4 ~~Department when the state's annual average unemployment rate is six percent~~
5 ~~(6%) or below.~~

6 ~~(B) When the state's annual average unemployment rate is~~
7 ~~above six percent (6%), "high unemployment" means equal to or in excess of~~
8 ~~three percent (3%) above the state's average unemployment rate for the~~
9 ~~preceding calendar year as specified by statewide annual labor force~~
10 ~~statistics compiled by the Arkansas Employment Security Department;~~

11 ~~(8)(A)(7)(A)~~ "Increased state sales tax liability" means that
12 portion of an approved company's reported state sales, i.e., gross receipts
13 tax liability resulting from taxable sales of goods and services to its
14 customers at the tourist attraction for any monthly sales tax reporting
15 period after the approved company provides the certification required by §
16 15-11-507(b), which exceeds that reported state sales tax liability for sales
17 to its customers for the same month in the calendar year immediately
18 preceding that certification.

19 (B) If an approved company purchases an existing tourism
20 attraction which was selling goods and services at the time of purchase and
21 which may or may not have been entitled to the benefits of this subchapter
22 prior to such a purchase, the "increased state sales tax liability" resulting
23 from any investments in the tourism attraction by the new owners means that
24 portion of the approved company's reported state sales, or gross receipts,
25 tax liability resulting from taxable sales of goods and services to its
26 customers at the tourism attraction for any monthly sales tax reporting
27 period after the approved company provides the certification required by §
28 15-11-507(b) which exceeds the reported state sales tax liability for sales
29 made by the seller of the tourism attraction for the same month in the
30 calendar year immediately preceding that certification.

31 (C) The prohibitions against disclosure of confidential
32 tax information provided in § 26-18-303 shall not apply for purposes of
33 computing the credit available under this subchapter;

34 ~~(9)(8)~~ "Inducements" means the Arkansas sales tax credit as
35 prescribed in § 15-11-507 or the Arkansas income tax credit as prescribed in
36 § 15-11-509, or both;

1 attraction project;

2 (iii) Facilities that are not open to the general
3 public;

4 (iv) Facilities that do not serve as a likely
5 destination where individuals who are not residents of the state would remain
6 overnight in commercial lodging at or near the tourism attraction project;

7 (v) Facilities owned by the State of Arkansas or a
8 political subdivision of the state; or

9 (vi)(a) Facilities established for the purpose of
10 conducting legalized gambling.

11 (b) However, a facility regulated under the
12 Arkansas Horse Racing Law, § 23-110-101 et seq., or the Arkansas Greyhound
13 Racing Law, § 23-111-101 et seq., shall be a tourism attraction for purposes
14 of this subchapter for any approved project as outlined in subdivision
15 (10)(A) of this section or for an approved project relating to pari-mutuel
16 racing at the facility and not for establishing a casino or for offering
17 casino-style gambling; ~~and~~

18 ~~(12)~~(13) "Tourism attraction project" or "project" means the:

19 (A) Acquisition, including the acquisition of real estate
20 by leasehold interest with a minimum term of ten (10) years, construction,
21 and equipping of a tourism attraction; and

22 (B) Construction and installation of improvements to
23 facilities necessary or desirable for the acquisition, construction, and
24 installation of a tourism attraction, including, but not limited to:

25 (i) Surveys;

26 (ii) Installation of utilities, which may include
27 water, sewer, sewage treatment, gas, electricity, communications, and similar
28 facilities; and

29 (iii) Off-site construction of utility extensions to
30 the boundaries of the real estate on which the facilities are located, all of
31 which are to be used to improve the economic situation of the approved
32 company in a manner that will allow the approved company to attract persons.

33

34 SECTION 2. Arkansas Code § 15-11-504 is amended to read as follows:

35 15-11-504. Evaluation standards - Tourism attraction project
36 applications.

1 (a) The Director of the Department of Economic Development shall
 2 establish standards for the making of applications for inducements to
 3 eligible companies and their tourism attraction projects by the promulgation
 4 of administrative regulations in accordance with the Arkansas Administrative
 5 Procedure Act, § 25-15-201 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 (1) Marketing plans for the project that target individuals who
 11 are not residents of the state;

12 (2) A description and location of the project;

13 (3) Capital and other anticipated expenditures for the project
 14 that indicate that the total cost of the project shall exceed ~~five hundred~~
 15 ~~thousand dollars (\$500,000)~~ one million dollars (\$1,000,000) and the
 16 anticipated sources of funding ~~therefor~~ for the project;

17 (4) The anticipated employment and wages to be paid at the
 18 project;

19 (5) Business plans which indicate the average number of days in
 20 a year in which the project will be in operation and open to the public; and

21 (6) The anticipated revenues and expenses generated by the
 22 project.

23 (c) The Department of Economic Development shall analyze the data made
 24 available by the eligible company and collect and analyze additional
 25 information as is necessary to determine that the tourism attraction project
 26 will:

27 (1) Develop a marketing plan that targets at least twenty-five
 28 percent (25%) of its visitors from among persons who are not residents of the
 29 state;

30 (2) Have costs in excess of ~~five hundred thousand dollars~~
 31 ~~(\$500,000)~~ one million dollars (\$1,000,000);

32 (3) Have a significant and positive economic impact on the state
 33 considering, among other factors, the extent to which the tourism attraction
 34 project will compete directly with existing tourism attractions in the state
 35 and the amount by which increased tax revenues from the tourism attraction
 36 project will exceed the sales tax credit allowed pursuant to § 15-11-507;

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

3 (5) Not adversely affect existing employment in the state.
4

5 SECTION 3. Arkansas Code § 15-11-505(e), concerning standards for
6 preliminary and final approval of tourism companies and projects, is amended
7 to read as follows:

8 (e) After a review of the relevant materials, other information made
9 available to the director, and the completion of other inquiries, the
10 director may give final approval to the eligible company's application for a
11 tourism attraction project and may grant the approval to the eligible company
12 ~~the status of an approved company in the form of a financial incentive~~
13 agreement.
14

15 SECTION 4. Arkansas Code § 15-11-506(b) and (c), concerning contracts
16 for tourism attraction projects, are amended to read as follows:

17 (b) The terms and provisions of each agreement shall include, but
18 shall not be limited to:

19 (1) The amount of approved costs, which shall be determined by
20 negotiations between the Director of the Department of Economic Development
21 and the approved company;

22 (2)(A)(i) The eligibility date for incurring project costs.

23 (ii) ~~A date certain~~ The eligibility date shall be
24 the date by which the approved company shall have completed the tourism
25 attraction project.

26 (B) Within three (3) months of the completion date, the
27 approved company shall document the actual cost of the tourism attraction
28 project through a certification of such costs by an independent certified
29 public accountant acceptable to the Director of the Department of Economic
30 Development; and

31 (3) The following provisions:

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

33 (a) The date of the final approval of the
34 tourism attraction project; or

35 (b) The completion date specified in the
36 agreement, if the completion date is within two (2) years of the date of the

1 final approval of the tourism attraction project.

2 (ii) However, the term of the agreement may be
 3 extended for up to two (2) additional years by the Director of the Department
 4 of Economic Development, with the advice and consent of the Director of the
 5 Department of Finance and Administration, if the Director of the Department
 6 of Economic Development determines that the failure to complete the tourism
 7 attraction project within two (2) years resulted from unanticipated and
 8 unavoidable delay in the construction of the tourism attraction project, the
 9 project as originally planned will require more than two (2) years to
 10 complete, or resulted from a merger, acquisition, or other change in business
 11 ownership or business structure;

12 (B) In any sales tax reporting period during which an
 13 agreement is in effect, if the increased state sales tax liability of the
 14 approved company exceeds the state sales tax credit available to the approved
 15 company, then the approved company shall pay the excess to the state as sales
 16 tax;

17 (C) Within forty-five (45) days after the end of each
 18 calendar year ~~of the approved company~~, the approved company shall supply the
 19 Director of the Department of Economic Development with such reports and
 20 certifications as the Director of the Department of Economic Development may
 21 request, demonstrating to the satisfaction of the Director of the Department
 22 of Economic Development that the approved company is in compliance with the
 23 provisions of this subchapter; and

24 (D) The approved company shall not receive a credit
 25 against the Arkansas sales tax imposed by § 26-52-301 et seq., with respect
 26 to any calendar year if in any calendar year following the first year of the
 27 agreement the tourism attraction project is not operating and open to the
 28 public on a regular and persistent basis.

29 (c) The agreement shall not be ~~transferrable~~ transferable or
 30 assignable by the approved company without the written consent of the
 31 Director of the Department of Economic Development.

32
 33 SECTION 5. Arkansas Code § 15-11-507(b) and (c), concerning tourism
 34 attraction project sales tax credits, are amended to read as follows:

35 (b)(1)(A)(i)(a) An approved company ~~whose agreement provides that it~~
 36 ~~shall expend approved costs of more than five hundred thousand dollars~~

1 ~~(\$500,000) but less than one million dollars (\$1,000,000)~~ shall be entitled
 2 to a credit if the company certifies to the Director of the Department of
 3 Finance and Administration that it has expended at least ~~five hundred~~
 4 ~~thousand dollars (\$500,000)~~ one million dollars (\$1,000,000) in approved
 5 costs and the Director of the Department of Economic Development certifies
 6 that the approved company is in compliance with this subchapter.

7 (b) The Director of the Department of Finance
 8 and Administration shall then issue a sales tax credit memorandum to the
 9 approved company equal to ten percent (10%) of the approved costs.

10 ~~(b)(ii)~~ Subsequent requests for credit for
 11 additional certified approved costs in excess of five hundred thousand
 12 dollars (\$500,000) but less than one million dollars (\$1,000,000) shall
 13 result in a sales tax credit equal to ten percent (10%) of the approved
 14 costs.

15 ~~(ii)~~ If the company subsequently expends additional
 16 certified approved costs so that the total amount of expended approved costs
 17 exceeds one million dollars (\$1,000,000), then the sales tax credit
 18 memorandum shall equal twenty five percent (25%) of the approved costs in
 19 excess of one million dollars (\$1,000,000).

20 ~~(B)(i)~~ An approved company whose agreement provides that
 21 it shall expend approved costs in excess of one million dollars (\$1,000,000)
 22 shall be entitled to a credit if the company certifies to the Director of the
 23 Department of Finance and Administration that it has expended at least one
 24 million dollars (\$1,000,000) in approved costs and the Director of the
 25 Department of Economic Development certifies that the approved company is in
 26 compliance with this subchapter.

27 ~~(ii)~~ The Director of the Department of Finance and
 28 Administration shall then issue a sales tax credit memorandum to the approved
 29 company equal to twenty five percent (25%) of the approved costs.

30 ~~(iii)~~ The credit on all subsequent additional
 31 certified approved costs shall be equal to twenty five percent (25%) of the
 32 costs.

33 ~~(C)(i)~~ (B)(i) The Director of the Department of Finance and
 34 Administration may require proof of expenditures.

35 (ii) Additional credit memoranda may be issued as
 36 the approved company certifies additional expenditures of approved costs.

1 (2)(A) No sales tax credit memorandum shall be issued for any
 2 approved costs expended after the expiration of two (2) years from the date
 3 the agreement was signed by the Director of the Department of Economic
 4 Development and the approved company.

5 (B) However, the Director of the Department of Economic
 6 Development, with the advice and consent of the Director of the Department of
 7 Finance and Administration, may authorize sales tax credits for approved
 8 costs expended up to four (4) years from the date the agreement was signed if
 9 the Director of the Department of Economic Development determines that the
 10 failure to complete the tourism attraction project within two (2) years
 11 resulted from:

12 (i) Unanticipated and unavoidable delay in the
 13 construction of the tourism attraction project;

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

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

18 (c) The credit memorandum issued pursuant to subsection (b) of this
 19 section may be used to offset a portion of the reported state sales, or gross
 20 receipts, tax liability of the approved company for all sales tax reporting
 21 periods following the issuance of the credit memorandum, subject to the
 22 following limitations:

23 (1) Only increased state sales tax liability as defined in this
 24 subchapter may be offset by the issued credit;

25 (2)(A)~~(i)~~ An approved company whose agreement provides that it
 26 shall expend approved costs in excess of one million dollars (\$1,000,000)
 27 shall be entitled to use one hundred percent (100%) of the issued credit to
 28 offset increased state sales tax liability during the first year if its tax
 29 liability is equal to or greater than the amount issued in the state sales
 30 tax credit memorandum.

31 ~~(ii)(B)~~ Unused credits may be carried forward for a period
 32 of nine (9) years~~;~~ and

33 ~~(B)(i)~~ ~~An approved company whose agreement provides that~~
 34 ~~it shall expend approved costs of more than five hundred thousand dollars~~
 35 ~~(\$500,000) but less than one million dollars (\$1,000,000) shall be entitled~~
 36 ~~to use one hundred percent (100%) of the issued credit to offset increased~~

1 ~~sales tax liability during the first year if its tax liability is equal to or~~
2 ~~greater than the amount issued in the state sales tax credit memorandum.~~

3 ~~(ii) Unused credits may be carried forward for a~~
4 ~~period of nine (9) years; and~~

5 (3) All issued credit memoranda shall expire at the end of the
6 month following the expiration of the agreement as provided in § 15-11-506.

8 SECTION 6. Arkansas Code § 15-11-509 is amended to read as follows:

9 15-11-509. Tourism attraction project income tax credit.

10 (a) Tourism attraction projects meeting the eligibility requirements
11 under § 15-11-503(13) are entitled to receive an income tax credit based upon
12 a percentage of the payroll of the new full-time permanent employees working
13 at the tourism attraction project.

14 ~~(a)(b)~~ Upon notification from the Director of the Department of
15 Economic Development that an approved company has entered into a tourism
16 attraction project agreement and is entitled to the income tax credit
17 provided by this section, the Director of the Department of Finance and
18 Administration shall provide the approved company with such forms and
19 instructions as are necessary to claim those credits.

20 ~~(b)(c)(1)~~ The approved company shall certify the number and payroll of
21 the new full-time permanent employees to the Revenue Division of the
22 Department of Finance and Administration.

23 (2) Upon certification by the company, the Department of Finance
24 and Administration shall authorize an income tax credit equal to one hundred
25 (100) times the average hourly wage paid, with a maximum of three thousand
26 dollars (\$3,000) per net new full-time permanent employee of an four percent
27 (4%) of the payroll of the new full-time permanent employees of the approved
28 tourism attraction project qualifying for benefits under this act.

29 ~~(c) The division shall authorize an income tax credit allowed under~~
30 ~~this section that shall increase by a factor of four (4) equal to four~~
31 ~~hundred (400) multiplied by the average hourly wage paid, with a maximum~~
32 ~~credit of six thousand dollars (\$6,000) if the business is located in a high-~~
33 ~~unemployment county.~~

34 (d) To be counted as a net new full-time permanent employee for the
35 purpose of qualifying for the tax credits provided by this section, the
36 employee in the position or job must have been an Arkansas taxpayer during

1 the year in which the tax credits were earned.

2 (e) In the event it is found that any approved company receiving the
3 benefits contained in this section has failed to comply with the conditions
4 contained in this act, that company shall be disqualified from receiving any
5 further benefits under this act and shall be liable for payment of such
6 additional income taxes as may be due after the income tax credits provided
7 for in this section are disallowed, plus interest.

8 (f) If the Department of Finance and Administration determines that an
9 approved company is no longer qualified to participate in this act, it shall
10 decertify the company. Any company so decertified shall not receive any
11 benefits under this act.

12 (g) For projects receiving final approval after March 1, 1999, the
13 credit may be applied against the approved company's income tax liability for
14 the succeeding nine (9) years or until the credit is entirely used, whichever
15 occurs first.

16
17 SECTION 7. Arkansas Code § 15-11-510(b)(1), concerning special rules
18 for certain tourism lodging facilities, is amended to read as follows:

19 (b)(1) A lodging facility qualifying as a tourism attraction project
20 under this section shall be entitled to the sales tax benefits as provided in
21 ~~§ 15-11-507(b)(1)(B)~~ § 15-11-507(b)(1)(A), provided that all other
22 requirements of this subchapter regarding tourism attraction projects are
23 satisfied.

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