

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 *As Engrossed: H2/24/05 H3/18/05 H4/1/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1899

4

5 By: Representative Ragland

6 By: *Senator Trusty*

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For An Act To Be Entitled

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

14

15

Subtitle

16 AN ACT TO AMEND THE ARKANSAS TOURISM
17 DEVELOPMENT ACT.

18

19

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

21

22 SECTION 1. Arkansas Code § 15-11-503 is amended to read as follows:
23 15-11-503. Definitions.

24 As used in this subchapter:

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

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

32 (3) "Approved costs" means:

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



1 (B) The costs of acquiring real property or rights in real
2 property in connection with a tourism attraction project and any costs
3 incidental thereto;

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

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

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

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

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

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

27 (5) "Eligible company" means any corporation, limited liability
28 company, partnership, registered limited liability partnership, sole
29 proprietorship, business trust, or any other entity that invests a minimum of
30 five hundred thousand dollars (\$500,000) in a high unemployment county or one
31 million dollars (\$1,000,000) in any other county for the purpose of
32 constructing, operating, or intending to operate a tourism attraction
33 project, whether owned or leased, within the state that meets the standards
34 promulgated by the director pursuant to § 15-11-504;

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

1 and 15-11-509;

2 (7)(A) *"High unemployment" means an unemployment rate equal to*
3 *or in excess of one hundred fifty percent (150%) of the state's average*
4 *unemployment rate for the preceding calendar year as specified by statewide*
5 *annual labor force statistics compiled by the Arkansas Employment Security*
6 *Department when the state's annual average unemployment rate is six percent*
7 *(6%) or below.*

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

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

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

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

36 (9) *"Inducements" means the Arkansas sales tax credit as*

1 prescribed in § 15-11-507 or the Arkansas income tax credit as prescribed in
2 § 15-11-509, or both;

3 (10) "Investment threshold" means the minimum amount of approved
4 costs that must be incurred in order to qualify for eligibility;

5 ~~(10)(A)(i)~~ (11)(A)(i) "New full-time permanent employee" means a
6 position or job which was created as a result of a tourism attraction project
7 and which is filled by one (1) or more employees or contractual employees who
8 were Arkansas taxpayers during the year in which the tax credits or
9 incentives were earned or claimed.

10 (ii) The ~~position or job held by the~~ employee or
11 employees must ~~have been filled for at least twenty-six (26) consecutive~~
12 ~~weeks with~~ work an average of at least thirty (30) hours per week.

13 (B) However, in order to qualify for the provisions of
14 this subchapter, a contractual employee must be offered a ~~benefit~~ benefits
15 package comparable to a direct employee of the business seeking incentives
16 under this subchapter;

17 (12) "Payroll" means the total taxable wages, including overtime
18 and bonuses, paid during the preceding tax year of the approved company to
19 new full-time permanent employees hired after the date of the signed
20 financial incentive agreement; and

21 ~~(11)(A)~~ (13)(A) "Tourism attraction" means:

- 22 (i) Cultural or historical sites;
- 23 (ii) Recreational or entertainment facilities;
- 24 (iii) Areas of natural phenomena or scenic beauty;
- 25 (iv) Theme parks;
- 26 (v) Amusement or entertainment parks;
- 27 (vi) Indoor or outdoor plays or music shows;
- 28 (vii) Botanical gardens; and
- 29 (viii) Cultural or educational centers.

30 (B) A tourism attraction shall not include:

31 (i) Lodging facilities, unless the facilities
32 constitute a portion of a tourism attraction project and represent less than
33 sixty percent (60%) of the total approved costs of the tourism attraction
34 project or unless the project meets the special rules outlined in § 15-11-
35 510;

36 (ii) Facilities that are primarily devoted to the

1 retail sale of goods, unless the goods are created at the site of the tourism
2 attraction project or if the sale of goods is incidental to the tourism
3 attraction project;

4 (iii) Facilities that are not open to the general
5 public;

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

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

11 (vi)(a) Facilities established for the purpose of
12 conducting legalized gambling.

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

20 ~~(12)~~(14) "Tourism attraction project" or "project" means the:

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

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

27 (i) Surveys;

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

31 (iii) Off-site construction of utility extensions to
32 the boundaries of the real estate on which the facilities are located, all of
33 which are to be used to improve the economic situation of the approved
34 company in a manner that will allow the approved company to attract persons.
35

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

1 15-11-504. Evaluation standards - Tourism attraction project
2 applications.

3 (a) The Director of the Department of Economic Development shall
4 establish standards for the making of applications for inducements to
5 eligible companies and their tourism attraction projects by the promulgation
6 of administrative regulations in accordance with the Arkansas Administrative
7 Procedure Act, § 25-15-201 et seq.

8 (b) With respect to each eligible company making an application to the
9 director for inducements and with respect to the tourism attraction project
10 described in the application, the director shall make inquiries and request
11 materials of the applicant that shall include, but shall not be limited to:

12 (1) Marketing plans for the project that target individuals who
13 are not residents of the state;

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

15 (3) Capital and other anticipated expenditures for the project
16 *that indicate that the total cost of the project shall exceed five hundred*
17 *thousand dollars (\$500,000) in a high unemployment county and one million*
18 *dollars (\$1,000,000) in all other counties and the anticipated sources of*
19 *funding ~~therefor~~ for the project;*

20 (4) The anticipated employment and wages to be paid at the
21 project;

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

24 (6) The anticipated revenues and expenses generated by the
25 project.

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

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

33 (2) *Have costs in excess of five hundred thousand dollars*
34 *(\$500,000) in a high unemployment county and one million dollars (\$1,000,000)*
35 *in all other counties;*

36 (3) Have a significant and positive economic impact on the state

1 considering, among other factors, the extent to which the tourism attraction
2 project will compete directly with existing tourism attractions in the state
3 and the amount by which increased tax revenues from the tourism attraction
4 project will exceed the sales tax credit allowed pursuant to § 15-11-507;

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

7 (5) Not adversely affect existing employment in the state.
8

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

12 (e) After a review of the relevant materials, other information made
13 available to the director, and the completion of other inquiries, the
14 director may give final approval to the eligible company's application for a
15 tourism attraction project and may grant the approval to the eligible company
16 ~~the status of an approved company in the form of a financial incentive~~
17 agreement.
18

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

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

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

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

27 ~~(ii) A date certain~~ The eligibility date shall be
28 the date by which the approved company shall have completed the tourism
29 attraction project.

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

35 (3) The following provisions:

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

1 (a) The date of the final approval of the
2 tourism attraction project; or

3 (b) The completion date specified in the
4 agreement, if the completion date is within two (2) years of the date of the
5 final approval of the tourism attraction project.

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

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

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

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

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

36

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

3 (b)(1)(A)(i)(a) An approved company ~~whose agreement provides that it~~
4 ~~shall expend approved costs of more than five hundred thousand dollars~~
5 ~~(\$500,000) but less than one million dollars (\$1,000,000)~~ shall be entitled
6 to a credit if the company certifies to the Director of the Department of
7 *Finance and Administration that it has expended at least five hundred*
8 *thousand dollars (\$500,000) in a high unemployment county and one million*
9 *dollars (\$1,000,000) in all other counties in approved costs and the Director*
10 of the Department of Economic Development certifies that the approved company
11 is in compliance with this subchapter.

12 (b) *The Director of the Department of Finance*
13 *and Administration shall then issue a sales tax credit memorandum to the*
14 *approved company equal to ~~ten percent (10%)~~ fifteen percent (15%) of the*
15 *approved costs.*

16 (c) *The sales tax credit memorandum shall not*
17 *include an offset of the tourism tax levied under § 26-52-1001-26-52-1006.*

18
19 ~~(b)(ii)~~ *Subsequent requests for credit for*
20 *additional certified approved costs ~~in excess of five hundred thousand~~*
21 *dollars (\$500,000) but less than one million dollars (\$1,000,000) shall*
22 *result in a sales tax credit equal to ten percent (10%) of the approved costs*
23 *shall be filed with the Department of Finance and Administration during the*
24 *term of the agreement.*

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

30 ~~(B)(i)~~ *An approved company whose agreement provides that*
31 *it shall expend approved costs in excess of one million dollars (\$1,000,000)*
32 *shall be entitled to a credit if the company certifies to the Director of the*
33 *Department of Finance and Administration that it has expended at least one*
34 *million dollars (\$1,000,000) in approved costs and the Director of the*
35 *Department of Economic Development certifies that the approved company is in*
36 *compliance with this subchapter.*

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

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

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

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

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

15 (B) However, the Director of the Department of Economic
16 Development, with the advice and consent of the Director of the Department of
17 Finance and Administration, may authorize sales tax credits for approved
18 costs expended up to four (4) years from the date the agreement was signed if
19 the Director of the Department of Economic Development determines that the
20 failure to complete the tourism attraction project within two (2) years
21 resulted from:

22 (i) Unanticipated and unavoidable delay in the
23 construction of the tourism attraction project;

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

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

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

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

35 (2)(A)~~(i)~~ An approved company whose agreement provides that it
36 shall expend approved costs in excess of five hundred thousand dollars

1 (\$500,000) in a high unemployment county and one million dollars (\$1,000,000)
2 in all other counties shall be entitled to use one hundred percent (100%) of
3 the issued credit to offset increased state sales tax liability during the
4 first year if its tax liability is equal to or greater than the amount issued
5 in the state sales tax credit memorandum.

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

8 ~~(B)(i)~~ An approved company whose agreement provides that
9 it shall expend approved costs of more than five hundred thousand dollars
10 ~~(\$500,000) but less than one million dollars (\$1,000,000)~~ shall be entitled
11 to use one hundred percent (100%) of the issued credit to offset increased
12 sales tax liability during the first year if its tax liability is equal to or
13 greater than the amount issued in the state sales tax credit memorandum.

14 ~~(ii)~~ Unused credits may be carried forward for a
15 period of nine (9) years; 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 § 15-11-506.

18 (4) Except as provided in § 15-11-511, credit memoranda shall
19 not be used to offset any tax other than state sales tax.

20
21 SECTION 6. Arkansas Code § 15-11-509 is amended to read as follows:

22 15-11-509. Tourism attraction project income tax credit.

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

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

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

36 (2) Upon certification by the company, the Department of Finance

1 and Administration shall authorize an income tax credit equal to ~~one hundred~~
2 ~~(100) times the average hourly wage paid, with a maximum of three thousand~~
3 ~~dollars (\$3,000) per net new full-time permanent employee of an four percent~~
4 ~~(4%) of the payroll of the new full-time permanent employees of the~~ approved
5 tourism attraction project qualifying for benefits under this act.

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

11 (d) To be counted as a net new full-time permanent employee for the
12 purpose of qualifying for the tax credits provided by this section, the
13 employee in the position or job must have been an Arkansas taxpayer during
14 the year in which the tax credits were earned.

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

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

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

29
30 SECTION 7. Arkansas Code § 15-11-510(b)(1), concerning special rules
31 for certain tourism lodging facilities, is amended to read as follows:

32 (b)(1) A lodging facility qualifying as a tourism attraction project
33 under this section shall be entitled to the sales tax benefits as provided in
34 ~~§ 15-11-507(b)(1)(B)~~ § 15-11-507(b)(1)(A), provided that all other
35 requirements of this subchapter regarding tourism attraction projects are
36 satisfied.

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/s/ Ragland