

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
4

A Bill

SENATE BILL 923

5 By: Senator Broadway
6 By: Representative Dunn
7

For An Act To Be Entitled

THE ECONOMIC DEVELOPMENT TAX ACT.

Subtitle

THE ECONOMIC DEVELOPMENT TAX ACT.

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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

18 SECTION 1. Arkansas Code § 14-174-101 is amended to read as follows:
19 14-174-101. Purpose.

20 The purpose of this subchapter is to provide cities and counties with
21 the authority to levy taxes to raise revenue for funding economic development
22 projects to stimulate the local economy and to support private sector job
23 creation opportunities. No funds generated by any tax levied pursuant to
24 this subchapter shall be used as general operating revenue but shall be
25 expended for the purposes prescribed by §§ 14-174-105 - 14-174-107 or § 14-
26 174-109.
27

28 SECTION 2. Arkansas Code Title 14, Chapter 174, Subchapter 1 is
29 amended to add an additional section to read as follows:

30 14-174-109. Public corporation for economic development.

31 (a) The sales and use taxes levied or authorized under this subchapter
32 may be used for the sole use and benefit of a corporation organized under the
33 Public Corporations for Economic Development Act § 14-175-101 et seq.

34 (b) On receipt from the Director of the Department of Finance and
35 Administration of the net proceeds of the sales and use tax levied or
36 authorized under this subchapter, the local government shall deliver all of



1 the proceeds to the corporation to use in carrying out its functions.

2 (c) At an election called and held under § 14-174-103, the local
3 government may also allow the voters to vote on a ballot proposition that
4 limits the length of time that a sales and use tax may be imposed.

5
6 SECTION 3. Arkansas Code Title 14 is amended to add an additional
7 chapter to read as follows:

8 14-175-101. Title.

9 This chapter shall be known and may be cited as the “Public
10 Corporations for Economic Development Act”.

11
12 14-175-102. Intent.

13 It is the intent of the General Assembly by the enactment of this
14 chapter to authorize in each municipality and county in this state the
15 incorporation of a public corporation as a political subdivision of the state
16 for the purpose of securing and developing industry and fostering economic
17 development and to invest the corporation with all powers that may be
18 necessary to enable it to accomplish those purposes.

19
20 14-175-103. Definitions.

21 As used in this subchapter:

22 (1) “Board” means the board of directors of a corporation;

23 (2) “Corporation” means a corporation organized under this
24 chapter;

25 (3)(A) “Costs” means expenditures made or estimated to be made
26 and monetary obligations incurred or estimated to be incurred by a
27 corporation.

28 (B) “Costs” includes, but is not limited to:

29 (i) Real property assembly costs, including, but not
30 limited to, those costs incurred for and in connection with the acquisition
31 of interests in real property and improvements and any deficit incurred as a
32 result of the sale or lease as lessor by the corporation of real or personal
33 property or a project for consideration which is less than its cost to the
34 corporation;

35 (ii) Capital costs, including, but not limited to:

36 (a) The actual costs of the construction of

1 new buildings, structures, and fixtures;

2 (b) The demolition, alteration, expansion,
3 remodeling, repair, or reconstruction of existing buildings, structures, and
4 fixtures and the environmental remediation of real property;

5 (c) Parking;

6 (d) Landscaping;

7 (e) The acquisition of equipment; and

8 (f) Site clearing, grading, and preparation;

9 (iii) Financing costs, including, but not limited

10 to:

11 (a) All interest paid to holders of evidences
12 of indebtedness issued to pay for project costs;

13 (b) All costs of issuance; and

14 (c) Any redemption premiums, credit
15 enhancement, or other related costs;

16 (iv) Research and development costs;

17 (v) Professional service costs, including, but not
18 limited to, those costs incurred for architectural, planning, engineering,
19 accounting, and legal advice and services;

20 (vi) Relocation costs;

21 (vii) Organizational and administrative costs
22 incurred by the corporation, including, but not limited to, the costs of:

23 (a) Conducting feasibility, environmental
24 impact, and other studies; and

25 (b) Informing the public with respect to a
26 project;

27 (viii) The amount of any contributions made in
28 connection with a project; and

29 (ix) Costs related to the construction of
30 environmental protection devices, storm or sanitary sewer lines, water lines,
31 or amenities or streets or the rebuilding or expansion of streets in
32 connection with a project;

33 (4) "County" means any county in this state;

34 (5) "Enterprise" means any for-profit or nonprofit corporation,
35 partnership, sole proprietorship, firm, franchise, association, organization,
36 trust, or any other form of legal entity;

1 (6) "Governing body" means the council, board of directors, or
 2 other like body in which the legislative functions of a municipality are
 3 vested or the quorum court of the county as it shall have been constituted
 4 and acting as the legislative body of the county under Arkansas Constitution,
 5 Amendment 55, or if not so constituted and acting, the county court of the
 6 county;

7 (7) "Municipality" means any incorporated city or town in this
 8 state;

9 (8) "Primary job" means a job that is available or expected to
 10 become available at an enterprise:

11 (A) For which a majority of the products or services of
 12 that enterprise are ultimately used in regional, statewide, national, or
 13 international markets infusing new dollars into the local economy; and

14 (B) Which enterprise derives less than ten percent (10%)
 15 of its total Arkansas revenue from sales to the general public;

16 (9)(A) "Project" means an undertaking related to the creation or
 17 retention of primary jobs.

18 (B) A project may include one (1) or more of the
 19 following:

20 (i) The acquisition and disposition of land,
 21 buildings, equipment, facilities, related infrastructure, and improvements
 22 necessary to:

23 (a) Attract, promote, or develop new or
 24 expanded enterprises that will create or retain primary jobs in the future;
 25 or

26 (b) Provide job training and postsecondary
 27 education required or suitable for the creation or retention of primary jobs;

28 (ii) The construction or expansion of buildings,
 29 facilities, related infrastructure, and improvements necessary to attract,
 30 promote, or develop new or expanded enterprises that will create or retain
 31 primary jobs in the future or to provide job training and postsecondary
 32 education required or suitable for the creation or retention of primary jobs;

33 (iii) Job training required or suitable for the
 34 creation or retention of primary jobs;

35 (iv) Postsecondary education required or suitable to
 36 educate students in fields of study needed by enterprises providing primary

1 jobs; and

2 (v) Expenditures found by the corporation to be
3 required or suitable for infrastructure necessary to attract, promote, or
4 develop new or expanded enterprises, limited to:

5 (a) Streets and roads;

6 (b) Parking;

7 (c) Rail spurs;

8 (d) Water and electric utilities;

9 (e) Gas utilities;

10 (f) Drainage and related improvements;

11 (g) Telecommunications;

12 (h) Data communications; and

13 (i) Internet improvements; and

14 (10) "State" means the State of Arkansas.

15
16 14-175-104. Construction.

17 (a) This chapter shall be liberally construed in conformity with its
18 intent.

19 (b)(1) All acts and activities of the public corporation performed
20 under the authority of this chapter are legislatively determined and declared
21 to be essential governmental functions.

22 (2) The General Assembly determines and declares that this
23 chapter is the sole authority necessary for the performance of the acts
24 authorized by this chapter.

25
26 14-175-105. Authority generally.

27 There is conferred upon corporations incorporated as public
28 corporations under this chapter the authority to take such action and to do,
29 or cause to be done, such things as shall be necessary or desirable to
30 accomplish and implement the purposes and intent of this chapter according to
31 the import of this chapter.

32
33 14-175-106. Authority and procedure to incorporate.

34 (a) Whenever any number of natural persons, but not fewer than three
35 (3), file with the governing body an application in writing for authority to
36 incorporate a public corporation under this chapter, if it is made to appear

1 to the governing body that each of the persons is a duly qualified elector of
2 the municipality or county creating the corporation and if the governing body
3 adopts a resolution that declares that it will be wise, expedient, and
4 necessary that a public corporation be formed and that the persons filing the
5 application may proceed to form a corporation, then the persons shall become
6 the incorporators of and shall proceed to incorporate the corporation in the
7 manner provided in this chapter.

8 (b) No corporation shall be formed under this chapter unless:

9 (1) The application provided for in this section is made; and

10 (2) The resolution provided for in this section is adopted.

11 (c) No county or municipality may authorize more than one (1)
12 corporation under this chapter.

13
14 14-175-107. Articles of incorporation.

15 (a) The articles of incorporation of the corporation shall state:

16 (1) The names of the persons forming the corporation together
17 with the residence of each person forming the corporation and a statement
18 that each of them is a qualified elector of the municipality or county;

19 (2) The name of the corporation, which shall be "The Economic
20 Development Corporation of the [City, Town, or County] of Arkansas" or some
21 other name of similar import; and

22 (3) Any other matters relating to the corporation required by
23 the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., or that
24 the incorporators may choose to insert and that is not inconsistent with this
25 chapter or with the laws of this state.

26 (b)(1) The form and content of the articles of incorporation shall be
27 submitted to the governing body for its approval.

28 (2) The governing body shall evidence approval by a resolution
29 entered upon the minutes of the governing body.

30
31 14-175-108. Execution and recording of articles.

32 (a) The articles of incorporation shall be signed and acknowledged by
33 the incorporators and shall have attached to them a certified copy of the
34 resolution required by § 14-175-107.

35 (b)(1) The articles of incorporation together with a certified copy of
36 the resolution required by § 14-175-107 shall be filed in the location or

1 locations required by the Arkansas Nonprofit Corporation Act of 1993, § 4-33-
2 101 et seq.

3 (2) When the articles of incorporation and attached resolution
4 have been so filed, the corporation referred to in the articles shall come
5 into existence and shall constitute a body corporate and politic and a
6 political subdivision of the state under the name set forth in the articles
7 of incorporation, whereupon the corporation shall be vested with the rights
8 and powers granted in this chapter.

9
10 14-175-109. Board of directors.

11 (a) The corporation shall have a board of directors composed of five
12 (5) members.

13 (b) All powers of the corporation shall be exercised by the board or
14 pursuant to its authorization.

15 (c)(1)(A) The directors shall be residents of the municipality or
16 county creating the corporation and shall be appointed by the mayor of the
17 creating municipality or the county judge of the creating county subject to
18 confirmation by the governing body of the municipality or county.

19 (B) The directors shall serve terms not exceeding five (5)
20 years as determined by the governing body of the municipality or county and
21 set in such manner as will result in the expiration of terms on a staggered
22 basis.

23 (2) Upon the expiration of a director's term, a successor
24 director shall be appointed for a five-year term by the mayor of the creating
25 municipality or the county judge of the creating county subject to
26 confirmation by the governing body of the municipality or county.

27 (3) Each director shall serve until his or her successor is
28 elected and qualified.

29 (4) A director shall be eligible to succeed himself or herself.

30 (5) In the event of a vacancy in the membership of the board,
31 however caused, a director shall be appointed by the mayor of the creating
32 municipality or the county judge of the creating county subject to
33 confirmation by the governing body of the municipality or county.

34 (d) Each director shall qualify by taking and filing with the clerk of
35 the municipality or county creating the corporation the oath of office in
36 which the member shall swear to support the Constitution of the United States

1 and the Constitution of the State of Arkansas and to discharge faithfully his
2 or her duties in the manner provided by law.

3 (e) A director shall receive no compensation for his or her services
4 but shall be entitled to reimbursement for reasonable and necessary expenses
5 incurred in the performance of his or her duties.

6 (f) After reasonable notice of and an opportunity to be heard
7 concerning the alleged grounds for removal, the mayor of the municipality or
8 the county judge of the county which created the board may remove any
9 director for misfeasance, malfeasance, or willful neglect of duty.

10 (g)(1) A majority of the members of the board shall constitute a
11 quorum for the transaction of business.

12 (2) No vacancy in the membership of the board shall impair the
13 right of a quorum to exercise all the powers and duties of the corporation.

14
15 14-175-110. Officers.

16 (a)(1) The officers of the corporation shall consist of a chair, a
17 vice chair, a secretary, a treasurer, and such other officers as the board
18 shall deem necessary to accomplish the purposes for which the corporation was
19 organized.

20 (2) The offices of secretary and treasurer may be held, but need
21 not be held, by the same person.

22 (b)(1) The chair and vice chair of the corporation shall be elected by
23 the board from its membership.

24 (2) The secretary, the treasurer, and any other officers of the
25 corporation who may be, but need not be, members of the board shall also be
26 elected by the board.

27
28 14-175-111. Powers generally.

29 (a) The corporation shall have and exercise all of the rights, powers,
30 privileges, authority, and functions given by the general laws of this state
31 to nonprofit corporations incorporated under the Arkansas Nonprofit
32 Corporation Act of 1993, § 4-33-101 et seq.

33 (b) In addition to the rights, powers, privileges, authority, and
34 functions authorized under subsection (a) of this section, the corporation
35 shall have the following powers with respect to projects together with all
36 powers incidental to those powers or necessary for the performance of those

1 powers set forth in this subsection (b):

2 (1) To receive sales and use taxes levied pursuant to the
3 Economic Development Tax Act, § 14-174-101 et seq., from the local government
4 or governments under whose authority the corporation was created;

5 (2) To acquire, whether by construction, devise, purchase, gift,
6 lease, or otherwise or any one (1) or more of those methods, and to
7 construct, improve, maintain, equip, and furnish one (1) or more projects
8 located within the state and within or near the corporate limits of the local
9 government or governments under whose authority the corporation was created;

10 (3) To lease to a user all or any part of any project for the
11 rentals and upon such terms and conditions as the corporation's board may
12 deem advisable and not in conflict with the provisions of this chapter;

13 (4) To sell by installment payments or otherwise and convey all
14 or any part of any project to a user for a purchase price and upon such terms
15 and conditions as the corporation's board may deem advisable and not in
16 conflict with the provisions of this chapter;

17 (5) To donate, exchange, convey, sell, or lease land,
18 improvements, or any other interest in real property or furnishings,
19 fixtures, or equipment or personal property to an institution of higher
20 education for a legal purpose of the institution upon such terms and
21 conditions as the board may deem advisable and that are not in conflict with
22 the provisions of this chapter;

23 (6) To make loans to a user for the purpose of providing
24 temporary or permanent financing or refinancing of all or part of the cost of
25 any project, including the refunding of any outstanding obligations,
26 mortgages, or advances issued, made, or given by any person for the cost of a
27 project; and to charge and collect interest on the loans for the loan
28 payments and upon such terms and conditions as its board may deem advisable
29 and not in conflict with the provisions of this chapter;

30 (7) To contract with private enterprises to carry out industrial
31 development programs or objectives or to assist with the development or
32 operation of an economic development program or objectives consistent with
33 the purposes and duties of the corporation upon such terms and conditions as
34 its board may deem advisable and not in conflict with the provisions of this
35 chapter;

36 (8) To appoint, employ, and compensate such employees, agents,

1 architects, planners, engineers, accountants, attorneys, and other persons as
 2 the activities of the corporation may require;

3 (9)(A) To invest any of the corporation's funds that the board
 4 may determine are not presently needed for its corporate purposes in
 5 obligations that are direct or guaranteed obligations of the United States,
 6 other securities in which public funds may be invested under the laws of this
 7 state, or securities of, or other interests in, open-end investment companies
 8 or investment trusts registered under the Investment Company Act of 1940, 15
 9 U.S.C. § 80a-1 et seq.

10 (B) However, the portfolio of any investment company or
 11 investment trust is limited solely to securities in which public funds may be
 12 invested under the laws of this state;

13 (10) To contract with enterprises to impose such terms and
 14 conditions on the receipt of benefits provided by a corporation as the
 15 corporation's board may deem advisable and not in conflict with the
 16 provisions of this chapter; and

17 (11)(A) Whether included in the subdivisions (b)(1)-(10) of this
 18 section or not, to have and exercise all powers necessary or appropriate to
 19 effect any or all of the purposes for which the corporation is organized.

20 (B) However, the powers shall be subject at all times to
 21 the control of the local government under whose auspices the corporation was
 22 created.

23
 24 14-175-112. Economic development taxes.

25 (a) All tax proceeds received by a corporation under the Economic
 26 Development Tax Act, § 14-174-101 et seq., shall be used for any one (1) or
 27 more of the following purposes:

28 (1) To pay administrative costs incurred by the corporation;

29 (2) To pay costs incurred in connection with a project;

30 (3) To pay costs incurred for promotional purposes; or

31 (4) To pay expenses incurred by the corporation under § 14-175-
 32 113 relating to job training.

33 (b) No tax proceeds received by a corporation under the Economic
 34 Development Tax Act, § 14-174-101 et seq., may be used for a project for the
 35 direct benefit of a specific individual or individuals or nongovernmental
 36 enterprise or enterprises unless the primary purpose of the project is to

1 finance facilities for the securing and developing of industry within or near
2 the local government that levies the tax.

3
4 14-175-113. Average weekly wage -- Job training expenditures.

5 A corporation may spend tax revenue received under this chapter for job
6 training offered through an enterprise only if the enterprise has committed
7 in writing to:

8 (1) Create new jobs that pay wages that are at least equal to
9 the prevailing wage for the applicable occupation in the local labor market
10 area; or

11 (2) Increase its payroll to pay wages that are at least equal to
12 the prevailing wage for the applicable occupation in the local labor market
13 area.

14
15 14-176-114. Limitation on liability.

16 The corporation, the corporation's board of directors, officers,
17 employees and agents, the local government approving the organization of a
18 corporation, members of the governing body of the local government, and
19 employees of the local government are not liable for damages arising from the
20 performance of a governmental function of the corporation or local
21 government.

22
23 14-176-115. Annual reports.

24 (a) Each corporation shall make a written report to the governing body
25 that created the corporation concerning its activities for the preceding
26 calendar year.

27 (b) Each report shall include audited financial statements covering
28 the corporation's operations during the preceding calendar year.

29
30 14-175-116. Application of Arkansas Nonprofit Corporation Act of 1993.

31 (a) Each corporation is subject to the provisions of the Arkansas
32 Nonprofit Corporation Act of 1993, § 4-33-101 et seq., to the extent that
33 those provisions are not in conflict with the provisions of this chapter.

34 (b) If a provision of the Arkansas Nonprofit Corporation Act of 1993,
35 § 4-33-101 et seq., is in conflict with any provision of this chapter, the
36 provisions of this chapter shall control.