State of Arkansas *As Engrossed: S3/19/15*
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 844

By: Senator Burnett
By: Representative M. Hodges

For An Act To Be Entitled

AN ACT TO AMEND TAX INCENTIVES; TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING *EQUIPMENT; TO CLARIFY THE DISTRIBUTION* OF INCOME TAX CREDITS FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT WHEN A PUBLIC RETIREMENT SYSTEM IS AN INVESTOR; *TO DECLARE AN EMERGENCY; AND* FOR OTHER PURPOSES.

Subtitle

TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. <u>Legislative findings.</u>

<u>The General Assembly finds that:</u>

<u>(1) Arkansas is one (1) of the leading producers of steel in the United States, and Mississippi County, Arkansas, is ranked as one (1) of the top (2) highest steel-producing counties in the United States;</u>

<u>(2) The steel industry in the United States is highly competitive, and there are presently rising prices and a high level of demand for raw materials in the domestic market;</u>

<u>(3) The five-year global recession that began in 2008 and current economic conditions in the steel industry are continuing to substantially affect the profitability of many Arkansas companies and to reduce the ability</u>

of Arkansas steel producers to utilize existing incentive programs that are intended to encourage capital investment in this state;

(4) In order to protect and preserve Arkansas jobs and encourage continuing capital investment by steel producers in this state, adjustments in the Arkansas recycling tax credit are appropriate to allow the tax credit to be utilized more fully to accomplish the purposes for which the tax credit is intended;

(5) The recycling tax credit is of significant importance to qualified manufacturers of steel and the State of Arkansas, and adjustments to the recycling tax credit will ensure its longevity to benefit the state and economic development within the state when a public retirement system is an investor;

(6) In order to protect and preserve Arkansas jobs and encourage continuing capital investment by steel producers in this state, adjustments in the retention tax credit under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq., are appropriate to allow the credit to be utilized more fully to accomplish the purposes for which the credit is intended; and

(7) The standards for the gross receipts tax exemption for repair and replacement of machinery and equipment require clarification for qualified manufacturers of steel to ensure continuing capital investment by steel producers and to protect and preserve Arkansas jobs.

SECTION 2. Arkansas Code § 26-51-506(c), concerning the income tax credit for waste reduction, reuse, or recycling equipment, is amended to read as follows:

(c)(1) There shall be allowed a tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (e) of this section for any taxpayer engaged in the business of reducing, reusing, or recycling solid waste for commercial purposes who purchases waste reduction, reuse, or recycling equipment used exclusively for the purpose of reducing, reusing, or recycling solid waste.

(2)(A)(i) If the tax credits are allowed with respect to a taxpayer pursuant to a qualified Amendment 82 project under the Arkansas Amendment 82 Implementation Act, § 15-4-3201 et seq., that, as of the end of the taxable year in which such tax credits are first allowed, does not have a public retirement system of the State of Arkansas as a proprietor, partner,

member, or shareholder, no more than twenty million dollars ($20,000,000) of credit against tax or an amount equal to the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., whichever is less, issued to the taxpayer making the purchases of waste reduction, reuse, or recycling equipment under subdivision (c)(1) of this section may be claimed each tax year.

(ii) Any unused tax credit that cannot be claimed in a tax year by operation of subdivision (c)(2)(A)(i) of this section may be carried forward as allowed by law. If a tax credit amount disallowed by operation of subdivision (c)(2)(A)(i) of this section would otherwise expire, the carry-forward period for such unused tax credit shall instead be extended each year, for one (1) additional year at a time, to preserve the ability of the taxpayer to apply the unused tax credit to future tax liability.

(B)(i) If tax credits are allowed under this section with respect to a qualified Amendment 82 project under the Arkansas Amendment 82 Implementation Act, § 15-4-3201 et seq., and any portion of the tax credits under this section would be apportioned to a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder of the taxpayer, the public retirement system shall have the possession and control of all tax credits, including any such tax credits otherwise apportioned to the other proprietors, partners, members, shareholders, or beneficiaries allowed under this section.

(ii) The possession and control of the tax credits by the public retirement system under this subdivision (c)(2)(B) shall be confirmed in writing by a legal opinion issued by the Department of Finance and Administration under the Department of Finance and Administration's promulgated rules.

(iii) The public retirement system shall sell or transfer for value the tax credits allowed under this section to the State of Arkansas for eighty percent (80%) of the face value, in lieu of the right of a proprietor, partner, member, shareholder, or beneficiary of the qualified Amendment 82 project to claim the tax credits as allowed pursuant to applicable state law. No more than twenty million dollars ($20,000,000) of the tax credits in possession and control of the public retirement system with respect to a qualified Amendment 82 project pursuant to subdivision (c)(2)(B)(i) of this section may be sold or transferred each year.

(iv) Any unused tax credit that cannot be sold or

transferred in a tax year by the operation of subdivision (c)(2)(B)(iii) of this section may be carried forward as allowed by law. If a tax credit amount disallowed by operation of subdivision (c)(2)(B)(iii) of this section would otherwise expire, the carry-forward period for such unused tax credit shall instead be extended each year, for one (1) additional year at a time, to preserve the ability of the public retirement system to sell or transfer all unused tax credits in future years.

(v) Repayment provisions in the applicable Amendment 82 agreement shall continue to apply to tax credits carried forward under subdivision (c)(2)(B)(iv) of this section and in the possession and control of a public retirement system of the State of Arkansas.

(vi) Beginning July 1, 2016, by July 15 of each year, the public retirement system with possession and control of the tax credits under this subdivision (c)(2)(B) shall provide notice to the Department of Finance and Administration of the amount of tax credits, including tax credits pending certification by the Arkansas Department of Environmental Quality, subject to the limitations in subdivision (c)(2)(B)(iii) of this section, to be sold or transferred for value.

(vii) The State of Arkansas shall pay the purchase price equal to eighty percent (80%) of the face value of all of the tax credits included in the notice required in subdivision (c)(2)(B)(vi) of this section on or before June 30 of the year following the year in which the notice was provided for all tax credits certified by the Arkansas Department of Environmental Quality by June 30 of the year following the year in which the notice was provided by warrant from the Economic Development Incentive Fund funded by a transfer from general revenue.

(viii)(a) Tax credits under this section sold or transferred for value to the State of Arkansas are extinguished upon payment of the purchase price as if claimed against the tax imposed by the Income Tax Act of 1929, 26-51-101 et seq.

(b)(1) In the event the State of Arkansas fails to timely pay the purchase price, as required in subdivision (c)(2)(B)(vii) of this section, for the tax credits included in the notice required in subdivision (c)(2)(B)(vi) of this section, the public retirement system may, before the end of the taxable year following the taxable year in which a failure to pay occurs, sell or transfer for value such tax credits to

one (1) or more persons. Such person or persons may claim such tax credits in accordance with applicable law, provided however, any tax credits sold or transferred for value to such person or persons under this subdivision (c)(2)(B)(viii)(b) shall not expire before the later of the end of:

(A) The carry-forward period for such tax credits under applicable law; or

(B) The third taxable year following the year in which such tax credits were sold or transferred for value pursuant to this section.

(2) The sale or transfer of tax credits under this subdivision (c)(2)(B)(viii)(b) shall be confirmed in writing by a legal opinion issued by the Department of Finance and Administration under the Department of Finance and Administration's promulgated rules.

SECTION 3. Arkansas Code § 19-6-301(181), concerning the enumeration of special revenues, is amended to read as follows:

(181) Arkansas Economic Development Incentive Act of 1993 transfers from general revenues for financial incentive plans, § 15-4-1607 and § 26-51-506(c)(2)(B)(vii);

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the tax credit allocations for waste reduction, reuse, or recycling equipment should be modified to ensure that the expansion of major projects utilizing the tax credit does not endanger the ability of the state to provide essential services or to provide the full value of the tax credits earned by the applicable businesses; that further investment for the tax credit allocations for waste reduction, reuse, or recycling equipment will increase the number of applicable tax credits in existence; and that the state must maintain a balanced budget necessary to deliver essential services to its citizens. Without this change, the ability of the State of Arkansas to ensure the delivery of essential services to citizens will be imperiled and could endanger the economic health of the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Hickey