

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/9/99 H3/23/99

A Bill

Act 1135 of 1999
SENATE BILL 503

5 By: Senators Hunter, Fitch
6 By: Representatives Hausam, T. Smith, Cleveland
7
8

For An Act To Be Entitled

9
10 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §15-11-501 ET
11 SEQ. TO TRANSFER ADMINISTRATION TO THE ARKANSAS
12 DEPARTMENT OF ECONOMIC DEVELOPMENT; TO ADD AN INCOME
13 TAX CREDIT; TO ADDRESS THE TIME FRAME IN WHICH TAX
14 CREDITS MAY BE TAKEN; TO INCREASE THE PERCENTAGE OF
15 ELIGIBLE LODGING COSTS; AND FOR OTHER PURPOSES. "

Subtitle

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17
18 "TO AMEND THE ARKANSAS TOURISM
19 DEVELOPMENT ACT. "
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code 15-11-503 is amended to read as follows:

25 "15-11-503. Definitions.

26 Whenever used or referred to in this subchapter, unless the context
27 clearly indicates otherwise:

28 (a) 'Agreement' means an agreement entered into pursuant to § 15-11-506
29 of this subchapter, by and between the director and an approved company, with
30 respect to a tourism attraction project;

31 (b) 'Approved company' means any eligible company that is seeking to
32 undertake a tourism attraction project and is approved by the director
33 pursuant to § 15-11-505 and § 15-11-506 of this subchapter;

34 (c) 'Approved costs' mean:

35 (1) Obligations incurred for labor and to vendors, contractors,
36 subcontractors, builders, suppliers, delivery men, and material men in

1 connection with the acquisition, construction, equipping, and installation of
2 a tourism attraction project;

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

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

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

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

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

25 (7) All other costs comparable with those described in this
26 subsection.

27 (d) 'Director' means the Director of the ~~Department of Parks and~~
28 ~~Tourism of the State of Arkansas~~ Department of Economic Development or his the
29 director's designated representative;

30 (e) 'Eligible company' means any corporation, limited liability
31 company, partnership, registered limited liability partnership, sole
32 proprietorship, or business trust, or any other entity operating or intending
33 to operate a tourism attraction project, whether owned or leased, within the
34 state that meets the standards promulgated by the director pursuant to § 15-
35 11-504 of this subchapter;

36 (f) 'Final approval' means the action taken by the director authorizing

1 the eligible company to receive inducements under § 15-11-507 and Section 5 of
2 this subchapter act;

3 (g) 'Increased state sales tax liability' means that portion of an
4 approved company's reported state sales (gross receipts) tax liability
5 resulting from taxable sales of goods and services to its customers at the
6 tourist attraction for any monthly sales tax reporting period after the
7 approved company provides the certification required by § 15-11-507(b) of this
8 subchapter, which exceeds the reported state sales tax liability for sales to
9 its customers for the same month in the calendar year immediately preceding
10 such certification. If an approved company purchases an existing tourism
11 attraction which was selling goods and services at the time of purchase and
12 which may or may not have been entitled to the benefits of this subchapter
13 prior to such purchase, the 'increased state sales tax liability' resulting
14 from any investments in the tourism attraction by the new owners means that
15 portion of the approved company's reported state sales (gross receipts) tax
16 liability resulting from taxable sales of goods and services to its customers
17 at the tourism attraction for any monthly sales tax reporting period after the
18 approved company provides the certification required by § 15-11-507(b) of this
19 subchapter, which exceeds the reported state sales tax liability for sales
20 made by the seller of the tourism attraction for the same month in the
21 calendar year immediately preceding such certification. The prohibitions
22 against disclosure of confidential tax information provided in § 26-18-301
23 shall not apply for purposes of computing the credit available under this
24 subchapter.

25 (h) 'Inducements' means the Arkansas sales tax credit as prescribed in
26 § 15-11-507 of this subchapter and/or the Arkansas income tax credit as
27 prescribed in Section 5 of this act;

28 (i) ~~'Preliminary approval' means the action taken by the director~~
29 ~~conditioning final approval by the director upon satisfaction by the eligible~~
30 ~~company of the requirements of this subchapter~~ 'New full-time permanent
31 employee' means a position or job which was created as a result of a tourism
32 attraction project, and which is filled by one (1) or more employees or
33 contractual employees who were Arkansas taxpayers during the year in which the
34 tax credits or incentives were earned or claimed. The position or job held by
35 such employee or employees must have been filled for at least twenty-six (26)
36 consecutive weeks, with an average of at least thirty (30) hours per week.

1 Provided, however, in order to qualify for the provisions of this subchapter,
2 a contractual employee must be offered a benefit package comparable to a
3 direct employee of the business seeking incentives under this subchapter;

4 (j)(1) 'Tourism attraction' means:

- 5 (A) Cultural or historical site;
- 6 (B) A recreational or entertainment facility;
- 7 (C) An area of natural phenomenon or scenic beauty;
- 8 (D) A theme park;
- 9 (E) An amusement or entertainment park;
- 10 (F) An indoor or outdoor play or music show;
- 11 (G) Botanical gardens;
- 12 (H) Cultural or educational centers.

13 (2) A tourism attraction shall not include:

14 (A) Lodging facilities, unless the facilities constitute a
15 portion of a tourism attraction project and represent less than ~~fifty~~ sixty
16 percent ~~(50%)~~ (60%) of the total approved costs of the tourism attraction
17 project, or unless the project meets the special rules outlined in Section
18 6(a)(b) of this act;

19 (B) Facilities that are primarily devoted to the retail
20 sale of goods, unless the goods are created at the site of the tourism
21 attraction project or if the sale of goods is incidental to the tourism
22 attraction project;

23 (C) Facilities that are not open to the general public;

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

27 (E) Facilities owned by the State of Arkansas or a
28 political subdivision of the state; or

29 (F) Facilities established for the purpose of conducting
30 legalized gambling. However, a facility regulated under § 23-110-101 et seq.
31 or § 23-111-101 et seq. shall be a tourism attraction for purposes of this
32 subchapter for any approval project as outlined in subsection (j)(1) of this
33 section or for an approved project relating to parimutuel racing at the
34 facility and not for establishing a casino or for offering casino-style
35 gambling.

36 (k) 'Tourism attraction project' or 'project' means the acquisition,

1 including the acquisition of real estate by leasehold interest with a minimum
2 term of ten (10) years, construction, and equipping of a tourism attraction;
3 the construction and installation of improvements to facilities necessary or
4 desirable for the acquisition, construction, and installation of a tourism
5 attraction, including, but not limited to, surveys; installation of utilities,
6 which may include, water, sewer, sewage treatment, gas, electricity,
7 communications, and similar facilities; and off-site construction of utility
8 extensions to the boundaries of the real estate on which the facilities are
9 located, all of which are to be used to improve the economic situation of the
10 approved company in a manner that shall allow the approved company to attract
11 persons."

12

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

14 "15-11-504. Evaluation standards - Tourism attraction project
15 applications. ~~Consulting services.~~

16 (a) The director, ~~with the approval of the State Parks, Recreation and~~
17 ~~Travel Commission,~~ shall establish standards for the making of applications
18 for inducements to eligible companies and their tourism attraction projects by
19 the promulgation of administrative regulations in accordance with § 25-15-201,
20 et seq..

21 (b) With respect to each eligible company making an application to the
22 director for inducements, and with respect to the tourism attraction project
23 described in the application, the director shall make inquiries and request
24 materials of the applicant that shall include, but shall not be limited to,
25 marketing plans for the project that target individuals who are not residents
26 of the state; a description and location of the project; capital and other
27 anticipated expenditures for the project that indicate that the total cost of
28 the project shall exceed five hundred thousand dollars (\$500,000) and the
29 anticipated sources of funding therefor; the anticipated employment and wages
30 to be paid at the project; business plans which indicate the average number of
31 days in a year in which the project will be in operation and open to the
32 public; and the anticipated revenues and expenses generated by the project.
33 ~~Based upon a review of these materials, if the director determines that the~~
34 ~~eligible company and the tourism attraction project may reasonably satisfy the~~
35 ~~criteria for final approval in subsection (c) of this section, then the~~
36 ~~director may consider granting a preliminary approval of the eligible company~~

1 ~~and the tourism attraction project pursuant to § 15-11-505(b).~~

2 ~~(c) After granting a preliminary approval, the director~~ The department
3 shall ~~engage the services of a competent consulting firm to analyze the data~~
4 made available by the eligible company and ~~to collect and analyze additional~~
5 information as necessary to determine that, ~~in the independent judgment of the~~
6 ~~consultant,~~ the tourism attraction project:

7 (1) Shall ~~attract~~ develop a marketing plan that targets at least
8 twenty-five percent (25%) of its visitors from among persons who are not
9 residents of the state;

10 (2) Shall have costs in excess of five hundred thousand dollars
11 (\$500,000);

12 (3) Shall have a significant and positive economic impact on the
13 state considering, among other factors, the extent to which the tourism
14 attraction project will compete directly with existing tourism attractions in
15 the state, and the amount by which increased tax revenues from the tourism
16 attraction project will exceed the sales tax credit allowed pursuant to § 15-
17 11-507 of this subchapter;

18 (4) Shall produce sufficient revenues and public demand to be
19 operating and open to the public on a regular and persistent basis; and

20 (5) Shall not adversely affect existing employment in the state.

21 ~~(d) The eligible company shall pay for the cost of the consultant's~~
22 ~~report and shall cooperate with the consultant and provide all of the data~~
23 ~~that the consultant deems necessary to make its determination under subsection~~
24 ~~(c) of this section."~~

25
26 SECTION 3. Arkansas Code 15-11-505 is amended to read as follows:

27 "15-11-505. Standards for preliminary and final approval of companies
28 and projects.

29 (a) The director, ~~with the approval of the State Parks, Recreation and~~
30 ~~Travel Commission,~~ shall establish standards for ~~preliminary approval and~~
31 final approval of eligible companies and their projects by the promulgation of
32 administrative regulations in accordance with § 25-15-201, et seq..

33 (b) The director may give ~~its preliminary~~ approval by designating an
34 eligible company as a ~~preliminarily~~ an approved company and ~~preliminarily~~
35 authorizing the undertaking of the tourism attraction project.

36 (c) The director shall review ~~the report of the consultant prepared~~

1 ~~pursuant to § 15-11-504(c) of this subchapter and other~~ information that has
 2 been made available to the director in order to ~~assist the director in~~
 3 ~~determining~~ determine whether the tourism attraction project will further the
 4 purposes of this subchapter.

5 (d) The criteria for final approval of eligible companies and tourism
 6 attraction projects shall include, but shall not be limited to, the criteria
 7 set forth in § 15-11-504(c) of this subchapter.

8 (e) After a review of the relevant materials, ~~the consultant's report,~~
 9 and other information made available to the director, and completion of other
 10 inquiries, the director may give ~~its~~ final approval to the eligible company's
 11 application for a tourism attraction project and may grant to the eligible
 12 company the status of an approved company. ~~The decision reached by the~~
 13 ~~director may be appealed by the eligible company to the State Parks,~~
 14 ~~Recreation and Travel Commission. The decision of the State Parks, Recreation~~
 15 ~~and Travel Commission shall constitute the final administrative decision of~~
 16 ~~the Department of Parks and Tourism."~~

17
 18 SECTION 4. Arkansas Code 15-11-507 is amended to read as follows:

19 "15-11-507. Tourism attraction project sales tax credit.

20 (a) Upon receiving notification from the director that an approved
 21 company has entered into a tourism project agreement and is entitled to the
 22 sales tax credits provided by this subchapter, the Director of the Department
 23 of Finance and Administration shall provide the approved company with such
 24 forms and instructions as are necessary to claim those credits.

25 (b)(1)(A)(i) An approved company whose agreement provides that it shall
 26 expend approved costs of more than five hundred thousand dollars (\$500,000)
 27 but less than one million dollars (\$1,000,000) shall be entitled to a credit
 28 if the company certifies to the Director of the Department of Finance and
 29 Administration that it has expended at least five hundred thousand dollars
 30 (\$500,000) in approved costs, and the director certifies that the approved
 31 company is in compliance with this subchapter. The Director of the Department
 32 of Finance and Administration shall then issue a sales tax credit memorandum
 33 to the approved company equal to ten percent (10%) of the approved costs.
 34 Subsequent requests for credit for additional certified approved costs in
 35 excess of five hundred thousand dollars (\$500,000) but less than one million
 36 dollars (\$1,000,000) shall result in a sales tax credit equal to ten percent

1 (10%) of the approved costs.

2 (ii) If the company subsequently expends additional
3 certified approved costs so that the total amount of expended approved costs
4 exceeds one million dollars (\$1,000,000), then the sales tax credit memorandum
5 shall equal twenty-five percent (25%) of the approved costs in excess of one
6 million dollars (\$1,000,000).

7 (B) An approved company whose agreement provides that it
8 shall expend approved costs in excess of one million dollars (\$1,000,000)
9 shall be entitled to a credit if the company certifies to the Director of the
10 Department of Finance and Administration that it has expended at least one
11 million dollars (\$1,000,000) in approved costs and the director certifies that
12 the approved company is in compliance with this subchapter. The Director of
13 the Department of Finance and Administration shall then issue a sales tax
14 credit memorandum to the approved company equal to twenty-five percent (25%)
15 of the approved costs. The credit on all subsequent additional certified
16 approved costs shall be equal to twenty-five percent (25%) of the costs.

17 (C) The Director of the Department of Finance and
18 Administration may require proof of expenditures. Additional credit memorandum
19 may be issued as the approved company certifies additional expenditures of
20 approved costs.

21 (2) No sales tax credit memorandum shall be issued for any
22 approved costs expended after the expiration of two (2) years from the date
23 the agreement was signed by the director and the approved company. However,
24 the director, with the advice and consent of the Director of the Department of
25 Finance and Administration, may authorize sales tax credits for approved costs
26 expended up to four (4) years from the date the agreement was signed if the
27 director determines that the failure to complete the tourism attraction
28 project within two (2) years resulted from:

29 ~~(i)~~(A) Unanticipated and unavoidable delay in the
30 construction of the tourism attraction project;

31 ~~(ii)~~(B) The tourism attraction project, as originally
32 planned, will require more than two (2) years to complete; or

33 ~~(iii)~~(C) A change in business ownership or business
34 structure resulting from a merger or acquisition.

35 (c) The credit memorandum issued pursuant to subsection (b) above may
36 be used to offset a portion of the reported state sales (gross receipts) tax

1 liability of the approved company for all sales tax reporting periods
2 following the issuance of the credit memorandum subject to the following
3 limitations:

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

6 (2)(A) An approved company whose agreement provides that it shall
7 expend approved costs in excess of one million dollars (\$1,000,000) shall be
8 entitled to use ~~only ten percent (10%) of the amount of each issued credit to~~
9 ~~offset increased state sales tax liability during each calendar year, plus the~~
10 ~~amount of any unused credit carried forward from a prior calendar year; and,~~
11 one hundred percent (100%) of the issued credit to offset increased state
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 Unused credits may be carried forward for a period of nine (9) years;

15 (B) An approved company whose agreement provides that it
16 shall expend approved costs of more than five hundred thousand dollars
17 (\$500,000) but less than one million dollars (\$1,000,000) shall be entitled to
18 use ~~only twenty percent (20%) of the amount of each issued credit to offset~~
19 ~~increased state sales tax liability during each calendar year, plus the amount~~
20 ~~of any unused credit carried forward from a prior calendar year; and, one~~
21 hundred percent (100%) of the issued credit to offset increased sales tax
22 liability during the first year if its tax liability is equal to or greater
23 than the amount issued in the state sales tax credit memorandum. Unused
24 credits may be carried forward for a period of nine (9) years; and

25 (3) All issued credit memoranda shall expire at the end of the
26 month following the expiration of the agreement as provided in § 15-11-506 of
27 this subchapter.

28 (d) The approved company shall have no obligation to refund or
29 otherwise return any amount of this credit to the person from whom the sales
30 tax was collected.

31 (e) By April 1 of each year, the Director of the Department of Finance
32 and Administration shall certify to the director the state sales tax liability
33 of the approved companies receiving inducements under this section, and the
34 amount of state sales tax credits taken during the preceding calendar year.

35 (f) The Director of the Department of Finance and Administration may
36 promulgate administrative regulations as are necessary for the proper

1 administration of this subchapter. The Director of the Department of Finance
2 and Administration may also develop such form and instructions as are
3 necessary for an approved company to claim the sales tax credit provided by
4 this subchapter.

5 (g) The Director of the Department of Finance and Administration shall
6 have the authority to obtain any information necessary from the approved
7 company and the Director of the Arkansas Department of Parks and Tourism
8 Economic Development to verify that approved companies have received the
9 proper amounts of sales tax credits as authorized by this subchapter; the
10 Director of the Department of Finance and Administration shall demand the
11 repayment of any credits taken in excess of the credit allowed by this
12 subchapter."

13

14 SECTION 5. Title 15, Chapter 11, Subchapter 5 of the Arkansas Code is
15 amended to add a new section to be appropriately numbered by the Arkansas Code
16 Revision Commission:

17 "Tourism attraction project income tax credit.

18 (a) Upon notification from the director that an approved company has
19 entered into a tourism attraction project agreement and is entitled to the
20 income tax credit provided by this section, the Director of the Department of
21 Finance and Administration shall provide the approved company with such forms
22 and instruction as are necessary to claim those credits.

23 (b) The Revenue Division of the Department of Finance and
24 Administration shall authorize an income tax credit equal to one hundred (100)
25 times the average hourly wage paid, with a maximum of three thousand dollars
26 (\$3,000) per net new full-time permanent employee of an approved tourism
27 attraction project qualifying for benefits under this act.

28 (c) The income tax credit allowed under this section shall increase by
29 a factor of four (4) with a maximum credit of six thousand dollars (\$6,000) if
30 the business is located in a county that had an unemployment rate equal to or
31 in excess of one hundred and fifty percent (150%) of the state's average
32 unemployment rate for the preceding calendar year as specified by statewide
33 annual labor force statistics compiled by the Arkansas Employment Security
34 Department.

35 (d) To be counted as a new full-time permanent employee for the purpose
36 of qualifying for the tax credits provided by this section, the employee in

1 the position or job must have been an Arkansas taxpayer during the year in
2 which the tax credits were earned.

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

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

13 (g) For projects receiving final approval after March 1, 1999, the
14 credit may be applied against the income tax for the succeeding nine (9) years
15 or until the credit is entirely used, which ever occurs first."

16
17 SECTION 6. Title 15, Chapter 11, Subchapter 5 of the Arkansas Code is
18 amended to add a new section to be appropriately numbered by the Arkansas Code
19 Revision Commission:

20 "Special rules for certain lodging facilities.

21 (a) A lodging facility may qualify as a tourism attraction project, as
22 defined in Arkansas Code § 15-11-503, entitled to the benefits of The Arkansas
23 Tourism Development Act even though the lodging costs represent one hundred
24 percent (100%) of the total project costs, provided the approved costs for the
25 lodging facility exceed five million dollars (\$5,000,000) and:

26 (1) The lodging facility is attached to a convention center
27 containing a minimum of seventy-five thousand (75,000) square feet; or

28 (2) The lodging facility contains a minimum of twelve thousand
29 (12,000) square feet of meeting or exhibit space.

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

35 (2) The sales tax credit shall be available only against the
36 increased sales tax liability for the tourism attraction project."

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SECTION 7. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 10. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-second General Assembly that Arkansas has yet to fully develop its potential in terms of attracting tourism to the state; that this act proposes incentives that will attract large tourism projects; that these projects will draw tourists from surrounding states, thereby stimulating the economy of the state; that it is necessary to compete with other states for the location of tourism attraction projects; that without viable incentives these projects are likely to locate elsewhere. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ Hunter, et al

APPROVED: 4/6/1999