

Stricken language would be deleted from and underlined language would be added to present law.
Act 685 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/16/17
A Bill

SENATE BILL 581

By: Senators J. Hendren, Irvin
By: Representatives Boyd, Johnson, *Lemons*

For An Act To Be Entitled

AN ACT TO ENHANCE LOCAL ECONOMIC DEVELOPMENT EFFORTS;
AND FOR OTHER PURPOSES.

Subtitle

TO ENHANCE LOCAL ECONOMIC DEVELOPMENT
EFFORTS.

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

SECTION 1. Arkansas Code Title 14 is amended to add an additional chapter to read as follows:

CHAPTER 176

LOCAL JOB CREATION, JOB EXPANSION, AND ECONOMIC DEVELOPMENT ACT OF 2017

14-176-101. Title.

This chapter shall be known and may be cited as the "Local Job Creation, Job Expansion, and Economic Development Act of 2017".

14-176-102. Definitions.

As used in this chapter:

(1) "Chief executive" means the:

(A) Mayor, city administrator, or city manager of a municipality; or

(B) County judge of a county;

(2)(A) "County" means a county in the State of Arkansas.

(B) "County" does not mean a public corporation for



economic development;

(3) "Economic development project" means the land, buildings, furnishings, equipment, facilities, infrastructure, and improvements that are required or suitable for the development, retention, or expansion of:

(A) Manufacturing, production, and industrial facilities;

(B) Research, technology, and development facilities;

(C) Recycling facilities;

(D) Distribution centers;

(E) Call centers;

(F) Warehouse facilities;

(G) Job training facilities; or

(H) Regional or national corporate headquarters

facilities;

(4) "Economic development service" means:

(A) Planning, marketing, and strategic advice and counsel regarding job recruitment, job development, job retention, and job expansion;

(B) Supervision and operation of industrial parks or other such properties; and

(C) Negotiation of contracts for the sale or lease of industrial parks or other such properties;

(5) "Economic impact and cost-benefit analysis" means an economic analysis created with an economic modeling software program or industry-recognized software program that measures the anticipated local or regional economic benefits of an economic development project against the costs of the incentive proposal of the economic development project and prepared by a nationally or regionally recognized independent economic forecasting firm or an Arkansas-based four-year institution of higher education with an active economic research or analysis department;

(6) "Financial forecast" means a written report prepared by an independent certified public accountant of the general revenue and expenses and any other sources of funds to be appropriated by the governing body;

(7) "General revenue" means:

(A) Unobligated current-year budgeted moneys in the general fund of the municipality or county; and

(B) Other unobligated general tax moneys of the municipality or county;

(8) "Governing body" means the:

(A) Quorum court of a county; or

(B) City council or board of directors of a municipality;

(9) "Infrastructure" means:

(A) Land acquisition;

(B) Site preparation;

(C) Road and highway improvements;

(D) Rail spur, railroad, and railport construction;

(E) Water service;

(F) Wastewater treatment;

(G) Employee training, which may include equipment for employee training; and

(H) Environmental mitigation or reclamation;

(10)(A) "Municipality" means a city of the first class, a city of the second class, or an incorporated town.

(B) "Municipality" does not mean a public corporation for economic development;

(11) "Public corporation for economic development" means a corporation created and authorized under § 14-174-101 et seq. and the Public Corporations for Economic Development Act, § 14-175-101 et seq.; and

(12) "Reserves" means:

(A) The unassigned fund balance in the general fund of a municipality or a county at the beginning of the fiscal year; and

(B) The beginning fund balance in a capital improvement fund that is available for appropriation to capital improvement projects at the discretion of the governing body of the municipality or county by ordinance or resolution.

14-176-103. Authorization for obtaining and appropriating money.

(a) A municipality or county may obtain or appropriate money for a corporation, association, institution, political subdivision of the state, the federal government, or an individual to:

(1) Finance economic development projects; or

(2) Provide economic development services.

(b) Funds appropriated by a municipality or county under the authority of this section shall be deemed to further the public purpose of economic

development.

14-176-104. Economic development projects – Control, restrictions, prohibitions, and recapture.

(a)(1) Before entering into a contract for an economic development project, the governing body shall review and approve an economic impact and cost-benefit analysis of the economic development project.

(2) The economic impact and cost-benefit analysis under subdivision (a)(1) of this section may be paid for by the governing body.

(3) The requirement for an economic impact and cost-benefit analysis under subdivision (a)(1) of this section does not apply to an economic development project in which the total appropriation does not exceed one hundred thousand dollars (\$100,000).

(b) Economic development project contracts shall:

(1) Be approved by the governing body in ordinance or resolution form after following applicable bidding, procurement, and professional services procedures in accordance with state law or local ordinance;

(2) Be memorialized in writing;

(3) Not exceed one (1) year in length unless there is a public finding by the governing body that multiple years are necessary for the success of the economic development project and that multiple years are both lawful and a matter of public benefit;

(4) Not be renewed automatically without a vote of the governing body;

(5) State a proper public purpose, such as the creation of new jobs, job retention, or the expansion of the tax base by construction or improvements to real property;

(6) Articulate specific criteria to measure the progress toward, or achievement of, the proper public purpose; and

(7) Contain a recapture provision, including without limitation:

(A) A specific time frame in which the recipient of the funding shall provide a written financial accounting to the chief executive and governing body of the use of the moneys with documentation generally acceptable to Arkansas Legislative Audit's requirements and a report detailing the recipient's progress toward, or achievement of, the specific criteria in the economic development project contract;

(B) A specific time frame in which the governing body may formally demand by resolution the refunding of the moneys by the recipient upon the governing body's decision that the reporting in subdivision (b)(7)(A) of this section was insufficient and without merit or that the agreed-upon progress or criteria has not been made or achieved in a timely manner as provided for in the economic development project contract; and

(C) If the moneys are not returned when demand is made by the municipality or county, the governing body may authorize a cause of action to recapture the moneys in the circuit court of the county with proper jurisdiction and venue.

(c)(1) The following are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., as related to economic development projects:

(A) Files and materials that if disclosed would give advantage to the competitors or bidders; and

(B) Records maintained by the municipality or county related to an economic development project's:

(i) Planning;

(ii) Site location;

(iii) Expansion;

(iv) Operations; or

(v) Product development and marketing.

(2)(A) However, quarterly reports shall be provided to the governing body by parties to the economic development project contract and shall be available to the public.

(B) The reports shall include a statement of the specific items contained in the economic development project contract and articulation of compliance as to each of those items.

14-176-105. Economic development services – Control, restrictions, and prohibitions.

(a) Economic development service contracts shall:

(1) Be approved by the governing body in ordinance or resolution form after following applicable bidding, procurement, and professional services procedures in accordance with state law or local ordinance;

(2) Be recorded in writing;

(3) Not exceed one (1) year in length unless there is a public

finding by the governing body that multiple years are necessary for the success of the economic development service and that multiple years are both lawful and a matter of public benefit;

(4) Not be renewed automatically without a vote of the governing body;

(5) State a proper public purpose, such as the creation of new jobs, job retention, or the expansion of the tax base by construction or improvements to real property; and

(6) Articulate specific criteria to measure the progress toward, or achievement of, the proper public purpose.

(b)(1) The following are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., as related to economic development services:

(A) Files and materials that if disclosed would give advantage to the competitors or bidders; and

(B) Records maintained by *an economic development service provider for a municipality or county* related to any economic development project.

(2)(A) However, quarterly reports shall be provided to the governing body by parties to the economic development service contract and shall be available to the public.

(B) The reports shall include a statement of the specific items contained in the economic development service contract and articulation of compliance as to each of those items.

14-176-106. Tax exemption.

Contracts, agreements, and actions taken under this chapter do not affect the tax-exempt status of the state or any municipality or county engaged in work under this chapter.

14-176-107. Immunity and liability.

(a) Section 21-9-301 et seq. applies to this chapter.

(b) A municipality or county is not liable for any action related to the providing of, or contractual agreement to enter into, an economic development project or economic development service, except as provided by law.

14-176-108. Limitation on budget – Due diligence.

(a) Except as provided in this section, appropriations for economic development projects by a governing body under this chapter shall not exceed in a fiscal year five percent (5%) of the total of the municipality's or county's unobligated general revenue and reserves of the previous fiscal year, without regard to the number of economic development projects.

(b)(1) If a governing body chooses to participate in an economic development project that exceeds the five percent (5%) level under subsection (a) of this section in a fiscal year, the governing body shall secure a financial forecast and then determine whether the municipality or county will participate in the economic development project or projects.

(2) A financial forecast under subdivision (b)(1) of this section shall be undertaken each time the five percent (5%) level under subsection (a) of this section is exceeded.

(c) The use of the whole or partial amount of revenue specifically dedicated by law, ordinance, or resolution and public vote for economic development for the purposes in this chapter are excluded from the restrictions and limitations of this section.

14-176-109. Singular contract methodology.

A municipality or county may engage the services of a singular entity to administer economic development projects and economic development services under this chapter.

14-176-110. Bonds.

This chapter does not prohibit or restrict the use of funding economic development projects through the proceeds of:

(1) Revenue bonds issued in accordance with Arkansas Constitution, Amendment 65; or

(2) Capital improvement or economic development bonds issued in accordance with Arkansas Constitution, Amendment 62.

14-176-111. Federal and state grants.

The use of federal and state grants are excluded from the restrictions and limitations of this chapter.

14-176-112. Interlocal agreements.

The use of interlocal agreements under the Interlocal Cooperation Act, § 25-20-101 et seq., is excluded from the restrictions and limitations of this chapter.

14-176-113. Current economic development projects.

Economic development projects that are under way on January 1, 2017, are exempt from the restrictions and limitations of this chapter.

SECTION 2. Arkansas Code § 15-4-3202(11), concerning the definitions to be used under the Arkansas Amendment 82 Implementation Act, is amended to read as follows:

- (11) "Infrastructure needs" means:
- (A) Land acquisition;
 - (B) Site preparation;
 - (C) Road and highway improvements;
 - (D) Rail spur, railroad, and railport construction;
 - (E) Water service;
 - (F) Wastewater treatment;
 - (G) Employee training, which may include equipment used for the training;
 - (H) Environmental mitigation or reclamation;
 - (I) Training and research facilities and the necessary equipment for the facilities; or
 - (J) Any other facility, activity, or infrastructure determined by the General Assembly to fall within the parameters of Arkansas Constitution, Amendment 82;

SECTION 3. Arkansas Code § 15-4-3207 is amended to read as follows:

15-4-3207. ~~Maximum ceiling on bond~~ Bond principal.

~~(a) In determining the maximum amount of Amendment 82 bonds that may be issued, the sum of the outstanding bonded indebtedness plus the principal amount of the proposed Amendment 82 bonds shall not exceed five percent (5%) of the general revenues collected during the most recent fiscal year for which revenue calculations are available.~~

~~(b) It is not a violation of Arkansas Constitution, Amendment 82, or~~

~~this subchapter and does not affect the validity of Amendment 82 bonds that were properly issued if:~~

~~(1) General revenues decline after Amendment 82 bonds are issued; and~~

~~(2) The outstanding bonded indebtedness exceeds five percent (5%) of the general revenues collected during the most recent fiscal year for which revenue calculations are available.~~

~~(c) Amendment 82 bonds that when issued complied with the five percent limitation may be refunded under Arkansas Constitution, Amendment 82, and this subchapter even if the outstanding bonded indebtedness before or after the refunding exceeds five percent (5%) of the general revenues collected during the most recent fiscal year for which revenue calculations are available.~~

Amendment 82 bonds may be issued to:

(1) Finance project costs in an aggregate principal amount approved by the General Assembly without regard to any debt limitation; and

(b) Refund outstanding Amendment 82 bonds in an aggregate principal amount approved by the Arkansas Development Finance Authority without regard to any debt limitation.

/s/J. Hendren

APPROVED: 03/27/2017