

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/13/13
A Bill

SENATE BILL 1065

By: Senator J. English
By: Representative Lea

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING THE ARKANSAS
ECONOMIC DEVELOPMENT COUNCIL AND THE ARKANSAS
ECONOMIC DEVELOPMENT COMMISSION; TO MAKE CONFORMING
CHANGES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING THE ARKANSAS
ECONOMIC DEVELOPMENT COUNCIL AND THE
ARKANSAS ECONOMIC DEVELOPMENT COMMISSION.

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

SECTION 1. Arkansas Code Title 15, Chapter 4, Subchapter 2, is amended to read as follows:

15-4-201. Arkansas Economic Development Council – Creation.

There is created and established at the seat of government of this state a council to be known as the “Arkansas Economic Development Council”, ~~hereinafter referred to as the “council”.~~

15-4-202. Arkansas Economic Development Council – Members.

(a)(1) The Arkansas Economic Development Council shall consist of sixteen (16) members, who shall be ~~residents and~~ qualified electors of this state, to be appointed by the Governor ~~by and~~ with the advice and consent of the Senate.

(2)(A) At least three (3) members shall be appointed from each of the four (4) congressional districts existing on January 1, ~~1987~~ 2012.



(B) Four (4) members shall be appointed at large.

(3) The members ~~se~~ appointed by the Governor shall be selected with special reference to their knowledge of and interest in the resources and ~~industrial~~ economic development of the State of Arkansas.

(b) For each member appointed by the Governor, the term of office shall commence on January 15 following the expiration date of the preceding term and shall end on January 14 of the fourth year following the year in which the regular term commenced.

(c) ~~Any~~ A vacancy arising in the membership of the ~~commission~~ council appointed by the Governor for any reason other than expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor to be thereafter effective until the expiration of the terms, subject, ~~however,~~ to the confirmation of the Senate when it is next in session.

(d) Before entering upon his or her duties, each member of the council shall take ~~and~~, subscribe, and file in the office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to faithfully perform the duties of the office upon which he or she is about to enter.

(e) Members of the council may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(f) Members of the council, acting in good faith, are not personally liable under this subchapter.

15-4-203. Arkansas Economic Development Council – Organization and meetings.

(a)(1) The Arkansas Economic Development Council, ~~from time to time,~~ shall select a chair and vice chair annually from its membership ~~a chair and a vice chair.~~

(2) The Executive Director of the Arkansas Economic Development Commission shall be ex officio Secretary of the Arkansas Economic Development Council but shall have no vote on matters coming before it.

(b)(1) The council ~~shall~~ may adopt and ~~may~~ modify rules for the conduct of its business and shall keep a public record of its transactions, findings, and determinations.

(2) The rules shall provide for regular meetings and for special

meetings at the call of the Chair of the Arkansas Economic Development Council or of the Vice Chair of the Arkansas Economic Development Council, if he or she is for any reason the acting chair, either at his or her own instance or upon the written request of at least ~~six (6)~~ seven (7) members.

(3) The rules adopted under this section may allow for meetings to be held by conference call or other means of communication to conduct the council's business.

~~(3) (4)~~ A quorum shall consist of ~~not fewer than six (6)~~ at least seven (7) members present at ~~any~~ a regular or special meeting, and an affirmative vote of ~~that number~~ seven (7) members shall be necessary for the disposition of any business.

15-4-204. Arkansas Economic Development Council – Functions, powers, and duties.

(a) The Arkansas Economic Development Council ~~shall have and be subject to all functions, powers, and duties imposed upon it by this act~~ may serve in an advisory capacity to the Executive Director of the Arkansas Economic Development Commission, the Governor, and the General Assembly.

~~(b) For the purpose of regulating its own procedure and carrying out its functions, the commission shall have the authority from time to time to make, amend, and enforce all reasonable rules or regulations not inconsistent with law which will aid in the performance of any of the functions, powers, or duties conferred or imposed upon it by law.~~

~~(c) In addition, the council shall have the function, power, and duty within the bounds of its financial means to approve:~~

~~(1) The articles of incorporation of any local industrial corporation prior to its submission to the Secretary of State for filing;~~

~~(2) The issuance of bonds by any local industrial development corporation; and~~

~~(3) Guaranties of amortization payments on Act No. 9 bonds, as provided for in the Industrial Revenue Bond Guaranty Law, § 15-4-601 et seq.~~

(b) A primary function of the council is to approve the issuance of guaranties of amortization payments on Act No. 9 bonds under the Industrial Revenue Bond Guaranty Law, § 15-4-601 et seq.

(c) The addition or elimination of international offices of the Arkansas Economic Development Commission by the commission shall first be

approved by the council.

(d) By a majority vote, the council may establish committees and subcommittees as needed.

15-4-205. Arkansas Economic Development Commission – ~~Information and investigations~~ Status and purpose.

(a) The Arkansas Economic Development Commission is the state agency responsible for implementing programs and policies aimed at improving the state's economic condition.

~~(a)~~ (b) The objects and purposes of the Arkansas Economic Development Commission shall be commission are to:

~~(1) Gather and assemble information, make investigation, compile statistics and data in respect to the natural and agricultural resources within the State of Arkansas, and catalogue and publish the same in any form deemed helpful in the development of the resources~~ Serve as the primary governmental source for carrying out the Governor's plan for economic development in the state;

~~(2) Distribute the information in a manner or form appropriate for the promotion of industrial enterprise within the State of Arkansas or the procuring of locations within the State of Arkansas of manufacturing or processing enterprises for the development of natural resources~~ Promote the state with a central focus on regional economic development efforts; and

~~(3) Foster and encourage the development of industrial utilization of agricultural and mineral products of the State of Arkansas, and in general to encourage helpful industries within the state.~~ Coordinate the activities of private and public efforts to advance economic development in the state;

(4) Compile and disseminate all available information pertinent to the economic opportunities afforded by the state;

(5) Receive and disburse funds for the purpose of community and economic development; and

(6) Perform other duties as designated by the Governor.

~~(b) The commission shall perform such other duties in the field of agriculture and industry as may be consistent with the purposes of this act.~~

15-4-206. Arkansas Economic Development Commission – Executive

Director.

(a)(1) The Executive Director of the Arkansas Economic Development Commission shall be appointed by the Governor ~~with the consent of the Arkansas Economic Development Council and be~~ subject to confirmation by the Senate.

(2) The executive director shall serve at the pleasure of the Governor.

~~(b)(1) The council executive director shall be charged with the duty of administering the provisions of this act.;~~

~~(2) By resolution duly adopted, the council may delegate to the director any of the powers or duties vested in or imposed upon it by this act.~~

~~(3) These delegated powers and duties may be exercised by the director in the name of the council.~~

~~(c)(1) The director shall be a person who shall have had technical training in business administration and economics and not less than three (3) years' practical administrative and field experience in economic and industrial research and development.~~

(1) Have the experience necessary to lead the Arkansas Economic Development Commission as determined by the Governor;

~~(2) He or she shall be~~ Be custodian of all property held in the name of the ~~Arkansas Economic Development Commission~~ commission; and shall be

(3) Be the ex officio disbursing agent of all funds available for ~~its~~ the commission's use.

~~(3) He or she shall furnish a bond to the state with a corporate surety thereon in the penal sum of ten thousand dollars (\$10,000), conditioned that he or she will faithfully perform his or her duties of employment and properly account for all funds received and disbursed by him or her.~~

~~(4) An additional disbursing agent's bond shall not be required of the director.~~

~~(5) The bond so furnished shall be filed with the Secretary of State and an executed counterpart thereof shall be filed with the Auditor of State.~~

~~(d) Notwithstanding his or her primary responsibility, the director may designate one (1) of his or her assistants to receive and disburse funds~~

~~of the commission. The assistants so designated shall be required to furnish bond with a corporate surety thereon in such amount as shall be determined by the director. This bond, together with such bonds as the director may require of other employees, shall be filed in the office of the commission. The premium on all such bonds shall be paid by the commission.~~

~~15-4-207. Arkansas Economic Development Commission — Duties regarding tax exemption to industries.~~

~~The Arkansas Economic Development Commission shall be the official state agency to act with the Governor in carrying out the provisions of Arkansas Constitution, Amendment 27, which provides for the granting of a limited exemption of state taxes to new manufacturing or processing investments in Arkansas for a period of from one (1) to ten (10) years.~~

~~15-4-208. Arkansas Economic Development Commission — Cooperation with other states and federal government.~~

~~The Arkansas Economic Development Commission is empowered to cooperate with similar agencies existing in other states, with the several federal departments, and with other boards, commissions, and departments of the state government. Cooperation shall be for the purpose of coordinating laws, rules, and regulations governing the interstate movement of all agricultural products and articles of commerce relating thereto with the view of properly safeguarding Arkansas against plant and animal diseases, insects, and pests and at the same time endeavoring to eliminate the trade barriers that have arisen between states.~~

15-4-209. Arkansas Economic Development Commission - ~~Additional functions~~ Functions, powers, and duties.

~~In addition to its functions, powers, and duties now provided by law, it shall be the function, power, and duty of the (a) The Arkansas Economic Development Commission within the bounds of its financial means to shall:~~

~~(1) Bring labor, industry, and agriculture into the closest and fullest possible accord for the development of the state's resources and the furtherance of its industry;~~

~~(2) Assemble and publicize all available information pertinent to the industrial opportunities afforded by this state, both in respect to~~

~~particular sections and the state as a whole, including the raw material and the products producible therefrom, the water and power resources, transportation facilities, available markets, labor supply, industrial sites, and banking and credit facilities, all to the end of encouraging both the establishment of new industrial enterprises and the expansion of industries already existing;~~

~~(3) Cooperate with civic organizations devoted to the welfare and development of the state, or of particular sections, and to receive from such organizations and also from other sources similarly interested contributions to be used in the furtherance of any of the commission's functions;~~

~~(4) Prepare and publicize through the various appropriate media, including paid advertisements in instances in which appropriations have been made available for that purpose, information for the purpose of bringing into and establishing new industry in the state;~~

~~(5) Purchase, lease, rent, or sell and receive bequests or donations of any real, corporeal, or personal property;~~

~~(6) Contract and be contracted with;~~

~~(7) Establish and administer an industry training program to train workers for new manufacturing jobs in new or expanded plants of new manufacturing companies characterized by one (1) or more of the following criteria: a high average skill, a high average wage, rapid national growth, or jobs feasible and desirable for location in rural regions; in furtherance thereof, to contract with any one (1) or more state agencies, other public agencies, or private agencies for the performance by such agencies of any educational or training activity authorized by law or for the providing of any services related thereto; and, in furtherance thereof, to cooperate with and accept funds from the State Board of Education, the State Board of Career Education, or any other state agency or from the United States or any agency thereof;~~

~~(8) Engage in economic development planning to promote the harmonious development of the state, encouraging increased employment, increased personal income, and the preservation of the state's natural beauty and environment in cooperation with other state agencies and with local substate planning and development agencies;~~

~~(9) Promote the development, retention, expansion, and support~~

~~of small businesses in Arkansas by providing direct technical assistance services and by coordination of and with the various available assistance programs;~~

~~(10) Expand the exportation of the state's agricultural and manufactured products to national and international markets by providing appropriate and effective marketing assistance and support;~~

~~(11) Encourage local participation and organization for economic development by providing necessary and appropriate community assistance; and~~

~~(12) Take such other action not inconsistent with law as it may deem necessary or desirable to carry out the intent and purpose of this act.~~

(1) Administer grants, loans, cooperative agreements, tax credits, and other incentives, memoranda of understandings, and conveyances to assist with economic development in the state;

(2) In concert with others, periodically develop a strategic plan to guide the commission in the pursuit of the commission's stated mission;

(3) Cooperate with public and private organizations to advance the commission's goals and objectives as identified in the commission's most recent strategic plan;

(4) Administer the Small Cities Community Development Block Grant (CDBG) Program with funds received from the federal government;

(5) Collaborate with other entities in the formation and implementation of a state energy plan to guide the state on issues related to energy supply, energy efficiency, and energy resource development of both fossil and renewable energy sources;

(6) To the extent that funds are available, assist with the cost of infrastructure in the pursuit of new or expanded job creation;

(7) Encourage the exportation of Arkansas-produced goods and services;

(8) Assist small and minority businesses through certification, loans, technical assistance, or grants to encourage their growth and development;

(9) Provide assistance to cities, counties, and regions as they develop and implement their own plans for economic development;

(10) Establish and administer a business and industry training program to train both new and existing employees;

(11) Cooperate with other international, multistate, regional, federal, state, and local efforts aimed at providing resources or assistance to economic development;

(12) Work with communities and regions to develop ongoing processes focused on the creation and recruitment of new businesses and the retention of existing businesses;

(13) Utilize all available means of securing financing for business development statewide;

(14) Serve as the state's focal point for the establishment of foreign trade zones under the programs offered by the United States Department of Commerce;

(15) Promote innovation and the commercialization of ideas into viable Arkansas businesses;

(16) Highlight the state's ability to host film projects and make available resources to assist in building the film industry in the state;

(17) Comply with procedures for the disposal of properties acquired by the commission;

(18) Administer the provisions of Amendment 27 to the Arkansas Constitution providing a limited exemption from certain tax liabilities; and

(19) Carry out any other duties or responsibilities as designated by the Governor.

(b) The commission may:

(1) Contract and be contracted with;

(2) Purchase, lease, rent, sell, and receive bequests or donations of real, corporeal, or personal property from any lawful source;

(3) Establish and maintain international offices, as approved by the Arkansas Economic Development Council, to assist with the export of Arkansas-produced goods and services as well as foreign direct investment, either through the use of contractual employees or other means;

(4) Conduct studies as necessary to assess any economic development need or asset; and

(5) Promulgate rules necessary to implement the programs and services offered by the commission.

15-4-210. Arkansas Economic Development Commission – Overseas Foreign

operation – Reports.

~~(a) The Arkansas Economic Development Council, with the approval of the Governor, shall open such foreign offices as are deemed appropriate to promote the export and sale of Arkansas products in foreign markets and to develop foreign industry and markets in Arkansas. Commission may engage the services of contract employees to promote the development of:~~

~~(1) Foreign direct investment in the state;~~

~~(2) Increased trade with foreign countries; and~~

~~(3) Improved relations with countries with which the state currently trades and countries that present future opportunities for enhanced economic development in the state.~~

~~(b) The commission may establish an Arkansas operation in any country approved by the Governor and the Arkansas Economic Development Council.~~

~~(b) (c) The council commission shall report the progress of these any foreign offices annually to the Legislative Council, the Legislative Joint Auditing Committee, and the Governor.~~

~~15-4-211. Overseas program – Personnel.~~

~~(a) The Arkansas Economic Development Council is authorized to engage the services of contract employees for the purpose of promoting the development of:~~

~~(1) European industry in Arkansas and the export and sale of Arkansas products in Europe;~~

~~(2) Asian industry in Arkansas and the export and sale of Arkansas products in Asia; and~~

~~(3) Latin American industry in Arkansas and the export and sale of Arkansas products in Latin America.~~

~~(b) The combined salaries for all employees shall not exceed the line item appropriation.~~

~~15-4-212. Sale of property.~~

~~(a) The Arkansas Economic Development Council is empowered to sell, for cash, and upon compliance with the provisions of this act, all that property transferred to it under the provisions of this act.~~

~~(b) The council, through its chair and the Director of the Arkansas Economic Development Commission, shall certify to the Governor, in duplicate,~~

~~its proposal for any such sale. The Governor, if he or she approves the proposal, shall endorse his or her approval upon both copies of the certificate and return one (1) copy thereof to the director, and he or she shall at the same time appoint a committee of appraisers to appraise the property, with notice thereof to the director. He or she may similarly fill any vacancy occurring on the committee.~~

~~(c) The committee shall consist of five (5) persons, each of whom is the owner of real property within the state. Before entering upon his or her respective duties, each member of the committee shall make and subscribe, in duplicate, an affidavit that he or she is not in any manner interested, either directly or indirectly, either in the sale or in the purchase of the property and that he or she will well and truly, according to the best of his or her ability, view and appraise the property.~~

~~(d) The members of the committee may receive expense reimbursement in accordance with § 25-16-901 et seq.~~

~~(e) After each member of the committee has made his or her appraisal of the property, he or she shall append to each copy of his or her affidavit a statement of his or her appraisal over his or her signature. He or she shall deliver both copies of the affidavit, with the statement appended thereto, to the Governor. The Governor, if he or she continues to approve the proposed sale of the property, as so appraised, shall endorse his or her approval upon both copies of the affidavit and statement. He or she shall transmit one (1) copy to the director.~~

~~(f) Thereupon, the director shall give notice on behalf of the council of the terms of sale by publication in one (1) newspaper regularly published in Little Rock and having a general circulation in the State of Arkansas, by four (4) weekly insertions therein. The notice shall specify a time and place for the receipt by the council of sealed bids for the purchase of the property. The specified time shall be not less than thirty (30) days from and after the date of the first insertion.~~

~~(g) Each bid shall be accompanied by a bank officer's check, payable to the order of the council, in an amount equal to one tenth (1/10) of the bid. The proceeds of the check of the successful bidder, if he or she makes the balance of his or her bid good, shall be credited upon his or her bid. If he or she fails to make the balance good, the proceeds shall be retained by the council as liquidated damages on account of such a failure. The check of~~

~~each unsuccessful bidder shall be returned to him or her upon the final acceptance of the successful bid.~~

~~(h) The council, at the time and place specified in the notice, subject to its adjournment by announcement then and there to some other time or place, shall open the bids which shall have been received. The council shall proceed to accept that bid which, in its best judgment, shall tend most to the industrial development of the state. No such sale, however, shall be had otherwise than for cash, nor for less than the amount of the appraisal. Provided further, no such bid shall be accepted unless and until approved by the Governor.~~

~~(i)(1) Upon receipt from the successful bidder of the full amount of his or her bid, the council, acting through the chair and the director, shall execute and deliver its deed conveying the property to the purchaser and shall certify a copy of the deed to the Governor. The deed shall recite in detail the compliance with the respective provisions of this act. The recital shall be prima facie evidence of the facts so set forth.~~

~~(2) The deed need not be acknowledged to entitle it to record. The effect of the deed, the provisions of this act having been substantially complied with in the sale, shall be to vest the purchaser with all of the right, title, and interest of the council and of the State of Arkansas, at law and in equity, in and to the property.~~

~~(j) The proceeds of the sale, including any liquidated damages as provided in subsection (g) of this section, upon receipt thereof, shall be deposited in the Arkansas Industrial Development Revolving Fund [INACTIVE], which is created and established in the State Treasury.~~

~~15-4-213. Rural development generally.~~

~~The Arkansas Economic Development Council shall act as coordinator with other state agencies in forming advisory teams to work with communities in the development of business, industry, and agriculture in the rural areas of the state.~~

~~15-4-214. Interagency contracts.~~

~~The Arkansas Economic Development Council is authorized to enter into interagency contracts in order to promote underdeveloped areas of the state, especially those areas with high unemployment.~~

15-4-215. [Repealed.]

15-4-216, 15-4-217. [Repealed.]

~~15-4-218. Access to industrial sites.~~

~~(a) The Arkansas Economic Development Council is authorized to investigate and study the necessity and desirability of constructing or reconstructing any transportation access to an industrial site located in a publicly owned industrial park.~~

~~(b)(1) Based upon such study, the council may enter into agreements with the Arkansas State Highway and Transportation Department or other governmental entities for the construction or reconstruction of transportation accesses to industrial sites.~~

~~(2) Such agreements may include provisions for preliminary engineering by the department and the letting of bids for such projects.~~

15-4-219. Annual report.

The Arkansas Economic Development ~~Council~~ Commission shall present a report annually on the ~~Arkansas Economic Development Council's~~ commission's work during the previous calendar year, in these areas of concern:

(1) An accounting of:

(A) ~~All projects completed~~ Each project that was offered incentives in the previous calendar year, including without limitation:

(i) The number of jobs ~~created~~ proposed by each project and the average hourly ~~wages~~ wage or annual ~~salaries~~ salary for each project;

(ii) For each job creation project that receives funds from the Economic Development Incentive Quick Action Closing Fund under § 19-5-1231, an indication of whether each project contains a repayment requirement;

(iii)(a) Each project that received funds from the Economic Development Incentive Quick Action Closing Fund under § 19-5-1231.

(b) The information reported in subdivision (1)(A)(iii)(a) of this section and any other related information shall be made available to the Office of Economic and Tax Policy upon request;

~~(ii) (iv)~~ The location of each project; and
~~(iii) (v)~~ What The elements of the ~~council's~~
commission's incentive packages that were used;

(B) ~~All projects~~ Each project that was offered incentives
but ~~not opened~~ that did not accept incentives, including without limitation:

(i) An assessment of the reasons why each offered
~~projects~~ project failed to open; and

(ii) ~~Proposals~~ Any proposals the General Assembly
should consider that would have assisted the ~~council~~ commission in its
negotiations regarding each project;

(C) ~~All factories and plants~~ Each factory and plant that
closed in the previous calendar year, including without limitation:

(i) The number of jobs lost as the result of the
closure of each factory or plant;

(ii) The location of each factory or plant that
closed; and

(iii) An assessment of the reasons for each factory
or plant closing; and

(D) The ~~council's~~ commission's strategies and
recommendations for the coming year, including:

(i) An assessment of the relative risk of loss of
factories, plants, and jobs in the state; and

(ii) Plans for:

(a) Preventing future closings of factories
and plants;

(b) Preventing future losses of jobs;

(c) Increasing the number of economic
development proposals within the state;

(d) Drawing an increasing number of economic
development proposals into the state; and

(e) Creating new incentives for economic
development proposals; and

(2) The ~~director's~~ Executive Director of the Arkansas Economic
Development Commission's assessment of the ~~council's~~ commission's
performance, including without limitation a comparison to:

(A) The ~~council's~~ commission's performance over the past

two (2) years;

- (B) The ~~council's~~ commission's own projections; and
- (C) Economic development in neighboring states.

15-4-220. Audit of economic incentive programs.

(a) In order to provide information to the General Assembly regarding the benefits of certain economic incentive programs, the Division of Legislative Audit shall prepare annually a cost-benefit analysis of the ~~incentive programs provided~~ projects provided incentives under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq.

(b) The analysis may include, ~~but not be limited to~~ without limitation:

- (1) The dollar amount of incentives actually provided;
- (2) The direct ~~and~~, indirect, and induced state ~~and local tax~~ benefits associated with each ~~program~~ project, including without limitation:

- (A) Estimated tax revenues;
- (B) Full-time equivalent jobs created;
- (C) Wages; and
- (D) Investment; and

(3) The safeguards to protect noneconomic influences in the award of incentives.

(c)(1) The analysis required under subsection (a) of this section may be conducted ~~annually~~ on a rotating basis so that each ~~incentive program provided under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq.,~~ project is evaluated at least one (1) time ~~every five (5) years~~ before the completion of the financial incentive agreement under the Consolidated Incentive Act of 2003, § 15-4-2701 et seq.

(2) ~~Should the division's staff be~~ If the staff of the division is insufficient to conduct the scheduled analysis in a given year, the executive committee of the Legislative Joint Auditing Committee may establish the priority and number of ~~programs~~ projects that can be reasonably analyzed with the available resources for a particular year.

(d)(1) All records, data, and other information from whatever source that the Legislative Auditor deems necessary in the examination of the incentive programs shall be made available to the division.

(2) However, ~~nothing in this subsection authorizes or permits~~

this subsection does not authorize publication of information protected from publication by law.

(3) Records and information exempt from public disclosure shall remain exempt in the custody of the division.

(e) The division and the Arkansas Economic Development Commission shall enter into a memorandum of understanding concerning the need for common definitions and rules for evaluating economic incentive projects.

SECTION 2. Arkansas Code § 15-4-102(a), concerning the construction of the Arkansas Industrial Development Act, is amended to read as follows:

(a) This section and §§ 15-4-101, 15-4-201 – 15-4-204, 15-4-206, ~~and~~ 15-4-209 —~~15-4-212~~, 15-4-210, and § 15-4-501 et seq. shall be construed liberally.

/s/J. English