

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1779

5 By: Representative Wardlaw
6 By: Senator Gilmore
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE WOOD ENERGY PRODUCTS AND FOREST
10 MAINTENANCE INCOME TAX CREDIT; TO ALLOW AN INCOME TAX
11 CREDIT FOR WOOD ENERGY PRODUCTS AND FOREST
12 MAINTENANCE EXPANSION PROJECTS; AND FOR OTHER
13 PURPOSES.
14
15

Subtitle

16
17 TO AMEND THE WOOD ENERGY PRODUCTS AND
18 FOREST MAINTENANCE INCOME TAX CREDIT; AND
19 TO ALLOW AN INCOME TAX CREDIT FOR WOOD
20 ENERGY PRODUCTS AND FOREST MAINTENANCE
21 EXPANSION PROJECTS.
22
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 19-6-301(181), concerning the enumeration
27 of special revenues, is amended to read as follows:

28 (181) Transfers from general revenues for financial incentive
29 plans and incentive agreements under § 15-4-1607, § 26-51-506(c)(2)(B)(vii),
30 § 26-51-506(c)(3)(D)(vi), and § ~~26-51-2704(e)(7)(A)~~ 26-51-2704(c)(8)(A);
31

32 SECTION 2. Arkansas Code § 26-51-2703(2), concerning the definitions
33 to be used under the Arkansas Wood Energy Products and Forest Maintenance
34 Income Tax Credit, is amended to read as follows:

35 (2) "Incentive agreement" means an agreement entered into by a
36 business and the Arkansas Economic Development Commission to provide the



1 business an incentive to locate a new qualified wood energy products and
 2 forest maintenance project or ~~expand an existing~~ a qualified wood energy
 3 products and forest maintenance expansion project in Arkansas;

4
 5 SECTION 3. Arkansas Code § 26-51-2703(3)(A), concerning the
 6 definitions to be used under the Arkansas Wood Energy Products and Forest
 7 Maintenance Income Tax Credit, is amended to read as follows:

8 (3)(A) "New full-time permanent employee" means a position or
 9 job that:

10 (i) Is created pursuant to an executed incentive
 11 agreement;

12 (ii) Is filled by one (1) or more employees or
 13 contractual employees who:

14 (a) Were Arkansas taxpayers during the year in
 15 which the tax credits or incentives were earned;

16 (b)(1) Work at or fill a position dedicated to
 17 the facility identified in the incentive agreement.

18 (2) New employees of the taxpayer that
 19 enters into the incentive agreement who do not work at the facility may be
 20 counted if they:

21 (A) Otherwise meet the definition
 22 of a new full-time permanent employee;

23 (B) Are subject to the Arkansas
 24 Income Tax Withholding Act of 1965, § 26-51-901 et seq.;

25 (C) Meet an average hourly wage
 26 threshold equal to or greater than the state average hourly wage for the
 27 preceding calendar year; and

28 (D) Are verified by reports and
 29 methods established as required by the incentive agreement; and

30 (c)(1) Are not employees hired by a business
 31 before the date the incentive agreement was executed unless:

32 (A) The position or job filled by
 33 the existing employee was created in accordance with the incentive agreement;
 34 and

35 (B) The position vacated by the
 36 existing employee was either filled by a subsequent employee or no subsequent

1 employee will be hired because the business no longer conducts the particular
 2 business activity requiring that classification.

3 (2) If the Director of the Arkansas
 4 Economic Development Commission and the Secretary of the Department of
 5 Finance and Administration find that a significant impairment of Arkansas job
 6 opportunities for existing employees will otherwise occur, they may jointly
 7 authorize the counting of existing employees as new full-time permanent
 8 employees; and

9 (iii) Has been filled for at least twenty-six (26)
 10 consecutive weeks with an average of at least thirty (30) hours worked per
 11 week.

12
 13 SECTION 4. Arkansas Code § 26-51-2703(5), concerning the definitions
 14 to be used under this Arkansas Wood Energy Products and Forest Maintenance
 15 Income Tax Credit, is amended to read as follows:

16 (5) “Qualified wood energy products and forest maintenance
 17 project” means a project specified in the incentive agreement to include one
 18 (1) or more Arkansas facilities in the same ownership group:

19 (A) For which the taxpayer commenced construction by the
 20 date specified in the incentive agreement, but no earlier than January 1,
 21 2020;

22 (B) That supports the Arkansas timber industry by using
 23 low-value wood, including without limitation sawmill residuals, forest
 24 thinnings, unwanted treetops, and damaged or diseased trees, to produce high-
 25 efficiency, high-energy wood energy products;

26 (C) In which the taxpayer has a total investment in excess
 27 of fifty million dollars (\$50,000,000);

28 (D) That is undertaken by a taxpayer who has entered into
 29 an incentive agreement with the State of Arkansas in which the taxpayer
 30 commits to creating at least one hundred (100) net new full-time permanent
 31 employees with an average annual wage of at least sixty thousand dollars
 32 (\$60,000);

33 (E) That will provide a positive cost-benefit analysis to
 34 the state as determined by the commission and the Office of Economic Analysis
 35 and Tax Research;

36 (F) That is certified as having a closing date before

1 December 31, 2023, for all facilities, by which the taxpayer has certified
 2 and the state has verified that necessary capital acquisition and borrowing
 3 for the facilities has occurred to ensure that funds will be available to:

- 4 (i) Secure a site for the facilities;
- 5 (ii) Obtain engineering services for the facilities;
- 6 (iii) Purchase equipment for the facilities; and
- 7 (iv) Commence construction on the facilities; and

8 (G) That is undertaken by a taxpayer that has elected by
 9 agreement with the State of Arkansas for the taxpayer's facilities to be
 10 classified as a qualified wood energy products and forest maintenance
 11 project; and

12
 13 SECTION 5. Arkansas Code § 26-51-2703, concerning the definitions to
 14 be used under this Arkansas Wood Energy Products and Forest Maintenance
 15 Income Tax Credit, is amended to add an additional subdivision to read as
 16 follows:

17 (7) "Qualified wood energy products and forest maintenance
 18 expansion project" means a project specified in the incentive agreement to
 19 include one (1) or more Arkansas facilities in the same ownership group:

20 (A) For which the taxpayer commenced construction by the
 21 date specified in the incentive agreement, but no earlier than January 1,
 22 2023;

23 (B) That supports the Arkansas timber industry by using
 24 low-value wood, including without limitation sawmill residuals, unwanted
 25 treetops, forest thinnings, and damaged or diseased trees, to produce high-
 26 efficiency, high-energy wood energy products;

27 (C) In which the taxpayer has a total investment in excess
 28 of fifty million dollars (\$50,000,000);

29 (D) That is undertaken by a taxpayer who has entered into
 30 an incentive agreement with the State of Arkansas in which the taxpayer
 31 commits to creating at least one hundred (100) net new full-time permanent
 32 employees with an average annual wage of at least sixty thousand dollars
 33 (\$60,000);

34 (E) That will provide a positive cost-benefit analysis to
 35 the state as determined by the commission and the Office of Economic Analysis
 36 and Tax Research;

1 (F) That is certified as having a closing date before
 2 December 31, 2025, for all facilities, by which the taxpayer has certified
 3 and the state has verified that necessary capital acquisition and borrowing
 4 for the facilities has occurred to ensure that funds will be available to:

- 5 (i) Secure a site for the facilities;
- 6 (ii) Obtain engineering services for the facilities;
- 7 (iii) Purchase equipment for the facilities; and
- 8 (iv) Commence construction on the facilities; and

9 (G) That is undertaken by a taxpayer that has elected by
 10 agreement with the State of Arkansas for the taxpayer's facilities to be
 11 classified as a qualified wood energy products and forest maintenance
 12 expansion project.

13
 14 SECTION 6. Arkansas Code § 26-51-2704(a)(2), concerning the
 15 qualification requirements for taxpayers to claim the Arkansas wood energy
 16 products and forest maintenance income tax credit, is amended to read as
 17 follows:

18 (2) Has been certified as owning a qualified wood energy
 19 products and forest maintenance project or a qualified wood energy products
 20 and forest maintenance expansion project.

21
 22 SECTION 7. Arkansas Code § 26-51-2704(b)-(e), concerning the Arkansas
 23 wood energy products and forest maintenance income tax credit, are amended to
 24 read as follows:

25 (b)(1) If a tax credit is allowed under this section and, as of the
 26 end of the taxable year in which the tax credit is first allowed, the
 27 taxpayer does not have a public retirement system of the State of Arkansas as
 28 a proprietor, partner member, shareholder, or holding an interest, the lesser
 29 of five million dollars (\$5,000,000) or the amount of income tax due by the
 30 taxpayer may be claimed each year.

31 (2)(A) Any unused tax credit that cannot be claimed in a tax
 32 year under subdivision (b)(1) of this section may be carried forward
 33 indefinitely to apply the unused tax credit to future tax liability.

34 (B) Beginning July 1, 2021, and by July 15 of each
 35 subsequent year, a taxpayer shall provide notice to the Department of Finance
 36 and Administration of the amount of tax credits, including without limitation

1 tax credits the taxpayer expects will receive certification during the fiscal
2 year by the Department of Energy and Environment, subject to the limitation
3 in subdivision (b)(1) of this section, that will be sold or transferred for
4 value.

5 (c)(1) If at the time of the execution of the incentive agreement the
6 taxpayer that owns a qualified wood energy products and forest maintenance
7 project or a qualified wood energy products and forest maintenance expansion
8 project is a proprietorship, partnership, limited liability company, or other
9 business organization and any portion of the tax credits allowed under this
10 section would be apportioned to a public retirement system of the State of
11 Arkansas as proprietor, partner, member, or shareholder of the taxpayer, the
12 public retirement system shall have the possession and control of all tax
13 credits, including without limitation any tax credits allowed under this
14 section and otherwise apportioned to the other proprietors, partners,
15 members, shareholders, or beneficiaries.

16 (2) The possession and control of tax credits by a public
17 retirement system under this subsection shall be confirmed in writing by the
18 office of the Department of Finance and Administration charged with the
19 administration of the tax credits allowed under this section.

20 (3) A public retirement system that has possession and control
21 of tax credits under this subsection shall sell or transfer for value the tax
22 credits allowed under this section to the State of Arkansas for eighty
23 percent (80%) of the face value in lieu of the right of a proprietor,
24 partner, member, shareholder, or beneficiary of the qualified wood energy
25 products and forest maintenance project or the qualified wood energy products
26 and forest maintenance expansion project to claim the tax credits as
27 otherwise allowed under applicable state law.

28 (4) Subject to the total tax credit allowed under this section
29 for a qualified wood energy products and forest maintenance project, the
30 maximum amount of tax credits allowed under an incentive agreement between
31 the taxpayer and the state, and the annual transfer by the Arkansas Economic
32 Development Commission as agreed by the state and the taxpayer, no more than
33 five million dollars (\$5,000,000) of the tax credits in the possession and
34 control of the public retirement system with respect to a qualified wood
35 energy products and forest maintenance project under this subsection may be
36 sold or transferred each year.

1 (5) Subject to the total tax credit allowed under this section
2 for a qualified wood energy products and forest maintenance expansion
3 project, the maximum amount of tax credits allowed under an incentive
4 agreement between the taxpayer and the state and the annual transfer by the
5 commission as agreed by the state and the taxpayer, no more than five million
6 dollars (\$5,000,000) of the tax credits in the possession and control of the
7 public retirement system with respect to a qualified wood energy products and
8 forest maintenance expansion project under this subsection may be sold or
9 transferred each year.

10 (6) Any unused tax credit that cannot be sold or transferred in
11 a tax year by the operation of subdivision (c)(4) or subdivision (c)(5) of
12 this section may be carried forward indefinitely to be sold or transferred by
13 future operation of subdivision (c)(4) or subdivision (c)(5) of this section.

14 ~~(6)(7)~~ Beginning July 1, 2021, by July 15 of each year, a public
15 retirement system with possession and control of tax credits under this
16 subsection shall provide notice to the Department of Finance and
17 Administration of the amount of tax credits, including without limitation tax
18 credits the public retirement system expects will receive certification
19 during the fiscal year by the Department of Energy and Environment, subject
20 to the ~~limitation in subdivision~~ limitations in subdivisions (c)(4) and
21 (c)(5) of this section, to be sold or transferred for value.

22 ~~(7)(A)(8)(A)~~ The State of Arkansas shall pay the purchase price
23 equal to eighty percent (80%) of the face value of all the tax credits
24 included in the notice required under subdivision ~~(e)(6)(c)(7)~~ of this
25 section on or before June 30 of the calendar year following the calendar year
26 in which the notice was provided for all tax credits certified by the
27 Department of Energy and Environment by warrant from the Economic Development
28 Incentive Fund funded by a transfer from general revenue.

29 (B) Tax credits under this subsection sold or transferred
30 for value to the State of Arkansas are extinguished upon payment of the
31 purchase price as if claimed against the tax imposed by this chapter.

32 (C)(i) In the event the State of Arkansas fails to timely
33 pay the purchase price required under subdivision ~~(e)(7)(A)(c)(8)(A)~~ of this
34 section for the tax credits included in the notice required under subdivision
35 ~~(e)(6)(c)(7)~~ of this section, the public retirement system may, before the
36 end of the taxable year following the taxable year in which failure to pay

1 occurs, sell or transfer for value such tax credits to one (1) or more
2 persons.

3 (ii) The person or persons to whom the tax credits
4 are sold or transferred under subdivision ~~(e)(7)(C)(i)~~(c)(8)(C)(i) of this
5 section may claim the tax credits in accordance with applicable law.

6 (iii) Any tax credits sold or transferred for value
7 under subdivision ~~(e)(7)(C)(i)~~(c)(8)(C)(i) of this section shall not expire
8 before the end of the third taxable year following the year in which the tax
9 credits were sold or transferred for value under this section.

10 (D) The sale or transfer of tax credits under this
11 subdivision ~~(e)(7)(c)(8)~~ shall be confirmed in writing by the office of the
12 Department of Finance and Administration charged with the administration of
13 the tax credit allowed under this section.

14 (d) A tax credit under this section shall not be authorized without:

15 (1) A cost-benefit analysis, including without limitation an
16 analysis of other incentives offered by the State of Arkansas with respect to
17 the qualified wood energy products and forest maintenance project or the
18 qualified wood energy products and forest maintenance expansion project
19 subject to the tax credit, as certified by the Director of the Arkansas
20 Economic Development Commission in consultation with the Chief Fiscal Officer
21 of the State; and

22 (2) An incentive agreement with performance criteria and
23 clawback provisions as required under subsection (e) of this section.

24 (e) The issuance, sale, and transfer of a tax credit authorized under
25 this section shall be subject to an incentive agreement with performance
26 criteria and clawback provisions between the taxpayer and the commission
27 that:

28 (1)(A) Is subject to the approval of the Chief Fiscal Officer of
29 the State to ensure that the cost-benefit analysis required under subsection
30 (d) of this section is met and maintained for a test period that is the
31 longer of the life of the tax credits or twelve (12) years, subject to the
32 limitation stated in subdivision (e)(1)(B) of this section.

33 (B) The test period described in subdivision (e)(1)(A) of
34 this section shall not be longer than fifteen (15) years; and

35 (2) Shall include without limitation the:

36 (A) Capital investment for the qualified wood energy

1 products and forest maintenance project or the qualified wood energy products
 2 and forest maintenance expansion project;

3 (B) New full-time permanent employee positions created by
 4 the qualified wood energy products and forest maintenance project or the
 5 qualified wood energy products and forest maintenance expansion project;

6 (C) Annual salary requirements for the new full-time
 7 permanent employee positions created by the qualified wood energy products
 8 and forest maintenance project or the qualified wood energy products and
 9 forest maintenance expansion project;

10 (D) Timeline for fulfilling the investment ~~of~~ and job
 11 creation targets stated in the performance and clawback agreement for the
 12 qualified wood energy products and forest maintenance project or the
 13 qualified wood energy products and forest maintenance expansion project; and

14 (E) Conditions for the clawback provisions, which are
 15 triggered if, during the test period stated in subdivision (e)(1) of this
 16 section, the taxpayer:

17 (i) Does not meet the required targets of the
 18 qualified wood energy products and forest maintenance project or the
 19 qualified wood energy products and forest maintenance expansion project
 20 related to capital investment, job creation, timeline, or annual salary
 21 amounts; or

22 (ii) Fails to maintain a positive cost-benefit
 23 analysis.

24
 25 SECTION 8. EFFECTIVE DATE. Sections 1-7 of this act are effective for
 26 tax years beginning on or after January 1, 2023.