~~Non-Profit Incentive Act of 2005~~
~~(Act 1277 of 2005 as amended)~~

~~Rules and Regulations~~

~~I. Introduction~~

~~The primary purpose of the Non-Profit Incentive Program is to encourage the location or expansion of national or regional non-profit headquarters in Arkansas. This incentive program may only be offered at the discretion of the Director of the Arkansas Economic Development Commission. Eligible non-profit organizations must create a payroll for new full-time permanent employees of at least five hundred thousand dollars ($500,000) and pay an average wage in excess of one hundred and ten percent (110%) of the state or county average wage (whichever is less) in the county in which the organization locates or expands. In addition, the non-profit must receive seventy-five percent (75%) of its income from out-of-state sources.~~

~~For additional information contact:~~

~~Incentives Manager~~
~~Arkansas Economic Development Commission~~
~~One Capitol Mall~~
~~Little Rock, AR 72201~~
~~(501) 682-5277~~

~~II. Definitions~~

~~(a) "Average hourly wage" means the weekly earnings, excluding overtime, bonuses, and company paid benefits, of all new full-time permanent employees hired after the date of the signed financial incentive agreement, divided by the number of new full-time permanent employees, divided by forty (40);~~

~~(b) "Commission" means the Arkansas Economic Development Commission;~~

~~(c) "County or state average hourly wage" means the weighted average weekly earnings for Arkansans in all industries, both statewide and county wide, as~~

~~calculated by the Arkansas Department of Workforce Services in their most recent Annual Covered Employment and Earnings publication, divided by forty (40);~~

~~(d) “Director” means the Director of the Arkansas Economic Development Commission;~~

~~(e) “Financial incentive agreement” means an agreement entered into by an eligible non-profit organization and the Arkansas Economic Development Commission to provide the organization an incentive to locate in Arkansas;~~

~~(f) “Governing authority” means the quorum court of a county or the governing body of a municipality;~~

~~(g) “Income” means the monies received by a non-profit organization for operations of the organization and shall include donations, revenue from sales or memberships, grants or legislative appropriations;~~

~~(h) (1)(A) “New full-time permanent employee” means a position or job which was created pursuant to the signed financial incentive agreement and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.~~

~~(B) The position or job held by such employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.~~

~~(2) Provided, however, in order to qualify for the provisions of this act, a contractual employee must be offered a benefits package comparable to a direct employee of the non-profit organization seeking incentives under this subchapter;~~

~~(i) “Non-profit organization” means an entity which has filed papers with and been approved by the Arkansas Secretary of State as having met the qualifications for a non-profit organization in Arkansas and which has also received a § 501 (c) (3), § 501 (c) (6), or § 501 (c) (9) designation from the United States Internal Revenue Service prior to applying for the benefits afforded under this subchapter;~~

~~(j) “Payroll” means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible non-profit organization to new full-time permanent employees hired after the date of the signed financial incentive agreement;~~

~~(k) (1) "Project" means:~~

~~(A) Preconstruction costs, including project planning costs, architectural/engineering fees, right-of-way purchases, utility extensions, site preparations, purchase of mineral rights, building demolition, builders risk insurance, capitalized start-up costs, deposits and process payments on eligible machinery and equipment and other costs necessary to prepare for the start of construction;~~
~~(B) Costs associated with the construction of a new plant or facility; including, but not limited to, land, building, production equipment or support infrastructure; or~~

~~(C) Costs associated with the expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or~~
~~(D) Cost associated with modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.~~
~~(2) "Project" does not include:~~
~~(A) Expenditures for routine repair and maintenance that do not result in new construction or expansion;~~
~~(B) Routine operating expenditures; or~~
~~(C) Expenditures incurred at multiple facilities.~~
~~(3) In order to receive credit for, or refunds related to project costs, the costs must be incurred within four (4) years from the date the financial incentive agreement was signed by the Commission.~~

~~(l) "Project plan" means the plan submitted to the Commission containing such information as may be required by the Director to determine eligibility for benefits. If approved, the project plan becomes a supplement to the financial incentive agreement; and~~

~~(m) "Start of construction" means any activity which causes a physical change to the building and/or property identified as the site of the approved project, excluding engineering surveys, soil tests, land clearing and extension of roads and utilities to the project site.~~

~~III. To Qualify for the Program a Non-Profit Organization Must~~

~~(a) Have a payroll of new full-time permanent employees in excess of five hundred thousand dollars ($500,000) annually.~~

~~(b)(1) Pay wages that average in excess of one hundred and ten percent (110%) of the lesser of the county or state average wage; and~~

~~(2) Receive a minimum of seventy-five percent (75%) of its income from out-of-state sources.~~

~~(c) Hospitals, medical clinics, accredited academic educational institutions and churches are specifically excluded from receiving the benefits authorized by this subchapter.~~

~~(d) Non-profit organizations must meet the payroll threshold and the average hourly wage threshold and invest a minimum of two hundred fifty thousand dollars ($250,000) in order to receive the sales and use tax refund authorized by this program. A sales tax refund will be made only after the audit of expenditures and payroll by the Revenue Division of the Arkansas Department of Finance and Administration has determined the non-profit organization is in compliance with all qualifications to receive benefits under this act.~~

~~IV. Terms of Financial Assistance~~

~~Payroll rebate:~~

~~(a) The award of this incentive is at the discretion of the Director of the Arkansas Economic Development Commission.~~

~~(b) Benefits are conditioned upon the hiring of new full-time permanent employees and certifying to the Department of Finance and Administration that the requisite payroll thresholds have been met.~~

~~(c) The requisite annual payroll for new full-time permanent employees of five hundred thousand dollars ($500,000) shall be reached within twenty-four (24) months of the signing of the financial incentive agreement in order for the benefits of this section to be approved.~~

~~(d) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the non-profit organization has presented compelling reasons for an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed twenty-four (24) months to reach the requisite annual payroll.~~

~~(e) In addition to having an annual payroll of five hundred thousand dollars ($500,000) or more, the non-profit organization applying for benefits under this act shall pay average hourly wages in excess of one hundred and ten percent (110%) of the lesser of the state or county average wage for the county in which the organization locates or expands.~~

~~(f) Payments to non-profit organizations with an annual payroll in excess of five hundred thousand dollars ($500,000) shall be considered and may be authorized by the Director, after having signed a financial incentive agreement with the non-profit organization. The payment will be four percent (4%) of the annual payroll of the new full-time permanent employees.~~

~~(g) The Director may authorize this benefit for up to five (5) years.~~

~~Sales and Use Tax Refund:~~

~~(a)(1) In order to qualify for the sales and use tax refund authorized by this section, a qualified non-profit organization must qualify for the payroll rebate program and spend in excess of two hundred fifty thousand dollars ($250,000) on buildings, machinery and equipment in the new or improved facility.~~

~~(2) An eligible non-profit organization must file an application with the Commission before the start of construction. The application shall include a project plan which clearly identifies the intent of the project, the expenditures planned, the start and end date of the project and an estimate of total project costs. In order to receive refunds related to project costs, the costs must be incurred within four (4) years from the date the financial incentive agreement was signed by the Commission and;~~

~~(A) The application must include an endorsement resolution from the governing authority of a municipality or county in whose jurisdiction the non-profit organization will be located.~~

~~(B) The resolution shall:~~

- ~~(i) Endorse the applicant's participation in this sales and use tax refund program; and~~
- ~~(ii) Authorize the refund of any sales and use tax levied by the municipality or county.~~

~~(b)(1) A sales and use tax refund of state and local sales and use taxes, excepting the sales and use tax dedicated to the Educational Adequacy Fund, as authorized by Act 107 of the 2nd Special Session of 2004 and the Conservation Tax Fund, as authorized by Arkansas Code Annotated 19-6-484, on the purchases of the~~

~~material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding non-profit organization, and machinery and equipment to be located in, or in connection with, such a building, shall be authorized by the Director of the Department of Finance and Administration.~~

~~(2) A refund shall not be authorized for:~~

~~(A) Routine operating expenditures; or~~

~~(B) The purchase of items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.~~

~~(c) Subject to the approval of the Arkansas Economic Development Commission, a program participant may make changes in a project by written amendment to the project plan filed with the Commission, provided that the amendment complies with Arkansas Code Annotated 15-4-3207(h)(2).~~

~~(d) All claims for sales and use tax refunds under this section shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.~~

~~V. Program Administration~~

~~(a)(1) In order to qualify for a sales and use tax refund, a non-profit organization must reach the two hundred fifty thousand dollars ($250,000) investment threshold within four (4) years from the date of the signed financial incentive agreement.~~

~~(2) All claims for sales and use tax refunds shall be filed annually with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.~~

~~(3) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed except when:~~

~~(A) A non-profit organization fails to pay sales tax on an item that was taxable; and~~

~~(B) The applicable tax is subsequently assessed as a result of an audit by the Revenue Division of the Department of Finance and Administration.~~

~~(b) All claims for sales and use tax refunds relating to an audited purchase shall be entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.~~

~~(c)(1) All claims for payroll rebates shall be certified to the Department of Finance and Administration and shall be recertified annually thereafter during the term of the financial incentive agreement.~~

~~(2) Failure to certify payroll figures and recertify those figures annually may result in a denial of payments.~~

~~(3)(A) If the annual payroll of the non-profit organization applying for benefits under this subchapter is not met within twenty-four (24) months after the signing of the financial incentive agreement, the non-profit organization may request, in writing, an extension of time to reach the required payroll threshold.~~

~~(B) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the non-profit organization has presented compelling reasons for an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed twenty-four (24) months.~~

~~(d)(1) If the annual payroll of a non-profit organization receiving benefits under this subchapter falls below the threshold for qualification in a year subsequent to the one in which it initially qualified for the incentive, the benefits outlined in the financial incentive agreement will be terminated unless the non-profit organization files a written application for an extension of benefits with the Arkansas Economic Development Commission explaining why the payroll has fallen below the level required for qualification.~~

~~(2) The Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration may approve the request for extension of time, not to exceed twenty-four (24) months, for the non-profit organization to bring the payroll back up to the requisite payroll threshold amount and may approve the continuation of benefits during the period the extension is granted.~~

~~(3) If a non-profit organization fails to reach the payroll threshold before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time, the non-profit organization will be liable for repayment of all payroll benefits previously received by the non-profit organization.~~

~~(e)(1) If a non-profit organization fails to maintain the average hourly wage requirements for benefits under this subchapter, the non-profit organization will be liable for the repayment of all payroll benefits previously received by the non-profit organization after the average hourly wage for new full-time permanent employees fell below the required threshold.~~

~~(2) After a non-profit organization has failed to maintain the average hourly wage requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the non-profit organization or file a lawsuit to enforce the repayment provisions.~~

~~(f)(1) If a non-profit organization fails to notify the Department of Finance and Administration that the annual payroll of the non-profit organization has fallen below the threshold for qualification for and retention of any incentive authorized by this subchapter, that non-profit organization will be liable for the repayment of all payroll~~

~~benefits which were paid to the non-profit organization after it no longer qualified for the benefits.~~

~~(2) After a non-profit organization has failed to notify the Department of Finance and Administration that the non-profit organization has fallen below the payroll threshold, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the non-profit organization or file a lawsuit to enforce the repayment provisions.~~

~~(3) Interest shall also be due at the rate of ten percent (10%) per annum.~~

~~(g)(1) For a qualified non-profit organization taking advantage of the sales and use tax refund, if the project costs exceed the initial project cost estimate included in the approved financial incentive agreement, the non-profit organization shall submit an amended project plan, as soon as the cost overrun is recognized, to include the updated cost figures.~~

~~(2)(A) Amendments that exceed twenty-five percent (25%) of the original financial incentive agreement estimate will not be considered and shall be submitted as a new project.~~

~~(B) An amendment shall not change the start date as specified in the original project.~~

~~(h) The Department of Finance and Administration may obtain whatever information is necessary from a participating non-profit organization and from the Arkansas Department of Workforce Services to verify that a non-profit organization that has entered into financial incentive agreements with the Arkansas Economic Development Commission is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments and payrolls to the Department of Finance and Administration.~~

~~(i) The Department of Finance and Administration may file a lawsuit in the Circuit Court of Pulaski County, or the circuit court in any county where a qualifying non-profit organization is located, to enforce the repayment provisions of this subchapter.~~

~~(j) The Commission may promulgate rules and regulations, as needed, to administer the provisions of this subchapter.~~

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Economic Development Commission

DIVISION Strategic Planning and Research

DIVISION DIRECTOR Kurt Naumann

CONTACT PERSON Kurt Naumann

ADDRESS 900 West Capitol; Little Rock, AR 72201

PHONE NO. 501-682-7308 **FAX NO.** 501-682-7499 **E-MAIL** knaumann@arkansasedc.com

NAME OF PRESENTER AT COMMITTEE MEETING Kurt Naumann

PRESENTER E-MAIL knaumann@arkansasedc.com

INSTRUCTIONS

A. Please make copies of this form for future use.

B. Please answer each question <u>completely</u> using layman terms. You may use additional sheets, if necessary.

C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.

D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

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1. What is the short title of this rule? Nonprofit Incentive Act of 2005 (Repeal)

2. What is the subject of the proposed rule? This is a repeal of the Nonprofit Incentive Act of 2005 Rule (Current rule was finalized 8-11-2009). Act 208 of 2017 repealed the Nonprofit Incentive Act of 2005.)

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No X

   If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No X

   If yes, what is the effective date of the emergency rule?

   When does the emergency rule expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No X

If yes, please provide a brief summary explaining the regulation. Defines the process by which the Arkansas Economic Development Commission may make discretionary grants to applicants meeting the eligibility requirements for programs and projects that strengthen and sustain military installations in Arkansas.

Does this repeal an existing rule? Yes X No ☐

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. ______ (No replacement rule)

Is this an amendment to an existing rule? Yes ☐ No X

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. § 15-4-209(b)(5) enabling legislation, and § 15-4-3107(k) authority to promulgate rules under the Nonprofit Incentive Act of 2005

7. What is the purpose of this proposed rule? Why is it necessary? The rule repeals the rule as a result of Act 208 of 2017 which repealed the Nonprofit Incentive Act of 2005.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.arkansasedc.com

9. Will a public hearing be held on this proposed rule? Yes X No ☐

If yes, please complete the following:

Date: July 12, 2017

Time: 8:30 am

Place: AEDC, Suite 400; 900 West Capitol; LR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

July 12, 2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

September 1, 2017 (tentative)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Draft attached to run June 11th, 12th and 13th

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e).

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. None

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Economic Development Commission

DIVISION Strategic Planning and Research

PERSON COMPLETING THIS STATEMENT Kurt Naumann

TELEPHONE 501-682-7308 **FAX** 501-682-7499 **EMAIL:** knaumann@arkansasedc.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Nonprofit Incentive Act of 2005 (Repeal)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No X

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes X No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No ☐

   If an agency is proposing a more costly rule, please state the following:

   (a) How the additional benefits of the more costly rule justify its additional cost;

   (b) The reason for adoption of the more costly rule;

   (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

   (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

   (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year **Next Fiscal Year**

General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)		Other (Identify)	
Total		Total	

(b) What is the additional cost of the state rule?

Current Fiscal Year		**Next Fiscal Year**	
General Revenue		General Revenue	
Federal Funds		Federal Funds	
Cash Funds		Cash Funds	
Special Revenue		Special Revenue	
Other (Identify)	$222.04 (Legal Advertisement)	Other (Identify)	
Total	$222.04	Total	$0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year
$ ___________
$0

Next Fiscal Year
$ 0

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year
$ ___________
$0

Next Fiscal Year
$ 0

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars ($100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:
   - (a) justifies the agency's need for the proposed rule; and
   - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
   - (a) the rule is achieving the statutory objectives;
   - (b) the benefits of the rule continue to justify its costs; and
   - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.