

Chapter 175

Public Corporations for Economic Development Act

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14-175-101. Title.

This chapter shall be known and may be cited as the “Public Corporations for Economic Development Act”.

History. Acts 2005, No. 1372, § 3.

14-175-102. Intent.

It is the intent of the General Assembly by the enactment of this chapter to authorize in each municipality and county in this state the incorporation of a public corporation as a political subdivision of the state for the purpose of securing and developing industry and fostering economic development and to invest the corporation with all powers that may be necessary to enable it to accomplish those purposes.

History. Acts 2005, No. 1372, § 3.

14-175-103. Definitions.

As used in this subchapter:

- (1) “Board” means the board of directors of a corporation;
- (2) “Corporation” means a corporation organized under this chapter;
- (3) (A) “Costs” means expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by a corporation.
 - (B) “Costs” includes, but is not limited to:
 - (i) Real property assembly costs, including, but not limited to, those costs incurred for and in connection with the acquisition of interests in real property and improvements and any deficit incurred as a result of the sale or lease as lessor by the corporation of real or personal property or a project for consideration which is less than its cost to the corporation;
 - (ii) Capital costs, including, but not limited to:
 - (a) The actual costs of the construction of new buildings, structures, and fixtures;
 - (b) The demolition, alteration, expansion, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures and the environmental remediation of real property;
 - (c) Parking;
 - (d) Landscaping;
 - (e) The acquisition of equipment; and
 - (f) Site clearing, grading, and preparation;
 - (iii) Financing costs, including, but not limited to:

(a) All interest paid to holders of evidences of indebtedness issued to pay for project costs;

(b) All costs of issuance; and

(c) Any redemption premiums, credit enhancement, or other related costs;

(iv) Research and development costs;

(v) Professional service costs, including, but not limited to, those costs incurred for architectural, planning, engineering, accounting, and legal advice and services;

(vi) Relocation costs;

(vii) Organizational and administrative costs incurred by the corporation, including, but not limited to, the costs of:

(a) Conducting feasibility studies, environmental impact studies, and other studies; and

(b) Informing the public with respect to a project;

(viii) The amount of any contributions made in connection with a project; and

(ix) Costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, or amenities or streets or the rebuilding or expansion of streets in connection with a project;

(4) “County” means any county in this state;

(5) “Enterprise” means any for-profit or nonprofit corporation, partnership, sole proprietorship, firm, franchise, association, organization, or trust, or any other form of legal entity;

(6) “Governing body” means the council, board of directors, or other like body in which the legislative functions of a municipality are vested or the quorum court of the county as it has been constituted and acting as the legislative body of the county under Arkansas Constitution, Amendment 55, or if not so constituted and acting, the county court of the county;

(7) “Municipality” means any incorporated city or town in this state;

(8) “Primary job” means a job that is available or expected to become available at an enterprise:

(A) For which a majority of the products or services of that enterprise are ultimately used in regional, statewide, national, or international markets infusing new dollars into the local economy; and

(B) That derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;

(9) (A) “Project” means an undertaking related to the creation or retention of primary jobs.

(B) A project may include one (1) or more of the following:

(i) The acquisition and disposition of land, buildings, equipment, facilities, related infrastructure, and improvements necessary to:

(a) Attract, promote, or develop new or expanded enterprises that will create or retain primary jobs in the future; or

(b) Provide job training and postsecondary education required or suitable for the creation or retention of primary jobs;

(ii) The construction or expansion of buildings, facilities, related infrastructure, and improvements necessary to attract, promote, or develop new or expanded enterprises that will create or retain primary jobs in the future or to provide job training and postsecondary education required or suitable for the creation or retention of primary jobs;

(iii) Job training required or suitable for the creation or retention of primary jobs;

(iv) Postsecondary education required or suitable to educate students in fields of study needed by enterprises providing primary jobs; and

(v) Expenditures found by the corporation to be required or suitable for infrastructure necessary to attract, promote, or develop new or expanded enterprises, limited to:

(a) Streets and roads;

(b) Parking;

(c) Rail spurs;

(d) Water and electric utilities;

(e) Gas utilities;

(f) Drainage and related improvements;

- (g) Telecommunications;
- (h) Data communications; and
- (i) Internet improvements; and

(10) “State” means the State of Arkansas.

History. Acts 2005, No. 1372, § 3.

14-175-104. Construction.

(a) This chapter shall be liberally construed in conformity with its intent.

(b) (1) All acts and activities of the public corporation performed under the authority of this chapter are legislatively determined and declared to be essential governmental functions.

(2) The General Assembly determines and declares that this chapter is the sole authority necessary for the performance of the acts authorized by this chapter.

History. Acts 2005, No. 1372, § 3.

14-175-105. Authority generally.

There is conferred upon corporations incorporated as public corporations under this chapter the authority to take such action and to do or cause to be done such things as shall be necessary or desirable to accomplish and implement the purposes and intent of this chapter according to the import of this chapter.

History. Acts 2005, No. 1372, § 3.

14-175-106. Authority and procedure to incorporate.

(a) Whenever any number of natural persons, but not fewer than three (3), files with the governing body an application in writing for authority to incorporate a public corporation under this chapter, if it is made to appear to the governing body that each of the persons is a duly qualified elector of the municipality or county creating the corporation and if the governing body adopts a resolution that declares that it will be wise, expedient, and necessary that a public corporation be formed and that the persons filing the application may proceed to form a corporation, then the persons shall become the incorporators of and shall proceed to incorporate the corporation in the manner provided in this chapter.

(b) No corporation shall be formed under this chapter unless:

- (1) The application provided for in this section is made; and
- (2) The resolution provided for in this section is adopted.

(c) No county or municipality may authorize more than one (1) corporation under this chapter.

History. Acts 2005, No. 1372, § 3.

14-175-107. Articles of incorporation.

(a) The articles of incorporation of the corporation shall state:

(1) The names of the persons forming the corporation, together with the residence of each person forming the corporation, and a statement that each person is a qualified elector of the municipality or county;

(2) The name of the corporation, which shall be:

(A) (i) “The Economic Development Corporation of [City], Arkansas”;

(ii) “The Economic Development Corporation of [Town], Arkansas”;

(iii) “The Economic Development Corporation of [County], Arkansas”; or

(B) Some other name of similar import; and

(3) Any other matters relating to the corporation required by the Arkansas Nonprofit Corporation Act of 1993, § [4-33-101](#) et seq., or that the incorporators may choose to insert, and which are not inconsistent with this chapter or with the laws of this state.

(b) (1) The form and content of the articles of incorporation shall be submitted to the governing body for its approval.

(2) The governing body shall evidence approval by a resolution entered upon the minutes of the governing body.

History. Acts 2005, No. 1372, § 3.

14-175-108. Execution and recording of articles.

(a) The articles of incorporation shall be signed and acknowledged by the incorporators and shall have attached to them a certified copy of the resolution required by § [14-175-107](#).

(b) (1) The articles of incorporation, together with a certified copy of the resolution required by § [14-175-107](#), shall be filed in the location or locations required by the Arkansas Nonprofit Corporation Act of 1993, § [4-33-101](#) et seq.

(2) When the articles of incorporation and attached resolution have been so filed, the corporation referred to in the articles shall come into existence and shall constitute a body corporate and politic and a political subdivision of the state under the name set forth in the articles of incorporation, whereupon the corporation shall be vested with the rights and powers granted in this chapter.

History. Acts 2005, No. 1372, § 3.

14-175-109. Board of directors.

(a) The corporation shall have a board of directors composed of five (5) members.

(b) All powers of the corporation shall be exercised by the board or pursuant to its authorization.

(c) (1) (A) The directors shall be residents of the municipality or county creating the corporation and shall be appointed by the mayor of the creating municipality or the county judge of the creating county, subject to confirmation by the governing body of the municipality or county.

(B) The directors shall serve terms not exceeding five (5) years as determined by the governing body of the municipality or county and set in such manner as will result in the expiration of terms on a staggered basis.

(2) Upon the expiration of a director's term, a successor director shall be appointed for a five-year term by the mayor of the creating municipality or the county judge of the creating county, subject to confirmation by the governing body of the municipality or county.

(3) Each director shall serve until his or her successor is elected and qualified.

(4) A director shall be eligible to succeed himself or herself.

(5) In the event of a vacancy in the membership of the board, however caused, a director shall be appointed by the mayor of the creating municipality or the county judge of the creating county, subject to confirmation by the governing body of the municipality or county.

(d) Each director shall qualify by taking and filing with the clerk of the municipality or county creating the corporation the oath of office in which the member shall swear to support the Constitution of the United States and the Constitution of the State of Arkansas and to discharge faithfully his or her duties in the manner provided by law.

(e) A director shall receive no compensation for his or her services but shall be entitled to reimbursement for reasonable and necessary expenses incurred in the performance of his or her duties.

(f) After reasonable notice of and an opportunity to be heard concerning the alleged grounds for removal, the mayor of the municipality or the county judge of the county which created the board may remove any director for misfeasance, malfeasance, or willful neglect of duty.

(g) (1) A majority of the members of the board shall constitute a quorum for the transaction of business.

(2) No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and duties of the corporation.

History. Acts 2005, No. 1372, § 3.

14-175-110. Officers.

(a) (1) The officers of the corporation shall consist of:

(A) A chair;

(B) A vice chair;

(C) A secretary;

(D) A treasurer; and

(E) Such other officers as the board shall deem necessary to accomplish the purposes for which the corporation was organized.

(2) The offices of secretary and treasurer may be held, but need not be held, by the same person.

(b) (1) The chair and vice chair of the corporation shall be elected by the board from its membership.

(2) The secretary, the treasurer, and any other officers of the corporation who may be, but need not be, members of the board shall also be elected by the board.

History. Acts 2005, No. 1372, § 3.

14-175-111. Powers generally.

(a) The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Arkansas Nonprofit Corporation Act of 1993, § [4-33-101](#) et seq.

(b) In addition to the rights, powers, privileges, authority, and functions authorized under subsection (a) of this section, the corporation shall have the following powers with respect to projects, together with all powers incidental to those powers or necessary for the performance of those powers set forth in this subsection:

(1) (A) To receive sales and use taxes levied pursuant to the Economic Development Tax Act, § [14-174-101](#) et seq., from the local government or governments under whose authority the corporation was created;

(B) To acquire, whether by construction, devise, purchase, gift, lease, or otherwise or any one (1) or more of those methods and to construct, improve, maintain, equip, and furnish one (1) or more projects located within the state and within or near the corporate limits of the local government or governments under whose authority the corporation was created;

(C) To lease to a user all or any part of any project for the rentals and upon such terms and conditions as the corporation's board may deem advisable and not in conflict with the provisions of this chapter;

(D) To sell by installment payments or otherwise and convey all or any part of any project to a user for a purchase price and upon such terms and conditions as the corporation's board may deem advisable and not in conflict with the provisions of this chapter;

(E) To donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property or furnishings, fixtures, or equipment or personal property to an institution of higher education for a legal purpose of the institution upon such terms and conditions as the board may deem advisable and that are not in conflict with the provisions of this chapter;

(F) To make loans to a user for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any project, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project, and charge and collect interest on the loans for the loan payments and upon such terms and conditions as its board may deem advisable and not in conflict with the provisions of this chapter;

(G) To contract with private enterprises to carry out industrial development programs or objectives or to assist with the development or operation of an economic development program or objectives consistent with the purposes and duties of the corporation, upon such terms and conditions as its board may deem advisable and not in conflict with the provisions of this chapter;

(H) To appoint, employ, and compensate such employees, agents, architects, planners, engineers, accountants, attorneys, and other persons as the activities of the corporation may require;

(I) (i) To invest any of the corporation's funds that the board may determine are not presently needed for its corporate purposes in obligations that are direct or guaranteed obligations of the United States, other securities in which public funds may be invested under the laws of this state, or securities of, or other interests in, open-end investment companies or investment trusts registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq.

(ii) However, the portfolio of any investment company or investment trust is limited solely to securities in which public funds may be invested under the laws of this state;

(J) Contract with enterprises to impose such terms and conditions on the receipt of benefits provided by a corporation as the corporation's board may deem advisable and not in conflict with the provisions of this chapter; and

(2) (A) Whether included in the subdivisions (b)(1)(A)-(J) of this section or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

(B) However, the powers shall be subject at all times to the control of the local government under whose auspices the corporation was created.

History. Acts 2005, No. 1372, § 3.

14-175-112. Economic development taxes.

(a) All tax proceeds received by a corporation under the Economic Development Tax Act, § [14-174-101](#) et seq., shall be used for any one (1) or more of the following purposes:

(1) To pay administrative costs incurred by the corporation;

(2) To pay costs incurred in connection with a project;

(3) To pay costs incurred for promotional purposes; or

(4) To pay expenses incurred by the corporation under § [14-175-113](#) relating to job training.

(b) No tax proceeds received by a corporation under the Economic Development Tax Act, § [14-174-101](#) et seq., may be used for a project for the direct benefit of a specific individual or individuals or nongovernmental enterprise or enterprises unless the primary purpose of the project is to finance facilities for the securing and developing of industry within or near the local government that levies the tax.

History. Acts 2005, No. 1372, § 3.

14-175-113. Average weekly wage — Job training expenditures.

A corporation may spend tax revenue received under this chapter for job training offered through an enterprise only if the enterprise has committed in writing to:

(1) Create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or

(2) Increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.

History. Acts 2005, No. 1372, § 3.

14-175-114. Limitation on liability.

The corporation, the corporation's board of directors, officers, employees and agents, the local government approving the organization of a corporation, members of the governing body of the local government, and employees of the local government are not liable for damages arising from the performance of a governmental function of the corporation or local government.

History. Acts 2005, No. 1372, § 3.

14-175-115. Annual reports.

(a) Each corporation shall make a written report to the governing body that created the corporation concerning its activities for the preceding calendar year.

(b) Each report shall include audited financial statements covering the corporation's operations during the preceding calendar year.

History. Acts 2005, No. 1372, § 3.

14-175-116. Application of Arkansas Nonprofit Corporation Act of 1993.

(a) Each corporation is subject to the provisions of the Arkansas Nonprofit Corporation Act of 1993, § [4-33-101](#) et seq., to the extent that those provisions are not in conflict with the provisions of this chapter.

(b) If a provision of the Arkansas Nonprofit Corporation Act of 1993, § [4-33-101](#) et seq., is in conflict with any provision of this chapter, the provisions of this chapter shall control.

History. Acts 2005, No. 1372, § 3.