

Economic Development Amendment and Enforcement of Fiscal Violations

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Job Creation, Job Expansion, and Economic Development Amendment

1. Removes the limitation on amount of general obligation bonds the state may issue to pay for economic development projects
2. Allows a county, city, town, or other municipal corporation to obtain or provide money for other entities to support economic development projects or services
3. Clarifies the authority of counties and municipalities to issue bonds for economic development projects instead of undefined industrial development purposes
4. Allows state legislators to authorize the use of taxes other than special taxes to pay off municipal and county bond debt
5. Removes the requirement that municipal and county bonds may be sold only at public sale
6. Allows cities, towns, school districts, and counties to form compacts for economic development projects

Amendment to Article 12, § 5

Prior to Amendment:

- No municipality may obtain or appropriate funds for any corporation, association, institution or individual

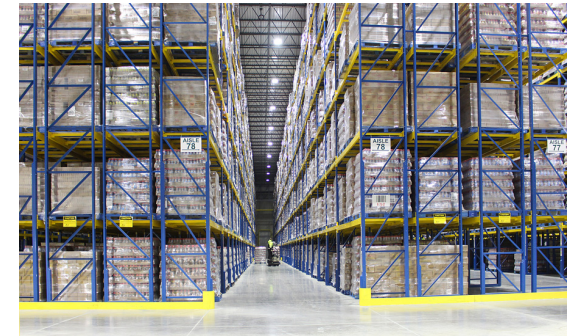
After Amendment:

- Municipality may obtain or appropriate funds for a corporation, association, institution or individual if it qualifies as an Economic Development Project or Service

What Qualifies as an Economic
Development Project or Service?

Economic Development Projects

- Land, buildings, furnishings, equipment, facilities, infrastructure and improvements for the development, retention and expansion of certain facilities and centers
 - Manufacturing, production, and industrial facilities
 - Research, technology, and development facilities
 - Recycling facilities
 - Distribution centers
 - Call centers
 - Warehouse facilities
 - Job training facilities
 - Regional or national corporate headquarters facilities



Infrastructure

- Land acquisition
- Site preparation
- Road and highway improvements
- Rail spur, railroad, and railport construction
- Water service
- Wastewater treatment
- Employee training and equipment to support it
- Environmental mitigation or reclamation



Economic Development Services

- Planning, marketing, and strategic advice and counsel for job recruitment, development, retention, and expansion
- Supervision and operation of industrial parks or similar properties
- Contract negotiations for the sale or lease of industrial parks or similar properties



Stodola v. Lynch

- Plaintiffs claim that the defendant cities, Little Rock and North Little Rock, had made unlawful appropriations of city funds to private corporations, the Regional Chamber of Commerce and Economic Development Corporation, in violation of Article 12, Section 5 of the Arkansas Constitution
- Pulaski County Circuit Court ruled that the city's payments violated Article 12's absolute prohibition of using county or municipal funds to support private corporations and issued injunction to stop payments
- Cities appealed after Article 12, Section 5 amended for Economic Development Projects or Services
- Arkansas Supreme Court remanded case with instructions to dismiss the complaint and lift the injunction as Article 12 now permits municipalities to make appropriations to entities for economic-development services

Modifications to Amendment 62 Local Capital Improvement Bonds

Amendment 62, § 1

Prior to Modification:

- Municipalities could issue local capital improvement bonds for “industrial development purposes”

After Modification:

- Replaces “industrial development purposes” with “economic development projects”

Amendment 62, § 2

Prior to Modification:

- Municipalities could pay for “facilities for the securing and developing of industry”
 - “Industry” undefined
- Only special taxes

After Modification:

- Replaces vague “industry” language with “economic development projects”
- Includes “other taxes”

Amendment 62, § 3

Prior to Modification:

- Industry development bonds sold only at a public sale

After Modification:

- Economic Development Project bonds can be sold publicly or privately
 - Process at the discretion of the government entity

Amendment 62, § 5

Prior to Modification:

- Use of special tax revenues collected in excess of the amount needed to pay off bonds to be used for additional bond issues if approved by voters

After Modification:

- Eliminates the authority of cities and counties to use excess tax revenues to pay for other bond issues
 - Any surplus tax collections would be transferred to the county or city's general revenues

Amendment 62, § 9

Prior to Modification:

- Cities, towns, school districts, and counties enter into a compact for “industry development”

After Modification:

- Replaces vague “industry” language with “economic development projects”

What Are Available Remedies for
Violation of Fiscal Management?

§ 14-77-101 et seq.

Local Fiscal Management Responsibility Act

- The executive officer of the political subdivision, upon being notified of a public officer or employee's alleged violation of a fiscal responsibility and management law, is obligated to investigate
- Executive officer for municipalities:
 - Mayor, city manager, or city administrator
- Public officer or employee:
 - Any officer or employee of a country, municipality, or school district of Arkansas
- Political subdivision:
 - Any county, municipality, or school district of Arkansas
- Fiscal responsibility and management laws:
 - Political subdivisions not to become stockholders in or lend credit to private corporations - exceptions, Arkansas Constitution, Article 12, § 5
 - Local Capital Improvement Bonds, Arkansas Constitution, Amendment 65

§ 14-77-103 & 104

Compliance & Notice

- If allegations have merit, the facts and circumstances relating to a violation and any corrective or remedial action shall be documented and placed in the personnel files of the public officer or employee involved in the violation
- Executive officer shall give public officer or employee notice of findings and any corrective or remedial action to be taken
 - Notice must be actual
 - Notice must state that employee's failure to make corrective or remedial action within thirty (30) days after the date of notification creates the rebuttable presumption that the violation was committed knowingly

§ 14-77-106

Investigation of Violations

- If executive officer determines that there has been violation, the executive officer or the Legislative Joint Auditing Committee may request the appropriate prosecuting attorney to conduct an investigation regarding the violation
- The prosecuting attorney shall conduct a timely investigation
 - If the prosecuting attorney fails to conduct a timely investigation, executive officer may request the Attorney General to conduct an investigation into the violations

Prosecution and Damages

§ 14-77-107. Civil action against violator

- Appropriate prosecuting attorney or Attorney General may file a civil suit against public officer or employee

§ 14-77-108. Knowing violations; punishment

- If a court finds that employee “knowingly violated the provisions of the fiscal responsibility and management laws,” may award damages and impose a civil penalty between \$100 and \$1,000 for each violation

§ 14-77-109. Knowing violations; cost recovery

- Prosecuting attorney or Attorney General may recover attorney fees from public official or employee

§ 14-77-110. Applicability of provisions

- All actions and procedures under Act are civil in nature

§ 14-77-111. Supplement to other remedies

- Remedies in the Act do not preclude pursuing any other available criminal or civil cause of action

§ 25-1-124

Reporting by Public Employee

- A public employee with supervisory fiduciary responsibility over all fiscal matters of a public employer shall report a loss of public funds to Arkansas Legislative Audit, including without limitation:
 - A. Apparent unauthorized disbursements of public funds; or
 - B. The apparent theft or misappropriation of public funds or property.
- Report must be made within five (5) business days of the date the public employee learns of the loss of public funds
- Employee who purposely fails to report is guilty of a Class A misdemeanor

§ 21-1-601 et seq. Whistle-Blower Act



- A public employer shall not take adverse action against a public employee because the employee:
 1. Communicates in good faith to an appropriate authority the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or a violation or suspected violation of a law, rule, or regulation adopted under the law of a political subdivision
 - The communication made at a time and in a manner which gives the public employer reasonable notice of need to correct the waste or violation
 2. Participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review
 3. Objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of laws of a political subdivision
 4. Reports of a loss of public funds under § 25-1-124

§ 21-1-604

Civil action for violation



- A public employee who alleges a violation of Whistle-Blower Act may bring a civil action for appropriate injunctive relief or actual damages, or both, within 180 days after the occurrence of alleged violation
- Public employee must establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee or a person acting on his or her behalf engaged or intended to engage in protected activity
- Public employer shall have an affirmative defense to a civil action brought by a public employee if the adverse action taken against a public employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a communication made pursuant to § 21-1-603

§ 14-59-115

Duties of Municipal Treasurer

- Treasurer must submit a monthly financial report to the council or board of directors and maintain the accounting records
- If treasurer does not comply or requests that specific duties be reassigned, the municipality may assign specific duties to another employee or may contract for the services to be performed by a private, qualified person or entity
- Before the municipality assigns or contracts with a person or entity for the disbursing of funds must:
 1. Establish by ordinance a method that provides for internal accounting controls and documentation for audit and accounting purposes
 2. Treasurer shall approve the disbursement of funds
 3. Ensure that the person or entity is adequately insured and bonded and meets industry standards
- Municipality may **not** assign collecting of funds to anyone other than an municipal employee, but **may** assign disbursing of funds for payroll, bonded debt, or construction projects funded with bond proceeds

§ 14-59-117

Withholding of turnback for noncompliance

- If Arkansas Legislative Audit, public official, or private accountant determines that a municipal treasurer is not substantially complying with duties, shall report the findings to the Legislative Joint Auditing Committee
- Committee shall notify the mayor and the city council of the municipality's noncompliant accounting records and allow municipality 60 days to bring them into compliance
- After 60 days, if Audit reviews the records and determines that municipality is not in compliance:
 - Committee shall report the noncompliance to the Treasurer of State who will place 50% of municipality's turnback in escrow until compliance
 - Municipality's governing body must assign duties to another employee or contract qualified person or entity
- After 120 days, if Audit has not received a request for review of records from the municipality:
 - Committee will notify municipality and Treasurer of State of continued noncompliance
 - Treasurer of State will withhold all turnback until compliance
- After 6 months, if Audit has not received a request for review of records from the municipality then the Committee will notify municipality and Treasurer of State of continued noncompliance
 - Municipality forfeits all escrowed funds
 - May not receive additional turnback until compliance

§ 14-62-101 et seq.

Revocation of Charter of Municipal Corporation

- If Legislative Joint Auditing Committee concludes the process under 14-59-117 and then within the subsequent 3-year period the Committee concludes the process a second time, the Committee may notify the Attorney General and Governor
- Attorney General shall file pleadings in circuit court to revoke the charter of municipality
- If proven, court shall revoke municipality's charter and the Governor appoints a Receiver
- Receiver shall resolve outstanding indebtedness and make report of proceedings and actions every 6 months in which all moneys and property collected by receiver shall be accounted for

§ 14-59-118

Penalty for Failure to Perform Duties

- Any municipal treasurer who refuses or neglects to maintain the books and records is deemed guilty of malfeasance, a criminal charge
- Upon conviction, treasurer fined between \$100 and \$1,000 and shall be removed from office

§ 10-4-419

Report of Improper or Illegal Practices

- If audit to the Legislative Joint Auditing Committee or subcommittee reflects evidence of either:
 1. Improper practices of financial administration or inadequacy of fiscal records
 - The Legislative Auditor must report the evidence to the appropriate executive official and to the governing body of the political subdivision
 2. Apparent unauthorized disbursements or unaccounted-for funds or property by a public official or employee
 - The Legislative Auditor must report the transactions to prosecuting attorney for the county in which the political subdivision is located, the Governor, the appropriate executive official, and the governing body of the political subdivision of the state.

§ 10-4-419

Prosecution

- If Legislative Joint Auditing Committee determines that a political subdivision has not corrected the deficiencies noted in previous report
 - The Committee may request the prosecuting attorney take appropriate action to assure that the records of the political subdivision are maintained in accordance with law
- If prosecuting attorney fails or refuses to take appropriate action within a reasonable time after notice from the Committee that a political subdivision is not maintaining its records in substantial compliance with law,
 - The Committee may request the Attorney General take such appropriate action as may be necessary to assure that the records of the political subdivision are maintained in compliance with law.



Questions & Answers