

HOUSE BILL 1265

By Holt

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 67, relative to economic development incentives.

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

SECTION 1. This act shall be known and may be cited as the "Fair Accountability and Clarity in Tax Subsidies Act" or "FACTS Act".

SECTION 2. Tennessee Code Annotated, Section 4-3-731(a), is amended by deleting the language "§ 4-3-717(d)(1)" and substituting instead the language "§ 4-3-717"; and is further amended by adding the following immediately after the language "to the department":

, including, but not limited to, failing to:

- (1) Add one hundred percent (100%) of the committed jobs agreed to in the agreement; or
- (2) Submit the annual and baseline reports, as applicable.

SECTION 3. Tennessee Code Annotated, Section 4-3-731, is amended by adding the following new subsections:

(d) In order to ensure compliance with the agreement in subsection (a) and the veracity of reports filed pursuant to subsection (c), the department is authorized to access any relevant information and records, confidential or otherwise, of any agency unless the department is denied such access by federal law or explicitly named and denied such access by state law. Upon such denial, the agency shall provide the department with a written explanation of its inability to produce the information or records and, after reasonable accommodations are made, shall produce for the department all information and records, or portions thereof, that can legally be reviewed.

Accommodations that may be negotiated between the agency and the department include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

(e) Notwithstanding any law to the contrary, upon receipt of a written request by the department for any information or record, the agency shall provide to the department as soon as is practicable and without delay, but not more than three (3) business days after actual receipt of the request, either:

(1) The requested materials; or

(2)

(A) If there is a legal basis for refusal to comply with the request, a written denial of the request together with the information specified in subsection (d); or

(B) If the entire request, after reasonable good faith efforts, cannot be fulfilled within three (3) business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, and an opportunity for the department to modify or prioritize the items within the request. A delay due to the significant difficulty or the extensiveness of a request for access to information or records must not exceed three (3) calendar weeks after actual receipt of such request by any agency. The day the request is received is not considered one (1) of the three (3) business days. For the purposes of this section, a business day does not include a Saturday, a Sunday, or a day during which the agency's offices of the custodian of the public records are closed.

(f) The department shall use the information and records available pursuant to this section annually to ensure the veracity of reports filed pursuant to subsection (c) for at least fifty-percent (50%) of all outstanding agreements created by subsection (a).

SECTION 4. Tennessee Code Annotated, Section 67-1-1702, is amended by adding the following new subsection:

(d) This part does not apply to any record, document, or other information pertaining to credits found in § 67-4-2009, § 67-4-2109, or § 67-6-224.

SECTION 5. Tennessee Code Annotated, Section 67-4-2009, is amended by deleting subdivision (3)(H) in its entirety.

SECTION 6. Tennessee Code Annotated, Section 67-4-2109, is amended by deleting subdivisions (b)(3)(B), (b)(3)(E), (b)(3)(I), and (g)(9)(i), in their entireties.

SECTION 7. Tennessee Code Annotated, Section 67-4-2109(r)(3), is amended by deleting the subdivision and substituting the following:

Nothing in this subsection (r) authorizes the disclosure of returns, tax information, or tax administration information, as such terms are defined in § 67-1-1701. This exemption does not apply to any record, document, or other information pertaining to credits found in § 67-4-2009, § 67-4-2109, or § 67-6-224.

SECTION 8. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following new subsection:

(s)

(1) A qualified business enterprise claiming a credit under § 67-4-2009(3), subdivision (b)(1), (b)(2)(A), or (b)(2)(B), or § 67-6-224 is required to make reports pursuant to this subsection (s).

(2) On or before March 1 of each year, a qualified business enterprise shall file a report with the commissioner for the tax year ending during the

immediately preceding calendar year, referred to in this subsection (s) as the report year, that contains the following information:

(A) The number of full-time employees of the qualified business enterprise based in this state on the last day of the report year; and

(B) The incremental amount of qualified investment made in the report year.

(3) The commissioner may prescribe forms for the annual report described in this subsection (s).

(4) By April 1 of each year, the commissioner shall report to the speakers of the senate and the house of representatives aggregate data on the location by city or county, employment levels, and qualified investment amounts of qualified business enterprises for each year and any revenue loss during the report year as a result of each qualified business enterprise claiming the listed credits.

(5) Notwithstanding any other law to the contrary, the reports provided under this subsection (s) are public records as defined in § 10-7-503.

SECTION 9. Tennessee Code Annotated, Section 67-6-224, is amended by deleting subsection (e) in its entirety.

SECTION 10. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect July 1, 2019, the public welfare requiring it.