

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

SENATE BILL 366

By: Senator Hickey  
By: Representative Hillman

## For An Act To Be Entitled

AN ACT TO REPEAL THE ARKANSAS DEVELOPMENT FINANCE CORPORATION ACT; TO REPEAL THE ARKANSAS CAPITAL DEVELOPMENT COMPANY ACT; AND FOR OTHER PURPOSES.

### Subtitle

TO REPEAL THE ARKANSAS DEVELOPMENT FINANCE CORPORATION ACT AND TO REPEAL THE ARKANSAS CAPITAL DEVELOPMENT COMPANY ACT.

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

SECTION 1. Arkansas Code § 4-113-103 is repealed.

~~4-113-103. Connect Arkansas Nonprofit organization Purposes Grants.~~

~~(a) The Arkansas Capital Corporation may form a nonprofit corporation named "Connect Arkansas" to:~~

~~(1) Prepare the people and businesses of Arkansas to secure the economic, educational, health, social, and other benefits available via broadband use;~~

~~(2) Facilitate the availability of broadband service to every home and business in Arkansas;~~

~~(3) Promote broadband based development in Arkansas, with the goals of facilitating:~~

~~(A) Broadband education so that the citizens of every home and business in Arkansas can take full advantage of broadband services; and~~

~~(B) The availability of broadband service to broadband-~~



~~educated citizens in every home and business in Arkansas by the end of the year 2012; and~~

~~(4)(A) Recognize that services such as geographical information system data delivery and high definition television programs require increasingly huge demands in bandwidth; and~~

~~(B) Promote broadband backbone networks that will serve all of Arkansas with the bandwidth to support Arkansas home and business needs into the foreseeable future.~~

~~(b) The Governor, and with the consent of the Governor, the Arkansas Economic Development Commission and any other state entity may make grants available for the purpose of supporting Connect Arkansas.~~

SECTION 2. Arkansas Code § 4-113-105 is repealed.

~~4-113-105. Broadband service registration.~~

~~(a) Connect Arkansas will establish a method for broadband service providers to register areas in which they provide broadband service to enable Connect Arkansas to target locations where broadband is not currently offered to Arkansas homes and businesses.~~

~~(b) Specific registration requirements will be established by Connect Arkansas, but competitive provider information shall be kept confidential by Connect Arkansas.~~

~~(c) Connect Arkansas shall execute nondisclosure agreements with providers to guarantee confidentiality.~~

~~(d) Connect Arkansas may disclose areas that are registered, the types of broadband available in registered areas, and any provider information that the provider identifies as acceptable for disclosure.~~

~~(e) Registered areas are subject to verification by Connect Arkansas and by the affected counties, but competitive service provider information shall not be released outside of Connect Arkansas.~~

SECTION 3. Arkansas Code Title 15, Chapter 4, Subchapter 9, is repealed.

~~Subchapter 9~~

~~—Arkansas Development Finance Corporation Act~~

~~15-4-901. Title.~~

~~This subchapter shall be referred to and may be cited as the "Arkansas Development Finance Corporation Act".~~

~~15-4-902. Purposes.~~

~~The purposes of each development finance corporation organized under the provisions of this subchapter shall be to:~~

- ~~(1) Promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Arkansas and its citizens;~~
- ~~(2) Encourage and assist, through loans, investments, or other business transactions in the location of new business and industry in this state and rehabilitate and assist existing business and industry;~~
- ~~(3) Stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state;~~
- ~~(4) Provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state;~~
- ~~(5) Cooperate and act in conjunction with other public or private organizations in the promotion and advancement of industrial, commercial, agricultural, and recreational development in this state; and~~
- ~~(6) Provide financing for the promotion, development, and conduct of all kinds of business activity in this state.~~

~~15-4-903. Definitions.~~

~~As used in this subchapter:~~

- ~~(1) "Board" means the State Banking Board;~~
- ~~(2) "Capital corporation" or "development finance corporation" means a corporation authorized to be organized under the provisions of this subchapter;~~
- ~~(3) "Commissioner" means the Bank Commissioner; and~~
- ~~(4) "Person", as used in § 15-4-922, includes a natural person, firm, association, corporation, joint stock company, trust, and trust estate.~~

~~15-4-904. Construction.~~

- ~~(a) This subchapter shall be construed liberally.~~
- ~~(b) The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes,~~

~~powers, manners, methods, or things.~~

~~15-4-905. Supervision.~~

~~(a) Each development finance corporation organized under the provisions of this subchapter shall be subject to the supervision, examination, and control of the Bank Commissioner. It shall make such reports of its condition to the commissioner as the commissioner shall prescribe.~~

~~(b) The commissioner is authorized to charge each development finance corporation under the commissioner's supervision assessment fees in order to defray the expenses of State Bank Department supervision and examination at the rate of forty five dollars (\$45.00) per examiner per hour of examination.~~

~~15-4-906. Articles of incorporation.~~

~~(a) The articles of incorporation for any development finance corporation organized under the provisions of this subchapter shall state:~~

~~(1) The name of the development finance corporation. The name shall include the words "capital corporation" or "development finance corporation" and such other designation as necessary to distinguish it from any subsequent development finance corporation which may be organized under the provisions of this subchapter and to distinguish it from any other corporation organized and existing under the laws of the State of Arkansas;~~

~~(2) The purpose for which the development finance corporation is formed;~~

~~(3) The period of duration of the development finance corporation, which may be perpetual or limited;~~

~~(4) The address of its principal office and the name and address of its agent upon whom process may be served;~~

~~(5) The total number of shares of common stock which the development finance corporation is authorized to issue. The number shall be not less than one thousand (1,000) shares of common stock having a par value of one hundred dollars (\$100) per share;~~

~~(6) The total number of shares of preferred stock which the development finance corporation is authorized to issue. The number shall be not less than thirty six thousand (36,000) shares of preferred stock having a par value of twenty five dollars (\$25.00) per share;~~

~~(7) In addition to the ex officio directors, the number of~~

~~directors, not fewer than six (6) nor more than fifteen (15), to be elected at the annual meeting of the holders of common stock, the terms of office of the directors, and any provisions desirable for staggering their terms of office, except that the terms of office of directors and other matters pertaining to the directors may be provided in the bylaws of the development finance corporation;~~

~~(8) The names and addresses of the incorporators who, with the ex officio directors, shall manage the affairs of the development finance corporation until the first meeting of the holders of the common stock; and~~

~~(9) Any provisions not inconsistent with law which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the development finance corporation.~~

~~(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this subchapter.~~

~~15-4-907. Application for preliminary approval.~~

~~Any fifteen (15) or more qualified natural persons, all of whom shall be bona fide residents of this state and among whom each of the congressional districts in the state shall have at least one (1) representative and who desire to associate themselves for the purpose of establishing and operating a development finance corporation, may subscribe, acknowledge, and file with the Bank Commissioner for preliminary approval proposed articles of incorporation, in duplicate, as authorized by § 15-4-906.~~

~~15-4-908. Preliminary investigation.~~

~~As soon as practicable after the receipt of the articles of incorporation, the Bank Commissioner shall, from the best source of information at his or her command:~~

~~(1) Ascertain the qualifications, character, and general fitness of the applicants and their standing in their respective communities; and~~

~~(2) Determine whether public convenience and necessity require a development finance corporation.~~

~~15-4-909. Preliminary approval.~~

~~If the Bank Commissioner is satisfied that the applicants are bona fide residents of the state, that each of the congressional districts in the state~~

~~is represented by at least one (1) applicant, that the applicants have the confidence of their respective communities, that public convenience and necessity require a development finance corporation, and that the proposed articles of incorporation conform to the provisions of § 15-4-906, the commissioner shall issue his or her certificate approving the articles of incorporation and authorizing the applicants to proceed with the organization of the development finance corporation.~~

~~15-4-910. Organization.~~

~~Upon receipt of the certificate of preliminary approval, the applicants may proceed to complete the organization of the development finance corporation, to obtain subscriptions for and payment of its capital stock, and to do all other things necessarily incidental and preliminary to its transacting business.~~

~~15-4-911. Certificate of organization.~~

~~(a) When the applicants shall have completed the organization of the proposed development finance corporation, they shall file with the Bank Commissioner a certificate of organization executed by the president of the development finance corporation, attested by its secretary, and with its seal affixed thereto, certifying:~~

~~(1) The names and addresses of all of its subscribers of common stock, the number of shares subscribed, and the number of shares fully paid for by each;~~

~~(2) The total number of shares of common stock subscribed but not fully paid for;~~

~~(3) The total number of shares of common stock paid in full;~~

~~(4) The total number of shares of preferred stock subscribed but not fully paid for;~~

~~(5) The total number of shares of preferred stock paid in full;~~

~~(6) The name and address of the depository or the names and addresses of the depositories, if more than one (1), holding on deposit the funds of the development finance corporation; and~~

~~(7) The names and addresses of the officers, directors, and members of the executive committee, if any, of the development finance corporation.~~

~~(b) The certificate of organization of the applicant shall be accompanied by the certificate of the named depository or by the certificates of the named depositories, if more than one (1), certifying the amount of the funds on deposit to the credit of the development finance corporation.~~

~~(c) The certificate of organization shall be accompanied also by any bylaws or by any regulations which may have been adopted by the directors of the development finance corporation.~~

~~15-4-912. Final investigation and approval by the board.~~

~~(a) Immediately upon the filing of the certificate of organization by the applicants, the Bank Commissioner shall submit to the State Banking Board the proposed articles of incorporation and the certificate of organization of the applicants.~~

~~(b) As soon as practicable thereafter, the board shall direct the commissioner to issue the applicants a certificate of incorporation in such form as it may prescribe, if the board, from the best source of information at its command, determines that:~~

~~(1) Public convenience and necessity continue to require the development finance corporation;~~

~~(2) The holders of the fully paid common stock of the development finance corporation are at least one hundred (100) in number;~~

~~(3) All of the subscribers of the common stock of the development finance corporation are qualified natural persons and bona fide residents of the State of Arkansas;~~

~~(4) Each congressional district in the state is represented by at least ten percent (10%) of the fully paid common stock of the development finance corporation and by at least one (1) member of the board of directors;~~

~~(5) Not less than one hundred thousand dollars (\$100,000) of common stock has been subscribed and fully paid for;~~

~~(6) Not less than nine hundred thousand dollars (\$900,000) of preferred stock has been subscribed and fully paid for; and~~

~~(7) The bylaws and regulations submitted, if any, are in conformity with the articles of incorporation and the provisions of this subchapter, are not contrary to the laws of this state, and are otherwise satisfactory.~~

~~(c) The commissioner shall return to the applicants one (1) of the~~

~~copies of the articles of incorporation theretofore submitted to him or her by the applicants, upon which copy he or she shall have endorsed the fact of the issuance by him or her of the certificate of incorporation.~~

~~(d) If bylaws and regulations are submitted and are found satisfactory by the board, the commissioner shall issue his or her certificate of approval thereof.~~

~~15-4-913. Beginning of corporate existence — Certificate as evidence.~~

~~(a) Upon the issuance of the certificate of incorporation by the Bank Commissioner, the corporate existence of the development finance corporation shall begin.~~

~~(b) The certificate of incorporation shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the applicants have been complied with and that the development finance corporation has been incorporated under this subchapter.~~

~~(c) A copy of the articles of incorporation so endorsed by the commissioner, as prescribed in § 15-4-912, shall be filed for recordation in the office of the county clerk in the county in which the principal office of the development finance corporation is located.~~

~~15-4-914. Amendment to articles of incorporation.~~

~~(a) A development finance corporation organized under the provisions of this subchapter may amend its articles of incorporation by a majority vote of the stock, represented in person or by proxy at any regular meeting or at any special meeting of the holders of the common stock called for that purpose.~~

~~(b) The power to amend shall include the power to accomplish any desired change in the provisions of the articles of incorporation and to include any purpose, power, or provision authorized to be included in the original articles of incorporation or by any amendment to this subchapter.~~

~~(c) Articles of amendment signed by the president or vice president and attested by the secretary certifying to such amendment and its lawful adoption shall be executed, acknowledged, and filed with the Bank Commissioner and when approved by the State Banking Board recorded with a certificate of the commissioner approving the articles of amendment in the same manner as the original articles of incorporation.~~

~~(d) As soon as the commissioner shall issue his or her certificate of amendment, the amendment or amendments shall be in effect.~~

~~15-4-915. Management of corporation—Voting and transfer of common stock.~~

~~(a) Only the holders of common stock, through the board of directors, shall manage the affairs of the development finance corporation. Each holder of common stock shall be entitled to one (1) vote, in person or by proxy, for each share of common stock held by him or her and, in voting for the directors of the development finance corporation, shall be entitled to exercise the right of cumulative voting, except that ex officio directors shall be excluded from any calculation with respect to cumulative voting.~~

~~(b) In the event of the transfer of shares of common stock, whether by act of the holder or by operation of law, the names of the proposed transferees shall be submitted to the directors of the development finance corporation and the directors may refuse to approve the transfer. In this event, the development finance corporation shall have the option to purchase the shares of common stock at par. Shares of common stock so purchased shall be cancelled and shares in lieu thereof may be reissued and sold by the development finance corporation. In the event that the directors do not purchase the shares of common stock subject to transfer, the shares of common stock then may be transferred without the approval of the directors.~~

~~(c)(1)(A) In addition to the directors elected by the holders of common stock of a development finance corporation, the Executive Director of the Arkansas Economic Development Commission and the President of the Arkansas Development Finance Authority, or persons holding similar executive positions in any agency or instrumentality succeeding thereto, shall be ex officio members of the board of directors of each development finance corporation created under this subchapter.~~

~~(B) Ex officio directors shall have all rights, duties, and obligations of a director except that their terms of office shall be concurrent with their employment in the position by the respective agencies and shall be deemed to have resigned as a director of the development finance corporation when such employment is terminated.~~

~~(C) The successor to such a person shall become a director without further action by the board of directors upon receipt of written~~

~~notice by the president of the development finance corporation from the chair of the board or commission of the respective agency that the person has become so employed.~~

~~(2) It shall not be necessary to amend the articles of incorporation of any development finance corporation organized and existing prior to the enactment of this provision, and the provisions of this subsection shall be applicable to all such development finance corporations on March 27, 1985.~~

~~15-4-916. Powers.~~

~~In furtherance of the purposes set out in § 15-4-902, each development finance corporation organized under this subchapter shall have the power:~~

~~(1) To sue and be sued, complain, and defend in its corporate name;~~

~~(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;~~

~~(3) To adopt a corporate seal, which may be altered at pleasure, and to use it or a facsimile thereof as required by law;~~

~~(4) Within the limitations hereinafter imposed and in the manner hereinafter prescribed, to borrow money and otherwise contract indebtedness, to issue its bonds, notes, debentures, or other obligations therefor with or without security, and, if with security, to secure the payment thereof by mortgage, pledge, or deed of trust on all or any part of its property, assets, revenues, or income;~~

~~(5) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;~~

~~(6) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property or assets;~~

~~(7) In the exercise of good judgment, to make sound and prudent loans to any person, firm, corporation, joint stock company, association, or trust and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith, consistent with the provisions of this subchapter;~~

~~(8) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of bonds, securities, or evidences of indebtedness~~

~~created by any other corporation of this state or any other state or government or created by any individual, unincorporated association, trust estate, improvement district, or government or municipal agency of any character;~~

~~(9) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of any other corporation of this or any other state or government subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the corporation may do business, and while owner of such stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;~~

~~(10) To make any and all contracts necessary or convenient for the exercise of the powers granted in this subchapter;~~

~~(11) To elect or appoint officers, agents, and employees of the development finance corporation and to define their duties and fix their compensation;~~

~~(12) To conduct its business and to have officers within or without the state;~~

~~(13) To accept gifts or grants of money, service, or property, real or personal;~~

~~(14) With the approval of the State Banking Board, by action of the directors of the development finance corporation, to make and alter bylaws and regulations not inconsistent with the articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the development finance corporation;~~

~~(15) To encourage and promote the cultural, industrial, economic, and recreational development of the State of Arkansas;~~

~~(16) To do and perform any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the development finance corporation is organized; and~~

~~(17)(A) To assist minority businesses in obtaining loans or other means of financial assistance.~~

~~(B) The terms and conditions of the loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this subchapter.~~

~~(C) In order to comply with this requirement, efforts must be made to solicit for review and analysis proposed minority business ventures.~~

~~(D) Basic loan underwriting standards will not be waived to inconsistently favor minority persons or businesses, or both, from the intent of the development finance corporation's lending practices.~~

~~15-4-917. Corporation to be nonprofit—Use of revenues.~~

~~(a) Each development finance corporation organized under the provisions of this subchapter shall be operated without profit to its members. No dividends shall be declared at any time on the common or preferred stock of such a development finance corporation.~~

~~(b) All revenues of the development finance corporation shall be devoted to the payment of interest on the bonds of the development finance corporation, to the maintenance of reserves, to the establishment and maintenance of a sinking fund for the retirement of debentures, and to transfers to earned surplus, substantially in the order named, but as may be more fully provided in the bylaws of the corporation.~~

~~15-4-918. Liability of directors and officers.~~

~~The directors and officers of the development finance corporation organized under the provisions of this subchapter shall not be responsible for losses unless the losses shall have been occasioned by the willful misconduct of such directors or officers.~~

~~15-4-919. Retirement of preferred stock.~~

~~(a) The outstanding preferred stock of a development finance corporation authorized and issued as provided in this subchapter shall be retired from time to time from the proceeds received by the development finance corporation from the issuance and disposal of its debentures, as provided in this subchapter, and until all of the issued and outstanding preferred stock of the development finance corporation shall have been retired, all proceeds of the development finance corporation received from the issuance and disposal of its debentures must be used for the retirement of the outstanding preferred stock of the development finance corporation.~~

~~(b) Such preferred stock shall be retired by lot, and the procedure~~

~~for determining the preferred stock so to be retired and for its retirement may be provided in the bylaws of the development finance corporation.~~

~~(c) Preferred stock of the development finance corporation retired as provided in this section shall be cancelled and shall not be reissued.~~

~~15-4-920. Exemption from the Arkansas Securities Act.~~

~~The bonds and all other obligations issued by any development finance corporation organized and existing under the provisions of this subchapter shall be exempt from the provisions of the Arkansas Securities Act, § 23-42-101 et seq.~~

~~15-4-921. Obligations as negotiable instruments.~~

~~All bonds, notes, debentures, and other obligations of a development finance corporation authorized under and issued in compliance with the provisions of this subchapter shall be, shall have, and are declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code, § 4-1-101 et seq.~~

~~15-4-922. Debentures.~~

~~(a) Any development finance corporation organized under the provisions of this subchapter may issue debentures which shall be unsecured and noninterest-bearing and which may be payable all at one (1) time or serially over such a period of time as the development finance corporation may provide for each such issue of debentures.~~

~~(b) The debentures issued under the provisions of this subchapter shall be issued by the development finance corporation in such form as its directors may provide and shall be executed by the president and secretary of the development finance corporation and be sealed with its corporate seal. In the event any of the officers whose signatures appear on any such obligation shall cease to be officers before the delivery thereof, such signatures nevertheless shall be valid and sufficient for all purposes the same as if they had remained in office until such delivery.~~

~~(c) The debentures shall not be offered for sale to the public. Instead, as a condition precedent to the purchase by the development finance corporation of bonds issued by any corporation organized and existing under the provisions of §§ 15-4-101, 15-4-102, 15-4-201—15-4-204, 15-4-206, 15-4-~~

~~209—15-4-212, and 15-4-501—15-4-525, or as a condition precedent to the purchase by the development finance corporation of any common or preferred stock of any corporation, or as a condition precedent to the loan by the development finance corporation of any sum of money to any person, the development finance corporation may require that the corporation, the bonds or stocks of which are purchased or the person to whom money is loaned, shall purchase from the development finance corporation at par debentures equal to at least five percent (5%) of the amount of the bonds or stocks purchased or the sum of money loaned. The corporation or the person so purchasing the debentures of the development finance corporation shall pledge the debentures so purchased to the development finance corporation as additional security for the payment of the bonds purchased, for the retirement of the stocks purchased, or for the repayment of the loan made by the development finance corporation.~~

~~(d) Until all of the preferred stock of the development finance corporation issued and outstanding has been fully retired as provided in this subchapter, the entire proceeds reserved by the development finance corporation from such sales of debentures shall be used exclusively for the retirement of the preferred stock of the development finance corporation.~~

~~15-4-923. Bonds and notes—Use of earned surplus.~~

~~(a)(1) Any development finance corporation organized under the provisions of this subchapter, from time to time, as the conduct of its business requires, may issue and sell at a price not less than par plus accrued interest its bonds or notes not to exceed, in a total aggregate amount outstanding at any one (1) time, ten (10) times the total amount of its fully paid common stock, its fully paid issued and outstanding preferred stock, its debentures issued and outstanding, and the amount of its earned surplus in excess of a reserve set aside therefrom equal in amount to five percent (5%) of the aggregate total amount of loans of the development finance corporation outstanding at any one (1) time.~~

~~(2) However, the validity of bonds or notes of the development finance corporation valid at the time of the issuance and delivery shall not thereafter be affected if in excess of such ratio.~~

~~(b)(1) The bonds or notes of the development finance corporation shall contain such provisions concerning the limitations, conditions, and security~~

~~therefor, if any, and shall be in such form and denominations; shall have such dates and maturities; shall bear interest payable at such times and places and at such rates; shall be payable at such places within or without the state; and shall contain such provisions as to registration of ownership, if registration is deemed desirable, all as the directors of the development finance corporation shall determine in conformity with the provisions of this subchapter.~~

~~(2) They shall be executed by the president and secretary of the development finance corporation and be sealed with the corporate seal, and, in the event any of the officers whose signatures appear on any such obligation shall cease to be officers before the delivery thereof, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.~~

~~(c)(1) Unless otherwise specifically stated therein, all bonds or notes of a development finance corporation issued under the provisions of this subchapter, irrespective of the date of issue, shall be on a parity as to security and shall be secured by a lien on the entire assets of the development finance corporation. The lien shall be a first lien and superior to all other debts and to all other encumbrances of whatsoever nature on all of the assets of the development finance corporation.~~

~~(2) However, the development finance corporation may issue one (1) or more series of bonds or notes of differing parity as to security or specifying a particular lien, pledge, or other security therefor, as the board of directors shall determine.~~

~~(d) The earned surplus of the development finance corporation, in whole or in part, in the discretion of the directors of the development finance corporation, may be invested as provided in the bylaws of the development finance corporation and retained in reserve to meet losses and contingencies of the development finance corporation.~~

#### ~~15-4-924. Eligibility for certain investments.~~

~~Any city or town in this state, any board, commission, or other authority duly established by ordinance of any city or town, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any city or town may invest any of its funds not immediately needed for its purposes in the bonds of any development~~

~~finance corporation organized under the provisions of this subchapter.~~

~~15-4-925. Exemption of interest and obligations from certain taxes.~~

~~Interest on bonds, notes, or other obligations of any development finance corporation issued under and in accordance with the provisions of this subchapter shall be exempt from all state income taxes and the principal thereof from inheritance taxes.~~

~~15-4-926. Loan policy—Disposition of funds.~~

~~(a) A development finance corporation organized under the provisions of this subchapter shall not lend money when credit is readily available elsewhere. Before granting a loan, the directors of the development finance corporation shall endeavor so far as is reasonably possible to ascertain that the first opportunity to grant the loan has been given to the banks, the insurance companies, and to the other lending institutions of the state.~~

~~(b) No development finance corporation organized under the provisions of this subchapter shall receive money on deposit.~~

~~(c) The development finance corporation shall not deposit any of its funds into any banking institution unless the institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the directors, exclusive of any director who is an officer or director of the depository so designated.~~

~~15-4-927. Dissolution.~~

~~(a)(1) Any development finance corporation organized under this subchapter may dissolve after the:~~

~~(A) Payment in full and cancellation of all its bonds and other obligations issued under the provisions of this subchapter; or~~

~~(B) Deposit in trust with the respective trustees designated in any deeds of trust given to secure the payment of any such obligations of a sum of money sufficient for the purpose.~~

~~(2) Dissolution may be effected by the vote of a majority of the common stock of the development finance corporation, represented in person or by proxy, at any regular meeting or at any special meeting of the holders of the common stock of the development finance corporation called for that purpose.~~

~~(b) A certificate of dissolution shall be signed by the president or vice president and attested by the secretary certifying to the dissolution and stating that they have been authorized to execute and file the certificate by a vote cast in person or by proxy by holders of a majority of the common stock of the development finance corporation.~~

~~(c) The certificate of dissolution shall be executed, acknowledged, and filed and recorded in the same manner as the original articles of incorporation. As soon as the Bank Commissioner shall have accepted and endorsed on the certificate of dissolution his or her approval thereof, the development finance corporation shall be deemed to be dissolved.~~

~~(d)(1) However, the development finance corporation shall continue for the purpose of paying, satisfying, and discharging any other existing liabilities or obligations, collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name.~~

~~(2)(A) Any assets remaining after all liabilities or other obligations of the development finance corporation have been satisfied or discharged shall be distributed pro rata first among the then holders, if any, of the preferred stock of the development finance corporation.~~

~~(B) Upon the retirement of the preferred stock of the development finance corporation, if any, at par, any remaining assets of the development finance corporation shall be distributed next, pro rata, among the then holders of the common stock of the development finance corporation.~~

~~(C) Upon the retirement of the common stock of the development finance corporation at par, all remaining assets of the development finance corporation shall be paid into the State Treasury.~~

SECTION 4. Arkansas Code Title 15, Chapter 4, Subchapter 10, is repealed.

~~Subchapter 10~~

~~—Arkansas Capital Development Company Act~~

~~15-4-1001. Title.~~

~~This subchapter shall be referred to and may be cited as the "Arkansas Capital Development Company Act".~~

~~15-4-1002. Definitions.~~

~~(a) As used in this subchapter:~~

- ~~(1) "Articles" means the articles of incorporation, articles of organization, certificate of limited partnership, or any similar document adopted by a capital development company in connection with its formation;~~
- ~~(2) "Board" means the State Banking Board;~~
- ~~(3) "Business law" means:~~
  - ~~(A) The Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.;~~
  - ~~(B) The Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.;~~
  - ~~(C) The Uniform Partnership Act (1996), § 4-46-101 et seq.;~~
  - ~~(D) The Uniform Limited Partnership Act (2001), § 4-47-101 et seq.;~~
  - ~~(E) The Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.; or~~
  - ~~(F) Any other laws related to the formation of business entities;~~
- ~~(4) "Commissioner" means the Bank Commissioner;~~
- ~~(5) "Capital development company" means a capital development company authorized to be organized under this subchapter;~~
- ~~(6) "Development finance corporation" means a development finance corporation organized under the Arkansas Development Finance Corporation Act, § 15-4-901 et seq.;~~
- ~~(7) "Equity capital" means the amount by which the total assets of a capital development company exceed the total liabilities of the company;~~
- ~~(8) "Equity interest" means any share of stock, limited liability company interest, partnership unit of ownership, or other evidence of ownership of an entity;~~
- ~~(9) "Financial institution" means any banking corporation or institution, trust company, savings bank, savings and loan association, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;~~
- ~~(10) "Governing board" means the individual or individuals authorized under applicable business law and the capital development~~

~~company's governing documents to manage the business of the company;~~

~~(1) "Governing documents" means the bylaws, operating agreement, partnership agreement, or other document adopted by the capital development company to govern its conduct; and~~

~~(2) "Person" includes any natural person, firm, association, corporation, joint stock company, trust, trust estate, partnership, limited liability company, joint venture, and any other similar entity authorized by law.~~

~~(b)(1) The singular number includes the plural.~~

~~(2) The masculine form includes the feminine.~~

~~15-4-1003. Construction.~~

~~(a) This subchapter shall be construed liberally.~~

~~(b) The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.~~

~~15-4-1004. Application for approval.~~

~~(a) Any development finance corporation that desires to establish and operate a capital development company may subscribe, acknowledge, and file in duplicate with the Bank Commissioner an application for approval and proposed articles.~~

~~(b) The application for approval shall include a certificate executed by the chief executive officer of the capital development company certifying:~~

~~(1) That not less than one hundred thousand dollars (\$100,000) of equity interests have been subscribed and fully paid for;~~

~~(2) The name and address of the depository or the names and addresses of the depositories, if more than one (1), holding on deposit the funds of the capital development company; and~~

~~(3) The names and addresses of the members of the governing board and the officers, managers, and other persons responsible for carrying out the day-to-day operations of the capital development company.~~

~~(c) The application for approval shall also be accompanied by any governing documents adopted by the governing board or the subscribers of equity interests of the capital development company.~~

~~15-4-1008. Ex officio members of the governing board.~~

~~(a)(1) The Executive Director of the Arkansas Economic Development Commission and the President of the Arkansas Development Finance Authority, or their respective designees, or persons holding similar executive positions in any agency or instrumentality succeeding thereto, or their respective designees, shall be ex officio members of the governing board of each capital development company created under this subchapter during their respective terms of office.~~

~~(2) An ex officio member under subdivision (a)(1) of this section may elect not to serve as a member of the governing board of a capital development company. He or she may change the election at any time.~~

~~(b) Ex officio members of the governing board shall have all rights, duties, and obligations of other members of the governing board under the capital development company's governing documents.~~

~~15-4-1009. Liability of governing board and officers.~~

~~No member of the governing board and no officer, manager, or other person responsible for carrying out the daily operations of a capital development company shall be responsible for any loss of assets of the capital development company unless the loss was occasioned by the willful misconduct of that person.~~

~~15-4-1011. Investigation and approval by the State Banking Board.~~

~~(a) As soon as practicable after the receipt of the application for approval and the articles, the Bank Commissioner shall:~~

~~(1) Ascertain the qualifications, character, and general fitness of the applicant and its standing in the community; and~~

~~(2) Determine whether public convenience and necessity require a capital development company.~~

~~(b)(1) Thereafter, the commissioner shall submit the application and the proposed articles of the company to the State Banking Board.~~

~~(2) As soon as practicable thereafter, the State Banking Board shall direct the commissioner to issue to the capital development company a certificate of organization in whatever form the commissioner may prescribe if the State Banking Board determines that:~~

~~(A) Public convenience and necessity continue to require~~

~~the capital development company;~~

~~(B) Each congressional district in the state is represented by at least one (1) member of the governing board;~~

~~(C) Not less than one hundred thousand dollars (\$100,000) of equity interests have been subscribed and fully paid for; and~~

~~(D) The governing documents submitted, if any, are in conformity with the articles and the provisions of this subchapter, are not contrary to the laws of the state, and are otherwise satisfactory.~~

~~(e) If a certificate of organization is issued under subdivision (b)(2) of this section, the commissioner shall return one (1) copy of the articles to the applicant and shall endorse on the face of the articles that the certificate of organization has been issued.~~

~~15-4-1012. Commencement of existence.~~

~~(a) Upon the issuance of the certificate of organization by the Bank Commissioner, the existence of the capital development company shall begin.~~

~~(b) The certificate of organization shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the applicant have been complied with and that the capital development company has been organized under this subchapter and the applicable business law under which it was formed.~~

~~(c) A copy of the articles so endorsed by the commissioner as prescribed by § 15-4-1011 shall be filed for recordation in the office of the Secretary of State.~~

~~15-4-1013. Articles.~~

~~The articles for any capital development company shall state:~~

~~(1) The name of the capital development company. The name shall include the words "Capital Development Company";~~

~~(2) The purpose for which the capital development company is formed;~~

~~(3) The period of duration of the capital development company, which may be perpetual or limited;~~

~~(4) The address of the capital development company's principal office and the name and address of its agent upon whom process may be served;~~

~~(5) Any provision required by the applicable business law under~~

~~which the capital development company is formed; and~~

~~(6)(A) Any provision not inconsistent with law that the organizers choose to insert for the regulation of the business and the conduct of the affairs of the capital development company.~~

~~(B) It shall not be necessary to state in the articles the powers enumerated in this subchapter.~~

~~15-4-1014. Amendment to articles.~~

~~(a) A capital development company may amend its articles in accordance with the applicable business law under which it was formed or with the provisions of its governing documents.~~

~~(b)(1) Articles of amendment adopted in accordance with subsection (a) of this section shall be executed by the authorized officers of the capital development company and filed with the Bank Commissioner for approval.~~

~~(2) The commissioner shall issue a certificate approving the articles of amendment if the articles of amendment do not violate this subchapter or other applicable law.~~

~~(3) An amendment is effective when the commissioner issues the certificate of approval.~~

~~(4) The capital development company shall record the articles of amendment and the commissioner's certificate of approval in the same manner as the original articles.~~

~~15-4-1015. Management of a capital development company.~~

~~(a) The governing board shall manage the affairs of the capital development company.~~

~~(b)(1) If a person desires to transfer an equity interest or the tax credit associated therewith, or both, whether by act of the person or by operation of law, the name or names of the proposed transferees and the terms of the proposed transfer shall be submitted to the governing board of the capital development company.~~

~~(2) If the requested transfer is not denied by the governing board of the capital development company within fifteen (15) days from the date of receipt of the name or names of the proposed transferees and the terms of the proposed transfer, the transfer shall be deemed approved by the governing board.~~

~~(3) If the governing board refuses to approve the transfer, the capital development company may purchase the equity interest or tax credit, or both, in accordance with the capital development company's governing documents.~~

~~(4) Equity interests purchased under subdivision (b)(2) of this section shall be cancelled, and equity interests in lieu thereof may be reissued and sold by the capital development company.~~

~~(5) If the governing board approves the transfer, then the equity interest or tax credit, or both, may be transferred.~~

~~15-4-1016. Powers.~~

~~(a) The purposes of each capital development company shall be to:~~

~~(1) Promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Arkansas and its citizens;~~

~~(2) Encourage and assist through loans, investments, or other business transactions in the location of new business and industry in this state and to assist the growth and expansion of existing business and industry;~~

~~(3) Stimulate and assist in the expansion of all kinds of business activity that will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state and, similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of knowledge-based industry, venture capital, and biotechnology and cultural, industrial, technological, scientific, commercial, agricultural, economic, and recreational development in this state;~~

~~(4) Provide financing for the promotion, development, and conduct of all kinds of business activity in this state, including new businesses developed through colleges and universities located in the state and businesses owned by women and minorities; and~~

~~(5) Foster the flow of development capital throughout the state.~~

~~(b) In furtherance of the purposes stated in subsection (a) of this section and in addition to any powers granted by the applicable business law under which it was formed, each capital development company shall have the power:~~

- ~~(1) To sue and be sued, complain, and defend in its own name;~~
- ~~(2) To have perpetual succession unless a limited period of duration is stated in its articles;~~
- ~~(3) To adopt a seal, which may be altered at pleasure, and to use it or a facsimile thereof as permitted by law;~~
- ~~(4) Within the limitations hereinafter imposed and in the manner hereinafter prescribed, to borrow money and otherwise contract indebtedness, to issue its bonds, notes, debentures, or other obligations with or without security and if with security, to secure the payment thereof by mortgage, pledge, or deed of trust on all or any part of its property, assets, revenues, or income;~~
- ~~(5) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any real and personal property or any interest therein;~~
- ~~(6) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property or assets;~~
- ~~(7) To make loans to any person and to establish and regulate the terms and conditions with respect to any loans and the charges for interest and service connected therewith, consistent with the provisions of this subchapter;~~
- ~~(8) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of bonds, securities, or evidences of indebtedness created by any individual or by any other capital development company, corporation, limited liability company, partnership, unincorporated association, trust estate, improvement district, or other entity or any governmental or municipal agency of any character;~~
- ~~(9) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of equity interests of any other entity or entities of this or any other state or government, subject to restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the capital development company may do business and, while owner of an equity interest, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;~~
- ~~(10) To make any contracts necessary or convenient for the exercise of the powers granted in this subchapter;~~
- ~~(11) To elect or appoint managers, officers, agents, and~~

~~employees of the capital development company and to define their duties and fix their compensation;~~

~~(12) To conduct its business and to have offices within or without the state;~~

~~(13) To accept gifts or grants of money, service, or real or personal property;~~

~~(14) With the approval of the State Banking Board and by action of the governing board of the capital development company, to make and alter governing documents in a manner not inconsistent with the articles or with the laws of this state for the administration and regulation of the affairs of the capital development company;~~

~~(15) To encourage and promote the cultural, industrial, technological, scientific, commercial, agricultural, knowledge-based industry, venture capital, biotechnology, economic, and recreational development of the State of Arkansas;~~

~~(16)(A) To assist minority-owned and women-owned businesses in obtaining loans, venture capital, or other means of financial assistance.~~

~~(B) The terms and conditions of loans, venture capital investments, or financial assistance, including the charges for interest and other services, shall be consistent with the provisions of this subchapter.~~

~~(C) In order to comply with this requirement, efforts must be made to solicit for review and analysis proposed minority-owned and women-owned business ventures.~~

~~(D) The capital development company's investment policies and underwriting standards may not be waived to inconsistently favor minority-owned or women-owned businesses;~~

~~(17) With the approval of the State Banking Board, to make loans to or investments in entities that do not own property or do not have employees located in this state if the loan or investment satisfies one (1) or more of the purposes stated in subsection (a) of this section; and~~

~~(18) To do and perform any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the capital development company is organized.~~

~~15-4-1017. Dividends and distributions.~~

~~Subject to any limitations as may be stated in the articles or governing documents thereof, the governing board of the capital development company may declare dividends and make partial distributions of its capital under the applicable business law under which it was formed.~~

~~15-4-1018. Bonds or notes of the company.~~

~~(a) From time to time as the conduct of its business requires, any capital development company may issue and sell bonds or notes at a price and on terms determined by the governing board.~~

~~(b) The bonds or notes of the capital development company shall be executed by the authorized officers of the capital development company.~~

~~15-4-1019. Authority of other corporations and financial institutions.~~

~~(a) Notwithstanding any rule at common law or any provision of law or any provision in their respective articles of incorporation, all for-profit and nonprofit entities, including any public utility, company organized under the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., financial institution, pension fund, and all trusts, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, or other evidence of indebtedness created by, or the equity interests or other securities of, a capital development company.~~

~~(b) The owner of an equity interest or other security may exercise all the rights, powers, and privileges of ownership, including the right to vote.~~

~~(c) Any of the actions in subsection (a) or subsection (b) of this section may be taken by the owner of an equity interest or other security without the approval of any regulatory authority of the state.~~

~~15-4-1022. Compliance with the Arkansas Securities Act.~~

~~The equity interests, notes, debentures, bonds, and all other securities or obligations issued by any capital development company shall be issued in compliance with and are subject to the provisions of the Arkansas Securities Act, § 23-42-101 et seq.~~

~~15-4-1023. Obligations as negotiable instruments.~~

~~All bonds, notes, debentures, and other similar obligations of a capital development company authorized under and issued in compliance with~~

~~the provisions of this subchapter shall be and shall have and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state.~~

~~15-4-1024. Eligibility for certain investments.~~

~~Any agency or instrumentality of this state or city or town in this state or any board, commission, or other authority duly established by ordinance of any city or town or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any city or town may invest any of its funds not immediately needed for its purposes in the bonds, notes, or equity interests of any capital development company.~~

~~15-4-1025. Exemption from certain taxes.~~

~~(a)(1) The income of a capital development company shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq., and from the payment of any other income taxes levied by a county or a municipality.~~

~~(2) Dividends, distributions, and income allocable to the equity interests of any capital development company shall be exempt from all state, county, or municipal income tax.~~

~~(3) Interest on bonds, notes, or other obligations of any capital development company issued under and in accordance with the provisions of this subchapter shall be exempt from all state, county, or municipal income taxes.~~

~~(b) Each capital development company shall file an income tax return each year at the time provided for the filing of tax returns in the Income Tax Act of 1929, § 26-51-101 et seq.~~

~~(c) Each capital development company claiming exemption from income tax under this section shall attach to the return required in subsection (b) of this section a certification from the Bank Commissioner stating that the capital development company has been organized and is operating as a capital development company in accordance with the provisions of this subchapter.~~

~~15-4-1026. Tax credit.~~

~~(a)(1) Subject to the limitations contained in this section, a person who purchases an equity interest in a capital development company in any of~~

~~the calendar years 2003—2015 is entitled to a credit against any state income tax liability or premium tax liability that may be imposed on the purchaser for any tax year commencing on or after the date of the purchase.~~

~~(2) However, within eighteen (18) months after receipt of the proceeds from the purchase of an equity interest in a capital development company, the proceeds must be used in one (1) or more of the transactions described in subdivision (a)(3) of this section and for the purposes stated in § 15-4-1016 or for operating expenses.~~

~~(3) Upon satisfaction of the conditions in subdivisions (a)(1) and (2) of this section, use of proceeds from the purchase described in subdivision (a)(1) of this section in the following transactions shall cause the purchaser to be eligible for the tax credit under subdivision (a)(1) of this section:~~

~~(A) Transactions in which one (1) or more persons purchase equity interests in a capital development company to create a pool of capital available for investment in entities approved by the capital development company's governing board;~~

~~(B) Transactions in which one (1) or more persons purchase equity interests in a capital development company and the proceeds of the purchases are invested by the capital development company at the direction of the purchasers into one (1) or more venture capital funds or private equity funds that have investment policies which conform to all or a portion of the capital development company's investment policy, if the governing board reviews and does not object to the use of the proceeds by the funds; and~~

~~(C) Transactions in which:~~

~~(i) A capital development company enters into an agreement with an entity approved by the governing board of the capital development company;~~

~~(ii) The entity is required to identify the investors who will invest in the entity;~~

~~(iii) Receipt of the tax credit is contingent upon the investors' actually investing in the entity through the capital development company; and~~

~~(iv) The governing board of the capital development company determines that the entity would not be able to raise the funds needed for the entity's business without a tax credit.~~

~~(b) The credit shall be determined in the following manner:~~

~~(1)(A) The credit shall be equal to thirty three and one third percent (33 1/3%) of the actual purchase price paid for the equity interest to the capital development company, which shall include any fees or commissions to underwriters or sales agents paid by the capital development company.~~

~~(B)(i) However, the total amount of fees and commissions to underwriters or sales agents for which a credit may be taken shall not exceed fifteen percent (15%) of the actual purchase price.~~

~~(ii) No fees or commissions in excess of fifteen percent (15%) of the total purchase price may be considered in calculating the amount of the credit determined in this section.~~

~~(2) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax liability or premium tax liability of the taxpayer after all other credits and reductions in tax have been calculated.~~

~~(3)(A) Any credit in excess of the amount allowed by subdivision (b)(2) of this section for any one (1) tax year may be carried forward and applied against Arkansas state income tax or premium tax for the next succeeding tax year and annually thereafter for a total period of eight (8) years next succeeding the year in which the equity interest in a capital development company was purchased, subject to the provisions of subdivision (b)(2) of this section or until the credit is exhausted, whichever occurs first.~~

~~(B) In no event may the credit allowed by this section be allowed for any tax year ending after December 31, 2021; and~~

~~(4) An original purchaser of equity interests who seeks to qualify for the income tax credit or premium tax credit provided in this section must obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the capital development company stating:~~

~~(A) The name and address of the original purchaser;~~

~~(B) The tax identification number of the person entitled to the credit;~~

~~(C) The original date of purchase of the equity interest;~~

~~(D) The number and type of equity interests purchased;~~

~~(E) The amount paid by the original purchaser for the~~

~~equity interest;~~

~~(F)—The amount of the tax credit associated with the purchase of the equity interest; and~~

~~(G)—The amount of dividends and distributions previously paid by the capital development company to the purchaser.~~

~~(c)(1)—A transferee from an original purchaser is entitled to the tax credit described in this section only to the extent the credit is still available to and has not previously been used by the transferor.~~

~~(2)—A transferee of equity interests or tax credits who seeks to qualify for the income tax credit or premium tax credit provided in this section must obtain and attach to the income tax return or premium tax return for the years the credit is claimed a certified statement from the capital development company stating:~~

~~(A)—The name and address of the original purchaser and all transferees;~~

~~(B)—The tax identification number of all persons entitled to any portion of the original tax credit;~~

~~(C)—The original date the equity interest was purchased;~~

~~(D)—The number and type of equity interests purchased;~~

~~(E)—The amount paid by the original purchaser for the equity interest;~~

~~(F)—The amount of the tax credit associated with the purchase of the equity interest;~~

~~(G)—The amount of the tax credit associated with the original purchase used by all previous owners of the equity interest or tax credit and the remaining amount of the tax credit available for use by the transferee; and~~

~~(H)—The amount of dividends and distributions previously paid by the capital development company to the original purchaser and all transferees.~~

~~(d)(1)—If the owner of an equity interest in or a tax credit issued by a capital development company is a pass-through entity for tax purposes, such as a limited liability company or a partnership, then the owner of the pass-through entity is entitled to the tax credit described in this section.~~

~~(2)—If a pass-through entity entitled to a tax credit under subdivision (d)(1) of this section is owned by two (2) or more persons, then~~

~~the tax credit may be allocated among the pass-through entity owners in the method selected by the owners as described in the governing documents of the pass-through entity or by other written agreement among the owners.~~

~~(e)(1) For the purpose of ascertaining the gain or loss from the sale or other disposition of an equity interest in a capital development company, the owner of the equity interest shall reduce his or her basis in the equity interest by the amount of the tax credits previously deducted under this section.~~

~~(2) However, sale or other disposition under subdivision (e)(1) of this section does not include a transfer from the holder of an equity interest to the capital development company in liquidation of the equity interest.~~

~~(3) This reduced basis shall be used by the original purchaser or transferee when calculating tax due under the Income Tax Act of 1929, § 26-51-101 et seq.~~

~~(f)(1) If any of the proceeds from the purchase of equity interests in a capital development company are not used for the purposes stated in § 15-4-1016 or for operating expenses within eighteen (18) months after receipt, then for each person who previously claimed a tax credit under this section with respect to that purchase, the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the year in which the eighteen-month period ends shall be increased by the tax credit amount associated with the unused purchase proceeds.~~

~~(2) Within thirty (30) days after the expiration of the eighteen-month period, the capital development company shall notify each person who claimed a tax credit under this section and the Department of Finance and Administration of the failure to use the proceeds and the tax recapture amount associated with the failure.~~

~~(g)(1) Except as provided in subdivision (g)(2) of this section, the total cumulative amount of tax credits available to all purchasers of equity interest in capital development companies under this section in any calendar year shall not exceed five million dollars (\$5,000,000).~~

~~(2) For any calendar year, the maximum tax credit under subdivision (g)(1) of this section may be increased by an additional amount not to exceed one million two hundred fifty thousand dollars (\$1,250,000) by the Director of the Department of Finance and Administration if a capital~~

~~development company requests the increase and the requirements of subdivision (g)(3) of this section are met.~~

~~(3) By August 15 of the calendar year for which the maximum tax credit increase is requested, the director shall:~~

~~(A) Determine:~~

~~(i) The total amount of tax credits first claimed under this section during the most recent fiscal year;~~

~~(ii) The total amount of tax credits claimed under this section by all taxpayers during the most recent fiscal year; and~~

~~(iii) Based upon the amounts calculated under subdivisions (g)(3)(A)(i) and (ii) of this section, the estimated amount of tax credits that may be claimed under this section during the fiscal year that began on the most recent July 1;~~

~~(B) Based on the most recent revenue forecast and budget information, determine:~~

~~(i) The fiscal impact of the estimated tax credits under subdivision (g)(3)(A) of this section on the amount of general revenues available for distribution under § 19-5-202 for the fiscal year that began on the most recent July 1, including amounts to be distributed for the support of public schools; and~~

~~(ii) The fiscal impact of increasing the maximum tax credit under subdivision (g)(2) of this section on the amount of general revenues available for distribution under § 19-5-202 for the fiscal year that began on the most recent July 1, including amounts to be distributed for the support of public schools; and~~

~~(C) Certify the amount, if any, that the maximum tax credit shall be increased under subdivision (g)(2) of this section such that the resulting estimated amount of general revenues available for distribution under § 19-5-202 for the fiscal year that began on the most recent July 1, including amounts to be distributed for the support of public schools, is sufficient to meet the budgeted needs of state agencies and public schools funded by general revenues.~~

~~(h)(1) No capital development company shall enter into an agreement or a commitment for the purchase by any person of equity interests in the capital development company on or after July 1, 2007.~~

~~(2) However, all agreements and commitments of the capital~~

~~development company related to the purchase of equity interests in existence before July 1, 2007, and certified to the Arkansas Economic Development Commission shall remain valid and enforceable, shall be entitled to the tax credits set forth in this section, and shall be completed in accordance with their respective terms.~~

~~15-4-1027. Investment and loan policy.~~

~~(a) A capital development company shall not lend money when credit is readily available on comparable terms elsewhere.~~

~~(b)(1) The governing board of a capital development company shall adopt an investment policy consistent with the provisions of this subchapter.~~

~~(2) The governing board shall deliver to the Bank Commissioner a copy of the capital development company's investment policy within thirty (30) days after its adoption.~~

~~(c) No capital development company under this subchapter shall receive money on deposit.~~

~~15-4-1028. Supervision of capital development companies.~~

~~(a) Each capital development company shall be subject to the supervision, examination, and control of the Bank Commissioner in the same manner, so far as applicable, as provided in § 23-46-501 et seq., and shall make reports of its condition to the commissioner as the commissioner shall prescribe, but the capital development company shall not be deemed a financial institution.~~

~~(b) The commissioner shall have the power to:~~

~~(1) Make rules and regulations to regulate the safety and soundness of capital development companies;~~

~~(2) Conduct investigations that may be necessary to determine whether any person has engaged in or is about to engage in any act or practice constituting noncompliance with any provision of this subchapter or of other laws of this state; and~~

~~(3)(A) Classify as confidential records and information obtained by the State Bank Department from an investigation or examination by the department's staff under § 23-46-101.~~

~~(B) However, for purposes of this subchapter, applications for approval under § 15-4-1004 are public documents.~~

~~(c)(1) Whenever it appears, upon sufficient grounds or evidence satisfactory to the commissioner, that any capital development company has engaged in or is about to engage in any act or practice that is noncompliant with this subchapter or any rule, regulation, or order under this subchapter or that the assets or capital of any capital development company is impaired or a capital development company's affairs are in an unsafe condition, the commissioner may:~~

~~(A) Refer the evidence that is available concerning noncompliance with this subchapter or any rule, regulation, or order under this subchapter to the appropriate agency; or~~

~~(B)(i) Summarily order the capital development company to cease and desist from the act or practice during the time the commissioner may apply to the Pulaski County Circuit Court or the circuit court in the county in which the capital development company is situated, has its principal office or place of business, or in which its chief officer resides to enjoin the act or practice and to enforce compliance with this subchapter or any rule, regulation, or order under this subchapter.~~

~~(ii) However, the commissioner may apply directly to Pulaski County Circuit Court or the circuit court in the county in which the capital development company is situated or has its principal office or place of business or in which its chief officer resides for injunctive relief without issuing a cease and desist order.~~

~~(2) Upon the entry of the order, the commissioner shall promptly notify the capital development company that the order has been entered, of the reasons for the entry of the order, and of the right to a hearing on the order.~~

~~(3)(A) A hearing shall be held on the written request of the capital development company aggrieved by the order if the request is received by the commissioner within thirty (30) days after the date of the entry of the order or if ordered by the commissioner.~~

~~(B) If no hearing is requested and none is ordered by the commissioner, the order shall remain in effect until it is modified or vacated by the commissioner.~~

~~(C) If a hearing is requested or ordered, the commissioner, after notice of and an opportunity for hearing, may affirm, modify, or vacate the order.~~

~~(4) Upon a proper showing, the circuit court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus and may appoint a receiver or conservator for the capital development company or its assets.~~

~~(5) The circuit court shall not require the commissioner to post a bond.~~

~~(6) In addition to any other remedy provided in this subchapter or under other applicable law, the circuit court may impose as additional damages payable by the capital development company the costs incurred by the commissioner in successfully pursuing acts of noncompliance with this subchapter.~~

~~(7) The commissioner shall forward a copy of all reports of the investigation or other proceedings conducted under this section to the Director of the Department of Finance and Administration.~~

~~(d) Each capital development company shall deliver a quarterly report to the commissioner and the Department of Finance and Administration that describes each investment transaction made by the capital development company in the previous quarter and the economic benefits and any tax credits allowed under this subchapter.~~

~~(e) Each capital development company shall deliver an annual report to the commissioner and the Department of Finance and Administration within six (6) months after the close of its fiscal year that shall include an annual audit of the activities conducted by the capital development company and shall list any tax credits allowed under this subchapter.~~

#### ~~15-4-1029. Dissolution.~~

~~(a) A capital development company may dissolve in accordance with the applicable business law under which it was formed.~~

~~(b) In connection with a dissolution under subsection (a) of this section, a certificate of dissolution shall be signed by the authorized officers of the capital development company and delivered to the Bank Commissioner.~~

~~(c) The certificate of dissolution shall be filed and recorded in the same manner as the original articles. As soon as the commissioner has accepted and endorsed on the certificate of dissolution his or her approval thereof, the capital development company shall be deemed to be dissolved.~~

~~(d) However, the capital development company shall be continued for the purpose of paying, satisfying, and discharging any other existing liabilities or obligations and collecting or liquidating its assets and doing all other acts required to adjust and conclude its business and affairs and may sue and be sued in its own name.~~

~~(e) Any assets remaining after all liabilities or other obligations of the capital development company have been satisfied or discharged shall be distributed in accordance with the applicable business law under which it was formed and the capital development company's governing documents.~~

~~(f)(1) Upon dissolution, if any proceeds from the purchase of an equity interest in a capital development company have not been used for the purposes stated in § 15-4-1016 or for operating expenses, then for each person who previously claimed a tax credit under § 15-4-1026 with respect to that purchase, the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the year in which dissolution occurs shall be increased by the tax credit amount associated with the unused purchase proceeds.~~

~~(2) Within thirty (30) days after dissolution, the capital development company shall notify each person who previously claimed a tax credit and the Department of Finance and Administration of a failure to use the proceeds and the tax recapture amount associated with the failure.~~

~~(g)(1) If authority to receive tax credits pursuant to this subchapter is terminated prior to December 31, 2015, or if a capital development company is dissolved, then the capital development company may assign the administration of any outstanding tax credits to the Arkansas Economic Development Council or its successor.~~

~~(2)(A) If the governing board of a capital development company approves an agreement for the purchase by any person of equity interests in the capital development company upon satisfaction of the conditions in the agreement and the agreement is approved prior to December 31, 2015, then the agreement shall remain valid and enforceable.~~

~~(B) However, the person entering into the agreement described in subdivision (g)(2)(A) of this section shall not receive any tax credits for the purchase of an equity interest in the capital development company that occurs after December 31, 2015.~~

~~(C) The capital development company shall remain in existence until the purchases of equity interests contemplated by this~~

~~subsection are completed.~~

~~15-4-1030. Merger.~~

~~(a) Subject to the provisions of this subchapter, a capital development company may merge or consolidate with or into another capital development company, a development finance corporation, a company organized under the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., a financial institution, or any other entity.~~

~~(b)(1) Each entity that is a party to a merger or consolidation shall adopt articles of merger or consolidation in accordance with the applicable business law under which it was formed and shall file the articles with the Bank Commissioner.~~

~~(2) The commissioner shall issue a certificate approving the articles of merger or consolidation if the articles of merger or consolidation are acceptable to the commissioner.~~

~~(3) The articles of merger or consolidation are effective when the commissioner issues the certificate of approval.~~

~~(4) The capital development company shall record the articles of merger or consolidation and the commissioner's certificate of approval in the same manner as the original articles.~~

~~15-4-1031. Application of business laws.~~

~~(a) Each capital development company is subject to the provisions of any applicable business law under which it was formed, as now or hereafter amended, to the extent that those provisions are not in conflict with the provisions of this subchapter.~~

~~(b) If a provision of an applicable business law is in conflict with any provision of this subchapter, then the provisions of this subchapter shall control.~~

SECTION 5. Arkansas Code § 15-4-3305(f), concerning an award of an equity investment tax credit, is amended to read as follows:

(f) The total cumulative amount of tax credits available to all purchasers of equity interest in qualified businesses under this section ~~and under § 15-4-1026~~ in any calendar year shall not exceed six million two hundred fifty thousand dollars (\$6,250,000).

SECTION 6. Arkansas Code § 15-5-1103(1), concerning the definitions used in the Arkansas Capital Access Program for Small Business Act of 1993, is amended to read as follows:

(1) "Financial institution" means all banks, savings and loan associations, corporations organized under ~~either the Arkansas Development Finance Corporation Act, § 15-4-901 et seq., or~~ the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., and any other lending institutions approved by the Board of Directors of the Arkansas Development Finance Authority;

SECTION 7. Arkansas Code § 19-3-518(b)(1)(B)(xiv), concerning investments in securities and bank certificates of deposit, is amended to read as follows:

(xiv) As approved by the guidelines established by the State Treasury investment policy approved by the State Board of Finance,<sup>1</sup>

~~(a) A~~ a corporate obligation with an investment grade rating of BBB or higher as indicated by at least two (2) nationally recognized statistical rating organizations; ~~or~~

~~(b) Obligations of corporations organized under the Arkansas Development Finance Corporation Act, § 15-4-901 et seq., and issued under the Arkansas Development Finance Corporation Act, § 15-4-901 et seq., to the extent of forty eight million dollars (\$48,000,000).~~

SECTION 8. Arkansas Code § 19-3-518(b)(4), concerning investments in securities and bank certificates of deposit, is amended to read as follows:

~~(4)(A) An obligation of a corporation organized under the Arkansas Development Finance Corporation Act, § 15-4-901 et seq., purchased as authorized in this section shall:~~

~~(i) Bear a maturity date not to exceed ten (10) years; and~~

~~(ii) Be purchased at par pursuant to an annual commitment to the corporation under conditions established by the State Board of Finance.~~

~~(B)(i) Before an obligation described in subdivision (b)(4)(A) of this section is purchased, the opinion of legal counsel~~

~~acceptable to the State Board of Finance shall be furnished without charge to the State Board of Finance.~~

~~(ii) The opinion shall:~~

~~(a) Approve the validity of the issue;~~

~~(b) Recite that, in the opinion of counsel, the obligations to be purchased by the State Board of Finance are the duly authorized, legally binding obligations of the issuing corporation; and~~

~~(c) Specify the security, lien, or pledge created is perfected collateral for the obligation.~~

SECTION 9. Arkansas Code § 19-3-518(b)(5), concerning investments in securities and bank certificates of deposit, is amended to read as follows:

(5)(A) All or any part of the bonds of local industrial development corporations, authorized and issued under the Arkansas Industrial Development Act, § 15-4-101 et seq., and all or any part of the bonds of municipalities and counties, authorized and issued under the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq., ~~and all or any part of the obligations of development finance corporations authorized and issued under the Arkansas Development Finance Corporation Act, § 15-4-901 et seq.,~~ at any time held in the Securities Account in the State Treasury, may be sold at public sale or at private sale as the State Board of Finance shall determine.

(B) However, in a private sale, the sales price of the bonds or obligations shall not be less than the amount paid for the bonds or obligations.

SECTION 10. Arkansas Code § 23-32-202 is repealed.

~~23-32-202. Investment in and loans to capital development companies.~~

~~(a) In addition to the powers conferred upon building and loan associations, savings and loan associations, or credit unions organized under the laws of this state, each such entity shall have the power to:~~

~~(1)(A) Acquire and own on its own behalf any stock or equity interest issued by a capital development company.~~

~~(B) However, no such entity under this subsection shall invest more than ten percent (10%) of its capital and unimpaired surplus in the stock or equity interest; and~~

~~(2) Make loans to a capital development company, subject, however, to the rules and regulations promulgated by the institutions' primary regulator.~~

~~(b) Any investment in stock or equity interest made pursuant to this section shall be considered an asset of the investing institution or association at a value of at least its original purchase price. The asset shall not be valued by any regulatory body in this state at less than at least the purchase price regardless of the failure of a capital development company to pay dividends or distributions of equity to the investors.~~

SECTION 11. Arkansas Code § 23-45-102(a)(11), concerning definitions in the Arkansas Banking Code of 1997, is repealed.

~~(11) "Capital development company" means a company authorized to be organized under the provisions of the Arkansas Capital Development Company Act, § 15-4-1001 et seq.;~~

SECTION 12. Arkansas Code § 23-46-101(a)(3), concerning confidential records of the State Bank Department, is amended to read as follows:

(3) Investigations and reports revealing facts concerning a financial institution, ~~a capital development company,~~ or the customers of ~~these organizations~~ a financial institution; and

SECTION 13. Arkansas Code § 23-47-101(a)(18), concerning powers of a state bank, is repealed.

~~(18) To invest in a capital development company pursuant to the provisions of § 23-47-604;~~

SECTION 14. Arkansas Code § 23-47-604 is repealed.

~~23-47-604. Capital development companies.~~

~~(a)(1) State banks shall have the power to acquire and own on their own behalf stock or equity interests issued by a capital development company or make loans to a capital development company.~~

~~(2) No state bank shall invest in or lend to the capital development company more than twenty percent (20%) of the bank's capital base.~~

~~(b) Any investment in stock or equity interest made pursuant to this~~

~~section shall not be revalued or classified by the Bank Commissioner solely because of the failure of a capital development company to pay dividends or distributions of equity to the investors.~~

SECTION 15. Arkansas Code § 26-18-303(b)(17), concerning confidential and privileged state tax records, is repealed.

~~(17) Disclosure to a capital development company organized under the Arkansas Capital Development Company Act, § 15-4-1001 et seq., of the name and tax identification number of and amount of any tax credit received by a taxpayer as a result of the purchase of an equity interest in a capital development company;~~

**APPROVED: 03/09/2017**