

Stricken language would be deleted from and underlined language would be added to present law.
Act 507 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H2/27/17
A Bill

HOUSE BILL 1604

By: Representative Jett
By: Senator J. English

For An Act To Be Entitled

AN ACT TO PROVIDE FOR THE EXAMINATION AND REGULATION
OF CERTAIN ECONOMIC DEVELOPMENT FINANCE CORPORATIONS
BY THE STATE BANK DEPARTMENT; TO DECLARE AN
EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR THE EXAMINATION AND
REGULATION OF CERTAIN ECONOMIC
DEVELOPMENT FINANCE CORPORATIONS BY THE
STATE BANK DEPARTMENT; AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code § 23-46-503, concerning examinations conducted by the Bank Commissioner, is amended to add an additional subsection to read as follows:

(c)(1) The commissioner shall direct the State Bank Department to make an annual examination into the affairs of nonprofit corporations that have registered with the commissioner to be a regulated economic development enterprise under this subsection and that registration has been approved by the State Banking Board.

(2) A nonprofit corporation electing to be a regulated economic development enterprise shall certify in its registration to the commissioner that the nonprofit corporation:

(A) Was previously registered under the Arkansas



Development Finance Corporation Act, § 15-4-901 et seq.;

(B) Is a domestic nonprofit corporation with a total equity of the nonprofit corporation and any subsidiaries exceeding five million dollars (\$5,000,000);

(C) Provides financing for the promotion, development, and conduct of Arkansas business;

(D) Together with any of its subsidiaries, has loan receivables that exceed fifteen million dollars (\$15,000,000); and

(E) Shall provide reasonable cooperation and assistance to the department during an examination.

(3)(A) A regulated economic development enterprise registered under this subsection shall pay to the department, within ten (10) days after notice from the commissioner in the months of January and July of each year, an assessment fee in accordance with an assessment fee schedule approved by the commissioner.

(B) The commissioner, with the approval of the board, shall also have the authority to establish a schedule of fees to be charged by the department relative to registrations which are reviewed by the department, as well as a schedule of other fees to be charged for service performed by the department.

(C) The assessments may be increased if not sufficient in connection with other fees received as mentioned in this section to defray the expenses of the department.

(4)(A) The commissioner shall be charged with the general supervision of regulated economic development enterprises, with the power to issue cease and desist orders against any regulated economic development enterprise, or an officer, director, or employee of a regulated economic development enterprise, found to be violating state or federal law, rules, or regulations of a federal regulatory agency, violating any regulatory agreement, or jeopardizing the safety and soundness of the regulated economic development enterprise.

(B) The commissioner has grounds for and may issue a cease and desist order for the permanent or temporary removal of an officer, director, employee, agent, or any other person participating in the affairs of or otherwise connected with a regulated economic development enterprise, or any affiliate thereof, if he or she is found by the commissioner to be or

to have been:

(i) Violating state or federal law, rules and regulations of a federal regulatory agency, or department regulations;

(ii) Acting incompetently, recklessly, or dishonestly;

(iii) Indicted of a crime involving moral turpitude;

or

(iv) Otherwise impairing the safety and soundness of the regulated economic development enterprise.

(C)(i) A person who is subject to a cease and desist order issued by the commissioner that refuses or fails to comply with the terms of the order may be assessed a monetary penalty for the failure to comply with the cease and desist order after a ten-day notice given by the commissioner to the regulated economic development enterprise or person who is subject to the order.

(ii) The amount of the monetary penalty shall not exceed one thousand dollars (\$1,000) per day of the violation against each regulated economic development enterprise and each officer, director, or employee contributing to the regulated economic development enterprise's or the individual's failure to comply with the cease and desist order.

(iii) Subject to the limitation described in subdivision (c)(4)(C)(ii) of this section, the amount of the monetary penalty shall be determined by the commissioner.

(D) The commissioner may revoke a nonprofit corporation's status as a regulated economic development enterprise under this subsection if the commissioner determines, after examination and investigation, that the regulated economic development enterprise:

(i) Is or has been violating state or federal law;

(ii) Is violating the rules and regulations of a federal regulatory agency;

(iii) Fails to meet the minimum equity requirements under subdivision (c)(2) of this section; or

(iv) Is operating or has been operated in a manner that jeopardizes the safety and soundness of the regulated economic development enterprise.

(E)(i) The commissioner shall have the power to issue such

rules as may be necessary or appropriate with the approval and consent of the board.

(ii) This section shall not be construed to curtail the commissioner's power to issue emergency rules with the approval and consent of the board.

(F) In addition to other powers under this section, the commissioner shall have the power and authority to:

(i) Inspect and copy all books, records, and other information relating to a regulated economic development enterprise; and

(ii) Subpoena witnesses, compel their attendance, require production of evidence, and administer oaths.

(G)(i) A person or regulated economic development enterprise aggrieved and directly affected by an order of the commissioner issued under this subsection is entitled to judicial review.

(ii) A person or regulated economic development enterprise may seek judicial review by petition to a circuit court of competent jurisdiction.

(iii) The petition shall be filed within thirty (30) days from the date of issuance of the order.

(iv) If a petition is not filed within thirty (30) days from the date of issuance of the order, the order shall not be appealed and is permanently binding upon the person until terminated by the commissioner.

(5) A nonprofit corporation that is registered as a regulated economic development enterprise, that is in compliance with federal and state laws, rules, and regulations, and that does not have any regulatory proceeding pending against it may withdraw its registration as a regulated economic development enterprise.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that to enhance economic development, the Bank Commissioner needs to examine financial entities in Arkansas; and that this act is immediately necessary because of the need to take advantage of any opportunities that may be encouraged by the enhanced economic development created as a result of the examinations. Therefore, an emergency is declared to exist, and this act being immediately necessary for

the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Jett

APPROVED: 03/15/2017