

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-112

State of Arkansas *As Engrossed: H1/29/09 H2/5/09 H2/17/09 H2/20/09 H2/26/09 H3/4/09 H3/12/09 H3/20/09 H4/1/09*

87th General Assembly  
Regular Session, 2009

# A Bill

HOUSE BILL 1060

By: Representatives Pennartz, R. Green, Glidewell, Cook, Tyler, Cash, J. Roebuck, J. Burris, L. Smith, Williams, Dunn, Ingram, Webb, Betts, Breedlove, Carroll, Clemmer, English, Gaskill, House, Nix, Perry, Powers, Saunders, Slinkard, Wagner, S. Malone, Kidd, King, Lea, Wells, Patterson, Lindsey, Pyle, Harrelson, Woods, Word, Barnett, Adcock, Hobbs, Hopper, L. Cowling, Rainey, Baird, Blount, J. Brown, Dale, Davis, J. Dickinson, Dismang, Garner, George, Hoyt, D. Hutchinson, Hyde, Moore, Rice, G. Smith, Stewart, Overbey, J. Rogers

By: Senators G. Baker, Wilkinson, Altes

Filed with: House Interim Committee on Revenue and Taxation  
pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

AN ACT TO ESTABLISH AN INVESTMENT TAX CREDIT FOR  
THE REHABILITATION AND DEVELOPMENT OF CENTRAL  
BUSINESS IMPROVEMENT DISTRICTS; AND FOR OTHER  
PURPOSES.

### Subtitle

TO ESTABLISH AN INVESTMENT TAX CREDIT  
FOR THE REHABILITATION AND DEVELOPMENT  
OF CENTRAL BUSINESS IMPROVEMENT  
DISTRICTS.

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

SECTION 1. Arkansas Code 26, Chapter 51 is amended to add an additional subchapter to read as follows:

Subchapter 22 - Arkansas Central Business Improvement District  
Rehabilitation and Development Investment Tax Credit Act.



1  
2       26-51-2201. Title.

3       This subchapter shall be known and may be cited as the "Arkansas  
4 Central Business Improvement District Rehabilitation and Development  
5 Investment Tax Credit Act".

6  
7       26-51-2202. Purpose.

8       The purpose of this subchapter is to encourage economic development  
9 within central business improvement districts by promoting the rehabilitation  
10 and development of structures within the central business improvement  
11 districts.

12  
13       26-51-2203. Definitions.

14       As used in this subchapter:

15           (1) "Central business improvement district" means the central  
16 business district of any municipality of the first-class or municipality of  
17 the second-class of the state that has been designated as a central business  
18 improvement district under § 14-184-101 et seq.;

19           (2) "Development" means the new construction of a structure or  
20 the *expansion or rehabilitation of an existing structure;*

21           (3) "Eligibility certificate" means a certificate:

22                   (A) Authorized and issued by the governing body of the  
23 central business improvement district certifying that a project is a  
24 qualified project, has met the requirements of this subchapter, and is an  
25 eligible central business improvement district property; and

26                   (B) That specifies the total amount of qualified  
27 rehabilitation or development expenditures allowed;

28           (4) "Eligible central business improvement district property"  
29 means property that is located within the physical boundaries of a central  
30 *business improvement district and is a qualified project;*

31           (5) "Governing body of the central business improvement  
32 *district" means the board of commissioners of the central business*  
33 *improvement district;*

34           (6) "Governing body of the municipality" means the city council,  
35 *board of directors, commission, or other municipal body exercising general*  
36 *legislative power in the municipality;*

1           (7) "Investment tax credit" means the Arkansas Central Business  
2 Improvement District Rehabilitation and Development investment tax credit  
3 under this subchapter;

4           (8) "Qualified project" means eligible central business  
5 improvement district property that has met the requirements of § 26-51-  
6 2204(b) and has been approved for rehabilitation or development by the  
7 governing body of the central business improvement district where the  
8 eligible central business improvement district property is located;

9           (9)(A) "Qualified rehabilitation or development expenditures"  
10 means expenditures approved by the governing body of the central business  
11 improvement district where the eligible central business improvement district  
12 property is located that meets the requirements of this subchapter.

13           (B) "Qualified rehabilitation or development expenditures"  
14 do not include:

15                   (i) The cost of acquiring the eligible central  
16 business improvement district property or realtor's fees associated with the  
17 eligible central business improvement district property;

18                   (ii) Taxes due on the eligible central business  
19 improvement district property;

20                   (iii) Insurance costs;

21                   (iv) Costs of landscaping; or

22                   (v) Sales and marketing costs; and

23           (10) "Taxpayer" means an individual, a partnership, limited  
24 liability company, or corporation subject to the state income tax imposed by  
25 the Income Tax Act of 1929, § 26-51-101 et seq.

26  
27           26-51-2204. Qualified project.

28           (a) To apply for a designation as a qualified project, a taxpayer  
29 shall submit to the governing body of the central business improvement  
30 district where the property to be rehabilitated or developed is located all  
31 forms and fees required by the governing body of the central business  
32 improvement district.

33           (b) To qualify as eligible central business improvement district  
34 property, the taxpayer shall demonstrate that the property to be  
35 rehabilitated or developed meets the following requirements:

36                   (1) The project must be planned within the physical boundaries

1 of the central business improvement district;

2 (2) A full set of plans by a licensed architect must be  
3 submitted to the governing body of the central business improvement district  
4 where the property to be rehabilitated or developed is located;

5 (3) The project must meet all zoning and building codes of the  
6 municipality in which the property to be rehabilitated or developed is  
7 located;

8 (4) The project must meet the design guidelines, be compatible  
9 with the overall plan for the central business improvement district, and have  
10 a use that the governing body of the central business improvement district  
11 determines as maintaining the overall integrity of the central business  
12 improvement district;

13 (5) The qualified rehabilitation or development expenditures for  
14 the project must have occurred on or after the effective date of this act;  
15 and

16 (6) The qualified rehabilitation or development expenditures for  
17 the project must be greater than fifty thousand dollars (\$50,000).

18 (c) After evaluating the information provided by the taxpayer, the  
19 governing body of the central business improvement district shall issue a  
20 determination about whether the property to be rehabilitated or developed is  
21 a qualified project.

22 (d)(1) If the taxpayer is dissatisfied with the determination made by  
23 the governing body of the central business improvement district, the taxpayer  
24 may request that a review of that determination be made by the governing body  
25 of the municipality.

26 (2)(A) The request for review shall be made in writing to the  
27 governing body of the municipality within thirty (30) days from the date of  
28 the determination of the governing body of the central business improvement  
29 district under subsection (c) of this section.

30 (B) The decision of the governing body of the municipality is  
31 a final decision.

32  
33 26-51-2205. Eligibility certificate.

34 (a) After a property to be rehabilitated or developed is designated a  
35 qualified project under § 26-51-2204 and the taxpayer completes the  
36 rehabilitation or development work, the taxpayer shall submit to the

1 governing body of the central business improvement district where the  
2 eligible central business improvement district property is located all  
3 documentation and forms required by the governing body of the municipality  
4 and the governing body of the central business improvement district to verify  
5 that the qualified project has been completed.

6 (b)(1) If the governing body of the central business improvement  
7 district determines that the qualified project has been successfully  
8 completed, the governing body of the central business improvement district  
9 shall issue an eligibility certificate.

10 (2) Before issuance of the eligibility certificate in this  
11 subsection (b), the governing body of the central business improvement  
12 district shall verify with the Department of Finance and Administration that  
13 sufficient tax credits are remaining for the current fiscal year.

14 (c)(1) If the taxpayer is dissatisfied with the determination made by  
15 the governing body of the central business improvement district under  
16 subsection (b) of this section, the taxpayer may request that a review of  
17 that determination be made by the governing body of the municipality

18 (2)(A) The request for review shall be made in writing to the  
19 governing body of the municipality within thirty (30) days from the date of  
20 the determination of the governing body of the central business improvement  
21 district under subsection (b) of this section.

22 (B) The decision of the governing body of the  
23 municipality is a final decision.

24 (d) Upon issuance of an eligibility certificate, the governing body of  
25 the central business improvement district immediately shall report in writing  
26 to the Department of Finance and Administration:

27 (1) The name and address of the taxpayer;

28 (2) The taxpayer identification number;

29 (3) The date of issuance of the eligibility certificate;

30 (4) The amount of the eligibility certificate; and

31 (5) Any other information as determined necessary by the  
32 department.

33  
34 26-51-2206. The projected rehabilitation or development expenditures.

35 (a) The projected rehabilitation or development expenditures must  
36 occur during a period not to exceed eighteen (18) months.

1       (b) For the rehabilitation or development of an existing structure,  
2 the projected qualified rehabilitation or development expenditures must equal  
3 or exceed the adjusted basis of the structure, excluding the land, before the  
4 qualified rehabilitation or development work begins.

5  
6       26-51-2207. Investment tax credits.

7       (a) There is allowed an investment tax credit against the tax imposed  
8 by the Income Tax Act of 1929, § 26-51-101 et seq. for any taxpayer incurring  
9 costs and expenses that are qualified rehabilitation or development  
10 expenditures of eligible central business improvement district property.

11       (b) The investment tax credit is equal to twenty percent (20%) of up  
12 to the first one million dollars (\$1,000,000) of qualified rehabilitation or  
13 development expenditures incurred for a qualified project.

14       (c)(1) The investment tax credit for a qualified project covering  
15 income-producing eligible central business improvement district property  
16 shall be taken in the tax year in which the eligible central business  
17 improvement district property is placed in service.

18       (2) The investment tax credit for a qualified project covering  
19 residential eligible central business improvement district property or other  
20 commercial eligible central business improvement district property shall be  
21 taken in the tax year the qualified project is completed.

22       (d) A taxpayer who receives an investment tax credit under this  
23 section shall not claim any other state or local tax credit or deduction  
24 based on the qualified rehabilitation or development expenditures except for  
25 the deduction for normal depreciation of the eligible central business  
26 improvement district property.

27       (e)(1) The maximum amount of investment tax credits awarded by the  
28 state in a fiscal year is ten million dollars (\$10,000,000) to be awarded as  
29 follows:

30               (A) Up to five million dollars (\$5,000,000) in investment  
31 tax credits may be awarded for eligible central business improvement district  
32 property located in municipalities with a population of less than fifty  
33 thousand (50,000), as determined by the last federal census; and

34               (B) Up to five million dollars (\$5,000,000) in investment  
35 tax credits may be awarded for eligible central business improvement district  
36 property located in municipalities with a population of fifty thousand

1 (50,000) or more, as determined by the last federal census.

2 (2) Any eligibility certificate that would cause the investment  
3 tax credit to exceed the amounts listed in subdivision (e)(1) of this section  
4 during the fiscal year will be carried forward to the following fiscal year.

5 (3) The Department of Finance and Administration shall maintain  
6 an ongoing record of the eligibility certificates in order to ensure that the  
7 maximum amount of investment tax credits awarded each fiscal year does not  
8 exceed the amounts provided in subsection (e)(1) of this section.

9  
10 26-51-2208. Procedure to claim the investment tax credit.

11 (a) To claim the investment tax credit, the taxpayer shall submit the  
12 eligibility certificate issued by the applicable central business improvement  
13 district to the Department of Finance and Administration.

14 (b)(1) In addition to the application under subsection (a) of this  
15 section, the taxpayer shall submit an eligibility certificate at the time of  
16 filing the taxpayer's income tax return.

17 (2) If the taxpayer fails to attach the eligibility certificate,  
18 an investment tax credit is not allowed with respect to the qualified project  
19 for that tax year until the eligibility certificate is provided to the  
20 Department of Finance and Administration.

21  
22 26-51-2209. Credits exceeding tax liability – Assignment.

23 (a)(1) The amount of the investment tax credit that may be used by a  
24 taxpayer for a taxable year shall not exceed the amount of income tax due.

25 (2) Any unused investment tax credit may be carried over for  
26 seven (7) consecutive taxable years for credit against the state income tax  
27 due.

28 (3)(A) The investment tax credit may be transferred, sold, or  
29 assigned only one (1) time.

30 (B) A taxpayer who transfers, sells, or assigns the  
31 investment tax credit shall notify in writing the Department of Finance and  
32 Administration within thirty (30) days the following information:

33 (i) The name, address, and taxpayer identification  
34 number of the transferee, purchaser, or assignee of the investment tax  
35 credit;

36 (ii) The original issuance date of the investment

1 tax credit and the date of the transfer, purchase, or assignment of the  
2 investment tax credit; and

3 (iii) The amount paid for the investment tax credit  
4 by the transferee, purchaser, or assignee.

5 (C)(i) A transferee, purchaser, or assignee of an  
6 investment tax credit is entitled for the remaining carry forward period to  
7 the investment tax credit under this subchapter only to the extent the  
8 investment tax credit is still available and only for the portion of the  
9 investment tax credit that has not been previously claimed by the transferor,  
10 seller, or assignor.

11 (ii) A transferee, purchaser, or assignee may not  
12 transfer, sell, or assign the investment tax credit.

13 (D) The Department of Finance and Administration may  
14 refuse to recognize the investment tax credit if the transferor, seller,  
15 assignor or the transferee, purchaser, or assignee of the investment tax  
16 credit fails to submit the eligibility certificate and any transfer,  
17 purchase, or assignment documents.

18 (4) An investment tax credit granted to a partnership, a limited  
19 liability company taxed as a partnership, or multiple owners of eligible  
20 central business improvement district property shall be passed through to the  
21 partners, members, or owners respectively on a pro rata basis or pursuant to  
22 an executed agreement between or among the partners, members, or owners  
23 documenting an alternative distribution method.

24 (b)(1) Any assignee of an investment tax credit may use an acquired  
25 investment tax credit to offset up to one hundred percent (100%) of the state  
26 income tax due from the assignee, but the offset shall not exceed the amount  
27 of income tax due for the taxable year.

28 (2) An assignor of an investment tax credit shall perfect an  
29 assignment to an assignee of an investment tax credit by notifying the  
30 Department of Finance and Administration in writing within thirty (30)  
31 calendar days following the effective date of the assignment and shall  
32 provide any information required by the Department of Finance and  
33 Administration to administer and carry out this subchapter.

34 26-51-2210. Fees.

35 (a) The governing body of the central business improvement district  
36 may charge a fee of two hundred fifty dollars (\$250) for the services it



1 provides under this subchapter.

2 (b) The fee collected under subdivision (a)(1) of this section  
3 by the governing body of the central business improvement district shall be  
4 considered cash funds of the central business improvement district and shall  
5 be used for the administration of this subchapter.

6  
7 26-51-2211. Enforcement.

8 (a)(1) The Director of the Department of Finance and Administration  
9 may make rules and prescribe forms for an approved taxpayer to claim the  
10 investment tax credit provided by this subchapter and for the proper  
11 enforcement of the claim.

12 (2) The department shall consult with the governing bodies of the  
13 central business improvement districts in making rules under this subchapter  
14 to maintain consistency with the purpose and intent of this subchapter.

15 (b) A fee collected under § 26-51-2204 by the central business  
16 improvement district shall be deposited into the treasury cash fund of the  
17 governing body of a central business improvement district receiving the fee.

18 (c) The Department of Finance and Administration and the governing  
19 body of a central business improvement district may inspect facilities and  
20 records of an entity requesting or receiving an investment tax credit as  
21 necessary to verify a claim.

22 (d) The Director of the Department of Finance and Administration shall  
23 demand the repayment of any credits taken in excess of the investment tax  
24 credit allowed by this subchapter.

25  
26 26-51-2212. Effective Date.

27 (a) This act is effective for tax years beginning on and after January  
28 1, 2010, and expires December 31, 2011.

29 (b) An unused investment tax credit under this act that is earned  
30 before the end of the 2011 tax year may be carried forward on an income tax  
31 return for up to seven (7) years after the year in which the investment tax  
32 credit was first earned or until exhausted, whichever event occurs first.

33  
34 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
35 General Assembly of the State of Arkansas that the central business  
36 improvement districts in Arkansas municipalities are in need of

1 rehabilitation and development; that the state and country are in an economic  
2 recession; that providing an investment tax credit would encourage the needed  
3 rehabilitation and development of the central business improvement districts  
4 in this state; that the rehabilitation and development would provide jobs to  
5 Arkansans; and that the investment tax credit would provide an economic  
6 stimulus to the State of Arkansas. Therefore, an emergency is declared to  
7 exist and this act being necessary for the preservation of the public peace,  
8 health, and safety shall become effective on:

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

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

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

15  
16 */s/ Pennartz*  
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