

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1861

By: Representative Williams
By: Senator Elliott

For An Act To Be Entitled

AN ACT CONCERNING ECONOMIC DEVELOPMENT PROGRAMS; TO
CREATE THE MINORITY BUSINESS LOAN MOBILIZATION ACT TO
GUARANTEE LOANS TO SMALL MINORITY BUSINESS
ENTERPRISES; TO REPEAL AS OBSOLETE THE JOBS CREATION
BY STIMULATING SMALL BUSINESS GROWTH ACT OF 1985; AND
FOR OTHER PURPOSES.

Subtitle

TO CREATE THE MINORITY BUSINESS LOAN
MOBILIZATION ACT TO GUARANTEE LOANS TO
SMALL MINORITY BUSINESS ENTERPRISES AND
TO REPEAL AS OBSOLETE THE JOBS CREATION
BY STIMULATING SMALL BUSINESS GROWTH ACT
OF 1985.

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

SECTION 1. Arkansas Code Title 15, Chapter 4, is amended to add an
additional subchapter to read as follows:

Subchapter 35 – Minority Business Loan Mobilization Act

15-4-3501. Title.

This subchapter shall be known and may be cited as the “Minority
Business Loan Mobilization Act”.

15-4-3502. Legislative intent.



The General Assembly finds that it is in the best interests of the state to:

- (1) Promote the development of minority business enterprises in the state;
- (2) Increase the ability of minority business enterprises to compete for state contracts;
- (3) Sustain the economic growth of minority business enterprises in the state; and
- (4) Provide loans to minority business enterprises that are unable to secure financing on reasonable terms through normal lending channels.

15-4-3503. Definitions.

As used in this subchapter:

- (1) "Lender" means a financial institution that:
 - (A) Extends credit or funds to small businesses in the state; and
 - (B) Meets the eligibility requirements of § 15-4-3506;
- (2) "Minority" means the same as defined in § 15-4-303; and
- (3) "Minority business enterprise" means the same as defined in § 15-4-303.

15-4-3504. Loan guarantee – Terms.

(a)(1) The Arkansas Economic Development Commission may guarantee a loan from a private lender to a minority business enterprise.

(2) The commission may guarantee no more than ninety percent (90%) of a loan under this subchapter.

(3) The commission shall use the Minority Business Loan Mobilization Revolving Fund to fund loan guarantees approved under this subchapter.

(b) The loan amount being guaranteed under this subchapter shall be at least ten thousand dollars (\$10,000) but not more than one hundred thousand dollars (\$100,000).

(c) The interest rate on the loan shall be:

- (1) Determined by the lender; and
- (2) Approved by the commission.

(d) The term of the loan shall be:

(1) Determined by the lender and the commission; and

(2) Equal to the term of the loan guarantee stated in the loan guarantee agreement between the commission and the lender.

(e) The commission shall not charge a fee for providing a loan guarantee under this subchapter.

15-4-3505. Eligibility of a business for a loan guarantee.

(a) To be eligible for a loan guarantee under this subchapter, the business shall:

(1) Be a minority business enterprise;

(2) Be certified with the Small and Minority Business Division of the Arkansas Economic Development Commission;

(3) Be registered with the Office of State Procurement as a vendor;

(4) Be seeking to obtain a state contract with a state agency or other organization approved by the commission; and

(5) Affirm that it will use the proceeds of the loan guaranteed under this subchapter for one (1) or more of the following purposes:

(A) Sustaining the minority business enterprise;

(B) Promoting the economic growth and development of the minority business enterprise in the state;

(C) Creating jobs for the minority business enterprise for the purpose of competing for state contracts;

(D) Expanding the minority business enterprise;

(E) Repairing the real property or personal property of the minority business enterprise;

(F) Acquiring machinery or equipment for the minority business enterprise;

(G) Purchasing inventory for the minority business enterprise; or

(H) Obtaining working capital for the minority business enterprise.

(b) The proceeds of a loan guaranteed under this subchapter shall not be used:

(1) To purchase real property to be held primarily for

investment purposes;

- (2) For personal debt consolidation;
- (3) To invest in one (1) or more of the following:
 - (A) Another business;
 - (B) Stocks;
 - (C) Bonds; or
 - (D) Any other investment security; or
- (4) For any purpose other than the purposes stated in this subchapter.

15-4-3506. Eligibility of a financial institution to serve as a lender.

To be eligible to serve as a lender for a loan that is guaranteed under this subchapter, the financial institution shall:

- (1) Be one (1) of the following:
 - (A) A federally chartered bank;
 - (B) A state-chartered bank;
 - (C) A savings and loan association;
 - (D) A credit union; or
 - (E) Any other form of financial institution regulated by the state or the federal government;
- (2) Have a continuing ability to evaluate, process, close, disburse, service, and liquidate small business loans;
- (3) Be open to the public for the making of small business loans;
- (4) Not be a financing subsidiary engaged primarily in financing the operations of an affiliate;
- (5) Satisfy the required ethical standards;
- (6) Be supervised and examined by a regulatory authority of the state or the federal government; and
- (7) Execute a loan guarantee agreement with the Arkansas Economic Development Commission.

15-4-3507. Application procedure.

(a) To apply for a loan guarantee under this subchapter, a minority business enterprise shall submit an application and any supporting

documentation required by the Arkansas Economic Development Commission.

(b) The commission shall:

(1) Evaluate each submitted application and any supporting documentation to determine whether the minority business enterprise is eligible for a loan guarantee under this subchapter; and

(2) Notify the minority business enterprise of the approval or denial of the minority business enterprise's application within three (3) business days after the commission receives the application.

(c) Upon being informed of the commission's approval of the application, the minority business enterprise shall select a lender and begin the loan application process.

(d) The lender selected by the minority business enterprise shall:

(1) Notify the minority business enterprise of the lender's determination to approve or deny the minority business enterprise's loan application; and

(2) Send written notification of the lender's determination to approve or deny the minority business enterprise's loan application to the commission within three (3) business days after making the determination.

(e) After a loan application has been approved by a lender, the minority business enterprise shall close the loan within three (3) business days.

15-4-3508. Rules – Forms.

The Arkansas Economic Development Commission shall:

(1) Promulgate rules to implement this subchapter; and

(2) Create and adopt by rule the following forms:

(A) An application for a loan guarantee under this subchapter;

(B) A loan guarantee agreement; and

(C) Any other forms necessary for the administration of this subchapter.

SECTION 2. Arkansas Code Title 15, Chapter 4, Subchapter 4 is repealed.

~~Subchapter 4 — Jobs Creation by Stimulating Small Business Growth Act of 1985~~

~~15-4-401.—Title.~~

~~This subchapter shall be known and may be cited as the “Jobs Creation by Stimulating Small Business Growth Act of 1985”.~~

~~15-4-402.—Legislative findings and purpose.~~

~~The General Assembly finds that:~~

~~(1) It would be in the best interest of the population of the State of Arkansas to promote the growth and development of small business concerns and concerns owned and controlled by socially and economically disadvantaged individuals, to the extent provided in this subchapter, by:~~

~~(A) Stimulating the flow of private capital and long-term loan funds these concerns need for the sound financing of capital improvements for their business operations and for growth, expansion, and modernization; and~~

~~(B) Providing incentives as appropriate for the increase of business volume these concerns need to become competitive; and~~

~~(2) The State of Arkansas’ primary concern is to encourage the creation of more jobs for the population in a segment in which the ratio of new jobs per dollar invested is maximized.~~

~~15-4-403.—Definitions.~~

~~As used in this subchapter:~~

~~(1) “Council” means the Arkansas Economic Development Council;~~

~~(2) “Division” means the Division of Minority Business Enterprise within the Arkansas Economic Development Commission;~~

~~(3) “Small business concern” means small business firms in this state owned and operated by:~~

~~(A) Socially and economically disadvantaged individuals who are qualified to receive federally secured loans through small business investment companies licensed by the Small Business Administration; and~~

~~(B) Small business firms owned and operated by persons of limited financial means; and~~

~~(4) “Small business investment company” means a small business investment company organized and chartered under the business corporation or nonprofit corporation statutes of this state or formed as a limited partnership for the purpose of making investment loans for capital~~

~~improvements and expansion to persons whose participation in the free enterprise system is hampered because of social or economic disadvantages, as authorized in 15 U.S.C. § 681(d) [repealed], or because of limited financial means.~~

~~15-4-404. Promulgation of rules and regulations generally.~~

~~The Arkansas Economic Development Council shall promulgate rules, regulations, and procedures to be followed by the Division of Minority Business Enterprise of the Arkansas Economic Development Commission:~~

- ~~(1) In administering the provisions of this subchapter; and~~
- ~~(2) In the making of loans to small business investment companies or in the purchase from the companies of loans made to small business concerns in compliance with the provisions of this subchapter.~~

~~15-4-405. Companies qualified for loan application and sale — Apportioning available funds.~~

~~(a) Any small business investment company which qualifies and is licensed by the Small Business Administration as a small business investment company authorized to do business in this state and to make loans and provide investment funds for capital improvements to persons whose participation in the free enterprise system is hampered because of social or economic disadvantage shall be entitled to apply with the Division of Minority Business Enterprise of the Arkansas Economic Development Commission for loans under the provisions of this subchapter and may sell to the division loans made to small business concerns eligible to receive the loans under the provisions of this subchapter.~~

~~(b) If applications for loans or applications to sell investment loans filed with the division exceed the funds available for such purposes, the Arkansas Economic Development Council shall promulgate appropriate rules and regulations to apportion to each such small business investment company its pro rata share of available loan funds in accordance with guidelines and standards promulgated by the council.~~

~~15-4-406. Authority to issue revenue bonds — Loan funds.~~

~~To stimulate the flow of private funds for capital improvements to small business concerns, the Arkansas Economic Development Council is~~

~~authorized to:~~

~~(1) Issue revenue bonds to obtain funds to be administered through the Division of Minority Business Enterprise of the Arkansas Economic Development Commission to make investment loans to small business concerns insured by the Small Business Administration of the federal government; and~~

~~(2) Provide funds whereby the division may purchase from small business investment companies small business enterprise loans for capital improvements and expansions guaranteed by the Small Business Administration, thereby making available to such small business investment companies additional loan funds.~~

~~15-4-407. Limits on bond issuance and loan purchases.~~

~~(a) The Arkansas Economic Development Council is authorized and empowered to issue revenue bonds in such amounts as may be determined by the council.~~

~~(b) For the purposes of this subchapter, the aggregate amount of revenue bonds to be issued under the provisions of this subchapter shall not exceed the sum of ten million dollars (\$10,000,000) for the fiscal biennium ending June 30, 1987.~~

~~(c) Moneys loaned to small business companies under the provisions of this subchapter shall be used by the companies in making business loans to small business concerns, as defined in this subchapter, in amounts not to exceed an aggregate of one hundred thousand dollars (\$100,000) in such moneys to the same small business concern during any fiscal biennium.~~

~~(d) Small business concern loans purchased by the council from qualified small business investment companies shall not exceed an aggregate of one hundred thousand dollars (\$100,000) in loans to any single business firm during any fiscal biennium.~~

~~15-4-408. Prerequisites to issuance.~~

~~Before the Arkansas Economic Development Council shall issue its revenue bonds, the commission, acting through the Division of Minority Business Enterprise of the Arkansas Economic Development Commission, shall have received from small business investment companies in this state binding commitments to make business loans to small business concerns, as defined in this subchapter, to sell small business loans to the division or to engage in~~

~~specific small business concern loan activities, as authorized in this subchapter.~~

~~15-4-409. Authorizing resolution and trust indenture.~~

~~(a) Before revenue bonds shall be issued, the Arkansas Economic Development Council shall adopt an authorizing resolution and trust indenture which, together with this subchapter, shall constitute a contract between the council and the holders and registered owners of the bonds.~~

~~(b) The contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with the terms and conditions of the contracts, and the covenants, agreements, and obligations of the Arkansas Economic Development Commission shall be enforced by mandamus or other appropriate proceedings at law or in equity.~~

~~15-4-410. Issuance and redemption procedures.~~

~~(a) The bonds to be issued by the Arkansas Economic Development Council shall be issued in accordance with the same procedures provided for the issuance of revenue bonds by the Arkansas Development Finance Authority.~~

~~(b) All other provisions of the Arkansas Housing Development Agency Act [repealed] governing the issuance of revenue bonds, the issuance of refunding bonds, and the various formalities and procedures to be followed with respect to the issuance or redemption thereof shall be applicable to revenue bonds to be issued by the council under the provisions of this subchapter.~~

~~15-4-411. Security.~~

~~(a) The principal of, interest on, and trustees' and paying agents' fees in connection with the revenue bonds issued by the Arkansas Economic Development Council under the provisions of this subchapter shall be secured by a lien and pledge of the loans made or the investment loans purchased from the proceeds and collateral security received by the council from small business investment companies.~~

~~(b) It shall not be necessary to the provisions of the lien and pledge that the trustees or holders of the revenue bonds take possession of the loan mortgages for collateral security.~~

~~15-4-412. Expenses.~~

~~The Arkansas Economic Development Council may require the small business investment company borrowing money from the commission or selling small business concern investment loans to the commission to pay all or part of the incidental expenses in connection therewith and all or part of the expenses of issuance of the bonds.~~

~~15-4-413. Tax exemption.~~

~~Bonds issued under the provisions of this subchapter and the interest on those bonds shall be exempt from all state, county, and municipal taxes, and the exemption shall include income, inheritance, and estate taxes.~~

~~15-4-414. No personal liability.~~

~~Neither the members of the Arkansas Economic Development Council nor officials or employees of the Arkansas Economic Development Commission or the Division of Minority Business Enterprise of the Arkansas Economic Development Commission executing bonds or notes pursuant to this subchapter shall be liable personally on such bonds or notes by reason of the issuance thereof.~~

~~15-4-415. Authority to use bond proceeds.~~

~~The Arkansas Economic Development Council, acting through the Division of Minority Business Enterprise of the Arkansas Economic Development Commission, is authorized and empowered to use the proceeds of any bonds issued under this subchapter, together with any other available funds, for the making of loans for:~~

- ~~(1) The purchase of investment loans and paying of incidental expenses in connection therewith;~~
- ~~(2) Paying the expenses of amortizing and issuing the bonds;~~
- ~~(3) Paying interest on the bonds until revenues thereon are available in sufficient amounts; and~~
- ~~(4) Funding such debt service reserves as the council deems necessary or desirable.~~

~~15-4-416. Deposit and use of revenues.~~

~~(a) All revenues received by the Division of Minority Business Enterprise of the Arkansas Economic Development Commission in behalf of the~~

~~Arkansas Economic Development Council under the authority of this subchapter, except revenues derived from appropriations, are specifically declared to be cash funds restricted in their use and dedicated and to be used solely as provided in this subchapter.~~

~~(b) The pledged revenues shall not be deposited in the State Treasury, but, when received, shall be deposited by the council in the account or accounts and in the depository or depositories specified by resolution of the council and shall be used by the council solely for the purpose of carrying out the provisions of this subchapter and in conformity with the provisions of any resolution or indenture securing bonds of the council or other agreement entered into by the council pursuant to the provisions of this subchapter.~~

~~(c) Any revenues at any time held by the council in excess of the amount necessary to accomplish the purpose for which the revenues were received and to comply with all covenants and agreements of the agency relating thereto shall be deposited to the credit of the state in such depositories and shall be reported to the Treasurer of State at such time and in such manner as shall be designated and prescribed by the Treasurer of State.~~