

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

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/24/15
A Bill

HOUSE BILL 1493

By: Representatives Eads, Pitsch
By: Senators B. Johnson, G. Stubblefield

For An Act To Be Entitled

AN ACT TO REVISE AND UPDATE LAWS FOR THE EFFICIENT OPERATION OF THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REVISE AND UPDATE LAWS FOR THE EFFICIENT OPERATION OF THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. Arkansas Code § 2-7-201 is amended to read as follows:
2-7-201. Creation.

(a) There is hereby created within the ~~Division of Agriculture~~ ~~Development of the~~ Arkansas Development Finance Authority the Arkansas Farm Mediation Office which shall administer the Arkansas Farm Mediation Program to provide mediation and debt management services to farmers and their creditors in the State of Arkansas.

(b)(1) The program shall be administered by the ~~Director~~ President of the ~~Division of Agriculture Development~~ Arkansas Development Finance Authority who shall employ mediators and administrative staff in such numbers as are necessary and as the General Assembly may appropriate to carry out the provisions of this chapter.

(2) The ~~director~~ president may apply to the United States Secretary of



Agriculture or any other agency or department for any financial assistance for the administration and operation of the program.

(3) The ~~director~~ president or his or her designee shall select mediators who are knowledgeable in the areas of finance, agriculture, and negotiation and shall train them in any other matters as are necessary to carry out their functions under this chapter.

(4) The ~~director shall have the authority to~~ president may promulgate ~~any necessary rules and regulations~~ to carry out the provisions of this chapter.

SECTION 2. Arkansas Code § 15-5-202(a)(4), concerning the membership of the Board of Directors of the Arkansas Development Finance Authority, is amended to read as follows:

(4)(A) One (1) public member of the board shall be a representative of the agricultural business enterprise industry, ~~and~~.

~~(B) one~~ One (1) public member shall be a representative of the state's elderly population ~~and shall be~~ who is:

~~(i) sixty~~ Sixty (60) years of age or older; ~~and~~

~~(B)(ii) This member shall not be~~ Not actively engaged in or retired from the operation of an agricultural business enterprise.

~~(C) He or she~~ The public members appointed under subdivisions (a)(4)(A) and (B) of this section shall be:

~~(i) selected~~ Selected from the state at large subject to confirmation by the Senate; ~~and~~

~~(ii) shall be a full~~ Full voting ~~member~~ members of the authority.

SECTION 3. Arkansas Code § 15-5-202(a)(6) and (7), concerning the membership of the Board of Directors of the Arkansas Development Finance Authority, are amended to read as follows:

~~(6)(A) As vacancies occur, the Governor shall ensure that two (2) of the ten (10) members represent various agricultural interests in the state.~~

~~(B)(i) In addition to their other duties as board members, those board members representing agriculture shall function as an agriculture~~

~~subcommittee to oversee and support the Division of Agriculture Development.~~
~~(ii) This subcommittee shall assist in policy development and program oversight and will be responsible to the Governor and the authority as a whole.~~

~~(C) In addition to the two (2) members of the Agriculture Subcommittee of the Arkansas Development Finance Authority provided for in subdivisions (a)(6)(A) and (B) of this section, the subcommittee shall also include three (3) members of the Senate Committee on Agriculture, Forestry, and Economic Development to be designated by the chair of the committee, and three (3) members of the House Committee on Agriculture, Forestry, and Economic Development to be designated by the chair of the committee, who shall serve as ex officio members of the subcommittee.~~

~~(7)(6)~~ In addition to the other members of the board, the Treasurer of State or his or her designee, who shall serve during the Treasurer of State's absence, shall serve as an ex officio voting member of the board.

SECTION 4. Arkansas Code § 15-5-207(b)(10)(A), concerning the bond issuing authority of the Arkansas Development Finance Authority, is amended to read as follows:

(10)(A) To issue bonds to provide financing for a specific activity or particular project authorized under this chapter or to provide on a pooled or consolidated basis financing for activities or projects authorized under this chapter that shall be secured by and payable solely from ~~the bonds, lease payments~~ all or any portion of the following:

- (i) Proceeds of the bonds;
- (ii) Reserves established in connection with the bonds;
- (iii) Lease or loan payments;
- (iv) Revenues of the authority that are not derived from appropriations; and
- (v) , or other obligations Obligations issued by or payable to the state agencies, political subdivisions of the state, or others for whose benefit the authority may issue bonds, and the security and sources of payments ~~thereof~~ of the obligations.

SECTION 5. Arkansas Code § 15-5-207(b)(12)(A), concerning lending authority of the Arkansas Development Finance Authority, is amended to read as follows:

(12)(A) To make secured or unsecured loans, including loans made to financial institutions to secure loans made by the financial institutions ~~to~~ for qualifying agricultural business enterprises, capital improvements, educational facilities, energy enterprises, ~~health care~~ healthcare facilities, housing developments, industrial enterprises, and short-term advance funding of local government obligations.

SECTION 6. Arkansas Code § 15-5-207(c), concerning applications filed with the Arkansas Development Finance Authority, is amended to read as follows:

(c) ~~All applications~~ Applications filed with the Arkansas Development Finance Authority for direct loans ~~authorized under subsection (b) of this section, tax credits, qualified investments, and requests for proposals~~ shall be treated, handled, and considered in the same manner as ~~set forth for other~~ loan applications ~~in~~ under § 15-5-409.

SECTION 7. Arkansas Code § 15-5-209(f), concerning revenues pledged to the Arkansas Development Finance Authority, is amended to read as follows:

(f) The revenues pledged ~~revenues to any bonds of the authority~~ shall not be deposited into the State Treasury but when received shall be deposited by the authority in an account or accounts in a depository or depositories specified by resolution of the authority and used by the authority solely for the purpose of carrying out the provisions of this subchapter and §§ 15-5-101 – 15-5-106 and 15-5-301 – 15-5-316 and in conformity with the provisions of any resolution or any indenture securing bonds of the authority or other agreement entered into by the authority pursuant to the provisions of this subchapter and §§ 15-5-101 – 15-5-106 and 15-5-301 – 15-5-316.

SECTION 8. Arkansas Code § 15-5-312(b), concerning security for bond obligations, is amended to read as follows:

(b) The payment of the bonds' principal ~~of~~, redemption premium, if any, ~~and interest, on the~~ and trustee's and paying agent's fees ~~in connection with the bonds~~ may be secured by any combination of:

- (1) ~~a~~ A lien on any security interest in facilities financed by bonds issued ~~hereunder, under this subchapter;~~
- (2) ~~by~~ A lien encumbering or pledge of loans made or mortgages purchased by the authority, ~~and;~~
- (3) A pledge of revenues of the authority that are not derived from appropriations;
- (4) ~~any collateral~~ Collateral security received by the authority, including, without limitation, the authority's interest in and ~~any~~ revenue derived from ~~any~~ loan agreements; and
- (5) A lien encumbering or pledge of the proceeds of the bonds and any reserves established in connection with the bonds.

SECTION 9. Arkansas Code § 15-5-314(a), concerning the issuance of refunding bonds, is amended to read as follows:

(a) Bonds may be issued for the purpose of refunding, either at maturity or in advance of maturity, ~~any;~~

- (1) ~~bonds~~ Bonds issued under this subchapter; or
- (2) Bonds or other obligations issued or incurred by a state agency or a political subdivision to finance a purpose for which the authority is authorized to issue bonds under this subchapter.

SECTION 10. Arkansas Code § 15-5-703(8), concerning definitions under the Arkansas Development Finance Authority Small Business Act of 1989, is amended to read as follows:

(8) "Direct ~~fund~~ Fund" means a cash fund used for qualified investments to invest exclusively in Arkansas small businesses, preferably as a co-investor with other professional venture investors or accredited investors as defined in § 15-5-1603(1), consisting of the total dollar amount of cash funds of the authority dedicated and made available by the board for qualified investments to invest exclusively in Arkansas small businesses, preferably as a coinvestor with other professional venture investors from any combination of:

- (A) The Venture Capital Investment Trust as defined in § 15-5-1603(8) that is dedicated and made available by the board; and
- (B) An authorized source under § 15-5-711;

SECTION 11. Arkansas Code § 15-5-703(11), concerning definitions under the Arkansas Development Finance Authority Small Business Act of 1989, is amended to read as follows:

(11) "Qualified investment" means ~~an~~ any form of investment, by the Venture Capital Investment Trust as defined in § 15-5-1603(8) in whatever form, in the capital structure of a small business:

(A) ~~through the direct fund~~ Through the Direct Fund; or
 (B) ~~through cooperation~~ By investing in or cooperating with other investment entities, including without limitation an accredited investor as defined in § 15-5-1603;

SECTION 12. Arkansas Code § 15-5-706(b), concerning the administration of the Arkansas Development Finance Authority Small Business Act of 1989, is amended to read as follows:

(b) The authority ~~shall also be empowered to~~ may also promulgate rules ~~and regulations~~ for the handling of disbursements from and payments to the Small Business Revolving Loan Fund and the ~~direct fund~~ Direct Fund and for the management and implementation of programs provided in this subchapter, specifically including the establishment of amounts to be made available for small businesses in rural areas.

SECTION 13. Arkansas Code § 15-5-711 is amended to read as follows:

15-5-711. Grants to fund.

The Arkansas Development Finance Authority ~~is authorized to~~ may accept grants to its Small Business Revolving Loan Fund ~~from any state or federal agencies, municipalities, corporations, foundations, individual donees, or authorities~~ and its Direct Fund from any source.

SECTION 14. Arkansas Code § 15-5-712 is amended to read as follows:

15-5-712. Power to make grants and loans.

The Arkansas Development Finance Authority ~~is authorized to~~ may make grants, direct loans, or loan guaranties to:

(1) ~~new~~ New or existing:

(A) Title IX revolving loan funds;
 (B) ~~small~~ Small business investment companies, ~~or;~~ and
 (C) ~~specialized~~ Specialized small business investment

companies;

(2) The Division of Minority Business Enterprise of the Arkansas Economic Development Commission; and

(3) A certified Community Development Financial Institution under the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. No. 103-325.

SECTION 15. Arkansas Code § 15-5-713 is amended to read as follows:
15-5-713 . Funding of qualified investments.

~~(a)(1) The Arkansas Development Finance Authority is authorized to make, from cash funds held by the authority for such a purpose, may approve~~ the use of funds for qualified investments upon such terms and conditions and for such periods of time as shall be recommended by the President of the Arkansas Development Finance Authority and approved by the Board of Directors of the Arkansas Development Finance Authority from:

(1) Cash funds held by the authority; and

(2) The Venture Capital Investment Trust.

~~(2)(b) Before approving a qualified investment, the~~ The board shall determine that the making of the not approve a qualified investment that:

(1) Does not furthers further the purposes of this subchapter ~~as included in § 15-5-702;~~ and

(2) is Is not in the best interest of the state.

~~(b) The authority shall not make qualified investments in any one (1) small business, in the aggregate, exceeding five hundred thousand dollars (\$500,000) or ten percent (10%) of the direct fund, whichever is smaller.~~

SECTION 16. Arkansas Code Title 15, Chapter 5, Subchapter 8, is repealed.

~~Subchapter 8 — Rural and Agricultural Development~~

~~15-5-801. Rural development generally.~~

~~The Arkansas Development Finance Authority shall act as coordinator with other state agencies in forming advisory teams to work with communities in the development of business, industry, and agriculture in the rural areas of the state.~~

~~15-5-802. Division of Agriculture Development.~~

~~There is created a Division of Agriculture Development within the Arkansas Development Finance Authority. The division will be staffed with adequate personnel to carry out its duties as itemized and described in this subchapter and in the authority's appropriations legislation.~~

~~15-5-803. Duties of division.~~

~~The functions of the Division of Agriculture Development of the Arkansas Development Finance Authority shall include to:~~

- ~~(1) Monitor and advise the Governor and the Arkansas Development Finance Authority on federal and state legislative issues affecting agriculture;~~
- ~~(2) Serve as an ombudsman for the agricultural community;~~
- ~~(3) Identify job creation opportunities in the agriculture business;~~
- ~~(4) Assist in domestic and international marketing of agricultural products;~~
- ~~(5) Identify new agricultural business enterprises as well as assist in implementing an agriculture awareness program in this state;~~
- ~~(6) Identify problems in the agricultural sector and develop necessary policies and programs to address the problems; and~~
- ~~(7) Perform such other duties as prescribed by the Governor and the Chair of the Board of Directors of the Arkansas Development Finance Authority.~~

~~15-5-804. Advisory capacity of division.~~

~~The Division of Agriculture Development of the Arkansas Development Finance Authority is mandated to serve in an advisory capacity to the development finance functions of the Arkansas Development Finance Authority as they may relate to the development of agricultural business enterprises.~~

~~15-5-805. Catfish Industry Development Program.~~

~~(a)(1) There is created a Catfish Industry Development Program within the Arkansas Development Finance Authority.~~

~~(2) The program's office will be staffed with adequate personnel to carry out its functions as itemized and described in this section and in the appropriation legislation of the Arkansas Development Finance Authority.~~

~~(b) The functions of the program shall include:~~

- ~~(1) Monitoring and advising the Governor and the authority on federal and state legislative issues affecting the catfish industry;~~
- ~~(2) Identifying job creation opportunities in the catfish industry;~~
- ~~(3) Identifying new catfish industry enterprises as well as assisting in implementing a catfish industry awareness program in this state;~~
- ~~(4) Identifying problems in the catfish industry and developing necessary policies and programs to address the problems;~~
- ~~(5) Developing financing programs to provide funds for new and existing catfish industry enterprises; and~~
- ~~(6) Performing such other duties as prescribed by the Governor and the Chair of the Board of Directors of the Arkansas Development Finance Authority.~~

SECTION 17. Arkansas Code § 15-5-1607 is amended to read as follows:
15-5-1607. Review committee.

The review committee shall recommend to the trustees ~~the payment of the~~ Venture Capital Investment Trust the payment of fees and expenses out of the Arkansas Risk Capital Matching Fund for the operation of the fund.

SECTION 18. Arkansas Code § 15-5-1805(b)(1), concerning the issuance of bonds for energy efficiency projects, is amended to read as follows:

(b)(1) The authority shall not issue bonds under this subchapter unless:

(A) A state entity has:

(i) Applied for approval; and

(ii) Submitted a resolution to the authority

authorizing the issuance of bonds; ~~and~~

(B) The authority determines that the energy savings to be realized from the energy efficiency project and other available revenues are sufficient to fund the requested bond issue.

SECTION 19. Arkansas Code § 25-38-205 is repealed.

~~25-38-205. The Division of Agricultural Development of the Arkansas Development Finance Authority — Coordination of marketing programs. The Division of Agriculture Development of the Arkansas Development~~

~~Finance Authority, created under § 15-5-802, shall coordinate all aspects of its work concerning the marketing of the agricultural products of Arkansas with the Secretary of the Arkansas Agriculture Department.~~

SECTION 20. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the efficient administration of the programs and functions conducted by the Arkansas Development Finance Authority is critical to the economic well-being of the state; that it is vital that business and citizens are immediately encouraged to the full extent possible to use the authority's programs and thereby help the economic development of state resources; and that this act is immediately necessary to ensure that the authority's programs are operated efficiently and in a manner that does not hinder participation or negatively impact program applicants. 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/Eads