

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 533

By: Senator D. Sullivan

For An Act To Be Entitled

AN ACT CONCERNING CERTAIN STATE ECONOMIC DEVELOPMENT PROGRAMS; TO AMEND THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY SMALL BUSINESS ACT OF 1989; TO AMEND THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY BOND GUARANTY ACT OF 1985; TO REPEAL THE VENTURE CAPITAL INVESTMENT ACT OF 2001; TO MAKE CONFORMING CHANGES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY SMALL BUSINESS ACT OF 1989; TO AMEND THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY BOND GUARANTY ACT OF 1985; AND TO REPEAL THE VENTURE CAPITAL INVESTMENT ACT OF 2001.

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

SECTION 1. Arkansas Code § 15-3-112(a), concerning prohibition on personal interest in contracts, is amended to read as follows:

(a) ~~No~~ A director, officer, or employee of the Division of Science and Technology of the Arkansas Economic Development Commission or of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission, for purpose of personal gain, shall not have or attempt to have, directly or indirectly, ~~any~~ an interest in ~~any~~ a contract or agreement of the division in connection with ~~the qualified investments or other programs~~ any program of the division.



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SECTION 2. Arkansas Code § 15-3-503(b)(2)(C), concerning the programs and initiatives for which the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission shall make funding recommendations, is repealed.

~~(C) Venture Capital Investment Act of 2001, § 15-5-1401 et seq.;~~

SECTION 3. Arkansas Code § 15-5-207(c), concerning the rights, powers, privileges, and duties of the Arkansas Development Finance Authority, is amended to read as follows:

(c) Applications filed with the authority for direct loans, tax credits, ~~qualified investments,~~ and requests for proposals shall be treated, handled, and considered in the same manner as loan applications under § 15-5-409.

SECTION 4. Arkansas Code § 15-5-403(10), concerning the definitions used under the Arkansas Development Finance Authority Bond Guaranty Act of 1985, is amended to read as follows:

(10) "Qualified bonds" means:

(A) Revenue bonds validly issued by the authority in accordance with the provisions of the Arkansas Development Finance Authority Act, §§ 15-5-101 – 15-5-106, 15-5-201 – 15-5-211, 15-5-213, and 15-5-301 – 15-5-316;

~~(B) An obligation issued by the designated investor group under the Venture Capital Investment Act of 2001, § 15-5-1401 et seq.;~~ or

~~(C)~~(B) Revenue bonds validly issued by a city or county under the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq.;

SECTION 5. Arkansas Code § 15-5-703(8), concerning the definitions used under the Arkansas Development Finance Authority Small Business Act of 1989, is repealed.

~~(8) "Direct 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 § 15-5-1403, consisting of the total dollar amount of cash funds of the authority from any combination of:~~

~~(A) The Venture Capital Investment Trust as defined in § 15-5-1403 that is dedicated and made available by the board; and~~

~~(B) An authorized source under § 15-5-711;~~

SECTION 6. Arkansas Code § 15-5-703(11), concerning the definitions used under the Arkansas Development Finance Authority Small Business Act of 1989, is repealed.

~~(11) “Qualified investment” means any form of investment by the Venture Capital Investment Trust as defined in § 15-5-1403 in the capital structure of a small business:~~

~~(A) Through the Direct Fund; or~~

~~(B) By investing in or cooperating with other investment entities, including without limitation an accredited investor as defined in § 15-5-1403;~~

SECTION 7. Arkansas Code § 15-5-704 is amended to read as follows:
15-5-704. Duty of authority.

(a) The Arkansas Development Finance Authority, in addition to all the duties and functions defined in the Arkansas Development Finance Authority Act, §§ 15-5-101 – 15-5-106, 15-5-201 – 15-5-211, 15-5-213, and 15-5-301 – 15-5-316, is empowered to approve or deny by majority vote of the Board of Directors of the Arkansas Development Finance Authority the applications for direct loans and guaranties of obligations ~~and qualified investments~~, except that, at the discretion of the board, approvals for loans up to any limit the board shall specify may be approved by the Small Business Loan Committee.

(b) The committee shall report all such actions taken at the next meeting of the board.

SECTION 8. Arkansas Code § 15-5-706 is amended to read as follows:
15-5-706. Evaluation of small-business persons.

(a) The Arkansas Development Finance Authority shall promulgate standards and rules for the evaluation of the financial condition and business history of the small-business person and may require the attachment to each application for a loan or guaranty ~~or qualified investment~~ under this subchapter of a financial report and evaluation by an independent certified public accountant firm in addition to such examination and evaluation as the

authority may make in determining whether the small-business person meets prescribed minimum standards and qualifications before entering into any guaranty under this subchapter.

(b) The authority may also promulgate rules for the handling of disbursements from and payments to the Small Business Revolving Loan Fund ~~and the 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 9. Arkansas Code § 15-5-708 is amended to read as follows:
 15-5-708. Applications – Supporting documents.

Each small-business person requesting a loan or guaranty ~~or qualified investment~~ under this subchapter shall submit to the Arkansas Development Finance Authority an application, supporting documents, and instruments as may be required by the rules promulgated by the authority ~~pursuant to~~ under this subchapter and approved by a majority vote of the Board of Directors of the Arkansas Development Finance Authority.

SECTION 10. Arkansas Code § 15-5-711 is amended to read as follows:
 15-5-711. Grants to fund.

The Arkansas Development Finance Authority may accept grants to its Small Business Revolving Loan Fund ~~and its Direct Fund~~ from any source.

SECTION 11. Arkansas Code § 15-5-713 is repealed.
~~15-5-713. Funding of qualified investments.~~

~~(a) The Arkansas Development Finance Authority 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.~~

~~(b) The board shall not approve a qualified investment that:~~

- ~~(1) Does not further the purposes of this subchapter; and~~
- ~~(2) Is not in the best interest of the state.~~

SECTION 12. Arkansas Code Title 15, Chapter 5, Subchapter 14, is repealed.

~~Subchapter 14—Venture Capital Investment Act of 2001~~

~~15-5-1401.—Title.~~

~~This subchapter shall be known and may be cited as the “Venture Capital Investment Act of 2001”.~~

~~15-5-1402.—Purpose.~~

~~The State of Arkansas desires to increase the availability of equity and near-equity capital for emerging, expanding, relocating, and restructuring enterprises in the state. Such investments will help strengthen the state’s economic base and create jobs.~~

~~15-5-1403.—Definitions.~~

~~As used in this subchapter:~~

~~(1) “Accredited investor” means an accredited investor as defined in 17 C.F.R. § 230.215, as it existed on January 1, 2013;~~

~~(2) “Authority” means the Arkansas Development Finance Authority;~~

~~(3) “Bond guaranty” means a special obligation of the Bond Guaranty Reserve Account as defined in § 15-5-403;~~

~~(4) “Capital guaranty” means the guaranty provided by the authority under § 15-5-1405;~~

~~(5) “Certificate” means a document executed by the authority extending a capital guaranty to the designated investor group;~~

~~(6) “Designated investor group” means the investor group selected by the authority under this subchapter;~~

~~(7) “Equity capital” means capital invested in common stock or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other equity, securities, or rights that evidence ownership or investment in private enterprises;~~

~~(8) “Investor group” means any individual, corporation, partnership, limited liability company, or other lawfully organized entity;~~

~~(9) “Near equity capital” means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities;~~

~~(10) “Person” means any individual, corporation, partnership, or other~~

~~lawfully organized entity;~~

~~(11) “Review committee” means a committee composed of the President of the Arkansas Development Finance Authority, the Director of the Arkansas Economic Development Commission, and the members of the Board of Directors of the Arkansas Development Finance Authority;~~

~~(12) “Revolving fund” means a bank account;~~

~~(A) Created by the designated investor group in a financial institution located in this state; and~~

~~(B) Used solely as provided in this subchapter;~~

~~(13) “Tax credit” means an income tax credit granted to the authority under this subchapter;~~

~~(14) “Technology-based enterprises” means a group of growing businesses in one (1) or more of the following business sectors:~~

~~(A) Advanced materials and manufacturing systems;~~

~~(B) Agriculture, food, and environmental sciences;~~

~~(C) Biotechnology, bioengineering, medical technology, and life sciences;~~

~~(D) Information technology;~~

~~(E) Transportation logistics; and~~

~~(F) Biobased products;~~

~~(15) “Venture capital funds” means private, for-profit investment funds that seek to invest in technology-based enterprises; and~~

~~(16) “Venture Capital Investment Trust” means the public trust formed July 21, 2003, under § 28-72-201 et seq., the trustees of which are the President of the Arkansas Development Finance Authority, the Director of the Arkansas Economic Development Commission, and the Secretary of the Department of Finance and Administration, and that has as a principal purpose increasing the availability of equity capital and near-equity capital for emerging and expanding enterprises in the State of Arkansas.~~

~~15-5-1404. Designated investor group.~~

~~(a)(1) The Arkansas Development Finance Authority shall solicit from investor groups investment plans for the raising and investing of capital in accordance with the requirements of this subchapter.~~

~~(2) Investment plans submitted shall address the investor group's:~~

- ~~(A) Level of experience;~~
- ~~(B) Quality of management;~~
- ~~(C) Investment philosophy and process;~~
- ~~(D) Probability of success in fund raising; and~~
- ~~(E) Plan for achieving the purposes of this subchapter.~~

~~(b)(1) The authority shall consider and select the investment plans and shall select and certify as the designated investor group the one (1) investor group deemed best qualified to:~~

- ~~(A) Capitalize the private revolving fund with the most effective and efficient utilization of the capital guaranty;~~
- ~~(B) Invest the capital in private seed and venture capital entities in a manner mobilizing a wide variety of equity capital and near-equity capital investments in ventures promoting the economic development of Arkansas; and~~
- ~~(C) Help build a significant, fiscally strong, and permanent resource to serve the objectives expressed in this subsection.~~

~~(2) The designated investor group must have a manager who is a person with demonstrated substantial successful experience in design, implementation, and management of seed and venture capital investment programs and in capital formation.~~

- ~~(c) The authority, in its discretion, shall have the right to:~~
 - ~~(1) Remove and replace the chosen designated investor group; and~~
 - ~~(2) Effect the assignment of all assets, liabilities, guaranties, and other contracts of this program to a new designated investor group.~~

~~15-5-1405. Guaranty.~~

~~(a) The Arkansas Development Finance Authority shall have the power to extend a capital guaranty of obligations issued by the designated investor group.~~

- ~~(b) The capital guaranty shall be secured by:~~
 - ~~(1) The authority guaranty, subject to the limits establish by the authority; and~~
 - ~~(2) Tax credits.~~

~~(c) The authority may charge a reasonable fee for costs and the fair compensation of risk associated with its guaranty.~~

~~15-5-1406.—Tax credits.~~

~~(a)—The State of Arkansas shall issue income tax credits that may be used to reduce the tax liability of a person, firm, or corporation.~~

~~(b)(1)—Income tax credits transferred by the Arkansas Development Finance Authority shall only be used to offset payment of reported state income tax liability and are not refundable.~~

~~(2)—Unused tax credit may be carried forward for five (5) additional taxable years after the taxable year in which the tax credit was first used.~~

~~(b)—Tax credits against liabilities shall be limited to the amount that would otherwise be collected and allocated to the Treasurer of State.~~

~~(c)—The total amount of tax credits issued and transferable to the authority is sixty million dollars (\$60,000,000).~~

~~(d)—The tax credits issued under this subchapter shall be transferred only after:~~

~~(1)—The authority guaranty funds, subject to limits established by the authority, are exhausted;~~

~~(2)(A)—The authority presents its recommendations concerning the issuance of tax credits to the State Board of Finance.~~

~~(B)—These recommendations shall include:~~

~~(i)—The amount of tax credits to be transferred to the parties with whom the authority has contracted;~~

~~(ii)—The parties to whom the tax credits will be transferred; and~~

~~(iii)—Other information requested by the board; and~~

~~(3)—The board reviews and approves the issuance of the tax credits.~~

~~(e)(1)—The authority shall immediately notify in writing the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor if any tax credit is transferred in conjunction with a legitimate call on an authority guarantee.~~

~~(2)—The authority shall not be required to make such a notification for transfers to subsequent transferees.~~

~~(f)—The authority shall determine the amount of income tax credits to be transferred by the authority under this subchapter, up to a total amount~~

~~of ten million dollars (\$10,000,000) in any one (1) fiscal year, and may negotiate for sale of the tax credits subject only to the limits imposed under this subchapter.~~

~~(g) The authority shall clearly indicate upon the face of the document transferring the tax credit the principal amount of the tax credit.~~

~~(h) The authority may pay a fee in connection with the purchase by the authority of an option or other agreement under which the transfer of the tax credits authorized under this subchapter may be made.~~

~~(i) The authority shall have the power to make any contract, execute any document, charge reasonable fees for any services rendered, perform any act, or enter into any financial or other transaction necessary in order to carry out its mission.~~

~~(j)(1) The authority may employ any person as required for:~~
~~(A) Proper implementation of this subchapter;~~
~~(B) The management of its assets; or~~
~~(C) The performance of any function authorized or required by this subchapter or necessary for the accomplishment of any function.~~

~~(2) The person employed shall be selected by the authority based upon outstanding knowledge and leadership in the field for which the person performs services for the authority.~~

~~15-5-1407. Registration of tax credits.~~

~~(a) The Arkansas Development Finance Authority, in conjunction with the Revenue Division of the Department of Finance and Administration, shall develop a system for registration of all tax credits claimed under this subchapter.~~

~~(b) The system shall verify that any:~~
~~(1) Tax credit claimed upon a tax return is valid and properly taken in the year of claim; and~~
~~(2) Transfer of the tax credit is made in accordance with the requirements of this subchapter.~~

~~15-5-1408. Annual report.~~

~~The designated investor group shall publish an annual report within six (6) months after the close of its fiscal year, which shall:~~

~~(1) Include its annual audit of the activities conducted by the~~

~~designated investor group;~~

~~(2) Be presented in writing, and by testimony if requested, to the:~~

~~(A) Governor;~~

~~(B) House Committee on Agriculture, Forestry, and Economic Development and the Senate Committee on Agriculture, Forestry, and Economic Development; and~~

~~(C) Arkansas Development Finance Authority;~~

~~(3) Document and review the progress of the designated investor group in implementing its investment plan; and~~

~~(4) List any use, redemption, or transfer of tax credits allowed under this subchapter.~~

~~15-5-1409. Powers of the Arkansas Development Finance Authority.~~

~~The Arkansas Development Finance Authority shall have the power to promulgate rules and make any contract, execute any document, perform any act, or enter into any financial or other transaction necessary to implement this subchapter.~~

~~15-5-1410. Legislative findings.~~

~~The General Assembly finds:~~

~~(1) There is a need to strengthen and advance the infrastructure that supports and accelerates the advancement of the growth of technology-based enterprises in Arkansas;~~

~~(2) There exists a shortage of risk capital and financial assistance at the early stages of development for technology-based enterprises;~~

~~(3) An improved investment climate for early stage technology-based enterprises is expected to increase, advance, and accelerate the growth and development of technology-based enterprises in Arkansas;~~

~~(4) The ultimate goal of supporting technology-based enterprises is to convert research and development activities and early stage technology-based enterprises into viable commercial ventures; and~~

~~(5) The provision of financial investment and assistance to aid early stage technology-based enterprises is expected to strengthen the economic base of the State of Arkansas and create better paying jobs, thereby~~

~~benefiting all residents of the state.~~

~~15-5-1411. Creation of the Arkansas Venture Capital Development Fund.~~

~~(a) There is established the Arkansas Venture Capital Development Fund, and within that Arkansas Venture Capital Development Fund the Arkansas Venture Capital Development Fund Account, which Arkansas Venture Capital Development Fund and Arkansas Venture Capital Development Fund Account shall be held by and maintained as a separate fund and separate account within the Venture Capital Investment Trust.~~

~~(b)(1) The Arkansas Venture Capital Development Fund is a Direct Fund, as defined in § 15-5-703, created for the purpose of providing financial assistance to technology-based enterprises located in Arkansas with the expectation of:~~

~~(A) Developing jobs paying in excess of county and state average wages;~~

~~(B) Improving the growth, development, and advancement of technology-based enterprises; and~~

~~(C) Converting research and development activities and early stage technology-based enterprises into viable and productive commercial ventures.~~

~~(2) The Arkansas Venture Capital Development Fund shall target financial assistance toward:~~

~~(A) Technology-based enterprises that are in the early stages of development and that are not yet able to attract adequate private sources of traditional financing or venture or investor-backed capital for their growth and development; and~~

~~(B) Venture capital funds that have a direct connection to Arkansas and are focused on providing equity capital or near-equity capital to technology-based enterprises.~~

~~15-5-1412. Eligibility for financial assistance — Limitation.~~

~~(a) For a technology-based enterprise or venture capital fund to be eligible for financial assistance under this subchapter, the technology-based enterprise or venture capital fund shall:~~

~~(1) Demonstrate that at least one dollar (\$1.00) of financial assistance provided by the Arkansas Venture Capital Development Fund will~~

~~result in at least one dollar (\$1.00) of new private financial assistance;~~

~~(2) Demonstrate a reasonable expectation that financial assistance from the Arkansas Venture Capital Development Fund can, over time, result in private financial assistance that is at least ten (10) times the amount of financial assistance provided by the Arkansas Venture Capital Development Fund; and~~

~~(3) Have no more than five hundred (500) employees.~~

~~(b) Funds from the Arkansas Venture Capital Development Fund shall not be used to provide financial assistance that exceeds five million dollars (\$5,000,000) to any single technology based enterprise or venture capital fund.~~

~~15-5-1413. Funding of Arkansas Venture Capital Development Fund.~~

~~(a) The trustees of the Venture Capital Investment Trust may accept moneys and funds for the Arkansas Venture Capital Development Fund from any source.~~

~~(b) Moneys and funds received by the trustees of the trust for the fund shall be dedicated and used solely as authorized in this subchapter.~~

~~(c)(1) Moneys and funds received by the Arkansas Development Finance Authority or the Arkansas Economic Development Commission designated for use or ownership by the fund shall be deposited to the trust and held in the Arkansas Venture Capital Development Fund Account, as applicable and as specified in this subchapter, until used for the purposes of this subchapter.~~

~~(2) Moneys deposited to the trust for the purposes of providing financial assistance to technology based enterprises under this subchapter shall be allocated to the account according to a ratio approved by the trustees of the trust.~~

~~15-5-1414. Review committee.~~

~~The review committee shall:~~

~~(1) Recommend to the trustees of the Venture Capital Investment Trust the payment of fees and expenses out of the Arkansas Venture Capital Development Fund for the operation of the fund; and~~

~~(2) Approve an investment policy under this subchapter.~~

~~15-5-1415. Annual report.~~

~~The trustees of the Venture Capital Investment Trust shall publish an annual report within five (5) months after the close of each fiscal year that shall:~~

~~(1) Include an annual audit of the Arkansas Venture Capital Development Fund's activities conducted by the trustees with the assistance of the review committee;~~

~~(2) Be presented in writing, and by testimony if requested, to the:~~

~~(A) Governor;~~

~~(B) House Committee on Agriculture, Forestry, and Economic Development;~~

~~(C) Senate Committee on Agriculture, Forestry, and Economic Development;~~

~~(D) Arkansas Development Finance Authority; and~~

~~(E) Arkansas Economic Development Commission; and~~

~~(3) Document and review the progress of the trustees of the trust and the review committee in implementing the investment and financial assistance activities under this subchapter.~~

~~15-5-1416. Powers of the trustees of the Venture Capital Investment Trust.~~

~~The trustees of the Venture Capital Investment Trust may promulgate guidelines and rules and make any contract, execute any document, perform any act, or enter into any financial or other transaction necessary to implement the duties of the trustees under this subchapter.~~