

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.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

Act 860 of 2003
HOUSE BILL 1747

5 By: Representative Milligan
6 By: Senator Malone
7
8

For An Act To Be Entitled

10 AN ACT TO AMEND THE ARKANSAS CAPITAL DEVELOPMENT
11 CORPORATION ACT TO INCLUDE ADDITIONAL BUSINESS
12 ENTITIES AND TO REINSTATE INCOME TAX CREDITS; TO
13 AMEND ARKANSAS CODE § 26-18-303 TO PERMIT
14 DISCLOSURE OF CERTAIN TAX-RELATED INFORMATION TO
15 A CAPITAL DEVELOPMENT COMPANY; AND FOR OTHER
16 PURPOSES.
17

Subtitle

18 AN ACT TO AMEND THE ARKANSAS CAPITAL
19 DEVELOPMENT CORPORATION ACT.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code §§ 15-4-1001 and 15-4-1002 are amended to
26 read as follows:

27 15-4-1001. Title.

28 This subchapter shall be referred to and may be cited as the "Arkansas
29 Capital Development ~~Corporation~~ Company Act".
30

31 15-4-1002. Definitions.

32 (a) As used in this subchapter, unless the content otherwise
33 indicates:

34 ~~(1) "Board" means the State Banking Board;~~

35 ~~(2) "Commissioner" means the Bank Commissioner;~~

36 ~~(3) "Corporation" means a capital development corporation~~



1 authorized to be organized under the provisions of this subchapter;

2 ~~(4) "Financial institution" means any banking corporation or~~
3 ~~institution, trust company, savings bank, savings and loan association,~~
4 ~~insurance company, or related corporation, partnership, foundation, or other~~
5 ~~institution engaged primarily in lending or investing funds;~~

6 ~~(5) "Loan limit" means, for any member, the maximum amount~~
7 ~~permitted to be outstanding at any one (1) time on loans made by such member~~
8 ~~to the corporation, as determined under § 15-4-1020(b)(3);~~

9 ~~(6) "Member" means any financial institution authorized to do~~
10 ~~business in the State of Arkansas which shall undertake to lend money to a~~
11 ~~corporation upon its call and in accordance with the provisions of § 15-4-~~
12 ~~1020; and~~

13 ~~(7) "Person" includes any natural person, firm, association,~~
14 ~~corporation, joint stock company, trust, and trust estate.~~

15 (1) "Articles" means the articles of incorporation, articles of
16 organization, certificate of limited partnership, or any similar document
17 adopted by a capital development company in connection with its formation;

18 (2) "Board" means the State Banking Board;

19 (3) "Business Law" means the Arkansas Business Corporation Act
20 of 1987, § 4-27-101, the Small Business Entity Tax Pass Through Act, § 4-32-
21 101, the Uniform Partnership Act, § 4-46-101, the Revised Limited Partnership
22 Act of 1991, § 4-43-101, or the Arkansas Nonprofit Corporation Act of 1993, §
23 4-33-101, as each may be amended, or any other laws related to the formation
24 of business entities;

25 (4) "Commissioner" means the Bank Commissioner;

26 (5) "Capital development company" means a capital development
27 company authorized to be organized under this subchapter;

28 (6) "Development finance corporation" means a development
29 finance corporation organized under the Arkansas Development Finance
30 Corporation Act, § 15-4-901 et seq.;

31 (7) "Equity capital" means the amount by which the total assets
32 of a capital development company exceed the total liabilities of the company;

33 (8) "Equity interest" means any share of stock, limited
34 liability company interest, partnership unit of ownership, or other evidence
35 of ownership of an entity;

36 (9) "Financial institution" means any banking corporation or

1 institution, trust company, savings bank, savings and loan association,
 2 insurance company, or related corporation, partnership, foundation, or other
 3 institution engaged primarily in lending or investing funds;

4 (10) "Governing board" means the individual or individuals
 5 authorized under applicable business law and the capital development
 6 company's governing documents to manage the business of the company;

7 (11) "Governing documents" means the bylaws, operating
 8 agreement, partnership agreement, or other document adopted by the capital
 9 development company to govern its conduct; and

10 (12) "Person" includes any natural person, firm, association,
 11 corporation, joint-stock company, trust, trust estate, partnership, limited
 12 liability company, joint venture, and any other similar entity authorized by
 13 law.

14
 15 SECTION 2. Arkansas Code § 15-4-1004 is amended to read as follows:
 16 15-4-1004. Application for preliminary approval.

17 ~~Any five (5) or more qualified natural persons, who shall be bona fide~~
 18 ~~residents of this state and among whom each of the congressional districts in~~
 19 ~~the state shall have at least one (1) representative and who desire to~~
 20 ~~associate themselves for the purpose of establishing and operating a capital~~
 21 ~~development corporation, may subscribe, acknowledge, and file with the Bank~~
 22 ~~Commissioner for preliminary approval proposed articles of incorporation, in~~
 23 ~~duplicate, as authorized by § 15-4-1012.~~

24 (a) Any development finance corporation that desires to establish and
 25 operate a capital development company may subscribe, acknowledge, and file
 26 with the Bank Commissioner, an application for approval and proposed
 27 articles, in duplicate.

28 (b) The application for approval shall include a certificate executed
 29 by the chief executive officer of the capital development company certifying:

30 (1) That not less than one hundred thousand dollars (\$100,000)
 31 of equity interests have been subscribed and fully paid for;

32 (2) The name and address of the depository, or the names and
 33 addresses of the depositories, if more than one (1), holding on deposit the
 34 funds of the company; and

35 (3) The names and addresses of the members of the governing
 36 board and the officers, managers, and other persons responsible for carrying

1 out the day to day operations of the company.

2 (c) The application for approval shall also be accompanied by any
3 governing documents adopted by the governing board or the subscribers of
4 equity interests of the company.

5
6 SECTION 3. Arkansas Code §§ 15-4-1005 through 15-4-1007 are repealed.

7 ~~15-4-1005. Preliminary investigation.~~

8 ~~As soon as practicable after the receipt of the articles of~~
9 ~~incorporation, the Bank Commissioner, from the best source of information at~~
10 ~~his command shall:~~

11 ~~(1) Ascertain the qualifications, character, and general fitness~~
12 ~~of the applicants and their standing in their respective communities; and~~

13 ~~(2) Determine whether public convenience and necessity require a~~
14 ~~capital development corporation.~~

15
16 ~~15-4-1006. Preliminary approval.~~

17 ~~If the Bank Commissioner is satisfied that the applicants are bona fide~~
18 ~~residents of the state, that each of the congressional districts in the state~~
19 ~~is represented by at least one (1) applicant, that the applicants have the~~
20 ~~confidence of their respective communities, that public convenience and~~
21 ~~necessity require a capital development corporation, and that the proposed~~
22 ~~articles of incorporation conform to the provisions of § 15-4-1013, the~~
23 ~~commissioner shall issue his certificate approving the articles of~~
24 ~~incorporation and authorizing the applicants to proceed with the organization~~
25 ~~of the capital development corporation.~~

26
27 ~~15-4-1007. Organization.~~

28 ~~Upon receipt of the certificate of preliminary approval, the applicants~~
29 ~~may proceed to complete the organization of the capital development~~
30 ~~corporation, to obtain subscriptions for and payment of its stock, and to do~~
31 ~~all other things necessarily incidental and preliminary to its transacting~~
32 ~~business.~~

33
34 SECTION 4. Arkansas Code §§ 15-4-1008 and 15-4-1009 are amended to
35 read as follows:

36 15-4-1008. Ex officio ~~directors~~ members of the governing board.

1 (a) ~~In addition to the directors elected by the holders of common~~
 2 ~~stock of a capital development corporation, the~~ The Director of the
 3 Department of Economic Development, the President of the Arkansas Development
 4 Finance Authority, and the ~~Executive Director~~ President of the Arkansas
 5 Science and Technology Authority or persons holding similar executive
 6 positions in any agency or instrumentality succeeding thereto shall be ex
 7 officio members of the ~~board of directors~~ governing board of each ~~corporation~~
 8 capital development company created under this subchapter during their
 9 respective terms of office.

10 (b) Ex officio ~~directors~~ members of the governing board shall have all
 11 rights, duties, and obligations of ~~a director~~ other members of the governing
 12 board under the company's governing documents. ~~except that their terms of~~
 13 ~~office shall be concurrent with their employment in such position by the~~
 14 ~~respective agencies and shall be deemed to have resigned as a director when~~
 15 ~~such employment is terminated.~~

16 (c) ~~The successor to such person shall become a director without~~
 17 ~~further action by the board of directors upon receipt of written notice by~~
 18 ~~the president of the corporation from the chairman of the board or commission~~
 19 ~~of the respective agency that the person has become so employed.~~

20
 21 15-4-1009. Liability of ~~directors~~ governing board and officers.

22 ~~The directors and officers of a capital development corporation~~
 23 ~~organized under the provisions of this subchapter~~ No member of the governing
 24 board and no officer, manager, or other person responsible for carrying out
 25 the daily operations of a capital development company shall ~~not~~ be
 26 responsible for ~~losses~~ any loss of assets of the ~~corporation~~ company unless
 27 the ~~losses shall have been~~ loss was occasioned by the willful misconduct of
 28 ~~such directors or officers~~ that person.

29
 30 SECTION 5. Arkansas Code § 15-4-1010 is repealed.

31 ~~15-4-1010. Certificate of organization.~~

32 (a) ~~When the applicants shall have completed the organization of the~~
 33 ~~proposed capital development corporation, they shall file with the Bank~~
 34 ~~Commissioner a certificate of organization executed by the president of the~~
 35 ~~capital development corporation, attested to by its secretary, and with its~~
 36 ~~seal affixed thereto, certifying:~~

1 ~~(1) The names and addresses of all of its subscribers of stock,~~
2 ~~the number of shares subscribed, and the number of shares fully paid for by~~
3 ~~each;~~

4 ~~(2) The total number of shares of stock subscribed but not fully~~
5 ~~paid for;~~

6 ~~(3) The total number of shares of stock paid in full;~~

7 ~~(4) The name and address of the depository or the names and~~
8 ~~addresses of the depositories, if more than one (1), holding on deposit the~~
9 ~~funds of the capital development corporation; and~~

10 ~~(5) The names and addresses of the officers, directors, and~~
11 ~~members of the executive committee, if any, of the capital development~~
12 ~~corporation.~~

13 ~~(b) The certificate of organization of the applicant shall be~~
14 ~~accompanied by the certificate of the named depository or by the certificates~~
15 ~~of the named depositories, if more than one (1), certifying the amount of the~~
16 ~~funds on deposit to the credit of the capital development corporation.~~

17 ~~(e) The certificate of organization shall be accompanied also by any~~
18 ~~bylaws or by any regulations which may have been adopted by the directors of~~
19 ~~the capital development corporation.~~

20
21 SECTION 6. Arkansas Code §§ 15-4-1011 through 15-4-1019 are amended to
22 read as follows:

23 15-4-1011. ~~Final investigation~~ Investigation and approval by the ~~board~~
24 State Banking Board.

25 ~~Immediately upon the filing of the certificate of organization by the~~
26 ~~applicants, the Bank Commissioner shall submit to the State Banking Board the~~
27 ~~proposed articles of incorporation and the certificate of organization of the~~
28 ~~applicants. As soon as practicable thereafter, if the board shall, from the~~
29 ~~best sources of information at its command, determine that:~~

30 (a) As soon as practicable after the receipt of the application for
31 approval and the articles, the Bank Commissioner shall:

32 (1) Ascertain the qualifications, character, and general fitness
33 of the applicant and its standing in the community; and

34 (2) Determine whether public convenience and necessity require a
35 capital development company.

36 (b)(1) Thereafter, the commissioner shall submit the application and

1 the proposed articles of the company to the State Banking Board.

2 (2) As soon as practicable thereafter, the board shall direct
3 the commissioner to issue to the company a certificate of organization in
4 whatever form the commissioner may prescribe if the board determines that:

5 ~~(1)(A)~~ Public convenience and necessity continue to require the
6 capital development ~~corporation,~~ company;

7 ~~(2)~~ The holders of the fully paid common stock of the capital
8 development corporation are at least twenty (20) in number;

9 ~~(3)(B)~~ Each congressional district in the state is represented
10 by at least one (1) member of the governing board of directors; and

11 ~~(4)(C)~~ Not less than one hundred thousand dollars (\$100,000) of
12 ~~common stock has~~ equity interests have been subscribed and fully paid for;
13 and

14 (D) The governing documents submitted, if any, are in
15 conformity with the articles and the provisions of this subchapter, are not
16 contrary to the laws of the state, and are otherwise satisfactory.

17 ~~(5)~~ The bylaws or regulations submitted, if any, are in
18 conformity with the articles of incorporation and the provisions of this
19 subchapter, and not contrary to the laws of the state and are otherwise
20 satisfactory, it shall direct the commissioner to issue to the applicants a
21 certificate of incorporation in such form as it may prescribe. The
22 commissioner shall also return to the applicants one (1) of the copies of
23 articles of incorporation theretofore submitted to the commissioner by the
24 applicants, upon which copy he shall have endorsed the fact of the issuance
25 by him of such certificate of incorporation. If bylaws or regulations are
26 submitted and are found satisfactory by the board, the commissioner shall
27 also issue his certificate of approval thereof.

28 (c) If a certificate of organization is issued under subdivision
29 (b)(2), the commissioner shall return one (1) copy of the articles to the
30 applicant and shall endorse on the face of the articles that the certificate
31 of organization has been issued.

32
33 15-4-1012. Commencement of ~~corporate~~ existence.

34 (a) Upon the issuance of the certificate of ~~incorporation~~ organization
35 by the Bank Commissioner, the ~~corporate~~ existence of the capital development
36 ~~corporation~~ company shall begin.

1 (b) The certificate of ~~incorporation~~ organization shall be conclusive
 2 evidence, except as against the state, that all conditions precedent required
 3 to be performed by the ~~applicants~~ applicant have been complied with and that
 4 the capital development ~~corporation~~ company has been ~~incorporated~~ organized
 5 under this subchapter and the applicable business law under which it was
 6 formed.

7 (c) A copy of the articles ~~of incorporation~~ so endorsed by the
 8 commissioner, as prescribed in § 15-4-1011, shall be filed for recordation in
 9 the office of the ~~county clerk in the county in which the principal office of~~
 10 ~~the capital development corporation is located~~ Secretary of State.

11
 12 15-4-1013. Articles ~~of incorporation~~.

13 The articles ~~of incorporation~~ for any capital development ~~corporation~~
 14 ~~organized under the provisions of this subchapter~~ company shall state:

15 (1) The name of the ~~corporation~~ company, which name shall
 16 include the words "Capital Development Corporation Company", ~~and such~~
 17 ~~designation as may be appropriate to distinguish it from any subsequent~~
 18 ~~capital development corporation which may be organized under the provisions~~
 19 ~~of this subchapter, and the name shall be such as to distinguish it from any~~
 20 ~~other corporation organized and existing under the laws of the State of~~
 21 ~~Arkansas;~~

22 (2) The purpose for which the ~~corporation~~ company is formed;

23 (3) The period of duration of the ~~corporation~~ company, which may
 24 be perpetual or limited;

25 (4) The address of ~~its~~ the company's principal office and the
 26 name and address of its agent upon whom process may be served;

27 ~~(5) The total number of shares of common stock which the~~
 28 ~~corporation is authorized to issue, which number shall be not less than one~~
 29 ~~hundred (100) shares of common stock, having a par value of one hundred~~
 30 ~~dollars (\$100) per share;~~

31 ~~(6) The total number of shares of stock of any other class or~~
 32 ~~distinction which the corporation is authorized to issue and the par value,~~
 33 ~~if any, thereof;~~

34 ~~(7) A provision stating that no stockholder shall be entitled as~~
 35 ~~of right to purchase or subscribe for any unissued or treasury stock of the~~
 36 ~~corporation, whether now or hereafter authorized or whether of a class now~~

1 existing or of a class hereafter created, and no stockholder shall be
 2 entitled as of right to purchase or subscribe for any bonds, notes, or other
 3 obligations convertible into stock of the corporation;

4 (8) In addition to the ex officio directors specified in § 15-4-
 5 1008, the number of directors, not less than six (6) nor more than fifteen
 6 (15), to be elected at the annual meeting of the holders of stock entitled to
 7 vote for the election of directors, the terms of office of the directors, and
 8 any provisions desirable for staggering their terms of office, except that
 9 the terms of office of directors and other matters pertaining to the
 10 directors may be provided in the bylaws of the corporation;

11 (9) The names and addresses of the incorporators, who with the
 12 ex officio directors shall constitute the board of directors and manage the
 13 affairs of the corporation until the first meeting of the holders of the
 14 common stock; and

15 ~~(10)~~(5) Any provisions provision required by the applicable
 16 business law under which the company is formed; and

17 (6)(A) Any provision not inconsistent with law that the
 18 ~~incorporators~~ organizers may choose to insert for the regulation of the
 19 business and the conduct of the affairs of the ~~corporation~~ company.

20 (B) It shall not be necessary to ~~set forth~~ state in the
 21 articles of incorporation any of the corporate the powers enumerated in this
 22 subchapter.

23
 24 15-4-1014. Amendment to articles of incorporation.

25 (a) A corporation organized under the provisions of this subchapter
 26 may amend its articles of incorporation by a majority vote of the common
 27 stock, represented in person or by proxy at any regular meeting, or at any
 28 special meeting, of the holders of the common stock called for that purpose.
 29 A capital development company may amend its articles in accordance with the
 30 applicable business law under which it was formed or with the provisions of
 31 its governing documents.

32 (b)(1) The power to amend shall include the power to accomplish any
 33 desired change in the provisions of the articles of incorporation and to
 34 include any purpose, power, or provision authorized to be included in the
 35 original articles of incorporation or by later amendment to this subchapter.
 36 Articles of amendment adopted in accordance with subsection (a) of this

1 section shall be executed by the authorized officers of the company and filed
 2 with the Bank Commissioner for approval.

3 (2) The commissioner shall issue a certificate approving the
 4 articles of amendment if the articles of amendment do not violate this
 5 subchapter or other applicable law.

6 (3) An amendment is effective when the commissioner issues the
 7 certificate of approval.

8 (4) The company shall record the articles of amendment and the
 9 commissioner's certificate of approval in the same manner as the original
 10 articles.

11 ~~(c) Articles of amendment signed by the president or a vice president~~
 12 ~~and attested by the secretary or an assistant secretary certifying to such~~
 13 ~~amendment and its lawful adoption shall be executed, acknowledged, and filed~~
 14 ~~with the Bank Commissioner and, when approved by the State Banking Board,~~
 15 ~~recorded with a certificate of the commissioner approving the articles of~~
 16 ~~amendment in the same manner as the original articles of incorporation, and~~
 17 ~~as soon as the commissioner shall issue his certificate of amendment, the~~
 18 ~~amendment or amendments shall be in effect.~~

19
 20 15-4-1015. Management of ~~corporation,~~ a capital development company.

21 ~~(a) Only the holders of common stock, through the board of directors,~~
 22 ~~shall manage the affairs of the corporation. Each holder of common stock~~
 23 ~~shall be entitled to one (1) vote, in person or by proxy, for each share of~~
 24 ~~common stock held by him, and, in voting for the directors of the~~
 25 ~~corporation, shall be entitled to exercise the right of cumulative voting.~~
 26 The governing board shall manage the affairs of the capital development
 27 company.

28 ~~(b) In the event of the transfer of shares of common stock, whether by~~
 29 ~~act of the holder or by operation of law, the name or names of the proposed~~
 30 ~~transferees shall be submitted to the directors of the capital development~~
 31 ~~corporation and the directors may refuse to approve the transfer, in which~~
 32 ~~event the capital development corporation shall have the option to purchase~~
 33 ~~the shares of common stock at par. Shares of common stock so purchased shall~~
 34 ~~be cancelled and shares in lieu thereof may be reissued and sold by the~~
 35 ~~corporation. In the event that the directors do not purchase the shares of~~
 36 ~~common stock subject to transfer, the shares of common stock then may be~~

1 ~~transferred without the approval of the directors.~~

2 (b)(1) If a person desires to transfer an equity interest or the tax
3 credit associated therewith, or both, whether by act of the person or by
4 operation of law, the name or names of the proposed transferees and the terms
5 of the proposed transfer shall be submitted to the governing board of the
6 company.

7 (2) The governing board shall have thirty (30) days from the
8 date of receipt of the name or names of the proposed transferees and the
9 terms of the proposed transfer, to approve the transfer.

10 (3) If the governing board refuses to approve the transfer, the
11 company may purchase the equity interest or tax credit, or both, in
12 accordance with the company's governing documents.

13 (4) Equity interests purchased under subdivision (b)(2) of this
14 section shall be cancelled, and equity interests in lieu thereof may be
15 reissued and sold by the company.

16 (5) If the governing board approves the transfer, then the
17 equity interest or tax credit, or both, may be transferred.

18
19 15-4-1016. ~~Corporate powers~~ Powers.

20 (a) The purposes of each capital development ~~corporation~~ company
21 ~~organized under the provisions of this subchapter~~ shall be to:

22 (1) Promote, stimulate, develop, and advance the business
23 prosperity and economic welfare of the State of Arkansas and its citizens;

24 (2) Encourage and assist through loans, investments, or other
25 business transactions in the location of new business and industry in this
26 state, and to assist the growth and expansion of existing business and
27 industry;

28 (3) Stimulate and assist in the expansion of all kinds of
29 business activity which will tend to promote the business development and
30 maintain the economic stability of this state, provide maximum opportunities
31 for employment, encourage thrift, and improve the standard of living of the
32 citizens of this state, and similarly, to cooperate and act in conjunction
33 with other organizations, public or private, in the promotion and advancement
34 of cultural, industrial, technological, scientific, commercial, agricultural,
35 knowledge-based industry, venture capital, biotechnology, economic, and
36 recreational development in this state; and

1 (4) Provide financing for the promotion, development, and
 2 conduct of all kinds of business activity in this state, including new
 3 businesses developed through colleges and universities located in the state
 4 and businesses owned by women and minorities; and

5 (5) Foster the flow of development capital throughout the state.

6 (b) In furtherance of ~~such~~ the purposes, ~~each corporation stated in~~
 7 subsection (a) of this section, and in addition to any powers granted by the
 8 applicable business law under which it was formed, each company organized
 9 ~~under this subchapter~~ shall have power:

10 (1) To sue and be sued, complain, and defend in its ~~corporate~~
 11 own name;

12 (2) To have perpetual succession, unless a limited period of
 13 duration is stated in its articles ~~of incorporation;~~

14 (3) To adopt a ~~corporate~~ seal, which may be altered at pleasure,
 15 and to use it or a facsimile thereof as permitted by law;

16 (4) Within the limitations hereinafter imposed and in the manner
 17 hereinafter prescribed, to borrow money and otherwise contract indebtedness,
 18 to issue its bonds, notes, debentures, or other obligations ~~therefor~~ with or
 19 without security, and, if with security, to secure the payment thereof by
 20 mortgage, pledge, or deed of trust on all or any part of its property,
 21 assets, revenues, or income;

22 (5) To purchase, receive, lease as lessee, or in any other
 23 manner acquire, own, hold, maintain, sell, exchange, and use any ~~and all~~ real
 24 and personal property or any interest therein;

25 (6) To sell and convey, mortgage, pledge, lease as lessor, and
 26 otherwise dispose of all or any part of its property or assets;

27 (7) To make loans to any person and to establish and regulate
 28 the terms and conditions with respect to any ~~such~~ loans and the charges for
 29 interest and service connected therewith, consistent with the provisions of
 30 this subchapter;

31 (8) To purchase, hold, sell, assign, transfer, mortgage, pledge,
 32 or otherwise dispose of bonds, securities, or evidences of indebtedness
 33 created by any ~~other corporation or corporations of this state or any other~~
 34 ~~state or government, or created by any~~ individual or by any other capital
 35 development company, corporation, limited liability company, partnership,
 36 unincorporated association, trust estate, improvement district, or other

1 entity, or any governmental or municipal agency of any character;

2 (9) To purchase, hold, sell, assign, transfer, mortgage, pledge,
 3 or otherwise dispose of ~~the shares of the capital stock of any other~~
 4 ~~corporation or corporations~~ equity interests of any other entity or entities
 5 of this or any other state or government, subject to ~~such~~ restrictions and
 6 limitations, if any, as may be imposed by the laws of this or any other state
 7 in which the ~~corporation~~ company may do business, and, while owner of ~~such~~
 8 ~~stock~~ an equity interest, to exercise all the rights, powers, and privileges
 9 of ownership, including the right to vote thereon;

10 (10) To make any ~~and all~~ contracts necessary or convenient for
 11 the exercise of the powers granted in this subchapter;

12 (11) To elect or appoint managers, officers, agents, and,
 13 employees of the ~~corporation~~ company and to define their duties and fix their
 14 compensation;

15 (12) To conduct its business and to have ~~officers~~ offices within
 16 or without the state;

17 (13) To accept gifts or grants of money, service, or real or
 18 personal property;

19 (14) With the approval of the board, by action of the ~~directors~~
 20 ~~of the corporation~~ governing board of the company, to make and alter ~~bylaws~~
 21 ~~and regulations,~~ governing documents in a manner not inconsistent with the
 22 articles ~~of incorporation~~ or with the laws of this state, for the
 23 administration and regulation of the affairs of the ~~corporation~~ company;

24 (15) To encourage and promote the cultural, industrial,
 25 technological, scientific, commercial, agricultural, knowledge-based
 26 industry, venture capital, biotechnology, economic, and recreational
 27 development of the State of Arkansas;

28 (16)(A) To assist ~~minority~~ minority-owned and women-owned
 29 businesses in obtaining loans, venture capital, or other means of financial
 30 assistance.

31 (B) The terms and conditions of ~~such~~ loans, venture
 32 capital investments, or financial assistance, including the charges for
 33 interest and other services, ~~will~~ shall be consistent with the provisions of
 34 this subchapter.

35 (C) In order to comply with this requirement, efforts must
 36 be made to solicit for review and analysis proposed minority-owned and women-

1 owned business ventures.

2 (D) ~~Be it further provided, that basic underwriting~~
 3 ~~standards will not be waived to inconsistently favor minority persons or~~
 4 ~~businesses, or both, from the intent of the corporation's lending practices;~~
 5 ~~and The company's investment policies and underwriting standards may not be~~
 6 ~~waived to inconsistently favor minority-owned or women-owned businesses; and~~

7 (17) With the approval of the board, to make loans to or
 8 investments in entities that do not own property or do not have employees
 9 located in this state, if the loan or investment satisfies one or more of the
 10 purposes stated in § 15-4-1016(a); and

11 (18) To do and perform any and all acts and things and to have
 12 and exercise any and all powers as may be necessary, convenient, or
 13 appropriate to effectuate the purpose for which the ~~corporation~~ company is
 14 organized.

15

16 15-4-1017. Dividends and distributions.

17 The ~~directors governing board~~ of the capital development ~~corporation~~
 18 company, subject to ~~such~~ any limitations as may be ~~set forth~~ stated in the
 19 ~~articles of incorporation or bylaws or governing documents~~ thereof, may
 20 declare dividends ~~to the holders of its stock~~ and make partial ~~distribution~~
 21 distributions of its capital surplus pursuant to the provisions of the
 22 ~~Arkansas Business Corporation Act, § 4-26-101 et seq., including, without~~
 23 ~~limitation, §§ 4-26-616—4-26-621, as the same may be amended from time to~~
 24 ~~time~~ under the applicable business law under which it was formed.

25

26 15-4-1018. Bonds or notes of the ~~corporation~~ company.

27 (a)~~(1)~~ Any capital development ~~corporation~~ organized under the
 28 ~~provisions of this subchapter~~ company, from time to time as the conduct of
 29 its business requires, may issue and sell bonds or notes at ~~such a~~ a price and
 30 on ~~such~~ terms determined by ~~as the governing board of directors shall~~
 31 ~~determine, its bonds or notes not to exceed, in a total aggregate amount~~
 32 ~~outstanding at any one (1) time, ten (10) times the total amount of its fully~~
 33 ~~paid common stock, its fully paid issued and outstanding preferred stock, if~~
 34 ~~any, and the amount of its earned surplus in excess of a reserve set aside~~
 35 ~~therefrom equal in amount to five percent (5%) of the aggregate total amount~~
 36 ~~of loans of the capital development corporation outstanding at any one (1)~~

1 time.

2 ~~(2) However, the validity of bonds or notes of the corporation~~
 3 ~~valid at the time of the issuance and delivery shall not thereafter be~~
 4 ~~affected if in excess of the ratio.~~

5 ~~(b)(1) The bonds or notes of the capital development corporation~~
 6 ~~company shall be executed by the authorized officers of the company. shall be~~
 7 ~~in such form and denominations; shall have such dates and maturities; shall~~
 8 ~~bear interest payable at such times and places within or without the state;~~
 9 ~~shall contain such provisions as to registration of ownership, if~~
 10 ~~registration is deemed desirable, all as the directors of the corporation~~
 11 ~~shall determine in conformity with the provisions of this subchapter; and~~
 12 ~~shall be executed by the president and secretary of the corporation, and be~~
 13 ~~sealed with the corporate seal.~~

14 ~~(2) In the event any of the officers whose signatures appear on~~
 15 ~~any such obligation shall cease to be such officers before the delivery~~
 16 ~~thereof, their signatures, nevertheless, shall be valid and sufficient for~~
 17 ~~all purposes, the same as if they had remained in office until such delivery.~~

18 ~~(c) All bonds or notes of a capital development corporation issued~~
 19 ~~under the provisions of this subchapter, unless otherwise limited by the~~
 20 ~~express provisions thereof, irrespective of the date of issue, shall be on a~~
 21 ~~parity as to security and shall be secured by a lien on the entire assets of~~
 22 ~~the corporation, which lien shall be a first lien and superior to all other~~
 23 ~~debts and to all other encumbrances of whatsoever nature on all of the assets~~
 24 ~~of the corporation.~~

25 ~~(d) The earned surplus of the corporation, in whole or in part, in the~~
 26 ~~discretion of the directors of the corporation, may be invested as provided~~
 27 ~~in the bylaws of the corporation, and retained in reserve to meet losses and~~
 28 ~~contingencies of the corporation.~~

29

30 15-4-1019. Authority of other corporations and financial institutions.

31 ~~Notwithstanding any rule at common law or any provision of law or any~~
 32 ~~provision in their respective articles of incorporation:~~

33 ~~(1) All domestic corporations organized for the purpose of~~
 34 ~~carrying on business within this state, including, without implied~~
 35 ~~limitation, any public utility, and all trusts, are authorized to acquire,~~
 36 ~~purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise~~

~~dispose of any bonds, notes, securities, or other evidences of indebtedness created by or the shares of the common stock of a corporation organized under this subchapter, and while owners of the stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;~~

~~(2) All financial institutions are authorized to become members of the corporation and to make loans to the corporation as provided in this subchapter;~~

~~(3) A financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the common stock of the corporation; and~~

~~(4)(A) Each financial institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, securities, or other evidences of indebtedness created by or the shares of the common stock of the corporation and, while owners of the stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state.~~

~~(B)(i) However, the amount of the common stock of the corporation which may be acquired by any member pursuant to the authority granted in this subchapter shall not exceed ten percent (10%) of the loan limit of such member.~~

~~(ii) The amount of common stock of a corporation organized under this subchapter which any member is authorized to acquire pursuant to the authority granted in this subchapter is in addition to the amount of common stock in corporations which the member may otherwise be authorized to acquire.~~

(a) Notwithstanding any rule at common law or any provision of law or any provision in their respective articles of incorporation, all for profit and nonprofit entities, including any public utility, company organized under the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., financial institution, pension fund, and all trusts, may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, or other evidence of indebtedness created by, or the equity interests or other securities of, a capital development company.

(b) The owner of an equity interest or other security may exercise all

1 the rights, powers, and privileges of ownership, including the right to vote.

2 (c) Any of the actions in subsection (a) or (b) of this section may be
 3 taken by the owner of an equity interest or other security without the
 4 approval of any regulatory authority of the state.

5
 6 SECTION 7. Arkansas Code §§ 15-4-1020 and 15-4-1021 are repealed.

7 ~~15-4-1020. Member financial institutions—Loan limits.~~

8 ~~(a) Any financial institution may request membership in the capital~~
 9 ~~development corporation by making application to the board of directors on~~
 10 ~~such form and in such manner as the board of directors may require, and~~
 11 ~~membership shall become effective upon acceptance of the application by the~~
 12 ~~board of directors.~~

13 ~~(b) Each member of the corporation shall make loans to the corporation~~
 14 ~~as and when called upon by it to do so on such terms and other conditions as~~
 15 ~~shall be approved from time to time by the board of directors, subject to the~~
 16 ~~following conditions:~~

17 ~~(1) All loan limits shall be established at the thousand dollar~~
 18 ~~amount nearest to the amount computed in accordance with the provisions of~~
 19 ~~this section;~~

20 ~~(2) No loan to a corporation organized under this subchapter~~
 21 ~~shall be made by members pursuant to call made by the corporation if~~
 22 ~~immediately thereafter, the total amount of such loans will exceed ten (10)~~
 23 ~~times the amount then paid in on the outstanding stock of the corporation,~~
 24 ~~plus ten (10) times the earned surplus of the corporation less reserves;~~

25 ~~(3) The total amount outstanding on loans to a corporation made~~
 26 ~~by any member at any one (1) time, when added to the amount of the investment~~
 27 ~~in the capital stock of the corporation then held by such member, shall not~~
 28 ~~exceed;~~

29 ~~(A) Twenty percent (20%) of the total amount then~~
 30 ~~outstanding on loans to the corporation by all members, including in the~~
 31 ~~total amount outstanding amounts validly called for loan but not yet loaned;~~
 32 ~~or~~

33 ~~(B) The limitation on loans established by law or~~
 34 ~~regulation applicable to the member or, in the absence of any such~~
 35 ~~limitation, the amount approved by the board of directors for such member;~~

36 ~~(4)(A) Subject to subdivision (b)(3)(A) of this section, each~~

1 call made by the corporation shall be prorated among the members of a
 2 corporation in substantially the same proportion that the adjusted loan limit
 3 of each member bears to the aggregate of the adjusted loan limits of all
 4 members.

5 (B) The adjusted loan limit of a member shall be the
 6 amount of such member's loan limit, reduced by the balance of outstanding
 7 loans made by such member to the corporation and the investment in capital
 8 stock of the corporation held by such a member at the time of such call, and
 9 further reduced, in the case of a member who has assumed the obligation of a
 10 financial institution withdrawn from membership pursuant to § 15-4-
 11 1021(a)(2), by the balance of outstanding loans made to the corporation by
 12 the financial institution; and

13 (5) All loans to a corporation by members shall be evidenced by
 14 bonds, debentures, notes, or other evidences of indebtedness of the
 15 corporation, which shall be freely transferable at all times and which shall
 16 bear interest at a rate which may be adjusted from time to time in a manner
 17 determined by the board of directors, which rate shall not be less than one
 18 quarter of one percent (0.25%) in excess of the prime or base rate of
 19 interest prevailing at the time of such adjustment for commercial banks in
 20 the City of Little Rock on unsecured commercial loans.

21
 22 15-4-1021. Withdrawal of members.

23 (a) Membership in a capital development corporation shall be for an
 24 indeterminate period, provided that:

25 (1) Upon written notice given to a corporation five (5) years in
 26 advance, a member may withdraw from membership in the corporation at the
 27 expiration date of the notice; or

28 (2)(A) In the event that a member, herein called a "constituent
 29 member", shall consolidate with, merge into, or sell all or substantially all
 30 of its property and assets to another financial institution, herein called
 31 the "continuing institution", the board of directors, in such manner as it
 32 determines, may permit the withdrawal of the constituent member from
 33 membership in the corporation if the continuing institution at the time of
 34 such withdrawal is a member and has assumed the obligation of the constituent
 35 member to make loans to the corporation.

36 (B) If such continuing institution is not a member prior

1 ~~to the consolidation, merger, or sale, the assumed obligation shall be~~
 2 ~~discharged at the time the continuing institution becomes a member.~~

3 ~~(b) A member shall not be obligated to make any loans to the~~
 4 ~~corporation pursuant to calls made subsequent to the withdrawal of the~~
 5 ~~member.~~

6
 7 SECTION 8. Arkansas Code §§ 15-4-1022 through 15-4-1029 are amended to
 8 read as follows:

9 15-4-1022. ~~Exemption for Securities~~ Compliance with the Arkansas
 10 Securities Act.

11 The ~~stock~~ equity interests, notes, debentures, bonds, and all other
 12 securities or obligations issued by any capital development ~~corporation~~
 13 ~~organized and existing under the provisions of this subchapter shall be~~
 14 ~~exempt from~~ company shall be issued in compliance with and are subject to the
 15 provisions of the Arkansas Securities Act, § 23-42-101 et seq.

16
 17 15-4-1023. Obligations as negotiable instruments.

18 All bonds, notes, debentures, and other similar obligations of a
 19 capital development ~~corporation~~ company authorized under and issued in
 20 compliance with the provisions of this subchapter shall be and shall have and
 21 are declared to have all the qualities and incidents of negotiable
 22 instruments under the negotiable instruments law of the state.

23
 24 15-4-1024. Eligibility for certain investments.

25 Any agency or instrumentality of this state, city or town in this state
 26 or any board, commission, or other authority duly established by ordinance of
 27 any ~~such~~ city or town or the boards of trustees, respectively, of the
 28 firemen's relief and pension fund and the policemen's pension and relief fund
 29 of any ~~such~~ city or town may invest any of its funds not immediately needed
 30 for its purposes in the bonds ~~or~~, notes, or equity interests of any capital
 31 development ~~corporation~~ company ~~organized under the provisions of this~~
 32 ~~subchapter.~~

33
 34 15-4-1025. Exemption from certain taxes.

35 (a)(1) A The income of a capital development ~~corporation~~ company shall
 36 be exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et

1 seq., and from the payment of any other income taxes levied by a county or a
 2 municipality.

3 (2) Dividends on stock of any corporation, distributions, and
 4 income allocable to the equity interests of any company shall be exempt from
 5 all state, county, or municipal income tax.

6 (3) Interest on bonds, notes, or other obligations of any
 7 corporation company issued under and in accordance with the provisions of
 8 this subchapter shall be exempt from all state, county, or municipal income
 9 taxes and the principal thereof from property taxes.

10 (b) ~~A corporation~~ Each company shall file an income tax return each
 11 year at the time provided for the filing of ~~corporate~~ tax returns in the
 12 Income Tax Act of 1929, § 26-51-101 et seq.

13 (c) ~~A corporation~~ Each company claiming exemption from income tax
 14 under this section shall attach to the return required in subsection (b) of
 15 this section a certification from the Bank Commissioner stating that the
 16 ~~corporation company~~ has been ~~incorporated~~ organized and is operating as a
 17 capital development ~~corporation company~~ in accordance with the provisions of
 18 this subchapter.

19
 20 15-4-1026. Tax credit.

21 (a)(1) ~~The original purchaser of common stock of a capital development~~
 22 ~~corporation shall be~~ A person who purchases an equity interest in a capital
 23 development company in any of the calendar years 2003 through 2013 is
 24 entitled to a credit against any state income tax liability or premium tax
 25 liability which may be imposed on ~~such~~ the purchaser for any tax year
 26 commencing ~~on or after January 1, 1985, for common stock purchased from the~~
 27 ~~corporation in any of the calendar years 1985 through 1994~~ with the tax year
 28 which is two years after the date of the purchase.

29 (2) However, the proceeds from the purchase of an equity
 30 interest in a company must be used for the purposes stated in § 15-4-1016 or
 31 for operating expenses, within eighteen (18) months after receipt of the
 32 proceeds.

33 ~~(2)(b)~~ The credit shall be determined in the following manner:

34 (1)(A) The credit is limited to an amount not to exceed thirty-
 35 three percent (33%) shall be equal to thirty-three and one-third percent (33
 36 1/3%) of the actual purchase price paid for the ~~stock~~ equity interest to the

1 ~~corporation~~ company, which shall include any fees or commissions to
 2 underwriters or sales agents paid by the ~~corporation~~ company;

3 (B)(i) ~~In any one (1) tax year, the credit allowed by this~~
 4 ~~section shall not exceed fifty percent (50%) of the net Arkansas state income~~
 5 ~~tax liability of the taxpayer after all other credits and reductions in tax~~
 6 ~~have been calculated;~~ However, the total amount of fees and commissions to
 7 underwriters or sales agents for which a credit may be taken shall not exceed
 8 fifteen percent (15%) of the actual purchase price.

9 (ii) No fees or commissions in excess of
 10 fifteen percent (15%) of the total purchase price may be considered in
 11 calculating the amount of the credit determined in this section;

12 (2) In any one (1) tax year, the credit allowed by this section
 13 shall not exceed fifty percent (50%) of the net Arkansas state income tax
 14 liability or premium tax liability of the taxpayer after all other credits
 15 and reductions in tax have been calculated;

16 ~~(C)(i)(3)(A)~~ Any credit in excess of the amount allowed by
 17 subdivision ~~(a)(2)(B)(b)(2)~~ of this section for any one (1) tax year may be
 18 carried forward and applied against Arkansas state income tax or premium tax
 19 for the next-succeeding tax year and annually thereafter for a total period
 20 of ~~three (3)~~ eight (8) years next succeeding the year in which the ~~credit~~
 21 ~~arose~~equity interest in a company was purchased, subject to the provisions of
 22 subdivision ~~(a)(2)(B)(b)(2)~~ of this section, or until the credit is
 23 exhausted, whichever occurs first.

24 ~~(ii)~~ (B) In no event may the credit allowed by this
 25 section be allowed for any tax year ending after December 31, ~~1994;~~ and 2019;
 26 and

27 ~~(D) Any original purchaser of common stock who seeks to~~
 28 ~~qualify for the income tax credit provided in this section must:~~

29 ~~(i) Obtain a certified statement from the corporation~~
 30 ~~issuing the common stock stating the name and address of the original~~
 31 ~~purchaser, the number of shares purchased, the amount paid by the original~~
 32 ~~purchaser for the common stock, and the date of purchase of the common stock;~~
 33 and

34 ~~(ii) Attach a copy of the certificate described in~~
 35 ~~subdivision (a)(2)(D)(i) of this section to the income tax return for the~~
 36 ~~years the credit is claimed.~~

1 (4) An original purchaser of equity interests who seeks to
 2 qualify for the income tax credit or premium tax credit provided in this
 3 section must obtain and attach to the income tax return or premium tax return
 4 for the years the credit is claimed a certified statement from the company
 5 stating:

6 (A) The name and address of the original purchaser;

7 (B) The tax identification number of the person entitled
 8 to the credit;

9 (C) The original date of purchase of the equity interest;

10 (D) The number and type of equity interests purchased;

11 (E) The amount paid by the original purchaser for the
 12 equity interest;

13 (F) The amount of the tax credit associated with the
 14 purchase of the equity interest; and

15 (G) The amount of dividends and distributions previously
 16 paid by the company to the purchaser.

17 ~~(b) For the purpose of ascertaining the gain or loss from the sale or~~
 18 ~~other disposition of common stock in a capital development corporation, the~~
 19 ~~original purchaser of the common stock shall reduce his basis in the stock by~~
 20 ~~the amount of the tax credits previously deducted under this section. This~~
 21 ~~reduced basis shall be used by the original purchaser when calculating tax~~
 22 ~~due under the Income Tax Act of 1929, § 26 51-101 et seq.~~

23 (c)(1) A transferee of an original purchaser is entitled to the tax
 24 credit described in this section only to the extent the credit is still
 25 available to, and has not previously been used by, the transferor.

26 (2) A transferee of equity interests or tax credits who seeks to
 27 qualify for the income tax credit or premium tax credit provided in this
 28 section must obtain and attach to the income tax return ore premium tax
 29 return for the years the credit is claimed a certified statement from the
 30 company stating:

31 (A) The name and address of the original purchaser and all
 32 transferees;

33 (B) The tax identification number of all persons entitled
 34 to any portion of the original tax credit;

35 (C) The original date the equity interest was purchased;

36 (D) The number and type of equity interests purchased;

1 (E) The amount paid by the original purchaser for the
2 equity interest;

3 (F) The amount of the tax credit associated with the
4 purchase of the equity interest;

5 (G) The amount of the tax credit associated with the
6 original purchase used by all previous owners of the equity interest or tax
7 credit, and the remaining amount of the tax credit available for use by the
8 transferee; and

9 (H) The amount of dividends and distributions previously
10 paid by the company to the original purchaser and all transferees.

11 (d)(1) If the owner of an equity interest in or a tax credit issued by
12 a company is a pass through entity for tax purposes, such as a limited
13 liability company or a partnership, then the owner of the pass through entity
14 is entitled to the tax credit described in this section.

15 (2) If a pass through entity entitled to a tax credit under
16 subdivision (d)(1) is owned by two (2) or more persons, then the tax credit
17 may be allocated among the pass through entity owners in the method selected
18 by the owners as described in the governing documents of the pass through
19 entity, or by other written agreement among the owners.

20 (e)(1) For the purpose of ascertaining the gain or loss from the sale
21 or other disposition of an equity interest in a company, the owner of the
22 equity interest shall reduce his or her basis in the equity interest by the
23 amount of the tax credits previously deducted under this section.

24 (2) However, sale or other disposition under subdivision (e)(1)
25 of this section does not include a transfer from the holder of an equity
26 interest to the company in liquidation of the equity interest.

27 (3) This reduced basis shall be used by the original purchaser
28 or transferee when calculating tax due under the Income Tax Act of 1929, §
29 26-51-101 et seq.

30 (f)(1) If any of the proceeds from the purchase of equity interests in
31 a company are not used for the purposes stated in § 15-4-1016 or for
32 operating expenses within eighteen (18) months after receipt, then for each
33 person who previously claimed a tax credit under this section with respect to
34 that purchase, the tax imposed by the Income Tax Act of 1929, § 26-51-101 et
35 seq., for the year in which the eighteen-month period ends, shall be
36 increased by the tax credit amount associated with the unused purchase

1 proceeds.

2 (2) Within thirty (30) days after the expiration of the
 3 eighteen-month period, the company shall notify each person who claimed a tax
 4 credit under this section and the Department of Finance and Administration of
 5 the failure to use the proceeds and the tax recapture amount associated with
 6 the failure.

7
 8 15-4-1027. Loan policy Investment and loan policy.

9 (a) ~~A capital development corporation organized under the provisions~~
 10 ~~of this subchapter~~ company shall not lend money when credit is readily
 11 available on comparable terms elsewhere. ~~Before granting a loan, the~~
 12 ~~directors of the corporation shall endeavor so far as is reasonably possible~~
 13 ~~to ascertain that reasonable opportunity to grant the loan has been given to~~
 14 ~~the financial institutions of the state.~~

15 (b)(1) The governing board of a company shall adopt an investment
 16 policy consistent with the provisions of this subchapter.

17 (2) The governing board shall deliver to the Bank Commissioner a
 18 copy of the company's investment policy within thirty (30) days after its
 19 adoption.

20 (c) ~~No corporation organized under the provisions of this subchapter~~
 21 No company under this subchapter shall receive money on deposit.

22 (e) ~~The corporation shall not deposit any of its funds in any banking~~
 23 ~~institution unless such institution has been designated as a depository by a~~
 24 ~~vote of a majority of the directors present at an authorized meeting of the~~
 25 ~~directors, exclusive of any director who is an officer or director of the~~
 26 ~~depository so designated.~~

27
 28 15-4-1028. Supervision of capital development corporations companies.

29 (a) ~~Each capital development corporation organized under the~~
 30 ~~provisions of this subchapter~~ company shall be subject to the supervision,
 31 examination, and control of the Bank Commissioner in the same manner, so far
 32 as applicable, as provided in §§ ~~23-32-1101—23-32-1103 [repealed], 23-32-~~
 33 ~~1106 [repealed], 23-32-1108 [repealed], 23-32-1109 [repealed], and 23-32-1111~~
 34 ~~[repealed], jointly with supervision, examination, and control of the State~~
 35 ~~Board of Finance §§ 23-46-501 through 23-46-512, and shall make reports of~~
 36 ~~its condition to the commissioner and to the board as they as the~~ as the

1 commissioner shall prescribe, but the ~~corporation~~ company shall not be deemed
 2 a banking institution nor be required to pay any fee or other charge for any
 3 supervision or examination, financial institution.

4 (b) The commissioner shall have the power to:

5 (1) Make rules and regulations to regulate the safety and
 6 soundness of capital development companies;

7 (2) Conduct investigations which may be necessary to determine
 8 whether any person has engaged in, or is about to engage in, any act or
 9 practice constituting a violation of any provision of this subchapter or of
 10 other laws of this state; and

11 (3)(A) Classify as confidential records and information obtained
 12 by the State Bank Department from an investigation or examination by the
 13 department's staff, under § 23-46-101.

14 (B) However, for purposes of this subchapter, applications
 15 for approval under § 15-4-1004 are public documents.

16 (c)(1) Whenever it appears, upon sufficient grounds or evidence
 17 satisfactory to the commissioner, that any company has engaged in or is about
 18 to engage in any act or practice in violation of this subchapter or any rule
 19 or regulation or order under this subchapter, or the assets or capital of any
 20 company is impaired or a company's affairs are in an unsafe condition, the
 21 commissioner may:

22 (A) Refer the evidence which is available concerning
 23 violations of this subchapter or any rule, regulation, or order under this
 24 subchapter to the appropriate agency; or

25 (B)(i) Summarily order the company to cease and desist
 26 from the act or practice during the time the commissioner may apply to the
 27 Pulaski County Circuit Court, or the circuit court in the county in which the
 28 company is situated or has its principal office or place of business, or in
 29 which its chief officer resides, to enjoin the act or practice and to enforce
 30 compliance with this subchapter or any rule, regulation, or order under this
 31 subchapter.

32 (ii) However, the commissioner may apply
 33 directly to the Pulaski County Circuit Court, or the circuit court in the
 34 county in which the company is situated or has its principal office or place
 35 of business, or in which its chief officer resides, for injunctive relief
 36 without issuing a cease and desist order.

1 (2) Upon the entry of the order, the commissioner shall promptly
 2 notify the company that the order has been entered, of the reasons for the
 3 entry of the order, and of the right to a hearing on the order.

4 (3)(A) A hearing shall be held on the written request of the
 5 company aggrieved by the order if the request is received by the commissioner
 6 within thirty (30) days after the date of the entry of the order, or if
 7 ordered by the commissioner.

8 (B) If no hearing is requested and none is ordered by the
 9 commissioner, the order shall remain in effect until it is modified or
 10 vacated by the commissioner.

11 (C) If a hearing is requested or ordered, the
 12 commissioner, after notice of and an opportunity for hearing, may affirm,
 13 modify, or vacate the order.

14 (4) Upon a proper showing, the circuit court shall grant a
 15 permanent or temporary injunction, restraining order, or writ of mandamus and
 16 may appoint a receiver or conservator for the company or its assets.

17 (5) The circuit court shall not require the commissioner to post
 18 a bond.

19 (6) In addition to any other remedy provided in this subchapter
 20 or under other applicable law, the circuit court may impose as additional
 21 damages payable by the company the costs incurred by the commissioner in
 22 successfully prosecuting violations of this subchapter.

23 (7) The commissioner shall forward a copy of all reports of the
 24 investigation or other proceedings conducted under this section to the
 25 Director of the Department of Finance and Administration.

26 (d) Each company shall deliver a quarterly report to the commissioner
 27 and the Department of Finance and Administration that describes each
 28 investment transaction made by the company in the previous quarter and the
 29 economic benefits and any tax credits allowed under this subchapter.

30 (e) Each company shall deliver an annual report to the commissioner
 31 and the Department of Finance and Administration within six (6) months after
 32 the close of its fiscal year that shall include an annual audit of the
 33 activities conducted by the company and shall list any tax credits allowed
 34 under this subchapter.

1 (a) ~~Any capital development corporation organized under this~~
 2 ~~subchapter, after the payment in full and cancellation of all its notes,~~
 3 ~~bonds, and other obligations issued under the provisions of this subchapter~~
 4 ~~or after the deposit in trust with the respective trustees designated in any~~
 5 ~~deeds of trust given to secure the payment of any such obligations of a sum~~
 6 ~~of money sufficient for the purpose, may dissolve by the vote of a majority~~
 7 ~~of the common stock of the corporation, represented in person or by proxy, at~~
 8 ~~any regular meeting or at any special meeting of the holders of the common~~
 9 ~~stock of the corporation called for that purpose. A capital development~~
 10 ~~company may dissolve in accordance with the applicable business law under~~
 11 ~~which it was formed.~~

12 (b) ~~A In connection with a dissolution under subsection (a) of this~~
 13 ~~section, a certificate of dissolution shall be signed by the president or~~
 14 ~~vice president and attested by the secretary authorized officers of the~~
 15 ~~company and delivered to the Bank Commissioner certifying to such dissolution~~
 16 ~~and stating that they have been authorized to execute and file such~~
 17 ~~certificate by a vote cast in person or by proxy by holders of a majority of~~
 18 ~~the common stock of the corporation.~~

19 (c) The certificate of dissolution shall be ~~executed, acknowledged,~~
 20 ~~filed, and recorded in the same manner as the original articles of~~
 21 ~~incorporation, and as soon as the ~~Bank Commissioner~~ commissioner shall have~~
 22 ~~accepted and endorsed on the certificate of dissolution his or her approval~~
 23 ~~thereof, the ~~corporation~~ company shall be deemed to be dissolved.~~

24 (d) The ~~corporation, company,~~ however, shall be continued for the
 25 purpose of paying, satisfying, and discharging any other existing liabilities
 26 or obligations and collecting or liquidating its assets and doing all other
 27 acts required to adjust and conclude its business and affairs, and may sue
 28 and be sued in its ~~corporate~~ own name.

29 (e) Any assets remaining after all liabilities or other obligations of
 30 the ~~corporation~~ company have been satisfied or discharged shall be
 31 distributed ~~pro rata first among the then holders, if any, of any stock of~~
 32 ~~the corporation entitled to a preference, and the remaining assets of the~~
 33 ~~corporation shall then be distributed, pro rata, among the then holders of~~
 34 ~~the common stock of the corporation, in accordance with the applicable~~
 35 ~~business law under which it was formed and the company's governing documents.~~

36 (f)(1) Upon dissolution, if any proceeds from the purchase of an

1 equity interest in a company have not been used for the purposes stated in §
2 15-4-1016 or for operating expenses, then for each person who previously
3 claimed a tax credit under § 15-4-1026 with respect to that purchase, the tax
4 imposed by the Income Tax Act of 1929, § 25-51-101 et seq., for the year in
5 which dissolution occurs, shall be increased by the tax credit amount
6 associated with the unused purchase proceeds.

7 (2) Within thirty (30) days after dissolution, the company shall
8 notify each person who previously claimed a tax credit and the Department of
9 Finance and Administration of a failure to use the proceeds and the tax
10 recapture amount associated with the failure.

11
12 SECTION 9. Arkansas Code Title 15, Chapter 4, Subchapter 10, is
13 amended to add additional sections to read as follows:

14 15-4-1030. Merger.

15 (a) Subject to the provisions of this subchapter, a capital
16 development company may merge or consolidate with or into another capital
17 development company, a development finance corporation, a company organized
18 under the County and Regional Industrial Development Company Act, § 15-4-1201
19 et seq., a financial institution, or any other entity.

20 (b)(1) Each entity that is a party to a merger or consolidation shall
21 adopt articles of merger or consolidation in accordance with applicable
22 business law under which it was formed and shall file the articles with the
23 Bank Commissioner.

24 (2) The commissioner shall issue a certificate approving the
25 articles of merger or consolidation if the articles of merger or
26 consolidation are acceptable to the commissioner.

27 (3) The articles of merger or consolidation are effective when
28 the commissioner issues the certificate of approval.

29 (4) The company shall record the articles of merger or
30 consolidation and the commissioner's certificate of approval in the same
31 manner as the original articles.

32
33 15-4-1031. Application of business laws.

34 (a) Each capital development company is subject to the provisions of
35 any applicable business law under which it was formed, as now or hereafter
36 amended, to the extent that those provisions are not in conflict with the

1 provisions of this subchapter.

2 (b) If a provision of an applicable business law is in conflict with
 3 any provision of this subchapter, then the provision of this subchapter shall
 4 control.

5
 6 SECTION 10. Arkansas Code § 26-18-303(b), allowing the disclosure of
 7 certain tax records and files, is amended to add an additional subdivision to
 8 read as follows:

9 (17) Disclosure to a capital development company organized under
 10 the Arkansas Capital Development Company Act, § 15-4-1001 et seq., of the
 11 name and tax identification number of, and amount of any tax credit received
 12 by, a taxpayer as a result of the purchase of an equity interest in a capital
 13 development company.

14
 15 SECTION 11. Arkansas Code § 23-32-202 is amended to read as follows:

16 23-32-202. Investment in and loans to capital development ~~corporations~~
 17 companies.

18 (a) In addition to the powers conferred upon building and loan
 19 associations, savings and loan associations, or credit unions organized under
 20 the laws of this state, each such entity shall have the power to:

21 (1) Acquire and own on its own behalf any stock or equity
 22 interest issued by a capital development ~~corporation~~ company. However, no
 23 such entity under subsection (a) shall invest more than ten percent (10%) of
 24 its capital and unimpaired surplus in the stock or equity interest.

25 (2) Make loans to a capital development ~~corporation~~ company,
 26 subject, however, to the rules and regulations promulgated by the
 27 institutions' primary regulator.

28 (b) Any investment in stock or equity interest made pursuant to this
 29 section shall be considered an asset of the investing institution or
 30 association at a value of at least its original purchase price, and the asset
 31 shall not be valued by any regulatory body in this state at less than at
 32 least the purchase price regardless of the failure of a capital development
 33 ~~corporation~~ company to pay dividends or distributions of equity to the
 34 investors.

35
 36 SECTION 12. Arkansas Code § 23-45-102(a)(11), concerning definitions

1 used under the Banking Code of 1997, is amended to read as follows:

2 (11) “Capital development ~~corporation~~ company” means a
 3 ~~corporation~~ company authorized to be organized under the provisions of the
 4 Arkansas Capital Development ~~Corporation~~ Company Act, § 15-4-1001 et seq.;

5
 6 SECTION 13. Arkansas Code § 23-46-101(a)(3), concerning exemptions
 7 from the Freedom of Information Act for certain records of the State Bank
 8 Department, is amended to read as follows:

9 (3) Investigations and reports revealing facts concerning a
 10 financial institution, a capital development ~~corporation~~ company, or the
 11 customers of these organizations; and

12
 13 SECTION 14. Arkansas Code § 23-47-101(a)(18), concerning the general
 14 powers of state banks, is amended to read as follows:

15 (18) To invest in a capital development ~~corporation~~ company
 16 pursuant to the provisions of § 23-47-604;

17
 18 SECTION 15. Arkansas Code § 23-47-604 is amended to read as follows:
 19 23-47-604. Capital development ~~corporations~~ companies.

20 (a)(1) State banks shall have the power to acquire and own on their
 21 own behalf stock or equity interests issued by a capital development
 22 ~~corporation~~ company or make loans to a capital development ~~corporation~~
 23 company.

24 (2) No state bank shall invest in or lend to the capital
 25 development ~~corporation~~ company more than twenty percent (20%) of the bank’s
 26 capital base.

27 (b) Any investment in stock or equity interest made pursuant to this
 28 section shall not be revalued or classified by the Bank Commissioner solely
 29 because of the failure of a capital development ~~corporation~~ company to pay
 30 dividends or distributions of equity to the investors.

31
 32 SECTION 16. EMERGENCY CLAUSE. It is found and determined by the
 33 General Assembly of the State of Arkansas that the flow of development
 34 capital funds into and within the state has been and continues to be,
 35 insufficient to support the growth of businesses and infrastructure
 36 development; that as a result of the lack of available capital sources, the

1 state has suffered economic losses because of the inability to compete with
2 other states in providing capital resources for business and infrastructure
3 development; that this legislation will stimulate the flow of private capital
4 and long-term loan funds that are vital to the sound financing of businesses
5 and will encourage growth, expansion, and modernization through the
6 reinstatement of tax credits; that unless an adequate program to encourage
7 private capital investment is undertaken, the state will suffer further
8 irreparable loss as a result of the continued inability to support business
9 and infrastructure development, and from the lost opportunities for economic
10 expansion. Therefore, an emergency is declared to exist and this act being
11 necessary for the preservation of the public peace, health and safety shall
12 be effective on July 1, 2003.

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15 **APPROVED: 3/28/2003**
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