

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4
5 By: Representative Jett
6 By: Senator J. English
7

As Engrossed: H2/27/17

A Bill

HOUSE BILL 1604

For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR THE EXAMINATION AND REGULATION
10 OF CERTAIN ECONOMIC DEVELOPMENT FINANCE CORPORATIONS
11 BY THE STATE BANK DEPARTMENT; TO DECLARE AN
12 EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

16 TO PROVIDE FOR THE EXAMINATION AND
17 REGULATION OF CERTAIN ECONOMIC
18 DEVELOPMENT FINANCE CORPORATIONS BY THE
19 STATE BANK DEPARTMENT; AND TO DECLARE AN
20 EMERGENCY.

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

25 SECTION 1. Arkansas Code § 23-46-503, concerning examinations
26 conducted by the Bank Commissioner, is amended to add an additional
27 subsection to read as follows:

28 (c)(1) The commissioner shall direct the State Bank Department to make
29 an annual examination into the affairs of nonprofit corporations that have
30 registered with the commissioner to be a regulated economic development
31 enterprise under this subsection and that registration has been approved by
32 the State Banking Board.

33 (2) A nonprofit corporation electing to be a regulated economic
34 development enterprise shall certify in its registration to the commissioner
35 that the nonprofit corporation:

36 (A) Was previously registered under the Arkansas



1 Development Finance Corporation Act, § 15-4-901 et seq.;

2 (B) Is a domestic nonprofit corporation with a total
3 equity of the nonprofit corporation and any subsidiaries exceeding five
4 million dollars (\$5,000,000);

5 (C) Provides financing for the promotion, development, and
6 conduct of Arkansas business;

7 (D) Together with any of its subsidiaries, has loan
8 receivables that exceed fifteen million dollars (\$15,000,000); and

9 (E) Shall provide reasonable cooperation and assistance to
10 the department during an examination.

11 (3)(A) A regulated economic development enterprise registered
12 under this subsection shall pay to the department, within ten (10) days after
13 notice from the commissioner in the months of January and July of each year,
14 an assessment fee in accordance with an assessment fee schedule approved by
15 the commissioner.

16 (B) The commissioner, with the approval of the board,
17 shall also have the authority to establish a schedule of fees to be charged
18 by the department relative to registrations which are reviewed by the
19 department, as well as a schedule of other fees to be charged for service
20 performed by the department.

21 (C) The assessments may be increased if not sufficient in
22 connection with other fees received as mentioned in this section to defray
23 the expenses of the department.

24 (4)(A) The commissioner shall be charged with the general
25 supervision of regulated economic development enterprises, with the power to
26 issue cease and desist orders against any regulated economic development
27 enterprise, or an officer, director, or employee of a regulated economic
28 development enterprise, found to be violating state or federal law, rules, or
29 regulations of a federal regulatory agency, violating any regulatory
30 agreement, or jeopardizing the safety and soundness of the regulated economic
31 development enterprise.

32 (B) The commissioner has grounds for and may issue a cease
33 and desist order for the permanent or temporary removal of an officer,
34 director, employee, agent, or any other person participating in the affairs
35 of or otherwise connected with a regulated economic development enterprise,
36 or any affiliate thereof, if he or she is found by the commissioner to be or

1 to have been:

2 (i) Violating state or federal law, rules and
3 regulations of a federal regulatory agency, or department regulations;

4 (ii) Acting incompetently, recklessly, or
5 dishonestly;

6 (iii) Indicted of a crime involving moral turpitude;
7 or

8 (iv) Otherwise impairing the safety and soundness of
9 the regulated economic development enterprise.

10 (C)(i) A person who is subject to a cease and desist order
11 issued by the commissioner that refuses or fails to comply with the terms of
12 the order may be assessed a monetary penalty for the failure to comply with
13 the cease and desist order after a ten-day notice given by the commissioner
14 to the regulated economic development enterprise or person who is subject to
15 the order.

16 (ii) The amount of the monetary penalty shall not
17 exceed one thousand dollars (\$1,000) per day of the violation against each
18 regulated economic development enterprise and each officer, director, or
19 employee contributing to the regulated economic development enterprise's or
20 the individual's failure to comply with the cease and desist order.

21 (iii) Subject to the limitation described in
22 subdivision (c)(4)(C)(ii) of this section, the amount of the monetary penalty
23 shall be determined by the commissioner.

24 (D) The commissioner may revoke a nonprofit corporation's
25 status as a regulated economic development enterprise under this subsection
26 if the commissioner determines, after examination and investigation, that the
27 regulated economic development enterprise:

28 (i) Is or has been violating state or federal law;

29 (ii) Is violating the rules and regulations of a
30 federal regulatory agency;

31 (iii) Fails to meet the minimum equity requirements
32 under subdivision (c)(2) of this section; or

33 (iv) Is operating or has been operated in a manner
34 that jeopardizes the safety and soundness of the regulated economic
35 development enterprise.

36 (E)(i) The commissioner shall have the power to issue such

1 rules as may be necessary or appropriate with the approval and consent of the
2 board.

3 (ii) This section shall not be construed to curtail
4 the commissioner's power to issue emergency rules with the approval and
5 consent of the board.

6 (F) In addition to other powers under this section, the
7 commissioner shall have the power and authority to:

8 (i) Inspect and copy all books, records, and other
9 information relating to a regulated economic development enterprise; and

10 (ii) Subpoena witnesses, compel their attendance,
11 require production of evidence, and administer oaths.

12 (G)(i) A person or regulated economic development
13 enterprise aggrieved and directly affected by an order of the commissioner
14 issued under this subsection is entitled to judicial review.

15 (ii) A person or regulated economic development
16 enterprise may seek judicial review by petition to a circuit court of
17 competent jurisdiction.

18 (iii) The petition shall be filed within thirty (30)
19 days from the date of issuance of the order.

20 (iv) If a petition is not filed within thirty (30)
21 days from the date of issuance of the order, the order shall not be appealed
22 and is permanently binding upon the person until terminated by the
23 commissioner.

24 (5) A nonprofit corporation that is registered as a regulated
25 economic development enterprise, that is in compliance with federal and state
26 laws, rules, and regulations, and that does not have any regulatory
27 proceeding pending against it may withdraw its registration as a regulated
28 economic development enterprise.

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30 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
31 General Assembly of the State of Arkansas that to enhance economic
32 development, the Bank Commissioner needs to examine financial entities in
33 Arkansas; and that this act is immediately necessary because of the need to
34 take advantage of any opportunities that may be encouraged by the enhanced
35 economic development created as a result of the examinations. Therefore, an
36 emergency is declared to exist, and this act being immediately necessary for

1 the preservation of the public peace, health, and safety shall become
2 effective on:

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

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

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

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/s/Jett

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