

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 As Engrossed: H1/29/09 H2/5/09 H2/17/09 H2/20/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

HOUSE BILL 1060

4

5 By: Representatives Pennartz, R. Green, Glidewell, Cook, Tyler, Cash, J. Roebuck, J. Burris, L. Smith,
6 Williams, Dunn, Ingram, Webb, Betts, Breedlove, Carroll, Clemmer, English, Gaskill, House, Nix, Perry,
7 Powers, Saunders, Slinkard, Wagner, S. Malone, Kidd, King, Lea, Wells, Patterson, Lindsey, Pyle,
8 Harrelson, Woods, Word, Barnett, Adcock, Hobbs, Hopper, L. Cowling, Rainey

9 By: Senators G. Baker, Wilkinson, Altes

10

11

12

For An Act To Be Entitled

13

AN ACT TO ESTABLISH AN INVESTMENT TAX CREDIT FOR
14 THE REHABILITATION AND DEVELOPMENT OF CENTRAL
15 BUSINESS IMPROVEMENT DISTRICTS; AND FOR OTHER
16 PURPOSES.

17

18

Subtitle

19

TO ESTABLISH AN INVESTMENT TAX CREDIT
20 FOR THE REHABILITATION AND DEVELOPMENT
21 OF CENTRAL BUSINESS IMPROVEMENT
22 DISTRICTS.

23

24

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

26

27 SECTION 1. Arkansas Code 26, Chapter 51 is amended to add an
28 additional subchapter to read as follows:

29 Subchapter 22 - Arkansas Central Business Improvement District
30 Rehabilitation and Development Investment Tax Credit Act.

31

32 26-51-2201. Title.

33 This subchapter shall be known and may be cited as the "Arkansas
34 Central Business Improvement District Rehabilitation and Development
35 Investment Tax Credit Act".

36



1 26-51-2202. Purpose.

2 The purpose of this subchapter is to encourage economic development
3 within central business improvement districts by promoting the rehabilitation
4 and development of structures within the central business improvement
5 districts.

6
7 26-51-2203. Definitions.

8 As used in this subchapter:

9 (1) "Central business improvement district" means the central
10 business district of any municipality of the first-class or municipality of
11 the second-class of the state that has been designated as a central business
12 improvement district under § 14-184-101 et seq.;

13 (2) "Development" means the new construction of a structure or
14 the expansion of an existing structure;

15 (3) "Eligibility certificate" means a certificate:

16 (A) Authorized and issued by the governing body of the
17 central business improvement district certifying that a project is a
18 qualified project, has met the requirements of this subchapter, and is an
19 eligible central business improvement district property; and

20 (B) That specifies the total amount of qualified
21 rehabilitation or development expenditures allowed;

22 (4) "Eligible central business improvement district property"
23 means property that is located within the physical boundaries of a central
24 business improvement district and is a qualified project;

25 (5) "Investment tax credit" means the Arkansas Central Business
26 Improvement District Rehabilitation and Development investment tax credit
27 under this subchapter;

28 (6) "Qualified project" means eligible central business
29 improvement district property that has met the requirements of § 26-51-
30 2204(b) and has been approved for rehabilitation or development by the
31 governing body of the central business improvement district where the
32 eligible central business improvement district property is located;

33 (7)(A) "Qualified rehabilitation or development expenditures"
34 means expenditures approved by the governing body of the central business
35 improvement district where the eligible central business improvement district
36 property is located that meets the requirements of this subchapter.

1 (B) "Qualified rehabilitation or development expenditures"
2 do not include:

3 (i) The cost of acquiring the eligible central
4 business improvement district property or realtor's fees associated with the
5 eligible central business improvement district property;

6 (ii) Taxes due on the eligible central business
7 improvement district property;

8 (iii) Insurance costs;

9 (iv) Costs of landscaping; or

10 (v) Sales and marketing costs; and

11 (8) "Taxpayer" means an individual, a partnership, limited
12 liability company, or corporation subject to the state income tax imposed by
13 the Income Tax Act of 1929, § 26-51-101 et seq.

14
15 26-51-2204. Qualified project.

16 (a) To apply for a designation as a qualified project, a taxpayer
17 shall submit to the governing body of the central business improvement
18 district where the property to be rehabilitated or developed is located all
19 forms and fees required by the Arkansas Economic Development Commission and
20 the governing body of the central business improvement district.

21 (b) To qualify as eligible central business improvement district
22 property, the taxpayer shall demonstrate that the property to be
23 rehabilitated or developed meets the following requirements:

24 (1) The project must be planned within the physical boundaries
25 of the central business improvement district;

26 (2) A full set of plans by a licensed architect must be
27 submitted to the governing body of the central business improvement district
28 where the property to be rehabilitated or developed is located;

29 (3) The project must meet all zoning and building codes of the
30 municipality in which the property to be rehabilitated or developed is
31 located;

32 (4) The project must meet the design guidelines, be compatible
33 with the overall plan for the central business improvement district, and have
34 a use that the governing body of the central business improvement district
35 determines as maintaining the overall integrity of the central business
36 improvement district;

1 (5) The qualified rehabilitation or development expenditures for
2 the project must have occurred on or after the effective date of this act;
3 and

4 (6) The qualified rehabilitation or development expenditures for
5 the project must be greater than fifty thousand dollars (\$50,000).

6 (c) After evaluating the information provided by the taxpayer, the
7 governing body of the central business improvement district shall issue a
8 determination about whether the property to be rehabilitated or developed is
9 a qualified project.

10 (d)(1) If the taxpayer is dissatisfied with the determination made by
11 the governing body of the central business improvement district, the taxpayer
12 may request that a review of that determination be made by the Director of
13 the Arkansas Economic Development Commission.

14 (2) The request for review shall be made in writing to the
15 Director of the Arkansas Economic Development Commission within thirty (30)
16 days from the date of the determination of the governing body of the central
17 business improvement district under subsection (c) of this section.

18 (3)(A) A taxpayer may seek judicial relief from the decision of
19 the Director of the Arkansas Economic Development Commission under this
20 subsection by filing an appeal with the circuit court within twenty (20)
21 calendar days from the date of the decision.

22 (B) The appeal shall be tried de novo in the circuit
23 court.

24
25 26-51-2205. Eligibility certificate.

26 (a) After a property to be rehabilitated or developed is designated a
27 qualified project under § 26-51-2204 and the taxpayer completes the
28 rehabilitation or development work, the taxpayer shall submit to the
29 governing body of the central business improvement district where the
30 eligible central business improvement district property is located all
31 documentation and forms required by the Arkansas Economic Development
32 Commission and the governing body of the central business improvement
33 district to verify that the qualified project has been completed.

34 (b) If the governing body of the central business improvement district
35 determines that the qualified project has been successfully completed, the
36 governing body of the central business improvement district shall issue an

1 eligibility certificate.

2 (c)(1) If the taxpayer is dissatisfied with the determination made by
3 the governing body of the central business improvement district under
4 subsection (b) of this section, the taxpayer may request that a review of
5 that determination be made by the Director of the Arkansas Economic
6 Development Commission.

7 (2) The request for review shall be made in writing to the
8 Director of the Arkansas Economic Development Commission within thirty (30)
9 days from the date of the determination of the governing body of the central
10 business improvement district under subsection (b) of this section.

11 (3)(A) A taxpayer may seek judicial relief from the decision of
12 the Director of the Arkansas Economic Development Commission under this
13 subsection by filing an appeal with the circuit court within twenty (20)
14 calendar days from the date of the decision.

15 (B) The appeal shall be tried de novo in the circuit
16 court.

17
18 26-51-2206. The projected rehabilitation or development expenditures.

19 (a) The projected rehabilitation or development expenditures must
20 occur during a period not to exceed:

21 (1) Two (2) years for a single-phase project; or

22 (2) Five (5) years for a multiple-phase project.

23 (b) For the rehabilitation or development of an existing structure,
24 the projected qualified rehabilitation or development expenditures must equal
25 or exceed the adjusted basis of the structure, excluding the land, before the
26 qualified rehabilitation or development work begins.

27
28 26-51-2207. Investment tax credits.

29 (a) There is allowed an investment tax credit against the tax imposed
30 by the Income Tax Act of 1929, § 26-51-101 et seq. for any taxpayer incurring
31 costs and expenses that are qualified rehabilitation or development
32 expenditures of eligible central business improvement district property.

33 (b) The investment tax credit is equal to twenty percent (20%) of up
34 to the first two million dollars (\$2,000,000) of qualified rehabilitation or
35 development expenditures incurred for a qualified project.

36 (c)(1) The investment tax credit for a qualified project covering

1 income-producing eligible central business improvement district property
2 shall be taken as follows:

3 (A) For eligible central business improvement district
4 property that has not been approved to be completed in phases by the
5 governing body of the central business improvement district where the
6 eligible central business improvement district property is located, the
7 investment tax credit shall be taken in the tax year in which the eligible
8 central business improvement district property is placed in service; or

9 (B) For central business improvement district property
10 that has been approved to be completed in phases by the governing body of the
11 central business improvement district where the eligible central business
12 improvement district property is located, the investment tax credit shall be
13 taken in the tax year each phase is completed.

14 (2) The investment tax credit for a qualified project covering
15 residential eligible central business improvement district property or other
16 commercial eligible central business improvement district property shall be
17 taken as follows:

18 (A) For eligible central business improvement district
19 property that has not been approved to be completed in phases by the
20 governing body of the central business improvement district, the investment
21 tax credit shall be taken in the tax year the qualified project is completed;
22 or

23 (B) For eligible central business improvement district
24 property that has been approved to be completed in phases by the governing
25 body of the central business improvement district where the eligible central
26 business improvement district property is located, the investment tax credit
27 shall be taken in the tax year that each phase is completed.

28 (d) A taxpayer who receives an investment tax credit under this
29 section shall not claim any other state or local tax credit or deduction
30 based on the qualified rehabilitation or development expenditures except for
31 the deduction for normal depreciation of the eligible central business
32 improvement district property.

33 (e)(1) The maximum amount of investment tax credits awarded by the
34 state in a fiscal year is twenty million dollars (\$20,000,000) to be awarded
35 as follows:

36 (A) Up to ten million dollars (\$10,000,000) in investment

1 tax credits may be awarded for eligible central business improvement district
2 property located in municipalities with a population of less than fifty
3 thousand (50,000), as determined by the last federal census; and

4 (B) Up to ten million dollars (\$10,000,000) in investment
5 tax credits may be awarded for eligible central business improvement district
6 property located in municipalities with a population of fifty thousand
7 (50,000) or more, as determined by the last federal census.

8 (2) Any eligibility certificate that would cause the investment
9 tax credit to exceed the amounts listed in subdivision (e)(1) of this section
10 during the fiscal year will be carried forward to the following fiscal year.

11 (3) The Arkansas Economic Development Commission shall maintain
12 an ongoing record of the eligibility certificates in order to ensure that the
13 maximum amount of investment tax credits awarded each fiscal year does not
14 exceed the amounts provided in subsection (e)(1) of this section.

15
16 26-51-2208. Procedure to claim the investment tax credit.

17 (a) To claim the investment tax credit, the taxpayer shall submit the
18 eligibility certificate issued by the applicable central business improvement
19 district to the Arkansas Economic Development Commission.

20 (b)(1) In addition to the application under subsection (a) of this
21 section, the taxpayer shall submit an eligibility certificate at the time of
22 filing the taxpayer's income tax return.

23 (2) If the taxpayer fails to attach the eligibility certificate,
24 an investment tax credit is not allowed with respect to the qualified project
25 for that tax year until the eligibility certificate is provided to the
26 Department of Finance and Administration.

27
28 26-51-2209. Credits exceeding tax liability – Assignment.

29 (a)(1) The amount of the investment tax credit that may be used by a
30 taxpayer for a taxable year shall not exceed the amount of income tax due.

31 (2) Any unused investment tax credit may be carried over for
32 seven (7) consecutive taxable years for credit against the state income tax
33 due.

34 (3)(A) The investment tax credit may be transferred, sold, or
35 assigned only one (1) time.

36 (B) A taxpayer who transfers, sells, or assigns the

1 investment tax credit shall notify in writing the Arkansas Economic
2 Development Commission within thirty (30) days the following information:

3 (i) The name, address, and taxpayer identification
4 number of the transferee, purchaser, or assignee of the investment tax
5 credit;

6 (ii) The original issuance date of the investment
7 tax credit and the date of the transfer, purchase, or assignment of the
8 investment tax credit; and

9 (iii) The amount paid for the investment tax credit
10 by the transferee, purchaser, or assignee.

11 (C)(i) A transferee, purchaser, or assignee of an
12 investment tax credit is entitled for the remaining carry forward period to
13 the investment tax credit under this subchapter only to the extent the
14 investment tax credit is still available and only for the portion of the
15 investment tax credit that has not been previously claimed by the transferor,
16 seller, or assignor.

17 (ii) A transferee, purchaser, or assignee may not
18 transfer, sell, or assign the investment tax credit.

19 (D) The Department of Finance and Administration may
20 refuse to recognize the investment tax credit if the transferor, seller,
21 assignor or the transferee, purchaser, or assignee of the investment tax
22 credit fails to submit the eligibility certificate and any transfer,
23 purchase, or assignment documents.

24 (4) An investment tax credit granted to a partnership, a limited
25 liability company taxed as a partnership, or multiple owners of eligible
26 central business improvement district property shall be passed through to the
27 partners, members, or owners respectively on a pro rata basis or pursuant to
28 an executed agreement between or among the partners, members, or owners
29 documenting an alternative distribution method.

30 (b)(1) Any assignee of an investment tax credit may use an acquired
31 investment tax credit to offset up to one hundred percent (100%) of the state
32 income tax due from the assignee, but the offset shall not exceed the amount
33 of income tax due for the taxable year.

34 (2) An assignor of an investment tax credit shall perfect an
35 assignment to an assignee of an investment tax credit by notifying the
36 Arkansas Economic Development Commission in writing within thirty (30)

1 calendar days following the effective date of the assignment and shall
2 provide any information required by the commission to administer and carry
3 out this subchapter.

4 26-51-2210. Fees.

5 (a)(1) The governing body of the central business improvement district
6 may charge a fee of one hundred dollars (\$100) for the services it provides
7 under this subchapter.

8 (2) The fee collected under subdivision (a)(1) of this section
9 by the governing body of the central business improvement district shall be
10 considered cash funds of the central business improvement district and shall
11 be used for the administration of this subchapter.

12 (b)(1) The Arkansas Economic Development Commission may charge a fee
13 of twenty-five dollars (\$25) for the services it provides under this
14 subchapter.

15 (2) The fee collected under subdivision (b)(1) of this section
16 by the Arkansas Economic Development Commission shall be considered cash
17 funds of the commission and shall be used for the administration of this
18 subchapter.

19
20 26-51-2211. Enforcement.

21 (a)(1) The Director of the Arkansas Economic Development Commission
22 may make rules and prescribe forms for the proper enforcement of claims for
23 an eligibility certificate.

24 (2) The Arkansas Economic Development Commission shall consult
25 with the governing bodies of the central business improvement districts in
26 making rules under this subchapter to maintain consistency with the purpose
27 and intent of this subchapter.

28 (b) The governing body of a central business improvement district may
29 charge a reasonable application fee as established by the Arkansas Economic
30 Development Commission for the processing of an eligibility certificate.

31 (c) A fee collected under § 26-51-2204 by the central business
32 improvement district shall be deposited into the treasury cash fund of the
33 governing body of a central business improvement district receiving the fee.

34 (d) The Department of Finance and Administration and the governing
35 body of a central business improvement district may inspect facilities and
36 records of an entity requesting or receiving an investment tax credit as

1 necessary to verify a claim.

2 (e) The Director of the Department of Finance and Administration may
3 develop such forms and instructions as are necessary for an approved taxpayer
4 to claim the investment tax credit provided by this subchapter.

5 (f) The Director of the Department of Finance and Administration shall
6 demand the repayment of any credits taken in excess of the investment tax
7 credit allowed by this subchapter.

8
9 26-51-2212. Effective Date.

10 (a) This act is effective for tax years beginning on and after January
11 1, 2009, and expires December 31, 2013.

12 (b) An unused investment tax credit under this act that is earned
13 before the end of the 2013 tax year may be carried forward on an income tax
14 return for up to seven (7) years after the year in which the investment tax
15 credit was first earned or until exhausted, whichever event occurs first.

16
17 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that the central business
19 improvement districts in Arkansas municipalities are in need of
20 rehabilitation and development; that the state and country are in an economic
21 recession; that providing an investment tax credit would encourage the needed
22 rehabilitation and development of the central business improvement districts
23 in this state; that the rehabilitation and development would provide jobs to
24 Arkansans; and that the investment tax credit would provide an economic
25 stimulus to the State of Arkansas. Therefore, an emergency is declared to
26 exist and this act being necessary for the preservation of the public peace,
27 health, and safety shall become effective on:

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

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

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

34
35 /s/ Pennartz
36