

EXHIBIT D

POSSIBLE CORRECTIONS TO VARIOUS PARTS OF THE ARKANSAS CODE RESULTING FROM ENACTMENT OF ACT 1041 OF 2021

Commission staff received a request for possible revisions to the use of the term "articles of organization" in certain sections of Arkansas Code in light of Act 1041 of 2021 replacing the term. After receiving the request, staff reviewed the Arkansas Code to determine if other changes might be necessary. Below are possible revisions that are consistent with the request. We would note that we are not practitioners in this area of law and certain details of this issue may be beyond our experience. Persons with experience in this area of the law may have thoughts on changes to the term "articles of organization" in these contexts.

1. "Articles of organization" being changed to "operating agreement"

4-37-102(13)

"Manager" or "managers" means, with respect to a limited liability company that has set forth in its ~~articles of organization~~ operating agreement that it is to be managed by managers, the person or persons designated in accordance with § 4-38-407.

2. "Articles of organization" being changed to "certificate of organization"

4-26-1001(9)(C)

For a domestic or foreign limited liability company, its ~~articles~~ certificate of organization and operating agreement or the comparable records provided for in its governing statute;

4-27-1101(9)(C)

For a domestic or foreign limited liability company, its ~~articles~~ certificate of organization and operating agreement, or the comparable records provided for in its governing statute;

4-46-901(9)(C)

For a domestic or foreign limited liability company, its ~~articles~~ certificate of organization and operating agreement, or the comparable records provided for in its governing statute;

4-47-1101(9)(C)

for a domestic or foreign limited liability company, its **articles certificate of organization** and operating agreement, or comparable records as provided in its governing statute;

4-70-201(c)

This subchapter shall not apply to any limited liability company which has filed its **articles certificate of organization** with the Secretary of State pursuant to § 4-38-201.

15-4-1204. Application for preliminary approval.

Any five (5) or more qualified natural persons who shall be bona fide residents of the same county or region in this state to be served by the proposed company and who desire to associate themselves for the purpose of establishing and operating a company may subscribe, acknowledge, and file with the Bank Commissioner for preliminary approval proposed articles of incorporation in the case of a corporation and **articles certificate of organization** and an operating agreement in the case of a limited liability company, in duplicate, as authorized by § 15-4-1211.

15-4-1205. Preliminary approval.

(a) If the Bank Commissioner is satisfied that the applicants are bona fide residents of the county or region to be served by the proposed company, that the applicants have the confidence of their respective communities, that, in the case of a regional company, the proposed region constitutes a reasonably compact area with similar economic development needs, that public convenience and necessity require a company, and that the proposed articles of incorporation or **articles certificate of organization** and operating agreement conform to the provisions of § 15-4-1211, the commissioner shall issue his or her certificate approving the articles of incorporation or **articles certificate of organization** and operating agreement and authorizing the applicants to proceed with the organization of the company.

(b)(1) The commissioner shall not refuse a certificate to a regional company solely because one (1) or more county companies have been approved for the counties composing the region.

(2) Provided, however, only one (1) county industrial development company may be organized to serve in each individual county.

15-4-1208. **Certificate of organization.**

(a) When the applicants have completed the organization of the proposed company, they shall file with the Bank Commissioner a **certificate of organization** executed by the chief executive officer of the company, attested by its chief financial officer, and with its seal affixed thereto, certifying:

(1) The names and addresses of all of its subscribers of stock or units of interest of a limited liability company, the number of shares subscribed or the amount of units of interest subscribed in the case of a limited liability company, and the number of shares fully paid for by each in the case of a corporation or the amount of units of interest fully paid for by each in the case of a limited liability company;

(2) The total number of shares of stock or units of interest of a limited liability company subscribed, but not fully paid for;

(3) The total number of shares of stock or units of interest paid in full;

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

(5) The names and addresses of the officers, directors, and members of the executive committee, if any, of a corporation and the names and addresses of the managers and members of the management committee of a limited liability company.

(b) The **certificate of organization** of the applicant shall be accompanied by the certificate of the named depository or by the certificates of the named depositories, if more than one (1), certifying the amount of the funds on deposit to the credit of the company.

(c) The **certificate of organization** shall also be accompanied by any bylaws or by any regulations which may have been adopted by the directors of a corporation or the operating agreement of a limited liability company.

15-4-1209. **Final investigation and approval by the board.**

(a)(1) Immediately upon the filing of the **certificate of organization** by the applicants, the Bank Commissioner shall submit to the State Banking Board the proposed articles of incorporation, **articles certificate of organization** and operating agreement, as appropriate, and the **certificate of organization** of the applicants.

(2) As soon as practicable thereafter, if the board shall determine from the best sources of information at its command that:

(A) Public convenience and necessity continue to require the company;

(B) The holders of the fully paid common stock of a corporation or units of interest of a limited liability company are at least twenty (20) in number;

(C) Not less than one hundred thousand dollars (\$100,000) of common stock or units of interest have been subscribed and fully paid for;

(D) No single stockholder nor related group of stockholders owns more than ten percent (10%) of the voting stock in the case of a corporation or no single member nor related group of members owns more than ten percent (10%) of the units of interest in the case of a limited liability company; and

(E) The bylaws submitted, if any, or the operating agreement is in conformity with the articles of incorporation or **articles certificate of organization** and the provisions of this subchapter, is not contrary to the laws of the state, and is otherwise satisfactory, the board shall direct the commissioner to issue to the applicants a certificate of incorporation or certificate of organization in such form as it may prescribe.

(b)(1) The commissioner shall also return to the applicants one (1) of the copies of the articles of incorporation or the **articles certificate of organization** theretofore submitted to the commissioner by the applicants, upon which copy he or she shall have endorsed the fact of the issuance by him or her of the certificate of incorporation or **certificate of organization**.

(2) If the bylaws, regulations, or the operating agreement are submitted and are found to be satisfactory by the board, the commissioner shall also issue his or her certificate of approval.

15-4-1210. Commencement and continuation of existence.

(a) Upon the issuance of the certificate of incorporation or **certificate of organization** by the Bank Commissioner, the existence of the company shall begin.

(b) The certificate of incorporation or **certificate of organization** shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the applicants have been complied with and that the company has been organized under this subchapter.

(c) A copy of the articles of incorporation or **articles certificate of organization** so endorsed by the commissioner, as prescribed in § 15-4-1209, shall be filed for recordation in the office of the county clerk in the county in which the principal office of the company is located, and a copy shall be delivered to the Secretary of the Department of Finance and Administration.

(d) The company shall pay to the commissioner in semiannual billings four hundred dollars (\$400) per year to establish and continue its existence and good standing under this subchapter.

15-4-1211. Articles of incorporation or articles certificate of organization.

(a) The articles of incorporation for any corporation or the articles certificate of organization of any limited liability company organized under the provisions of this subchapter shall state:

(1) The name of the company, which shall include the words “County Industrial Development Company” if the proposed company is to serve a single county, or “Regional Industrial Development Company” if the proposed company is to serve a region larger than a single county, and such designation as may be appropriate to distinguish it from any subsequent company which may be organized under the provisions of this subchapter, and the name shall be such as to distinguish it from any other corporation, limited liability company, limited partnership, limited liability partnership, and limited liability limited partnership organized and existing under the laws of the State of Arkansas as evidenced by the Secretary of State in writing;

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

(3) The period of duration of the company, which for a corporation may be perpetual or limited, but which for a limited liability company must be for a stated term;

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

(5) The total number of shares of common stock that the corporation is authorized to issue, which number shall be not less than one hundred (100) shares of common stock, each share having a par value of one hundred dollars (\$100) in the case of a corporation or the total units of interest in the limited liability company that the limited liability company is authorized to issue, which number shall not be less than one hundred (100) units of interest, each unit of interest having a stated value of one hundred dollars (\$100);

(6) The total number of shares of stock of any other class or distinction which a corporation is authorized to issue and its par value, if any, in the case of a corporation or the total number of units of other interests in a limited liability company that a limited liability company is authorized to issue and its stated value and preferences or limitations, if any;

(7) That no stockholder or member shall have preemptive rights with respect to any additional equity issued by the company or with respect to any debt issued by the company;

(8) That no stockholder shall be entitled to own more than ten percent (10%) of the total number of shares of voting stock issued at any time or that no member

shall be entitled to own more than ten percent (10%) of the total units of interest of a limited liability company issued at any time;

(9)(A) In the case of a corporation, the number of directors, not fewer than six (6) nor more than fifteen (15), to be elected at the annual meeting of the holders of stock entitled to vote for the election of directors, in the case of a regional corporation, the requirement that at least one (1) director shall be a resident of each county composing the region and a prohibition of more than one-third (1/3) of the directors being residents of any single county, the terms of office of the directors, and any provisions desirable for staggering their terms of office.

(B) However, the terms of office of directors and other matters pertaining to the directors may be provided in the bylaws of the corporation;

(10)(A) In the case of a limited liability company, the number of members of the management committee, not fewer than six (6) nor more than fifteen (15), to be elected at the annual meeting of the members of the limited liability company entitled to vote for the election of the members of the management committee, in the case of a regional limited liability company, the requirement that at least one (1) member of the management committee shall be a resident of each county composing the region and a prohibition of more than one-third (1/3) of the members of the management committee being residents of any single county, the terms of office of the members of the management committee, and any provisions desirable for staggering their terms of office.

(B) However, the terms of office of members of the management committee and other matters pertaining to the members of the management committee may be provided in the operating agreement of the limited liability company;

(11) The names and addresses of the incorporators or organizers who shall constitute the board of directors or the management committee and manage the affairs of the company until the first meeting of the holders of the common stock or until the first meeting of the members of the limited liability company;

(12)(A) In the case of a limited liability company, that such an entity shall be a manager-managed limited liability company and shall be governed by a management committee elected by the holders of the units of interest of the limited liability company.

(B) The management committee shall appoint a chief operating officer, a chief financial officer, and such other officers as it deems appropriate;

(13)(A) In the case of a corporation, that the shares of the corporation shall be issued at such prices and with such rights and preferences as stated in the articles of incorporation, the bylaws, and as stated by the board of directors.

(B) In the case of a limited liability company, the ownership of the limited liability company shall be represented by units of interest that shall be issued at such prices and with such rights and preferences as stated in the articles certificate of

organization, the operating agreement, or as stated by the management committee of the limited liability company.

(C)(i) Stock and units of interest may be issued for consideration consisting of money paid, labor done, or property actually received, but neither promissory notes nor the promise of future services shall constitute valid consideration.

(ii) In all cases, shares or units of interest shall be issued at not less than the par value of one hundred dollars (\$100) per share or the stated value of one hundred dollars (\$100) per unit of interest; and

(14) Any provisions not inconsistent with law which the incorporators or organizers may choose to insert for the regulation of the business and the conduct of the affairs of the company.

(b) It shall not be necessary to set forth in the articles of incorporation or the **articles certificate of organization** or the operating agreement any of the company powers enumerated in this subchapter.

15-4-1212. Amendment to articles of incorporation or **articles certificate of organization**.

(a) A company organized under the provisions of this subchapter may amend its articles of incorporation or its **articles certificate of organization** by a majority vote of the common stock in the case of a corporation or by a majority vote of the units of interest of a limited liability company represented in person or by proxy at any regular meeting or at any special meeting of the holders of the common stock or members of the limited liability company called for that purpose.

(b) The power to amend shall include the power to accomplish any desired change in the provisions of the articles of incorporation or **articles certificate of organization** and to include any purpose, power, or provision authorized to be included in the original articles of incorporation or **articles certificate of organization** or by later amendment to this subchapter.

(c)(1) Articles of amendment signed by the chief executive officer and attested by the secretary, an assistant secretary, or another manager certifying to such an amendment and its lawful adoption shall be executed, acknowledged, and filed with the Bank Commissioner and, when approved by the State Banking Board, recorded with the certificate of the commissioner approving the articles of amendment in the same manner as the original articles of incorporation or **articles certificate of organization**.

(2) As soon as the commissioner shall issue his or her certificate of amendment, the amendment or amendments shall be in effect.

15-4-1214. Powers of the company.

(a) The purposes of each company organized under the provisions of this subchapter shall be to:

(1) Promote, stimulate, develop, and advance the business prosperity and economic welfare of the county or region where it is located and its citizens;

(2) Encourage and assist through loans, investments, or other business transactions in the location of new business and industry in that county or region, and to assist the growth and expansion of existing business and industry;

(3) Stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of the county or region, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of that county or region;

(4) Cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, technological, scientific, commercial, agricultural, and recreational development in that county or region; and

(5) Provide venture financing for the promotion, development, and conduct of all kinds of business activity in that county or region on terms and conditions that would not otherwise be available from existing financial institutions.

(b) In furtherance of such purposes, each company organized under this subchapter shall have the power to:

(1) Sue and be sued and to complain and defend in its corporate or limited liability company name;

(2) Have perpetual succession, in the case of corporations, unless a limited period of duration is stated in its articles of incorporation;

(3) Adopt a company seal, which may be altered at pleasure, and to use it or a facsimile thereof as permitted by law;

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

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

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

(7) Make loans to any qualifying person within its county or region and to establish and regulate the terms and conditions with respect to those loans and the charges for interest and service connected with those loans, consistent with the provisions of this subchapter;

(8) Purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of:

(A) Bonds, securities, or evidences of indebtedness created by any other corporation or corporations of this state or any other state or government or created by any individual, unincorporated association, limited liability company, limited partnership, general partnership, limited liability partnership, limited liability limited partnership, trust estate, improvement district, municipality, or governmental or municipal agency of any character;

(B) Shares of the capital stock of any other corporation or corporations of this or any other state or government, subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the corporation may do business, and, while owner of such stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote that stock; and

(C) The units of interest of limited liability companies, partnerships, joint ventures, or other business entities of this or any other state or government, subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the business entity may do business, and, while owner of such units of interest, to exercise all the rights, powers, and privileges of ownership, including the right to vote those units of interest;

(9) Make any and all contracts necessary or convenient for the exercise of the powers granted in this subchapter;

(10) Elect or appoint officers, agents, and employees of the company and to define their duties and fix their compensation;

(11) Conduct its business and to have officers within or without the state;

(12) Accept gifts or grants of money, service, or property, real or personal;

(13) With the approval of the board of directors or the management committee by action of those persons, make and alter bylaws and regulations not inconsistent with the articles of incorporation or the **articles certificate of organization** and operating agreement or with the laws of this state for the administration and regulation of the affairs of the company;

(14) Encourage and promote the cultural, industrial, technological, scientific, economic, and recreational development of the county or region where it is located;

(15)(A) Assist minority businesses in obtaining loans or other means of financial assistance.

(B) The terms and conditions of such loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this subchapter.

(C) Efforts must be made to solicit for review and analysis proposed minority business ventures.

(D) Be it further provided that basic loan underwriting standards will not be changed to inconsistently favor or disfavor minority persons or businesses, or both, from the intent of the company's lending practices; and

(16) Do and perform any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the company is organized.

15-4-1215(b)

The management committee of a limited liability company, subject to such limitations as may be set forth in the articles certificate of organization or the operating agreement, may declare distributions to the holders of the units of interest in the limited liability company consistent with the provisions of the Uniform Limited Liability Company Act, § 4-38-101 et seq.

15-4-1219. Withdrawal of members.

(a)(1) Membership in a company shall be for an indeterminate period not to exceed the termination date of the company stated in its articles of incorporation or articles certificate of organization.

(2) Provided, however, that:

(A) Upon written notice given to a company five (5) years in advance, a member may withdraw from membership in the company at the expiration date of the notice; or

(B)(i) In the event that a member, herein called a “constituent member”, shall consolidate with, merge into, or sell all or substantially all of its property and assets to another financial institution, herein called the “continuing institution”, the board of directors or the management committee may permit, in such manner as it determines, the withdrawal of the constituent member from membership in the company if the continuing institution at the time of the withdrawal is a member and has assumed any obligation of the constituent member to make loans to the company.

(ii) If the continuing institution is not a member prior to the consolidation, merger, or sale, the assumed obligation shall be discharged at the time the continuing institution becomes a member.

(b) A member shall not be obligated to make any loans to the company pursuant to calls made either before or after the withdrawal of the member.

15-4-1227(c)

The certificate of dissolution shall be executed, acknowledged, and filed and recorded in the same manner as the original articles of incorporation or **articles certificate of organization**, and as soon as the Bank Commissioner shall have accepted and endorsed on the certificate of dissolution his or her approval thereof, the company shall be deemed to be dissolved.

Appendix Title 19 Bond Issues

Big River Steel, LLC Amendment 82 Agreement with State of Arkansas

Acts 2013, No. 1084, § 8, 19.5. Non-contravention . Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement shall: (a) violate any applicable law including the Amendment 82 Requirements; (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create the right to accelerate, terminate, modify, cancel, or require any notice pursuant to the Capital Commitment Documents and any other material contract or lease to which the Sponsor may be a party or by which the Sponsor may be bound or to which the Incentive Loan Collateral may be subject; or (c) violate or conflict with the **articles** of organization, the operating agreement, and other governing documents of the Sponsor.

Big River Steel, LLC Amendment 82 Agreement with State of Arkansas

Acts 2013, No. 1476, § 8, 19.5. Non-contravention . Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement shall: (a) violate any applicable law including the Amendment 82 Requirements; (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create the right to accelerate, terminate, modify, cancel, or require any notice pursuant to the Capital Commitment Documents and any other material contract or lease to which the Sponsor may be a party or by which the Sponsor may be bound or to which the Incentive Loan Collateral may be subject; or (c) violate or conflict with the **articles** of organization, the operating agreement, and other governing documents of the Sponsor.