

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.

Act 1759 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/16/05

A Bill

SENATE BILL 1031

5 By: Senator Malone
6 By: Representatives Maloch, Roebuck
7
8

For An Act To Be Entitled

10 AN ACT TO AMEND THE ARKANSAS CAPITAL DEVELOPMENT
11 COMPANY ACT TO LIMIT THE MAXIMUM AMOUNT OF TAX
12 CREDITS AVAILABLE; AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO AMEND THE ARKANSAS CAPITAL
15 DEVELOPMENT COMPANY ACT TO LIMIT THE
16 MAXIMUM AMOUNT OF TAX CREDITS AVAILABLE.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 15-4-1008 is amended to read as follows:
23 15-4-1008. Ex officio members of the governing board.

24 (a)(1) The Director of the Department of Economic Development, the
25 President of the Arkansas Development Finance Authority, and the President of
26 the Arkansas Science and Technology Authority, or their respective designees,
27 or persons holding similar executive positions in any agency or
28 instrumentality succeeding thereto, or their respective designees, shall be
29 ex officio members of the governing board of each capital development company
30 created under this subchapter during their respective terms of office.

31 (2) An ex officio member under subdivision (a)(1) of this
32 section may elect not to serve as a member of the governing board of a
33 capital development company. He or she may change the election at any time.

34 (b) Ex officio members of the governing board shall have all rights,
35 duties, and obligations of other members of the governing board under the



1 company's governing documents.

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3 SECTION 2. Arkansas Code § 15-4-1015 is amended to read as follows:
4 15-4-1015. Management of a capital development company.

5 (a) The governing board shall manage the affairs of the capital
6 development company.

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

12 (2) ~~The governing board shall have thirty (30) days~~ If the
13 requested transfer is not denied by the governing board of the capital
14 development company within fifteen (15) days from the date of receipt of the
15 name or names of the proposed transferees and the terms of the proposed
16 transfer ~~to approve~~, the transfer shall be deemed approved by the governing
17 board.

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

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

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

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27 SECTION 3. Arkansas Code § 15-4-1026(a) and (b), pertaining to tax
28 credits for purchase of equity in a capital development company, are amended
29 to read as follows:

30 (a)(1) A person who purchases an equity interest in a capital
31 development company in any of the calendar years 2003 - ~~2013~~ 2015 is entitled
32 to a credit against any state income tax liability or premium tax liability
33 that may be imposed on the purchaser for any tax year commencing ~~with the tax~~
34 ~~year that is two years~~ on or after the date of the purchase.

35 (2) However, within eighteen (18) months after receipt of the
36 proceeds from the purchase of an equity interest in a company, the proceeds

1 must be used in one (1) or more of the transactions described in subdivision
2 (a)(3) of this section and for the purposes stated in § 15-4-1016 or for
3 operating expenses.

4 (3) Upon satisfaction of the conditions in subdivisions (a)(1)
5 and (a)(2) of this section, use of proceeds from the purchase described in
6 subdivision (a)(1) of this section in the following transactions shall cause
7 the purchaser to be eligible for the tax credit under subdivision (a)(1) of
8 this section:

9 (A) Transactions in which one (1) or more persons purchase
10 equity interests in a capital development company to create a pool of capital
11 available for investment in entities approved by the capital development
12 company's governing board;

13 (B) Transactions in which one (1) or more persons purchase
14 equity interests in a capital development company and the proceeds of the
15 purchases are invested by the capital development company at the direction of
16 the purchasers into one (1) or more venture capital funds or private equity
17 funds that have investment policies which conform to all or a portion of the
18 capital development company's investment policy, if the governing board
19 reviews and does not object to the use of the proceeds by the funds; and

20 (C) Transactions in which:

21 (i) A capital development company enters into an
22 agreement with an entity approved by the governing board of the company;

23 (ii) The entity is required to identify the
24 investors who will invest in the entity;

25 (iii) Receipt of the tax credit is contingent upon
26 the investors actually investing in the entity through the company; and

27 (iv) The governing board of the company determines
28 that the entity would not be able to raise the funds needed for the entity's
29 business without a tax credit.

30 (b) The credit shall be determined in the following manner:

31 (1)(A) The credit shall be equal to thirty-three and one-third
32 percent (33 1/3%) of the actual purchase price paid for the equity interest
33 to the company, which shall include any fees or commissions to underwriters
34 or sales agents paid by the company.

35 (B)(i) However, the total amount of fees and commissions
36 to underwriters or sales agents for which a credit may be taken shall not

1 exceed fifteen percent (15%) of the actual purchase price.

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

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

9 (3)(A) Any credit in excess of the amount allowed by subdivision
10 (b)(2) of this section for any one (1) tax year may be carried forward and
11 applied against Arkansas state income tax or premium tax for the next-
12 succeeding tax year and annually thereafter for a total period of eight (8)
13 years next succeeding the year in which the equity interest in a company was
14 purchased, subject to the provisions of subdivision (b)(2) of this section or
15 until the credit is exhausted, whichever occurs first.

16 (B) In no event may the credit allowed by this section be
17 allowed for any tax year ending after December 31, ~~2019~~ 2021; and

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

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

24 (B) The tax identification number of the person entitled
25 to the credit;

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

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

28 (E) The amount paid by the original purchaser for the
29 equity interest;

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

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

34

35 SECTION 4. Arkansas Code § 15-4-1026, pertaining to tax credits for
36 the purchase of equity in a capital development company, is amended to add a

1 new subsection as follows:

2 (g)(1) Except as provided in subdivision (g)(2) of this section, the
3 total cumulative amount of tax credits available to all purchasers of equity
4 interest in capital development companies under this section in any calendar
5 year shall not exceed five million dollars (\$5,000,000).

6 (2) For any calendar year, the maximum tax credit under
7 subdivision (g)(1) of this section may be increased by an additional amount
8 not to exceed one million two hundred fifty thousand dollars (\$1,250,000) by
9 the Director of the Department of Finance if a capital development company
10 requests the increase and the requirements of subdivision (g)(3) of this
11 section are met.

12 (3) By August 15 of the calendar year for which the maximum tax
13 credit increase is requested, the director shall:

14 (A) Determine:

15 (i) The total amount of tax credits first claimed
16 under this section during the most recent fiscal year;

17 (ii) The total amount of tax credits claimed under
18 this section by all taxpayers during the most recent fiscal year; and

19 (iii) Based upon the amounts calculated under
20 subdivisions (g)(3)(A)(i) and (ii) of this section, the estimated amount of
21 tax credits that may be claimed under this section during the fiscal year
22 that began on the most recent July 1;

23 (B) Based on the most recent revenue forecast and budget
24 information, determine:

25 (i) The fiscal impact of the estimated tax credits
26 under subdivision (g)(3)(A) of this section on the amount of general revenues
27 available for distribution under § 19-5-202 for the fiscal year that began on
28 the most recent July 1, including amounts to be distributed for the support
29 of public schools; and

30 (ii) The fiscal impact of increasing the maximum tax
31 credit under subdivision (g)(2) of this section on the amount of general
32 revenues available for distribution under § 19-5-202 for the fiscal year that
33 began on the most recent July 1, including amounts to be distributed for the
34 support of public schools; and

35 (C) Certify the amount, if any, that the maximum tax
36 credit shall be increased under subdivision (g)(2) of this section such that

1 the resulting estimated amount of general revenues available for distribution
2 under § 19-5-202 for the fiscal year that began on the most recent July 1,
3 including amounts to be distributed for the support of public schools, is
4 sufficient to meet the budgeted needs of state agencies and public schools
5 funded by general revenues.

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7 SECTION 5. Arkansas Code § 15-4-1029 is amended to read as follows:
8 15-4-1029. Dissolution.

9 (a) A capital development company may dissolve in accordance with the
10 applicable business law under which it was formed.

11 (b) In connection with a dissolution under subsection (a) of this
12 section, a certificate of dissolution shall be signed by the authorized
13 officers of the company and delivered to the Bank Commissioner.

14 (c) The certificate of dissolution shall be filed and recorded in the
15 same manner as the original articles. As soon as the commissioner has
16 accepted and endorsed on the certificate of dissolution his or her approval
17 thereof, the company shall be deemed to be dissolved.

18 (d) However, the company shall be continued for the purpose of paying,
19 satisfying, and discharging any other existing liabilities or obligations and
20 collecting or liquidating its assets and doing all other acts required to
21 adjust and conclude its business and affairs and may sue and be sued in its
22 own name.

23 (e) Any assets remaining after all liabilities or other obligations of
24 the company have been satisfied or discharged shall be distributed in
25 accordance with the applicable business law under which it was formed and the
26 company's governing documents.

27 (f)(1) Upon dissolution, if any proceeds from the purchase of an
28 equity interest in a company have not been used for the purposes stated in §
29 15-4-1016 or for operating expenses, then for each person who previously
30 claimed a tax credit under § 15-4-1026 with respect to that purchase, the tax
31 imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the year in
32 which dissolution occurs shall be increased by the tax credit amount
33 associated with the unused purchase proceeds.

34 (2) Within thirty (30) days after dissolution, the company shall
35 notify each person who previously claimed a tax credit and the Department of
36 Finance and Administration of a failure to use the proceeds and the tax

1 recapture amount associated with the failure.

2 (g)(1) If authority to receive tax credits pursuant to this subchapter
3 is terminated prior to December 31, 2015, or if a capital development company
4 is dissolved, then the capital development company may assign the
5 administration of any outstanding tax credits to the Department of Economic
6 Development or its successor.

7 (2)(A) If the governing board of a capital development company
8 approves an agreement for the purchase by any person of equity interests in
9 the capital development company upon satisfaction of the conditions in the
10 agreement and the agreement is approved prior to December 31, 2015, then the
11 agreement shall remain valid and enforceable.

12 (B) However, the person entering into the agreement
13 described in subdivision (g)(1)(2)(A) of this section shall not receive any
14 tax credits for the purchase of an equity interest in the capital development
15 company that occurs after December 31, 2015.

16 (C) The capital development company shall remain in
17 existence until the purchases of equity interests contemplated by this
18 subsection are completed.

19
20 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
21 General Assembly of the State of Arkansas that the flow of venture capital
22 funds into the state has been insufficient to support the growth of
23 businesses; that as a result of the lack of available venture capital funds,
24 the state has suffered economic losses because businesses seeking venture
25 capital are sometimes required to relocate outside of this state as a
26 condition of receiving funds; that this act will stimulate the flow of
27 private capital and long-term loan funds that are vital to the sound
28 financing of businesses and will encourage growth, expansion, and
29 modernization through the reinstatement of tax credits; and that unless an
30 adequate program to encourage venture capital investment is undertaken, the
31 state will immediately suffer further irreparable loss as a result of the
32 continued departure from the state of businesses seeking venture capital
33 funds and from the lost opportunities for economic expansion. Therefore, an
34 emergency is declared to exist and this act being immediately necessary for
35 the preservation of the public peace, health, and safety shall become
36 effective on:

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

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

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

/s/ Malone

APPROVED: 4/05/2005

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