

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

*As Engrossed: H2/27/17*

# A Bill

HOUSE BILL 1604

5 By: Representative Jett  
6 By: Senator J. English  
7

## 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.  
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### 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.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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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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**APPROVED: 03/15/2017**

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