

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of Senate Bill No. 808

"VENTURE CAPITAL INVESTMENT ACT OF 2001."

Amendment No. 1 to Senate Bill No. 808.

Amend Senate Bill No. 808 as engrossed, 3/19/01:

Delete everything after the enacting clause and substitute the following:

SECTION 1. Title.

This act shall be known and may be cited as the "Venture Capital Investment Act of 2001".

SECTION 2. Purpose.

The State of Arkansas desires to increase the availability of equity and near-equity capital for emerging, expanding, relocating, and restructuring enterprises in the state. Such investments will help strengthen the state's economic base and create jobs.

SECTION 3. Definitions.

For purposes of this act:

- (1) "Authority" means the Arkansas Development Finance Authority;
- (2) "Bond guaranty" means a special obligation of the Bond Guaranty Reserve Account as defined in §15-5-403(8);
- (3) "Capital guaranty" means the guaranty provided by the Arkansas Development Finance Authority under section five of this act;
- (4) "Certificate" means a document executed by the Authority extending a capital guaranty to the designated investor group;
- (5) "Designated investor group" means the investor group selected by the authority under this act;
- (6) "Equity capital" means capital invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses;
- (7) "Investor group" means any individual, corporation, partnership, limited liability company, or other lawfully organized entity;
- (8) "Near-equity capital" means capital invested in unsecured, undersecured, subordinated or convertible loans or debt securities;
- (9) "Person" means any individual, corporation, partnership or other lawfully organized entity;
- (10) "Revolving fund" means a bank account;

(A) Created by the designated investor group in a financial institution located in this state; and

(B) Used solely as provided in this act; and

(11) "Tax credit" means an income tax credit granted to the authority under this act.

SECTION 4. Designated investor group.

(a)(1) The authority shall solicit from investor groups investment plans for the raising and investing of capital in accordance with the requirements of this act.

(2) Investment plans submitted shall address the investor group's level of experience, quality of management, investment philosophy and process, probability of success in fund raising, and plan for achieving the purposes of the act.

(b)(1) The authority shall consider and select the investment plans and shall select and certify as the designated investor group the one (1) investor group deemed best qualified to:

(A) Capitalize the private revolving fund with the most effective and efficient utilization of the capital guaranty;

(B) Invest the capital in private seed and venture capital entities in a manner mobilizing a wide variety of equity and near-equity capital investments in ventures promoting the economic development of Arkansas; and

(C) Help build a significant, fiscally strong, and permanent resource to serve the objectives expressed in subdivision (B) of this section.

(2) The designated investor group must have a manager who is a person with demonstrated substantial successful experience in design, implementation, and management of seed and venture capital investment programs and in capital formation.

(c) The Arkansas Development Finance Authority shall have the right to, in its discretion, remove and replace the chosen designated investor group and to affect the assignment of all assets, liabilities, guaranties, and other contracts of this program to a new designated investor group.

SECTION 5. Guaranty.

(a) The Arkansas Development Finance Authority shall have the power to extend a capital guaranty of obligations issued by the designated investor group.

(b) The capital guaranty shall be secured by:

(1) The Arkansas Development Finance Authority guaranty, subject to the limits establish by the authority; and

(2) Tax credits.

(c) The authority may charge a reasonable fee for costs and the fair compensation of risk associated with its guaranty.

SECTION 6. Tax Credits.

(a) The State of Arkansas shall issue income tax credits that may be used to reduce the tax liability of a person, firm, or corporation.

(b)(1) Income tax credits transferred by the authority shall only be used to offset payment of reported state income tax liability and are not refundable.

(2) Unused credit may be carried forward for five (5) additional taxable years after the taxable year in which the credit was first used.

(b) Tax credits against liabilities shall be limited to the amount that would otherwise be collected and allocated to the Treasurer of State.

(c) The total amount of credits issued and transferable to the authority is sixty million dollars (\$60,000,000).

(d) The credits issued under this act shall be transferred only after:

(1) The Arkansas Development Finance Authority guaranty funds, subject to limits established by the authority, are exhausted;

(2)(A) The Arkansas Development Finance Authority presents its recommendations concerning the issuance of tax credits to the State Board of Finance;

(B) These recommendations shall include:

(i) The amount of tax credits to be transferred to the parties with whom the authority has contracted;

(ii) The parties to whom the credits will be transferred; and

(iii) Other information requested by the State Board of finance; and

(3) The State Board of Finance reviews and approves the issuance of such tax credits.

(e)(1) The authority shall immediately notify the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor in writing if any tax credit is transferred in conjunction with a legitimate call on an authority guarantee.

(2) The authority shall not be required to make such notification for transfers to subsequent transferees.

(f) The Arkansas Development Finance Authority shall determine the amount of income tax credits to be transferred by the authority under this act, up to a total amount of ten million dollars (\$10,000,000) in any one (1) fiscal year, and may negotiate for sale of the credits subject only to the limits imposed under this act.

(g) The authority shall clearly indicate upon the face of the document transferring the tax credit the principal amount of the tax credit.

(h) The authority may pay a fee in connection with the purchase by the authority of an option or other agreement under which the transfer of the tax credits authorized under this act may be made.

(i) The authority shall have the power to make any contract, execute any document, charge reasonable fees for any services rendered, perform any act or enter into any financial or other transaction necessary in order to carry out its mission.

(j)(1) The authority may employ any person as required for proper implementation of this act, the management of its assets, or the performance of any function authorized or required by this act or necessary for the accomplishment of any function.

(2) The person employed shall be selected by the authority based upon outstanding knowledge and leadership in the field for which the person performs services for the authority.

SECTION 7. Registration of Tax Credits.

(a) The authority shall, in conjunction with the Revenue Division of

the Department of Finance and Administration, develop a system for registration of all tax credits claimed under this act.

(b) The system shall verify that any:

(1) Tax credit claimed upon a tax return is valid and properly taken in the year of claim; and

(2) Transfer of the tax credit is made in accordance with the requirements of this act.

SECTION 8. Annual report.

The designated investor group shall publish an annual report within six (6) months after the close of its fiscal year, which shall:

(1) Include its annual audit of the activities conducted by the designated investor group;

(2) Be presented in writing, and by testimony if requested, to the Governor, the House and Senate Interim Committees on Agriculture and Economic Development of the Arkansas General Assembly, and the authority;

(3) Document and review the progress of the designated investor group in implementing its investment plan; and

(4) List any use, redemption or transfer of tax credits allowed under this act.

SECTION 9. Powers of the authority.

The authority shall have the power to promulgate regulations and make any contract, execute any document, perform any act, or enter into any financial or other transaction necessary to implement this act.

SECTION 10. Arkansas Code 15-5-103 is amended to read as follows:

15-5-103. Definitions.

As used in subchapters 1, 2, ~~and 3,~~ 4 and 7 of this chapter, unless the context otherwise requires:

(1) "Agricultural business enterprises" means and includes facilities and operations supporting farms, ranches, and other agricultural or silvicultural commodity producers, such as aquaculture, fish hatchery operations and fish farms, and related businesses and industries, including, but not limited to, grain elevators, shipping heads, livestock pens, warehouses and other storage facilities, related transportation facilities, drainage facilities, and any related facilities and operations thereto;

(2) "Authority" means the Arkansas Development Finance Authority created by §15-5-201;

(3) "Board of directors" means and includes the Board of Directors of the Arkansas Development Finance Authority created in §15-5-202;

(4) "Bonds" means any bonds, notes, debentures, interim certificates, grant and revenue anticipation notes, commercial paper or other notes with maturities of one (1) year or less, interest in a lease, lease certificates of participation or other evidences of indebtedness, whether or not the interest on them is subject to federal income taxation, issued by the authority pursuant to subchapters 1, 2, and 3 of this chapter;

(5) "Capital improvements" means, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means:

(A) Any physical public betterment or improvement, or any preliminary plans, studies, or surveys relative thereto;

(B) Land or rights in land, including, without limitations, leases, air rights, easements, rights-of-way, or licenses; and

(C) Any furnishings, machinery, vehicles, apparatus, or equipment for any public betterment or improvement, which shall include, without limiting the generality of the foregoing definition, the following:

(i) Any and all facilities for state agencies, city or town halls, courthouses, and other administrative, executive, or other public offices;

(ii) Court facilities;

(iii) Jails;

(iv) Fire fighting facilities and apparatus;

(v) Parking garages or other facilities;

(vi) Educational and training facilities for public employees;

(vii) Auditoriums, stadiums, convention halls, and similar public meeting or entertainment facilities;

(viii) Civil defense facilities;

(ix) Air and water pollution control facilities;

(x) Drainage and flood control facilities;

(xi) Storm sewers;

(xii) Arts and crafts centers;

(xiii) Museums;

(xiv) Libraries;

(xv) Public parks, playgrounds, or other public open space;

(xvi) Marinas;

(xvii) Swimming pools, tennis courts, golf courses, camping facilities, gymnasiums, and other recreational facilities;

(xviii) Tourist information and assistance centers;

(xix) Historical, cultural, natural, or folklore sites;

(xx) Fair and exhibition facilities;

(xxi) Streets and street lighting, alleys, sidewalks, roads, bridges, and viaducts;

(xxii) Airports, passenger or freight terminals, hangars, and related facilities;

(xxiii) Barge terminals, ports, harbors, ferries, wharves, docks, and similar marine services;

(xxiv) Slack water harbors, water resource facilities, waterfront development facilities, and navigation facilities;

(xxv) Public transportation facilities;

(xxvi) Public water systems and related transmission and distribution facilities, storage facilities, wells, impounding reservoirs, treatment plants, lakes, dams, watercourses, and water rights;

(xxvii) Sewage collection systems and treatment plants;

(xxviii) Maintenance and storage buildings and facilities;

(xxix) Police and sheriffs' stations, apparatus, and training facilities;

(xxx) Incinerators;

(xxxi) Garbage and solid waste disposal and compacting and recycling facilities of every kind; and

(xxxii) Social and rehabilitative facilities;

(6) "Construct" means to acquire or build, in whole or in part, in

such manner and by such method, including contracting therefor, and if the latter, by negotiation or bidding upon such terms and pursuant to such advertising as the authority shall determine to be in the public interest and necessary, under the circumstances existing at the time, to accomplish the purposes of and authority set forth in this subchapter;

(7) "Educational facilities" means real, personal, and mixed property of any and every kind intended by an educational institution in furtherance of its educational program, including, but not limited to, dormitories, classrooms, laboratories, athletic fields, administrative buildings, equipment, and other property for use therein or thereon;

(8) "Facilities" means any real property, personal property, or mixed property of any and every kind, including, without limiting the generality of the foregoing, rights-of-way, roads, streets, pipes, pipelines, reservoirs, utilities, materials, equipment, fixtures, machinery, furniture, furnishings, instrumentalities, and other real, personal, or mixed property of every kind or any preliminary studies and surveys relative thereto;

(9) "Health care facilities" means facilities for furnishing physical or mental health care, including, without limitation:

(A) Hospitals, other facilities for the diagnosis and treatment of any illness or disease, offices and clinics of doctors of medicine, dentists, optometrists, podiatrists, chiropractors, and related facilities, and nursing homes and related facilities;

(B) Long-term care or life-care facilities for the elderly or disabled, including facilities used to furnish emergency medical health care and emergency medical services, including, but not limited to, ambulances or vehicles specifically designed, equipped, and licensed for transporting the sick or injured;

(C) Emergency medical equipment and supplies;

(D) Dispatching or other communication systems;

(E) Computers for billing, collections, and system design and control; and

(F) Training and administrative facilities;

(10)(A)(i) "Health care project costs" specifically includes the refinancing of any existing debt of a health care facility necessary in order to permit the health care facility to borrow from the authority and give adequate security for the health care facility loan.

(ii) The determination of the authority with respect to the necessity of refinancing and adequate security for a health care facility loan is conclusive.

(B)(i) "Health care project costs" also includes the financing of working capital.

(ii) Provided, that any health care facility loan to a health care facility located outside the state to finance working capital shall be made only if necessary to a program of working capital financing, including a health care facility loan to a health care facility located within the state.

(C) The determination of the authority with respect to the necessity of such health care facility loans to health care facilities located outside the state is conclusive;

(11)(A) "Housing development" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this subchapter for the primary purpose of providing

sanitary, decent, and safe dwelling accommodations for elderly persons and families of low or moderate income in need of housing.

(B) Such undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as, but not limited to, site preparation, landscaping, and other nonhousing facilities such as community and recreational facilities as the authority determines to be necessary, convenient, or desirable appurtenances, retirement homes, centers, and related facilities, nursing homes and related facilities, and long-term care or life-care facilities for the elderly or disabled;

(12)(A) "Industrial enterprise" means and includes facilities and operations for manufacturing, producing, processing, assembling, repairing, extracting, warehousing, distributing, communications, computer services, the production of motion pictures and like products, tourism enterprises, transportation, corporate and management offices, and services provided in connection with any of the foregoing, in isolation or in any combination, that involve the creation of new or additional employment or the retention of existing employment, and industrial parks.

(B) However, a shopping center, retail store or shop, or other similar undertaking which is solely or predominantly of a commercial retail nature shall not be an industrial enterprise for the purposes of this subchapter;

(13) "Loans" means loans made for the purposes of financing any of the activities authorized within this subchapter, including working capital, the acquisition of accounts as defined in § 4-9-106, to finance working capital, and loans made to financial institutions for the purpose of funding or as security for loans made for the purpose of accomplishing any of the purposes of this subchapter, and reserves and expenses appropriate or incidental thereto;

(14) "Operations" means and includes any and all matters deemed necessary or desirable to the promotion of agricultural business and industrial enterprises, including, but not limited to, the provision of labor and services of any nature and all transactions pertaining to receivables, accounts, inventory, loans, lines of credit, and working capital, designed to promote, restore, revitalize, or develop existing agricultural business or industrial enterprises, or the establishment of new agricultural business or industrial enterprises;

(15) "Political subdivision" means a city of the first class, a city of the second class, an incorporated town, a county, or an improvement district, or any agency, board, commission, public corporation, or instrumentality of the above;

(16) "Short-term advance funding" means the financing of temporary cash shortfalls of local governments based on the local government's projected monthly income and expenditures and its surplus at the beginning of each fiscal year, and such shortfall is the result of the local government's projected income being insufficient to meet the needs of its estimated expenditures, even though the aggregate income will exceed the aggregate expenditures for the fiscal year;

(17) "State" means the State of Arkansas;

(18) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency, or instrumentality of this state; and

(19) "Tourism enterprise" means and includes:

(A) Cultural and historic sites, recreational and entertainment facilities, areas of natural phenomenon or scenic beauty, theme parks, amusement or entertainment parks, indoor or outdoor theatrical productions, botanical gardens, cultural or educational centers; and

(B) Lodging facilities which are an integrated part of any of the enterprises listed in subdivision (19)(A) of this section.

SECTION 11. Arkansas Code 15-5-403 is amended to read as follows:
15-5-403. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Act" means the Arkansas Development Finance Authority Bond Guaranty Act of 1985, § 15-5-401 et seq.;

(2) "ADFA Act" means the Arkansas Development Finance Authority Act, §§ 15-5-101 et seq., and 15-5-201 et seq.;

(3) "Amortization payments" means the periodic, i.e., monthly, semi annual, annual, etc., payments of interest, whether at a fixed or variable rate, on premium, if any, and installments of principal of qualified bonds as required by the trust indenture relating to the bonds;

(4) "Authority" means the Arkansas Development Finance Authority;

(5) "Board" means the Board of Directors of the Arkansas Development Finance Authority;

(6) "Bond fund" means the Guaranty Bond Fund authorized in this subchapter from which bonds issued by the authority for the purpose of meeting the obligations of the Bond Guaranty Reserve Account are payable;

(7) "Borrower" means the individual, entity, firm, or corporation, whether for profit or nonprofit, city, county, other political subdivision, or state agency charged with developing the project under the terms of the trust indenture relating to qualified bonds;

(8) "Guaranty Reserve Account" means the Bond Guaranty Reserve Account created in this subchapter for the purpose of meeting amortization payments of qualified bonds guaranteed by the authority and for the purpose of enhancing and supporting the credit of those qualified bonds;

(9) "Project" means the project for which the proceeds of qualified bonds are utilized;

~~(10) "Qualified bonds" means revenue bonds validly issued by the authority in accordance with the provisions of the Arkansas Development Finance Authority Act, § 15-5-101 et seq. or by any city, county, or other political subdivision of this state;~~

(10) "Qualified bonds" means:

(A) Revenue bonds validly issued by the authority in accordance with the provisions of the Arkansas Development Finance Authority Act beginning at §15-5-101; or

(B) An obligation issued by the designated investor group under the Venture Capital Investment act of 2001;

(11) "State" means the State of Arkansas; and

(12) "Supplemental Guaranty Reserve Account" means an account which may be established by the authority for the purpose of enhancing the Bond Guaranty Reserve Account.

SECTION 12. Arkansas Code 15-5-703 is amended to read as follows:

15-5-703. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Act" ~~shall mean~~ means the Arkansas Development Finance Authority Small Business Act of 1989, §15-5-701 et seq.;

(2) "Agencies of the United States Government" ~~shall mean~~ means federal agencies empowered to make direct loans and provide guaranties backed by the United States Government;

(3) "Amortization payments" ~~shall mean~~ means periodic (monthly, semiannual, annual, etc.) payment of interest on and installments of principal of loans guaranteed by the Small Business Revolving Loan Fund;

(4) "Arkansas Development Finance Authority guaranty" ~~shall mean~~ means:

(A) ~~a~~ special obligation of the Small Business Revolving Loan Fund; or

(B) A special obligation of the Bond Guaranty Reserve Account as defined in §15-5-403(8);

(5) "Arkansas Development Finance Authority guaranty premium payment" means a premium payment or payments made to the bond guaranty reserve account by borrowers receiving guaranties;

~~(5)(6)~~ "Arkansas Development Finance Authority loans" ~~shall mean~~ means direct loans from the Small Business Revolving Loan Fund or from direct loans made by the authority in accordance with provisions of the Arkansas Development Finance Authority Act, §§15-5-101-15-5-106, 15-5-201-15-5-211, 15-5-213, and 15-5-301-15-5-316;

~~(6)(7)~~ "Authority" ~~shall mean~~ means the Arkansas Development Finance Authority;

~~(7)(8)~~ "Board" ~~shall mean~~ means the Board of Directors of the Arkansas Development Finance Authority;

~~(8)(9)~~ "Direct fund" ~~shall mean~~ means the total dollar amount of cash funds of the authority dedicated and made available by the board for qualified investments to invest exclusively in Arkansas small businesses, preferably as a coinvestor with other professional venture investors;

~~(9)(10)~~ "Local financial institutions" ~~shall mean~~ means state and local agencies, banks, Arkansas savings and loans, Arkansas development finance corporations, and Arkansas certified development corporations;

~~(10)(11)~~ "Project" ~~shall mean~~ means the project for which proceeds of Arkansas Development Finance Authority loans are utilized;

~~(11)(12)~~ "Qualified investment" ~~shall mean~~ means an investment, in whatever form, in the capital structure of a small business through the direct fund or through cooperation with other investment entities;

~~(12)(13)~~ "Small business" ~~shall mean~~ means business enterprises with fewer than fifty (50) employees and less than one million dollars (\$1,000,000) in gross sales or receipts;

~~(13)(14)~~ (A) "Small business" ~~shall mean~~ means business enterprises with fewer than five hundred (500) employees and less than eighty million dollars (\$80,000,000) in gross sales or receipts.

(B) This definition ~~shall be~~ is subject to change by standards and regulations promulgated by the authority; ~~and~~

~~(14)(15)~~ "Small business investment company" ~~shall mean~~ means an entity which is qualified as such under the provisions of §301 of the Small Business Investment Act of 1958, 15 U.S.C. §681, and the regulations promulgated thereunder;

~~(15)~~(16) "Small Business Loan Committee" ~~shall mean~~ means a committee comprised of authority staff members or board members or both appointed by the Chairman of the Board of Directors of the Arkansas Development Finance Authority and approved by a majority vote of the board of directors of the authority, which committee is to comply with standards and requirements set by the board in carrying out its function;

~~(16)~~ "Small business person" ~~shall mean the individual, firm, or corporation, whether for profit or nonprofit, charged with developing the project;~~

~~(17)~~ "Small business person" ~~shall mean an individual, firm, partnership, limited liability company, corporation, or any other business entity in any form which owns and operates a small business;~~

(17) "Small business person" means:

(A) An individual, firm, or corporation, whether for profit or nonprofit, charged with developing the project; or

(B) An individual, firm, partnership, limited liability company, corporation, or any other business entity in any form which owns and operates a small business;

~~(18)~~ "Small Business Revolving Loan Fund" ~~shall mean~~ means the fund created hereunder for the purpose of making direct loans and meeting amortization payments of loans guaranteed by the Small Business Revolving Loan Fund;

~~(19)~~ "Specialized small business investment company" ~~shall mean~~ means an entity which is qualified as such under the provisions of § 301(d) of the Small Business Investment Act of 1958, 15 U.S.C. § 681(d), and the regulations promulgated thereunder;

~~(20)~~ "State" ~~shall mean~~ means the State of Arkansas; and

~~(21)~~ "Title IX revolving loan funds" ~~shall mean~~ means revolving loan funds operated by regional planning and development districts and authorized by Title IX of the Public Works and Economic Development Act of 1965.

SECTION 13. EMERGENCY CLAUSE. It is found and determined by the Eighty-Third General Assembly that there is an urgent need to provide additional economic development capital to promote the continued expansion of industry within the state by providing funds for economic growth. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

The Amendment was read _____
By: Representative Teague
SW/TRB - 040320011003
TRB493

Chief Clerk