

INTERIM STUDY PROPOSAL 2021-074

State of Arkansas

*As Engrossed: S3/22/21*

93rd General Assembly

**A Bill**

Regular Session, 2021

SENATE BILL 475

By: Senator D. Sullivan

*By: Representatives Vaught, M. Gray, B. Smith*

Filed with: Arkansas Legislative Council  
pursuant to A.C.A. §10-3-217.

**For An Act To Be Entitled**

AN ACT TO REGULATE THE ARKANSAS DEVELOPMENT FINANCE  
AUTHORITY; TO ALTER THE BOARD OF DIRECTORS OF THE  
ARKANSAS DEVELOPMENT FINANCE AUTHORITY IN  
COMPOSITION, NUMBER, AND APPOINTMENT PROCESS; TO  
AMEND THE MANNER OF DISTRIBUTING THE FEDERAL LOW-  
INCOME HOUSING TAX CREDIT AND AFFORDABLE NEIGHBORHOOD  
HOUSING TAX CREDIT; TO REQUIRE CONSENT OF LEGISLATIVE  
COUNCIL BEFORE THE ARKANSAS DEVELOPMENT FINANCE  
AUTHORITY MAY HIRE CERTAIN PROFESSIONALS; AND FOR  
OTHER PURPOSES.

**Subtitle**

TO AMEND THE LAW GOVERNING THE BOARD OF  
DIRECTORS OF THE ARKANSAS DEVELOPMENT  
FINANCE AUTHORITY; AND TO MODIFY THE  
MANNER IN WHICH THE AUTHORITY DISTRIBUTES  
CERTAIN TAX CREDITS AND HIRES CERTAIN  
PERSONS.

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

SECTION 1. Arkansas Code § 15-5-202(a)-(c), concerning the composition  
of and process of appointment to the Board of Directors of the Arkansas  
Development Finance Authority, are amended to read as follows:

1           (a)~~(1)~~ The Board of Directors of the Arkansas Development Finance  
 2 Authority shall consist of the Secretary of the Department of Finance and  
 3 Administration or his or her designee, who shall serve during the Secretary  
 4 of the Department of Finance and Administration's absence, ~~eleven (11)~~ twelve  
 5 (12) public members to be appointed ~~by the Governor with the advice and~~  
 6 ~~consent of the Senate~~ under subsection (b) of this section, and the Secretary  
 7 of the Department of Commerce, who shall serve as a nonvoting member.

8           **(b)(1)(A) The twelve (12) public members of the board shall meet the**  
 9 **criteria under subdivision (b)(2) of this section, be appointed for terms of**  
 10 **four (4) years to end on January 14, and be appointed as follows:**

11                           **(i) Four (4) members shall be appointed by the**  
 12 **Governor, subject to confirmation by the Senate in the manner stated under §**  
 13 **10-2-113;**

14                           **(ii) Four (4) members shall be appointed by the**  
 15 **President Pro Tempore of the Senate; and**

16                           **(iii) Four (4) members shall be appointed by the**  
 17 **Speaker of the House of Representatives.**

18                           **(B) Vacancies that arise on the board due to the**  
 19 **expiration of the term of public members shall be filled in the following**  
 20 **order:**

21                           **(i) The Speaker of the House of Representatives**  
 22 **shall appoint a public member;**

23                           **(ii) The President Pro Tempore of the Senate shall**  
 24 **appoint a public member;**

25                           **(iii) The Governor shall appoint a public member,**  
 26 **subject to confirmation by the Senate in the manner stated under § 10-2-113;**  
 27 **and**

28                           **(iv) After the appointment under subdivision**  
 29 **(b)(1)(B)(iii) of this section, the sequence of appointments under**  
 30 **subdivisions (b)(1)(B)(i)-(iii) of this section shall repeat.**

31                           **(2) The public members appointed by the Governor to the board**  
 32 **shall be:**

33                           **(A) residents Residents** of the state and **congressional**  
 34 **district that they represent and** shall have been qualified electors ~~therein~~  
 35 **in the congressional district** for at least one (1) year preceding the time of  
 36 **appointment; and**

1                   ~~(B)~~ shall be recognized Recognized by their peers as  
2 outstanding in the field of economic development, affordable housing, or  
3 development finance.

4                   (3) Each congressional district in the state shall be  
5 represented by at least ~~one (1)~~ three (3) public ~~member~~ members of the *board*  
6 at the time of the public members' appointments.

7                   ~~(4)(A) One (1) public member of the board shall be a~~  
8 ~~representative of the agricultural business enterprise industry.~~

9                   ~~(B) One (1) public member shall be a representative of the~~  
10 ~~state's elderly population who is:~~

11                                 ~~(i) Sixty (60) years of age or older; and~~

12                                 ~~(ii) Not actively engaged in or retired from the~~  
13 ~~operation of an agricultural business enterprise.~~

14                   ~~(C) The public members appointed under subdivisions~~  
15 ~~(a)(4)(A) and (B) of this section shall be:~~

16                                 ~~(i) Selected from the state at large subject to~~  
17 ~~confirmation by the Senate; and~~

18                                 ~~(ii) Full voting members of the Arkansas Development~~  
19 ~~Finance Authority.~~

20                   ~~(5) The additional public member added by this section shall be~~  
21 ~~a public housing or community development professional actively engaged in~~  
22 ~~that profession, and that person must not be a member of any public housing~~  
23 ~~board.~~

24                   (4) When assessing a potential appointee under subdivision  
25 (b)(1)(A) of this section, the appointor may give additional consideration to  
26 whether the potential appointee is:

27                                 (A) Part of the state's subset of people who are at least  
28 sixty (60) years of age and have fully or partially retired from an  
29 agribusiness enterprise;

30                                 (B) Actively engaged in the agribusiness enterprise  
31 industry; or

32                                 (C) A professional who is actively engaged in the  
33 profession of public housing or community development.

34                   ~~(6)(5)~~ In addition to the other members of the board, the  
35 Treasurer of State or his or her designee, who shall serve during the

1 Treasurer of State's absence, shall serve as an ex officio voting member of  
2 the board.

3 ~~(b) The Governor shall appoint public members of the board to terms of~~  
4 ~~four (4) years.~~

5 (c)(1) Each board member shall hold office for the term of his or her  
6 appointment and until his or her successor ~~shall have been~~ is appointed and  
7 qualified.

8 (2) ~~Any vacancy in~~ A vacancy on the board occurring other than  
9 by expiration of term shall be filled in the same manner as the original  
10 appointment ~~by appointment by the Governor~~, but for the unexpired term only.

11 ~~(3) The terms of the members of the board shall expire on~~  
12 ~~January 14.~~

13  
14 SECTION 2. Arkansas Code § 15-5-202(d)(1), concerning the composition  
15 of and process of appointment to the Board of Directors of the Arkansas  
16 Development Finance Authority, is amended to read as follows:

17 (d)(1) Each appointed public board member may be removed from office  
18 by the ~~Governor~~ original appointing entity for cause after a public hearing  
19 and may be suspended by the ~~Governor~~ original appointing entity pending the  
20 completion of the public hearing.

21  
22 SECTION 3. Arkansas Code § 15-5-209, concerning the disposition and  
23 use of funds by the Arkansas Development Finance Authority, is amended to add  
24 an additional subsection to read as follows:

25 (i)(1) In awarding a federal low-income housing tax credit under § 26-  
26 51-1701 et seq., the authority shall award the tax credits *in a manner that*  
27 *is substantially equal*, to the extent possible, among Arkansas's four (4)  
28 congressional districts each year.

29 (2) If, in a given allocation year, there are not enough  
30 applications in a given congressional district to use the amount of tax  
31 credits allocated to that congressional district for that year, then the  
32 *unused tax credits may be immediately allocated to the use of one (1) or more*  
33 *applications in other congressional districts.*

34 (3) The authority shall develop and implement a plan to educate  
35 *potential applicants about the tax credits available under § 26-51-1701 et*  
36 *seq. and the application process to obtain those tax credits.*

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SECTION 4. Arkansas Code § 15-5-212(a), concerning the approval of the Legislative Council for certain matters, is amended to read as follows:

(a) The Arkansas Development Finance Authority or the Secretary of the Department of Commerce on behalf of the authority shall not employ or select any investment banker, consultant, professional financial advisor, or attorney unless the selection criteria to be used in the selection have been submitted to the Legislative Council for review and consent.

SECTION 5. Arkansas Code § 15-5-706, concerning the administration of the Arkansas Development Finance Authority Small Business Act of 1989, is amended to add an additional subsection to read as follows:

(c)(1) In awarding Arkansas Development Finance Authority loans under this subchapter, the authority shall award the Arkansas Development Finance Authority loans in a manner that is substantially equal, to the extent possible, among Arkansas's four (4) congressional districts each year.

(2) If, in a given allocation year, there are not enough applications from a given congressional district to use the amount of Arkansas Development Finance Authority loans allocated to that congressional district for that year, then the unused amount may be immediately allocated to the use of one (1) or more qualifying applications in other congressional districts.

(3) The authority shall develop and implement a plan to educate potential applicants for the Arkansas Development Finance Authority loans about the moneys available and the application process to obtain those moneys.

SECTION 6. Arkansas Code § 15-5-1304(a), concerning the tax credits certified by the Arkansas Development Finance Authority for approved proposals for affordable housing assistance activities, is amended to read as follows:

(a)(1) For proposals approved under § 15-5-1303, the amount of the tax credit shall not exceed thirty percent (30%) of the total amount invested in affordable housing assistance activities by a business firm.

1           (2) Any tax credit not used in the period for which the credit  
2 was approved may be carried forward to any of the five (5) subsequent taxable  
3 years until the full credit has been allowed.

4           (3) The total amount of tax credits granted for programs  
5 approved under § 15-5-1303 shall:

6                   (A) ~~not~~ Not exceed seven hundred fifty thousand dollars  
7 (\$750,000) in any taxable year; and

8                   (B) Be evenly distributed across each of the state's  
9 congressional districts.

10           (4)(A) ~~For taxable year 1997, at least one half (½) of the tax~~  
11 ~~credits shall be designated by the Arkansas Development Finance Authority to~~  
12 ~~the affordable housing assistance activities in counties declared disaster~~  
13 ~~areas by the Governor~~ In awarding tax credits under this subchapter, the  
14 authority shall award the tax credits equally, to the extent possible, among  
15 Arkansas's four (4) congressional districts each year.

16                   (B) If, in a given allocation year, there are not enough  
17 applications in a given congressional district to use the amount of tax  
18 credits allocated to that congressional district for that year, then the  
19 unused credits shall be carried forward to use in that congressional district  
20 for one (1) year before being allocated to any other congressional district  
21 at the discretion of the authority.

22                   (C) Applications for tax credits shall be awarded to the  
23 highest-scoring applicant in each congressional district according to the  
24 scoring criteria in the authority's most recent Qualified Allocation Plan.

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26           SECTION 7. DO NOT CODIFY. TEMPORARY LANGUAGE.

27           (a) Within thirty (30) days after the effective date of this act, the  
28 appointors under § 15-5-202(b) in Section 1 of this act shall each appoint  
29 four (4) new public members of the Board of Directors of the Arkansas  
30 Development Finance Authority who meet the criteria stated under § 15-5-  
31 202(b)(2)-(5) of Section 1 of this act.

32           (b)(1) The twelve (12) appointees under subsection (a) of this section  
33 shall take office on January 14, 2022.

34           (2) The appointees shall draw for initial staggered terms as  
35 follows:

