

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.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

SENATE BILL 903

4
5 By: Senator Riggs
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE COUNTY AND
10 REGIONAL INDUSTRIAL DEVELOPMENT CORPORATION ACT; TO
11 CHANGE THE TITLE TO THE "ARKANSAS INDUSTRIAL
12 DEVELOPMENT COMPANY ACT OF 2001"; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 TO AMEND VARIOUS SECTIONS OF THE COUNTY
16 AND REGIONAL INDUSTRIAL DEVELOPMENT
17 CORPORATION ACT; TO CHANGE THE TITLE TO
18 THE "ARKANSAS INDUSTRIAL DEVELOPMENT
19 COMPANY ACT OF 2001".
20
21
22

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

24
25 SECTION 1. Arkansas Code 15-4-1201 is amended to read as follows:
26 15-4-1201. Title.

27 This subchapter shall be referred to and may be cited as the "~~County~~
28 ~~and Regional~~ Arkansas Industrial Development Company Act of 2001".
29

30 SECTION 2. Arkansas Code 15-4-1202 is amended to read as follows:
31 15-4-1202. Definitions.

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

34 (1) "Bank Commissioner" means the Bank Commissioner of the State
35 of Arkansas;

36 (2) "Board" means the State Banking Board;

1 (3) "Company" means ~~a county or regional~~ an industrial
2 development corporation or limited liability company authorized to be
3 organized under the provisions of this subchapter;

4 (4) "Financial institution" means any banking corporation or
5 institution, trust company, savings bank, savings and loan association,
6 insurance company, or related corporation, partnership, foundation, or other
7 institution engaged in lending or investing funds;

8 (5) "Impaired" means, for the purposes of § 15-4-1228, that the
9 capital of the company has been reduced to fifty thousand dollars (\$50,000)
10 or less;

11 (6) "Loan limit" means, for any member, the maximum amount
12 permitted to be outstanding at any one (1) time on loans made by such member
13 to the company, as determined under § 15-4-1218;

14 (7) "Member" means any financial institution authorized to do
15 business in the State of Arkansas which may undertake to lend money to a
16 company upon its call and in accordance with the provisions of § 15-4-1218;

17 (8) "Person" includes all natural persons and legal entities;

18 ~~(9) "Region" means any compact area composed of no fewer than
19 three (3) nor more than fifteen (15) contiguous counties within the State of
20 Arkansas;~~

21 ~~(10)~~ (9) "Securities Commissioner" means the Securities
22 Commissioner of the State of Arkansas; and

23 ~~(11)~~ (10) "Unit of interest" means a participation in the
24 profits interests of a limited liability company so that the total of all the
25 units of interest in a limited liability company shall equal one hundred
26 percent (100%) of the profits interests in the limited liability company.

27
28 SECTION 3. Arkansas Code 15-4-1204 is amended to read as follows:

29 15-4-1204. Application for preliminary approval.

30 Any five (5) or more qualified natural persons who shall be bona fide
31 residents of ~~the same county or region in~~ this state to be served by the
32 proposed company and who desire to associate themselves for the purpose of
33 establishing and operating a company may subscribe, acknowledge, and file
34 with the Bank Commissioner for preliminary approval proposed articles of
35 incorporation in the case of a corporation and articles of organization and
36 an operating agreement in the case of a limited liability company, in

1 duplicate, as authorized by § 15-4-1211.

2

3 SECTION 4. Arkansas Code 15-4-1205 is amended to read as follows:

4 15-4-1205. Preliminary approval.

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

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

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

21

22 SECTION 5. Arkansas Code 15-4-1209 is amended to read as follows:

23 15-4-1209. Final investigation and approval by the board.

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

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

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

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

36 (C) Not less than one hundred thousand dollars (\$100,000)

1 of common stock or units of interest have been subscribed and fully paid for;
 2 (D) No single stockholder ~~nor related group of~~
 3 ~~stockholders~~ owns more than ten percent (10%) of the voting stock in the case
 4 of a corporation or no single member ~~nor related group of members~~ owns more
 5 than ten percent (10%) of the units of interest in the case of a limited
 6 liability company; and

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

14 (b)(1) The commissioner shall also return to the applicants one (1) of
 15 the copies of the articles of incorporation or the articles of organization
 16 theretofore submitted to the commissioner by the applicants, upon which copy
 17 he shall have endorsed the fact of the issuance by him of such certificate of
 18 incorporation or certificate of organization.

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

22
 23 SECTION 6. Arkansas Code 15-4-1211 is amended to read as follows:
 24 15-4-1211. Articles of incorporation or articles of organization.

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

28 (1) The name of the company, which shall include the words
 29 "~~County Industrial Development Company~~" ~~if the proposed company is to serve a~~
 30 ~~single county, or "Regional Industrial Development Company" if the proposed~~
 31 ~~company is to serve a region larger than a single county,~~ and such
 32 designation as may be appropriate to distinguish it from any subsequent
 33 company which may be organized under the provisions of this subchapter, and
 34 the name shall be such as to distinguish it from any other corporation,
 35 limited liability company, limited partnership, limited liability
 36 partnership, and limited liability limited partnership organized and existing

1 under the laws of the State of Arkansas as evidenced by the Secretary of
 2 State in writing;

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

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

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

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

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

23 (7) A provision stating that no stockholder or member shall have
 24 preemptive rights with respect to any additional equity issued by the company
 25 or with respect to any debt issued by the company;

26 (8) A provision stating that no stockholder shall be entitled to
 27 own more than ten percent (10%) of the total number of shares of voting stock
 28 issued at any time or that no member shall be entitled to own more than ten
 29 percent (10%) of the total units of interest of a limited liability company
 30 issued at any time;

31 (9)(A) In the case of a corporation, the number of directors,
 32 not less than ~~six (6)~~ five (5) nor more than fifteen (15), to be elected at
 33 the annual meeting of the holders of stock entitled to vote for the election
 34 of directors;

35 (B) ~~The requirement, in the case of a regional~~
 36 ~~corporation, that at least one (1) director shall be a resident of each~~

1 ~~county comprising the region and a~~ A requirement that at least one (1)
 2 director shall be from each United States congressional district of this
 3 state and a prohibition of more than one-third (1/3) of the directors being
 4 residents of any single county;

5 (C) The terms of office of the directors; and

6 (D) Any provisions desirable for staggering their terms of
 7 office, except that the terms of office of directors and other matters
 8 pertaining to the directors may be provided in the bylaws of the corporation;

9 (10)(A) In the case of a limited liability company, the number
 10 of members of the management committee, not less than ~~six (6)~~ five (5) nor
 11 more than fifteen (15), to be elected at the annual meeting of the members of
 12 the limited liability company entitled to vote for the election of the
 13 members of the management committee;

14 ~~(B) The requirement, in the case of a regional limited~~
 15 ~~liability company, that at least one (1) member of the management committee~~
 16 ~~shall be a resident of each county comprising the region and a~~ A prohibition
 17 of more than one-third (1/3) of the members of the management committee being
 18 residents of any single county;

19 (C) The terms of office of the members of the management
 20 committee; and

21 (D) Any provisions desirable for staggering their terms of
 22 office, except that the terms of office of members of the management
 23 committee and other matters pertaining to the members of the management
 24 committee may be provided in the operating agreement of the limited liability
 25 company;

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

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

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

1 deems appropriate;

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

6 (B) In the case of a limited liability company, the
 7 ownership of the limited liability company shall be represented by units of
 8 interest that shall be issued at such prices and with such rights and
 9 preferences as stated in the articles of organization, the operating
 10 agreement, or as stated by the management committee of the limited liability
 11 company.

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

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

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

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

26

27 SECTION 7. Arkansas Code 15-4-1213 is amended to read as follows:

28 15-4-1213. Management of company.

29 (a)~~(1)~~ Only the holders of common stock, through the board of
 30 directors, shall manage the affairs of a corporation.

31 ~~(2)(b)~~ Only holders of units of interest in a limited liability
 32 company, through the management committee, shall manage the affairs of a
 33 limited liability company.

34 ~~(3)(c)~~ Each holder of common stock or each holder of a unit of
 35 interest in the limited liability company shall be entitled to one (1) vote,
 36 in person or by proxy, for each share of common stock or each unit of

1 interest held by him and, in voting for the directors or management committee
2 of the company, shall be entitled to exercise the right of cumulative voting.

3 ~~(b)(1)(A) In the event of the transfer of shares of common stock or~~
4 ~~units of interest, whether by act of the holder or by operation of law, the~~
5 ~~name or names of the proposed transferees shall be submitted to the directors~~
6 ~~of the corporation or to the management committee of the limited liability~~
7 ~~company and the directors or the management committee may refuse to approve~~
8 ~~the transfer, in which event the company shall have the option to purchase~~
9 ~~the shares of common stock or the units of interest at par or stated value.~~

10 ~~(B) Shares of common stock or units of interest so~~
11 ~~purchased shall be cancelled, and shares or units in lieu thereof may be~~
12 ~~reissued and sold by the company.~~

13 ~~(2) In the event that the directors or the management committee~~
14 ~~do not purchase the shares of common stock or the units of interest subject~~
15 ~~to transfer, the shares of common stock or the units of interest then may be~~
16 ~~transferred without the approval of the directors or the management~~
17 ~~committee.~~

18
19 SECTION 8. Arkansas Code 15-4-1214 is amended to read as follows:
20 15-4-1214. Powers of the company.

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

23 (1)(A) To promote, stimulate, develop, and advance the business
24 prosperity and economic welfare ~~of the county or region where it is located~~
25 within the state and its citizens;

26 (B) To encourage and assist through loans, investments, or
27 other business transactions in the location of new business and industry ~~in~~
28 ~~that county or region,~~ within the state and to assist the growth and
29 expansion of existing business and industry; and

30 (C) To stimulate and assist in the expansion of all kinds
31 of business activity which will tend to promote the business development and
32 maintain the economic stability of the ~~county or region~~ state, provide
33 maximum opportunities for employment, encourage thrift, and improve the
34 standard of living of the citizens ~~of that county or region~~ within the state;

35 (2) To cooperate and act in conjunction with other
36 organizations, public or private, in the promotion and advancement of

1 industrial, technological, scientific, commercial, agricultural, and
 2 recreational development in that county or region; and

3 (3) To provide venture financing for the promotion, development,
 4 and conduct of all kinds of business activity ~~in that county or region~~ within
 5 the state on terms and conditions that would not otherwise be available from
 6 existing financial institutions.

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

9 (1) To sue and be sued and to complain and defend in its
 10 corporate or limited liability company name;

11 (2) To have perpetual succession, in the case of corporations,
 12 unless a limited period of duration is stated in its articles of
 13 incorporation;

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

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

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

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

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

31 (8) To purchase, hold, sell, assign, transfer, mortgage, pledge,
 32 or otherwise to dispose of bonds, securities, or evidences of indebtedness
 33 created by any other corporation or corporations of this state or any other
 34 state or government or created by any individual, unincorporated association,
 35 limited liability company, limited partnership, general partnership, limited
 36 liability partnership, limited liability limited partnership, trust estate,

1 improvement district, municipality, or governmental or municipal agency of
2 any character;

3 (9) To purchase, hold, sell, assign, transfer, mortgage, pledge,
4 or otherwise dispose of shares of the capital stock of any other corporation
5 or corporations of this or any other state or government, subject to such
6 restrictions and limitations, if any, as may be imposed by the laws of this
7 or any other state in which the corporation may do business, and, while owner
8 of such stock, to exercise all the rights, powers, and privileges of
9 ownership, including the right to vote that stock;

10 (10) To purchase, hold, sell, assign, transfer, mortgage,
11 pledge, or otherwise dispose of the units of interest of limited liability
12 companies, partnerships, joint ventures, or other business entities of this
13 or any other state or government, subject to such restrictions and
14 limitations, if any, as may be imposed by the laws of this or any other state
15 in which the business entity may do business, and, while owner of such units
16 of interest, to exercise all the rights, powers, and privileges of ownership,
17 including the right to vote those units of interest;

18 (11) To make any and all contracts necessary or convenient for
19 the exercise of the powers granted in this subchapter;

20 (12) To elect or appoint officers, agents, and employees of the
21 company and to define their duties and fix their compensation;

22 (13) To conduct its business and to have officers within or
23 without the state;

24 (14) To accept gifts or grants of money, service, or property,
25 real or personal;

26 (15) With the approval of the board of directors or the
27 management committee by action of those persons, to make and alter bylaws and
28 regulations not inconsistent with the articles of incorporation or the
29 articles of organization and operating agreement or with the laws of this
30 state for the administration and regulation of the affairs of the company;

31 (16) To encourage and promote the cultural, industrial,
32 technological, scientific, economic, and recreational development of the
33 ~~county or region where it is located~~ state;

34 (17)(A) To assist minority businesses in obtaining loans or
35 other means of financial assistance.

36 (B) The terms and conditions of such loans or financial

1 assistance, including the charges for interest and other services, will be
2 consistent with the provisions of this subchapter.

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

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

9 (18) To do and perform any and all acts and things and to have
10 and exercise any and all powers as may be necessary, convenient, or
11 appropriate to effectuate the purpose for which the company is organized.

12

13 SECTION 9. Arkansas Code 15-4-1217 is amended to read as follows:

14 15-4-1217. Authority of other corporations and financial institutions.

15 Notwithstanding any rule at common law or any provision of law or any
16 provision in their respective articles of incorporation:

17 (1) All domestic corporations, including nonprofit corporations
18 and associations, organized for the purpose of carrying on business within
19 this state, including, without implied limitation, any public utility, and
20 all trusts, are hereby authorized to acquire, purchase, hold, sell, assign,
21 transfer, mortgage, pledge, or otherwise dispose of any bonds, notes,
22 securities, or other evidences of indebtedness created pursuant to this
23 subchapter or the shares of the common stock or the units of interest of a
24 company organized under this subchapter and, while owners of the stock or
25 units of interest, to exercise all the rights, powers, and privileges of
26 ownership, including the right to vote thereon, all without the approval of
27 any regulatory authority of the state;

28 (2) All financial institutions are hereby authorized to become
29 members of the company and to make loans to the company as provided in this
30 subchapter;

31 (3) A financial institution which does not become a member of
32 the company shall not be permitted to acquire any shares of the common stock
33 or units of interest of the company; and

34 (4)(A)(i) Each financial institution which becomes a member of
35 the company is hereby authorized to acquire, purchase, hold, sell, assign,
36 transfer, mortgage, pledge, or otherwise dispose of any bonds, notes,

1 securities, or other evidences of indebtedness created pursuant to this
 2 subchapter or the shares of the common stock or the units of interest of the
 3 company and, while owners of the stock or units of interest, to exercise all
 4 the rights, powers, and privileges of ownership, including the right to vote
 5 thereon, all without the approval of any regulatory authority of the state.

6 (ii) Provided, however, that the amount of the
 7 common stock of a corporation or the units of interest of a limited liability
 8 company which may be acquired by any member pursuant to the authority granted
 9 in this section shall not exceed ten percent (10%) of the loan limit of each
 10 member, except that an investment in excess of the foregoing ten percent
 11 (10%) limitation will be permissible when such investment in excess of the
 12 ten percent (10%) limitation is secured by obligations bearing the full faith
 13 and credit of the United States government.

14 (B) The common stock or the units of interest of a company
 15 organized under this subchapter which any member is authorized to acquire
 16 pursuant to the authority granted in this section is in addition to the
 17 amount of common stock in corporations or units of interest in other business
 18 entities which the member may otherwise be authorized to acquire.

19
 20 SECTION 10. Arkansas Code 15-4-1222 is amended to read as follows:

21 15-4-1222. Eligibility ~~for certain~~ and encouragement of investments.

22 ~~Any city or town in this state or any board, commission, or other~~
 23 ~~authority duly established by ordinance of any such city or town or the~~
 24 ~~boards of trustees, respectively, of the firemen's relief and pension fund~~
 25 ~~and the policemen's pension and relief fund of any such city or town may~~
 26 ~~invest any of its funds not immediately needed for its purposes in the bonds~~
 27 ~~and notes of any company organized under the provisions of this subchapter.~~
 28 All cities and towns in this state, all boards, commissions, or other
 29 authority duly established by ordinance of any city or town, or the boards of
 30 trustees, respectively, of the firemen's relief and pension fund and the
 31 policemen's pension and relief fund of any city or town and any public
 32 employees retirement fund, including, without limitation, the Arkansas
 33 Teacher Retirement Fund and the Arkansas Public Employees' Retirement System
 34 may invest up to five percent (5%) of its funds not immediately needed for
 35 its purposes in the bonds and notes, stock, and units of interest of any
 36 company organized under the provisions of this subchapter to provide a source

1 of venture capital for the state.

2
3 SECTION 11. Arkansas Code 15-4-1223 is amended to read as follows:

4 15-4-1223. Exemption from certain taxes.

5 (a)(1) ~~County or regional industrial~~ Industrial development companies
6 shall be exempt from taxation under the Income Tax Act of 1929, § 26-51-101
7 et seq., and from the payment of any other income taxes levied by a county or
8 a municipality.

9 (2) Dividends on stock or distributions with respect to units of
10 interest of any such company pursuant to § 15-4-1215 shall be exempt from all
11 state, county, or municipal income tax.

12 (3) Interest on bonds, notes, or other obligations of any
13 company issued under and in accordance with the provisions of this subchapter
14 shall be exempt from all state, county, or municipal income taxes.

15 (b) Gain upon the sale, transfer or other disposition by the owner of
16 any stock or units of interest in a company shall be exempt from taxation
17 under the Income Tax Act of 1929, which begins at § 26-51-101.

18 ~~(b)(c)~~ Corporations and limited liability companies shall file income
19 tax returns each year at the time provided for the filing of corporate or
20 partnership income tax returns, respectively.

21 ~~(e)(d)~~ A company claiming exemption from income tax under this section
22 shall attach to the return required in subsection ~~(b)(c)~~ of this section a
23 certification from the Bank Commissioner stating that the company has been
24 incorporated or organized and is operating as a corporation or limited
25 liability company in accordance with the provisions of this subchapter.

26
27 SECTION 12. Arkansas Code 15-4-1224 is amended to read as follows:

28 15-4-1224. Tax credit.

29 (a)(1) ~~The original~~ A purchaser of common stock of a corporation or a
30 unit of interest of a limited liability company shall be entitled to a credit
31 against any Arkansas income tax liability or premium tax liability which may
32 be imposed on such purchaser for any tax year commencing on or after January
33 1, ~~1999~~ 2001, for common stock purchased from a corporation or units of
34 interest of a limited liability company and retained during any of the
35 calendar years ~~1999-2003~~ 2001-2005.

36 (2) The credit shall be determined in the following manner:

1 (A)(i)(a) The total credit is an amount equal to thirty-
 2 three and one-third percent (33 1/3%) of the actual purchase price paid for
 3 the stock of a corporation to the corporation or for the units of interest of
 4 a limited liability company to the limited liability company, which shall
 5 include any fees or commissions to underwriters or sales agents paid by the
 6 company.

7 (b) Provided, however, that the total amount
 8 of fees and commissions to underwriters or sales agents for which a credit
 9 may be taken shall not exceed fifteen percent (15%) of the actual purchase
 10 price. Any fees or commissions in excess of fifteen percent (15%) of the
 11 total purchase price shall not be considered in calculating the amount of the
 12 credit determined in this section.

13 (ii) If any shares or units of interest, once
 14 purchased from the company, are then sold or otherwise disposed of prior to
 15 five (5) years elapsing from the original date of purchase, the ~~maximum~~
 16 amount of any credit claimed by the original purchaser shall be reduced a pro
 17 rata amount, and the transferee shall be entitled to that portion of the
 18 remaining credit. In addition, any distribution from the company to the
 19 holder of the common stock or the unit of interest that is not a dividend or
 20 distribution within the meaning of § 15-4-1215 shall be deemed a sale of that
 21 portion of the original purchase price of the common stock or unit of
 22 interest on the date of such distribution for application of the credit
 23 reduction calculated under subdivision (a)(2)(A) of this section;

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

28 (C)(i) Any credit in excess of the amount allowed by
 29 subdivision (a)(2)(B) of this section for any one (1) tax year may be carried
 30 forward and applied against Arkansas state income tax or premium tax for the
 31 next-succeeding tax year and annually thereafter for a total period of three
 32 (3) years next succeeding the year in which the credit arose, subject to the
 33 provisions of subdivision (a)(2)(B) of this section, or until the credit is
 34 exhausted, whichever occurs first.

35 (ii) Provided, however, that any credit arising
 36 under the ~~County and Regional~~ Arkansas Industrial Development Company Act, §

1 15-4-1201 et seq., shall be allowed to be carried forward to years past
 2 December 31, ~~1999~~ 2001, subject to the three-year carry forward rules of
 3 subdivision (a)(2)(C) of this section.

4 (iii) In no event will the credit allowed by this
 5 section be allowed for any tax year ending after December 31, ~~2006~~ 2008; and

6 (D) Any ~~original~~ purchaser of common stock or units of
 7 interest who seeks to qualify for and maintain the income tax credit or
 8 premium tax credit provided in this section must obtain and attach to its
 9 annual income tax or premium tax return a certified statement from the
 10 company issuing the common stock or units of interest stating:

11 (i) The name and address of the ~~original~~ purchaser;

12 (ii) The number of shares or units of interest
 13 purchased;

14 (iii) The amount paid by the original purchaser for
 15 the common stock or units of interest, specifying what portion of the
 16 original purchase price consisted of fees or commissions to the underwriter
 17 or sales agent;

18 (iv) The date of purchase of the common stock or
 19 units of interest;

20 (v) In the case of a transferee, the name of the
 21 transferor and the number of shares of common stock or units of interest
 22 transferred by the transferor;

23 ~~(v)~~ (vi) The number of shares or units of interest of
 24 the original purchase still owned by the original purchaser and each
 25 transferee; and

26 ~~(vi)~~ (vii) The amount and date of distributions made
 27 from the company to the purchaser and whether or not such distributions are
 28 ones made pursuant to § 15-4-1215.

29 ~~(b)(1) For the purpose of ascertaining the gain or loss from the sale~~
 30 ~~or other disposition of common stock in a corporation or units of interest in~~
 31 ~~a limited liability company, the original purchaser of the common stock or~~
 32 ~~the units of interest shall reduce his basis in the stock or units by the~~
 33 ~~amount of the tax credits previously deducted under this section.~~

34 ~~(2)(A) The original purchaser's basis in the stock or the units~~
 35 ~~shall be further reduced by ten percent (10%) of the original purchase price~~
 36 ~~for any shares of stock or any units of interest sold or otherwise disposed~~

1 ~~of before five (5) years has elapsed from the date of purchase.~~

2 ~~(B) This reduced basis shall be used by the original~~
3 ~~purchaser when calculating tax due under the Income Tax Act of 1929, § 26-51-~~
4 ~~101 et seq.~~

5 (b)(1) Purchasers that are electing small business corporations under
6 § 26-51-409, limited liability companies, general partnerships, limited
7 partnerships, limited liability partnerships, limited liability limited
8 partnerships or other pass-through tax entities may allocate the credit and
9 income among the owners as the owners deem appropriate.

10 (2) Each entity shall attach a statement to its Arkansas income
11 tax return for the entity specifying the person receiving tax credits or tax-
12 exempt income or both from the company and the amount of benefits.

13 (c) Companies are authorized to secure the investment of any purchaser
14 in the company by the purchase and holding of investment grade securities as
15 a source of funds or assets for redemption of the purchaser in the future
16 without reduction in the credit available to the purchaser.

17
18 SECTION 13. Arkansas Code 15-4-1226 is amended to read as follows:
19 15-4-1226. Supervision of companies.

20 (a)(1) Each company organized under the provisions of this subchapter
21 shall be subject to the general supervision and control of the Bank
22 Commissioner.

23 (2) In addition to the other duties imposed upon them by law,
24 the powers of the Bank Commissioner are to:

25 (A) Make reasonable rules and regulations which may be
26 necessary to regulate the safety and soundness of the companies for making
27 this subchapter effective;

28 (B) Conduct investigations which may be necessary to
29 determine whether any person has engaged in or is about to engage in any act
30 or practice constituting a violation of any provision of this subchapter or
31 of the laws of this state;

32 (C) Conduct any examinations, investigations, and hearings
33 which may be necessary and proper for the efficient administration of the
34 ~~county and regional~~ industrial development company laws of this state and to
35 charge the company for the expense of such examination, investigation, or
36 hearing at the rate of two hundred twenty-five dollars (\$225) per examiner

1 per day or partial day; and

2 (D)(i) Within the Bank Commissioner's discretion, classify
3 as confidential certain records and information obtained by the State Bank
4 Department when such matters are obtained from an investigation or
5 examination by the department's staff.

6 (ii) However, applications shall be public
7 documents.

8 (b) With respect to § 15-4-1220, each company organized under the
9 provisions of this subchapter shall be subject to the specific regulation and
10 control of the Securities Commissioner, who shall have the authority to:

11 (1) Make reasonable rules and regulations which may be necessary
12 for making § 15-4-1220 effective;

13 (2) Conduct investigations and hearings which may be necessary
14 to determine whether any person has engaged in or is about to engage in any
15 act or practice constituting a violation of § 15-4-1220 and to charge the
16 company for the expense of such investigation or hearing at the rate of two
17 hundred twenty-five dollars (\$225) per investigator per day or partial day;

18 (3) Conduct any examinations, investigations, and hearings which
19 may be necessary and proper for the efficient administration and application
20 of § 15-4-1220 to ~~county and regional~~ industrial development companies; and

21 (4) Within the Securities Commissioner's discretion, classify as
22 confidential certain records and information obtained by the Securities
23 Commissioner when such matters are obtained from an investigation or
24 examination by the State Bank Department's staff.

25

26 SECTION 14. Arkansas Code 15-4-1228 is amended to read as follows:

27 15-4-1228. Investigations by Bank Commissioner or Securities
28 Commissioner - Injunctions.

29 (a) The Bank Commissioner may investigate, either upon complaint or
30 otherwise, when it appears that ~~a county or regional~~ an industrial
31 development company is conducting its business in an unsafe and injurious
32 manner or in violation of this subchapter or the regulations promulgated
33 under this subchapter by the Bank Commissioner or when it appears that any
34 person is engaging in the business without being approved under the
35 provisions of this subchapter.

36 (b) The Securities Commissioner may investigate, either upon complaint

1 or otherwise, when it appears that ~~a county or regional~~ an industrial
 2 development company is offering its securities in violation of § 15-4-1220 or
 3 is otherwise violating the provisions of Arkansas law that come under the
 4 jurisdiction of the Securities Commissioner.

5 (c)(1) Subject to the jurisdictional provisions of subsections (a) and
 6 (b) of this section, whenever it appears upon sufficient grounds or evidence
 7 satisfactory to the Bank Commissioner or the Securities Commissioner that any
 8 ~~county or regional~~ industrial development company has engaged in or is about
 9 to engage in any act or practice in violation of this subchapter or any rule
 10 or regulation or order under this subchapter, or the assets or capital of any
 11 ~~county or regional~~ industrial development company is impaired or the ~~county~~
 12 ~~or regional~~ industrial development company's affairs are in an unsafe
 13 condition, the Bank Commissioner or the Securities Commissioner may:

14 (A) Refer the evidence which is available concerning
 15 violations of this subchapter or any rule, regulation, or order under this
 16 subchapter to the appropriate agency, which may institute the appropriate
 17 corrective action or proceedings with or without the reference; or

18 (B)(i) Summarily order the ~~county or regional~~ industrial
 19 development company to cease and desist from the act or practice during the
 20 time the Bank Commissioner or the Securities Commissioner may apply to the
 21 Pulaski County ~~Chancery~~ Circuit Court to enjoin the act or practice and to
 22 enforce compliance with this subchapter or any rule, regulation, or order
 23 under this subchapter.

24 (ii) However, the Bank Commissioner or the
 25 Securities Commissioner may apply directly to the Pulaski County ~~Chancery~~
 26 Circuit Court for injunctive relief without issuing a cease and desist order.

27 (2) Upon a proper showing, a permanent or temporary injunction,
 28 restraining order, or writ of mandamus shall be granted and a receiver or
 29 conservator may be appointed for the ~~county or regional~~ industrial
 30 development company or its assets.

31 (3) The court may not require the Bank Commissioner or the
 32 Securities Commissioner to post a bond.

33 (4) In addition to any other remedy provided in this subchapter
 34 or under applicable law, the costs of the Bank Commissioner or the Securities
 35 Commissioner incurred in successfully prosecuting violations of this
 36 subchapter may be imposed by the court as additional damages payable by the

1 company.

2 (d) A copy of all reports of the investigation or other proceedings
3 conducted pursuant to this section shall be forwarded to the Director of the
4 Department of Finance and Administration.

5
6 SECTION 15. This act shall apply to all companies existing under
7 Arkansas Code Title 15, Chapter 4, Subchapter 12 prior to the effective date
8 of this act.

9
10 SECTION 16. EMERGENCY CLAUSE. It is found and determined by the
11 General Assembly that the various regional industrial development
12 corporations established pursuant to Arkansas Code 15-4-1201 through 15-4-
13 1228 have been most successful in accomplishing their purposes of promoting,
14 stimulating, developing, and advancing the business prosperity and economic
15 welfare of the area they serve; that the entities can even better serve their
16 purposes as state-wide entities; that the state income tax credit provided in
17 the present law for purchasers of common stock and units of interest in such
18 companies expires and will not be allowed for any tax year ending after
19 December 31, 2006; that this law clarifies the use of and permits transfers
20 of tax credits, permits tax credits arising under present law to be carried
21 forward past 2001, and extends the expiration date for the tax credit
22 allowance to December 31, 2008; and that these revisions of the County and
23 Regional Industrial Development Corporation Act must be given effect
24 immediately to assure that the entities established hereunder can continue to
25 carry out their essential function of promoting and developing the economic
26 prosperity of the state. Therefore, an emergency is declared to exist and
27 this act being immediately necessary for the preservation of the public
28 peace, health and safety shall become effective on the date of its approval
29 by the Governor. If the bill is neither approved nor vetoed by the Governor,
30 it shall become effective on the expiration of the period of time during
31 which the Governor may veto the bill. If the bill is vetoed by the Governor
32 and the veto is overridden, it shall become effective on the date the last
33 house overrides the veto.