

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 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: H1/29/09

# A Bill

HOUSE BILL 1060

5 By: Representatives Pennartz, R. Green, Glidewell, Cook, Tyler, Cash, J. Roebuck, J. Burris, L. Smith,  
6 Williams  
7  
8

## For An Act To Be Entitled

9 AN ACT TO ESTABLISH AN INVESTMENT TAX CREDIT FOR  
10 THE REHABILITATION AND DEVELOPMENT OF CENTRAL  
11 BUSINESS IMPROVEMENT DISTRICTS; AND FOR OTHER  
12 PURPOSES.  
13  
14

### Subtitle

15 TO ESTABLISH AN INVESTMENT TAX CREDIT  
16 FOR THE REHABILITATION AND DEVELOPMENT  
17 OF CENTRAL BUSINESS IMPROVEMENT  
18 DISTRICTS.  
19  
20  
21

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

24 SECTION 1. Arkansas Code 26, Chapter 51 is amended to add an  
25 additional subchapter to read as follows:

26 Subchapter 22 - Arkansas Central Business Improvement District  
27 Rehabilitation and Development Investment Tax Credit Act.  
28

29 26-51-2201. Title.

30 This subchapter shall be known and may be cited as the "Arkansas  
31 Central Business Improvement District Rehabilitation and Development  
32 Investment Tax Credit Act".  
33

34 26-51-2202. Purpose.

35 The purpose of this subchapter is to encourage economic development  
36 within central business improvement districts by promoting the rehabilitation



1 and development of structures within the central business improvement  
2 districts.

3  
4 26-51-2203. Definitions.

5 As used in this subchapter:

6 (1) "Central business improvement district" means the central  
7 business district of any municipality of the first-class or municipality of  
8 the second-class of the state that has been designated as a central business  
9 improvement district under § 14-184-101 et seq.;

10 (2) "Development" means the new construction of a structure or  
11 the expansion of an existing structure;

12 (3) "Eligibility certificate" means a certificate:

13 (A) Authorized and issued by the governing body of the  
14 central business improvement district certifying that a project is a  
15 qualified project, has met the requirements of this subchapter, and is an  
16 eligible central business improvement district property; and

17 (B) That specifies the total amount of qualified  
18 rehabilitation or development expenditures allowed;

19 (4) "Eligible central business improvement district property"  
20 means property that is located within the physical boundaries of a central  
21 business improvement district and is a qualified project;

22 (5) "Investment tax credit" means the Arkansas Central Business  
23 Improvement District Rehabilitation and Development investment tax credit  
24 under this subchapter;

25 (6) "Qualified project" means eligible central business  
26 improvement district property that has met the requirements of § 26-51-  
27 2204(b) and has been approved for rehabilitation or development by the  
28 governing body of the central business improvement district where the  
29 eligible central business improvement district property is located;

30 (7)(A) "Qualified rehabilitation or development expenditures"  
31 means expenditures approved by the governing body of the central business  
32 improvement district where the eligible central business improvement district  
33 property is located that meets the requirements of this subchapter.

34 (B) "Qualified rehabilitation or development expenditures"  
35 do not include:

36 (i) The cost of acquiring the eligible central

1 business improvement district property or realtor's fees associated with the  
2 eligible central business improvement district property;

3 (ii) Taxes due on the eligible central business  
4 improvement district property;

5 (iii) Insurance costs;

6 (iv) Costs of landscaping; or

7 (v) Sales and marketing costs; and

8 (8) "Taxpayer" means an individual, a partnership, limited  
9 liability company, or corporation subject to the state income tax imposed by  
10 the Income Tax Act of 1929, § 26-51-101 et seq.

11  
12 26-51-2204. Qualified project.

13 (a) To apply for a designation as a qualified project, a taxpayer  
14 shall submit to the governing body of the central business improvement  
15 district where the property to be rehabilitated or developed is located all  
16 forms and fees required by the Arkansas Economic Development Commission.

17 (b) To qualify as eligible central business improvement district  
18 property, the taxpayer shall demonstrate that the property to be  
19 rehabilitated or developed meets the following requirements:

20 (1) The project must be planned within the physical boundaries  
21 of the central business improvement district;

22 (2) A full set of plans by a licensed architect must be  
23 submitted to the governing body of the central business improvement district  
24 where the property to be rehabilitated or developed is located;

25 (3) The project must meet all zoning and building codes of the  
26 municipality in which the property to be rehabilitated or developed is  
27 located;

28 (4) The project must meet the design guidelines, be compatible  
29 with the overall plan for the central business improvement district, and have  
30 a use that the governing body of the central business improvement district  
31 determines as maintaining the overall integrity of the central business  
32 improvement district;

33 (5) The qualified rehabilitation or development expenditures for  
34 the project must have occurred on or after the effective date of this act;  
35 and

36 (6) The qualified rehabilitation or development expenditures for

1 the project must be greater than fifty thousand dollars (\$50,000).

2 (c) After evaluating the information provided by the taxpayer, the  
3 governing body of the central business improvement district shall issue a  
4 determination about whether the property to be rehabilitated or developed is  
5 a qualified project.

6 (d)(1) If the taxpayer is dissatisfied with the determination made by  
7 the governing body of the central business improvement district, the taxpayer  
8 may request that a review of that determination be made by the Director of  
9 the Arkansas Economic Development Commission.

10 (2) The request for review shall be made in writing to the  
11 Director of the Arkansas Economic Development Commission within thirty (30)  
12 days from the date of the determination of the governing body of the central  
13 business improvement district under subsection (c) of this section.

14 (3)(A) A taxpayer may seek judicial relief from the decision of  
15 the Director of the Arkansas Economic Development Commission under this  
16 subsection by filing an appeal with the circuit court within twenty (20)  
17 calendar days from the date of the decision.

18 (B) The appeal shall be tried de novo in the circuit  
19 court.

20  
21 26-51-2205. Eligibility certificate.

22 (a) After a property to be rehabilitated or developed is designated a  
23 qualified project under § 26-51-2204 and the taxpayer completes the  
24 rehabilitation or development work, the taxpayer shall submit to the  
25 governing body of the central business improvement district where the  
26 eligible central business improvement district property is located all  
27 documentation and forms required by the Arkansas Economic Development  
28 Commission and the governing body of the central business improvement  
29 district to verify that the qualified project has been completed.

30 (b) If the governing body of the central business improvement district  
31 determines that the qualified project has been successfully completed, the  
32 governing body of the central business improvement district shall issue an  
33 eligibility certificate.

34 (c)(1) If the taxpayer is dissatisfied with the determination made by  
35 the governing body of the central business improvement district under  
36 subsection (b) of this section, the taxpayer may request that a review of

1 that determination be made by the Director of the Arkansas Economic  
2 Development Commission.

3 (2) The request for review shall be made in writing to the  
4 Director of the Arkansas Economic Development Commission within thirty (30)  
5 days from the date of the determination of the governing body of the central  
6 business improvement district under subsection (b) of this section.

7 (3)(A) A taxpayer may seek judicial relief from the decision of  
8 the Director of the Arkansas Economic Development Commission under this  
9 subsection by filing an appeal with the circuit court within twenty (20)  
10 calendar days from the date of the decision.

11 (B) The appeal shall be tried de novo in the circuit  
12 court.

13  
14 26-51-2206. The projected rehabilitation or development expenditures.

15 (a) The projected rehabilitation or development expenditures must  
16 occur during a period not to exceed:

17 (1) Two (2) years for a single-phase project; or

18 (2) Five (5) years for a multiple-phase project.

19 (b) For the rehabilitation or development of an existing structure,  
20 the projected qualified rehabilitation or development expenditures must equal  
21 or exceed the adjusted basis of the structure, excluding the land, before the  
22 qualified rehabilitation or development work begins.

23  
24 26-51-2207. Investment tax credits.

25 (a) There is allowed an investment tax credit against the tax imposed  
26 by the Income Tax Act of 1929, § 26-51-101 et seq. for any taxpayer incurring  
27 costs and expenses that are qualified rehabilitation or development  
28 expenditures of eligible central business improvement district property.

29 (b) The investment tax credit is equal to twenty percent (20%) of up  
30 to the first two million dollars (\$2,000,000) of qualified rehabilitation or  
31 development expenditures incurred for a qualified project.

32 (c)(1) The investment tax credit for a qualified project covering  
33 income-producing eligible central business improvement district property  
34 shall be taken as follows:

35 (A) For eligible central business improvement district  
36 property that has not been approved to be completed in phases by the

1 governing body of the central business improvement district where the  
2 eligible central business improvement district property is located, the  
3 investment tax credit shall be taken in the tax year in which the eligible  
4 central business improvement district property is placed in service; or

5 (B) For central business improvement district property  
6 that has been approved to be completed in phases by the governing body of the  
7 central business improvement district where the eligible central business  
8 improvement district property is located, the investment tax credit shall be  
9 taken in the tax year each phase is completed.

10 (2) The investment tax credit for a qualified project covering  
11 residential eligible central business improvement district property or other  
12 commercial eligible central business improvement district property shall be  
13 taken as follows:

14 (A) For eligible central business improvement district  
15 property that has not been approved to be completed in phases by the  
16 governing body of the central business improvement district, the investment  
17 tax credit shall be taken in the tax year the qualified project is completed;  
18 or

19 (B) For eligible central business improvement district  
20 property that has been approved to be completed in phases by the governing  
21 body of the central business improvement district where the eligible central  
22 business improvement district property is located, the investment tax credit  
23 shall be taken in the tax year that each phase is completed.

24 (d) A taxpayer who receives an investment tax credit under this  
25 section shall not claim any other state or local tax credit or deduction  
26 based on the qualified rehabilitation or development expenditures except for  
27 the deduction for normal depreciation of the eligible central business  
28 improvement district property.

29 (e)(1) The maximum amount of investment tax credits awarded by the  
30 state in a fiscal year is twenty million dollars (\$20,000,000) to be awarded  
31 as follows:

32 (A) Up to ten million dollars (\$10,000,000) in investment  
33 tax credits may be awarded for eligible central business improvement district  
34 property located in municipalities with a population of less than fifty  
35 thousand (50,000), as determined by the last federal census; and

36 (B) Up to ten million dollars (\$10,000,000) in investment

1 tax credits may be awarded for eligible central business improvement district  
2 property located in municipalities with a population of fifty thousand  
3 (50,000) or more, as determined by the last federal census.

4 (2) Any eligibility certificate that would cause the investment  
5 tax credit to exceed the amounts listed in subdivision (e)(1) of this section  
6 during the fiscal year will be carried forward to the following fiscal year.

7 (3) The Arkansas Economic Development Commission shall maintain  
8 an ongoing record of the eligibility certificates in order to ensure that the  
9 maximum amount of investment tax credits awarded each fiscal year does not  
10 exceed the amounts provided in subsection (e)(1) of this section.

11  
12 26-51-2208. Procedure to claim the investment tax credit.

13 (a) To claim the investment tax credit, the taxpayer shall submit the  
14 eligibility certificate issued by the applicable central business improvement  
15 district to the Arkansas Economic Development Commission.

16 (b)(1) In addition to the application under subsection (a) of this  
17 section, the taxpayer shall submit an eligibility certificate at the time of  
18 filing the taxpayer's income tax return.

19 (2) If the taxpayer fails to attach the eligibility certificate,  
20 an investment tax credit is not allowed with respect to the qualified project  
21 for that tax year until the eligibility certificate is provided to the  
22 Department of Finance and Administration.

23  
24 26-51-2209. Credits exceeding tax liability – Assignment.

25 (a)(1) The amount of the investment tax credit that may be used by a  
26 taxpayer for a taxable year shall not exceed the amount of income tax due.

27 (2) Any unused investment tax credit may be carried over for  
28 seven (7) consecutive taxable years for credit against the state income tax  
29 due.

30 (3)(A) A taxpayer eligible for the investment tax credit may  
31 transfer, sell, or assign the investment tax credit.

32 (B) A taxpayer who transfers, sells, or assigns the  
33 investment tax credit shall notify in writing the Arkansas Economic  
34 Development Commission within thirty (30) days the following information:

35 (i) The name, address, and taxpayer identification  
36 number of the transferee, purchaser, or assignee of the investment tax

1 credit;

2 (ii) The date of the transfer, purchase, or  
3 assignment of the investment tax credit; and

4 (iii) The amount paid for the investment tax credit  
5 by the transferee, purchaser, or assignee.

6 (C) A transferee, purchaser, or assignee of an investment  
7 tax credit is entitled to the investment tax credit under this subchapter  
8 only to the extent the investment tax credit is still available and only for  
9 the portion of the investment tax credit that has not been previously claimed  
10 by the transferor, seller, or assignor and all previous transferors, sellers,  
11 and assignors.

12 (D) The Department of Finance and Administration may  
13 refuse to recognize the investment tax credit if the transferor, seller,  
14 assignor or the transferee, purchaser, or assignee of the investment tax  
15 credit fails to submit the eligibility certificate and any transfer,  
16 purchase, or assignment documents.

17 (4) An investment tax credit granted to a partnership, a limited  
18 liability company taxed as a partnership, or multiple owners of eligible  
19 central business improvement district property shall be passed through to the  
20 partners, members, or owners respectively on a pro rata basis or pursuant to  
21 an executed agreement between or among the partners, members, or owners  
22 documenting an alternative distribution method.

23 (b)(1) Any assignee of an investment tax credit may use an acquired  
24 investment tax credit to offset up to one hundred percent (100%) of the state  
25 income tax due from the assignee, but the offset shall not exceed the amount  
26 of income tax due for the taxable year.

27 (2) An assignor of an investment tax credit shall perfect an  
28 assignment to an assignee of an investment tax credit by notifying the  
29 Arkansas Economic Development Commission in writing within thirty (30)  
30 calendar days following the effective date of the assignment and shall  
31 provide any information required by the commission to administer and carry  
32 out this subchapter.

33  
34 26-51-2210. Enforcement.

35 (a)(1) The Director of the Arkansas Economic Development Commission  
36 may make rules and prescribe forms for the proper enforcement of claims for



1 an eligibility certificate.

2 (2) The Arkansas Economic Development Commission shall consult  
3 with the governing bodies of the central business improvement districts in  
4 making rules under this subchapter to maintain consistency with the purpose  
5 and intent of this subchapter.

6 (b) The governing body of a central business improvement district may  
7 charge a reasonable application fee as established by the Arkansas Economic  
8 Development Commission for the processing of an eligibility certificate.

9 (c) A fee collected under § 26-51-2204 by the central business  
10 improvement district shall be deposited into the treasury cash fund of the  
11 governing body of a central business improvement district receiving the fee.

12 (d) The Department of Finance and Administration and the governing  
13 body of a central business improvement district may inspect facilities and  
14 records of an entity requesting or receiving an investment tax credit as  
15 necessary to verify a claim.

16 (e) The Director of the Department of Finance and Administration may  
17 develop such forms and instructions as are necessary for an approved taxpayer  
18 to claim the investment tax credit provided by this subchapter.

19 (f) The Director of the Department of Finance and Administration shall  
20 demand the repayment of any credits taken in excess of the investment tax  
21 credit allowed by this subchapter.

22  
23 26-51-2211. Effective Date.

24 (a) This act is effective for tax years beginning on and after January  
25 1, 2009, and expires December 31, 2013.

26 (b) An unused investment tax credit under this act that is earned  
27 before the end of the 2013 tax year may be carried forward on an income tax  
28 return for up to seven (7) years after the year in which the investment tax  
29 credit was first earned or until exhausted, whichever event occurs first.

30  
31 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
32 General Assembly of the State of Arkansas that the central business  
33 improvement districts in Arkansas municipalities are in need of  
34 rehabilitation and development; that the state and country are in an economic  
35 recession; that providing an investment tax credit would encourage the needed  
36 rehabilitation and development of the central business improvement districts

1 in this state; that the rehabilitation and development would provide jobs to  
2 Arkansans; and that the investment tax credit would provide an economic  
3 stimulus to the State of Arkansas. Therefore, an emergency is declared to  
4 exist and this act being necessary for the preservation of the public peace,  
5 health, and safety shall become effective on:

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

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

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

12 */s/ Pennartz*

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