

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 As Engrossed: H1/29/09 H2/5/09 H2/17/09 H2/20/09 H2/26/09 H3/4/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

HOUSE BILL 1060

4
5 By: Representatives Pennartz, R. Green, Glidewell, Cook, Tyler, Cash, J. Roebuck, J. Burris, L. Smith,
6 Williams, Dunn, Ingram, Webb, Betts, Breedlove, Carroll, Clemmer, English, Gaskill, House, Nix, Perry,
7 Powers, Saunders, Slinkard, Wagner, S. Malone, Kidd, King, Lea, Wells, Patterson, Lindsey, Pyle,
8 Harrelson, Woods, Word, Barnett, Adcock, Hobbs, Hopper, L. Cowling, Rainey

9 By: Senators G. Baker, Wilkinson, Altes

For An Act To Be Entitled

10
11
12 AN ACT TO ESTABLISH AN INVESTMENT TAX CREDIT FOR
13 THE REHABILITATION AND DEVELOPMENT OF CENTRAL
14 BUSINESS IMPROVEMENT DISTRICTS; AND FOR OTHER
15 PURPOSES.
16

Subtitle

17
18 TO ESTABLISH AN INVESTMENT TAX CREDIT
19 FOR THE REHABILITATION AND DEVELOPMENT
20 OF CENTRAL BUSINESS IMPROVEMENT
21 DISTRICTS.
22

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

29 Subchapter 22 - Arkansas Central Business Improvement District
30 Rehabilitation and Development Investment Tax Credit Act.

31
32 26-51-2201. Title.

33 This subchapter shall be known and may be cited as the "Arkansas
34 Central Business Improvement District Rehabilitation and Development
35 Investment Tax Credit Act".
36



1 26-51-2202. Purpose.

2 The purpose of this subchapter is to encourage economic development
3 within central business improvement districts by promoting the rehabilitation
4 and development of structures within the central business improvement
5 districts.

6
7 26-51-2203. Definitions.

8 As used in this subchapter:

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

13 (2) "Development" means the new construction of a structure or
14 the expansion or rehabilitation of an existing structure;

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

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

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

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

25 (5) "Governing body of the central business improvement
26 district" means the board of commissioners of the central business
27 improvement district;

28 (6) "Governing body of the municipality" means the city council,
29 board of directors, commission, or other municipal body exercising general
30 legislative power in the municipality;

31 (7) "Investment tax credit" means the Arkansas Central Business
32 Improvement District Rehabilitation and Development investment tax credit
33 under this subchapter;

34 (8) "Qualified project" means eligible central business
35 improvement district property that has met the requirements of § 26-51-
36 2204(b) and has been approved for rehabilitation or development by the

1 governing body of the central business improvement district where the
2 eligible central business improvement district property is located;

3 (9)(A) "Qualified rehabilitation or development expenditures"
4 means expenditures approved by the governing body of the central business
5 improvement district where the eligible central business improvement district
6 property is located that meets the requirements of this subchapter.

7 (B) "Qualified rehabilitation or development expenditures"
8 do not include:

9 (i) The cost of acquiring the eligible central
10 business improvement district property or realtor's fees associated with the
11 eligible central business improvement district property;

12 (ii) Taxes due on the eligible central business
13 improvement district property;

14 (iii) Insurance costs;

15 (iv) Costs of landscaping; or

16 (v) Sales and marketing costs; and

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

20
21 26-51-2204. Qualified project.

22 (a) To apply for a designation as a qualified project, a taxpayer
23 shall submit to the governing body of the central business improvement
24 district where the property to be rehabilitated or developed is located all
25 forms and fees required by the governing body of the central business
26 improvement district.

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

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

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

35 (3) The project must meet all zoning and building codes of the
36 municipality in which the property to be rehabilitated or developed is

1 located;

2 (4) The project must meet the design guidelines, be compatible
3 with the overall plan for the central business improvement district, and have
4 a use that the governing body of the central business improvement district
5 determines as maintaining the overall integrity of the central business
6 improvement district;

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

10 (6) The qualified rehabilitation or development expenditures for
11 the project must be greater than fifty thousand dollars (\$50,000).

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

16 (d)(1) If the taxpayer is dissatisfied with the determination made by
17 the governing body of the central business improvement district, the taxpayer
18 may request that a review of that determination be made by the governing body
19 of the municipality.

20 (2)(A) The request for review shall be made in writing to the
21 governing body of the municipality within thirty (30) days from the date of
22 the determination of the governing body of the central business improvement
23 district under subsection (c) of this section.

24 (B) The decision of the governing body of the municipality is
25 a final decision.

26
27 26-51-2205. Eligibility certificate.

28 (a) After a property to be rehabilitated or developed is designated a
29 qualified project under § 26-51-2204 and the taxpayer completes the
30 rehabilitation or development work, the taxpayer shall submit to the
31 governing body of the central business improvement district where the
32 eligible central business improvement district property is located all
33 documentation and forms required by the governing body of the municipality
34 and the governing body of the central business improvement district to verify
35 that the qualified project has been completed.

36 (b)(1) If the governing body of the central business improvement

1 district determines that the qualified project has been successfully
2 completed, the governing body of the central business improvement district
3 shall issue an eligibility certificate.

4 (2) Before issuance of the eligibility certificate in this
5 subsection (b), the governing body of the central business improvement
6 district shall verify with the Department of Finance and Administration that
7 sufficient tax credits are remaining for the current fiscal year.

8 (c)(1) If the taxpayer is dissatisfied with the determination made by
9 the governing body of the central business improvement district under
10 subsection (b) of this section, the taxpayer may request that a review of
11 that determination be made by the governing body of the municipality

12 (2)(A) The request for review shall be made in writing to the
13 governing body of the municipality within thirty (30) days from the date of
14 the determination of the governing body of the central business improvement
15 district under subsection (b) of this section.

16 (B) The decision of the governing body of the
17 municipality is a final decision.

18 (d) Upon issuance of an eligibility certificate, the governing body of
19 the central business improvement district immediately shall report in writing
20 to the Department of Finance and Administration:

21 (1) The name and address of the taxpayer;

22 (2) The taxpayer identification number;

23 (3) The date of issuance of the eligibility certificate;

24 (4) The amount of the eligibility certificate; and

25 (5) Any other information as determined necessary by the
26 department.

27
28 26-51-2206. The projected rehabilitation or development expenditures.

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

31 (1) Eighteen (18) months for a single-phase project; or

32 (2) Three (3) years for a multiple-phase project.

33 (b) For the rehabilitation or development of an existing structure,
34 the projected qualified rehabilitation or development expenditures must equal
35 or exceed the adjusted basis of the structure, excluding the land, before the
36 qualified rehabilitation or development work begins.

1
2 26-51-2207. Investment tax credits.

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

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

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

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

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

24 (2) The investment tax credit for a qualified project covering
25 residential eligible central business improvement district property or other
26 commercial eligible central business improvement district property shall be
27 taken as follows:

28 (A) For eligible central business improvement district
29 property that has not been approved to be completed in phases by the
30 governing body of the central business improvement district, the investment
31 tax credit shall be taken in the tax year the qualified project is completed;
32 or

33 (B) For eligible central business improvement district
34 property that has been approved to be completed in phases by the governing
35 body of the central business improvement district where the eligible central
36 business improvement district property is located, the investment tax credit

1 shall be taken in the tax year that each phase is completed.

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

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

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

14 (B) Up to ten million dollars (\$10,000,000) in investment
15 tax credits may be awarded for eligible central business improvement district
16 property located in municipalities with a population of fifty thousand
17 (50,000) or more, as determined by the last federal census.

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

21 (3) The Department of Finance and Administration shall maintain
22 an ongoing record of the eligibility certificates in order to ensure that the
23 maximum amount of investment tax credits awarded each fiscal year does not
24 exceed the amounts provided in subsection (e)(1) of this section.

25
26 26-51-2208. Procedure to claim the investment tax credit.

27 (a) To claim the investment tax credit, the taxpayer shall submit the
28 eligibility certificate issued by the applicable central business improvement
29 district to the Department of Finance and Administration.

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

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

1
2 26-51-2209. Credits exceeding tax liability – Assignment.

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

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

8 (3)(A) The investment tax credit may be transferred, sold, or
9 assigned only one (1) time.

10 (B) A taxpayer who transfers, sells, or assigns the
11 investment tax credit shall notify in writing the Department of Finance and
12 Administration within thirty (30) days the following information:

13 (i) The name, address, and taxpayer identification
14 number of the transferee, purchaser, or assignee of the investment tax
15 credit;

16 (ii) The original issuance date of the investment
17 tax credit and the date of the transfer, purchase, or assignment of the
18 investment tax credit; and

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

21 (C)(i) A transferee, purchaser, or assignee of an
22 investment tax credit is entitled for the remaining carry forward period to
23 the investment tax credit under this subchapter only to the extent the
24 investment tax credit is still available and only for the portion of the
25 investment tax credit that has not been previously claimed by the transferor,
26 seller, or assignor.

27 (ii) A transferee, purchaser, or assignee may not
28 transfer, sell, or assign the investment tax credit.

29 (D) The Department of Finance and Administration may
30 refuse to recognize the investment tax credit if the transferor, seller,
31 assignor or the transferee, purchaser, or assignee of the investment tax
32 credit fails to submit the eligibility certificate and any transfer,
33 purchase, or assignment documents.

34 (4) An investment tax credit granted to a partnership, a limited
35 liability company taxed as a partnership, or multiple owners of eligible
36 central business improvement district property shall be passed through to the

1 partners, members, or owners respectively on a pro rata basis or pursuant to
2 an executed agreement between or among the partners, members, or owners
3 documenting an alternative distribution method.

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

8 (2) An assignor of an investment tax credit shall perfect an
9 assignment to an assignee of an investment tax credit by notifying the
10 Department of Finance and Administration in writing within thirty (30)
11 calendar days following the effective date of the assignment and shall
12 provide any information required by the Department of Finance and
13 Administration to administer and carry out this subchapter.

14 26-51-2210. Fees.

15 (a) The governing body of the central business improvement district
16 may charge a fee of two hundred dollars (\$200) for the services it provides
17 under this subchapter.

18 (b) The fee collected under subdivision (a)(1) of this section
19 by the governing body of the central business improvement district shall be
20 considered cash funds of the central business improvement district and shall
21 be used for the administration of this subchapter.

22
23 26-51-2211. Enforcement.

24 (a)(1) The Director of the Department of Finance and Administration
25 may make rules and prescribe forms for an approved taxpayer to claim the
26 investment tax credit provided by this subchapter and for the proper
27 enforcement of the claim.

28 (2) The department shall consult with the governing bodies of the
29 central business improvement districts in making rules under this subchapter
30 to maintain consistency with the purpose and intent of this subchapter.

31 (b) A fee collected under § 26-51-2204 by the central business
32 improvement district shall be deposited into the treasury cash fund of the
33 governing body of a central business improvement district receiving the fee.

34 (c) The Department of Finance and Administration and the governing
35 body of a central business improvement district may inspect facilities and
36 records of an entity requesting or receiving an investment tax credit as

1 necessary to verify a claim.

2 (d) The Director of the Department of Finance and Administration shall
3 demand the repayment of any credits taken in excess of the investment tax
4 credit allowed by this subchapter.

5
6 26-51-2212. Effective Date.

7 (a) This act is effective for tax years beginning on and after January
8 1, 2009, and expires December 31, 2013.

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

13
14 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
15 General Assembly of the State of Arkansas that the central business
16 improvement districts in Arkansas municipalities are in need of
17 rehabilitation and development; that the state and country are in an economic
18 recession; that providing an investment tax credit would encourage the needed
19 rehabilitation and development of the central business improvement districts
20 in this state; that the rehabilitation and development would provide jobs to
21 Arkansans; and that the investment tax credit would provide an economic
22 stimulus to the State of Arkansas. Therefore, an emergency is declared to
23 exist and this act being necessary for the preservation of the public peace,
24 health, and safety shall become effective on:

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

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

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

31
32 /s/ Pennartz