

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.

State of Arkansas As Engrossed: H1/29/09 H2/5/09 H2/17/09 H2/20/09 H2/26/09 H3/4/09 H3/12/09

87th General Assembly

# A Bill

Regular Session, 2009

HOUSE BILL 1060

By: Representatives Pennartz, R. Green, Glidewell, Cook, Tyler, Cash, J. Roebuck, J. Burris, L. Smith, Williams, Dunn, Ingram, Webb, Betts, Breedlove, Carroll, Clemmer, English, Gaskill, House, Nix, Perry, Powers, Saunders, Slinkard, Wagner, S. Malone, Kidd, King, Lea, Wells, Patterson, Lindsey, Pyle, Harrelson, Woods, Word, Barnett, Adcock, Hobbs, Hopper, L. Cowling, Rainey, Baird, Blount, J. Brown, Dale, Davis, J. Dickinson, Dismang, Garner, George, Hoyt, D. Hutchinson, Hyde, Moore, Rice, G. Smith, Stewart

By: Senators G. Baker, Wilkinson, Altes

## For An Act To Be Entitled

AN ACT TO ESTABLISH AN INVESTMENT TAX CREDIT FOR THE REHABILITATION AND DEVELOPMENT OF CENTRAL BUSINESS IMPROVEMENT DISTRICTS; AND FOR OTHER PURPOSES.

## Subtitle

TO ESTABLISH AN INVESTMENT TAX CREDIT FOR THE REHABILITATION AND DEVELOPMENT OF CENTRAL BUSINESS IMPROVEMENT DISTRICTS.

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

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

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

26-51-2201. Title.

This subchapter shall be known and may be cited as the "Arkansas Central Business Improvement District Rehabilitation and Development



1 Investment Tax Credit Act".

2  
3 26-51-2202. Purpose.

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

8  
9 26-51-2203. Definitions.

10 As used in this subchapter:

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

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

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

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

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

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

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

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

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

36 (8) "Qualified project" means eligible central business

1 improvement district property that has met the requirements of § 26-51-  
2 2204(b) and has been approved for rehabilitation or development by the  
3 governing body of the central business improvement district where the  
4 eligible central business improvement district property is located;

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

9 (B) "Qualified rehabilitation or development expenditures"  
10 do not include:

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

14 (ii) Taxes due on the eligible central business  
15 improvement district property;

16 (iii) Insurance costs;

17 (iv) Costs of landscaping; or

18 (v) Sales and marketing costs; and

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

22  
23 26-51-2204. Qualified project.

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

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

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

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

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

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

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

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

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

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

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

26           (B) The decision of the governing body of the municipality is  
27 a final decision.

28  
29           26-51-2205. Eligibility certificate.

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

1 that the qualified project has been completed.

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

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

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

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

18 (B) The decision of the governing body of the  
19 municipality is a final decision.

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

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

24 (2) The taxpayer identification number;

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

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

27 (5) Any other information as determined necessary by the  
28 department.

29  
30 26-51-2206. The projected rehabilitation or development expenditures.

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

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

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

35 (b) For the rehabilitation or development of an existing structure,  
36 the projected qualified rehabilitation or development expenditures must equal

1 or exceed the adjusted basis of the structure, excluding the land, before the  
2 qualified rehabilitation or development work begins.

3  
4 26-51-2207. Investment tax credits.

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

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

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

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

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

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

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

35 (B) For eligible central business improvement district  
36 property that has been approved to be completed in phases by the governing

1 body of the central business improvement district where the eligible central  
2 business improvement district property is located, the investment tax credit  
3 shall be taken in the tax year that each phase is completed.

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

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

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

16 (B) Up to ten million dollars (\$10,000,000) in investment  
17 tax credits may be awarded for eligible central business improvement district  
18 property located in municipalities with a population of fifty thousand  
19 (50,000) or more, as determined by the last federal census.

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

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

27  
28 26-51-2208. Procedure to claim the investment tax credit.

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

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

35 (2) If the taxpayer fails to attach the eligibility certificate,  
36 an investment tax credit is not allowed with respect to the qualified project

1 for that tax year until the eligibility certificate is provided to the  
2 Department of Finance and Administration.

3  
4 26-51-2209. Credits exceeding tax liability – Assignment.

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

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

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

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

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

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

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

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

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

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

36 (4) An investment tax credit granted to a partnership, a limited



1 liability company taxed as a partnership, or multiple owners of eligible  
2 central business improvement district property shall be passed through to the  
3 partners, members, or owners respectively on a pro rata basis or pursuant to  
4 an executed agreement between or among the partners, members, or owners  
5 documenting an alternative distribution method.

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

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

16 26-51-2210. Fees.

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

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

24  
25 26-51-2211. Enforcement.

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

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

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

36 (c) The Department of Finance and Administration and the governing

1 body of a central business improvement district may inspect facilities and  
2 records of an entity requesting or receiving an investment tax credit as  
3 necessary to verify a claim.

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

7  
8 26-51-2212. Effective Date.

9 (a) This act is effective for tax years beginning on and after January  
10 1, 2009, and expires December 31, 2013.

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

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

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

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

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

33  
34 /s/ Pennartz