

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 ArkansasAs Engrossed: H1/29/09 H2/5/09 H2/17/09 H2/20/09 H2/26/09 H3/4/09 H3/12/09 H3/20/09

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, Baird, Blount, J. Brown,
9 Dale, Davis, J. Dickinson, Dismang, Garner, George, Hoyt, D. Hutchinson, Hyde, Moore, Rice, G. Smith,
10 Stewart, Overbey, J. Rogers

11 By: Senators G. Baker, Wilkinson, Altes

For An Act To Be Entitled

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

Subtitle

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

25
26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

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

33
34 26-51-2201. Title.

35 This subchapter shall be known and may be cited as the "Arkansas
36 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 eighteen (18) months.

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 one million dollars (\$1,000,000) 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 in the tax year in which the eligible central business
13 improvement district property is placed in service.

14 (2) The investment tax credit for a qualified project covering
15 residential eligible central business improvement district property or other
16 commercial eligible central business improvement district property shall be
17 taken in the tax year the qualified project is completed.

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

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

26 (A) Up to five million dollars (\$5,000,000) in investment
27 tax credits may be awarded for eligible central business improvement district
28 property located in municipalities with a population of less than fifty
29 thousand (50,000), as determined by the last federal census; and

30 (B) Up to five million dollars (\$5,000,000) in investment
31 tax credits may be awarded for eligible central business improvement district
32 property located in municipalities with a population of fifty thousand
33 (50,000) or more, as determined by the last federal census.

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

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

5
6 26-51-2208. Procedure to claim the investment tax credit.

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

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

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

17
18 26-51-2209. Credits exceeding tax liability – Assignment.

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

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

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

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

29 (i) The name, address, and taxpayer identification
30 number of the transferee, purchaser, or assignee of the investment tax
31 credit;

32 (ii) The original issuance date of the investment
33 tax credit and the date of the transfer, purchase, or assignment of the
34 investment tax credit; and

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

1 (C)(i) A transferee, purchaser, or assignee of an
2 investment tax credit is entitled for the remaining carry forward period to
3 the investment tax credit under this subchapter only to the extent the
4 investment tax credit is still available and only for the portion of the
5 investment tax credit that has not been previously claimed by the transferor,
6 seller, or assignor.

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

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

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

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

24 (2) An assignor of an investment tax credit shall perfect an
25 assignment to an assignee of an investment tax credit by notifying the
26 Department of Finance and Administration in writing within thirty (30)
27 calendar days following the effective date of the assignment and shall
28 provide any information required by the Department of Finance and
29 Administration to administer and carry out this subchapter.

30 26-51-2210. Fees.

31 (a) The governing body of the central business improvement district
32 may charge a fee of two hundred fifty dollars (\$250) for the services it
33 provides under this subchapter.

34 (b) The fee collected under subdivision (a)(1) of this section
35 by the governing body of the central business improvement district shall be
36 considered cash funds of the central business improvement district and shall

1 be used for the administration of this subchapter.

2
3 26-51-2211. Enforcement.

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

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

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

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

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

21
22 26-51-2212. Effective Date.

23 (a) This act is effective for tax years beginning on and after January
24 1, 2009, and expires December 31, 2011.

25 (b) An unused investment tax credit under this act that is earned
26 before the end of the 2011 tax year may be carried forward on an income tax
27 return for up to seven (7) years after the year in which the investment tax
28 credit was first earned or until exhausted, whichever event occurs first.

29
30 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
31 General Assembly of the State of Arkansas that the central business
32 improvement districts in Arkansas municipalities are in need of
33 rehabilitation and development; that the state and country are in an economic
34 recession; that providing an investment tax credit would encourage the needed
35 rehabilitation and development of the central business improvement districts
36 in this state; that the rehabilitation and development would provide jobs to

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

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

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

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

11
12 /s/ Pennartz
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