

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

# A Bill

HOUSE BILL 1910

5 By: Representatives Ingram, Lindsey, Barnett  
6 By: Senator D. Johnson  
7  
8

## For An Act To Be Entitled

10 AN ACT TO MAKE CHANGES TO THE EQUITY INVESTMENT  
11 INCENTIVE TAX CREDIT; TO ENCOURAGE THE CREATION  
12 OF REGIONAL OR COMMUNITY-BASED ALLIANCE FUNDS; TO  
13 MAKE TECHNICAL CORRECTIONS; TO SPECIFY THAT THE  
14 DECISION TO AWARD A TAX CREDIT IS THE JOINT  
15 RESPONSIBILITY OF THE ARKANSAS ECONOMIC  
16 DEVELOPMENT COMMISSION, THE ARKANSAS SCIENCE AND  
17 TECHNOLOGY AUTHORITY, AND THE ARKANSAS  
18 DEVELOPMENT FINANCE AUTHORITY; AND FOR OTHER  
19 PURPOSES.  
20

## Subtitle

21 AN ACT TO ENCOURAGE THE CREATION OF  
22 REGIONAL OR COMMUNITY-BASED ALLIANCE  
23 FUNDS AND TO MAKE TECHNICAL CORRECTIONS  
24 TO THE EQUITY INVESTMENT INCENTIVE TAX  
25 CREDIT.  
26  
27  
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
30

31 SECTION 1. Arkansas Code § 15-4-3302 is amended to read as follows:

32 15-4-3302. Equity investment incentives – Creation – Purpose – Tax  
33 credit.

34 (a) Equity investment incentives in the form of tax credits to  
35 persons, ~~or companies,~~ or regional or community-based alliance funds  
36 investing in certain types of eligible businesses are created.



1 (b) The equity investment incentives shall:

2 (1) Encourage capital investment in certain types of businesses  
3 including:

4 (A) Early-stage businesses and start-up businesses in this  
5 state;

6 (B) Businesses paying wages in excess of prevailing wages  
7 in the state or the county where the company is located; and

8 (C) Businesses that are invested in by venture capital  
9 funds and regional or community-based alliance funds; ~~and~~

10 (2) Create new jobs; and

11 (3) Encourage the formation of regional or community-based  
12 alliance funds.

13 (c)(1) An equity investment incentive tax credit is created that shall  
14 be equal to ~~thirty three and one third percent (33 1/3%)~~ fifty percent (50%)  
15 of the approved amount invested by an investor in an eligible business, as  
16 identified in § 15-4-3303(a).

17 (2) A tax credit not to exceed fifty thousand dollars (\$50,000)  
18 is created that shall be equal to one hundred percent (100%) of the approved  
19 amount of start-up organizational and educational costs associated with  
20 forming a regional or community-based alliance fund, as identified in § 15-4-  
21 3303(b).

22 (3) The tax credit, if awarded, is available to the investor.

23  
24 SECTION 2. Arkansas Code § 15-4-3303 is amended to read as follows:

25 15-4-3303. Eligibility for equity investment incentive.

26 (a) Eligibility for the equity investment incentive tax credit under  
27 ~~this subchapter~~ § 15-4-3302(c)(1) is limited to investments in:

28 (1) ~~Targeted businesses as defined in § 15-4-2703(43)~~ A business  
29 in a targeted business sector under § 15-4-2703(43)(A) that pays not less  
30 than one hundred fifty percent (150%) of the lesser of the county average  
31 wage or the state average wage; ~~or~~

32 (2) A nonretail business identified by the Executive Director of  
33 the Arkansas Economic Development Commission as the type of business targeted  
34 for recruitment, retention, or growth within the state that:

35 (A) Pays not less than one hundred fifty percent (150%) of  
36 the lesser of the county average wage or the state average wage; and

1                   (B) Has its corporate headquarters located in this state;  
2 or

3                   ~~(2)(3) Businesses that receive~~ A business that receives  
4 assistance in the form of equity investments from capital investment funds  
5 that target early-stage businesses and start-up businesses, if the business:

6                   (A) Pays not less than one hundred fifty percent (150%) of  
7 the lesser of the county average wage or the state average wage; and

8                   (B) Meets at least two (2) of the following conditions:

9                   ~~(i) The business is in one (1) of the business~~  
10 ~~sectors set forth in § 15-4-2703(43)(A)(i)-(vi);~~

11                   ~~(ii)~~ (i) The business is identified in a local or  
12 regional economic development plan as the type of business targeted for  
13 recruitment, retention, or growth within the community or region;

14                   ~~(iii)~~ (ii) The business is supported by a resolution  
15 of the city council or quorum court in the municipality or county in which  
16 the business is located or plans to locate;

17                   ~~(iv)~~ (iii) The business is supported by business  
18 incubators certified under § 26-51-815(d);

19                   ~~(v)~~ (iv) The business is supported by federal small  
20 business innovation research grants; or

21                   ~~(vi)~~ (v) The business is supported by technology  
22 development or seed capital investments made by instrumentalities of the  
23 state.

24                   (b)(1) Eligibility for the tax credit under § 15-4-3302(c)(2) is  
25 limited to an approved regional or community-based alliance fund that is:

26                   (A) A for-profit investment company eligible to do  
27 business in this state;

28                   (B) Formed for the purposes of making investments in:

29                   (i) A qualified business primarily located in a  
30 designated community, municipality, or county as defined by the regional or  
31 community-based alliance fund; and

32                   (ii) Conjunction with other investment funds to make  
33 investments in qualified companies located in Arkansas;

34                   (C) Supported by a resolution from the city council or  
35 quorum court in the municipality or county which have been identified as the  
36 designated geographical area for investment by the regional or community-

1 based alliance fund; and

2 (D) Formed by not less than three (3) citizens or an  
 3 organization in the designated community, municipality, or county that has:

4 (i) Significant business leadership experience or  
 5 meaningful exposure covering multiple businesses and industries; and

6 (ii) Strong background in corporate finance and  
 7 experience in working with or implementing business models that efficiently  
 8 utilize capital.

9 (2) A regional or community-based alliance fund seeking a tax  
 10 credit under § 15-4-3302(c)(2) shall be required to:

11 (A) Hold any investment in a qualified company for not  
 12 less than four (4) years;

13 (B) Reinvest any returns from qualified investments back  
 14 into the regional or community-based alliance fund if those returns are  
 15 collected within four (4) years of initial investment;

16 (C) Hold a diversified portfolio of investments with one  
 17 (1) investment equaling not more than twenty percent (20%) of the total  
 18 capitalization of the regional or community-based alliance fund; and

19 (D) Secure finances sufficient for the purpose of  
 20 offsetting initial organizational costs associated with the formation of the  
 21 regional or community-based alliance fund. Specifically, these finances  
 22 should compensate for but should not be limited to:

23 (i) The cost of hiring legal counsel associated with  
 24 establishing the organization and governance of the regional or community-  
 25 based alliance fund;

26 (ii) The cost of hiring or contracting with a  
 27 qualified group or individual to manage the regional or community-based  
 28 alliance fund;

29 (iii) The cost of a security-related counsel,  
 30 including the formation of a private placement memorandum; and

31 (iv) Any other costs associated with the  
 32 organization and establishment of the regional or community-based alliance  
 33 fund.

34 (3) Specific requirements set forth jointly by the Arkansas  
 35 Economic Development Commission, Arkansas Development Finance Authority, and  
 36 Arkansas Science and Technology Authority must be met by the applying

1 regional or community-based alliance fund.

2 ~~(b)(1)(c)(1)~~ The award of the equity investment incentive tax credit  
 3 to a qualified business under ~~subsection~~ subsections (a) and (b) of this  
 4 section shall be determined jointly ~~be~~ at the discretion of the Executive  
 5 Director of the Arkansas Economic Development Commission, the President of  
 6 the Arkansas Development Finance Authority, and the President of the Arkansas  
 7 Science and Technology Authority.

8 (2) Only cash investments shall qualify for the equity  
 9 investment incentive tax credit under this subchapter.

10 (3) A business that seeks eligibility for an equity investment  
 11 incentive tax credit under this subchapter shall sign an equity investment  
 12 incentive agreement with the commission.

13  
 14 SECTION 3. Arkansas Code § 15-4-3304 is amended to read as follows:  
 15 15-4-3304. Application for an equity investment incentive tax credit.

16 (a)(1) A business that seeks eligibility for an equity investment  
 17 incentive tax credit under ~~this subchapter~~ § 15-4-3302(c)(1) shall file an  
 18 application with the Arkansas Economic Development Commission.

19 ~~(b)(2)~~ The application shall include:

20 ~~(1)(A)~~ A business plan describing the proposed business for  
 21 which an equity investment incentive tax credit is sought;

22 ~~(2)(B)~~ A projection of the amount of capital being sought for  
 23 the proposed business; and

24 ~~(3)(C)~~ Other information requested jointly by the Executive  
 25 Director of the Arkansas Economic Development Commission, the President of  
 26 the Arkansas Development Finance Authority, and the President of the Arkansas  
 27 Science and Technology Authority.

28 (b)(1) A regional or community-based alliance fund that intends to  
 29 invest in a qualified business as defined by § 15-4-3303(a) and seeks to  
 30 qualify for the tax credit under § 15-4-3302(c)(2) shall file an application  
 31 with the Arkansas Economic Development Commission.

32 (2) The application shall include:

33 (A) A business plan describing the proposed regional or  
 34 community-based alliance fund;

35 (B) A projection of the amount of capital being sought for  
 36 the proposed regional or community-based alliance fund;

1 (C) A projection of the total organizational and  
 2 educational costs associated with forming the proposed regional or community-  
 3 based alliance fund;

4 (D) A strategy for garnering commitments for the projected  
 5 amount of capital being sought for the regional or community-based alliance  
 6 fund; and

7 (E) Other information requested jointly by the Executive  
 8 Director of the Arkansas Economic Development Commission, the President of  
 9 the Arkansas Development Finance Authority, and the President of the Arkansas  
 10 Science and Technology Authority.

11 (c)(1)(A) The commission shall gather information necessary to  
 12 determine the eligibility of a business that seeks an equity investment  
 13 incentive tax credit under § 15-4-3302(c)(1) and process the application.

14 (B) The commission shall gather information necessary to  
 15 determine the eligibility of a regional or community-based alliance fund that  
 16 seeks qualification for the tax credit under § 15-4-3302(c)(2) and process  
 17 the application.

18 (2)(A) The commission shall share the application and all  
 19 information concerning the business or regional or community-based alliance  
 20 fund with the Arkansas Development Finance Authority and the Arkansas Science  
 21 and Technology Authority for review and concurrence on whether an equity  
 22 investment incentive is offered to the business.

23 ~~(B) The Arkansas Science and Technology Authority shall~~  
 24 ~~decide whether an equity investment incentive shall be offered to the~~  
 25 ~~business.~~

26 (d)(1) If a business is notified of approval of an application for an  
 27 equity investment incentive tax credit under § 15-4-3302(c)(1), the business  
 28 shall sign an equity investment incentive agreement with the commission.

29 (2) After the equity investment incentive agreement has been  
 30 signed by the business and the commission, the business may solicit investors  
 31 and offer the equity investment incentive tax credit to the investors.

32 (3) If a regional or community-based alliance fund is notified  
 33 of approval for the tax credit under § 15-4-3302(c)(2), the regional or  
 34 community-based alliance fund shall sign an incentive agreement with the  
 35 commission.

36 (e)(1) For the equity investment tax credit under § 15-4-3302(c)(1) to

1 be awarded to an investor, the eligible business shall verify that all  
 2 conditions to the award of an equity investment incentive tax credit stated  
 3 in the equity investment incentive agreement have been met within the time  
 4 set forth in the agreement.

5 (2) For the tax credit under § 15-4-3302(c)(2) to be awarded to  
 6 a regional or community-based alliance fund, the eligible regional or  
 7 community-based alliance fund shall verify that all conditions to the award  
 8 of the tax credit stated in the incentive agreement have been met within the  
 9 time set forth in the agreement.

10  
 11 SECTION 4. Arkansas Code § 15-4-3305(a) and (b), concerning an award  
 12 of an equity investment incentive tax credit, is amended to read as follows:

13 (a) A person who purchases an equity interest in a qualified business  
 14 under § 15-4-3303(a) or invests in a qualified regional or community-based  
 15 alliance fund under § 15-4-3303(b) in any of the calendar years ~~2007—2019~~  
 16 2009 - 2019 is entitled to a credit against any state income tax liability  
 17 that may be imposed on the person for any tax year commencing on or after the  
 18 date of the purchase.

19 (b) The credit against state income tax liability shall be determined  
 20 in the following manner:

21 (1) ~~The~~ If approved under § 15-4-3303(a), the credit shall not  
 22 ~~exceed thirty three and one third percent (33 1/3%)~~ fifty percent (50%) of  
 23 the actual purchase price paid for the equity interest to the business, less  
 24 any fees or commissions to underwriters or sales agents paid by the business;

25 (2) If approved under § 15-4-3303(b), the credit shall not  
 26 exceed one hundred percent (100%) of the actual costs incurred through  
 27 forming a regional or community-based alliance fund;

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

32 ~~(3)(A)~~ (4)(A) Any credit in excess of the amount allowed by  
 33 subdivision ~~(b)(2)~~ (b)(3) of this section for any one (1) tax year may be  
 34 carried forward and applied against Arkansas state income tax for the next-  
 35 succeeding tax year and annually thereafter for a total period of nine (9)  
 36 years next succeeding the year in which the equity interest in a business was

1 purchased, subject to the provisions of subdivision ~~(b)(2)~~ (b)(3) of this  
2 section or until the credit is exhausted, whichever occurs first.

3 (B) In no event may the credit allowed by this section be  
4 allowed for any tax year ending after December 31, 2028; and

5 ~~(4)(5)~~ An original purchaser of equity interests who seeks to  
6 qualify for the income tax credit or premium tax credit provided in this  
7 section shall obtain and attach to the income tax return or premium tax  
8 return for the years the credit is claimed a certified statement from the  
9 business stating:

10 (A) The name and address of the original purchaser;

11 (B) The tax identification number of the person entitled  
12 to the credit;

13 (C) The original date of purchase of the equity interest;

14 (D) The number and type of equity interests purchased;

15 (E) The amount paid by the original purchaser for the  
16 equity interest;

17 (F) The amount of the tax credit associated with the  
18 purchase of the equity interest; and

19 (G) The amount of dividends and distributions previously  
20 paid by the business to the purchaser.

21  
22 SECTION 5. Arkansas Code § 15-4-3306 is amended to read as follows:  
23 15-4-3306. Rules.

24 The Arkansas Economic Development Commission, Arkansas Development  
25 Finance Authority, and Arkansas Science and Technology Authority shall  
26 jointly promulgate guidelines and rules to implement this subchapter.