

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: H1/24/11 H1/31/11 H2/1/11 H3/2/11

2 88th General Assembly

# A Bill

3 Regular Session, 2011

HOUSE BILL 1118

4

5 *By: Representatives Pennartz, Tyler, Williams, Allen, S. Malone, D. Altes, McLean, Hopper, Leding*

6 *By: Senator Files*

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## For An Act To Be Entitled

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

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15

## Subtitle

16

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

21

22

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

23

24

25

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

26

27

Subchapter 24 - Arkansas Central Business Improvement District Rehabilitation and Development Investment Tax Credit Act.

28

29

26-51-2401. Title.

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

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26-51-2402. Purpose.

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The purpose of this subchapter is to encourage economic development

36



1 within central business improvement districts by promoting the rehabilitation  
2 and development of structures within the central business improvement  
3 districts.

4  
5 26-51-2403. Definitions.

6 As used in this subchapter:

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

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

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

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

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

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

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

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

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

33 (8) "Qualified project" means eligible central business  
34 improvement district property that has met the requirements of § 26-51-  
35 2404(b) and has been approved for rehabilitation or development by the  
36 governing body of the central business improvement district where the

1 eligible central business improvement district property is located;

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

6 (B) "Qualified rehabilitation or development expenditures"  
7 does not include:

8 (i) The cost of acquiring the eligible central  
9 business improvement district property or *real estate licensee's* fees  
10 associated with the eligible central business improvement district property;

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

13 (iii) Insurance costs;

14 (iv) Costs of landscaping; or

15 (v) Sales and marketing costs; and

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

19  
20 26-51-2404. Qualified project.

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

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

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

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

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

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

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

9           (6) The qualified rehabilitation or development expenditures for  
10 the project must be greater than thirty thousand dollars (\$30,000).

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

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

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

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

25  
26           26-51-2405. Eligibility certificate.

27           (a) After a property to be rehabilitated or developed is designated a  
28 qualified project under § 26-51-2404 and the taxpayer completes the  
29 rehabilitation or development work, the taxpayer shall submit to the  
30 governing body of the central business improvement district where the  
31 eligible central business improvement district property is located all  
32 documentation and forms required by the governing body of the municipality  
33 and the governing body of the central business improvement district to verify  
34 that the qualified project has been completed.

35           (b) If the governing body of the central business improvement district  
36 determines that the qualified project has been successfully completed, the

1 governing body of the central business improvement district shall issue an  
2 eligibility certificate.

3 (c)(1) If the taxpayer is dissatisfied with the determination made by  
4 the governing body of the central business improvement district under  
5 subsection (b) of this section, the taxpayer may request that a review of  
6 that determination be made by the governing body of the municipality.

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

11 (B) The decision of the governing body of the  
12 municipality is a final decision.

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

16 (1) The name and address of the taxpayer;  
17 (2) The taxpayer identification number;  
18 (3) The date of issuance of the eligibility certificate;  
19 (4) The amount of the eligibility certificate; and  
20 (5) Any other information as determined necessary by the  
21 department.

22  
23 26-51-2406. The projected rehabilitation or development expenditures.

24 (a) The projected qualified rehabilitation or development expenditures  
25 must occur during a period not to exceed eighteen (18) months.

26 (b) For the rehabilitation or development of an existing structure,  
27 the projected qualified rehabilitation or development expenditures must equal  
28 or exceed the adjusted basis of the existing structure, excluding the land,  
29 before the qualified rehabilitation or development work begins.

30  
31 26-51-2407. Investment tax credits.

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

36 (b) The investment tax credit is equal to *twenty-five percent (25%) of*

1 qualified rehabilitation or development expenditures incurred for a qualified  
2 project up to the first:

3 (1) Five hundred thousand dollars (\$500,000) on income-producing  
4 property; or

5 (2) Two hundred thousand dollars (\$200,000) on nonincome-  
6 producing property.

7 (c)(1) The investment tax credit for a qualified project covering  
8 income-producing eligible central business improvement district property  
9 shall be taken in the tax year in which the eligible central business  
10 improvement district property is placed in service.

11 (2) The investment tax credit for a qualified project covering  
12 residential eligible central business improvement district property or other  
13 nonincome-producing eligible central business improvement district property  
14 shall be taken in the tax year the qualified project is completed.

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

20 (e)(1) The Department of Finance and Administration shall maintain  
21 an ongoing record of the eligibility certificates awarded each fiscal year.

22 (2) The department shall only issue investment tax credits up to  
23 four million dollars (\$4,000,000) in any one (1) fiscal year.

24 26-51-2408. Procedure to claim the investment tax credit.

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

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

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

35  
36 26-51-2409. Credits exceeding tax liability – Assignment.

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

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

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

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

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

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

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

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

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

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

33       (4) An investment tax credit granted to a partnership, a limited  
34 liability company taxed as a partnership, or multiple owners of eligible  
35 central business improvement district property shall be passed through to the  
36 partners, members, or owners respectively on a pro rata basis or pursuant to

1 an executed agreement between or among the partners, members, or owners  
2 documenting an alternative distribution method.

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

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

13  
14 26-51-2410. Fees.

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

18 (b) The fee collected under subsection (a) of this section by  
19 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 26-51-2411. Enforcement.

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

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

32 (b) A fee collected under § 26-51-2204 by the governing body of the  
33 central business improvement district shall be deposited into the treasury  
34 cash fund of the governing body of a central business improvement district  
35 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 a taxpayer 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 investment tax credits taken in excess of the  
6 investment tax credit allowed by this subchapter.

7  
8 26-51-2412. Effective date.

9 (a) This act is effective for tax years beginning on and after January  
10 1, 2012, and expires December 31, 2017.

11 (b) An unused investment tax credit under this act that is earned  
12 before the end of the 2017 tax year may be carried forward on an income tax  
13 return for up to five (5) 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