

15-4-1201. Title.

This subchapter shall be referred to and may be cited as the "County and Regional Industrial Development Company Act".

15-4-1202. Definitions.

As used in this subchapter, unless the context clearly requires otherwise:

- (a) "Board" means the State Banking Board;
- (b) "Commissioner" means the Bank Commissioner of the State of Arkansas;
- (c) "Company" means a county or regional industrial development corporation or limited liability company authorized to be organized under the provisions of this subchapter;
- (d) "Financial institution" means any banking corporation or institution, trust company, savings bank, savings and loan association, insurance company, or related corporation, partnership, foundation, or other institution, engaged in lending or investing funds;
- (e) "Impaired" means, for the purposes of § 15-4-1228 that the capital of the Company has been reduced to fifty thousand dollars (\$50,000) or less;
- (f) "Loan limit" means, for any member, the maximum amount permitted to be outstanding at any one (1) time on loans made by such member to the Company, as determined under § 15-4-1218(b)(3);
- (g) "Member" means any financial institution authorized to do business in the State of Arkansas which may undertake to lend money to a Company upon its call and in accordance with the provisions of § 15-4-1218;
- (h) "Person" includes all natural persons and legal entities;
- (i) "Region" means any compact area comprised of not less than three (3) nor more than fifteen (15) contiguous counties within the State of Arkansas;
- (j) "Securities Commissioner" means the Securities Commissioner of the State of Arkansas; and
- (k) "Unit of interest" means a participation in the profits interests of a limited liability company so that the total of all units of interest in a limited liability company shall equal one hundred percent (100%) of the profits interests in the limited liability company.

15-4-1203. Construction of laws.

- (a) This subchapter shall be construed liberally.
- (b) The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

15-4-1204. Application for preliminary approval.

Any five (5) or more qualified natural persons, who shall be bona fide residents of the same county or region in this state to be served by the proposed Company and who desire to associate themselves for the purpose of establishing and operating a Company may subscribe, acknowledge, and file with the Commissioner for preliminary approval proposed articles of incorporation, in the case of a corporation, and articles of organization and operating agreement, in the case of a limited liability Company, in duplicate, as authorized by § 15-4-1212.

15-4-1205. Preliminary approval.

- (a) If the Commissioner is satisfied that the applicants are bona fide residents of the county or region to be served by the proposed Company, that the applicants have the confidence of their respective communities, that, in the case of a regional Company, the proposed region constitutes a reasonably compact area with similar economic development needs, that public convenience and necessity require a Company, and that the proposed articles of incorporation or articles of organization and operating agreement conform to the provisions of § 15-4-1211, the Commissioner shall issue his or her certificate approving the articles of incorporation or articles of organization and operating agreement and authorizing the applicants to proceed with the organization of the Company.
- (b) The Commissioner shall not refuse a certificate to a regional Company solely because one (1) or more county Companies have been approved for the counties comprising the region. Provided, however, only one (1) county industrial development Company may be organized to serve in each individual county.

15-4-1206. Organization.

Upon receipt of such certificate of preliminary approval, the applicants may proceed to complete the organization of the Company, to obtain subscriptions for and payment of its stock or limited liability units of interest, and to do all other things necessarily incidental to its transacting business.

15-4-1207. Liability of directors, officers, managers and members.

The directors and officers of a corporation organized under the provisions of this subchapter and the managers and members of a limited liability company organized under the provisions of this subchapter shall not be responsible for losses of assets of the Company unless the losses shall have been occasioned by the willful misconduct of such directors, officers, managers or members.

15-4-1208. Certificate of organization.

- (a) When the applicants shall have completed the organization of the proposed Company, they shall file with the Bank Commissioner a certificate of organization executed by the chief executive officer of the Company, attested by its chief financial officer, and with its seal affixed thereto, certifying:
 - (1) The names and addresses of all of its subscribers of stock or units of interest of a limited liability company, the number of shares subscribed or the amount of units of interest subscribed in the case of a limited liability company, and the number of shares fully paid for by each in the case of a corporation or the amount of units of interest fully paid for by each in the case of a limited liability company;
 - (2) The total number of shares of stock or units of interest of a limited liability company subscribed, but not fully paid for;
 - (3) The total number of shares of stock or units of interest paid in full;
 - (4) The name and address of the depository, or the names and addresses of the depositories, if more than one (1), holding on deposit the funds of the Company; and
 - (5) The names and addresses of the officers, directors, and members of the executive committee, if any, of a corporation and the names and addresses of the managers and members of the management committee of a limited liability company.
- (b) The said certificate of organization of applicant shall be accompanied by the certificate of the named depository, or by the certificates of the named depositories, if more than one (1), certifying the amount of the funds on deposit to the credit of the Company.
- (c) The said certificate of organization shall be accompanied, also, by any bylaws or by any regulations which may have been adopted by the directors of a corporation or the operating agreement of a limited liability company.

15-4-1209. Final investigation and approval by the board.

- (a) Immediately upon the filing of the certificate of organization by the applicants, the Commissioner shall submit to the Board the proposed articles of incorporation, articles of organization and operating agreement, as appropriate, and the certificate of organization of the applicants. As soon as practicable thereafter, if the Board shall, from the best sources of information at its command, determine that:
 - (1) Public convenience and necessity continue to require the Company;
 - (2) The holders of the fully paid common stock of a corporation or units of interest of a limited liability company of the company are at least twenty (20) in number;
 - (3) Not less than one hundred thousand dollars (\$100,000) of common stock or units of interest have been subscribed and fully paid for;
 - (4) No single stockholder nor related group of stockholders owns more than ten percent (10%) of the voting stock in the case of a corporation or no single member nor related group of members owns more than ten percent (10%) of the units of interest in the case of a limited liability company;
 - (5) The bylaws submitted, if any, or the operating agreement are in conformity with the articles of incorporation or articles of organization and the provisions of this subchapter, and not contrary to the laws of the state, and are otherwise satisfactory; it shall direct the Commissioner to issue to the applicants a certificate of incorporation or certificate of organization in such form as it may prescribe.
- (b)
 - (1) The Commissioner shall also return to the applicants one (1) of the copies of articles of incorporation or articles of organization theretofore submitted to the Commissioner by the applicants, upon which copy he shall have endorsed the fact of the issuance by him of such certificate of incorporation or certificate of organization.
 - (2) If bylaws, regulations or the operating agreement are submitted and are found to be satisfactory by the Board, the Commissioner shall also issue his certificate of approval thereof.

§ 15-4-1210. Commencement and continuation of existence.

- (a) Upon the issuance of the certificate of incorporation or certificate of organization by the Commissioner, the existence of the Company shall begin.

- (b) The certificate of incorporation or certificate of organization shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the applicants have been complied with, and that the Company has been organized under this subchapter.
- (c) A copy of the articles of incorporation or articles of organization so endorsed by the Commissioner, as prescribed in § 15-4-1209, shall be filed for recordation in the office of the county clerk in the county in which the principal office of the Company is located and a copy shall be delivered to the director of the Department of Finance and Administration.
- (d) The Company shall pay to the Commissioner in semi-annual billings four hundred dollars (\$400) per year to establish and continue its existence and good standing under this subchapter.

15-4-1211. Articles of incorporation or articles of organization.

The articles of incorporation for any corporation or the articles of organization of any limited liability company organized under the provisions of this subchapter shall state:

- (a) The name of the Company, which shall include the words "County Industrial Development Company" if the proposed Company is to serve a single county, or "Regional Industrial Development Company" if the proposed Company is to serve a region larger than a single county, and such designation as may be appropriate to distinguish it from any subsequent Company which may be organized under the provisions of this subchapter, and the name shall be such as to distinguish it from any other corporation, limited liability company, limited partnership, limited liability partnership and limited liability limited partnership organized and existing under the laws of the State of Arkansas as evidenced by the Arkansas Secretary of State in writing;
- (b) The purpose for which the Company is formed;
- (c) The period of duration of the Company, which for a corporation may be perpetual or limited but which for a limited liability company must be for a stated term;
- (d) The address of its principal office and the name and address of its agent upon whom process may be served;
- (e) The total number of shares of common stock which the corporation is authorized to issue, which number shall be not less than one hundred (100) shares of common stock, having a par value of one hundred dollars (\$100) each in the case of a corporation or the total units of interest in the limited liability company that the limited liability company is authorized to issue, which number shall not be less than one hundred (100) units of interest, having a stated value of one hundred dollars (\$100) each;

- (f) The total number of shares of stock of any other class or distinction which a corporation is authorized to issue and its par value, if any, thereof in the case of a corporation or the total number of units of other interests in a limited liability company that a limited liability company is authorized to issue and the stated value and preferences or limitations, if any, thereof;
- (g) A provision stating that no stockholder or member shall have preemptive rights with respect to any additional equity issued by the Company or with respect to any debt issued by the Company;
- (h) A provision stating that no stockholder shall be entitled to own more than ten percent (10%) of the total number of shares of voting stock issued at any time or that no member shall be entitled to own more than ten percent (10%) of the total units of interest of a limited liability company issued at any time;
- (i) In the case of a corporation, the number of directors, not less than six (6) nor more than fifteen (15), to be elected at the annual meeting of the holders of stock entitled to vote for the election of directors, the requirement, in the case of a regional corporation, that at least one (1) director shall be a resident of each county comprising the region and a prohibition of more than one-third (1/3) of the directors being residents of any single county, the terms of office of the directors, and any provisions desirable for staggering their terms of office, except that the terms of office of directors and other matters pertaining to the directors may be provided in the bylaws of the corporation;
- (j) In the case of a limited liability company, the number of members of the management committee, not less than six (6) nor more than fifteen (15) to be elected at the annual meeting of the members of the limited liability company entitled to vote for the election of the members of the management committee, the requirement, in the case of a regional limited liability company, that at least one (1) member of the management committee shall be a resident of each county comprising the region and a prohibition of more than one-third (1/3) of the members of the management committee being residents of any single county, the terms of office of the members of the management committee; and any provisions desirable for staggering their terms of office, except that the terms of office of members of the management committee and other matters pertaining to the members of the management committee may be provided in the operating agreement of the limited liability company;
- (k) The names and addresses of the incorporators or organizers, who shall constitute the board of directors or the management committee and manage the affairs of the Company until the first meeting of the holders of the common stock or until the first meeting of the members of the limited liability company;

- (l) In the case of a limited liability company, such entity shall be a manager managed limited liability company and shall be governed by a management committee elected by the holders of units of interest of the limited liability company. The management committee shall appoint a chief operating officer, a chief financial officer and such other officers as it deems appropriate;
- (m) In the case of a corporation, the shares of the corporation shall be issued at such prices and with such rights and preferences as stated in the articles of incorporation, bylaws and as stated by the board of directors. In the case of a limited liability company, the ownership of the limited liability company shall be represented by units of interest that shall be issued at such prices and with such rights and preferences as stated in the articles of organization, operating agreement or stated by the management committee of the limited liability company. Stock and units of interest may be issued for consideration consisting of money paid, labor done, or property actually received but neither promissory notes nor the promise of future services shall constitute valid consideration. In all cases, shares or units of interest shall be issued at not less than the par value of one hundred dollars (\$100) per share or the stated value of one hundred dollars (\$100) per unit of interest; and
- (n) Any provisions, not inconsistent with law, which the incorporators or organizers may choose to insert, for the regulation of the business and the conduct of the affairs of the Company. It shall not be necessary to set forth in the articles of incorporation or the articles of organization or the operating agreement any of the Company powers enumerated in this subchapter.

15-4-1212. Amendment to articles of incorporation or articles of organization.

- (a) A Company organized under the provisions of this subchapter may amend its articles of incorporation or its articles of organization by a majority vote of the common stock, in the case of a corporation, or by a majority vote of the units of interest of a limited liability company represented in person or by proxy at any regular meeting, or at any special meeting of the holders of the common stock or members of the limited liability company called for that purpose.
- (b) The power to amend shall include the power to accomplish any desired change in the provisions of the articles of incorporation or articles of organization and to include any purpose, power, or provision authorized to be included in the original articles of incorporation or articles of organization or by later amendment to this subchapter.

- (c) Articles of amendment signed by the chief executive officer and attested by the secretary or an assistant secretary or another manager, certifying to such amendment and its lawful adoption, shall be executed, acknowledged, and filed with the Commissioner and, when approved by the Board, recorded with the certificate of the Commissioner approving the articles of amendment, in the same manner as the original articles of incorporation or articles of organization; and as soon as the Commissioner shall issue his certificate of amendment, the amendment or amendments shall be in effect.

15-4-1213. Management of Company.

- (a) Only the holders of common stock, through the board of directors, shall manage the affairs of a corporation. Only holders of units of interest in a limited liability company shall manage the affairs of a limited liability company. Each holder of common stock or each holder of a unit of interest in the limited liability company shall be entitled to one (1) vote, in person or by proxy, for each share of common stock or each unit of interest held by him and, in voting for the directors or management committee of the Company, shall be entitled to exercise the right of cumulative voting.
- (b) In the event of the transfer of shares of common stock or units of interest, whether by act of the holder, or by operation of law, the name or names of the proposed transferees shall be submitted to the directors of the corporation or the management committee of the limited liability company, and the directors or management committee may refuse to approve the transfer, in which event the Company shall have the option to purchase the shares of common stock or units of interest at par or stated value. Shares of common stock or units of interest so purchased shall be cancelled, and shares or units in lieu thereof may be reissued and sold by the Company. In the event that the directors or management committee do not purchase the shares of common stock or units of interest subject to transfer, the shares of common stock or units of interest then may be transferred without the approval of the directors or management committee.

15-4-1214. Powers of the Company.

- (a) The purposes of each Company organized under the provisions of this subchapter shall be:
 - (1) (A) To promote, stimulate, develop, and advance the business prosperity and economic welfare within the county or region wherein it is located and its citizens;
 - (B) To encourage and assist through loans, investments, or other business transactions in the location of new business and industry within that county or region, and to assist the growth and expansion of existing business and industry; and so

- (C) To stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of the county or region, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens within that county or region; and similarly
 - (2) To cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, technological, scientific, commercial, agricultural, and recreational development within that county or region; and
 - (3) To provide venture financing for the promotion, development, and conduct of all kinds of business activity within that county or region on terms and conditions that would not otherwise be available from existing financial institutions.
- (b) In furtherance of such purposes, each Company organized under this subchapter shall have power:
- (1) To sue and be sued, complain and defend, in its corporate or limited liability company name;
 - (2) To have perpetual succession, in the case of corporations, unless a limited period of duration is stated in its articles of incorporation;
 - (3) To adopt a Company seal, which may be altered at pleasure, and to use it, or a facsimile thereof, as permitted by law;
 - (4) Within the limitations hereinafter imposed, and in the manner hereinafter prescribed, to borrow money and otherwise contract indebtedness, to issue its bonds, notes, debentures, or other obligations therefor with or without security, and, if with security, to secure the payment thereof by mortgage, pledge, or deed of trust, on all or any part of its property, assets, revenues, or income;
 - (5) To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property, or any interest therein;
 - (6) To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property or assets;

- (7) To make loans to any qualifying person within its county or region and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith, consistent with the provisions of this subchapter;
- (8) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise to dispose of bonds, securities, or evidences of indebtedness created by any other corporation or corporations of this state, or any other state or government, or created by any individual, unincorporated association, limited liability company, limited partnership, general partnership, limited liability partnership, limited liability limited partnership, trust estate, improvement district, municipal, or governmental or municipal agency of any character;
- (9) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of any other corporation or corporations of this or any other state or government, subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the corporation may do business; and, while owner of such stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;
- (10) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the units of interest of limited liability companies, partnerships, joint ventures, or other business entities of this or any other state or government, subject to such restrictions and limitations, if any, as may be imposed by the laws of this or any other state in which the business entity may do business; and, while owner of such units of interest, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;
- (11) To make any and all contracts necessary or convenient for the exercise of the powers granted in this subchapter;
- (12) To elect or appoint officers, agents, and employees of the Company and to define their duties and fix their compensation;
- (13) To conduct its business and to have officers within or without the state;
- (14) To accept gifts or grants of money, service, or property, real or personal;
- (15) With the approval of the board of directors or management committee, by action of such persons, to make and alter bylaws and regulations, not inconsistent with the articles of incorporation or the articles of organization and operating agreement, or with the laws of this state, for the administration and regulation of the affairs of the Company;

- (16) To encourage and promote the cultural, industrial, technological, scientific, economic, and recreational development of the county or region wherein it is located;
- (17) To assist minority businesses in obtaining loans or other means of financial assistance. The terms and conditions of such loans or financial assistance, including the charges for interest and other services, will be consistent with the provisions of this subchapter. Efforts must be made to solicit for review and analysis proposed minority business ventures. Be it further provided, that basic loan underwriting standards will not be changed to inconsistently favor or disfavor minority persons or businesses, or both, from the intent of the Company's lending practices;
- (18) To do and perform any and all acts and things, and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the Company is organized.

15-4-1215. Dividends and distributions.

- (a) The directors of a corporation, subject to such limitations as may be set forth in the articles of incorporation or bylaws thereof, may declare dividends to the holders of its stock and make partial distribution of its capital surplus pursuant to the provisions of the Arkansas Business Corporation Act of 1987, beginning at § 4-27-101.
- (b) The management committee of a limited liability company, subject to such limitations as may be set forth in the articles of organization or operating agreement, may declare distributions to the holders of the units of interest in the limited liability company consistent with the provisions of the Small Business Entity Tax Pass Through Act, beginning at § 4-32-101.

15-4-1216. Bonds and notes of the Company.

- (a) Any company organized under the provisions of this subchapter may, from time to time as the conduct of its business requires, issue and sell at such price and on such terms as the board of directors or management committee shall determine, its bonds and notes not to exceed, in a total aggregate amount outstanding at any one (1) time, ten (10) times the total amount of its fully paid common stock or units of interest, its fully paid issued and outstanding preferred stock, if any, and the amount of its earned surplus in excess of a reserve set aside therefrom equal in amount to five percent (5%) of the aggregate total amount of loans of the Company outstanding at any one (1) time; provided, however, that the validity of the bonds and notes of the Company valued at the time of the issuance and delivery shall not thereafter be affected if in excess of such ratio.

- (b) The bonds and notes of the Company shall be in such form and denominations, shall have such dates and maturities, shall bear interest payable at such times and places within or without the state, shall contain such provisions as to registration of ownership, if registration is deemed desirable, all as the directors of a corporation or management committee of a limited liability company shall determine in conformity with the provisions of this subchapter, and shall be executed by the chief executive officer and chief financial officer of the Company and be sealed with the Company seal. In the event any of the officers whose signatures appear on any such obligation shall cease to be such officers before the delivery thereof, of, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until the delivery.
- (c) All bonds and notes of a Company issued under the provisions of this subchapter shall, unless otherwise limited by the express provisions thereof irrespective of the date of issue, be on a parity as to security and shall be secured by a lien on the entire assets of the Company, which said lien shall be a first lien and superior to all other debts and to all other encumbrances, of whatsoever nature on all of the assets of the Company.
- (d) The earned surplus of a corporation, in whole or in part, in the discretion of the directors of the corporation, may be invested as provided in the bylaws of the corporation, and retained in reserve to meet losses and contingencies of the corporation.
- (e) The undistributed earnings of a limited liability company, in whole or in part, in the discretion of the management committee of a limited liability company, may be invested as provided in the operating agreement of the limited liability company, and retained in reserves to meet losses and contingencies of the limited liability company.

15-4-1217. Authority of other corporations and financial institutions.

Notwithstanding any rule at common law or any provision of law or any provision in their respective articles of incorporation:

- (a) All domestic corporations, including nonprofit corporations and associations, organized for the purpose of carrying on business within this state, including, without implied limitation, any public utility, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, notes, securities, or other evidences of indebtedness created by or the shares of the common stock or the units of interest of, a Company organized under this subchapter, and while owners of said stock or units of interest to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;
- (b) All financial institutions are hereby authorized to become members of the Company and to make loans to the Company as provided herein;

- (c) A financial institution which does not become a member of the Company shall not be permitted to acquire any shares of the common stock or units of interest of the Company; and
- (d) Each financial institution which becomes a member of the Company is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, notes, securities, or other evidences of indebtedness created by or the shares of the common stock or the units of interest of, the Company and, while owners of said stock or units of interest, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the common stock of a corporation or units of interest of a limited liability company which may be acquired by any member pursuant to the authority granted herein shall not exceed ten percent (10%) of the loan limit of each member. The common stock or units of interest of a Company organized under this subchapter which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of common stock in corporations or units of interest in other business entities which such member may otherwise be authorized to acquire.

15-4-1218. Member financial institutions; loan limits.

- (a) Any financial institution may request membership in the Company by making application to the board of directors or management committee on such form and in such manner as said board of directors or management committee may require, and membership shall become effective upon the acceptance of such application by the board of directors or management committee.
- (b) Each member of the Company may make loans to the Company as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors or management committee, subject to the following conditions:
 - (1) All loan limits shall be established at the thousand-dollar amount nearest to the amount computed in accordance with the provisions of this section;
 - (2) No loan to a Company organized under this subchapter shall be made by members pursuant to call made by the Company if immediately thereafter the total amount of such loans will exceed ten (10) times the amount then paid in on the outstanding stock or units of interest of the Company, plus ten (10) times the earned surplus of a corporation less reserves or ten (10) times the undistributed earnings of a limited liability company less reserves;

- (3) The total amount outstanding on loans to a Company made by any member at any one (1) time, when added to the amount of the investment in the capital stock or units of interest of the Company then held by that member, shall not exceed the limitation on loans established by law or regulation applicable to the member or, in the absence of any such limitation, the amount approved by the board of directors or management committee for such member;
- (4) Each call made by the Company may be prorated among members of a Company in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by the member to the Company and the investment in capital stock of a corporation or units of interest in a limited liability company held by such member at the time of such call, and further reduced, in the case of a member which has assumed the obligation of a financial institution withdrawn from membership pursuant to § 15-4-1219(a)(2), by the balance of outstanding loans made to the Company by such financial institution; and
- (5) All loans to a Company by members shall be evidenced by bonds, debentures, notes, or other evidence of indebtedness of the Company, which shall be freely transferable at all times, and which shall bear interest at a rate which may be adjusted from time to time in a manner determined by the board of directors or management committee, which rate shall not be less than one-quarter of one percent (0.25%) in excess of the prime or base rate of interest prevailing at the time of the adjustment for commercial banks in the City of Little Rock on unsecured commercial loans.

15-4-1219. Withdrawal of members.

- (a) Membership in a Company shall be for an indeterminate period not to exceed the termination date of the Company stated in its articles of incorporation or articles of organization; provided, that:
 - (1) Upon written notice given to a Company five (5) years in advance, a member may withdraw from membership in the Company at the expiration date of the notice; or

- (2) In the event that a member, herein called a "constituent member", shall consolidate with, merge into, or sell all or substantially all of its property and assets to, another financial institution, herein called the "continuing institution", the board of directors or management committee may, in such manner as it determines, permit the withdrawal of the constituent member from membership in the Company if the continuing institution at the time of such withdrawal is a member and has assumed any obligation of the constituent member to make loans to the Company. If such continuing institution is not a member prior to the consolidation, merger, or sale, such assumed obligation shall be discharged at the time such continuing institution becomes a member.
- (b) A member shall not be obligated to make any loans to the Company pursuant to calls made either before or after the withdrawal of said member.

15-4-1220. Exemption for securities.

- (a) The stock, units of interest, notes, debentures, bonds, and all other securities or obligations issued by any Company organized and existing under the provisions of this subchapter shall be exempt from the provisions of the Arkansas Securities Act, beginning at § 23-42-101. Provided, however, that any Company organized and existing under the provisions of this subchapter shall not be exempt from the antifraud provisions of the Arkansas Securities Act, § 23-42-507, the criminal provisions for violation of such provisions found in § 23-42-104(a), and the civil remedies available for violation of such provisions found in § 23-42-106.
- (b) Notwithstanding the provisions of subsection (a) of this section, no Company may offer its stock, units of interest, notes, debentures, bonds, or other securities or obligations without filing a notice with the Securities Commissioner before the first offer of the securities to be sold. The filing shall state the terms of the offer and how the Company intends to comply with the antifraud provisions of the Arkansas Securities Act, and be accompanied with copies of any sales materials the Company will use in the offer of the securities. The filing shall be effective upon deposit with the Securities Commissioner. This filing requirement shall be applicable to the initial capitalization of the Company and any subsequent offer of stock, units of interest, notes, debentures, bonds or other securities or obligations or series thereof.
- (c) Failure of a Company to make the filing required by subsection (b) of this section shall be a basis for imposition of all remedies available to the Securities Commissioner for the offer and sale of unregistered and non-exempt securities under the Arkansas Securities Act.

15-4-1221. Obligations as negotiable instruments.

All bonds, notes, debentures, and other obligations of a Company authorized under and issued in compliance with the provisions of this subchapter shall be, and shall have, and are hereby declared to have, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state.

15-4-1222. Eligibility for certain investments.

Any city or town in this state, or any board, commission, or other authority duly established by ordinance of any such city or town, or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any such city or town, may invest any of its funds not immediately needed for its purposes in the bonds and notes of any Company organized under the provisions of this subchapter.

15-4-1223. Exemption from certain taxes.

- (a) County or regional industrial development companies shall be exempt from taxation under the Income Tax Act of 1929, beginning at § 26-51-101, and from the payment of any other income taxes levied by a county or a municipality. Dividends on stock or distributions with respect to units of interest of any such Company pursuant to § 15-4-1215 shall be exempt from all state, county, or municipal income tax. Interest on bonds, notes, or other obligations of any such Company issued under and in accordance with the provisions of this subchapter shall be exempt from all state, county, or municipal income taxes.
- (b) Corporations and limited liability companies shall file income tax returns each year at the time provided for the filing of corporate or partnership income tax returns, respectively.
- (c) A Company claiming exemption from income tax under this section shall attach to the return required in subsection (b) of this section a certification from the Commissioner stating that the Company has been incorporated or organized and is operating as a corporation or limited liability company in accordance with the provisions of this subchapter.

15-4-1224. Tax credit.

- (a) (1) The original purchaser of common stock of a corporation or a unit of interest of a limited liability company shall be entitled to a credit against any Arkansas income tax liability or premium tax liability which may be imposed on such purchaser for any tax year commencing on or after January 1, 1999, for common stock purchased from a corporation or units of interest of a limited liability company and retained during any of the calendar years 1999-2003. The credit shall be determined in the following manner:

- (A) The credit is an amount equal to thirty-three and one-third percent (33 1/3%) of the actual purchase price paid for the stock of a corporation to the corporation or units of interest of a limited liability company to the limited liability company, which shall include any fees or commissions to underwriters or sales agents paid by the Company; provided, however, that the total amount of fees and commissions to underwriters or sales agents for which a credit may be taken shall not exceed fifteen percent (15%) of the actual purchase price. Any fees or commissions in excess of fifteen percent (15%) of the total purchase price shall not be considered in calculating the amount of the credit determined hereunder. If any shares or units of interest, once purchased from the Company, are then sold or otherwise disposed of prior to five (5) years elapsing from the date of purchase, the maximum amount of any credit shall be reduced a pro rata amount. In addition, any distribution from the Company to the holder of the common stock or unit of interest that is not a dividend or distribution within the meaning of § 15-4-1215 shall be deemed a sale of that portion of the original purchase price of the common stock or unit of interest on the date of such distribution for application of the credit reduction calculated under subdivision (a)(1)(A) of this section;
- (B) In any one (1) tax year, the credit allowed by this section shall not exceed fifty percent (50%) of the net Arkansas state income tax or premium tax liability of the taxpayer after all other credits and reductions in tax have been calculated;
- (C) Any credit in excess of the amount allowed by subdivision (a)(1)(B) of this section for any one (1) tax year may be carried forward and applied against Arkansas state income tax or premium tax for the next-succeeding tax year and annually thereafter for a total period of three (3) years next succeeding the year in which the credit arose, subject to the provisions of subdivision (a)(1)(B) of this section, or until the credit is exhausted, whichever occurs first. Provided, however, that any credit arising under Act 1029 of 1991 shall be allowed to be carried forward to years past December 31, 1999, subject to the three-year carry forward rules of subdivision (a)(1)(C). In no event will the credit allowed by this section be allowed for any tax year ending after December 31, 2006;

- (D) Any original purchaser of common stock or units of interest who seeks to qualify for and maintain the income tax credit or premium tax credit provided in this section must obtain and attach to its annual income tax or premium tax return a certified statement from the Company issuing the common stock or units of interest stating:
 - (i) The name and address of the original purchaser;
 - (ii) The number of shares or units of interest purchased;
 - (iii) The amount paid by the original purchaser for the common stock or units of interest, specifying what portion of the original purchase price consisted of fees or commissions to the underwriter of sales agent;
 - (iv) The date of purchase of the common stock or units of interest;
 - (v) The number of shares or units of interest of the original purchase still owned by the original purchaser; and
 - (vi) The amount and date of distributions made from the Company to the purchase and whether or not such distributions are ones made pursuant to § 15-4-1215 hereof.
- (b) For the purpose of ascertaining the gain or loss from the sale or other disposition of common stock in a corporation or the units of interest in a limited liability company, the original purchaser of the common stock or the units of interest shall reduce his basis in the stock or units by the amount of the tax credits previously deducted under this section. The original purchaser's basis in the stock or units shall be further reduced by ten percent (10%) of the original purchase price for any shares of stock or units of interest sold or otherwise disposed of before five (5) years has elapsed from the date of purchase. This reduced basis shall be used by the original purchaser when calculating tax due under the Income Tax Act of 1929, beginning at § 26-51-101.

15-4-1225. Loan policy.

- (a) A Company organized under the provisions of this subchapter shall not lend money when credit is readily available on comparable terms elsewhere. Before granting a loan, the directors of a corporation or the management committee of a limited liability company shall endeavor so far as is reasonably possible to ascertain that reasonable opportunity to grant the loan has been given to the financial institutions of the state.
- (b) No Company organized under the provisions of this subchapter shall receive money on deposit.

- (c) The Company shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors or a majority of the management committee present at an authorized meeting of the directors or the management committee, exclusive of any director or member of the management committee who is an officer or director of the depository so designated.

15-4-1226. Supervision of Companies.

- (a) Each Company organized under the provisions of this subchapter shall be subject to the general supervision and control of the Commissioner. In addition to the other duties imposed upon them by law, the powers of the Commissioner are to:
 - (1) Make reasonable rules and regulations which may be necessary to regulate the safety and soundness of the Companies for making this subchapter effective;
 - (2) Conduct investigations which may be necessary to determine whether any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of the subchapter or of the laws of this state;
 - (3) Conduct any examinations, investigations, and hearings which may be necessary and proper for the efficient administration of the county and regional industrial development company laws of this state and to charge the Company for the expense of such examination, investigation or hearing at the rate of two hundred twenty-five dollars (\$225) per examiner per day or partial day; and
 - (4) Within the Commissioner's discretion classify as confidential certain records and information obtained by the State Bank Department when such matters are obtained from an investigation or examination by the department's staff; however, applications shall be public documents.
- (b) With respect to § 15-4-1220 herein, each Company organized under the provisions of this subchapter shall be subject to the specific regulation and control of the Securities Commissioner who shall have the authority to:
 - (1) Make reasonable rules and regulations which may be necessary for making § 15-43-1220 effective;
 - (2) Conduct investigations and hearings which may be necessary to determine whether any person has engaged in, or is about to engage in, any act or practice constituting a violation of § 15-4-1220 and to charge the Company for the expense of such investigation or hearing at the rate of two hundred twenty-five dollars (\$225) per investigator per day or partial day;

- (3) Conduct any examinations, investigations, and hearings which may be necessary and proper for the efficient administration and application of § 15-4-1220 to county and regional industrial development companies; and
- (4) Within the Securities Commissioner's discretion, classify as confidential certain records and information obtained by the Securities Commissioner when such matters are obtained from an investigation or examination by the department's staff.

15-4-1227. Dissolution of Company.

- (a) Any Company organized under this subchapter, after the payment in full and cancellation of all its notes, bonds, and other obligations issued under the provisions of this subchapter, or after the deposit in trust with the respective trustees designated in any deeds of trust given to secure the payment of any such obligations of a sum of money sufficient for the purpose, may dissolve by the vote of a majority of the common stock of a corporation or by the vote of a majority of the units of interest of a limited liability company, represented in person or by proxy, at any regular meeting, or at any special meeting of the holders of the common stock of a corporation or the holders of the units of interest of a limited liability company called for that purpose.
- (b) A certificate of dissolution shall be signed by the chief executive officer and attested by the chief financial officer, certifying to such dissolution and stating that they have been authorized to execute and file such certificate by a vote cast in person or by proxy by holders of a majority of the common stock of a corporation or by holders of a majority of the units of interest of a limited liability company.
- (c) The certificate of dissolution shall be executed, acknowledged, and filed and recorded in the same manner as the original articles of incorporation or articles of organization, and as soon as the Commissioner shall have accepted and endorsed on the certificate of dissolution his approval thereof, the Company shall be deemed to be dissolved.
- (d) Such Company shall, however, be continued for the purpose of paying, satisfying, and discharging any other existing liabilities or obligations, and collecting or liquidating its assets, and doing all other acts required to adjust and conclude its business and affairs, and may sue and be sued in its corporate or limited liability company name.
- (e) Any assets remaining after all liabilities or other obligations of the Company have been satisfied or discharged shall be distributed pro rata first among the then-holders, if any, of any stock of a corporation or holders of units of interest of a limited liability company entitled to a preference, and the remaining assets of the Company shall then be distributed, pro rata, among the then-holders of the common stock of a corporation or among the then-holders of the units of interest of a limited liability company not entitled to any such preferences.

- (f) A copy of the certificate of dissolution as accepted and endorsed by the Commissioner, as prescribed in § 15-4-1227(c), shall be filed for recordation in the office of the county clerk in the county in which the principal office of the Company is located and a copy shall be delivered to the director of the Department of Finance and Administration.

15-4-1228. Investigations by Commissioner or Securities Commissioner-Injunctions.

- (a) The Commissioner may investigate, either upon complaint or otherwise, when it appears that a county or regional industrial development Company is conducting its business in an unsafe and injurious manner or in violation of this subchapter, or the regulations promulgated thereunder by the Commissioner, or when it appears that any person is engaging in the business without being approved under the provisions of this subchapter.
- (b) The Securities Commissioner may investigate, either upon complaint or otherwise, when it appears that a county or regional industrial development company is offering its securities in violation of § 15-4-1220 hereof or is otherwise violating the provisions of Arkansas law that come under the jurisdiction of the Securities Commissioner.
- (c) (1) Subject to the jurisdictional provisions of subsections (a) and (b) of this section, whenever it appears, upon sufficient grounds or evidence satisfactory to the Commissioner or the Securities Commissioner, that any county or regional industrial development company has engaged in or is about to engage in any act or practice in violation of this subchapter or any rule or regulation or order hereunder, or the assets or capital of any county or regional industrial development company is impaired or the county or regional industrial development company's affairs are in an unsafe condition, the Commissioner or the Securities Commissioner may:
 - (A) Refer the evidence which is available concerning violations of this subchapter or any rule, regulation, or order hereunder, to the appropriate agency, who may, with or without such reference, institute the appropriate corrective action or proceedings; or
 - (B) Summarily order the county or regional industrial development company to cease and desist from the act or practice, during the time the Commissioner or Securities Commissioner may apply to the Chancery Court of Pulaski County to enjoin the act or practice and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. However, the Commissioner or the Securities Commissioner may, without issuing a cease and desist order, apply directly to the Chancery Court of Pulaski County for injunctive relief.

- (2) Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted, and a receiver or conservator may be appointed for the county or regional industrial development company or its assets.
 - (3) The court may not require the Commissioner or the Securities Commissioner to post a bond.
 - (4) In addition to any other remedy provided herein or under applicable law, the costs of the Commissioner or the Securities Commissioner incurred in successfully prosecuting violations of this subchapter may be imposed by the court as additional damages payable by the Company.
- (d) A copy of all reports of investigation or other proceedings conducted pursuant to this section shall be forwarded to the director of the Department of Finance and Administration.