

Title 15 Natural Resources and Economic Development  
Subtitle 1. Development Of Economic And Natural Resources Generally  
Chapter 5 Arkansas Development Finance Authority  
Subchapter 2 -- Arkansas Development Finance Authority Act -- Administration

A.C.A. § 15-5-207 (2012)

**15-5-207. Rights, powers, privileges, and duties of authority.**

**(a)** The Arkansas Development Finance Authority shall have such rights, powers, and privileges and shall be subject to such duties as provided by this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316

**(b)** Except as otherwise limited by this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316, the authority shall have the following powers:

**(1)** To sue;

**(2)** To be sued;

**(3)** To have a seal and alter the seal at its pleasure;

**(4)** To make and alter bylaws for its organization and internal management;

**(5)** To make and issue such rules and regulations as may be necessary or convenient in order to carry out the purposes of this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316;

**(6)** To acquire, hold, and dispose of real and personal property for its corporate purposes;

**(7)** To appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their compensation;

**(8)** To borrow money and to issue notes, bonds, and other obligations, whether or not the interest on which is subject to federal income taxation, and to provide for the rights of the lenders or holders thereof;

**(9)** To issue bonds on behalf of state agencies and political subdivisions;

**(10) (A)** To issue bonds to provide financing for a specific activity or particular project authorized herein or to provide on a pooled or consolidated basis financing for activities or projects authorized hereunder which shall be secured by and payable solely from the bonds, lease payments, or other obligations issued by or payable to the state agencies, political subdivisions of the state, or others for whose benefit the authority may issue bonds, and the security and sources of payments thereof.

**(B) (i)** The authority may also issue bonds for the purpose of generating investment earnings or other income.

**(ii)** The investment earnings or other income shall thereafter be used to finance activities or projects authorized in this section.

**(C)** Prior to the engagement of a financial institution to serve as trustee, paying agent, or in any fiduciary capacity in connection with any program, indenture, or general resolution of the authority, the authority shall request proposals for services, and the selection of the financial institution shall be made on the basis of the response to such a request that is the most economical and in the best interest of the authority;

**(11)** To purchase notes or participations in notes evidencing loans that are secured by mortgages or security interests and to enter into contracts in that regard, or to purchase accounts to finance working capital;

**(12) (A)** To make secured or unsecured loans, including loans made to financial institutions to secure loans made by the financial institutions to qualifying agricultural business enterprises, capital improvements, educational facilities, energy enterprises, health care facilities, housing developments, industrial enterprises, and short-term advance funding of local government obligations.

**(B)** Prior to the making of any loan for qualifying agricultural business enterprises or industrial enterprises, the loan transaction shall be recommended to the authority by a financial institution or investment banker;

**(13)** To sell mortgages and security interests at public or private sale, to negotiate modifications or alterations in mortgage and security interests, to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, contract, or other agreement, and to bid for and purchase property that was the subject of such a mortgage or security interest at any foreclosure or at any other sale, to acquire or take possession of any such property, and to exercise any and all rights as provided by law for the benefit or protection of the authority or mortgage holders;

**(14)** To collect fees and charges in connection with its loans, bond guaranties, commitments, and servicing, including, but not limited to, reimbursement of costs of financing as the authority shall determine to be reasonable and as shall be approved by the authority;

**(15)** To make and execute contracts for the servicing of mortgages acquired by the authority pursuant to this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316 and to pay the reasonable value of services rendered to the authority pursuant to those contracts;

**(16)** To accept gifts, grants, loans, and other aid from the federal government, the state or any state agency, or any political subdivision of the state, or any person or corporation, foundation, or legal entity and to agree to and comply with any conditions attached to federal and state financial assistance not inconsistent with the provisions of this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316;

**(17)** To invest moneys of the authority, including proceeds from the sale of any bonds, in such manner as the Board of Directors of the Arkansas Development Finance Authority shall determine, subject to any agreement with bondholders stated in the authorizing resolution, as defined in § 15-5-309, providing for the issuance of bonds;

**(18)** To procure insurance against any loss in connection with its programs, property, and other assets;

**(19)** To provide technical assistance and advice to the state, political subdivisions of the state, and local governing authorities and to enter into contracts with the state, political subdivisions of the state, and local governing authorities to provide such services. The state, political subdivisions of the state, and local governing authorities are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

**(20) (A)** To contract, cooperate, or join with any one (1) or more other governments or public agencies or with any political subdivisions of the state or with the United States to perform any administrative service, activity, or undertaking that any such contracting party is authorized by law to perform, including the issuance of bonds.

**(B)** An "intergovernmental agreement" is defined as any service contract entered into by a contracting party that establishes a permanent perpetual relationship thereby obligating the financial resources of the contracting party.

**(C)** The term "permanent or perpetual relationship" is defined for purposes of this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316 as any agreement exhibiting an effective duration greater than one (1) year, twelve (12) calendar months, or an agreement exhibiting no fixed duration but when the apparent intent of such an agreement is to establish a permanent or perpetual relationship. Such intergovernmental agreements shall be authorized by ordinance or resolution of the contracting party. Any intergovernmental agreement enacted may provide for the contracting party to:

- (i)** Cooperate in the exercise of any function, power, or responsibility;
- (ii)** Share the services of any officer, department, board, employee, or facility; and
- (iii)** Transfer or delegate any function, power, responsibility, or duty.

**(D)** An intergovernmental agreement shall be authorized and approved by the governing body of each party to the agreement, shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties, and shall specify the following:

- (i)** Its duration;
- (ii)** The precise organization, composition, and nature of any separate legal entity created;
- (iii)** The purpose or purposes of the intergovernmental agreement;
- (iv)** The manner of financing the joint or cooperative undertaking and establishing and maintaining a budget;
- (v)** The permissible method or methods to be employed in accomplishing the partial or complete termination of an agreement and for disposing of property upon partial or complete termination. The method or methods for termination shall include a requirement of six (6) months' written notification of the intent to withdraw by the governing body of the public agency wishing to withdraw;
- (vi)** Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the

joint board;

**(vii)** The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking; and

**(viii)** Any other necessary and proper matters.

**(E) (i)** Every agreement prior to and as a condition precedent to its final adoption and performance shall be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of the State of Arkansas.

**(ii)** The Attorney General shall approve any agreement submitted to him or her unless he or she finds it does not meet the conditions set forth in this section and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law.

**(iii)** Failure to disapprove an agreement within thirty (30) days of its submission shall constitute approval;

**(21)** To undertake and carry out studies and analyses of agricultural business, industrial, health care, housing, energy, educational, capital improvement, and local governments' short-term advance funding needs within the state and ways of meeting such needs;

**(22)** To establish accounts in one (1) or more depositories;

**(23)** To lease, acquire, construct, sell, and otherwise deal in and contract concerning any facilities;

**(24)** To accept funds for and participate in federal and other governmental programs established for the purpose of the promotion and development of agricultural business, industry, the provision of decent, safe, and sanitary housing, health care, education, tourism, capital improvements, and related matters;

**(25)** To have and exercise all of the powers granted to the public housing authorities by the state, except that the authority shall not have the power of eminent domain;

**(26)** To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316;

**(27) (A)** To assist minority businesses in obtaining loans or other means of financial assistance.

**(B)** 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 and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316.

**(C)** In order to comply with this requirement, efforts must be made to solicit for review and analysis proposed minority business ventures.

**(D)** Be it further provided that basic loan underwriting standards will not be waived to inconsistently favor minority persons or businesses from the intent of the authority's lending practices;

**(28)** To create nonprofit corporations that shall have such purposes and powers as the board shall determine, to assist in carrying out the purposes of this subchapter and §§ 15-5-101 -- 15-5-106 and 15-5-301 -- 15-5-316, and to provide technical, administrative, and financial assistance to those nonprofit corporations;

**(29)** To make secured or unsecured loans to or to guarantee the payment of loans made to businesses for the purpose of financing the export of goods to foreign countries if the board shall first find that a substantial portion of the value of those goods prior to export has been or will be added in the state;

**(30)** To make loans and enter into contracts with respect to, and issue bonds on behalf of, nonprofit organizations, including the issuance of qualified 501(c)(3) bonds as defined in the Internal Revenue Code;

**(31)** To make loans and enter into contracts with respect to, and issue bonds on behalf of, scientific and technical services businesses, technology-based enterprises, and tourism enterprises;

**(32)** To administer the allocation of the state ceiling of private activity bonds, as that term is defined in the Tax Reform Act of 1986, which are subject to volume limitations under federal law, including particularly the limitations under section 146 of the Internal Revenue Code of 1986; and

**(33)** To enter into an interest rate exchange agreement or similar agreement or contract.

**(c)** All applications filed with the Arkansas Development Finance Authority for direct loans authorized under subsection (b) of this section shall be treated, handled, and considered in the same manner as set forth for other loan applications in § 15-5-409.

**HISTORY:** Acts 1985, No. 1062, §§ 4.00, 5.00; 1986 (2nd Ex. Sess.), No. 18, § 1; A.S.A. 1947, §§ 13-2904, 13-2905; Acts 1987, No. 900, §§ 2-4; 1989, No. 836, § 4; 2001, No. 1044, § 6; 2003, No. 494, § 2; 2007, No. 593, § 1.

### **15-5-301. Power to issue bonds.**

**(a) (1)** The Arkansas Development Finance Authority is authorized and empowered to issue bonds from time to time, whether or not the interest on the bonds is subject to federal income taxation, either for a specific activity or for a particular project or on a pooled or consolidated basis for a series of related or unrelated activities or projects in such amounts as shall be determined by the authority for the purpose of enhancing the Public School Fund or financing qualified agricultural business enterprises, capital improvement facilities, educational facilities, health care facilities, housing developments, industrial enterprises, exports of goods and short-term advance funding of local government obligations, scientific and technical services businesses, technology-based enterprises, tourism enterprises, nonprofit organizations, or any combination of those facilities or enterprises, or any interest in facilities, including, without limitation, leasehold interests in and mortgages on those facilities.

**(2)** The proceeds of and earnings from the bond issues, in amounts determined by the authority, may be deposited into the State Treasury to the credit of the fund.

**(b)** However, nothing in this subchapter and §§ 15-5-101 -- 15-5-106, 15-5-201 -- 15-5-211, and 15-5-213 shall be construed to authorize the authority to issue or sell revenue bonds or use the proceeds thereof to purchase, condemn, or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility.

**HISTORY:** Acts 1985, No. 1062, § 6.00; 1986 (2nd Ex. Sess.), No. 18, § 2; A.S.A. 1947, § 13-2906; Acts 1987, No. 900, § 5; 2007, No. 593, § 2.

#### **15-5-302. Underwriters and experts.**

**(a)** The Arkansas Development Finance Authority, when requested to do so by a state agency or a political subdivision, is authorized and empowered to engage an underwriter or underwriters to facilitate the issuance and sale of bonds to accomplish the financing of a specific activity or a particular project of the state agency or political subdivision permitted to be financed hereunder, or other activities and projects for which no state agency or political subdivision is authorized by law to obtain such financing, which the authority determines to be consistent with the purposes of this subchapter and §§ 15-5-101 -- 15-5-106, 15-5-201 -- 15-5-211, and 15-5-213.

**(b)** In the furtherance thereof, the authority is also authorized and empowered to engage in connection therewith such legal counsel and other experts as may be recommended by the underwriter or underwriters.

**HISTORY:** Acts 1985, No. 1062, § 6.00; A.S.A. 1947, § 13-2906.

#### **15-5-304. Exclusive issuer of mortgage bonds.**

For purposes of compliance with the Mortgage Subsidy Bond Tax Act of 1980, the General Assembly finds and declares that the Arkansas Development Finance Authority shall be the exclusive issuer of mortgage bonds as defined in the Mortgage Subsidy Bond Tax Act of 1980, and the authority shall receive the entire allocation to the state in principal amount of bonds to be issued annually.

**HISTORY:** Acts 1985, No. 1062, § 9.00; A.S.A. 1947, § 13-2909.

#### **15-5-306. Tax exemption.**

Any bonds issued under the provisions of this subchapter and §§ 15-5-101 -- 15-5-106, 15-5-201 -- 15-5-211, and 15-5-213 and the interest paid thereon, unless specifically declared to be taxable in the authorizing resolution, shall be exempt from all state, county, and municipal taxes, and the exemption shall include income, inheritance, and property taxes.

**HISTORY:** Acts 1985, No. 1062, § 10.00; A.S.A. 1947, § 13-2910.

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#### **15-5-317. Power to enter into an interest rate exchange agreement or similar agreement or contract.**

**(a)** In connection with bonds issued before, on, or after March 18, 2003, the Arkansas Development Finance Authority shall have the power to:

**(1) (A)** Enter into an interest rate exchange agreement or similar agreement or contract with any person on a competitive or negotiated basis under the terms and conditions as the authority shall determine.

**(B)** The terms and conditions of the agreements under subdivision (a)(1)(A) of this section in which the authority may enter shall include terms as to default or early termination and indemnification by the authority or any other party to the agreement for loss of benefits as a result of default or early termination;

**(2)** Procure insurance, letters of credit, or other credit enhancement with respect to an interest rate exchange agreement or similar agreement or contract;

**(3)** Provide security for the payment or performance of its obligations with respect to an interest rate exchange agreement or similar agreement or contract in accordance with existing state law governing security for its bonds; and

**(4)** Modify, amend, or replace an interest rate exchange agreement or similar agreement or contract.

**(b)** Any interest rate exchange agreement or similar agreement or contract entered into under this section is subject to the following limitations, and the authority shall not enter into an interest rate exchange agreement or similar agreement or contract unless:

**(1)** The counterparty to the agreement has obtained a credit rating from at least one (1) nationally recognized statistical rating agency that is at least equal to the lowest investment grade rating of any of the authority's bonds by the rating agency or the payment obligations of the counterparty are unconditionally guaranteed by an entity with the credit ratings stated in this section;

**(2)** The written contract evidencing the agreement provides that if the rating of the counterparty or of the guarantor of the counterparty falls below the rating level stated in subdivision (b)(1) of this section during the term of the agreement, the obligation of the counterparty or guarantor to pay the aggregate security value of the contract to the authority shall be collateralized by the counterparty's or guarantor's investment obligations to the extent required by the authority's guidelines adopted under this section; and

**(3)** The authority files in its records a finding by independent financial advisors to the authority that the terms and conditions of the interest rate exchange agreement or similar agreement or contract reflect a fair market value regardless of whether the agreement was solicited on a competitive or negotiated basis.

**(c)** Prior to authorizing the approval of any contract for an interest rate exchange agreement or a similar agreement, the authority shall adopt guidelines for the use of an interest rate exchange agreement or a similar agreement or contract that shall include the following:

**(1)** The methods by which those agreements are to be solicited and procured;

**(2)** The standards and procedures for counterparty selection;

**(3)** The aspects of risk exposure associated with those agreements;

**(4)** The types of agreements to be entered into;

**(5)** The collateralization requirements imposed upon a counterparty or guarantor in the event of a rating agency downgrade; and

**(6)** The long-term implications associated with entering into those agreements, such as:

**(A)** Costs of borrowing;

**(B)** Historical trends;

**(C)** Any potential impact on the future ability to redeem bonds, including opportunities to refund related debt obligations; or

**(D)** Any similar consideration.

**(d)** The authority may amend the guidelines for an interest rate exchange agreement or similar agreement or contract and shall make the guidelines available for public inspection at the offices of the authority.

**(e)** Pursuant to the authority's reporting requirement under § 15-5-212, the authority shall disclose to the Governor and to the Legislative Council each interest rate exchange agreement or a similar agreement or contract to which the authority is a party.

**HISTORY:** Acts 2003, No. 494, § 4.

**15-5-318. Primary administration of federal allocations of private activity and governmental volume cap.**

**(a) (1)** Except as provided in subsection (b) of this section, the Arkansas Development Finance Authority is hereby recognized as the primary administrator of federal allocations of private activity and governmental volume cap that are and may be allocated to the State of Arkansas by the United States Department of the Treasury.

**(2)** All plans, policies, and procedures developed for the administration of volume cap allocations will be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**(b)** This section shall not apply to § 15-5-601 et seq.

**HISTORY:** Acts 2011, No. 814, § 1.

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