

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 561 OF 1995
HOUSE BILL 1322

4 **By: Representatives Northcutt, Calhoun, Fletcher, G. Hendrix, Rorie, Wagner**

5
6
7

For An Act To Be Entitled

8 "AN ACT TO CREATE TAX CREDIT INCENTIVES FOR THE CREATION
9 AND RESTORATION OF PRIVATE WETLANDS AND RIPARIAN ZONES;
10 AND FOR OTHER PURPOSES."

11

Subtitle

12
13 "ARKANSAS PRIVATE WETLAND AND RIPARIAN
14 ZONE CREATION AND RESTORATION INCENTIVES
15 ACT."

16

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

18

19 SECTION 1. TITLE.

20 This act may be cited as the "Arkansas Private Wetland and Riparian Zone
21 Creation and Restoration Incentives Act".

22

23 SECTION 2. LEGISLATIVE FINDINGS.

24 (a) Wetlands and riparian zones have significant benefit to the state.
25 They include: Flood impact mitigation by slowing storm water runoff; Water
26 quality enhancement by removing sediment, nitrogen, phosphorus and other
27 pollutants from surface water; Habitat for fish and wildlife, including
28 waterfowl and rare or endangered species; Groundwater recharge can occur in
29 wetland that will assist in ensuring that groundwater is available for the
30 future; Recreational use for hunting, fishing, hiking, etc. that not only add
31 to the quality of life, but also have a significant economic impact on the
32 state; and, timber and food production, properly managed wetlands can provide
33 wood products, plants and animals for human and livestock consumption.

34 (b) Arkansas has lost over seventy percent (70%) of her pre-European
35 settlement wetlands. Even though the rate of wetland loss in the United
36 States has declined in recent years, wetlands in Arkansas continue to

1 experience significant loss.

2 (c) The majority of lands suitable for wetlands and riparian zones are
3 held by private owners. The state should encourage these owners to restore
4 and enhance existing wetlands and riparian zones, and when possible create new
5 wetlands and riparian zones.

6

7 SECTION 3. DEFINITIONS.

8 The following definitions shall apply in this act only:

9 (a) "Application" means a written plan for development and operation of
10 the project, including all requirements as the Commission may adopt by rule.

11 (b) "Commission" means the Arkansas Soil and Water Conservation
12 Commission.

13 (c) "Department" means the Revenue Division of the Arkansas Department
14 of Finance and Administration.

15 (d) "Project" means wetlands or riparian zones created or restored by
16 activities for which tax credits are claimed.

17 (e) "Project cost" means the actual expenditure for a project less any
18 reimbursement received by the taxpayer from cost-share programs.

19 (f) "Private Lands Restoration Committee" is a committee made up of the
20 directors or their designees of the Arkansas Forestry Commission, Arkansas
21 Game and Fish Commission, Arkansas Department of Finance and Administration,
22 Department of Arkansas Heritage, and the Arkansas Department of Pollution
23 Control and Ecology, and two (2) public members with expertise in wetlands
24 ecology appointed by the Commission. In appointing public members, the
25 Commission should consider the wide variety of interest in wetlands.

26 (g) "Riparian Zone" means an area of land along the bank of a natural
27 water course or contiguous to a body of water that is set aside to reduce
28 impacts of adjoining land use on the stream or water body or any other
29 definition promulgated by the Commission.

30 (h) "Wetlands" means an area that has water at or near the surface of
31 the ground at some time during the growing season (wetland hydrology). It
32 contains plants that are adapted to wet habitats (hydrophytic vegetation) and
33 is made up of soils that have developed under wet conditions (hydric soils) or
34 any other definition promulgated by the Commission.

35

1 SECTION 4. APPLICABILITY.

2 (a) The tax credits provided by this act shall apply to taxable years
3 beginning on or after January 1, 1996 and all taxable years thereafter.

4 (b) Any taxpayer claiming a tax credit under this act may not claim a
5 credit under the Water Resources Conservation and Development Incentives Act
6 of 1985, Title 26, Chapter 51, Subchapter 10 of the Ark. Code of 1987
7 Annotated or any similar act for any costs related to the same project.

8 (c) Any tax credits issued to partnerships, limited liability
9 companies, Subchapter S corporations or fiduciaries may pass through to their
10 members, managers, partners, shareholders and/or beneficiaries.

11

12 SECTION 5. ADMINISTRATION.

13 (a) (1) The Commission is charged with the responsibility of
14 promulgating and administering rules related to the creation and restoration
15 of wetlands and riparian zones with the intent of qualifying for the tax
16 incentives provided for in this act.

17 (2) Prior to adoption of any rules under this act, the Commission
18 shall obtain comments on the proposed rules of the Private Lands Restoration
19 Committee.

20 (b) The Commission may charge a reasonable application fee for the
21 processing of tax credit applications. All fees collected shall be deposited
22 in the Arkansas Water Development Fund.

23

24 SECTION 6. CREDIT GRANTED.

25 (a) There shall be allowed a credit against the tax imposed by the
26 Arkansas Income Tax Act, §26-51-101 et seq., in an amount as determined in
27 subsection (c) of this section, for any taxpayer engaged in the development or
28 restoration of wetlands and riparian zones.

29 (b) To claim the benefits of this section, a taxpayer must obtain a
30 certification from the Commission certifying to the Revenue Division of the
31 Department that the taxpayer has met all the requirements and qualifications
32 set forth in Section 7 of this Act.

33 (c) The amount of the credit allowed under subsection (a) of this
34 section shall be equal to the project cost incurred in the development or
35 restoration of wetlands and riparian zones.

1 (d) The amount of the credit that may be used by a taxpayer for a
2 taxable year may not exceed the lesser of the amount of individual or
3 corporate income tax otherwise due or five thousand dollars (\$5,000). Any
4 unused credit may be carried over for a maximum of nine (9) consecutive
5 taxable years following the taxable year in which the credit originated.

6 (e) The Revenue Division of the Department of Finance and
7 Administration shall promulgate such rules and regulations as may be deemed
8 necessary to carry out the tax credit provisions of the act.

9

10 SECTION 7. APPLICATION AND APPROVAL PROCEDURE.

11 (a) A taxpayer wishing to obtain a tax credit shall submit an
12 application to the Commission.

13 (b) Upon receipt of the application, the Commission shall make the
14 application available to the Private Lands Restoration Committee for its
15 review and comment.

16 (c) After review of the committee comments, the Commission may issue
17 tax credit approval certificate for those applications proposing projects that
18 meet the requirements of this Act and rules promulgated thereunder.

19 (d) Upon completion and proper functioning of the project, the
20 Commission shall issue a certificate of completion.

21 (e) A taxpayer must file the certificate of tax credit approval with
22 his income tax return for the first year in which the taxpayer claims a tax
23 credit under this Act.

24 (f) A taxpayer must file the certificate of completion with the first
25 tax return filed after issuance of the certificate of completion.

26 (g) Any taxpayer claiming a tax credit under this Act may not claim a
27 tax credit under any other act for any costs related to the same project.

28

29 SECTION 8. DEVELOPMENT, OPERATION AND TAX CREDITS.

30 (a) Project activities shall meet or exceed those standards as
31 established by the Commission and the project must be maintained for a minimum
32 life of ten (10) years after certified as being complete.

33 (b) Project costs incurred after issuance of a tax credit approval
34 certificate may be claimed for tax credit, subject to limitations in Section

35 6.

1 (c) All projects must be completed and properly functioning within
2 three (3) years of the date of the certificate of tax credit approval, except
3 if the Commission determines that failure to comply with this subsection is
4 the result of conditions beyond the control of the taxpayer, an additional
5 year to comply with this subsection may be granted by the Commission.

6 (d) If the taxpayer does not complete the project within the period
7 provided in Subsection (c), all credits claimed must be repaid to the
8 Department, and the project will be disallowed as a project for tax credit
9 purposes.

10 (e) (1) If taxpayer terminates the project prior to expiration of the
11 minimum project life, taxpayer shall provide written notification to the
12 Commission and the Department. In addition, the taxpayer shall file an
13 amended tax return and repay the amount of tax credit claimed which was not
14 allowable.

15 (2) If the Commission determines that the taxpayer has terminated
16 the project, it shall notify the Department.

17 (f) Upon the termination of the project, the taxpayer shall not be
18 allowed any further tax credits provided in this Act and the Department shall
19 recapture the pro-rata share of any tax credits claimed under this act for the
20 period of termination.

21 (g) The pro-rata share for recapture of the disallowed tax credits
22 shall be determined by dividing the period of time from termination of the
23 project until the expiration of the minimum life of the project by the
24 required minimum life of the project times the tax credit claimed.

25 (h) (1) For purposes of this Act, the record keeping provisions of
26 Arkansas Code §26-18-506 requiring a taxpayer to maintain records for six (6)
27 years after a return is filed shall be extended to require the taxpayer
28 claiming a credit under this act to maintain the required records for the
29 required minimum life of the project plus three (3) years.

30 (2) Notwithstanding the provisions of Arkansas Code Annotated
31 §26-18-306 the Department may make necessary assessments to recapture
32 disallowed tax credits for a period of three (3) years from the date of
33 expiration of the minimum life of the project.

34

35 SECTION 9. ANNUAL COMPILATION OF CREDITS; EXPIRATION OF ACT.

1 (a) The Department shall compile the total amount of tax credits used
2 pursuant to the provisions of this Act for each calendar year.

3 (b) When the total amount of tax credits used pursuant to the
4 provisions of this act exceeds five hundred thousand dollars (\$500,000) in any
5 calendar year, the tax credits established by this act shall expire on
6 December 31 of the calendar year following the calendar year in which the tax
7 credits used pursuant to the provisions of this act exceed five hundred
8 thousand dollars (\$500,000). However, any taxpayer having been issued a
9 certificate of tax credit approval on or prior to this day may complete the
10 project and shall be entitled to the tax credits provided under this Act
11 without regard to the fact that the availability of the tax credits have
12 otherwise expired.

13

14 SECTION 10. All provisions of this act of a general and permanent
15 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
16 Code Revision Commission shall incorporate the same in the Code.

17

18 SECTION 11. If any provision of this act or the application thereof to
19 any person or circumstance is held invalid, such invalidity shall not affect
20 other provisions or applications of the act which can be given effect without
21 the invalid provision or application, and to this end the provisions of this
22 act are declared to be severable.

23

24 SECTION 12. All laws and parts of laws in conflict with this act are
25 hereby repealed.

26

27

28

29

APPROVED: 3-8-95

30

31

32

33

34

35

1
2
3
4