

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.

Act 351 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

HOUSE BILL 1577

4
5 By: Representatives Lindsey, Carnine, Carroll, Glidewell, Hall, House, Ingram, Lowery, Maxwell,
6 Moore, Patterson, Pierce, L. Smith, G. Smith, Summers, Tyler, Webb
7 By: Senator Madison

For An Act To Be Entitled

11 AN ACT TO AMEND THE ARKANSAS PRIVATE WETLAND AND
12 RIPARIAN ZONE CREATION AND RESTORATION INCENTIVES
13 ACT; TO PROVIDE CONSERVATION TAX CREDITS; AND FOR
14 OTHER PURPOSES.

Subtitle

17 TO AMEND THE ARKANSAS PRIVATE WETLAND
18 AND RIPARIAN ZONE CREATION AND
19 RESTORATION INCENTIVES ACT AND TO
20 PROVIDE CONSERVATION TAX CREDITS.

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

25 SECTION 1. Arkansas Code § 26-51-1501, concerning the title of the
26 Arkansas Private Wetland and Riparian Zone Creation and Restoration
27 Incentives Act, is amended to read as follows:

28 This subchapter may be cited as the “Arkansas Private Wetland and
29 Riparian Zone Creation, ~~and Restoration, Incentives~~ and Conservation Tax
30 Credits Act”.

31
32 SECTION 2. Arkansas Code § 26-51-1502, concerning the legislative
33 findings of the Arkansas Private Wetland and Riparian Zone Creation and
34 Restoration Incentives Act, is amended to add an additional subsection to
35 read as follows:



1 (d) The donation of wetland and riparian zone qualified real property
2 interests should be encouraged by the state so that permanent protection of
3 the conservation values of these lands is ensured.

4
5 SECTION 3. Arkansas Code § 26-51-1503(4), concerning the definition of
6 Private Lands Restoration Committee as used in the Arkansas Private Wetland
7 and Riparian Zone Creation and Restoration Incentives Act, is amended to read
8 as follows:

9 (4) "Committee" means the Private ~~Lands~~ Wetland and Riparian
10 Zone Creation, Restoration, and Conservation Committee", which is a committee
11 made up of:

12 (A) The directors or their designees of:

- 13 (i) The Arkansas Forestry Commission;
- 14 (ii) The Arkansas State Game and Fish Commission;
- 15 (iii) The Department of Finance and Administration;
- 16 (iv) The Department of Arkansas Heritage; and
- 17 (v) The Arkansas Department of Environmental

18 Quality; and

19 (B)(i) Two (2) public members with expertise in wetlands
20 and riparian zone ecology appointed by the commission.

21 (ii) In appointing public members, the commission
22 should consider the wide variety of interests in wetlands and riparian zones;

23
24 SECTION 4. Arkansas Code § 26-51-1503, concerning the definitions used
25 in the Arkansas Private Wetland and Riparian Zone Creation and Restoration
26 Incentives Act, is amended to add additional subdivisions to read as follows:

27 (9)(A) "Eligible donee" means a qualified organization under 26 U.S.C.
28 § 170(h)(3), as in effect on January 1, 2009, and corresponding regulations
29 in 26 C.F.R. § 1.170A-14(c), as in effect on January 1, 2009.

30 (B) A non-governmental qualified organization must have adopted
31 the Land Trust Alliance's Land Trust Standards and Practices, as in effect on
32 January 1, 2009, in order to qualify as an "eligible donee";

33 (10) "Eligible donor" means any person or entity that owns a qualified
34 real property interest, including without limitation an individual,
35 corporation, trust, estate, and partnership or other pass-through legal
36 entity;

1 (11) "Qualified appraisal" means an appraisal in accordance with 26
 2 C.F.R. § 1.170A-13(c)(3), as in effect on January 1, 2009, and the Uniform
 3 Standards of Professional Appraisal Practice, as in effect on January 1,
 4 2009;

5 (12) "Qualified conservation purpose" means a conservation purpose as
 6 defined by 26 U.S.C. § 170(h)(4), as in effect on January 1, 2009, and
 7 corresponding regulations in 26 C.F.R. § 1.170A-14(d), as in effect on
 8 January 1, 2009; and

9 (13) "Qualified real property interest" means an interest in real
 10 property located completely in this state and containing wetlands or riparian
 11 zones, which also meets the definition of a qualified real property interest
 12 under 26 U.S.C. § 170(h)(2), as in effect on January 1, 2009, and the
 13 corresponding regulations in 26 C.F.R. § 1.170A-14(b), as in effect on
 14 January 1, 2009.

15
 16 SECTION 5. Arkansas Code 26-51-1504(a), concerning the applicability
 17 of the Arkansas Private Wetland and Riparian Zone Creation and Restoration
 18 Incentives Act, is amended to read as follows:

19 (a) ~~The~~ There are two (2) types of tax credits available under this
 20 subchapter:

21 (1) Wetland and riparian zone creation and restoration tax
 22 credits, which ~~provided by this subchapter~~ shall apply to taxable years
 23 beginning on or after January 1, 1996, and all taxable years thereafter; ~~and~~

24 (2) Wetland and riparian zone conservation tax credits, which
 25 shall apply to taxable years beginning on or after January 1, 2009, and all
 26 taxable years thereafter.

27
 28 SECTION 6. Arkansas Code § 26-51-1505 is amended to read as follows:
 29 26-51-1505. ~~Credit~~ Credits granted.

30 (a) There shall be allowed a wetland and riparian zone creation and
 31 restoration tax credit against the tax imposed by the Arkansas Income Tax Act
 32 of 1929, § 26-51-101 et seq., in an amount as determined in subsection ~~(b)~~
 33 (c) of this section, for any taxpayer engaged in the ~~development~~ creation or
 34 restoration of wetlands and riparian zones.

35 **(b)** There shall be allowed a wetland and riparian zone conservation
 36 tax credit against the tax imposed by the Arkansas Income Tax Act of 1929, §

1 26-51-101 et seq., in an amount as determined in subsection (c) of this
 2 section for any eligible donor who donates a qualified real property interest
 3 for a qualified conservation purpose to an eligible donee.

4 ~~(b)(1)~~ (c)(1) The amount of the wetland and riparian zone creation and
 5 restoration tax credit allowed under subsection (a) of this section shall be
 6 equal to the project cost incurred in the ~~development~~ creation or restoration
 7 of wetlands and riparian zones and shall not exceed fifty thousand dollars
 8 (\$50,000).

9 (2) The amount of the wetland and riparian zone conservation tax
 10 credit allowed under subsection (b) of this section shall equal fifty percent
 11 (50%) of the fair market value of the qualified real property interest
 12 donation calculated to exclude any short term capital gain under 26 U.S.C. §
 13 170(e)(1)(A), as in effect on January 1, 2009, and shall not exceed fifty
 14 thousand dollars (\$50,000).

15 ~~(2)(A)~~ (3)(A) The amount of the tax credit under this subchapter
 16 that may be used by a taxpayer for a taxable year may not exceed the lesser
 17 of:

18 (i) The amount of individual or corporate income tax
 19 otherwise due; or

20 (ii) Five thousand dollars (\$5,000).

21 (B) Any unused tax credit under this subchapter may be
 22 carried over for a maximum of nine (9) consecutive taxable years following
 23 the taxable year in which the tax credit originated.

24 (C) Any unused tax credit under this subchapter shall
 25 survive the death of an individual taxpayer and may be used by the individual
 26 taxpayer's estate, subject to the limitations in this subdivision (c)(3).

27 (4) Tax credits under this subchapter may only be used by the
 28 taxpayer certified to earn a tax credit to offset the taxpayer's state income
 29 tax liability and are non-transferable.

30 (5)(A) Only one (1) wetland and riparian zone conservation tax
 31 credit may be earned per qualified real property interest donation.

32 (B) If the qualified real property interest is held in
 33 common ownership, the wetland and riparian zone conservation tax credit shall
 34 be allocated in proportion to each respective ownership share.

35 (C) If the qualified real property interest is held by a
 36 pass-through entity, the wetland and riparian zone conservation tax credit

1 shall be allocated as prescribed under 26 U.S.C. § 704(b), as in effect on
 2 January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.704-
 3 1(b)(4)(ii), as in effect on January 1, 2009.

4 (6) An eligible donor may earn only one (1) wetland and riparian
 5 zone conservation tax credit per income tax year.

6 ~~(e)~~(d) To claim the benefits of this section, a taxpayer must obtain a
 7 certification from the commission certifying to the Revenue Division of the
 8 Department of Finance and Administration that the taxpayer has met all the
 9 requirements and qualifications set forth in §§ 26-51-1504(b)(2) and 26-51-
 10 1507(a) for a wetland and riparian zone creation and restoration tax credit
 11 or § 26-51-1507(b) for a wetland and riparian zone conservation tax credit.

12 ~~(d)~~(e) The Revenue Division of the Department of Finance and
 13 Administration shall promulgate such rules and regulations as may be deemed
 14 necessary to carry out the tax credit provisions of this subchapter.

15
 16 SECTION 7. Arkansas Code § 26-51-1506(a), concerning the
 17 administration of the Arkansas Private Wetland and Riparian Zone Creation and
 18 Restoration Incentives Act, is amended to read as follows:

19 (a)(1) The commission is charged with the responsibility of
 20 promulgating and administering rules related to the creation, ~~and~~
 21 restoration, and conservation of wetlands and riparian zones with the intent
 22 of qualifying for the tax ~~incentives~~ credits provided for in this subchapter.

23 (2) Prior to adoption of any rules under this subchapter, the
 24 commission shall obtain comments on the proposed rules ~~of the Private Lands~~
 25 ~~Restoration Committee~~ from the committee.

26
 27 SECTION 8. Arkansas Code § 26-51-1507 is amended to read as follows:
 28 26-51-1507. Application and approval procedure.

29 (a) Wetland and Riparian Zone Creation and Restoration Tax Credit.

30 (1)(A) A taxpayer wishing to obtain a wetland and riparian zone
 31 creation and restoration tax credit shall submit an application to the
 32 commission.

33 ~~(2)~~(B) Upon receipt of the application, the commission shall
 34 make the application available to the ~~Private Lands Restoration Committee~~
 35 committee for its review and comment.

36 ~~(3)~~(C) After review of the committee comments, the commission

1 may issue a wetland and riparian zone creation and restoration tax credit
 2 approval certificate for those applications proposing projects that meet the
 3 requirements of this subchapter and rules promulgated thereunder.

4 ~~(b)(1)(2)(A)~~ Project costs incurred after issuance of a wetland and
 5 riparian zone creation and restoration tax credit approval certificate may be
 6 claimed for wetland and riparian zone creation and restoration tax credit,
 7 subject to the limitations in § 26-51-1505.

8 ~~(2)(B)~~ A taxpayer must file the certificate of wetland and
 9 riparian zone creation and restoration tax credit approval with ~~his~~ the
 10 taxpayer's income tax return for the first year in which the taxpayer claims
 11 a tax credit under this subchapter.

12 ~~(e)(1)(3)(A)~~ Upon completion and proper functioning of the project,
 13 the commission shall issue a certificate of completion.

14 ~~(2)(B)~~ A taxpayer must file the certificate of completion with
 15 the first tax return filed after issuance of the certificate of completion.

16 (b) Wetland and Riparian Zone Conservation Tax Credit.

17 (1)(A) An eligible donor wishing to obtain a wetland and
 18 riparian zone conservation tax credit shall submit an application to the
 19 commission.

20 (B) Upon receipt of the application, the commission shall
 21 make the application available to the committee for its review and comment.
 22 The committee's review shall include the following considerations:

23 (i) Whether the appraisal of the qualified real
 24 property interest meets the minimum standards of the Uniform Standards of
 25 Professional Appraisal Practice and the Internal Revenue Service requirements
 26 for a qualified appraisal;

27 (ii) Whether the qualified real property interest's
 28 valuation does not appear to be manifestly abusive;

29 (iii) Whether the conservation purpose of the
 30 donation complies with the requirements of a qualified conservation purpose
 31 and contributes to the wetland and riparian zone benefits in § 26-51-1502;

32 (iv) Whether the real property interest meets the
 33 requirements for a qualified real property interest; and

34 (v) Whether the donee of the qualified real property
 35 interest meets the requirements of an eligible donee.

36 (C) After review of the committee comments, the commission

1 may issue a wetland and riparian zone conservation tax credit approval
 2 certificate for those applications that meet the requirements of this
 3 subchapter and the rules promulgated under this subchapter.

4 (2)(A) An eligible donor may apply for conditional approval of a
 5 wetland and riparian zone conservation tax credit before a qualified real
 6 property interest donation has been recorded.

7 (B) If conditional approval of a wetland and riparian zone
 8 conservation tax credit is granted, the application must be resubmitted to
 9 the commission after the qualified real property interest donation has been
 10 recorded for the limited purpose of demonstrating conformity with the
 11 originally submitted draft documents.

12 (3)(A) If the commission denies approval of a wetland and
 13 riparian zone conservation tax credit, it shall provide a brief written
 14 statement to the applicant of the reason for a decision to deny approval.

15 (B) When a problem identified by the commission is
 16 remedied, an eligible donor may resubmit the application for approval of the
 17 wetland and riparian zone conservation tax credit.

18 (4) A decision on an application for approval or conditional
 19 approval of a wetland and riparian zone conservation tax credit or on a
 20 resubmission of a conditionally approved or previously denied application
 21 shall be issued in the order in which the completed applications or
 22 resubmissions are received.

23 (5) For good cause shown, the Department of Finance and
 24 Administration may review and either accept or reject in whole or in part any
 25 wetland and riparian zone conservation tax credit claimed by a taxpayer and
 26 may require information from a taxpayer regarding the:

27 (A) Appraisal value of the qualified real property
 28 interest;

29 (B) Amount of the wetland and riparian zone conservation
 30 tax credit;

31 (C) Validity of the wetland and riparian zone conservation
 32 tax credit; and

33 (D) Other relevant matters.

34
 35 SECTION 9. Arkansas Code § 26-51-1509, concerning recordkeeping
 36 requirements, is amended to read as follows:

1 For purposes of this subchapter, the recordkeeping provisions of § 26-
2 18-506 requiring a taxpayer to maintain records for six (6) years after a
3 return is filed shall be extended to require the taxpayer claiming a wetland
4 and riparian zone creation and restoration tax credit under this subchapter
5 to maintain the required records for the required minimum life of the project
6 plus three (3) years.

7
8 SECTION 10. Arkansas Code § 26-51-1510 is amended to read as follows:

9 26-51-1510. Annual compilation of credits – Expiration of subchapter –
10 - Tax credit availability.

11 (a) ~~The~~ Following the end of every calendar year, the department
12 Department of Finance and Administration shall compile the cumulative total
13 amount of tax credits used pursuant to the provisions of this subchapter ~~for~~
14 ~~each calendar year.~~

15 (b)(1) ~~When the total amount of tax credits used pursuant to the~~
16 ~~provisions of this subchapter exceeds five hundred thousand dollars~~
17 ~~(\$500,000) in any calendar year, the~~ The tax credits established by this
18 subchapter and the availability of those tax credits shall expire on December
19 31 of the calendar year following the calendar year in which the tax credits
20 used pursuant to the provisions of this subchapter exceed five hundred
21 thousand dollars (\$500,000).

22 (2) However, any taxpayer having been issued a certificate of
23 tax credit approval on or prior to such December 31 ~~may complete the project~~
24 ~~and~~ shall be entitled to the tax credits provided under this subchapter
25 without regard to the fact that the availability of the tax credits has
26 otherwise expired.

27
28 SECTION 11. Effective Date. This act is effective for tax years
29 beginning on or after January 1, 2009.

30
31 **APPROVED: 3/10/2009**
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