

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

A Bill

ACT 562 OF 1995
HOUSE BILL 1324

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

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For An Act To Be Entitled

8 "AN ACT TO CREATE AN ARKANSAS WETLANDS MITIGATION BANK;
9 ALLOW FOR PURCHASE, CREATION, RESTORATION OR ENHANCEMENT
10 OF WETLANDS BY THE STATE OF ARKANSAS; ALLOW FOR SALE OF
11 CREDITS ON WETLANDS FOR MEETING FEDERAL PERMIT
12 REQUIREMENTS; USE THE ARKANSAS WATER DEVELOPMENT FUND FOR
13 FINANCIAL ASPECTS OF THE MITIGATION BANK; AND OTHER
14 PURPOSES."

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Subtitle

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17 "THE ARKANSAS WETLANDS MITIGATION BANK
18 ACT."

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

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22 SECTION 1. SHORT TITLE.

23 This act may be cited as the "Arkansas Wetlands Mitigation Bank Act."

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25 SECTION 2. DEFINITIONS.

26 As used in this act:

27 (a) "Commission" means the Arkansas Soil and Water Conservation
28 Commission.

29 (b) "Credit" means a numerical value that represents the wetland
30 resource functions and value of a site.

31 (c) "Director" means the Executive Director of the Arkansas Soil and
32 Water Conservation Commission.

33 (d) "Mitigation bank" means a publicly owned and managed wetland site,
34 created or restored in accordance with this act to compensate for unavoidable
35 adverse impacts due to activities which otherwise comply with the requirements
36 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections

1 1251 through 1376).

2 (e) "Permit action" means activity under a specific dredge or fill
3 permit requested or issued pursuant to Section 404 of the Federal Water
4 Pollution Control Act (33 U.S.C. 1344) or any other action requiring
5 mitigation.

6 (f) "Wetlands Technical Advisory Committee" is a committee made up of
7 the directors or their designees of the Arkansas Forestry Commission, Arkansas
8 Game and Fish Commission, Arkansas Highway and Transportation Department,
9 Department of Arkansas Heritage, and the Arkansas Department of Pollution
10 Control and Ecology, and two (2) public members with expertise in wetlands
11 ecology appointed by the Commission.

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13 SECTION 3. POLICY STATEMENT.

14 The purpose of this act is to:

15 (a) Promote, in concert with federal and other state programs as well
16 as interested parties, the restoration, maintenance and conservation of
17 wetlands;

18 (b) Improve cooperative efforts among private, nonprofit and public
19 entities for the restoration, management and protection of wetlands;

20 (c) Offset losses of wetland values caused by activities which
21 otherwise comply with state and federal law;

22 (d) Encourage a predictable, efficient regulatory framework for
23 environmentally acceptable mitigation;

24 (e) Provide an option for accomplishing off-site mitigation when such
25 mitigation is required under a dredge or fill permit; and

26 (f) To supplement and not in any way abrogate, any state or federal law
27 relating to wetlands.

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29 SECTION 4. WETLANDS; ACQUISITION AND PROTECTION; POWERS OF THE DIRECTOR
30 OF THE COMMISSION.

31 In consultation with the Commission and Wetlands Technical Advisory
32 Committee, the Director may:

33 (a) Set a sales price for credits in the mitigation bank on behalf of
34 the Commission.

35 (b) Acquire or accept title from willing sellers to approved lands in

1 the name of the Commission suitable for use in mitigation banks.

2 (c) Pay costs incurred for alterations needed to create or restore
3 wetland areas for purposes of carrying out the provisions of this act.

4 (d) Authorize payment of administrative, research or scientific
5 monitoring expenses of the Commission in carrying out the provisions of this
6 act.

7 (e) Receive funds from whatever source for the voluntary acquisition of
8 wetlands and interests therein.

9 (f) Enter into contract with state and federal agencies, nonprofit
10 corporations, or other persons for the management of mitigation bank
11 properties.

12 (g) Upon satisfactory establishment of a functioning wetlands site, to
13 convey mitigation bank properties to other appropriate state agencies for
14 management. The Commission shall reserve such interest in the property, as
15 necessary, to protect the wetlands function and values.

16 (h) Lands for the mitigation bank shall not be acquired by
17 condemnation.

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19 SECTION 5. PROGRAM FOR WETLANDS MITIGATION BANKS; PROGRAM CRITERIA.

20 (a) In accordance with the provisions of this act, upon the approval of
21 the Commission, the Director shall initiate and implement a program for
22 wetlands mitigation banks.

23 (b) The Commission shall adopt, by rule, standards and criteria for the
24 site selection process, operation and evaluation of mitigation banks.
25 Criteria to be considered shall include but need not be limited to:

26 (1) Historical wetland trends, including the estimated rate of
27 current and future losses of the respective types of wetlands.

28 (2) The contributions of the wetlands to:

29 (A) Wildlife, migratory birds and resident species;

30 (B) Commercial and sport fisheries;

31 (C) Surface and ground water quality and quantity, and
32 flood moderation;

33 (D) Habitat and species diversity;

34 (E) Outdoor recreation including enhancement of scenic
35 waterways; and

1 (F) Scientific and research values.

2 (3) Location of mitigation bank sites in relation:

3 (A) Location of permit actions where mitigation bank might
4 be used;

5 (B) Probability of establishing a successful mitigation
6 bank projects; and

7 (C) Maximization of wetlands functions and values.

8 (4) Regional economic needs.

9 (c) For each mitigation bank, the Director shall establish a well-
10 defined plan, including preliminary objectives, inventory of resource values
11 and an evaluation and monitoring program.

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13 SECTION 6. RESOURCE VALUES AND CREDITS FOR MITIGATION BANKS; USE AND
14 WITHDRAWAL OF CREDITS; ANNUAL EVALUATION OF SYSTEM

15 (a) For each mitigation bank, the Director shall, in consultation with
16 the Wetlands Technical Advisory Committee, establish a system of resource
17 values and credits.

18 (b) The Director shall not withdraw any credits from any mitigation
19 bank until the Director has taken actions sufficient to establish wetland
20 function of the mitigation bank site.

21 (c) The price for any mitigation credit shall be set at an amount that
22 will compensate the state for all of the costs and expenses the state has
23 incurred, and is expected to incur in establishing and maintaining that
24 portion of the mitigation bank.

25 (d) The Director annually shall:

26 (1) Evaluate the wetlands functions and values created within
27 each wetland mitigation bank site; and

28 (2) Compare the current functions and values with the functions
29 and values that the director anticipated the site would provide. If the
30 Director finds any significant disparity between the actual and anticipated
31 functions and values, the Director shall:

32 (A) Suspend the withdrawal of credits to that mitigation
33 site; or

34 (B) Take prompt action to assure that the anticipated
35 functions and values are established.

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SECTION 7. MONITORING ACTIVITIES IN MITIGATION BANKS; REPORTS.

(a) The Director shall maintain a record of actions for each mitigation bank and conduct monitoring of banks with moneys set aside for that purpose in the Arkansas Water Development Fund.

(b) The Director shall provide annual reports to the Commission and Wetlands Technical Advisory Committee moneys spent and received for each wetland mitigation bank.

SECTION 8. RULES.

The Commission shall adopt rules necessary and convenient to carry out the provisions of this act.

SECTION 9. DIRECTOR TO CONSULT AND COOPERATE WITH OTHER AGENCIES AND INTERESTED PARTIES; STATE AGENCIES TO USE BANK.

(a) The provisions of this act shall be carried out by the Director in consultation with the Wetlands Technical Advisory Committee.

(b) All public agencies requiring permit action mitigation shall, when practicable, use mitigation created under this act.

SECTION 10. ARKANSAS WETLANDS MITIGATION BANK FUNDS TO BE DEPOSITED IN THE ARKANSAS WATER DEVELOPMENT FUND; RECEIPTS.

(a) All money received for carrying out of the provisions of this act shall be deposited in the Arkansas Water Development Fund.

(b) The Commission shall keep a record of all moneys deposited in and withdrawn from the fund. The record shall indicate by separate cumulative accounts the sources from which the moneys are derived and the activity against which each withdrawal is charged.

SECTION 11. SOURCES OF FUNDS.

The following moneys shall be paid into the Arkansas Water Development Fund and used for purposes contained in this act:

- (a) Moneys received from the sale of mitigation bank credits;
- (b) Any moneys appropriated for that purpose by the General Assembly;
- (c) Moneys obtained by gift, bequest, donation or grant from any public

1 or private source for the purposes of carrying out the intent of this act;

2 (d) Moneys obtained from state financial assistance programs for the
3 purpose of carrying out the intent of this act; and

4 (e) Moneys obtained from interest or other earnings from investments of
5 moneys set aside for carrying out the purposes of this act.

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7 SECTION 12. USE OF FUNDS.

8 The Director may use the moneys in the Arkansas Water Development Fund
9 for the following purposes:

10 (a) For the voluntary acquisition of land suitable for use in
11 mitigation banks.

12 (b) To pay for costs incurred for alterations needed to create, restore
13 or enhance wetland areas for purposes of carrying out the provisions of this
14 act.

15 (c) For payment of administrative, research or scientific monitoring
16 expenses of the Commission in carrying out the provisions of this act.

17 (d) To repay financial assistance received from state financial
18 assistance programs, including interest and applicable fees, used for the
19 purposes of carrying out the intent of this act.

20 (e) Any other purpose related to wetlands creation or restoration.

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22 SECTION 13. All provisions of this act of a general and permanent
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
24 Code Revision Commission shall incorporate the same in the Code.

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26 SECTION 14. If any provision of this act or the application thereof to
27 any person or circumstance is held invalid, such invalidity shall not affect
28 other provisions or applications of the act which can be given effect without
29 the invalid provision or application, and to this end the provisions of this
30 act are declared to be severable.

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32 SECTION 15. All laws and parts of laws in conflict with this act are
33 hereby repealed.

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APPROVED: 3-8-95

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