

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 476 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

A Bill

HOUSE BILL 1671

4
5 By: Representative L. Smith
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7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE "ARKANSAS WETLANDS MITIGATION
10 BANK ACT" TO INCLUDE AQUATIC RESOURCES, STREAMS,
11 AND DEEP WATER AQUATIC HABITATS; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14
15 TO AMEND THE "ARKANSAS WETLANDS
16 MITIGATION BANK ACT" TO INCLUDE AQUATIC
17 RESOURCES, STREAMS, AND DEEP WATER
18 AQUATIC HABITATS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 15-22-1002 is amended to read as follows:
24 15-22-1002. Policy statement.

25 The purpose of this subchapter is to:

26 (1) Promote, in concert with federal and other state programs as
27 well as interested parties, the restoration, maintenance, and conservation of
28 ~~wetlands~~ aquatic resources, including wetlands, streams, and deep water
29 aquatic habitats;

30 (2) Improve cooperative efforts among private, nonprofit, and
31 public entities for the restoration, management, and protection of ~~wetlands~~
32 aquatic resources;

33 (3) Offset losses of ~~wetlands~~ aquatic resources values caused by
34 activities which otherwise comply with state and federal law;

35 (4) Encourage a predictable, efficient regulatory framework for



1 environmentally acceptable mitigation;

2 (5) Provide an option for accomplishing off-site mitigation when
3 the mitigation is required under a dredge or fill permit; and

4 (6) Supplement and not in any way abrogate any state or federal
5 law relating to ~~wetlands~~ aquatic resources.

6
7 SECTION 2. Arkansas Code § 15-22-1003 is amended to read as follows:
8 15-22-1003. Definitions.

9 As used in this subchapter:

10 (1) "Aquatic resources" means ecological functions, services,
11 and values provided by the waters of the United States that are subject to
12 compensatory mitigation under Section 404 of the Clean Water Act and Sections
13 9 and 10 of the Rivers and Harbors Act as they exist on January 1, 2007, and
14 Executive Order 11990 issued May 24, 1977, 42 F.R. 26961;

15 ~~(1)(2)~~ "Commission" means the Arkansas ~~Soil and Water~~
16 ~~Conservation~~ Natural Resources Commission;

17 ~~(2)(3)~~ "Credit" means a numerical value that represents the
18 ~~wetland~~ aquatic resources functions and value of a site;

19 ~~(3)(4)~~ "Director" means the Executive Director of the Arkansas
20 ~~Soil and Water Conservation~~ Natural Resources Commission;

21 ~~(4)(5)~~ "Mitigation bank" means a publicly owned and managed
22 ~~wetland~~ aquatic resources site created or restored in accordance with this
23 subchapter to compensate for unavoidable adverse impacts due to activities
24 which otherwise comply with the requirements of the Federal Water Pollution
25 Control Act, 33 U.S.C. §§ 1251-1376, Section 404 of the Clean Water Act and
26 Sections 9 and 10 of the Rivers and Harbors Act as they exist on January 1,
27 2007, and Executive Order 11990 issued May 24, 1977, 42 F.R. 26961., or other
28 laws requiring mitigation;

29 ~~(5)(6)~~ "Permit action" means activity under a specific dredge or
30 fill permit requested or issued pursuant to section 404 of the Federal Water
31 Pollution Control Act, 33 U.S.C. § 1344, or any other action requiring
32 mitigation; and

33 ~~(6)(7)~~ "Wetlands Technical Advisory Committee" is a committee
34 made up of the directors or their designees of:

35 (A) The Arkansas Forestry Commission;

36 (B) The Arkansas State Game and Fish Commission;

1 (C) The Arkansas State Highway and Transportation
 2 Department;

3 (D) The Department of Arkansas Heritage;

4 (E) The Arkansas Department of Environmental Quality; and

5 (F) Two (2) public members with expertise in ~~wetlands~~
 6 aquatic resources ecology appointed by the commission.

7
 8 SECTION 3. Arkansas Code § 15-22-1004 is amended to read as follows:

9 15-22-1004. ~~Wetlands~~ Banks - Acquisition and protection - Powers of
 10 the director of the commission.

11 In consultation with the Arkansas ~~Soil and Water Conservation~~ Natural
 12 Resources Commission and the Wetlands Technical Advisory Committee, the
 13 Executive Director of the Arkansas ~~Soil and Water Conservation~~ Natural
 14 Resources Commission may:

15 (1) Set a sales price for credits in the mitigation bank on
 16 behalf of the commission;

17 (2) Acquire or accept title, including easements, from willing
 18 sellers or donors to approved lands, in the name of the commission, suitable
 19 for use in mitigation banks;

20 (3) Pay costs incurred for alterations needed to create or
 21 restore ~~wetland~~ aquatic resources areas for purposes of carrying out the
 22 provisions of this subchapter;

23 (4) Authorize payment of administrative, research, or scientific
 24 monitoring expenses of the commission in carrying out the provisions of this
 25 subchapter;

26 (5) Receive funds from whatever source for the voluntary
 27 acquisition of ~~wetlands~~ a mitigation bank and interests therein;

28 (6) Enter into contracts with state and federal agencies,
 29 nonprofit corporations, or other persons for the management of mitigation
 30 bank properties; and

31 (7)(A) Upon satisfactory establishment of a functioning ~~wetlands~~
 32 aquatic resources site, convey mitigation bank properties to other
 33 appropriate state agencies for management.

34 (B) The commission shall reserve such interest in the
 35 mitigation bank property as necessary to protect the ~~wetlands~~ aquatic
 36 resources function and values.

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SECTION 4. Arkansas Code § 15-22-1005 is amended to read as follows:
15-22-1005. Program for ~~wetlands~~ mitigation banks - Program criteria.

(a) In accordance with the provisions of this subchapter, upon the approval of the Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission, the Executive Director of the Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission shall initiate and implement a program for ~~wetlands~~ mitigation banks.

(b)(1) The commission shall adopt, by rule, standards and criteria for the site selection process, operation, and evaluation of mitigation banks.

(2) Criteria to be considered shall include, but need not be limited to:

(A) Historical ~~wetland~~ aquatic resources trends, including the estimated rate of current and future losses of the respective types of ~~wetlands~~ aquatic resources;

(B) The contributions of the ~~wetlands~~ aquatic resources to:

- (i) Wildlife, migratory birds, and resident species;
- (ii) Commercial and sport fisheries;
- (iii) Surface and groundwater quality and quantity and flood moderation;
- (iv) Habitat and species diversity;
- (v) Outdoor recreation, including enhancement of scenic waterways; and
- (vi) Scientific and research values;

(C) Location of a mitigation bank ~~sites~~ in relation to the:

- (i) Location of permit actions where mitigation banks might be used;
- (ii) Probability of establishing successful mitigation bank projects; ~~and~~
- (iii) Maximization of ~~wetlands~~ aquatic resources functions and values; and

(D) Regional economic needs.

(c) For each mitigation bank, the director shall establish a well-defined plan, including preliminary objectives, an inventory of resource

1 values, and an evaluation and monitoring program.

2 (d) Lands for the mitigation bank shall not be acquired by
3 condemnation.

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5 SECTION 5. Arkansas Code § 15-22-1006 is amended the read as follows:
6 15-22-1006. Resource values and credits for mitigation banks - Use and
7 withdrawal of credits - Annual evaluation of system.

8 (a) For each mitigation bank, the Executive Director of the Arkansas
9 ~~Soil and Water Conservation~~ Natural Resources Commission, in consultation
10 with the Wetlands Technical Advisory Committee, shall establish a system of
11 resource values and credits, consistent with compensatory mitigation under
12 Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and
13 Harbors Act as they exist on January 1, 2007, and Executive Order 11990
14 issued May 24, 1977, 42 F.R. 26961.

15 (b) The director may sell credits from any mitigation bank site prior
16 to the establishment of ~~wetlands~~ aquatic resources functions if, upon review
17 of the site plan, the director determines that the implementation of the plan
18 will likely result in the established ~~wetland~~ aquatic resources function on
19 the site.

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

24 (d) The director annually shall:

25 (1) Evaluate the ~~wetlands~~ aquatic resources functions and values
26 created within each ~~wetland~~ aquatic resources mitigation bank site; and

27 (2)(A) Compare the current functions and values with the
28 functions and values that the director anticipated the mitigation bank site
29 would provide.

30 (B) If the director finds any significant disparity
31 between the actual and anticipated functions and values, the director shall:

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

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

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SECTION 6. Arkansas Code § 15-22-1007 is amended to read as follows:
 15-22-1007. Monitoring activities in mitigation banks - Reports.

(a) The Executive Director of the Arkansas ~~Soil and Water Conservation~~
Natural Resources Commission 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 Arkansas ~~Soil and~~
~~Water Conservation~~ Natural Resources Commission and the Wetlands Technical
 Advisory Committee of moneys spent and received for each ~~wetland~~ mitigation
 bank.

SECTION 7. Arkansas Code § 15-22-1008 is amended to read as follows:
 15-22-1008. Rules.

The Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission
 shall adopt rules necessary and convenient to carry out the provisions of
 this subchapter.

SECTION 8. Arkansas Code § 15-22-1009 is amended to read as follows:
 15-22-1009. Director to consult and cooperate with other agencies and
 interested parties - State agencies to use bank.

(a) The provisions of this subchapter shall be carried out by the
 Executive Director of the Arkansas ~~Soil and Water Conservation~~ Natural
Resources Commission in consultation with the Wetlands Technical Advisory
 Committee.

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

SECTION 9. Arkansas Code § 15-22-1010 is amended to read as follows:
 15-22-1010. Arkansas wetlands mitigation bank funds to be deposited in
 the Arkansas Water Development Fund - Receipts.

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

(b)(1) The Arkansas ~~Soil and Water Conservation~~ Natural Resources
 Commission shall keep a record of all moneys deposited in and withdrawn from
 the fund.

(2) The record shall indicate by separate cumulative accounts

1 the sources from which the moneys are derived and the activity against which
2 each withdrawal is charged.

3
4 SECTION 10. Arkansas Code § to read 15-22-1012 is amended as
5 follows:

6 15-22-1012. Use of funds.

7 The Executive Director of the Arkansas ~~Soil and Water Conservation~~
8 Natural Resources Commission may use the moneys in the Arkansas Water
9 Development Fund for the following purposes:

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

12 (2) To pay for costs incurred for alterations needed to create,
13 restore, or enhance ~~wetland~~ aquatic resources areas for purposes of carrying
14 out the provisions of this subchapter;

15 (3) For payment of administrative, research, or scientific
16 monitoring expenses of the Arkansas ~~Soil and Water Conservation~~ Natural
17 Resources Commission in carrying out the provisions of this subchapter;

18 (4) To repay financial assistance received from state financial
19 assistance programs, including interest and applicable fees, used for the
20 purposes of carrying out the intent of this subchapter; and

21 (5) Any other purpose related to ~~wetlands~~ wetland, stream, deep
22 water aquatic habitat, or aquatic resources creation or restoration.

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24 APPROVED: 3/23/2007