

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.

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

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9  
10 AN ACT TO AMEND THE ARKANSAS PRIVATE WETLAND AND  
11 RIPARIAN ZONE CREATION AND RESTORATION INCENTIVES  
12 ACT; TO PROVIDE CONSERVATION TAX CREDITS; AND FOR  
13 OTHER PURPOSES.  
14

## Subtitle

15  
16 TO AMEND THE ARKANSAS PRIVATE WETLAND  
17 AND RIPARIAN ZONE CREATION AND  
18 RESTORATION INCENTIVES ACT AND TO  
19 PROVIDE CONSERVATION TAX CREDITS.  
20

21  
22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24  
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:

36 (d) The donation of wetland and riparian zone qualified real property



1 interests should be encouraged by the state so that permanent protection of  
 2 the conservation values of these lands is ensured.

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

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

11 (A) The directors or their designees of:

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

17 Quality; and

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

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

22  
 23 SECTION 4. Arkansas Code § 26-51-1503, concerning the definitions used  
 24 in the Arkansas Private Wetland and Riparian Zone Creation and Restoration  
 25 Incentives Act, is amended to add additional subdivisions to read as follows:

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

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

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

36 (11) "Qualified appraisal" means an appraisal in accordance with 26

1 C.F.R. § 1.170A-13(c)(3), as in effect on January 1, 2009, and the Uniform  
2 Standards of Professional Appraisal Practice, as in effect on January 1,  
3 2009;

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

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

14

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

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

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

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

26

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

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

34 (b) There shall be allowed a wetland and riparian zone conservation  
35 tax credit against the tax imposed by the Arkansas Income Tax Act of 1929, §  
36 26-51-101 et seq., in an amount as determined in subsection (c) of this

1 section for any eligible donor who donates a qualified real property interest  
 2 for a qualified conservation purpose to an eligible donee.

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

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

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

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

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

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

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

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

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

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

34 (C) If the qualified real property interest is held by a  
 35 pass-through entity, the wetland and riparian zone conservation tax credit  
 36 shall be allocated as prescribed under 26 U.S.C. § 704(b), as in effect on

1 January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.704-  
2 1(b)(4)(ii), as in effect on January 1, 2009.

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

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

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

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

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

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~~  
~~Restoration Committee~~ from the committee.  
25

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

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

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

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

35 ~~(3)~~(C) After review of the committee comments, the commission  
36 may issue a wetland and riparian zone creation and restoration tax credit

1 approval certificate for those applications proposing projects that meet the  
 2 requirements of this subchapter and rules promulgated thereunder.

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

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

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

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

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

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

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

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

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

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

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

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

35 (C) After review of the committee comments, the commission  
 36 may issue a wetland and riparian zone conservation tax credit approval

1 certificate for those applications that meet the requirements of this  
 2 subchapter and the rules promulgated under this subchapter.

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

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

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

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

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

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

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

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

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

32 (D) Other relevant matters.

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

36 For purposes of this subchapter, the recordkeeping provisions of § 26-

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

6  
7 SECTION 10. Arkansas Code § 26-51-1510 is amended to read as follows:

8 26-51-1510. Annual compilation of credits – Expiration of subchapter –  
9 - Tax credit availability.

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

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

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

26  
27 SECTION 11. Effective Date. This act is effective for tax years  
28 beginning on or after January 1, 2009.