

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Shaver**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 15-24-102, 15-24,104, 15-  
9 24,105, 15-24-107, AND 15-24-108 AND TO AMEND SUBCHAPTER 7  
10 OF CHAPTER 120 OF TITLE 14 OF THE ARKANSAS CODE OF 1987 TO  
11 ESTABLISH A WATER DISTRICT, IRRIGATION AND DRAINAGE  
12 IMPROVEMENT DISTRICT, AND CONSERVATION DISTRICT FINANCIAL  
13 AND FACILITIES REPORTING REQUIREMENT TO THE ARKANSAS SOIL  
14 AND WATER CONSERVATION COMMISSION; AND FOR OTHER  
15 PURPOSES."

16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18  
19 SECTION 1. Arkansas Code 15-24-102 is hereby amended to read as  
20 follows:

21 "15-24-102. Commission powers and duties generally.

22 (a) It shall be the duty of the Arkansas Soil and Water Conservation  
23 Commission to:

24 (1) Study, consider, and determine upon a sound public policy with  
25 regard to flood prevention, flood control, and flood protection;

26 (2) Compile figures on flood damage current and past and information  
27 and scientific data relative to the recurrence of floods such as rainfall,  
28 runoff, flowing channels, stream obstruction, existing facilities for storing  
29 surplus waters, and existing protection works.

30 (b) The commission shall have power to:

31 (1) Clean out, widen, deepen, straighten, change, alter, divert, or  
32 eliminate in whole or in part the course or terminus of any natural or  
33 artificial water streams;

34 (2) To shape or protect stream banks for the improvement of hydraulic  
35 efficiency in the discharge of flood waters;

1           (3) To acquire lands necessary for reservoir dam sites and lines;

2           (4) To construct, take over, maintain, and operate dams, reservoirs,  
3 holding or impounding basins, flood gates, revetments, or any other works and  
4 improvements deemed necessary to prevent floods and to control, preserve, and  
5 regulate the flow of rivers and streams;

6           (5) Construct dikes, levees, or other artificial barriers to protect  
7 against inundation of property when deemed advisable by the commission;

8           (6) As an incident to the foregoing, relocate or revise bridges,  
9 buildings, roads, streets, railroads, service lines and connections of public  
10 service utilities, fences, and to do generally all things necessary for the  
11 fulfillment of the purposes of this subchapter.

12           (c) The commission shall have the power to acquire by donation, lease,  
13 purchase, or condemnation and, to hold or own in the name of the state, real  
14 and personal property, easements, and the public works erected and constructed  
15 under the authority of this subchapter.

16           (d) Any levee or drainage district shall have the authority to make  
17 contracts with the commission and to make compacts and contracts with the  
18 Government of the United States or any of its agencies and may thereby grant  
19 to the commission general or special powers as drainage or levee districts may  
20 deem proper."

21

22           SECTION 2. Arkansas Code 15-24-104 is hereby amended to read as  
23 follows:

24           "15-24-104. Rights of levee and drainage districts.

25           The following rights of any and all levee districts or drainage  
26 districts are expressly declared, ratified, and confirmed:

27           (1) The right to make compacts and contracts with the United States  
28 Government or with any agency of that government or created by that  
29 government, to borrow money and repay it, and to accept and receive any and  
30 all federal moneys, grants, contributions, gratuities, or loans, or aid of any  
31 nature made available by the United States Government or by any of its  
32 agencies or instrumentalities;

33           (2) The right of any and all levee or drainage districts to refinance  
34 their indebtedness in cooperation with any and all applicable governmental  
35 agencies and the right to proceed in pursuance of any insolvency statute or

1 bankruptcy act adopted by the Congress of the United States or by the State of  
2 Arkansas."

3

4 SECTION 3. Arkansas Code 15-24-105 is hereby amended to read as  
5 follows:

6 "15-24-105. Cooperation with United States - Applications for allotment  
7 or assistance.

8 (a) The Arkansas Soil and Water Conservation Commission is authorized  
9 and empowered on behalf of the state to:

10 (1) Cooperate with the proper federal authority of the United States in  
11 every way contemplated by any of the acts of Congress passed in connection  
12 with flood control on any of the streams in Arkansas; and

13 (2) Make necessary application for allotment or assistance from the  
14 federal government, to submit all project statements, surveys, plans,  
15 specifications and estimates and other reports or information required by the  
16 constituted federal authority, and to enter into all necessary contracts with  
17 the proper federal authorities in order to secure this full cooperation of the  
18 United States Government and the benefits of all present and future allotments  
19 in aid of flood control.

20 (b) The commission is authorized and empowered on behalf of the state  
21 to:

22 (1) Cooperate with any local entity with flood control or prevention  
23 authority in any way determined by the commission to be in the best interest  
24 of the state; and

25 (2) Enter into the necessary contracts with local entities to provide  
26 necessary assistance in the area of flood prevention and control."

27

28 SECTION 4. Arkansas Code 15-24-107 is hereby amended to read as  
29 follows:

30 "15-24-107. Eminent domain.

31 (a) The commission, where necessary for the purpose of this subchapter,  
32 shall have a dominant right of eminent domain over the right of eminent domain  
33 of railroads, telegraph, telephone, gas, water power, and other companies and  
34 corporations and over counties, townships, cities, and villages.

35 (b) In the exercise of this right, due care shall be taken to cause no

1 unnecessary damage to other public utilities.

2 (c) The commission shall also have the right to condemn for the use of  
3 any project any land or property necessary for the purpose of this subchapter  
4 and appropriate the land or property in the same manner as lands, rights-of-  
5 way, and easements are acquired by the Arkansas State Highway and  
6 Transportation Department."

7

8 SECTION 5. Arkansas Code 15-24-108 is hereby amended to read as  
9 follows:

10 "15-24-108. Receipt of federal or other funds - Flood Control Fund.

11 (a) The commission is authorized to receive on behalf of the State of  
12 Arkansas any or all federal moneys, grants, contributions, gratuities, or  
13 loans available from the Government of the United States or any of its  
14 agencies or instrumentalities for flood control work and improvement under  
15 such rules and regulations not inconsistent with the provisions of this  
16 chapter as may be provided by laws of the Congress of the United States or any  
17 federal agency or instrumentality and to receive donations, contributions, and  
18 gratuities, from any other source and to pay them over to the State Treasurer.  
19

20 (b) It shall be the duty of the State Treasurer to set up a fund known  
21 as the State Flood Control Fund, and all money shall be placed in the fund by  
22 the State Treasurer. The fund shall not be used for any purpose except the  
23 purposes set forth in this subchapter. Local entities shall have the ability  
24 to receive any and all federal grants, loans, or other assistance applicable  
25 to projects and improvements which the entity is a sponsor.

26 (c) The commission shall as it deems necessary develop any regulations  
27 necessary to administer its responsibilities under this chapter."  
28

29 SECTION 6. Arkansas Code 14-120-701 is hereby amended to read as  
30 follows:

31 "14-120-701. Purpose and intent.

32 (a) It is the express purpose and intent of this subchapter to require  
33 districts to keep their facilities in proper repair, whenever the districts  
34 shall have given assurances to the federal government that maintenance of a  
35 facility would be provided upon its completion.

1           (b) In imposing the duty upon districts, the General Assembly takes  
2 cognizance of the fact that many facilities in the State of Arkansas are  
3 constructed through the cooperation of the federal government and that  
4 adequate maintenance of these facilities in good faith is extremely important  
5 if the State of Arkansas is to continue to receive the benefit of future  
6 development of projects in this state by the federal government.

7           (c) The General Assembly also recognizes that a number of districts may  
8 be involved in an overall project that results in mutual benefits to all  
9 districts in the affected area.

10          (d) If one (1) or more of these districts fails to provide adequate  
11 maintenance according to the assurance given the federal government, the lack  
12 of maintenance can jeopardize the entire project.

13          (e) Therefore, each district shall have the duty of maintaining its  
14 facility and shall not endanger the facilities of the other districts in the  
15 affected area.

16          (f) In addition, the General Assembly recognizes that the policies of  
17 Congress in planning future work in the State of Arkansas will be influenced  
18 by the adequacy with which districts in this state provide maintenance of  
19 existing facilities according to the terms of the assurances given the federal  
20 government.

21          (g) In order to encourage Congress to continue to make available funds  
22 for future development and improvement in this state, the General Assembly  
23 recognizes that the State of Arkansas must take steps to see that the  
24 assurances given to the federal government as authorized by the laws of this  
25 state shall be fulfilled. It is declared that the purpose of this subchapter  
26 is to require that maintenance shall be provided."

27

28          SECTION 7. Arkansas Code 14-120-702 is hereby amended to read as  
29 follows:

30          "14-120-702. Authority and powers of the governing board.

31          (a) The governing board of a district organized under the laws of the  
32 State of Arkansas are authorized and empowered to purchase, lease, or rent,  
33 separately as individual districts or jointly with other districts such  
34 machinery, equipment, and material to be used in repairing, and maintaining  
35 the project of their districts.

1 (b) The governing board is further authorized and empowered to employ  
2 personnel as necessary and incident to the use of the machinery, equipment,  
3 and material obtained.

4 (c) For the purpose of carrying out the provisions of this subchapter,  
5 districts, with taxing authority, are authorized to levy a maintenance tax and  
6 obtain funds as now provided by law. Revenue based districts may set aside a  
7 portion of their receipts for operation and maintenance."

8

9 SECTION 8. Arkansas Code 14-120-703 is hereby amended to read as  
10 follows:

11 "14-120-703. Maintenance requirements.

12 (a) Whenever any district in the State of Arkansas shall have given  
13 assurances to the United States or any appropriate agency thereof that  
14 district will maintain any facility upon its completion by the federal  
15 government, then that district shall maintain the facility according to the  
16 terms of the assurance agreement entered into with the federal government.

17 (b) It shall be the duty of the governing board of districts to take  
18 all appropriate action to maintain the districts' facilities according to the  
19 assurances given to the federal government."

20

21 SECTION 9. Arkansas Code 14-120-704 is hereby amended to read as  
22 follows:

23 "14-120-704. Failure to maintain structures.

24 (a) (1) Whenever any district shall fail, refuse or neglect to maintain  
25 its project after completion, in compliance with the assurances given the  
26 federal or state government, then the appropriate agency may give written  
27 notice to the officers of the district and in the notice shall set forth the  
28 plans and specifications and estimate of cost of restoring and maintaining the  
29 structures in accordance with the assurances given.

30 (2) The district shall take steps to comply with the specifications and  
31 requirements within six (6) months after receiving notice.

32 (3) In the event that the district has not taken steps to comply  
33 therewith within the period of time above provided, then the appropriate  
34 agency may give written notice to the commission that the levee and drainage  
35 district has failed, refused, or neglected to comply with the requirements and

1 upon receipt of written notice from the agency, then the commission shall,  
2 acting through the Attorney General or its own counsel, immediately bring a  
3 mandamus suit in a court of competent jurisdiction in the name of the State of  
4 Arkansas against the officers, commissioners, or directors of the district in  
5 the county in which the domicile of the district is situated. However, in the  
6 mandamus proceedings, if it is shown that the district has insufficient funds  
7 to meet and fulfill these requirements, then it shall be deemed a compliance  
8 with this subchapter if the district has taken steps to assess and levy a  
9 sufficient maintenance tax or to raise through users fee sufficient revenue to  
10 comply with the assurances given.

11 (b) (1) Where the governing board of a district has indicated by  
12 resolution that it will not comply with the specifications and requirements  
13 contained in the notice, the commission may immediately, in lieu of a mandamus  
14 proceeding against the governing board of the district, bring an action and  
15 take other necessary legal steps in the proper local court, or courts, in the  
16 name of the State of Arkansas against the delinquent district, or subdivision  
17 thereof, or the governing board thereof to effectuate, in the manner now  
18 provided by law, the assessment, reassessment, extension, or collection of a  
19 sufficient annual tax upon the real property or to raise through users fee  
20 sufficient revenue in the district to enable the performance of the assurances  
21 given.

22 (2) The commission may also bring the action where the board of  
23 commissioners has failed to perform the assurances after the giving of the  
24 notice above specified."

25

26 SECTION 10. Arkansas Code 14-120-705 is hereby amended to read as  
27 follows:

28 "14-120-705. Collection and expenditure of tax - Costs.

29 (a) In all proceedings for the imposition and collection of an annual  
30 tax or users fee upon the real property in the district, the powers and duties  
31 of the commission in this respect shall cease when the order of the proper  
32 court in the matter has become final.

33 (b) The actual collection and expenditure of the tax or users fee shall  
34 be left to the governing board of the district.

35 (c) If the board fails or refuses to make the collection and

1 expenditure, mandamus proceedings may be instituted, or, in case a district is  
2 without representation, the commission may, in the name of the State of  
3 Arkansas, petition the proper local court for a receiver for the district to  
4 collect and expend the taxes or users fee.

5 (d) The order of the court in all such proceedings shall provide for  
6 the payment of the legal costs, including a reasonable fee for the commission  
7 or the Attorney General, by the defendant district.

8 (e) The order of the court in imposing an assessment or reassessment of  
9 taxes upon the real property or an increase in users fees in the district  
10 shall take into account the costs and expenses."

11

12 SECTION 11. Arkansas Code of 1987 Annotated, Title 14, Chapter 120, is  
13 hereby amended to add a new Section 14-120-706 to read as follows:

14 "14-120-706. (a) Each district required by law to file an annual sworn  
15 statement of the financial condition of the district and an annual audit  
16 report with the circuit or chancery clerk shall file a copy of their annual  
17 statement of financial condition and their audit report with the commission at  
18 the same time these reports are filed with the circuit or chancery clerk.

19 (b)(1) Each district not required by law to file an annual statement of  
20 financial condition and an audit report shall file with the commission on or  
21 before March 31 each year a sworn statement of the financial condition of the  
22 district and an audit report, to cover the year ending on December 31  
23 preceding. The statement of financial condition shall contain, among other  
24 things:

25 (A) A statement of the cash on hand as of January 1 of the year  
26 for which the report is made, together with all other assets of the district;

27 (B) The total receipts for the preceding year;

28 (C) The disbursements for administration, construction, and  
29 maintenance for bonds redeemed, and for interest paid on outstanding bonds;  
30 and

31 (D) Interest due on outstanding bonds, together with all other  
32 indebtedness of the district.

33 (2) In districts with revenues, from whatever source derived, in excess  
34 of twenty-five thousand dollars (\$25,000) per year, the books, records, and  
35 last annual report of the district shall also be examined at least once a year



1 by a certified public accountant. The accountant shall file a report of the  
2 examination with the commission within thirty (30) days after completing the  
3 examination.

4 (3) The accountant shall recommend the form and methods for keeping  
5 books and records and for making the reports of the district.

6 (4) The expense of the examination by the accountant shall be paid as a  
7 part of the expenses of the district.

8 (c) All accounts of the district shall be open for inspection by any  
9 person."

10

11 SECTION 12. Arkansas Code of 1987 Annotated, Title 14, Chapter 120, is  
12 hereby amended to add a new Section 14-120-707 to read as follows:

13 "14-120-707. Each district shall file with the commission on or before  
14 March 31, 1992, a report containing, among other things:

15 (1) An inventory and description of all works of improvements, levees,  
16 ditches, dams, structures, properties, and facilities owned or maintained by  
17 the district;

18 (2) An evaluation of any drainage and flooding problems in the  
19 district;

20 (3) A narrative description of the present condition and need, if any,  
21 for possible repair or maintenance work; and

22 (4) Any other reasonable engineering information the commission deems,  
23 by regulation, to be relevant to the adequate maintenance, repair, and  
24 operation of a district's plant, properties, and facilities."

25

26 SECTION 13. Arkansas Code of 1987 Annotated, Title 14, Chapter 120, is  
27 hereby amended to add a new Section 14-120-708 to read as follows:

28 "14-120-708. As used in this subchapter, unless the context otherwise  
29 requires:

30 (1) 'Commission' means the Arkansas Soil and Water conservation  
31 Commission; and

32 (2) 'District' means all levee, drainage, irrigation, watershed, and  
33 river impoundment districts, except those created by special act of the  
34 legislature, in the state of Arkansas to include, but not limited to, all  
35 those districts formed under Arkansas Code of 1987 Annotated, Title 14,

1 Chapters 117, 118, 120, 121, and 122, and all regional water districts formed  
2 under Chapter 116 of Title 14 of the Arkansas Code of 1987 Annotated, and  
3 project improvement areas formed under Chapter 125 of Title 14 of the Arkansas  
4 Code of 1987 Annotated."

5

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

9

10 SECTION 15. If any provision of this act or the application thereof to  
11 any person or circumstance is held invalid, such invalidity shall not affect  
12 other provisions or applications of the act which can be given effect without  
13 the invalid provision or application, and to this end the provisions of this  
14 act are declared to be severable.

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16 SECTION 16. All laws and parts of laws in conflict with this act are  
17 hereby repealed.

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