

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

# A Bill

HOUSE BILL 1322

4 By: Representatives Northcutt, Calhoun, Fletcher, G. Hendrix, Rorie, Wagner

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## For An Act To Be Entitled

8 "AN ACT TO CREATE TAX CREDIT INCENTIVES FOR THE CREATION  
9 AND RESTORATION OF PRIVATE WETLANDS AND RIPARIAN ZONES;  
10 AND FOR OTHER PURPOSES."

11

## Subtitle

12 "ARKANSAS PRIVATE WETLAND AND RIPARIAN  
13 ZONE CREATION AND RESTORATION INCENTIVES  
14 ACT."  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 SECTION 1. TITLE.

20 This act may be cited as the "Arkansas Private Wetland and Riparian  
21 Zone Creation and Restoration Incentives Act".

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23 SECTION 2. LEGISLATIVE FINDINGS.

24 (a) Wetlands and riparian zones have significant benefit to the state.  
25 They include: Flood impact mitigation by slowing storm water runoff; Water  
26 quality enhancement by removing sediment, nitrogen, phosphorus and other  
27 pollutants from surface water; Habitat for fish and wildlife, including  
28 waterfowl and rare or endangered species; Groundwater recharge can occur in  
29 wetland that will assist in ensuring that groundwater is available for the  
30 future; Recreational use for hunting, fishing, hiking, etc. that not only add  
31 to the quality of life, but also have a significant economic impact on the  
32 state; and, timber and food production, properly managed wetlands can provide  
33 wood products, plants and animals for human and livestock consumption.

34 (b) Arkansas has lost over seventy percent (70%) of her pre-European  
35 settlement wetlands. Even though the rate of wetland loss in the United

1 States has declined in recent years, wetlands in Arkansas continue to  
2 experience significant loss.

3 (c) The majority of lands suitable for wetlands and riparian zones are  
4 held by private owners. The state should encourage these owners to restore  
5 and enhance existing wetlands and riparian zones, and when possible create  
6 new wetlands and riparian zones.

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8 SECTION 3. DEFINITIONS.

9 The following definitions shall apply in this act only:

10 (a) "Application" means a written plan for development and operation  
11 of the project, including all requirements as the Commission may adopt by  
12 rule.

13 (b) "Commission" means the Arkansas Soil and Water Conservation  
14 Commission.

15 (c) "Department" means the Revenue Division of the Arkansas Department  
16 of Finance and Administration.

17 (d) "Project" means wetlands or riparian zones created or restored by  
18 activities for which tax credits are claimed.

19 (e) "Project cost" means the actual expenditure for a project less any  
20 reimbursement received by the taxpayer from cost-share programs.

21 (f) "Private Lands Restoration Committee" is a committee made up of  
22 the directors or their designees of the Arkansas Forestry Commission,  
23 Arkansas Game and Fish Commission, Arkansas Department of Finance and  
24 Administration, Department of Arkansas Heritage, and the Arkansas Department  
25 of Pollution Control and Ecology, and two (2) public members with expertise  
26 in wetlands ecology appointed by the Commission. In appointing public  
27 members, the Commission should consider the wide variety of interest in  
28 wetlands.

29 (g) "Riparian Zone" means an area of land along the bank of a natural  
30 water course or contiguous to a body of water that is set aside to reduce  
31 impacts of adjoining land use on the stream or water body or any other  
32 definition promulgated by the Commission.

33 (h) "Wetlands" means an area that has water at or near the surface of  
34 the ground at some time during the growing season (wetland hydrology). It  
35 contains plants that are adapted to wet habitats (hydrophytic vegetation) and

1 is made up of soils that have developed under wet conditions (hydric soils)  
2 or any other definition promulgated by the Commission.

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4       SECTION 4. APPLICABILITY.

5       (a) The tax credits provided by this act shall apply to taxable years  
6 beginning on or after January 1, 1996 and all taxable years thereafter.

7       (b) Any taxpayer claiming a tax credit under this act may not claim a  
8 credit under the Water Resources Conservation and Development Incentives Act  
9 of 1985, Title 26, Chapter 51, Subchapter 10 of the Ark. Code of 1987  
10 Annotated or any similar act for any costs related to the same project.

11       (c) Any tax credits issued to partnerships, limited liability  
12 companies, Subchapter S corporations or fiduciaries may pass through to their  
13 members, managers, partners, shareholders and/or beneficiaries.

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15       SECTION 5. ADMINISTRATION.

16       (a)(1) The Commission is charged with the responsibility of  
17 promulgating and administering rules related to the creation and restoration  
18 of wetlands and riparian zones with the intent of qualifying for the tax  
19 incentives provided for in this act.

20       (2) Prior to adoption of any rules under this act, the  
21 Commission shall obtain comments on the proposed rules of the Private Lands  
22 Restoration Committee.

23       (b) The Commission may charge a reasonable application fee for the  
24 processing of tax credit applications. All fees collected shall be deposited  
25 in the Arkansas Water Development Fund.

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27       SECTION 6. CREDIT GRANTED.

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

32       (b) To claim the benefits of this section, a taxpayer must obtain a  
33 certification from the Commission certifying to the Revenue Division of the  
34 Department that the taxpayer has met all the requirements and qualifications  
35 set forth in Section 7 of this Act.

1 (c) The amount of the credit allowed under subsection (a) of this  
2 section shall be equal to the project cost incurred in the development or  
3 restoration of wetlands and riparian zones.

4 (d) The amount of the credit that may be used by a taxpayer for a  
5 taxable year may not exceed the lesser of the amount of individual or  
6 corporate income tax otherwise due or five thousand dollars (\$5,000). Any  
7 unused credit may be carried over for a maximum of nine (9) consecutive  
8 taxable years following the taxable year in which the credit originated.

9 (e) The Revenue Division of the Department of Finance and  
10 Administration shall promulgate such rules and regulations as may be deemed  
11 necessary to carry out the tax credit provisions of the act.

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13 **SECTION 7. APPLICATION AND APPROVAL PROCEDURE.**

14 (a) A taxpayer wishing to obtain a tax credit shall submit an  
15 application to the Commission.

16 (b) Upon receipt of the application, the Commission shall make the  
17 application available to the Private Lands Restoration Committee for its  
18 review and comment.

19 (c) After review of the committee comments, the Commission may issue  
20 tax credit approval certificate for those applications proposing projects  
21 that meet the requirements of this Act and rules promulgated thereunder.

22 (d) Upon completion and proper functioning of the project, the  
23 Commission shall issue a certificate of completion.

24 (e) A taxpayer must file the certificate of tax credit approval with  
25 his income tax return for the first year in which the taxpayer claims a tax  
26 credit under this Act.

27 (f) A taxpayer must file the certificate of completion with the first  
28 tax return filed after issuance of the certificate of completion.

29 (g) Any taxpayer claiming a tax credit under this Act may not claim a  
30 tax credit under any other act for any costs related to the same project.

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32 **SECTION 8. DEVELOPMENT, OPERATION AND TAX CREDITS.**

33 (a) Project activities shall meet or exceed those standards as  
34 established by the Commission and the project must be maintained for a  
35 minimum life of ten (10) years after certified as being complete.

1 (b) Project costs incurred after issuance of a tax credit approval  
2 certificate may be claimed for tax credit, subject to limitations in Section  
3 6.

4 (c) All projects must be completed and properly functioning within  
5 three (3) years of the date of the certificate of tax credit approval, except  
6 if the Commission determines that failure to comply with this subsection is  
7 the result of conditions beyond the control of the taxpayer, an additional  
8 year to comply with this subsection may be granted by the Commission.

9 (d) If the taxpayer does not complete the project within the period  
10 provided in Subsection (c), all credits claimed must be repaid to the  
11 Department, and the project will be disallowed as a project for tax credit  
12 purposes.

13 (e)(1) If taxpayer terminates the project prior to expiration of the  
14 minimum project life, taxpayer shall provide written notification to the  
15 Commission and the Department. In addition, the taxpayer shall file an  
16 amended tax return and repay the amount of tax credit claimed which was not  
17 allowable.

18 (2) If the Commission determines that the taxpayer has  
19 terminated the project, it shall notify the Department.

20 (f) Upon the termination of the project, the taxpayer shall not be  
21 allowed any further tax credits provided in this Act and the Department shall  
22 recapture the pro-rata share of any tax credits claimed under this act for  
23 the period of termination.

24 (g) The pro-rata share for recapture of the disallowed tax credits  
25 shall be determined by dividing the period of time from termination of the  
26 project until the expiration of the minimum life of the project by the  
27 required minimum life of the project times the tax credit claimed.

28 (h)(1) For purposes of this Act, the record keeping provisions of  
29 Arkansas Code §26-18-506 requiring a taxpayer to maintain records for six (6)  
30 years after a return is filed shall be extended to require the taxpayer  
31 claiming a credit under this act to maintain the required records for the  
32 required minimum life of the project plus three (3) years.

33 (2) Notwithstanding the provisions of Arkansas Code Annotated  
34 §26-18-306 the Department may make necessary assessments to recapture  
35 disallowed tax credits for a period of three (3) years from the date of

1 expiration of the minimum life of the project.

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3 SECTION 9. ANNUAL COMPILATION OF CREDITS; EXPIRATION OF ACT.

4 (a) The Department shall compile the total amount of tax credits used  
5 pursuant to the provisions of this Act for each calendar year.

6 (b) When the total amount of tax credits used pursuant to the  
7 provisions of this act exceeds five hundred thousand dollars (\$500,000) in  
8 any calendar year, the tax credits established by this act shall expire on  
9 December 31 of the calendar year following the calendar year in which the tax  
10 credits used pursuant to the provisions of this act exceed five hundred  
11 thousand dollars (\$500,000). However, any taxpayer having been issued a  
12 certificate of tax credit approval on or prior to this day may complete the  
13 project and shall be entitled to the tax credits provided under this Act  
14 without regard to the fact that the availability of the tax credits have  
15 otherwise expired.

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17 SECTION 10. All provisions of this act of a general and permanent  
18 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
19 Code Revision Commission shall incorporate the same in the Code.

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21 SECTION 11. If any provision of this act or the application thereof to  
22 any person or circumstance is held invalid, such invalidity shall not affect  
23 other provisions or applications of the act which can be given effect without  
24 the invalid provision or application, and to this end the provisions of this  
25 act are declared to be severable.

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27 SECTION 12. All laws and parts of laws in conflict with this act are  
28 hereby repealed.

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