

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

A Bill

HOUSE BILL 1323

4 By: Representatives Northcutt, Fletcher, Calhoun, G. Hendrix, Rorie,
5 Schexnayder, Wagner, Choate, *Cash, Ray, Cunningham, Baker, Critcher, Curran,*
6 *Luker, Flanagan, Simmons, Hogue, Angel, George, and McGinnis*

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For An Act To Be Entitled

10 "AN ACT TO CREATE TAX CREDIT INCENTIVES FOR THE
11 DEVELOPMENT OF SURFACE WATER; CONVERSION FROM GROUND WATER
12 USE TO SURFACE WATER USE; WATER CONSERVATION BY
13 UTILIZATION OF LAND LEVELING; AND FOR OTHER PURPOSES."

14

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Subtitle

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"WATER RESOURCE CONSERVATION AND
DEVELOPMENT INCENTIVES ACT."

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

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SECTION 1. TITLE.

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This act shall be known as the "Water Resource Conservation and
23 Development Incentives Act."

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SECTION 2. LEGISLATIVE FINDINGS.

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(a) The State of Arkansas is blessed with abundant rainfall and other
27 surface and underground water resources which, when managed conjunctively,
28 can provide a continuous high-quality water supply to meet the foreseeable
29 needs of the entire state.

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(b) Existing water use patterns are depleting ground water supplies at
31 an unacceptable rate and alternative surface water supplies are not available
32 in sufficient quantities to alleviate this ground water depletion problem.

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(c) The tax incentives provided in this act will encourage the water
34 users to invest in: the construction of impoundments to utilize available
35 surface water and reduce our dependence on ground water; the conversion from

1 ground water use to surface water use when surface water is available; the
2 water conservation practice of land leveling to reduce agricultural
3 irrigation water use.

4 (d) It is of utmost importance to Arkansas that within critical ground
5 water areas, surface water be used when available.

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7 SECTION 3. DEFINITIONS.

8 The following definitions shall apply to this act:

9 (a) "Acre-foot" means the volumetric measure equal to forty-three
10 thousand five hundred sixty (43,560) cubic feet or approximately three
11 hundred twenty-five thousand nine hundred (325,900) gallons.

12 (b) "Application" means a written request for approval for tax
13 credits, describing the project including a water conservation plan outlining
14 the operation of the project and any additional requirements as the
15 Commission may adopt by rule.

16 (c) "Commission" means the Arkansas Soil and Water Conservation
17 Commission.

18 (d) "Critical ground water areas" means those areas that are
19 designated by the Commission pursuant to the Arkansas Groundwater Protection
20 and Management Act, contained in Title 15, Chapter 22, Subchapter 9 of the
21 Arkansas Code of 1987 Annotated.

22 (e) "Department" means the Revenue Division of the Arkansas Department
23 of Finance and Administration.

24 (f) "Land leveling" means modifying the surface relief of a field to a
25 planned grade to provide a more suitable surface for efficiently applying
26 irrigation water without excessive erosion, loss of water quality, or damage
27 to land by water logging.

28 (g) "Project" means:

29 (1) The construction, installation or restoration of water
30 impoundments or water control structures of twenty (20) acre-feet or more
31 designed for the purpose of storing water to be used for agricultural
32 irrigation or industrial processing;

33 (2) The conversion from ground water to surface water use by
34 agricultural, commercial, industrial or recreational water user.

35 (3) Agricultural land leveling resulting in water savings due to

1 the more efficient use of irrigation water for which tax credits are claimed.

2 (h) "Project cost" means the actual expenditure for a project less any
3 reimbursement received by the taxpayer from cost-share programs.

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5 SECTION 4. APPLICABILITY.

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

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

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

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16 SECTION 5. ADMINISTRATION.

17 (a)(1) The Commission shall promulgate such rules and regulations as
18 may be deemed necessary in administering projects submitted with the intent
19 of qualifying for the tax incentives provided for in this act.

20 (2) The rules shall not be adopted without the approval of the
21 Department.

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

25 (c) The Department shall promulgate such rules and regulations as may
26 be deemed necessary to carry out the tax credit provisions of this act.

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28 SECTION 6. CREDIT GRANTED -- WATER IMPOUNDMENTS OUTSIDE CRITICAL
29 AREAS.

30 (a) For projects located outside critical ground water areas, there
31 shall be allowed as a credit against the tax imposed by the Arkansas Income
32 Tax Act, §26-51-101 et seq., in an amount equal to fifty percent (50%) of the
33 project cost incurred in the construction and installation or restoration of
34 water impoundments or water control structures of twenty (20) acre-feet or
35 more designed for the purpose of storing water to be used primarily for

1 agricultural irrigation or industrial process water.

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

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8 SECTION 7. CREDIT GRANTED -- WATER IMPOUNDMENTS WITHIN CRITICAL AREAS.

9 (a) For projects located within critical ground water areas, there
10 shall be allowed as a credit against the tax imposed by the Arkansas Income
11 Tax Act, §26-51-101 et seq., in an amount equal to fifty percent (50%) of the
12 project cost incurred in the construction and installation or restoration of
13 water impoundments or water control structures of twenty (20) acre-feet or
14 more designed for the purpose of storing water to be used primarily for
15 agricultural irrigation or industrial process water.

16 (b) The amount of the credit that may be used by a taxpayer for a
17 taxable year may not exceed the lesser of the amount of individual or
18 corporate income tax otherwise due or nine thousand dollars (\$9,000). Any
19 unused credit may be carried over for a maximum of nine (9) consecutive
20 taxable years following the taxable year in which the credit originated.

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22 SECTION 8. CREDIT GRANTED -- SURFACE WATER CONVERSION OUTSIDE CRITICAL
23 AREAS.

24 (a) For projects located outside critical ground water areas, there
25 shall be allowed as a credit against the tax imposed by the Arkansas Income
26 Tax Act, §26-51-101 et seq., in an amount equal to ten percent (10%) of the
27 project cost incurred for the reduction of ground water use by substitution
28 of surface water for water used for industrial, commercial, agricultural or
29 recreational purposes.

30 (b) The amount of the credit that may be used by a taxpayer for a
31 taxable year may not exceed the lesser of the amount of individual or
32 corporate income tax otherwise due or *nine thousand dollars (\$9,000)* and any
33 unused tax credit may be carried over for a maximum of two (2) consecutive
34 taxable years following the taxable year in which the credit originated.

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1 SECTION 9. CREDIT GRANTED -- SURFACE WATER CONVERSION WITHIN CRITICAL
2 AREAS.

3 (a) For projects located within critical ground water areas, there
4 shall be allowed as a credit against the tax imposed by the Arkansas Income
5 Tax Act, §26-51-101 et seq., in an amount equal to fifty percent (50%) of the
6 project cost incurred for the reduction of ground water use by substitution
7 of surface water for water used for industrial, commercial, agricultural or
8 recreational purposes.

9 (b) The amount of the credit that may be used by a taxpayer for a
10 taxable year may not exceed the lesser of the amount of individual or
11 corporate income tax otherwise due or nine thousand dollars (\$9,000) and any
12 unused tax credit may be carried over for a maximum of two (2) consecutive
13 taxable years following the taxable year in which the credit originated.

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15 SECTION 10. CREDIT GRANTED -- LAND LEVELING FOR WATER CONSERVATION.

16 (a) There shall be allowed as a credit against the tax imposed by the
17 Arkansas Income Tax Act, §26-51-101 et seq., in an amount equal to ten
18 percent (10%) of the project cost incurred for agricultural land leveling to
19 conserve irrigation water.

20 (b) The amount of the credit that may be used by a taxpayer for a
21 taxable year may not exceed the lesser of the amount of individual or
22 corporate income tax otherwise due or *nine thousand dollars (\$9,000)* and any
23 unused tax credit may be carried over for a maximum of two (2) consecutive
24 taxable years following the taxable year in which the credit originated.

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26 SECTION 11. APPLICATION AND APPROVAL PROCEDURE.

27 (a) The Commission may issue a tax credit approval certificate for
28 those applications proposing projects that meet the requirements of this act
29 and rules promulgated thereunder.

30 (b) Upon completion of the project, the Commission shall issue a
31 certificate of completion.

32 (c) To claim the benefits of this section, a taxpayer must obtain a
33 certification from the Commission certifying to the Revenue Departments that
34 the taxpayer has met all the requirements and qualifications set forth in
35 this act.

1 (d) A taxpayer must file the certificate of tax credit approval with
2 his income tax return for the first year in which the taxpayer claims a tax
3 credit under this act.

4 (e) A taxpayer must file the certificate of completion with the first
5 tax return filed after issuance of the certificate of completion.

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7 SECTION 12. DEVELOPMENT, OPERATION AND TAX CREDITS.

8 (a) Project activities shall meet or exceed those standards as
9 established by the Commission and the project must be maintained for a
10 minimum life of ten (10) years after issuance of certificate of completion.

11 (b) Project costs incurred after issuance of a tax credit approval
12 certificate may be claimed for tax credit, subject to other limitations
13 contained in this act.

14 (c) All projects must be completed within three (3) years of the date
15 of the certificate of tax credit approval.

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

20 (e)(1) If taxpayer terminates the project prior to expiration of the
21 minimum project life, taxpayer shall provide written notification to the
22 Commission and the Department. In addition, the taxpayer shall file an
23 amended tax return and repay the amount of tax credit claimed which was not
24 allowable.

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

27 (f) Upon the termination of a project, the taxpayer shall not be
28 allowed any further tax credits provided in this act and the Department shall
29 recapture the pro-rata share of any tax credits claimed under this act for
30 the period of termination.

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

35 (h)(1) For purposes of this act, the record keeping provisions of

1 Arkansas Code §26-18-506 requiring a taxpayer to maintain records for six (6)
2 years after a return is filed shall be extended to require the taxpayer
3 claiming a credit under this act to maintain the required records for the
4 required minimum life of the project plus three (3) years.

5 (2) Notwithstanding the provisions of Arkansas Code Annotated
6 §26-18-306 the Department may make necessary assessments to recapture
7 disallowed tax credits for a period of three (3) years from the date of
8 expiration of the minimum life of the project.

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10 SECTION 13. DEDUCTION FOR PROJECT COSTS ABOVE TAX CREDIT.

11 (a) In determining net income for Arkansas income tax purposes, any
12 taxpayer qualifying for the credits provided for in this act shall also be
13 entitled to a deduction in an amount equal to the project cost less the total
14 amount of credits to which the taxpayer is entitled under this act.

15 (b) The deduction provided for in this act shall be taken only during
16 the year in which the expenditures for the project were actually incurred.

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18 SECTION 14. ANNUAL COMPILATION OF CREDITS; EXPIRATION OF THE ACT.

19 (a) The Department shall compile the total amount of tax credits used
20 pursuant to the provisions of this act for each calendar year.

21 (b) When the total amount of tax credits used pursuant to the
22 provisions of this act exceeds three million dollars (\$3,000,000) in any
23 calendar year, the tax credits established by this act shall expire on
24 December 31 of the calendar year following the calendar year in which the tax
25 credits used pursuant to the provisions of this act exceed three million
26 dollars (\$3,000,000). However, any taxpayer having been issued a certificate
27 of tax credit approval on or prior to this day may complete the project and
28 shall be entitled to the tax credits provided under this act without regard
29 to the fact that the availability of the tax credits have otherwise expired.

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31 SECTION 15. CONSTRUCTION.

32 No part or segment of this act shall be interpreted to in any way alter
33 or amend the permit requirements, reporting requirements, allocation
34 procedures or other requirements set forth in Title 15, Chapter 22 of the
35 Arkansas Code of 1985 Annotated.

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SECTION 16. AFTER DECEMBER 31, 1995, NO ADDITIONAL CERTIFICATE OF TAX CREDIT APPROVAL ISSUED UNDER WATER RESOURCE CONSERVATION AND DEVELOPMENT INCENTIVES ACT OF 1985.

No new tax credit approval certificates under the Water Resource Conservation and Development Incentives Act of 1985, codified in Title 26, Chapter 51, Subchapter 10 of the Ark. Code of 1985 Annotated shall be issued after December 31, 1995. However, any taxpayer having been issued a certificate of tax credit approval on or prior to this day may complete the project and shall be entitled the credits provided under that subchapter.

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

SECTION 18. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 19. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Northcutt, et al

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