

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

# A Bill

HOUSE BILL 1398

4 By: Representative McKissack

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## For An Act To Be Entitled

8 "AN ACT TO AMEND THE WATER POLLUTION CONTROL FACILITIES  
9 PROVISIONS CONTAINED IN TITLE 8, CHAPTER 5 OF THE ARKANSAS  
10 CODE ANNOTATED, TO PREVENT WATER POLLUTION, AND TO ENSURE  
11 RESPONSIBLE OPERATION OF AND TO REQUIRE FINANCIAL  
12 ASSURANCE FOR WASTEWATER TREATMENT PLANTS ACROSS THE  
13 STATE; AND FOR OTHER PURPOSES."

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## Subtitle

15 "TO AMEND THE WATER POLLUTION CONTROL  
16 FACILITIES PROVISIONS TO PREVENT WATER  
17 POLLUTION AND TO ENSURE RESPONSIBLE  
18 OPERATION OF AND TO REQUIRE FINANCIAL  
19 ASSURANCE FOR WASTEWATER TREATMENT  
20 PLANTS."  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. Title 8, Chapter 5 of the Arkansas Code Annotated is hereby  
26 amended to add Subchapter 7 to read as follows:

27 "SUBCHAPTER 7 -- Chronic Noncompliance.

28 8-5-701. Definitions.

29 As used in this chapter, unless the context otherwise requires:

30 (a) Chronic noncompliance means conditions described below that  
31 persist at a common sewage system after reasonable efforts by the Arkansas  
32 Department of Pollution Control and Ecology to obtain compliance with  
33 applicable laws or regulations in one of the following:

34 (i) failure to obtain a permit as required by law;

35 (ii) four or more permit violations within a six month period as

1 set out in the permit issued by the Arkansas Department of Pollution Control  
2 and Ecology;

3 (iii) failure to maintain the services of a certified wastewater  
4 treatment operator, where applicable; or

5 (iv) demonstrable failure to operate the sewage system so as to  
6 prevent the discharge of water borne pollutants in unacceptable  
7 concentrations, as defined in the individual permit or the state's water  
8 quality standards, to the surface waters or groundwater of the state.

9 (b) Common sewage system means any sewage treatment system and its  
10 associated sewage collection and pumping facilities, non-municipal publicly  
11 or privately owned, serving two or more individually owned, rented or  
12 temporarily occupied lots for the purpose of the collection or disposal of  
13 sewage. This term includes systems owned or operated by property owners'  
14 associations, non-municipal sewage improvement districts, and owners or  
15 managers of non-municipal residential subdivisions.

16 8-5-702. Remedies for Chronic Violations.

17 (a) The Department of Pollution Control and Ecology may petition a  
18 chancery court with competent jurisdiction and proper venue to remedy chronic  
19 violations by any common sewage system. The court may order any relief  
20 authorized by applicable laws, including the imposition of civil penalties,  
21 the revocation of the entity's permit, and a court order compelling the  
22 entity supplying potable water to the common sewage system to cut off the  
23 flow of potable water.

24 (b) If the court finds that circumstances prevent the owner or  
25 operator of a common sewage system from operating and maintaining the system  
26 in compliance with the law, the Department of Pollution Control and Ecology  
27 shall nominate five (5) possible receivers, which the court may appoint one  
28 to operate the system subject to the continuing jurisdiction of the court.  
29 Any such receiver appointed by the court may exercise any and all legal  
30 powers and rights assigned by law to the original owner or operator of the  
31 common sewage system, but is immune to any personal liability associated with  
32 the operation of the common sewage system. Once a receiver is appointed by  
33 the court to operate the common sewage system, the court may make available  
34 to the receiver funds pledged by the common sewage system under the minimal  
35 financial assurance provision of this statute and in addition, the receiver

1 may assess rates as necessary to operate and maintain the system.

2 (c) If the court determines that the permitted or registered entity  
 3 cannot equitably satisfy the provisions of this Act or that no feasible  
 4 alternatives exist, the court shall so certify that determination to the  
 5 Department of Pollution Control and Ecology, which shall terminate the  
 6 entity's permit and the court shall request a review by the State Health  
 7 Officer of the public health impact of an order compelling the entity  
 8 supplying potable water to the common sewage system to cut off the flow of  
 9 potable water. If the State Health Officer determines that a greater health  
 10 hazard exists from the malfunctioning sewage system than the discontinuance  
 11 of potable water service, then the State Health Officer shall so certify this  
 12 determination to the court. Then the court shall issue an order compelling  
 13 the receiver to notify all users of such system, including landowners and  
 14 tenants, of the State Health Officer's determination. Upon evidence of  
 15 reasonable notice, the court shall then issue the order to cutoff the flow of  
 16 potable water.

17 (d) The Department is authorized to institute a civil action in any  
 18 court of competent jurisdiction to accomplish any or all of the following:

- 19 (1) Restrain any violation of, or compel compliance with, the  
 20 provisions of this subchapter and of rules, regulations, orders, permits, or  
 21 plans issued pursuant thereto;
- 22 (2) Affirmatively order the remedial measures be taken as may be  
 23 necessary or appropriate to implement or effectuate the purposes and intent  
 24 of this subchapter;
- 25 (3) Recover all costs, expenses, and damages to the Department  
 26 and any other agency or subdivision of the state in enforcing or effectuating  
 27 the provisions of this subchapter, including, but not limited to, natural  
 28 resource damages;
- 29 (4) Assess civil penalties in an amount not to exceed ten  
 30 thousand dollars (\$10,000) per day for violations of this subchapter and of  
 31 any rules, regulations, permits, or plans issued pursuant thereto; or
- 32 (5) Recover civil penalties assessed pursuant to Ark. Code Ann.  
 33 § 8-4-103(c).

34 (e) In addition to the remedies provided in subsections (a)-(d) of §  
 35 8-5-702, the Department of Pollution Control and Ecology shall have the

1 authority to prohibit new or additional sewer line connections onto a common  
 2 sewage system meeting the criteria established by § 8-5-701. Once the  
 3 Department is satisfied that the common sewage system is in compliance with  
 4 state and federal law, the Department may authorize new or additional sewer  
 5 line connections onto the common sewage system.

6 8-5-703. Financial Assurance Requirements for Subsequently  
 7 Permitted Common Sewage Systems.

8 (a) After the effective date of this Act, the Department of Pollution  
 9 Control and Ecology shall not permit or register any common sewage system  
 10 serving two or more occupied lots, residences, businesses or other  
 11 discernible occupied units without the applicant first demonstrating to the  
 12 Department its financial ability to cover the costs of operating and  
 13 maintaining the system for a period of five (5) years. This minimal  
 14 financial assurance may be demonstrated to the Department by: (1) obtaining  
 15 insurance; (2) passing a financial test; (3) obtaining a letter of credit;  
 16 (4) obtaining a surety bond; (5) obtaining a trust fund or escrow account;  
 17 (6) through the use of a combination of insurance, financial test, letter of  
 18 credit, surety bond, trust fund or escrow account; or (7) an alternative  
 19 mechanism approved by the Department.

20 (b) After the effective date of this Act, any application for the  
 21 registration or permitting of a common sewage system shall be accompanied by  
 22 a reasonable estimation of the yearly operating and maintenance costs of the  
 23 system, upon which the permitting or registering agency shall base the  
 24 minimal amount of financial assurance required by this Act.

25 (c) Any financial instrument required by this Act shall be posted to  
 26 the benefit of the Arkansas Department of Pollution Control and Ecology.  
 27 It is explicitly understood that the Department of Pollution Control and  
 28 Ecology shall not directly operate and shall not be responsible for the  
 29 operation of any common sewage system."  
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31 SECTION 2. All provisions of this act of a general and permanent  
 32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
 33 Code Revision Commission shall incorporate the same in the Code.  
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35 SECTION 3. If any provision of this act or the application thereof to

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

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6 SECTION 4. All laws and parts of laws in conflict with this act are  
7 hereby repealed.

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