

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Senator Mahony

# A Bill

SENATE BILL 346

## For An Act To Be Entitled

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

## Subtitle

14 "WATER RESOURCE CONSERVATION AND  
15 DEVELOPMENT INCENTIVES ACT."

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

### 19 SECTION 1. TITLE.

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

### 23 SECTION 2. LEGISLATIVE FINDINGS.

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

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

31 (c) The tax incentives provided in this act will encourage the water  
32 users to invest in: the construction of impoundments to utilize available  
33 surface water and reduce our dependence on ground water; the conversion from  
34 ground water use to surface water use when surface water is available; the  
35 water conservation practice of land leveling to reduce agricultural

1 irrigation water use.

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

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5 SECTION 3. DEFINITIONS.

6 The following definitions shall apply to this act:

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

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

14 (c) "Commission" means the Arkansas Soil and Water Conservation  
15 Commission.

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

20 (e) "Department" means the Revenue Division of the Arkansas Department  
21 of Finance and Administration.

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

26 (g) "Project" means:

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

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

33 (3) Agricultural land leveling resulting in water savings due to  
34 the more efficient use of irrigation water for which tax credits are claimed.

35 (h) "Project cost" means the actual expenditure for a project less any

1 reimbursement received by the taxpayer from cost-share programs.

2

3 SECTION 4. APPLICABILITY.

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

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

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

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14 SECTION 5. ADMINISTRATION.

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

18 (2) The rules shall not be adopted without the approval of the  
19 Department.

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

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

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26 SECTION 6. CREDIT GRANTED -- WATER IMPOUNDMENTS OUTSIDE CRITICAL  
27 AREAS.

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

35 (b) The amount of the credit that may be used by a taxpayer for a

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

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

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

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

19

20 SECTION 8. CREDIT GRANTED -- SURFACE WATER CONVERSION OUTSIDE CRITICAL  
21 AREAS.

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

28 (b) The amount of the credit that may be used by a taxpayer for a  
29 taxable year may not exceed the lesser of the amount of individual or  
30 corporate income tax otherwise due or six thousand dollars (\$6,000) and any  
31 unused tax credit may be carried over for a maximum of two (2) consecutive  
32 taxable years following the taxable year in which the credit originated.

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34 SECTION 9. CREDIT GRANTED -- SURFACE WATER CONVERSION WITHIN CRITICAL  
35 AREAS.

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

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

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

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

18 (b) The amount of the credit that may be used by a taxpayer for a  
19 taxable year may not exceed the lesser of the amount of individual or  
20 corporate income tax otherwise due or six thousand dollars (\$6,000) and any  
21 unused tax credit may be carried over for a maximum of two (2) consecutive  
22 taxable years following the taxable year in which the credit originated.

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24 SECTION 11. APPLICATION AND APPROVAL PROCEDURE.

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

28 (b) Upon completion of the project, the Commission shall issue a  
29 certificate of completion.

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

34 (d) A taxpayer must file the certificate of tax credit approval with  
35 his income tax return for the first year in which the taxpayer claims a tax

1 credit under this act.

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

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5 SECTION 12. DEVELOPMENT, OPERATION AND TAX CREDITS.

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

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

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

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

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

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

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

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

33 (h)(1) For purposes of this act, the record keeping provisions of  
34 Arkansas Code §26-18-506 requiring a taxpayer to maintain records for six (6)  
35 years after a return is filed shall be extended to require the taxpayer

1 claiming a credit under this act to maintain the required records for the  
2 required minimum life of the project plus three (3) years.

3 (2) Notwithstanding the provisions of Arkansas Code Annotated  
4 §26-18-306 the Department may make necessary assessments to recapture  
5 disallowed tax credits for a period of three (3) years from the date of  
6 expiration of the minimum life of the project.

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

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

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

15

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

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

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

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29 SECTION 15. CONSTRUCTION.

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

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35 SECTION 16. AFTER DECEMBER 31, 1995, NO ADDITIONAL CERTIFICATE OF TAX

1 CREDIT APPROVAL ISSUED UNDER WATER RESOURCE CONSERVATION AND DEVELOPMENT  
2 INCENTIVES ACT OF 1985.

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

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

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

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

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