

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007

# A Bill

HOUSE BILL 1671

4  
5 By: Representative L. Smith  
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7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE "ARKANSAS WETLANDS MITIGATION  
10 BANK ACT" TO INCLUDE AQUATIC RESOURCES, STREAMS,  
11 AND DEEP WATER AQUATIC HABITATS; AND FOR OTHER  
12 PURPOSES.  
13

## Subtitle

14  
15 TO AMEND THE "ARKANSAS WETLANDS  
16 MITIGATION BANK ACT" TO INCLUDE AQUATIC  
17 RESOURCES, STREAMS, AND DEEP WATER  
18 AQUATIC HABITATS.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code § 15-22-1002 is amended to read as follows:  
24 15-22-1002. Policy statement.

25 The purpose of this subchapter is to:

26 (1) Promote, in concert with federal and other state programs as  
27 well as interested parties, the restoration, maintenance, and conservation of  
28 ~~wetlands~~ aquatic resources, including wetlands, streams, and deep water  
29 aquatic habitats;

30 (2) Improve cooperative efforts among private, nonprofit, and  
31 public entities for the restoration, management, and protection of ~~wetlands~~  
32 aquatic resources;

33 (3) Offset losses of ~~wetlands~~ aquatic resources values caused by  
34 activities which otherwise comply with state and federal law;

35 (4) Encourage a predictable, efficient regulatory framework for  
36 environmentally acceptable mitigation;



1 (5) Provide an option for accomplishing off-site mitigation when  
2 the mitigation is required under a dredge or fill permit; and

3 (6) Supplement and not in any way abrogate any state or federal  
4 law relating to ~~wetlands~~ aquatic resources.

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6 SECTION 2. Arkansas Code § 15-22-1003 is amended to read as follows:  
7 15-22-1003. Definitions.

8 As used in this subchapter:

9 (1) "Aquatic resources" means ecological functions, services,  
10 and values provided by the waters of the United States that are subject to  
11 compensatory mitigation under Section 404 of the Clean Water Act and Sections  
12 9 and 10 of the Rivers and Harbors Act as they exist on January 1, 2007, and  
13 Executive Order 11990 issued May 24, 1977, 42 F.R. 26961;

14 ~~(2)~~ (2) "Commission" means the Arkansas ~~Soil and Water~~  
15 ~~Conservation~~ Natural Resources Commission;

16 ~~(3)~~ (3) "Credit" means a numerical value that represents the  
17 ~~wetland~~ aquatic resources functions and value of a site;

18 ~~(4)~~ (4) "Director" means the Executive Director of the Arkansas  
19 ~~Soil and Water Conservation~~ Natural Resources Commission;

20 ~~(5)~~ (5) "Mitigation bank" means a publicly owned and managed  
21 ~~wetland~~ aquatic resources site created or restored in accordance with this  
22 subchapter to compensate for unavoidable adverse impacts due to activities  
23 which otherwise comply with the requirements of the Federal Water Pollution  
24 Control Act, 33 U.S.C. §§ 1251-1376, Section 404 of the Clean Water Act and  
25 Sections 9 and 10 of the Rivers and Harbors Act as they exist on January 1,  
26 2007, and Executive Order 11990 issued May 24, 1977, 42 F.R. 26961., or other  
27 laws requiring mitigation;

28 ~~(6)~~ (6) "Permit action" means activity under a specific dredge or  
29 fill permit requested or issued pursuant to section 404 of the Federal Water  
30 Pollution Control Act, 33 U.S.C. § 1344, or any other action requiring  
31 mitigation; and

32 ~~(7)~~ (7) "Wetlands Technical Advisory Committee" is a committee  
33 made up of the directors or their designees of:

- 34 (A) The Arkansas Forestry Commission;
- 35 (B) The Arkansas State Game and Fish Commission;
- 36 (C) The Arkansas State Highway and Transportation

1 Department;

2 (D) The Department of Arkansas Heritage;

3 (E) The Arkansas Department of Environmental Quality; and

4 (F) Two (2) public members with expertise in ~~wetlands~~

5 aquatic resources ecology appointed by the commission.

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7 SECTION 3. Arkansas Code § 15-22-1004 is amended to read as follows:

8 15-22-1004. ~~Wetlands~~ Banks - Acquisition and protection - Powers of  
9 the director of the commission.

10 In consultation with the Arkansas ~~Soil and Water Conservation~~ Natural  
11 Resources Commission and the Wetlands Technical Advisory Committee, the  
12 Executive Director of the Arkansas ~~Soil and Water Conservation~~ Natural  
13 Resources Commission may:

14 (1) Set a sales price for credits in the mitigation bank on  
15 behalf of the commission;

16 (2) Acquire or accept title, including easements, from willing  
17 sellers or donors to approved lands, in the name of the commission, suitable  
18 for use in mitigation banks;

19 (3) Pay costs incurred for alterations needed to create or  
20 restore ~~wetland~~ aquatic resources areas for purposes of carrying out the  
21 provisions of this subchapter;

22 (4) Authorize payment of administrative, research, or scientific  
23 monitoring expenses of the commission in carrying out the provisions of this  
24 subchapter;

25 (5) Receive funds from whatever source for the voluntary  
26 acquisition of ~~wetlands~~ a mitigation bank and interests therein;

27 (6) Enter into contracts with state and federal agencies,  
28 nonprofit corporations, or other persons for the management of mitigation  
29 bank properties; and

30 (7)(A) Upon satisfactory establishment of a functioning ~~wetlands~~  
31 aquatic resources site, convey mitigation bank properties to other  
32 appropriate state agencies for management.

33 (B) The commission shall reserve such interest in the  
34 mitigation bank property as necessary to protect the ~~wetlands~~ aquatic  
35 resources function and values.

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SECTION 4. Arkansas Code § 15-22-1005 is amended to read as follows:  
15-22-1005. Program for ~~wetlands~~ mitigation banks - Program criteria.

(a) In accordance with the provisions of this subchapter, upon the approval of the Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission, the Executive Director of the Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission shall initiate and implement a program for ~~wetlands~~ mitigation banks.

(b)(1) The commission shall adopt, by rule, standards and criteria for the site selection process, operation, and evaluation of mitigation banks.

(2) Criteria to be considered shall include, but need not be limited to:

(A) Historical ~~wetland~~ aquatic resources trends, including the estimated rate of current and future losses of the respective types of ~~wetlands~~ aquatic resources;

(B) The contributions of the ~~wetlands~~ aquatic resources to:

- (i) Wildlife, migratory birds, and resident species;
- (ii) Commercial and sport fisheries;
- (iii) Surface and groundwater quality and quantity and flood moderation;
- (iv) Habitat and species diversity;
- (v) Outdoor recreation, including enhancement of scenic waterways; and

(vi) Scientific and research values;

(C) Location of a mitigation bank ~~sites~~ in relation to the:

(i) Location of permit actions where mitigation banks might be used;

(ii) Probability of establishing successful mitigation bank projects; ~~and~~

(iii) Maximization of ~~wetlands~~ aquatic resources functions and values; and

(D) Regional economic needs.

(c) For each mitigation bank, the director shall establish a well-defined plan, including preliminary objectives, an inventory of resource values, and an evaluation and monitoring program.

1 (d) Lands for the mitigation bank shall not be acquired by  
 2 condemnation.

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 4 SECTION 5. Arkansas Code § 15-22-1006 is amended to read as follows:  
 5 15-22-1006. Resource values and credits for mitigation banks - Use and  
 6 withdrawal of credits - Annual evaluation of system.

7 (a) For each mitigation bank, the Executive Director of the Arkansas  
 8 ~~Soil and Water Conservation~~ Natural Resources Commission, in consultation  
 9 with the Wetlands Technical Advisory Committee, shall establish a system of  
 10 resource values and credits, consistent with compensatory mitigation under  
 11 Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and  
 12 Harbors Act as they exist on January 1, 2007, and Executive Order 11990  
 13 issued May 24, 1977, 42 F.R. 26961.

14 (b) The director may sell credits from any mitigation bank site prior  
 15 to the establishment of ~~wetlands~~ aquatic resources functions if, upon review  
 16 of the site plan, the director determines that the implementation of the plan  
 17 will likely result in the established ~~wetland~~ aquatic resources function on  
 18 the site.

19 (c) The price for any mitigation credit shall be set at an amount that  
 20 will compensate the state for all of the costs and expenses the state has  
 21 incurred and is expected to incur in establishing and maintaining that  
 22 portion of the mitigation bank.

23 (d) The director annually shall:

24 (1) Evaluate the ~~wetlands~~ aquatic resources functions and values  
 25 created within each ~~wetland~~ aquatic resources mitigation bank site; and

26 (2)(A) Compare the current functions and values with the  
 27 functions and values that the director anticipated the mitigation bank site  
 28 would provide.

29 (B) If the director finds any significant disparity  
 30 between the actual and anticipated functions and values, the director shall:

31 (i) Suspend the withdrawal of credits to that  
 32 mitigation bank site; or

33 (ii) Take prompt action to assure that the  
 34 anticipated functions and values are established.

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 36 SECTION 6. Arkansas Code § 15-22-1007 is amended to read as follows:

1 15-22-1007. Monitoring activities in mitigation banks - Reports.

2 (a) The Executive Director of the Arkansas ~~Soil and Water Conservation~~  
3 Natural Resources Commission shall maintain a record of actions for each  
4 mitigation bank and conduct monitoring of banks with moneys set aside for  
5 that purpose in the Arkansas Water Development Fund.

6 (b) The director shall provide annual reports to the Arkansas ~~Soil and~~  
7 ~~Water Conservation~~ Natural Resources Commission and the Wetlands Technical  
8 Advisory Committee of moneys spent and received for each ~~wetland~~ mitigation  
9 bank.

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11 SECTION 7. Arkansas Code § 15-22-1008 is amended to read as follows:  
12 15-22-1008. Rules.

13 The Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission  
14 shall adopt rules necessary and convenient to carry out the provisions of  
15 this subchapter.

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17 SECTION 8. Arkansas Code § 15-22-1009 is amended to read as follows:

18 15-22-1009. Director to consult and cooperate with other agencies and  
19 interested parties - State agencies to use bank.

20 (a) The provisions of this subchapter shall be carried out by the  
21 Executive Director of the Arkansas ~~Soil and Water Conservation~~ Natural  
22 Resources Commission in consultation with the Wetlands Technical Advisory  
23 Committee.

24 (b) All public agencies requiring permit action mitigation, when  
25 practicable, shall use mitigation created under this subchapter.

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27 SECTION 9. Arkansas Code § 15-22-1010 is amended to read as follows:

28 15-22-1010. Arkansas wetlands mitigation bank funds to be deposited in  
29 the Arkansas Water Development Fund - Receipts.

30 (a) All money received for carrying out the provisions of this  
31 subchapter shall be deposited in the Arkansas Water Development Fund.

32 (b)(1) The Arkansas ~~Soil and Water Conservation~~ Natural Resources  
33 Commission shall keep a record of all moneys deposited in and withdrawn from  
34 the fund.

35 (2) The record shall indicate by separate cumulative accounts  
36 the sources from which the moneys are derived and the activity against which

1 each withdrawal is charged.

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SECTION 10. Arkansas Code § to read 15-22-1012 is amended as follows:

15-22-1012. Use of funds.

The Executive Director of the Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission may use the moneys in the Arkansas Water Development Fund for the following purposes:

(1) For the voluntary acquisition of land suitable for use in mitigation banks;

(2) To pay for costs incurred for alterations needed to create, restore, or enhance ~~wetland~~ aquatic resources areas for purposes of carrying out the provisions of this subchapter;

(3) For payment of administrative, research, or scientific monitoring expenses of the Arkansas ~~Soil and Water Conservation~~ Natural Resources Commission in carrying out the provisions of this subchapter;

(4) To repay financial assistance received from state financial assistance programs, including interest and applicable fees, used for the purposes of carrying out the intent of this subchapter; and

(5) Any other purpose related to ~~wetlands~~ wetland, stream, deep water aquatic habitat, or aquatic resources creation or restoration.