

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 87th General Assembly  
3 Regular Session, 2009

# A Bill

HOUSE BILL 1463

4  
5 By: Representative Greenberg  
6  
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## For An Act To Be Entitled

8  
9 AN ACT TO MODIFY THE FINANCIAL ASSURANCE  
10 REQUIREMENTS FOR NONMUNICIPAL DOMESTIC SEWAGE  
11 TREATMENT WORKS AND FACILITIES IN CHRONIC  
12 NONCOMPLIANCE IN THE STATE OF ARKANSAS; AND FOR  
13 OTHER PURPOSES.  
14

## Subtitle

15  
16 TO MODIFY THE FINANCIAL ASSURANCE  
17 REQUIREMENTS FOR NONMUNICIPAL DOMESTIC  
18 SEWAGE TREATMENT WORKS AND FACILITIES.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code § 8-4-203(b), concerning water permits  
24 generally, is amended to read as follows:

25 (b)(1)(A)(i) The department shall not issue, modify, or renew a  
26 National Pollutant Discharge Elimination System permit or state permit for a  
27 nonmunicipal domestic sewage treatment ~~system serving two (2) or more~~  
28 ~~individually owned, rented, or temporarily occupied lots or dwellings, and~~  
29 ~~using known technology, works~~ without the permit applicant first  
30 demonstrating to the department its financial ability to cover the estimated  
31 costs of operating and maintaining the nonmunicipal domestic sewage treatment  
32 ~~system~~ works for a minimum period of five (5) years.

33 (ii) For purposes of this section, "nonmunicipal  
34 domestic sewage treatment works" means a device or system operated by an  
35 entity other than a city, town, borough, county, or sewer improvement  
36 district, that treats, in whole or in part, waste or wastewater from humans



1 or household operations and must continuously operate to protect human health  
2 and the environment despite a permittee's failure to maintain or operate the  
3 treatment works.

4 (iii) State or federal facilities, schools,  
5 universities, colleges, and any facilities utilizing a device or system that  
6 treats, in whole or in part, waste or wastewater from humans or household  
7 operations, that are subject to the regulatory supervision of the Department  
8 of Health, are specifically exempted from the requirements of this section.

9 ~~(ii)~~(iv) Each permit application for a nonmunicipal  
10 domestic sewage treatment ~~system serving two (2) or more lots or dwellings~~  
11 ~~and using known technology~~ works submitted under this section shall be  
12 accompanied by a cost estimate for a third party to operate and maintain the  
13 nonmunicipal domestic sewage treatment works ~~on an annual basis~~ each year for  
14 a period of five (5) years.

15 (B)(i) The department shall not issue, or modify, or renew  
16 a National Pollutant Discharge Elimination System permit or a state permit  
17 for a nonmunicipal domestic sewage treatment ~~system serving two (2) or more~~  
18 ~~individually owned, rented, or temporarily occupied lots or dwellings, and~~  
19 ~~using~~ works that proposes to use a new technology that, in the discretion of  
20 the department, cannot be verified to meet permit requirements, that has not  
21 ~~been previously reviewed and approved by the department,~~ without the permit  
22 applicant first demonstrating ~~to the department~~ its financial ability to  
23 replace the ~~nonmunicipal domestic sewage treatment system using new~~  
24 ~~technology with one~~ a nonmunicipal domestic sewage treatment works that uses  
25 ~~using known~~ technology acceptable to the department.

26 (ii) ~~Each~~ A reasonable cost estimate shall accompany  
27 a permit application for a nonmunicipal domestic sewage treatment system  
28 works serving two (2) or more lots or dwellings and using that proposes to  
29 use a new technology that is acceptable to the department ~~shall be~~  
30 ~~accompanied by a reasonable cost estimate to replace the nonmunicipal~~  
31 ~~domestic treatment sewage system using new technology with a nonmunicipal~~  
32 domestic sewage treatment works using known technology.

33 (2) ~~This minimum financial assurance may~~ The applicant's  
34 financial ability to operate and maintain the nonmunicipal domestic sewage  
35 treatment works for a period of five (5) years shall be demonstrated to the  
36 department by:

1 (A) ~~By obtaining~~ Obtaining insurance that specifically  
2 covers operation and maintenance costs;

3 (B) ~~By obtaining~~ Obtaining a letter of credit;

4 (C) ~~By obtaining~~ Obtaining a surety bond;

5 (D) ~~By obtaining~~ Obtaining a trust fund or an escrow  
6 account; or

7 (E) ~~Through the use of~~ Using a combination of insurance,  
8 letter of credit, surety bond, trust fund, or escrow account.

9 (3)~~(A)~~ ~~The department shall have the discretion to set the~~  
10 ~~minimum amount of financial assurance required for each permit under this~~  
11 ~~subsection, may reduce or waive the amount of the required financial~~  
12 ~~assurance if the permit applicant can demonstrate to the department's~~  
13 ~~satisfaction that:~~

14 (A) For a renewal permit, during the five (5) years  
15 preceding the application for a renewal permit, the nonmunicipal domestic  
16 sewage treatment works facility has:

17 (i) Remained in continuous operation;

18 (ii) Received no more than three (3) permit  
19 violations within a six-month period as set out in the permit issued by the  
20 department;

21 (iii) Maintained the services of a certified  
22 wastewater treatment operator, where applicable;

23 (iv) Remained financially solvent; and

24 (v) Operated the facility's nonmunicipal domestic  
25 sewage treatment works to prevent the discharge of waterborne pollutants in  
26 unacceptable concentrations to the surface waters or groundwater of the state  
27 as defined in the permit or as defined in the state's water quality  
28 standards; or

29 (B) ~~This minimum amount of financial assurance may exceed~~  
30 ~~the cost estimates submitted with the permit application, For a new permit,~~  
31 ~~that the reduction or waiver is necessary to accommodate important economic~~  
32 ~~or social development in the area of the proposed nonmunicipal domestic~~  
33 ~~sewage treatment works facility and that the applicant has shown a history of~~  
34 ~~financial responsibility and compliance with regulatory requirements in other~~  
35 ~~relevant ventures.~~

36 (4) The department has discretion to withdraw a reduction or

1 waiver granted under this subsection at any time in order to protect human  
2 health or the environment.

3 ~~(4)(5)~~ Any A financial instrument required by this section shall  
4 be posted to the benefit of the department and shall remain in effect for the  
5 life of the permit.

6 ~~(5)(6)~~ It is explicitly understood that the department shall not  
7 directly operate and shall not be responsible for the operation of any  
8 nonmunicipal domestic sewage treatment ~~system~~ works.

9  
10 SECTION 2. Arkansas Code § 8-5-703 is amended to read as follows:

11 8-5-703. Financial assurance requirements for subsequently permitted  
12 common sewage systems.

13 (a)(1)(A) The Arkansas Department of Environmental Quality may require  
14 a permitted common sewage system which is in chronic noncompliance to  
15 demonstrate shall not issue, modify, or renew a National Pollutant Discharge  
16 Elimination System permit or a state permit for a common sewage system  
17 servng two (2) or more individually owned, rented, or temporarily occupied  
18 lots or dwellings, and using known technology, without the permit applicant  
19 first demonstrating to the department its financial ability to cover the  
20 estimated costs of operating and maintaining the common sewage system for a  
21 minimum period of five (5) years.

22 (B) ~~Each permit application shall be accompanied~~ The  
23 department may require the permitted common sewage system that is in chronic  
24 noncompliance to submit by a cost estimate for a third party to operate and  
25 maintain the common sewage system ~~on an annual basis~~ each year for a period  
26 of five (5) years.

27 ~~(2)(A)~~ The department shall not ~~issue, modify, or renew a~~  
28 National Pollutant Discharge Elimination System permit or state permit for a  
29 ~~common sewage system serving two (2) or more individually owned, rented, or~~  
30 ~~temporarily occupied lots or dwellings, and using new technology that has not~~  
31 ~~been previously reviewed and approved by the department, without the permit~~  
32 ~~applicant first demonstrating to the department its financial ability to~~  
33 ~~replace the common sewage system using new technology with one using known~~  
34 ~~technology acceptable to the department.~~ common sewage system if the common  
35 sewage system facility is in chronic noncompliance and the common sewage  
36 system facility proposes to use new technology that in the discretion of the

1 department can not be verified to meet permit requirements.

2 ~~(B) Each permit application shall be accompanied by a~~  
 3 ~~reasonable cost estimate to replace the common sewage system using new~~  
 4 ~~technology with one using known technology.~~

5 (b) The applicant's financial ability to operate and maintain the  
 6 system for a period of five (5) years shall ~~This minimum financial assurance~~  
 7 ~~may be demonstrated to the department by:~~

8 (1) ~~By obtaining~~ Obtaining insurance that specifically covers  
 9 operation and maintenance costs;

10 (2) ~~By obtaining~~ Obtaining a letter of credit;

11 (3) ~~By obtaining~~ Obtaining a surety bond;

12 (4) ~~By obtaining~~ Obtaining a trust fund or an escrow account; or

13 (5) ~~Through the use of~~ Using a combination of insurance, letter  
 14 of credit, surety bond, trust fund, or escrow account.

15 (c)~~(1)~~ The department ~~shall have the discretion to set the minimum~~  
 16 ~~amount of financial assurance required for each permit, may require an amount~~  
 17 of financial assurance that exceeds the cost estimate submitted by the  
 18 applicant.

19 ~~(2) This minimum amount may exceed the cost estimates submitted with the~~  
 20 ~~permit application.~~

21 (d) ~~Any~~ A financial instrument required by this section shall be  
 22 posted to the benefit of the department and shall remain in effect for the  
 23 life of the permit.

24 (e) It is explicitly understood that the department shall not directly  
 25 operate and shall not be responsible for the operation of any sewage system.

26 (f) This section ~~in no way restricts~~ does not restrict local and  
 27 county government entities from enacting more stringent ordinances regulating  
 28 nonmunicipal domestic treatment sewage systems in Arkansas.

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 30 SECTION 3. Arkansas Code § 8-5-903(b), concerning procedures for  
 31 approval of environmental projects, contents of applications, and public  
 32 notice. is amended to read as follows:

33 (b) The department shall cause notice of the proposed project and  
 34 associated water quality standard changes described in subsection (a) of this  
 35 section ~~to~~ be published for public notice and comment in the same manner as  
 36 provided for permit applications in § 8-4-203~~(b)~~(c), and shall ~~advise~~ notify

1 the public that the details of the proposed project are available for public  
2 review.

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