

1 State of Arkansas
2 89th General Assembly
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4

A Bill

HOUSE BILL 1197

5 By: Representative Davis
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For An Act To Be Entitled

8 AN ACT TO AMEND THE LAWS CONCERNING NONMUNICIPAL
9 DOMESTIC SEWAGE TREATMENT WORKS; TO CLARIFY THE LAWS
10 REGARDING THE TRANSFER OF WATER POLLUTION PERMITS; TO
11 CLARIFY THE FINANCIAL ASSURANCE REQUIREMENTS FOR
12 NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS; TO
13 ESTABLISH ADDITIONAL FINANCIAL ASSURANCE REQUIREMENTS
14 FOR NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS; TO
15 CREATE THE WATER PERFORMANCE BOND FUND; AND FOR OTHER
16 PURPOSES.
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Subtitle

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20 TO CLARIFY THE LAWS REGARDING THE
21 TRANSFER OF WATER POLLUTION PERMITS; TO
22 CLARIFY THE FINANCIAL ASSURANCE
23 REQUIREMENTS FOR NONMUNICIPAL DOMESTIC
24 SEWAGE TREATMENT WORKS; AND TO CREATE THE
25 WATER PERFORMANCE BOND FUND.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code § 8-4-203(b), concerning water pollution
31 permits, is amended to read as follows:

32 (b)(1)(A)(i) The department shall not issue, modify, ~~or~~ renew, or
33 transfer a National Pollutant Discharge Elimination System permit or state
34 permit for a nonmunicipal domestic sewage treatment works without the permit
35 applicant first demonstrating to the department its financial ability to
36 cover the estimated costs of operating and maintaining the nonmunicipal



1 domestic sewage treatment works for a minimum period of five (5) years.

2 (ii) ~~For purposes of~~ As used in this section,
3 "nonmunicipal domestic sewage treatment works" means a device or system
4 operated by an entity other than a city, town, ~~borough~~, county, or sewer
5 improvement district that treats, in whole or in part, waste or wastewater
6 from humans or household operations and must continuously operate to protect
7 human health and the environment despite a permittee's failure to maintain or
8 operate the ~~treatment works~~ device or system.

9 (iii) State or federal facilities, schools,
10 universities, and colleges are specifically exempted from the requirements of
11 this section.

12 (iv) Each permit application for a nonmunicipal
13 domestic sewage treatment works submitted under this section shall be
14 accompanied by a cost estimate for a third party to operate and maintain the
15 nonmunicipal domestic sewage treatment works each year for a period of five
16 (5) years.

17 (v) A commercial nonmunicipal domestic sewage
18 treatment works that does not include residential services is not required to
19 post financial assurance under this section.

20 (B)(i) The department shall not issue ~~or~~, modify, renew,
21 or transfer a National Pollutant Discharge Elimination System permit or a
22 state permit for a nonmunicipal domestic sewage treatment works that proposes
23 to use a new technology that, in the discretion of the department, cannot be
24 verified to meet permit requirements without the applicant first
25 demonstrating its financial ability to replace the new technology with a
26 nonmunicipal domestic sewage treatment works that uses technology acceptable
27 to the department.

28 (ii) Each permit application for a nonmunicipal
29 domestic sewage treatment works that proposes to use a new technology that in
30 the discretion of the department cannot be verified to meet permit
31 requirements shall be accompanied by a cost estimate to replace the proposed
32 system with a nonmunicipal domestic sewage treatment works that uses
33 technology acceptable to the department.

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

- 1 (A) Obtaining insurance that specifically covers operation
2 and maintenance costs;
3 (B) Obtaining a letter of credit;
4 (C) Obtaining a surety bond;
5 (D) Obtaining a trust fund or an escrow account; or
6 (E) Using a combination of insurance, letter of credit,
7 surety bond, trust fund, or escrow account.

8 (3) The financial assurance required under subdivision (b)(2) of
9 this section shall:

10 (A) Be posted to the benefit of the department;

11 (B) Provide that the financial instrument underlying the
12 financial assurance cannot be cancelled without ninety (90) days prior
13 written notice addressed to the department's legal division chief as
14 evidenced by a signed notice sent by certified mail with a return receipt
15 requested; and

16 (C) Be reviewed by the department upon receipt of the
17 cancellation notice to determine whether to initiate procedures to:

18 (i) Revoke or suspend the permit for the
19 nonmunicipal domestic sewage treatment works; and

20 (ii) Take possession of the funds guaranteed by the
21 financial instrument underlying the financial assurance.

22 (4)(A) The owner or operator of a nonmunicipal domestic sewage
23 treatment works shall establish and maintain financial assurance that
24 demonstrates to the department's satisfaction the applicant's financial
25 ability to ensure adequate operation and maintenance costs as required under
26 subdivision (b)(2) of this section.

27 (B) Financial assurance shall provide that the department
28 is the obligee or payee of the financial instrument underlying the financial
29 assurance and shall otherwise comply with the regulations promulgated under
30 this subchapter.

31 (C) The amount of financial assurance required under this
32 subsection shall be equal to or greater than the detailed cost estimate for a
33 third party to maintain and operate the permitted nonmunicipal domestic
34 sewage treatment works in accordance with the permit and applicable
35 regulations.

36 (D) The owner or operator shall provide continuous

1 financial assurance for the operation and maintenance costs of a nonmunicipal
2 domestic sewage treatment works until the department:

3 (i) Releases the owner or operator from the
4 financial assurance requirements under this subchapter and the permit;

5 (ii) Approves the closure of the nonmunicipal
6 domestic sewage treatment works; or

7 (iii) Approves the transfer of a permit and the
8 replacement financial assurance under subdivision (b)(9) of this section.

9 (5)(A) Operation and maintenance costs shall be updated with
10 each permit renewal to account for inflation and the condition of the
11 nonmunicipal domestic sewage treatment works.

12 (B) The updated operation and maintenance costs based on
13 the condition of the nonmunicipal domestic sewage treatment works required
14 under subdivision (b)(5)(A) of this section shall be provided in a report
15 certified by a professional engineer registered in the State of Arkansas and
16 submitted to the department with each permit renewal.

17 (6)(A) If an owner or operator establishes a trust as financial
18 assurance, the owner or operator shall either fully fund the trust or make
19 payments into a trust fund.

20 (B)(i) If the owner or operator elects to make payments
21 into a trust fund, the payments shall be made in equal monthly installments
22 by the owner or operator.

23 (ii) The trust fund shall be fully funded within
24 five (5) years of the issuance of the permit unless otherwise approved by the
25 Director of the Arkansas Department of Environmental Quality.

26 (7)(A) The director may order that any financial assurance filed
27 pursuant to this section be forfeited to the department if the director
28 determines that the owner or operator has not adequately operated,
29 maintained, or completed closure of the nonmunicipal domestic sewage
30 treatment works.

31 (B) Following the determination of the director under
32 subdivision (b)(7)(A) of this section, the department shall commence
33 proceedings to collect on the financial assurance on which the department is
34 the obligee or payee.

35 (C) For each permit, the financial instrument underlying
36 the financial assurance shall be renewed or an alternate financial instrument

1 shall be issued to maintain continuous financial assurance.

2 (D) If documentation of the renewed financial assurance or
3 alternate financial assurance is not received by the department at least
4 sixty (60) days before the expiration date of the existing financial
5 instrument underlying the financial assurance, the department shall:

6 (i) Take possession of the funds guaranteed by the
7 financial instrument underlying the financial assurance; and

8 (ii)(a) Initiate procedures to suspend or revoke the
9 permit under which the nonmunicipal domestic sewage treatment works is
10 operated.

11 (b) A permit shall remain suspended until
12 financial assurance is provided to the department in accordance with this
13 subsection.

14 (E) The permittee is responsible for ensuring that
15 documentation of the financial assurance and all renewals of financial
16 instruments underlying the financial assurance are received by the department
17 by the due date.

18 (8) The department shall deposit all forfeited funds into the
19 Water Performance Bond Fund.

20 (9)(A)(i) Existing responsibilities and financial instruments
21 underlying the financial assurance remain in full force and effect, and a
22 permit shall not be transferred until the proposed new owner or operator has
23 filed and the department has approved the required replacement financial
24 assurance in accordance with the requirements of this section and applicable
25 regulations.

26 (ii) The department shall approve or deny the
27 replacement financial assurance offered under subdivision (b)(9)(A)(i) of
28 this section within thirty (30) days of receipt of the completed permit
29 transfer request.

30 (B) The department shall release to the former owner,
31 operator, or issuing institution, if appropriate, the financial assurance
32 that the former owner or operator filed if the department does not:

33 (i) Object to the replacement financial assurance
34 within thirty (30) days of receipt of the completed permit transfer request;
35 and

36 (ii) Deny the permit transfer.

1 (C) A completed permit transfer request shall be submitted
 2 on the forms required by the department and shall include the following:

3 (i) A disclosure statement, unless the nonmunicipal
 4 domestic sewage treatment works is exempt under § 8-1-106 or an Arkansas
 5 Pollution Control and Ecology Commission rule; and

6 (ii) Acceptable replacement financial assurance.

7 (D) The new owner or operator is responsible for ensuring
 8 that the financial assurance meets all applicable requirements.

9 ~~(3)~~ (10) The department may reduce or waive the amount of the
 10 required financial assurance if the permit applicant can demonstrate to the
 11 department's satisfaction that:

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

15 (i) ~~Remained~~ Maintained the nonmunicipal domestic
 16 sewage treatment works in continuous operation;

17 (ii) ~~Received no more than three (3) permit~~
 18 ~~violations within a six-month period as set out in the permit issued by the~~
 19 ~~department~~ Maintained the nonmunicipal domestic sewage treatment works in
 20 substantial compliance with the existing discharge permit issued by the
 21 department, which shall be demonstrated by submitting the following:

22 (a) All discharge monitoring reports;

23 (b) Evidence that the nonmunicipal domestic
 24 sewage treatment works has not exceeded the same permit effluent criteria in
 25 any two (2) consecutive monitoring periods during the previous three (3)
 26 years;

27 (c) Evidence that no more than ten percent
 28 (10%) of the nonmunicipal domestic sewage treatment works's submitted
 29 discharge monitoring reports show effluent violations; and

30 (d) Evidence that there have not been any
 31 administrative or judicial orders entered against the owner or operator for
 32 violations of state or federal environmental laws, rules, or regulations or
 33 permits issued by the department;

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

36 (iv) (a) Remained financially solvent, which shall be

demonstrated by an independent certified public accountant's report on the examination of the owner's or operator's independently audited financial statements.

(b) The examination of financial statements under subdivision (b)(10)(A)(iv)(a) of this section shall be conducted in accordance with the American Institute of Certified Public Accountants' Professional Standards, as they existed on January 1, 2013; and

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

(B)(i) For a new permit, that the reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed nonmunicipal domestic sewage treatment works ~~facility~~; and ~~that the~~

(ii) The applicant has shown a history of financial responsibility and compliance with regulatory requirements in other relevant ventures.

~~(4) (11) The department has discretion to~~ may withdraw a reduction or waiver granted under this subsection at any time in order to protect human health or the environment.

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

~~(6) It is explicitly understood that the~~ (12) The department shall not directly operate ~~and shall not~~ nor be responsible for the operation of ~~any~~ a nonmunicipal domestic sewage treatment works.

SECTION 2. Arkansas Code § 8-4-203(h), concerning water pollution permits, is amended to read as follows:

(h)(1) Permits for the discharge of pollutants into the waters of the state or for the prevention of pollution of the waters of the state shall remain freely transferable, ~~provided if~~ provided if the applicant for the transfer ~~notifies;~~

(A) Notifies the ~~Director of the Arkansas Department of~~

~~Environmental Quality director~~ at least thirty (30) days in advance of the proposed transfer date ~~and submits;~~

(B) Submits a disclosure statement as required ~~by~~ under § 8-1-106; and

(C) Provides any replacement financial assurance required under this section.

(2) Only ~~those~~ the reasons ~~set out~~ stated in § 8-1-103(4), § 8-1-106(b)(1) and (c), and subdivision (b)(9) of this section constitute grounds for denial of a transfer.

(3) The permit is automatically transferred to the new permittee unless the director denies the request within thirty (30) days of the receipt of the disclosure statement.

SECTION 3. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1249. Water Performance Bond Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "Water Performance Bond Fund".

(b) The fund shall consist of the following:

(1) Funds appropriated by the General Assembly;

(2) All forfeitures collected under § 8-4-201 et seq.;

(3) Grants made by a person or the federal government;

(4) Gifts and donations; and

(5) Interest earned on the moneys deposited into the fund.

(c) The fund shall be used by the Arkansas Department of Environmental Quality to hire a third-party contractor to:

(1) Take remedial action, including without limitation corrective action, the closure of a nonmunicipal domestic sewage treatment works, and any other action the Director of the Arkansas Department of Environmental Quality determines to be necessary; or

(2) Maintain and operate a nonmunicipal sewage treatment works.