

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

*As Engrossed: H2/18/15*

# A Bill

HOUSE BILL 1067

5 By: Representatives Collins, Davis, *Ballinger, Beck, Bell, Bentley, Cozart, Della Rosa, C. Douglas,*  
6 *Eubanks, Gonzales, M. Gray, Hillman, G. Hodges, Ladyman, Leding, Neal, Petty*  
7 *By: Senator U. Lindsey*  
8

## For An Act To Be Entitled

10 AN ACT TO AMEND THE LAWS PERTAINING TO THE  
11 PROMULGATION OF WATER QUALITY REGULATIONS AND THE  
12 ISSUANCE OF WASTEWATER DISCHARGE PERMITS; TO  
13 AUTHORIZE THE IMPLEMENTATION OF NUTRIENT WATER  
14 QUALITY TRADING, CREDITS, OFFSETS, AND COMPLIANCE  
15 ASSOCIATIONS; AND FOR OTHER PURPOSES.  
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## Subtitle

18 TO AMEND THE LAWS REGARDING WATER QUALITY  
19 REGULATIONS AND WASTEWATER DISCHARGE  
20 PERMITS; AND TO AUTHORIZE NUTRIENT WATER  
21 QUALITY TRADING, CREDITS, OFFSETS, AND  
22 COMPLIANCE ASSOCIATIONS.  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

29 The General Assembly finds that:

30 (1) Water quality trading is a market-based approach to  
31 achieving water quality goals that can provide greater efficiency and cost  
32 savings by allowing one (1) source to meet its regulatory obligations by  
33 using pollutant reductions created by another source that has lower pollution  
34 control costs;

35 (2) Experience in other states has demonstrated that nutrient  
36 water quality trading programs, including the use of credits, offsets, and



1 compliance associations, can result in quicker and more efficient achievement  
2 of water quality protection goals; and

3 (3) Nutrient water quality trading should be encouraged wherever  
4 appropriate and facilitated by the development of applicable regulations and  
5 permit terms.

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7 SECTION 2. Arkansas Code Title 8, Chapter 4, Subchapter 2, is  
8 amended to add an additional sections to read as follows:

9 8-4-232. Nutrient water quality trading programs.

10 (a) As used in this section, "nutrient" means a substance assimilated  
11 by an organism that promotes growth and replacement of cellular constituents,  
12 including without limitation nitrogen, phosphorus, and carbon.

13 (b)(1) The Arkansas Pollution Control and Ecology Commission may adopt  
14 regulations that specify requirements, standards, and procedures governing  
15 the establishment and implementation of nutrient water quality trading  
16 programs, including without limitation program scope, eligibility, and  
17 threshold treatment requirements.

18 (2) The nutrient water quality trading programs may include  
19 without limitation the following:

20 (A) The establishment and regulation of nutrient water  
21 quality trading exchanges;

22 (B) The establishment and regulation of nutrient water  
23 quality compliance associations;

24 (C) The authorization and regulation of nutrient water  
25 quality trading credits;

26 (D) The authorization and regulation of nutrient water  
27 quality offsets; and

28 (E)(i) The establishment of a schedule of user fees to be  
29 collected by the Arkansas Department of Environmental Quality from persons or  
30 entities utilizing nutrient water quality trades or offsets to comply with  
31 permit limits.

32 (ii) The user fees shall be based on a record  
33 calculating the reasonable costs to the department of implementing and  
34 enforcing each nutrient water quality trading, credit, or offset program.

35 (c) Under regulations adopted by the commission under subsection (b)  
36 of this section, the department may:

1           (1) Include terms and conditions in any appropriate permit that  
2 allow the eligible permit holder to use water quality trading arrangements  
3 such as water quality trading credits and water quality offsets as a means  
4 for complying with appropriate nutrient effluent limitations or conditions  
5 contained in the permit; and

6           (2) Issue permits to eligible compliance associations as a means  
7 for multiple eligible permit holders to collectively satisfy their aggregate  
8 permit limits for one (1) or more appropriate nutrient water quality  
9 parameters.

10          (d) A nutrient water quality trading program or arrangement  
11 established under this section shall provide that a decision to participate  
12 in the nutrient water quality trading program or arrangement shall be a  
13 matter of voluntary choice on the part of each participant in the nutrient  
14 water quality trading program or arrangement.

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16           8-4-233. Nutrient Water Quality Trading Advisory Panel – Created  
17 – Members – Duties.

18          (a) The Nutrient Water Quality Trading Advisory Panel is created,  
19 consisting of *nine (9)* members as follows:

20           (1) One (1) member appointed by the President Pro Tempore of the  
21 Senate;

22           (2) One (1) member appointed by the Speaker of the House of  
23 Representatives;

24           (3) *Seven (7)* members appointed by the Governor as follows:

25           (A) One (1) member to represent agricultural interests;

26           (B) One (1) member to represent forestry interests;

27           (C) One (1) member to represent municipal wastewater  
28 treatment facility interests;

29           (D) One (1) member to represent public drinking water  
30 supply interests;

31           (E) One (1) member to represent the interests of  
32 industries that hold point source wastewater discharge permits; and

33           (F) Two (2) members to represent the interests of  
34 environmental organizations regarding water quality.

35          (b)(1) A member shall serve a term of two (2) years or until a  
36 successor is appointed.

1 (2) A member may serve successive terms without limitation.

2 (3) If a vacancy occurs, the officer who made the original  
3 appointment for that position shall appoint a person who represents the same  
4 constituency as the member being replaced.

5 (c)(1) A majority of the members shall constitute a quorum for the  
6 transaction of business.

7 (2) Meetings may be conducted with members participating via  
8 telephonic or other electronic conferencing methods.

9 (d)(1) The advisory panel shall elect a chair and vice chair.

10 (2) The advisory panel may adopt rules relating to the conduct  
11 of its meetings.

12 (e) Members shall serve without compensation but may be reimbursed for  
13 expenses in accordance with § 25-16-902, if funds are available.

14 (f) The Arkansas Department of Environmental Quality shall provide  
15 meeting space and administrative services for the advisory panel.

16 (g) The advisory panel may:

17 (1) Advise the department and the Arkansas Natural Resources  
18 Commission regarding the desirability, design, and operation of nutrient  
19 water quality trading programs; and

20 (2) Advise the Arkansas Pollution Control and Ecology Commission  
21 and the Arkansas Natural Resources Commission regarding the promulgation of  
22 regulations involving nutrient water quality trading programs.

23 (h) The Arkansas Pollution Control and Ecology Commission shall not  
24 initiate a rulemaking proceeding to adopt a regulation that authorizes or  
25 governs nutrient water quality trading unless:

26 (1) The proposed regulation has been recommended by the advisory  
27 panel; or

28 (2) A copy of the proposed regulation has been delivered to the  
29 advisory panel at least sixty (60) calendar days before the date the request  
30 to initiate the rulemaking is filed with the Arkansas Pollution Control and  
31 Ecology Commission.

32 (i) Subsection (h) of this section does not limit the authority of the  
33 Arkansas Pollution Control and Ecology Commission to:

34 (1) Alter a proposed regulation at any time during the  
35 rulemaking proceeding; or

36 (2) Initiate a rulemaking proceeding if:

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(A) The members of the advisory panel have not been appointed; or

(B) The advisory panel lacks an actively serving quorum.

/s/Collins