

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011

# A Bill

HOUSE BILL 1773

4  
5 By: Representative Dale

## For An Act To Be Entitled

8 AN ACT TO AMEND THE WATER RESOURCE CONSERVATION AND  
9 DEVELOPMENT INCENTIVES ACT; TO DECLARE AN EMERGENCY;  
10 AND FOR OTHER PURPOSES.

## Subtitle

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14 TO AMEND THE WATER RESOURCE CONSERVATION  
15 AND DEVELOPMENT INCENTIVES ACT AND TO  
16 DECLARE AN EMERGENCY.

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18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20  
21 SECTION 1. Arkansas Code § 26-51-1003 is amended to read as follows:  
22 26-51-1003. Definitions.

23 As used in this subchapter:

24 (1) "Acre-foot" means the volumetric measure equal to forty-  
25 three thousand five hundred sixty cubic feet (43,560 cu. ft.) or  
26 approximately three hundred twenty-five thousand nine hundred gallons  
27 (325,900 gals.);

28 (2) "Application" means a written request for approval of a  
29 project for tax credits, describing the project, including a water  
30 conservation plan outlining the operation of the project and any additional  
31 requirements as the Arkansas Natural Resources Commission may adopt by rule;

32 (3) "Approved applicant" means an individual, fiduciary,  
33 partnership, limited liability company, or corporation that submits a written  
34 request for approval of a project for tax credits in compliance with this  
35 subchapter and receives a certificate of approval for that project;

36 ~~(3)~~(4) "Commission" means the Arkansas Natural Resources



1 Commission;

2 ~~(4)~~(5) "Critical groundwater areas" means those areas that are  
 3 designated by the commission pursuant to the Arkansas Groundwater Protection  
 4 and Management Act, § 15-22-901 et seq.;

5 ~~(5)~~(6) "Department" means ~~the Revenue Division of the Department~~  
 6 of Finance and Administration;

7 ~~(6)~~(7) "Land leveling" means modifying the surface relief of a  
 8 field to a planned grade to provide a more suitable surface for efficiently  
 9 applying irrigation water without excessive erosion, loss of water quality,  
 10 or damage to land by waterlogging;

11 ~~(7)~~(8) "Project" means:

12 (A) The construction, installation, or restoration of  
 13 water impoundment or water control structures of twenty (20) acre-feet or  
 14 more designed for the purpose of storing water to be used for agricultural,  
 15 commercial, or industrial purposes;

16 (B) The conversion from groundwater to surface water use  
 17 by agricultural, commercial, industrial, or recreational water users;

18 (C) Agricultural land leveling resulting in water savings  
 19 due to the more efficient use of irrigation water for which tax credits are  
 20 claimed; and

21 (D)(i) The purchase and installation of water measuring or  
 22 metering devices used to determine the quantity of water used.

23 (ii) Installation of such devices shall be  
 24 considered a conversion from groundwater to surface water for tax credit  
 25 purposes; and

26 ~~(8)~~(9) "Project cost" means the actual expenditure for a  
 27 project, less any reimbursement received by the ~~taxpayer~~ approved applicant  
 28 from cost-share programs.

29

30 SECTION 2. Arkansas Code § 26-51-1004 is amended to read as follows:  
 31 26-51-1004. Applicability – Effective date.

32 (a)~~(1)~~ The tax credits provided by this subchapter shall apply to  
 33 taxable years beginning on or after January 1, 1996, and all taxable years  
 34 thereafter.

35 ~~(2)~~(b) Any ~~taxpayer~~ approved applicant claiming a tax credit under  
 36 this subchapter may not claim a credit under ~~the Water Resource Conservation~~

1 ~~and Development Incentives Act of 1985 [repealed] or any similar act for any~~  
 2 ~~costs related to the same project.~~

3 ~~(3)(c) Any tax credits issued to partnerships, limited liability~~  
 4 ~~companies, Subchapter S corporations, or fiduciaries may pass through to~~  
 5 ~~their members, managers, partners, shareholders, and/or beneficiaries. Any~~  
 6 ~~tax credit issued to an approved applicant that is a partnership, a limited~~  
 7 ~~liability company taxed as a partnership, a Subchapter S corporation, or a~~  
 8 ~~fiduciary shall be passed through to the partners, members, or owners,~~  
 9 ~~respectively, on a pro rata basis or pursuant to an executed agreement~~  
 10 ~~between or among the partners, members, or owners documenting an alternative~~  
 11 ~~method for the distribution of the credit.~~

12 ~~(b)(1) No new tax credit approval certificates under the Water~~  
 13 ~~Resource Conservation and Development Incentives Act of 1985 [repealed] shall~~  
 14 ~~be issued after December 31, 1995.~~

15 ~~(2) However, any taxpayer having been issued a certificate of~~  
 16 ~~tax credit approval on or prior to December 31, 1995, may complete the~~  
 17 ~~project and shall be entitled to the credits provided under that act.~~

18  
 19 SECTION 3. Arkansas Code § 26-51-1005 is amended to read as follows:

20 26-51-1005. Credit granted – Water impoundments ~~outside critical~~  
 21 ~~areas.~~

22 ~~(a) For projects located outside critical groundwater areas, there~~  
 23 ~~There shall be allowed as a credit against the tax imposed by the Income Tax~~  
 24 ~~Act of 1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%)~~  
 25 ~~of the project cost incurred in the construction and installation or~~  
 26 ~~restoration of to an approved applicant who constructs and installs or~~  
 27 ~~restores water impoundments or water control structures of twenty (20) acre-~~  
 28 ~~feet or more designed for the purpose of storing water to be used primarily~~  
 29 ~~for agricultural, commercial, or industrial purposes.~~

30 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~  
 31 ~~taxable year may not exceed the lesser of the amount of individual or~~  
 32 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000). The~~  
 33 ~~tax credit allowed to each approved applicant shall not exceed the lesser of~~  
 34 ~~fifty percent (50%) of the project cost incurred or ninety thousand dollars~~  
 35 ~~(\$90,000).~~

36 ~~(2)(A) The amount of tax credit allowed to each approved~~

1 applicant per project that may be used for a taxable year shall not exceed  
 2 the lesser of:

3 (i) The amount of individual or corporate income tax  
 4 otherwise due; or

5 (ii) Nine thousand dollars (\$9,000).

6 (B) If the approved applicant is a pass-through entity  
 7 such as a partnership, a limited liability company taxed as a partnership, a  
 8 Subchapter S corporation, or a fiduciary, the amount of tax credit that may  
 9 be used for a taxable year shall not exceed the lesser of:

10 (i) The aggregate amount of individual or corporate  
 11 income tax otherwise due by all members of the pass-through entity; or

12 (ii) Nine thousand dollars (\$9,000).

13 ~~(2)~~(3) Any unused credit may be carried over for a maximum of  
 14 nine (9) consecutive taxable years following the taxable year in which the  
 15 credit originated.

16  
 17 SECTION 4. Arkansas Code § 26-51-1006 is repealed.

18 ~~26-51-1006. Credit granted - Water impoundments within critical areas.~~

19 ~~(a) For projects located within critical groundwater areas, there~~  
 20 ~~shall be allowed as a credit against the tax imposed by the Income Tax Act of~~  
 21 ~~1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%) of the~~  
 22 ~~project cost incurred in the construction and installation or restoration of~~  
 23 ~~water impoundments or water control structures of twenty (20) acre feet or~~  
 24 ~~more designed for the purpose of storing water to be used primarily for~~  
 25 ~~agricultural, commercial, or industrial purposes.~~

26 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~  
 27 ~~taxable year may not exceed the lesser of the amount of individual or~~  
 28 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000).~~

29 ~~(2) Any unused credit may be carried over for a maximum of nine~~  
 30 ~~(9) consecutive taxable years following the taxable year in which the credit~~  
 31 ~~originated.~~

32  
 33 SECTION 5. Arkansas Code § 26-51-1007 is amended to read as follows:

34 26-51-1007. Credit granted - Surface water conversion outside critical  
 35 areas.

36 (a) For projects located outside critical groundwater areas, there

1 shall be allowed ~~as~~ a credit against the tax imposed by the Income Tax Act of  
 2 1929, § 26-51-101 et seq., ~~in an amount equal to ten percent (10%) of the~~  
 3 ~~project cost incurred to an approved applicant~~ for the reduction of  
 4 groundwater use by substitution of surface water for water used for  
 5 industrial, commercial, agricultural, or recreational purposes.

6 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~  
 7 ~~taxable year may not exceed the lesser of the amount of individual or~~  
 8 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000).~~

9 (b)(1) The tax credit allowed to each approved applicant shall not  
 10 exceed the lesser of ten percent (10%) of the project cost incurred or twenty  
 11 seven thousand dollars (\$27,000).

12 (2)(A) The amount of tax credit allowed to each approved  
 13 applicant per project that may be used for a taxable year may not exceed the  
 14 lesser of:

15 (i) The amount of individual or corporate income tax  
 16 otherwise due; or

17 (ii) Nine thousand dollars (\$9,000).

18 (B) If the approved applicant is a pass-through entity  
 19 such as a partnership, a limited liability company taxed as a partnership, a  
 20 Subchapter S corporation, or a fiduciary, the amount of tax credit that may  
 21 be used for a taxable year shall not exceed the lesser of:

22 (i) The aggregate amount of individual or corporate  
 23 income tax otherwise due by all members of the pass-through entity; or

24 (ii) Nine thousand dollars (\$9,000).

25 ~~(2)(3)~~ Any unused tax credit may be carried over for a maximum  
 26 of two (2) consecutive taxable years following the taxable year in which the  
 27 credit originated.

28  
 29 SECTION 6. Arkansas Code § 26-51-1008 is amended to read as follows:

30 26-51-1008. Credit granted – Surface water conversion within critical  
 31 areas.

32 (a) For projects located within critical groundwater areas, there  
 33 shall be allowed ~~as~~ a credit against the tax imposed by the Income Tax Act of  
 34 1929, § 26-51-101 et seq., ~~in an amount equal to fifty percent (50%) of the~~  
 35 ~~project cost incurred to an approved applicant~~ for the reduction of  
 36 groundwater use by substitution of surface water for water used for

1 industrial, commercial, agricultural, or recreational purposes.

2 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~  
 3 ~~taxable year may not exceed the lesser of the amount of individual or~~  
 4 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000) for~~  
 5 ~~projects using water for agricultural or recreational purposes and two~~  
 6 ~~hundred thousand dollars (\$200,000) for projects using water for industrial~~  
 7 ~~or commercial purposes.~~

8 ~~(2) Any unused tax credit may be carried over for a maximum of~~  
 9 ~~two (2) consecutive taxable years for projects using water for agricultural~~  
 10 ~~or recreational purposes and a maximum of four (4) consecutive taxable years~~  
 11 ~~for projects using water for industrial or commercial purposes following the~~  
 12 ~~taxable year in which the credit originated.~~

13 (b)(1) For agricultural or recreational projects, there shall be  
 14 allowed a tax credit to each approved applicant not to exceed the lesser of  
 15 fifty percent (50%) of the project cost incurred or twenty seven thousand  
 16 dollars (\$27,000).

17 (2)(A) The amount of tax credit allowed to each approved  
 18 applicant per project that may be used for a taxable year may not exceed the  
 19 lesser of:

20 (i) The amount of individual or corporate income tax  
 21 otherwise due; or

22 (ii) Nine thousand dollars (\$9,000).

23 (B) If the approved applicant is a pass-through entity  
 24 such as a partnership, a limited liability company taxed as a partnership, a  
 25 Subchapter S corporation, or a fiduciary, the amount of tax credit that may  
 26 be used for a taxable year shall not exceed the lesser of:

27 (i) The aggregate amount of individual or corporate  
 28 income tax otherwise due by all members of the pass-through entity; or

29 (ii) Nine thousand dollars (\$9,000).

30 (3) Any unused tax credit may be carried over for a maximum of  
 31 two (2) consecutive taxable years following the taxable year in which the  
 32 credit originated.

33 (c)(1) For industrial or commercial projects, there shall be allowed a  
 34 tax credit to each approved applicant not to exceed the lesser of fifty  
 35 percent (50%) of the project cost incurred or one million dollars  
 36 (\$1,000,000).

1           (2)(A) The amount of tax credit allowed to each approved  
 2 applicant per project that may be used for a taxable year may not exceed the  
 3 lesser of:

4                   (i) The amount of individual or corporate income tax  
 5 otherwise due; or

6                           (ii) Two hundred thousand dollars (\$200,000).

7           (B) If the approved applicant is a pass-through entity  
 8 such as a partnership, a limited liability company taxed as a partnership, a  
 9 Subchapter S corporation, or a fiduciary, the amount of tax credit that may  
 10 be used for a taxable year shall not exceed the lesser of:

11                   (i) The aggregate amount of individual or corporate  
 12 income tax otherwise due by all members of the pass-through entity; or

13                           (ii) Nine thousand dollars (\$9,000).

14           ~~(2)(3)~~ Any unused tax credit may be carried over for a maximum  
 15 of four (4) consecutive taxable years following the taxable year in which the  
 16 credit originated.

17  
 18           SECTION 7. Arkansas Code § 26-51-1009 is amended to read as follows:  
 19           26-51-1009. Credit granted – Land leveling for water conservation.

20           (a) There shall be allowed ~~as~~ a credit against the tax imposed by the  
 21 Income Tax Act of 1929, § 26-51-101 et seq., ~~in an amount equal to ten~~  
 22 ~~percent (10%) of the project cost incurred~~ to an approved applicant for  
 23 agricultural land leveling to conserve irrigation water.

24           ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~  
 25 ~~taxable year may not exceed the lesser of the amount of individual or~~  
 26 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000).~~

27           (b)(1) The tax credit allowed to each approved applicant shall not  
 28 exceed the lesser of ten percent (10%) of the project cost incurred or twenty  
 29 seven thousand dollars (\$27,000).

30           (2)(A) The amount of tax credit allowed to each approved  
 31 applicant per project that may be used for a taxable year may not exceed the  
 32 lesser of:

33                   (i) The amount of individual or corporate income tax  
 34 otherwise due; or

35                           (ii) Nine thousand dollars (\$9,000).

36           (B) If the approved applicant is a pass-through entity

1 such as a partnership, a limited liability company taxed as a partnership, a  
 2 Subchapter S corporation, or a fiduciary, the amount of tax credit that may  
 3 be used for a taxable year shall not exceed the lesser of:

4 (i) The aggregate amount of individual or corporate  
 5 income tax otherwise due by all members of the pass-through entity; or

6 (ii) Nine thousand dollars (\$9,000).

7 ~~(2)(3)~~ Any unused tax credit may be carried over for a maximum  
 8 of two (2) consecutive taxable years following the taxable year in which the  
 9 credit originated.

10  
 11 SECTION 8. Arkansas Code § 26-51-1010 (c) and (d), concerning the  
 12 application and approval procedure, is amended to read as follows:

13 (c)(1) The commission may issue a tax credit approval certificate for  
 14 those applications proposing projects that meet the requirements of this  
 15 subchapter and rules promulgated thereunder.

16 ~~(2) Upon completion of the project, the commission shall issue a~~  
 17 ~~certificate of completion.~~

18 ~~(3) To claim the benefits of this section, a taxpayer must~~  
 19 ~~obtain a certification from the commission certifying to the department that~~  
 20 ~~the taxpayer has met all the requirements and qualifications set forth in~~  
 21 ~~this subchapter.~~

22 ~~(4)(A)(2) A taxpayer~~ An approved applicant must file the  
 23 certificate of tax credit approval with his income tax return for the first  
 24 year in which the ~~taxpayer~~ approved applicant claims a tax credit under this  
 25 subchapter.

26 ~~(B) A taxpayer must file the certificate of completion~~  
 27 ~~with the first tax return filed after issuance of the certificate of~~  
 28 ~~completion.~~

29 (d)(1) Upon completion of the project, the approved applicant shall  
 30 apply to the commission for a certificate of completion.

31 (2) The commission shall issue a tax credit certificate of  
 32 completion to any approved applicant meeting the requirements of this  
 33 subchapter and the rules promulgated by the department.

34 (3) After receiving a certificate of completion, the approved  
 35 applicant shall file the certificate of completion with the first tax return  
 36 filed after issuance of the certificate of completion.



1       ~~(d)~~(e) The department shall promulgate such rules and regulations as  
2 may be deemed necessary to carry out the tax credit provisions of this  
3 subchapter.

4  
5       SECTION 9. Arkansas Code § 26-51-1011 is amended to read as follows:  
6       26-51-1011. Development, operation, and tax credits.

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

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

14       (c)(1) All projects must be completed within three (3) years of the  
15 date of the certificate of tax credit approval.

16       (2) If the ~~taxpayer~~ approved applicant does not complete the  
17 project within the period provided in subdivision (c)(1) of this section, all  
18 tax credits claimed ~~must~~ shall be repaid to the ~~department~~ Department of  
19 Finance and Administration, and the project will be disallowed as a project  
20 for tax credit purposes.

21       (d)(1) If the ~~taxpayer~~ approved applicant terminates the project prior  
22 to expiration of the minimum project life, the ~~taxpayer~~ approved applicant  
23 shall provide written notification to the commission and the department. In  
24 addition, the ~~taxpayer~~ approved applicant shall file an amended tax return  
25 and repay the amount of tax credit claimed which was not allowable.

26       (2) If the commission determines that the ~~taxpayer~~ approved  
27 applicant has terminated the project, it shall notify the department.

28       (e)(1) Upon the termination of a project, the ~~taxpayer~~ approved  
29 applicant shall not be allowed any further tax credits provided in this  
30 subchapter, and the department shall recapture the pro rata share of any tax  
31 credits claimed under this subchapter for the period of termination.

32       (2) The pro rata share for recapture of the disallowed tax  
33 credits shall be determined by dividing the period of time from termination  
34 of the project until the expiration of the minimum life of the project by the  
35 required minimum life of the project times the tax credit claimed.

36       (f) Notwithstanding the provisions of § 26-18-306, the department may

1 make necessary assessments to recapture disallowed tax credits for a period  
2 of three (3) years from the date of expiration of the minimum life of the  
3 project.

4 (g) For purposes of this subchapter, the recordkeeping provisions of §  
5 26-18-506 requiring a ~~taxpayer~~ an approved applicant to maintain records for  
6 six (6) years after a return is filed shall be extended to require the  
7 ~~taxpayer~~ approved applicant claiming a credit under this subchapter to  
8 maintain the required records for the required minimum life of the project  
9 plus three (3) years.

10  
11 SECTION 10. Arkansas Code § 26-51-1012 is amended to read as follows:  
12 26-51-1012. Deduction for project costs above tax credit.

13 (a) In determining net income for Arkansas income tax purposes, any  
14 ~~taxpayer~~ approved applicant qualifying for the credits provided ~~for~~ in this  
15 subchapter shall also be entitled to a deduction in an amount equal to the  
16 project cost less the total amount of credits to which the ~~taxpayer~~ approved  
17 applicant is entitled under this subchapter.

18 (b) The deduction provided for in this subchapter shall be taken only  
19 during the year in which the expenditures for the project were actually  
20 incurred.

21  
22 SECTION 11. Arkansas Code § 26-51-1013 (b)(2), concerning annual  
23 credits, is amended to read as follows:

24 (2) However, any ~~taxpayer having been~~ approved applicant issued  
25 a certificate of tax credit approval on or prior to December 31 may complete  
26 the project and shall be entitled to the tax credits provided under this  
27 subchapter without regard to the fact that the availability of the tax  
28 credits has otherwise expired.

29  
30 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the  
31 General Assembly of the State of Arkansas that a lawsuit concerning the  
32 amount of credit available per project has exposed the state to additional  
33 tax liability and that this act is immediately necessary to prevent further  
34 exploitation of the Water Resource Conservation and Development Incentives  
35 Act. Therefore, an emergency is declared to exist and that this act being  
36 immediately necessary for the preservation of the public peace, health, and

1 safety shall become effective on:

2 (1) The date of its approval by the Governor;

3 (2) If the bill is neither approved nor vetoed by the Governor,  
4 the expiration of the period of time during which the Governor may veto the  
5 bill; or

6 (3) If the bill is vetoed by the Governor and the veto is  
7 overridden, the date the last house overrides the veto.

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