

15-22-1001. Short title.

This subchapter may be cited as the "Arkansas Wetlands Mitigation Bank Act".  
History. Acts 1995, No. 562, § 1.

15-22-1002. Policy statement.

The purpose of this subchapter is to:

(1) Promote, in concert with federal and other state programs as well as interested parties, the restoration, maintenance, and conservation of wetlands;

(2) Improve cooperative efforts among private, nonprofit, and public entities for the restoration, management, and protection of wetlands;

(3) Offset losses of wetland values caused by activities which otherwise comply with state and federal law;

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

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

(6) To supplement and not in any way abrogate any state or federal law relating to wetlands.

History. Acts 1995, No. 562, § 3.

15-22-1003. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Soil and Water Conservation Commission;

(2) "Credit" means a numerical value that represents the wetland resource functions and value of a site;

(3) "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission;

(4) "Mitigation bank" means a publicly owned and managed wetland site, created or restored in accordance with this subchapter to compensate for unavoidable adverse impacts due to activities which otherwise comply with the requirements of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1376;

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

(6) "Wetlands Technical Advisory Committee" is a committee made up of the directors or their designees of:

(A) The State Forestry Commission;

(B) The Arkansas State Game and Fish Commission;

(C) The Arkansas State Highway and Transportation Department;

(D) The Department of Arkansas Heritage;

(E) The Department of Pollution Control and Ecology; and

(F) Two (2) public members with expertise in wetlands ecology appointed by the commission.

History. Acts 1995, No. 562, § 2.

15-22-1004. Wetlands - Acquisition and protection - Powers of the director of the commission.

In consultation with the commission and the Wetlands Technical Advisory Committee, the director may:

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

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

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

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

(5) Receive funds from whatever source for the voluntary acquisition of wetlands and interests therein;

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

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

(B) The commission shall reserve such interest in the property as necessary to protect the wetlands function and values.

History. Acts 1995, No. 562, § 4.

15-22-1005. Program for wetlands mitigation banks - Program criteria.

(a) In accordance with the provisions of this subchapter, upon the approval of the commission, the director 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 trends, including the estimated rate of current and future losses of the respective types of wetlands;

(B) The contributions of the wetlands 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 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 functions and values;

(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.

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

History. Acts 1995, No. 562, §§ 4, 5.

15-22-1006. Resource values and credits for mitigation banks -  
Use and withdrawal of credits - Annual evaluation  
of system.

(a) For each mitigation bank, the director shall, in consultation with the Wetlands Technical Advisory Committee, establish a system of resource values and credits.

(b) The director shall not withdraw any credits from any mitigation bank until the director has taken actions sufficient to establish wetland function of the mitigation bank site.

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

(d) The director annually shall:

(1) Evaluate the wetlands functions and values created within each wetland mitigation bank site; and

(2)(A) Compare the current functions and values with the functions and values that the director anticipated the site would provide.

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

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

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

History. Acts 1995, No. 562, § 6.

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

(a) The director shall maintain a record of actions for each mitigation bank and conduct monitoring of banks with moneys set aside for that purpose in the Arkansas Water Development Fund.

(b) The director shall provide annual reports to the commission and the Wetlands Technical Advisory Committee of moneys spent and received for each wetland mitigation bank.

History. Acts 1995, No. 562, § 7.

15-22-1008. Rules.

The commission shall adopt rules necessary and convenient to carry out the provisions of this subchapter.

History. Acts 1995, No. 562, § 8.

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

(a) The provisions of this subchapter shall be carried out by the director in consultation with the Wetlands Technical Advisory Committee.

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

History. Acts 1995, No. 562, § 9.

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

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

(b)(1) The commission shall keep a record of all moneys deposited in and withdrawn from the fund.

(2) The record shall indicate by separate cumulative accounts the sources from which the moneys are derived and the activity against which each withdrawal is charged.

History. Acts 1995, No. 562, § 10.

15-22-1011. Sources of funds.

The following moneys shall be paid into the Arkansas Water Development Fund and used for purposes contained in this subchapter:

- (1) Moneys received from the sale of mitigation bank credits;
- (2) Any moneys appropriated for that purpose by the General Assembly;
- (3) Moneys obtained by gift, bequest, donation, or grant from any public or private source for the purposes of carrying out the intent of this subchapter;
- (4) Moneys obtained from state financial assistance programs for the purpose of carrying out the intent of this subchapter; and
- (5) Moneys obtained from interest or other earnings from investments of moneys set aside for carrying out the purposes of this subchapter.

History. Acts 1995, No. 562, § 11.

15-22-1012. Use of funds.

The director 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 areas for purposes of carrying out the provisions of this subchapter;
- (3) For payment of administrative, research, or scientific monitoring expenses of the 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 creation or restoration.

History. Acts 1995, No. 562, § 12.