

Stricken language would be deleted from and underlined language would be added to present law.
Act 987 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/1/17 S3/23/17
A Bill

HOUSE BILL 1550

By: Representative Davis
By: Senator D. Sanders

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS; TO INCREASE CONTRIBUTIONS TO THE NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS TRUST FUND BY NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS; TO REQUIRE DOCUMENTATION CONCERNING FUTURE OPERATIONS FROM NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS; TO PROHIBIT NEW WATER CONNECTIONS TO NONCOMPLIANT NONMUNICIPAL DOMESTIC WASTEWATER TREATMENT SYSTEMS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS AND THE NONMUNICIPAL DOMESTIC SEWAGE TREATMENT WORKS TRUST FUND.

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

SECTION 1. Arkansas Code § 8-4-203(b)(1), concerning permits generally for nonmunicipal domestic sewage treatment works, is amended to read as follows:

(b)(1)(A) The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first:



(i) ~~paying~~ Paying the trust fund contribution fee required under subdivision ~~(b)(2)~~(b)(4) of this section; and

(ii) Submitting the assessment required by subdivision (b)(1)(D) of this section.

(B) As used in this section, “nonmunicipal domestic sewage treatment works” means a device or system operated by an entity other than a *city, town, or county, ~~or sewer improvement district~~ that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee’s failure to maintain or operate the device or system.*

(C) *The following are specifically exempted from the requirements of this ~~section~~ subsection:*

(i) State or federal facilities;

(ii) Schools;

(iii) Universities and colleges; ~~and~~

(iv) Entities that continuously operate due to a connection with a city, town, or county, ~~or sewer improvement district~~; and

(v) A commercial or industrial entity that treats domestic sewage from its operations and does not accept domestic sewage from other entities or residences.

(D) Each application for the initial permit and any subsequent permit renewal, modification, or transfer for a nonmunicipal domestic sewage treatment works submitted under this section shall be accompanied by an assessment developed by a professional engineer licensed by the state that includes:

(i) A cost estimate for a third party to operate and maintain the nonmunicipal domestic sewage treatment works for five (5) years;

(ii) A list of all necessary capital expenditures, system upgrades, or significant repairs and a milestone schedule for completion within five (5) years; and

(iii) A financial plan that demonstrates to the department’s satisfaction the permittee’s financial ability to operate and maintain the nonmunicipal domestic sewage treatment works each year for five (5) years.

(E)(i) Except as provided under subdivision (b)(1)(E)(ii) of this section, the department shall not issue, renew, or transfer permit

coverage for nonmunicipal domestic sewage treatment works to property owners' associations or homeowner associations after January 1, 2018.

(ii) A property owners' association or homeowner association with permit coverage before December 31, 2017, may retain permit coverage if the property owners' association or homeowner association complies with this section.

SECTION 2. Arkansas Code § 8-4-203(b)(4)(B), concerning trust fund contributions for nonmunicipal domestic sewage treatment works, is amended to read as follows:

(B)(i) The department shall determine the required initial and annual trust fund contribution fees for each nonmunicipal domestic sewage treatment works based on each nonmunicipal domestic sewage treatment works' actual flow design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit and existing and projected number of residential end users.

(ii)(a) The department shall require an initial trust fund contribution fee for each construction permit for a new nonmunicipal domestic sewage treatment works or any modification to an existing nonmunicipal domestic sewage treatment works resulting in an increase in design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit.

(b) The initial trust fund contribution fee required by the department for a new nonmunicipal domestic sewage treatment works is ten percent (10%) of the estimated cost of construction of the new nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(c) The initial trust fund contribution fee required by the department for modifications to existing nonmunicipal domestic sewage treatment works is ten percent (10%) of the estimated cost of construction for the modification of the nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(d) The department shall reduce the initial trust fund contribution fee if:

(1) The nonmunicipal domestic sewage treatment works is subject to an enforcement action; and

(2) The corrective actions approved by the department would require the nonmunicipal domestic sewage treatment works to make an initial trust fund contribution.

(e) The department shall not require an initial trust fund contribution fee if the design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit is not increased.

~~(ii)(iii)~~ However, the The annual trust fund contribution fee required by the department shall not exceed ~~two hundred dollars (\$200)~~ one thousand dollars (\$1,000) per year for no-discharge permits or ~~one thousand dollars (\$1,000)~~ five thousand dollars (\$5,000) per year for discharge permits.

(iv)(a) Except as otherwise provided in subsection (b) of this section a nonmunicipal domestic sewage treatment works may apply for reimbursement for a maximum of fifty percent (50%) of the costs for capital expenditures necessary to maintain permit compliance made to the nonmunicipal domestic sewage treatment facility in the previous five (5) years if:

(1) Funding is available and appropriated; and

(2) The department has issued that nonmunicipal domestic sewage treatment facility's third permit renewal following its initial trust fund contribution.

(b) Applications for reimbursement under this subdivision (b)(4)(B) shall include a statement certified by a professional engineer licensed by the State of Arkansas identifying the necessary capital costs expended.

(v) Reimbursements from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund are subject to the following restrictions:

(a) Over the lifetime of a nonmunicipal domestic sewage treatment facility, the reimbursement to a nonmunicipal domestic sewage treatment works shall not exceed seventy-five percent (75%) of that nonmunicipal domestic sewage treatment facility's initial trust fund contribution fee.

(b) If the Director of the Arkansas Department

of Environmental Quality determines that a nonmunicipal domestic sewage treatment works is in a state of chronic noncompliance, that nonmunicipal domestic sewage treatment works shall not receive reimbursement from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

(c) The department shall reimburse a nonmunicipal domestic sewage treatment works based on a pro-rata share of each submitted request compared to the total remaining funding available if there are insufficient moneys available in a fiscal year to make reimbursements for all submitted requests under this subsection after:

(1) Deducting the moneys required to make payments to third-party contractors hired by the department from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund;

(2) Calculating the total remaining funding available; and

(3) Allocating the moneys available for reimbursement to each applicant for reimbursement.

(vi) The Arkansas Pollution Control and Ecology Commission may promulgate regulations to implement this subsection (b).

SECTION 3. Arkansas Code § 8-4-203(b), concerning permits for nonmunicipal domestic sewage treatment works, is amended to add an additional subdivision to read as follows:

(9)(A) The director or the director's designee may send a signed statement to each water service provider that serves all or a portion of the service area of a nonmunicipal domestic sewage treatment works certifying that that the director finds that the nonmunicipal domestic sewage treatment works:

(i) Is the subject of an enforcement action by the department;

(ii) Has not complied with the requirements of this section, including payment of the nonmunicipal domestic sewage treatment works trust fund contribution; or

(iii) Otherwise failed to comply with its permit.

(B) The department shall include a legal description of the service area for the nonmunicipal domestic sewage treatment works with the signed statement under subdivision (b)(9)(A) of this section.

(C) Upon receipt of a signed statement that includes a legal description of the service area for the nonmunicipal domestic sewage treatment works, the water service provider shall not establish new connections or initiate service to existing connections for water service in the service area of the nonmunicipal domestic sewage treatment works as defined by the legal description.

(D) If the director or the director's designated representative finds that the nonmunicipal domestic sewage treatment works is no longer subject to an enforcement action or has remedied the noncompliance that formed the basis for the signed statement under subdivision (b)(9)(A) of this section, the director or the director's designated representative shall send a signed statement of the finding to each water service provider that received the prior statement.

(E) Upon receipt of the signed statement required under subdivision (b)(9)(D) of this section, the water service provider may resume installation of new connections or resume initiation of service to existing connections for water service.

SECTION 4. Arkansas Code § 19-5-1142(c), concerning the Nonmunicipal Domestic Sewage Treatment Works Trust Fund, is amended to add an additional subdivision to read as follows:

(3) The fund may be used by the Arkansas Department of Environmental Quality to do the following:

(A) Provide reimbursement to a nonmunicipal domestic sewage treatment works under § 8-4-203(b);

(B) Provide technical support to nonmunicipal domestic sewage treatment works to promote adequate operation, maintenance, or completed closure of a facility; and

(C) Pay reasonable costs and expenses of the department for administering the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

/s/Davis

APPROVED: 04/06/2017