

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

As Engrossed: H3/22/05

# A Bill

HOUSE BILL 2528

5 By: Representatives Norton, Jackson, Ragland, *Clemons*  
6 By: Senator Laverty  
7  
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## For An Act To Be Entitled

10 AN ACT TO REQUIRE THAT PERSONNEL OF ARKANSAS SOIL  
11 AND WATER CONSERVATION COMMISSION GIVE SEVENTY-  
12 TWO-HOUR NOTICE BEFORE ENTERING PRIVATE PROPERTY;  
13 AND FOR OTHER PURPOSES.  
14

## Subtitle

15 AN ACT TO PROTECT PRIVACY WITH REGARD TO  
16 NUTRIENT MANAGEMENT PROGRAM ENFORCEMENT.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 15-20-905 is amended to read as follows:  
23 15-20-905. Enforcement.

24 (a)(1) *Agents of the Arkansas Soil and Water Conservation Commission*  
25 *shall have the power to enter on private property to determine compliance*  
26 *with this subchapter.*

27 ~~(2)(A) If the entry is to a facility where poultry is regularly~~  
28 ~~kept, entry~~ Entry *shall not occur without prior notification of the owner,*  
29 *operator, or agent in charge of the property.*

30 (B) *Notice shall be given to the owner, operator, or agent*  
31 *in charge of the property at least* ~~twenty-four (24)~~ *seventy-two (72)*  
32 *hours before entry.*

33 (3) *Documentation of biosecurity measures taken and biosecurity*  
34 *certification received by the* *an inspection agent of the Arkansas Soil and*  
35 *Water Conservation Commission or by a conservation district officer,*  
36 *including a biosecurity log book, shall be available to the owner upon*



1 request.

2 (4) Upon notice of disease outbreak by the Arkansas Livestock  
3 and Poultry Commission, inspection under this subchapter shall be  
4 automatically suspended until notification by the Arkansas Livestock and  
5 Poultry Commission that it is safe to resume inspections.

6 (b)(1) The Arkansas Soil and Water Conservation Commission may impose  
7 administrative penalties not to exceed five hundred dollars (\$500) per  
8 violation against the owner of a poultry feeding operation that fails to  
9 comply with the requirements of this subchapter.

10 (2) The imposition of administrative penalties shall be  
11 conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201  
12 et seq.

13 ~~(3) The Arkansas Soil and Water Conservation Commission or the~~  
14 ~~Executive Director of the Arkansas Soil and Water Conservation Commission may~~  
15 ~~issue subpoenas as provided in § 15-22-208.~~

16 ~~(4)~~(3) If the person against whom an administrative penalty has  
17 been imposed by the Arkansas Soil and Water Conservation Commission under  
18 this section fails to pay the penalty to the Arkansas Soil and Water  
19 Conservation Commission, the Arkansas Soil and Water Conservation Commission  
20 may file an action to collect the administrative penalty in the circuit court  
21 of the county in which the poultry feeding operation is located.

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23 *SECTION 2. Arkansas Code § 15-20-1106 is amended to read as follows:*  
24 *15-20-1106. Designated nutrient application. [Effective January 1,*  
25 *2004.]*

26 (a) *It shall be a violation of this subchapter to apply designated*  
27 *nutrients to soils or associated crops within a nutrient surplus area unless*  
28 *the nutrient application is done in compliance with a nutrient management*  
29 *plan approved by the Arkansas Soil and Water Conservation Commission or at a*  
30 *protective rate established by the commission.*

31 (b) Application of poultry litter to soils or associated crops on  
32 lands within a nutrient surplus area shall be done in accordance with a  
33 nutrient management plan or poultry litter management plan after January 1,  
34 2007.

35 (c) After a soil test with nutrient application recommendations is  
36 obtained for lands within a nutrient surplus area, application of commercial

1 fertilizer may continue in compliance with the protective rate after January  
2 1, 2007.

3 (d) After a soil test with nutrient application recommendations is  
4 obtained for lands within a nutrient surplus area, the protective rate as  
5 indicated by the soil test shall constitute a permit to apply nutrients  
6 consistent with the protective rate.

7 ~~(b)~~(e) Designated nutrient application within a nutrient surplus area  
8 shall be applied under time, place, and manner restrictions determined  
9 necessary by the commission to protect the soil fertility, crop vitality, and  
10 the waters within the state.

11 ~~(e)~~(f)(1) Except as provided in subsection ~~(e)~~(h) of this section,  
12 only a certified nutrient applicator may apply a nutrient application within  
13 a nutrient surplus area.

14 (2) In areas outside nutrient surplus areas, nutrient  
15 applicators may not be required to be certified.

16 ~~(d)~~(g)(1) Except as provided in subsection ~~(e)~~(h) of this section,  
17 nutrient application within a nutrient surplus area shall be documented by  
18 the nutrient applicator in a method acceptable to the commission.

19 (2)(A) This documentation shall be maintained by the landowner  
20 and the nutrient applicator.

21 (B) The information collected in furtherance of this  
22 subchapter shall not be public record.

23 ~~(e)~~(h)(1) Designated nutrient application within a nutrient surplus  
24 area on residential lands of two and one-half (2 1/2) acres or less shall be  
25 applied at a rate not to exceed the protective rate and in a manner  
26 acceptable to the commission and may be performed by the landowner or  
27 resident.

28 (2) In such instances, the landowner or resident shall not be  
29 required to be a certified nutrient applicator but shall maintain the  
30 required documentation.

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32 SECTION 3. Arkansas Code § 15-20-1107 is amended to read as follows:

33 15-20-1107. Nutrient management plan. [Effective January 1, 2004.]

34 (a)(1) Nutrient management plans shall be approved by the board of  
35 directors of the conservation district where a majority of the land to which  
36 the plan applies is located.

1           (2) The person requesting a nutrient management plan may appeal  
2 its disapproval or any of its provisions to the Executive Director of the  
3 Arkansas Soil and Water Conservation Commission.

4           ~~(a)~~(b) In considering the approval of a nutrient management plan, a  
5 conservation district board of directors and the Arkansas Soil and Water  
6 Conservation Commission shall consider the plan's provision for:

7           (1) Soil nutrient testing;

8           (2) The level of nutrients contained in the nutrient source;

9           (3) Nutrient application rates, including the methodology  
10 utilized in determining the rate;

11           (4) Crops being grown, soil type, geology, hydrology, and other  
12 physical characteristics of land on which the nutrient will be applied;

13           (5) The manner and timing of nutrient application;

14           (6) The method for keeping application records contained in the  
15 plan; and

16           (7) The qualifications of the person developing the plan.

17           ~~(b)~~(c) If the land application of a designated nutrient within a  
18 nutrient surplus area is a part of a process regulated under the Arkansas  
19 Water and Air Pollution Control Act, § 8-4-101 et seq., or other similar  
20 federal or state law and the permit contains conditions regulating the  
21 application of the designated nutrient acceptable to the commission, then the  
22 permit shall serve as the nutrient management plan.

23           (d) An approved plan shall constitute a permit to apply nutrients  
24 consistent with the plan.

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26           SECTION 4. Arkansas Code § 15-20-1108 is amended to read as follows:  
27           15-20-1108. Poultry litter management plan. [Effective January 1,  
28 2004.]

29           (a)(1) Poultry litter management plans shall be approved by the board  
30 of directors of the conservation district where a majority of the land to  
31 which the plan applies is located.

32           (2) The person requesting a poultry litter management plan may  
33 appeal its disapproval or any of its provisions to the Executive Director of  
34 the Arkansas Soil and Water Conservation Commission.

35           ~~(a)~~~~(1)~~(b)(1) Poultry feeding operations within a surplus nutrient area  
36 shall develop and implement a poultry litter management plan acceptable to

1 the Arkansas Soil and Water Conservation Commission before January 1, 2007.

2 (2) The person who develops the poultry litter management plan  
3 shall have obtained certification from the commission in planning.

4 (3) If the commission determines it to be beneficial, the  
5 poultry litter management plan may be a part of a nutrient management plan.

6 ~~(b)~~(c) At a minimum, the poultry litter management plan shall contain  
7 a:

8 (1) Periodic poultry litter nutrient content analysis component;

9 (2) Poultry litter utilization component providing for the  
10 proper utilization of the litter produced, including provisions ensuring  
11 that:

12 (A) Land application within a nutrient surplus area is in  
13 accordance with a nutrient management plan or at a rate not to exceed the  
14 protective rate;

15 (B) Land application outside a nutrient surplus area is in  
16 a method and at a rate acceptable to the commission; and

17 (C) Litter not land-applied is converted to a nonnutrient  
18 use or other use acceptable to the commission; and

19 (3) Records component that requires the owner of the poultry  
20 feeding operation to maintain sufficient records at the site of the poultry  
21 feeding operation to determine poultry litter utilization and compliance with  
22 the other portions of the poultry litter management plan.

23 ~~(e)~~(d) The commission may accept a plan or permit prepared to comply  
24 with federal law as a poultry litter management plan if the plan or permit  
25 substantially meets the requirements of this section.

26 (e) An approved plan shall constitute a permit to apply nutrients  
27 consistent with the plan.

28  
29 SECTION 5. Arkansas Code § 15-20-1112 is amended to read as follows:

30 15-20-1112. Enforcement. [Effective January 1, 2004.]

31 (a)(1) Agents of the Arkansas Soil and Water Conservation Commission  
32 or a conservation district may enter on private property to determine  
33 compliance with this subchapter.

34 (2)(A) ~~If the entry is to a facility where poultry is regularly~~  
35 ~~kept, entry~~ Entry shall not occur without prior notification of the owner.

36 (B) Notice shall be given to the owner, operator, or agent

1 in charge of the property at least ~~twenty-four (24)~~ seventy-two (72) hours  
2 before entry.

3 (3) Documentation of biosecurity measures taken and biosecurity  
4 certification received by ~~the~~ an inspection agent of the Arkansas Soil and  
5 Water Conservation Commission or by a conservation district officer,  
6 including a biosecurity log book, shall be available to the owner upon  
7 request.

8 (4) Upon notice of disease outbreak by the Arkansas Livestock  
9 and Poultry Commission, inspection under this subchapter shall be  
10 automatically suspended until notification by the Arkansas Livestock and  
11 Poultry Commission that it is safe to resume inspections.

12 (b) The process for the imposition of administrative penalties under §  
13 15-20-1205 shall be conducted pursuant to the Arkansas Administrative  
14 Procedure Act, § 25-15-201 et seq.

15 ~~(c) The Arkansas Soil and Water Conservation Commission and the~~  
16 ~~Executive Director of the Arkansas Soil and Water Conservation Commission may~~  
17 ~~issue subpoenas as provided in § 15-22-208.~~

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19 SECTION 6. Arkansas Code § 15-20-1114(c), concerning the authority of  
20 the Arkansas Soil and Water Conservation Commission to determine that certain  
21 nutrient and litter-management activities constitute placing of sewage,  
22 industrial waste, or other wastes, is repealed:

23 ~~(c)(1) The Arkansas Soil and Water Conservation Commission may~~  
24 ~~determine that certain nutrient and litter management activities regulated~~  
25 ~~under the provisions of this subchapter are not in compliance with the~~  
26 ~~subchapter and thus constitute placing sewage, industrial waste, or other~~  
27 ~~wastes in a location where it is likely to cause pollution to the waters~~  
28 ~~within the state.~~

29 ~~(2) The nutrient and litter management activities so determined~~  
30 ~~shall be subject to regulation under the Arkansas Water and Air Pollution~~  
31 ~~Control Act, § 8-4-101 et seq., and regulations adopted under the act.~~

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33 SECTION 7. Arkansas Code Title 15, Chapter 20 is amended to add an  
34 additional subchapter to read as follows:

35 15-20-1201. Complaints.

36 (a) A person who provides information to the Arkansas Soil and Water

1 Conservation Commission concerning a possible violation of the Arkansas  
2 Poultry Feeding Operations Registration Act, § 15-20-901 et seq., the  
3 Arkansas Soil Nutrient Management Planner and Applicator Certification Act, §  
4 15-20-1001 et seq., or the Arkansas Soil Nutrient Application and Poultry  
5 Litter Utilization Act, § 15-20-1101 et seq. shall provide:

6 (1) A written complaint to the commission; and

7 (2) His or her:

8 (A) Legal name; and

9 (B) Current mailing and physical address at which the  
10 complainant may be contacted.

11 (b) The complaint shall be verified by the notarized signature of the  
12 complainant.

13 (c) All complaints provided under this section shall be open to public  
14 inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.

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16 */s/ Norton, et al*  
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