

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

A Bill

SENATE BILL 230

4
5 By: Senators B. Johnson, Faris, G. Jeffress, J. Jeffress, Horn, T. Smith, J. Bookout, Bisbee, Altes, Baker,
6 Broadway, Critcher, Hendren, Holt, J. Taylor, Trusty, Whitaker, Wilkins, Wilkinson, Womack,
7 Wooldridge
8 By: Representative Mahony

For An Act To Be Entitled

9
10
11 AN ACT TO BE KNOWN AS THE WATER QUALITY
12 PROTECTION ACT OF 2005; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 AN ACT TO BE KNOWN AS THE WATER QUALITY
16 PROTECTION ACT OF 2005.
17

18
19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 15, is amended to add an additional
23 chapter to read as follows:

24 15-25-101. Title.

25 This chapter shall be known and may be cited as the "Water Quality
26 Protection Act of 2005".

27
28 15-25-102. Purpose.

29 (a) It is the purpose of this chapter to preserve and protect the
30 public health and welfare by regulating activities that may impact the
31 quality of waters of the state. It has been found by the General Assembly
32 that certain land use practices have the potential to allow pollutants to be
33 carried to waters of the State of Arkansas during storm events. There is
34 currently no regulatory program whereby landowners who desire to alter the
35 use of their real property and implement the best management practices can
36 obtain the approval of appropriate regulatory authorities stating that the



1 land use practices proposed are appropriate to avoid a material adverse
2 impact upon the quality of waters of the state during and after development.

3 (b)(1) This chapter allows landowners to voluntarily enter into a
4 stewardship agreement with the Executive Director of the Arkansas Soil and
5 Water Conservation Commission.

6 (2) A stewardship agreement provides for the implementation of
7 site-specific land-use management practices that are designed to protect and
8 preserve water quality, provide for a guarantee of the landowner's
9 obligations to follow these practices through a form of financial assurance,
10 and provide for enforcement of the stewardship agreement by the Executive
11 Director of the Arkansas Soil and Water Conservation Commission.

12 (c) The absence of such a regulatory program has led to uncertainty as
13 to the potential impacts of a proposed land use on public water supplies,
14 leading to the use of condemnation to manage land use in a watershed.
15 Through this chapter, the General Assembly provides alternatives to
16 condemnation and restates its intent that water suppliers only utilize their
17 powers of eminent domain as a last resort.

18
19 15-25-103. Applicability.

20 (a) Any landowner who desires to undertake an alteration within the
21 watershed of any waters of the State of Arkansas may enter into a voluntary
22 stewardship agreement.

23 (b)(1) This chapter shall not be construed to affect any right of
24 action, other than the right of eminent domain as provided in this chapter
25 nor shall this chapter be construed to amend or repeal the powers and
26 authorities of any state agency.

27 (2) No lands, facilities, or watershed resources subject to the
28 licensing jurisdiction of the Federal Energy Regulatory Commission shall be
29 subject to the exercise of any powers or authorities granted in this act
30 which conflict in any manner with the exercise of any power or authority by
31 the Federal Energy Regulatory Commission.

32 (3) This chapter shall apply to any action for eminent domain
33 filed by a water supplier after January 1, 2005.

34
35 15-25-104. Definitions.

36 As used in this chapter:

1 (1) "Alteration" means any activity that changes the quantity or
2 quality of surface water run-off into a water of the state, including, but
3 not limited to:

4 (A) Regenerative timber harvesting, application of
5 herbicides, pesticides, or phosphate fertilizers;

6 (B) Draining, dumping, dredging, damming, discharging,
7 excavating, filling, or grading;

8 (C) The erection, reconstruction, or substantial expansion
9 of any buildings or structures;

10 (D) The driving of pilings;

11 (E) The construction or reconstruction or paving of roads
12 and other ways; and

13 (F) Other land surface disturbance activities;

14 (2) "Commission" means the Arkansas Soil and Water Conservation
15 Commission;

16 (3) "Conservation easement" means a conservation easement as
17 that term is defined in § 15-20-402(1), and all of the provisions of the
18 Conservation Easement Act, § 15-20-401 et seq. shall apply to the
19 conservation easement;

20 (4) "Development plan" means a plan that describes proposed
21 alterations which are developed pursuant to the terms of this chapter;

22 (5) "Executive director" means the Executive Director of the
23 Arkansas Soil and Water Conservation Commission;

24 (6) "Lakeside buffer" means protected zones, typically one
25 hundred feet (100') to three hundred feet (300') in width, which are located
26 on the bank of a public water supply or on the bank of a stream which is
27 located within the watershed of a public water supply and is generally
28 preserved in its natural state;

29 (7) "Public water supply" means a source of surface water from
30 which water is derived for drinking or domestic purposes by a public water
31 system as that term is defined in § 20-28-102(4);

32 (8) "Stewardship agreement" means an agreement entered into
33 between a landowner and the executive director pursuant to this chapter;

34 (9) "Streamside buffer" means protected zones, typically one
35 hundred feet (100') to three hundred feet (300') in width, which are located
36 on the bank of a public water supply or on the bank of a stream which is

1 located within the watershed of a public water supply and is generally
2 preserved in its natural state;

3 (10) "Water of the state" means all streams, lakes, marshes,
4 ponds, watercourses, waterways, and all other bodies or accumulations of
5 surface water, natural or artificial, public or private, which are contained
6 within, flow through, or border upon this state or any portion of this state;

7 (11) "Water supplier" means any municipal corporation, county,
8 corporation, including not-for-profit corporations and water associations,
9 consolidated waterworks system or any other entity which supplies any town,
10 city, or village in this state, or the inhabitants thereof, with water or
11 which supply water to rural customers or consumers;

12 (12) "Watershed" means the geographical area that drains into a
13 watershed resource; and

14 (13) "Watershed resources" means any public water supply, all
15 surface waters located within the watershed of a public water supply, and all
16 ground waters that are hydraulically connected to and recharge such watershed
17 resources.

18
19 15-25-201. Voluntary stewardship agreement.

20 (a) The executive director shall enter into a stewardship agreement
21 with any willing landowner who desires to make alterations if the stewardship
22 agreement provides reasonable protections which are designed and intended to
23 avoid material adverse impacts to water quality of a water of the state
24 during and following the alterations.

25 (b) The purposes of stewardship agreements are to:

26 (1) Provide an incentive for landowners to implement reasonable
27 measures which are designed and intended to avoid material adverse impacts to
28 water quality during and following the alterations and which can foster
29 conservation, preservation, or restoration of water quality within the
30 watershed during and following alterations;

31 (2) Provide a mechanism to coordinate, facilitate, and
32 memorialize a landowner's implementation of land-use management practices
33 that will create the potential to provide greater environmental benefits than
34 those available through existing laws, regulations, and ordinances;

35 (3) Provide a mechanism to facilitate proposed alterations in a
36 manner that will employ modern, safe, and effective land-use management

1 practices which are designed and intended to address the types of adverse
2 environmental impacts traditionally associated with alterations;

3 (4) Tailor the implementation of land-use management practices
4 to the unique needs of, and opportunities presented by, individual parcels of
5 eligible land and specific proposed alterations;

6 (5) Give landowners an increased level of regulatory certainty;
7 and

8 (6) Provide an alternative to the exercise of eminent domain by
9 a water supplier.

10
11 15-25-202. Terms of stewardship agreement.

12 At a minimum, a stewardship agreement shall include:

13 (1) The legal description of the property subject to the
14 agreement, together with a description of the natural resource features and
15 uses of the subject property;

16 (2) The proposed development plan for the property subject to
17 the agreement which shall consist of the proposed land use for the property
18 and which describes the proposed alterations and the proposed schedules for
19 implementation of the alterations;

20 (3) A description of the existing water quality of the watershed
21 resources potentially impacted by the proposed alterations and land use,
22 including, if applicable, site-specific water quality sampling data;

23 (4) A description of any streamside buffers or lakeside buffers
24 within the subject property for which added protections or prohibitions of
25 alterations are imposed;

26 (5) A description of the methods which are designed and intended
27 to avoid material adverse impacts to water quality, including those best
28 management practices applicable during and after the alterations, and the
29 proposed schedules for implementation and maintenance of the methods
30 identified;

31 (6) The identity of any person, organization, or public agency
32 that is responsible for implementing each of the methods described in
33 subdivision (5) of this section;

34 (7) The applicable criteria, standards, or benchmarks which
35 identify what would constitute a material adverse impact to water quality for
36 purposes of the alterations proposed and a description of the monitoring

1 program that will be implemented to measure the effectiveness of the methods
2 described in subdivision (5) of this section to avoid a material adverse
3 impact to water quality;

4 (8) A demonstration of financial and legal capability to carry
5 out the provisions of the stewardship agreement which may include a
6 performance bond or other appropriate financial assurance mechanism;

7 (9)(A) The term for which the stewardship agreement will be in
8 effect.

9 (B) However, if no term is set forth, the term shall be
10 perpetual;

11 (10) The manner in which the stewardship agreement may be
12 enforced; and

13 (11) A certification that all necessary permits will be obtained
14 and the terms of the permits and all applicable laws and regulations will be
15 complied with, and the provisions of the stewardship agreement will be
16 carried out and that the development plan will be modified as reasonably
17 necessary to achieve the goals of the stewardship agreement.

18
19 15-25-203. Stewardship agreements to run with the land.

20 (a) The stewardship agreement or a memorandum of the agreement shall
21 be filed with the deed records in each county in which property subject to
22 the stewardship agreement is located, and the obligations of the stewardship
23 agreement shall run with the land for the entire tenure of its term.

24 (b) The stewardship agreement may be designated as a conservation
25 easement upon any land upon which the stewardship agreement specifies that
26 activities will take place, including any continuing activities.

27
28 15-25-204. Enforcement of stewardship agreement.

29 (a) The executive director may take any action necessary and
30 appropriate to enforce the terms of the stewardship agreement, including
31 making demand upon the financial assurance agreement or the performance bond.

32 (b)(1) To enforce the stewardship agreement, the executive director or
33 his or her designee may enter upon the property and undertake the work
34 required to implement the terms of the stewardship agreement.

35 (2) In an action to enforce the terms of a stewardship
36 agreement, in addition to any other remedies that may be available, the court

1 shall award all costs and expenses, including attorney's fees, incurred by
 2 the executive director. The court in its discretion may order the landowner
 3 to comply with the stewardship agreement, may order that the performance bond
 4 or other financial assurance mechanism be called for the purpose of
 5 implementing the terms of the stewardship agreement, may award damages, and
 6 may impose any other appropriate remedy.

7
 8 15-25-205. Right and power of water suppliers to condemn.

9 (a) Notwithstanding any other legislative grant of power to condemn
 10 property through eminent domain, no water supplier may exercise the power of
 11 eminent domain except as a last resort, and the water supplier shall have the
 12 burden of proof that condemnation is the only alternative available.

13 (b) With the exception of reasonable and necessary lakeside buffers
 14 and streamside buffers, water suppliers may not acquire property by eminent
 15 domain to prohibit alterations or control land uses within the watershed of a
 16 public water supply unless the water supplier can demonstrate by clear and
 17 convincing evidence that all alternatives to condemnation including a
 18 stewardship agreement have been evaluated and demonstrated to be inadequate
 19 to prevent a material adverse impact to the water quality of the public water
 20 supply.

21
 22 15-25-206. Rulemaking.

23 The commission may promulgate rules to establish reasonable fees for
 24 stewardship agreements.

25
 26 15-25-207. Eminent domain statutes affected.

27 The power of eminent domain granted to a water supplier under §§ 14-
 28 116-402, 14-137-112, 14-201-110, 14-234-215, 14-234-516, 14-238-112, 18-15-
 29 202, 18-15-301, 18-15-401, 18-15-601, 25-20-309, and any other state law
 30 shall be subject to the requirements of this chapter.

31
 32 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 33 General Assembly of the State of Arkansas that without enforceable adherence
 34 to best management practices designed and intended to help avoid material
 35 adverse effects to the quality of public water supplies, certain land-use
 36 alterations within the watershed of public water supplies can threaten the

1 public water supply, which is vital to the public health and welfare; it is
 2 also found that public entities currently lack effective regulatory controls
 3 to require the implementation of land-use management practices that are
 4 designed and intended to protect and preserve the water quality of public
 5 water supplies. As a result, entities with the power of eminent domain have
 6 resorted to condemnation of property as a substitute for effective regulation
 7 of land-use management practices. The Arkansas Constitution, Article 2, § 22
 8 provides that "The right of property is before and higher than any
 9 constitutional sanction" and the General Assembly has stated that
 10 condemnation should not be utilized by public entities to acquire private
 11 property when other means are available. Therefore, an emergency is declared
 12 to exist and this act being immediately necessary for the preservation of the
 13 public peace, health, and safety shall become effective on:

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

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

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

20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36