

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: S2/3/05*  
**A Bill**

SENATE BILL 230

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  
9

10  
11 **For An Act To Be Entitled**

12 AN ACT TO BE KNOWN AS THE WATER QUALITY  
13 PROTECTION ACT OF 2005; AND FOR OTHER PURPOSES.  
14

15 **Subtitle**

16 AN ACT TO BE KNOWN AS THE WATER QUALITY  
17 PROTECTION ACT OF 2005.  
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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".  
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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 by consolidated waterworks systems to  
15 manage land use in a watershed. Through this chapter, the General Assembly  
16 provides alternatives to condemnation.

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18 15-25-103. Applicability.

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

22 (b)(1) This chapter shall not be construed to affect any right of  
23 action, other than a consolidated waterworks system's right of eminent  
24 domain; nor shall this chapter be construed to amend or repeal the powers and  
25 authorities of any state agency.

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

31 (3) This chapter shall apply to any action for eminent domain  
32 filed by a consolidated waterworks system after January 1, 2005.

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34 15-25-104. Definitions.

35 As used in this chapter:

36 (1) "Alteration" means any activity that changes the quantity or

1 quality of surface water run-off into a water of the state, including, but  
2 not limited to:

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

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

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

9 (D) The driving of pilings;

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

12 (F) Other land surface disturbance activities;

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

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

19 (4) "Consolidated waterworks system" means a consolidated  
20 waterworks system created and existing under the Consolidated Waterworks  
21 Authorization Act, § 25-20-301, et seq., and any successor to a consolidated  
22 waterworks system;

23 (5) "Development plan" means a plan that describes proposed  
24 alterations which are developed pursuant to the terms of this chapter;

25 (6) "Executive director" means the Executive Director of the  
26 Arkansas Soil and Water Conservation Commission, acting for and on behalf of  
27 the commission;

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

33 (8) "Public water supply" means a source of surface water from  
34 which water is derived for drinking or domestic purposes by a consolidated  
35 water system;

36 (9) "Stewardship agreement" means an agreement entered into

1 between a landowner and the executive director pursuant to this chapter;

2 (10) "Streamside buffer" means protected zones, typically one  
3 hundred feet (100') to three hundred feet (300') in width, which are located  
4 on the bank of a public water supply or on the bank of a stream which is  
5 located within the watershed of a public water supply and is generally  
6 preserved in its natural state;

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

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

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

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18 15-25-201. Voluntary stewardship agreement.

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

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

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

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

34 (3) Provide a mechanism to facilitate proposed alterations in a  
35 manner that will employ modern, safe, and effective land-use management  
36 practices which are designed and intended to address the types of adverse

1 environmental impacts traditionally associated with alterations;

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

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

7 (6) Provide an alternative to the exercise of eminent domain by  
8 a consolidated waterworks system.

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

11 At a minimum, a stewardship agreement shall include:

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

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

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

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

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

30 (B) The development plan and all the methods and best  
31 management practices must be signed by a registered professional engineer or  
32 other professional licensed in the relevant field of expertise;

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

36 (7) The applicable criteria, standards, or benchmarks which

1 identify what would constitute a material adverse impact to water quality for  
2 purposes of the alterations proposed and a description of the monitoring  
3 program that will be implemented to measure the effectiveness of the methods  
4 described in subdivision (5) of this section to avoid a material adverse  
5 impact to water quality;

6 (8) A demonstration of financial and legal capability to pay all  
7 fees due to the commission and to carry out the provisions of the stewardship  
8 agreement which may include a performance bond or other appropriate financial  
9 assurance mechanism;

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

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

14 (10) The manner in which the stewardship agreement may be  
15 enforced; and

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

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22 15-25-203. Stewardship agreements to run with the land.

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

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

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31 15-25-204. Enforcement of stewardship agreement.

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

35 (b)(1) To enforce the stewardship agreement, the executive director or  
36 his or her designee may enter upon the property and undertake the work

1 required to implement the terms of the stewardship agreement.

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

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11 15-25-205. Right and power of consolidated waterworks systems to  
12 condemn.

13 Notwithstanding any other legislative grant of power to condemn  
14 property through eminent domain, with the exception of reasonable and  
15 necessary lakeside buffers and streamside buffers, consolidated waterworks  
16 systems may not acquire property by eminent domain to prohibit alterations or  
17 control land uses within the watershed of a public water supply unless the  
18 consolidated waterworks system can demonstrate by clear and convincing  
19 evidence that all alternatives to condemnation including a stewardship  
20 agreement have been evaluated and demonstrated to be inadequate to prevent a  
21 material adverse impact to the water quality of the public water supply.

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23 15-25-206. Rulemaking.

24 The commission may promulgate rules to establish reasonable fees for  
25 stewardship agreements and to implement the provisions of this chapter.

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29 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
30 General Assembly of the State of Arkansas that without enforceable adherence  
31 to best management practices designed and intended to help avoid material  
32 adverse effects to the quality of public water supplies, certain land-use  
33 alterations within the watershed of public water supplies can threaten the  
34 public water supply, which is vital to the public health and welfare; it is  
35 also found that public entities currently lack effective regulatory controls  
36 to require the implementation of land-use management practices that are

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

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

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

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

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18 */s/ B. Johnson*  
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