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A Bill

HOUSE BILL 1929

5 By: Representatives Davis, Alexander, D. Altes, C. Armstrong, E. Armstrong, Baine, Ballinger, Baltz,
6 Barnett, Bragg, Branscum, J. Burris, Clemmer, Cozart, Dotson, C. Douglas, Eubanks, Farrer, Ferguson,
7 Gillam, Harris, Hickerson, Hobbs, House, Hutchison, Jett, Lea, Lowery, McElroy, D. Meeks, S. Meeks,
8 Miller, Neal, Payton, Ratliff, Rice, Steel, Wardlaw, Westerman, B. Wilkins, Wren
9 By: Senators D. Sanders, Burnett, Caldwell, E. Cheatham, J. Dismang, J. English, Files, K. Ingram, Irvin,
10 B. King, B. Sample, D. Wyatt
11

For An Act To Be Entitled

12 AN ACT TO AMEND THE LAWS PERTAINING TO THE
13 PROMULGATION OF WATER QUALITY STANDARDS; TO IMPROVE
14 THE PROCESS FOR DEVELOPING AND IMPLEMENTING WATER
15 QUALITY STANDARDS; TO DECLARE AN EMERGENCY; AND FOR
16 OTHER PURPOSES.
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Subtitle

20 TO AMEND THE LAWS PERTAINING TO THE
21 PROMULGATION OF WATER QUALITY STANDARDS;
22 TO IMPROVE THE PROCESS FOR DEVELOPING AND
23 IMPLEMENTING WATER QUALITY STANDARDS; AND
24 TO DECLARE AN EMERGENCY.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

31 (a) The General Assembly finds that:

32 (1) Under current interpretations by the United States
33 Environmental Protection Agency, the development, implementation, and
34 assessment of water quality standards required under the Clean Water Act, 33
35 U.S.C. § 1251 et seq., are to be based on sound scientific and statistical
36 principles, among other things, and should consider readily available data



1 that is consistent with and relevant to the water use to be maintained;

2 (2) Federal law requires the consideration of certain relevant
3 factors, including natural variability and statistical variability over
4 periods of time that are relevant to the water use to be maintained;

5 (3) After consideration of readily available data, reliance on
6 data that is not significant or meaningful, is incomplete, is not indicative
7 of conditions relevant to the water use to be maintained, is speculative, is
8 inconclusive or reasonably supportive of different conclusions, or is
9 otherwise not well-suited to the purpose for which it is being used, has the
10 potential to lead to unnecessary regulation and the inefficient use and
11 allocation of scarce resources;

12 (4) The State of Arkansas has a well-developed and long-standing
13 program of sampling the quality of waters subject to various uses;

14 (5) There is a rational basis found in sound scientific and
15 statistical principles for using long-term averages in assessing mineral
16 concentrations in a stream;

17 (6) The Arkansas Department of Environmental Quality's analysis
18 of data from Arkansas streams demonstrates that four cubic feet per second (4
19 ft³/s) is the median flow for small streams, which makes this measure an
20 appropriate indicator for stream flow when long-term flow data is not
21 available, thereby avoiding unnecessary regulation and the inefficient use of
22 state resources;

23 (7) It is appropriate and consistent with sound scientific and
24 statistical principles to use the greater of long-term average flows or four
25 cubic feet per second (4 ft³/s) for assessing mineral concentrations in
26 streams; and

27 (8) Because of the existing technological and economic limits on
28 treatability of dissolved minerals and the likely localized economic impacts
29 of the treatability requirement, it is an inefficient use of scarce resources
30 to apply domestic water supply uses and criteria to streams, stream segments,
31 or other bodies of water that do not have an existing domestic water supply
32 use or that do not have a demonstrated and reasonable potential to be used as
33 a domestic water supply source.

34 (b) The intent of this act is to:

35 (1) Provide for the consideration of existing and readily
36 available data and information relevant to the development, implementation,

1 and assessment of water quality standards for minerals;

2 (2) Provide standards for determining the data that should be
3 considered and relied on by the State of Arkansas and its agencies for the
4 development, implementation, and assessment of water quality standards for
5 minerals; and

6 (3) Direct state agencies to support the development,
7 implementation, and assessment of water quality standards according to the
8 provisions of this act.

9
10 SECTION 2. Arkansas Code § 8-4-202(b)(3), concerning the rules and
11 regulations the Arkansas Pollution Control and Ecology Commission may
12 promulgate with respect to water pollution, is amended to read as follows:

13 (3)(A) Water quality standards, performance standards, and
14 pretreatment standards.

15 (B) Water quality standards adopted under subdivision
16 (b)(3)(A) of this section shall comply with the following requirements
17 without precluding the evaluation of existing and readily available water
18 quality-related data:

19 (i) The development and implementation of standards
20 and criteria for minerals, including without limitation total dissolved
21 solids, chlorides, and sulfates, and the assessment of a stream's or a stream
22 segment's conformity with or attainment of a standard or criteria for
23 minerals shall be based on the greater of the average flow in the stream or
24 stream segment or four cubic feet per second (4 ft³/s);

25 (ii) The development and implementation of standards
26 or criteria for minerals, including without limitation total dissolved
27 solids, chlorides, and sulfates, in order to protect the use of a domestic
28 water supply, and the assessment of a stream's or a stream segment's
29 conformity with or protection of the use of a domestic water supply shall be
30 based on the greater of the average flow in the stream or stream segment or
31 four cubic feet per second (4 ft³/s);

32 (iii) The assessment of a stream, stream segment,
33 lake, or reservoir by the Arkansas Department of Environmental Quality for
34 conformity with or attainment of a water quality standard for minerals for
35 purposes of 33 U.S.C. § 1313(d) shall be based on the average concentration
36 of minerals in the stream, stream segment, lake, or reservoir using at least

1 sixty (60) actual measured samples taken at regular intervals over at least a
2 five-year period;

3 (iv)(a) Except as provided in subdivision
4 (b)(3)(B)(iv)(b) of this section, a water quality standard to protect or
5 maintain the use of a domestic water supply may be developed and implemented
6 only for a stream segment, lake, or reservoir that:

7 (1) Has an existing use as a domestic
8 water supply; or

9 (2) Is listed in the Arkansas Water Plan
10 as a planned or potential domestic water supply.

11 (b) The domestic water supply use shall be
12 designated for tributaries to lakes or reservoirs used as a public water
13 supply that are upstream from the point of a domestic water supply intake
14 unless the designated use is or has been removed under the regulations of the
15 commission.

16 (c) The commission shall regularly publish in
17 Regulation No. 2 a list of the stream segments or reservoirs to which
18 subdivision (b)(3)(B)(iv)(a) of this section applies;

19 (v)(a) Before commencing a study that would purport
20 to allocate loads for permissible discharges to a stream, stream segment,
21 lake, or reservoir in order to conform to a water quality standard, including
22 without limitation a total maximum daily load study under 33 U.S.C. §
23 1313(d), the person conducting the study shall give written notice to all
24 persons who are permitted to discharge directly or indirectly into the
25 stream, stream segment, lake, or reservoir.

26 (b) The notice required under subdivision
27 (b)(3)(B)(v)(a) of this section shall:

28 (1) Identify the person responsible for
29 conducting the study;

30 (2) Explain the purpose of the study and
31 the method that will be used to conduct the study; and

32 (3) Provide instructions on obtaining
33 additional information about the study.

34 (c) At the time a draft report of the study
35 under this subdivision (b)(3)(B)(v) is prepared, a copy of the draft report
36 shall be sent to each:

1 (1) Person that holds a permit to
2 discharge into the stream, stream segment, lake, or reservoir;

3 (2) Public drinking water treatment
4 system whose source water's watershed contains the stream, stream segment,
5 lake, or reservoir; and

6 (3) Person that has requested a copy of
7 the results or report of the study.

8 (d) Before the study under this subdivision
9 (b)(3)(B)(v) is finalized, the Arkansas Department of Environmental Quality
10 shall conduct a public hearing on the study if requested by a:

11 (1) Person holding a permit to discharge
12 to the stream, stream segment, or reservoir; or

13 (2) Public drinking water treatment
14 system whose source water's watershed contains the stream, stream segment,
15 lake, or reservoir.

16 (e) A study conducted under this subdivision
17 (b)(3)(B)(v) shall not establish a waste load allocation for a stream, stream
18 segment, lake, or reservoir for purposes of protecting the use of a domestic
19 water supply unless the department has first certified that:

20 (1) There is an existing domestic water
21 supply use for the stream, stream segment, lake, or reservoir; or

22 (2) The stream segment or reservoir is
23 listed in the Arkansas Water Plan as a planned or potential domestic water
24 supply;

25 (vi) Within thirty (30) days after the receipt of an
26 application for an individual permit to discharge into a stream, stream
27 segment, or reservoir, the department shall certify to the permit applicant
28 whether the stream segment or reservoir that will receive the proposed
29 discharge is:

30 (a) An existing domestic water supply; or

31 (b) Listed in the Arkansas Water Plan as a
32 planned or potential domestic water supply; and

33 (vii) The values for dissolved minerals listed in
34 Arkansas Pollution Control and Ecology Commission Regulation No. 2, §
35 2.511(B) shall not be used to evaluate or assess the attainment of water
36 quality standards.

1 (C) A term or provision in a National Pollutant Discharge
 2 Elimination System permit or an order related to a National Pollutant
 3 Discharge Elimination System permit that exists as of the effective date of
 4 this act but that has not yet become effective and does not comply with or
 5 was not developed according to subdivisions (b)(3)(B)(i)-(iv) of this section
 6 shall be:

7 (i) Stayed upon application to the commission by a
 8 person regulated under the noncompliant National Pollutant Discharge
 9 Elimination System permit term or condition or an order related to the
 10 noncompliant National Pollutant Discharge Elimination System permit; or

11 (ii) Waived upon application to the commission by a
 12 person regulated under the noncompliant National Pollutant Discharge
 13 Elimination System permit term or condition or an order related to the
 14 noncompliant National Pollutant Discharge Elimination System permit until an
 15 applicable National Pollutant Discharge Elimination System permit term or
 16 condition or an order related to an applicable National Pollutant Discharge
 17 Elimination System permit that complies with subdivisions (b)(3)(B)(i)-(iv)
 18 of this section becomes effective.

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 20 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 21 General Assembly of the State of Arkansas that clarification of the
 22 methodology for developing, implementing, and assessing state water quality
 23 standards for minerals and the procedure for identifying and protecting the
 24 use of domestic water supplies is needed to avoid unnecessary regulation and
 25 the inefficient use and allocation of scarce resources; and that this act is
 26 immediately necessary to ensure that existing regulatory requirements provide
 27 demonstrable benefits at reasonable costs and available resources are wisely
 28 allocated. Therefore, an emergency is declared to exist, and this act being
 29 immediately necessary for the preservation of the public peace, health, and
 30 safety shall become effective on:

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

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

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