

1 SB249  
2 115029-3  
3 By Senator Orr (N & P)  
4 RFD: Local Legislation No. 1  
5 First Read: 14-JAN-10

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9 A BILL  
10 TO BE ENTITLED  
11 AN ACT  
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13 Relating to Morgan County, to create source water  
14 protection areas for source water of public water supply  
15 systems; to provide for legislative findings and statements of  
16 public policy; to define certain terms for purposes of this  
17 act; to prohibit the construction and operation of a storage  
18 facility, any part of which is used for the storage and  
19 distribution of hazardous materials, within certain  
20 proximities of a public water supply intake facility; to  
21 provide a method for issuing permits by affected  
22 municipalities for the construction and operation of storage  
23 facilities otherwise prohibited; and to provide for civil  
24 remedies for the enforcement of this act.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Legislative Finding and Declaration of  
27 Policy.

1           The Legislature finds and declares it to be the  
2 policy of the state, as it relates to Morgan County,  
3 consistent with its duty to protect the health, safety, and  
4 welfare of the citizens of Morgan County, to protect the water  
5 of public water supply systems from contamination by hazardous  
6 materials, including, but not limited to, any oil, gasoline,  
7 diesel fuel, aviation fuel, or petroleum product. The  
8 Legislature further finds that accidental spills or discharge  
9 of hazardous materials, if and when they may occur, pose a  
10 significant and unacceptable risk to public water supply  
11 systems and thus to the public health and safety of the  
12 citizens of Morgan County and, where the transport to, storage  
13 in, and distribution from a storage facility occur from sites  
14 that are in close proximity to intake facilities of public  
15 water supply systems in Morgan County, that any spills or  
16 other releases of such substances would likely be ingested  
17 into the public water systems of municipalities lying within  
18 or partly within Morgan County. As a consequence of potential  
19 contamination risks, protection areas should be established by  
20 the Legislature around the source water public water system  
21 intake facility of any municipality in Morgan County, Alabama,  
22 in order to reduce or prevent the risk of contamination of the  
23 public water supply of the citizens of Morgan County.

24           Section 2. Definitions.

25           As used in this act, unless the context clearly  
26 indicates otherwise, the following terms have the following  
27 meanings:

1           (1) ENVIRONMENTAL LAWS. Any applicable federal,  
2 state, or local law, rule, regulation, ordinance, order,  
3 consent decree, or order of any governmental authority now or  
4 hereinafter in effect relating to and defining hazardous  
5 materials or the protection of the environment, health, and  
6 safety of public water supply systems under the federal Safe  
7 Drinking Water Act, Clean Water Act, Hazardous Materials  
8 Transportation Act, and Occupational Safety and Health Act and  
9 any similar state or local law; provided that any such  
10 environmental law does not specifically exclude regulation at  
11 the local governmental level.

12           (2) HAZARDOUS MATERIALS. Any hazardous or toxic  
13 material or substance defined, listed, or regulated under  
14 environmental laws and, without restricting the generality  
15 thereof, shall include oil, gas, diesel fuel, aviation fuel,  
16 and petroleum products in whatever form they may exist.

17           (3) INTAKE FACILITY. Any structure or facility by  
18 which untreated water is taken from any source water by any  
19 public water system for treatment and subsequent use or  
20 consumption by members of the public of Morgan County, for  
21 drinking or other purposes, including fire protection and  
22 sanitary sewer operations.

23           (4) PUBLIC WATER SYSTEM. Any water supply system  
24 operated by any municipality in Morgan County, or any public  
25 board, authority, or agency that provides drinking water for  
26 human consumption or other purposes to citizens of Morgan  
27 County.

1           (5) SOURCE WATER. Any water source, including any  
2 river or stream, from which water is drawn either periodically  
3 or continuously, by any municipality in Morgan County, which  
4 following treatment is piped for human use or consumption.

5           (6) SOURCE WATER PROTECTION AREA. Includes the  
6 following areas in Morgan County:

7           (a) If an intake facility is not within a stream or  
8 river, within one-quarter mile of any intake facility.

9           (b) If an intake facility lies within a river or  
10 stream, the area shall include an area extending 1,000 feet  
11 downstream and 5,000 feet upstream from any intake facility  
12 and shall also include an additional area within such upstream  
13 and downstream boundaries extending 200 feet landward from the  
14 water's edge or shoreline of any source water in which an  
15 intake facility for any public water system in Morgan County  
16 is located.

17           (7) STORAGE FACILITY. Includes the following:

18           (a) Any aboveground or underground storage tank or  
19 facility utilized for the receipt, by means of any method of  
20 transportation, storage, and distribution, of any hazardous  
21 materials as herein defined, having a capacity in excess of  
22 10,000 gallons.

23           (b) Where source water is a stream or river, any  
24 structure or facility, pump, pipeline, or other apparatus used  
25 to deliver or receive a hazardous material from any vessel,  
26 vehicle, tank car, or other transport device to any

1 aboveground or underground storage facility having a capacity  
2 in excess of 10,000 gallons.

3 Section 3. Storage Facility Prohibited in Source  
4 Water Protection Area.

5 Except as provided in Section 4, no storage facility  
6 may be constructed or operated within a source water  
7 protection area without regard as to whether the site or  
8 location upon which the storage facility is to be constructed  
9 and operated lies wholly or partially inside or outside the  
10 city limits of a municipality whose public water supply intake  
11 facility lies within such source water protection area.

12 Section 4. Municipal Permits to Operate a Storage  
13 Facility.

14 A storage facility may be constructed and operated  
15 within a source water protection area if constructed pursuant  
16 to the following municipal application and permit procedure:

17 (1) Any party desiring to construct and operate a  
18 storage facility at a location within a source water  
19 protection area shall submit to the governing body of the  
20 municipality whose intake facility lies within the area,  
21 without regard as to whether the proposed site or location  
22 upon which the proposed storage facility is to be constructed  
23 lies wholly or partially within or outside the city limits of  
24 the municipality, an application for a permit to construct  
25 such a storage facility. The application shall include design  
26 plans and specifications and a declaration of the purpose for  
27 and method by which a storage facility will be constructed and

1 operated, which shall all be continuing representations by the  
2 applicant, and any successor in interest or assignees of the  
3 applicant, and any disobedience or variance therefrom shall  
4 invalidate any permit granted hereunder.

5 (2) A public hearing on a permit application shall  
6 be held by the municipality no sooner than 30 days after  
7 public notice is given by the municipality that a public  
8 hearing will be held on whether the application for a permit  
9 shall be granted.

10 (3) If the municipality determines after the public  
11 hearing that the construction and operation of the storage  
12 facility in accordance with the terms and provisions of the  
13 permit application will not constitute, to any degree, a risk  
14 of contamination of the public water supply of the  
15 municipality, a permit for the construction and operation of a  
16 storage facility may be granted upon the terms and conditions  
17 as the municipality may impose, and the construction and  
18 operation of the storage facility granted a permit, in  
19 accordance with all terms on which the permit was issued,  
20 shall not constitute a violation of Section 3.

21 Section 5. Civil Remedies for Violations.

22 a. The construction or commencement of construction  
23 of or attempted operation of a storage facility within a  
24 source water protection area that is not authorized by this  
25 act constitutes a violation of this act and may be enjoined by  
26 a restraining order of the court upon the following actions:

1           (1) A resolution must first be adopted by the  
2 governing body of any municipality in Morgan County which  
3 finds and declares that the construction of a storage facility  
4 constitutes a violation of this act and that the continuance  
5 of the construction of the storage facility will constitute a  
6 public nuisance.

7           (2) After a resolution is adopted by a municipality  
8 in Morgan County, pursuant to Section 5(a)(1), above, it shall  
9 file a petition in the Circuit Court of Morgan County asking  
10 that any planned or threatened or in-progress construction of  
11 a storage facility be abated pending a final determination by  
12 a court of competent jurisdiction as to whether such storage  
13 facility is authorized to be built.

14           b. Any construction or planned construction shall be  
15 abated and discontinued pending any action by the Circuit  
16 Court of Morgan County, Alabama, or Appellate Court of  
17 Alabama, or other court of competent jurisdiction, vacating or  
18 otherwise abating any such determination by any municipality  
19 of Morgan County.

20           Section 6. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law.