

## 1 HOUSE BILL NO. 125

2 INTRODUCED BY C. YOUNKIN

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE GOAL OF TEMPORARY WATER  
 6 QUALITY STANDARDS IS TO IMPROVE WATER QUALITY TO THE POINT AT WHICH ALL THE  
 7 BENEFICIAL USES DESIGNATED FOR THAT WATER BODY OR SEGMENT ARE SUPPORTED ~~TO THE~~  
 8 ~~EXTENT CONSIDERED ACHIEVABLE~~; REQUIRING THAT A SUPPORT DOCUMENT AND PRELIMINARY  
 9 IMPLEMENTATION PLAN BE SUBMITTED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR  
 10 TO REQUESTING TEMPORARY WATER QUALITY STANDARDS; REVISING THE INFORMATION REQUIRED  
 11 IN THE SUPPORT DOCUMENT AND IMPLEMENTATION PLAN; REQUIRING THE SUBMISSION OF ANNUAL  
 12 WORK PLANS THAT MUST BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT; REQUIRING THE  
 13 BOARD OF ENVIRONMENTAL REVIEW TO REVIEW THE IMPLEMENTATION PLAN AT LEAST EVERY 3  
 14 YEARS AT A PUBLIC HEARING; AUTHORIZING THE DEPARTMENT TO MODIFY IMPLEMENTATION  
 15 PLANS; AND AMENDING SECTION 75-5-312, MCA."

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 **Section 1.** Section 75-5-312, MCA, is amended to read:

20 **"75-5-312. Temporary water quality standards.** (1) The board may ~~on its own~~, upon  
 21 recommendation of the department; or upon a petition for rulemaking, as provided in 2-4-315, by a person,  
 22 including a permit applicant or permittee, temporarily modify a water quality standard for a specific water  
 23 body or segment on a parameter-by-parameter basis in those instances in which substantive information  
 24 indicates that the water body or segment is not supporting its designated uses. When the board adopts  
 25 temporary standards, the goal is to improve water quality to the point at which all the beneficial uses  
 26 designated for that water body or segment ~~an additional beneficial use or uses are supported~~ ~~TO THE EXTENT~~  
 27 ~~CONSIDERED ACHIEVABLE~~.

28 (2) As a condition for establishing temporary water quality standards for a particular water body  
 29 or segment, the department or the petitioner, as applicable, shall prepare a support document and a  
 30 preliminary implementation plan for use by the board in determining whether to adopt a the proposed

1 temporary water quality ~~standard~~ standards. A person shall submit a support document and a preliminary  
2 implementation plan to the department for its review at least ~~90~~ 60 days prior to filing a petition with the  
3 board requesting the adoption of temporary water quality standards.

4 (3) ~~If a person petitions for rulemaking under this section, the petition must specifically describe~~  
5 ~~the affected state water, the existing ambient water quality for the parameter or parameters at issue, the~~  
6 ~~water quality standard or standards affected, and the temporary modifications sought. Within 180 days~~  
7 ~~after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board~~  
8 ~~and the department a proposed support document and implementation plan that sets forth: The support~~  
9 document prepared by the department or the petitioner, as applicable, must describe:

- 10 (a) the chemical, biological, and physical condition of the water body or segment;  
11 ~~(a)~~(b) the specific water quality limiting factors affecting the water body or segment;  
12 ~~(b)~~(c) the existing water quality standards that are not being achieved beneficial use or uses and  
13 ~~the beneficial use or uses considered attainable in the absence of the water quality limiting factors;~~  
14 (d) the temporary modifications to the existing water quality standards being requested;  
15 (e) existing beneficial uses; and  
16 (f) the designated uses considered attainable in the absence of the water quality limiting factors.  
17 ~~(c) an implementation plan to eliminate the water quality limiting factors to the extent considered~~  
18 ~~achievable; and~~  
19 ~~(d) a schedule for implementing the plan that ensures that the water quality standards for the~~  
20 ~~parameter or parameters at issue are met as soon as reasonably practicable and in no event later than the~~  
21 ~~time allowed by the board in the temporary standard.~~

22 (4) The preliminary implementation plan prepared by the department or the petitioner, as  
23 applicable, must contain:

24 (a) a description of the proposed actions that will eliminate the water quality limiting factors  
25 identified in subsection (3)(b) to the extent considered achievable; and

26 (b) a schedule for implementing the proposed actions that ensures that the existing water quality  
27 standards for the parameter or parameters at issue are met as soon as reasonably practicable.

28 (5) Within 30 days after the board's adoption of temporary water quality standards, the  
29 department or the petitioner, as applicable, shall:

30 (a) modify the preliminary implementation plan and schedule to reflect the requirements and

1 timeframe adopted by the board for the temporary standards; and

2 (b) develop a detailed work plan describing the implementation activities that will be conducted  
 3 during the first field season of the temporary standards. The work plan must be approved by the director  
 4 of the department.

5 (6) By March 1 of each year that the temporary water quality standards are in effect, the  
 6 department or the petitioner, as applicable, shall submit a detailed work plan describing the implementation  
 7 activities that will be conducted during that season. The annual work plans must be approved by the  
 8 director of the department. The department shall maintain copies of the implementation plan, schedule,  
 9 and annual work plans and any modifications to those plans and schedule.

10 ~~(4)(7)~~ Upon the board's adoption of a temporary water quality standard, the department shall  
 11 ensure that reasonable conditions and limitations designed to achieve compliance with the implementation  
 12 plan are established in appropriate discharge permits.

13 ~~(5)(8)~~ (a) A temporary modification of a water quality standard may not result in adverse impacts  
 14 to existing beneficial uses or be established for a total period longer than 20 years.

15 (b) During the period of the temporary modification, the board may not allow a discharge that will  
 16 cause overall water quality to become worse than the overall quality of the water body or segment prior  
 17 to the discharge.

18 ~~(6)(9)~~ If a state water is designated as having temporary standards, the department shall report  
 19 to the board at least every 3 years or upon request of the board regarding whether adequate efforts have  
 20 been made to implement the plans submitted as the basis for the temporary ~~standard~~ standards.

21 ~~(7)(10)~~ The board shall review the temporary standards and implementation plan at least every  
 22 3 years at a public hearing for which notice and an opportunity for comment have been provided. During  
 23 this review, the board shall consider the progress made in restoring water quality to a level that achieves  
 24 the water quality standards for the water body's classification GOAL OF THE TEMPORARY WATER QUALITY  
 25 STANDARDS. The board may terminate or modify the temporary ~~standard~~ standards based on information  
 26 submitted at the time of its review ~~that the applicant is not complying with the approved implementation~~  
 27 plan.

28 ~~(8)(11)~~ The board shall terminate a temporary standard for a parameter if:

29 (a) values for the modified parameter or parameters improve to conditions that support all  
 30 designated uses for that classification;

1 (b) the state water for which the temporary standard is adopted is reclassified as provided for in  
2 75-5-302; or

3 (c) the plan submitted in support of the temporary water quality standard is not being implemented  
4 according to the plan's schedule or modifications to that plan or schedule made by the board or  
5 department.

6 ~~(9)(12)~~ The board or the department may modify the implementation plan if ~~the permittee submits~~  
7 ~~there is~~ convincing evidence ~~to the board~~ that the plan needs modification. ~~The board may not extend the~~  
8 ~~plan beyond a total period of 20 years.~~

9 ~~(10)(13)~~ If a temporary standard for a parameter in a particular state water is terminated because  
10 the plan submitted in support of the temporary water quality standard is not being implemented according  
11 to the plan's schedule or modifications to that schedule made by the board or department, a person may  
12 request a new temporary standard by submitting both a petition for rulemaking and ~~a~~ an implementation  
13 plan that meet the requirements of subsection ~~subsections (2) and (3)~~ (4). However, the board may not  
14 adopt another temporary standard for the parameter in the state water that would cumulatively be in effect  
15 for a total period longer than 20 years for the parameter in the state water."

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