

SENATE BILL NO. 239

INTRODUCED BY A. WITTICH

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A BILL FOR AN ACT ENTITLED: "AN ACT TEMPORARILY PROHIBITING THE DEPARTMENT FROM EXERCISING ITS ENFORCEMENT AUTHORITY FOR COMMUNITY WATER SYSTEMS THAT ARE ELIGIBLE FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AMENDING SECTIONS 75-6-104, 75-6-109, 75-6-110, 75-6-112, 75-6-113, AND 75-6-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. Section 1. Exception to enforcement. (1) Except as provided in subsection (2), the department may not enforce the provisions of this part against a community water system that is eligible for funding under the treasure state endowment program pursuant to Title 90, chapter 6, part 7.

(2) The department may enforce the prohibition in 75-6-112(1).

Section 2. Section 75-6-104, MCA, is amended to read:

"75-6-104. Duties of department. The department shall:

(1) upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their quality and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the best method of ensuring its quality;

(4) advise persons as to the best method of treating and disposing of their drainage, sewage, or wastewater with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose



- 1 drainage or sewage may tend to pollute waters as to the best method of preventing pollution;
- 2 (6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public
- 3 drinking water special revenue fund established in 75-6-115;
- 4 (7) establish and maintain experiment stations and conduct experiments to study the best methods of
- 5 treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used
- 6 in other states;
- 7 (8) enter on premises at reasonable times to determine sources of pollution or danger to water supply
- 8 systems and whether rules and standards of the board are being obeyed;
- 9 (9) except as provided in [section 1], enforce and administer the provisions of this part;
- 10 (10) establish a plan for the provision of safe drinking water under emergency circumstances;
- 11 (11) maintain an inventory of public water supply systems and establish a program for conducting sanitary
- 12 surveys; and
- 13 (12) enter into agreements with local boards of health whenever appropriate for the performance of
- 14 surveys and inspections under the provisions of this part."

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- 16 **Section 3.** Section 75-6-109, MCA, is amended to read:
- 17 **"75-6-109. Administrative enforcement.** (1) Except as provided in [section 1] if, the department
- 18 believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this
- 19 part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the
- 20 violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged
- 21 to have been violated and the facts alleged to constitute a violation. The notice must include an order to take
- 22 necessary corrective action within a reasonable period of time. The time period must be stated in the order.
- 23 Service by mail is complete on the date of filing.
- 24 (2) If the alleged violator does not request a hearing before the board within 30 days of the date of
- 25 service, the order becomes final. Failure to comply with a final order may subject the violator to an action
- 26 commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.
- 27 (3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the
- 28 board shall schedule a hearing. After the hearing is held, the board may:
- 29 (a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation
- 30 has occurred; or

- 1 (b) rescind the department's order if the board finds that a violation has not occurred.
- 2 (4) An order issued by the department or the board may set a date by which the violation must cease
3 and set a time limit for action to correct a violation.
- 4 (5) As an alternative to issuing an order pursuant to subsection (1), the department may:
- 5 (a) require the alleged violator to appear before the board for a hearing, at a time and place specified
6 in the notice, to answer the charges complained of; or
- 7 (b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.
- 8 (6) (a) An action initiated under this part may include an administrative penalty not to exceed:
- 9 (i) \$1,000 for each day of a violation pertaining to a public water system, other than a water hauler or
10 a water bottling plant, that serves a population of more than 10,000; and
- 11 (ii) \$500 for each day of violation for other violations.
- 12 (b) Administrative penalties collected under this section must be deposited in the state general fund.
- 13 (7) In determining the amount of penalty to be assessed to a person, the department or the board, as
14 appropriate, shall consider the penalty factors in 75-1-1001 and the rules promulgated under 75-6-103(2)(i).
- 15 (8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2,
16 chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

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- 18 **Section 4.** Section 75-6-110, MCA, is amended to read:
- 19 **"75-6-110. Enforcement response.** (1) ~~Whenever~~ Except as provided in [section 1], whenever, on the
20 basis of information available to the department, the department finds that a person is in violation of this part, a
21 rule adopted under this part, or a condition, requirement of an approval, or order issued pursuant to this part, the
22 department shall initiate an enforcement response, which may include any of the following actions:
- 23 (a) issuance of a letter notifying the person of the violation and requiring compliance;
- 24 (b) issuance of an order requiring the person to correct the violation pursuant to 75-6-104 and 75-6-109;
- 25 (c) bringing a judicial action as authorized by 75-6-111; or
- 26 (d) seeking administrative or judicial penalties as provided under 75-6-109, 75-6-113, and 75-6-114.
- 27 (2) Unless an alleged violation represents an imminent threat to human health, safety, or welfare or to
28 the environment, the department shall first issue a letter notifying the person of the violation and requiring
29 compliance. If the person fails to respond to the conditions in the department's letter, then the department shall
30 take further action as provided in subsection (1).

1 (3) The provisions of this part do not limit the authority of the department to bring a judicial action, which
2 may include the assessment of penalties, prior to initiating an administrative action authorized by this part."

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4 **Section 5.** Section 75-6-112, MCA, is amended to read:

5 **"75-6-112. Prohibited acts.** ~~A~~ Except as provided in [section 1], a person may not:

6 (1) commence or continue construction, alteration, extension, or operation of a system of water supply
7 or water distribution that is intended to be used as a public water supply system or a system that is intended to
8 be used as a public sewage system before the person submits to the department necessary maps, plans, and
9 specifications for its review and the department approves those maps, plans, and specifications;

10 (2) operate or maintain a public water supply system that exceeds a maximum contaminant level
11 established by the board unless the person has been granted or has an application pending for a variance or
12 exemption pursuant to this part;

13 (3) violate any provision of this part or a rule adopted under this part; or

14 (4) violate any condition or requirement of an approval issued pursuant to this part."

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16 **Section 6.** Section 75-6-113, MCA, is amended to read:

17 **"75-6-113. Penalty.** ~~Any~~ Except as provided in [section 1], any person violating this part or any rule or
18 order of the board or department issued under the provisions of this part ~~shall be~~ is guilty of a misdemeanor and
19 upon conviction shall be fined not less than \$50 or more than \$500. Each day upon which a violation of this part
20 occurs ~~shall be~~ is considered a separate offense."

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22 **Section 7.** Section 75-6-114, MCA, is amended to read:

23 **"75-6-114. Civil penalty.** (1) ~~In~~ Except as provided in [section 1], in an action initiated by the department
24 to collect civil penalties against a person who is found to have violated this part or a rule, order, or condition of
25 approval issued under this part, the person is subject to a civil penalty not to exceed \$10,000. The action must
26 be filed in the district court of the county in which the violation occurred or, if mutually agreed on by the parties
27 in the action, in the district court of the first judicial district, Lewis and Clark County.

28 (2) Each day of violation constitutes a separate violation.

29 (3) Action under this section does not bar enforcement of this part or a rule, order, or condition of
30 approval issued under this part by injunction or other appropriate remedy.

1 (4) When seeking penalties under this section, the department shall take into account the penalty factors
2 in 75-1-1001 in determining an appropriate settlement or judgment, as appropriate.

3 (5) Civil penalties collected pursuant to this section must be deposited in the state general fund."
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5 NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an
6 integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [section 1].
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8 NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured,
9 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
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11 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.
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13 NEW SECTION. **Section 11. Termination.** [This act] terminates July 1, 2013.
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