

SENATE BILL NO. 325

INTRODUCED BY J. KEANE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE BOARD OF ENVIRONMENTAL REVIEW PROCESS  
5 FOR ADOPTING WATER QUALITY REGULATIONS MORE STRINGENT THAN FEDERAL REGULATIONS;  
6 REQUIRING WATER QUALITY STANDARDS BE NO PURER THAN A NATURAL CONDITION OF A  
7 WATERCOURSE OR WATER SOURCE; REVISING THE PROCESS FOR RECLASSIFYING WATER QUALITY  
8 STANDARDS; REVISING THE PROCESS FOR ADOPTING SITE-SPECIFIC WATER QUALITY STANDARDS;  
9 PROVIDING A DEFINITION; AMENDING SECTIONS 75-5-203, 75-5-302, AND 75-5-310, MCA; AND  
10 REPEALING SECTION 75-5-309, MCA."

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

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14 **NEW SECTION. Section 1. State regulations for natural conditions.** (1) The board may not adopt  
15 a standard for water quality requiring a purer condition than the natural condition of a watercourse or a water  
16 source, as long as the board protects public health and the environment of the state.

- 17 (2) As used in this section, "natural" refers to conditions:  
18 (a) resulting from material present from runoff or percolation over which humans have no control;  
19 (b) resulting from material present from developed land where all reasonable land, soil, and water  
20 conservation practices have been applied; or  
21 (c) shown to exist as a result of nonanthropogenic sources or under pre-Columbian era conditions.

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23 **Section 2.** Section 75-5-203, MCA, is amended to read:

24 **"75-5-203. State regulations no more stringent than federal regulations or guidelines.** (1) ~~After April~~  
25 ~~14, 1995, except~~ Except as provided in subsections (2) through (5) or unless required by state law, the board may  
26 not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or  
27 guidelines that address the same circumstances. The board may incorporate by reference comparable federal  
28 regulations or guidelines.

29 (2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal  
30 regulations or guidelines only if the board makes a written finding after a public hearing and public comment and

1 based on evidence in the record that:

2 (a) the proposed state standard or requirement protects public health or the environment of the state;  
3 and

4 (b) the state standard or requirement to be imposed ~~can~~ will definitively mitigate harm to the public health  
5 or environment and is achievable under current technology.

6 (3) The written finding must reference ~~information and~~ pertinent, ascertainable, and peer-reviewed  
7 scientific studies contained in the record that forms the basis for the board's conclusion. The written finding must  
8 also include information from the hearing record regarding the costs to the regulated community that are directly  
9 attributable to the proposed state standard or requirement.

10 (4) (a) A person affected by a rule of the board ~~adopted after January 1, 1990, and before April 14, 1995,~~  
11 that that person believes to be more stringent than comparable federal regulations or guidelines may petition the  
12 board to review the rule. If the board determines that the rule is more stringent than comparable federal  
13 regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the  
14 federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a  
15 reasonable period of time, not to exceed ~~42~~ 3 months after receiving the petition. A petition under this section  
16 does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition  
17 filing fee in an amount not to exceed \$250.

18 (b) A person may also petition the board for a rule review under subsection (4)(a) if the board adopts  
19 a rule ~~after January 1, 1990,~~ in an area in which no federal regulations or guidelines existed and the federal  
20 government subsequently establishes comparable regulations or guidelines that are less stringent than the  
21 previously adopted board rule.

22 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of  
23 2-4-303(1)."

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25 **Section 3.** Section 75-5-302, MCA, is amended to read:

26 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** (1) Except  
27 as provided in subsection (2) and subject to [section 1], in revising classifications or standards or in adopting new  
28 classifications or standards, the board may not formulate standards of water quality or classify state water in a  
29 manner that lowers the water quality standard applicable to state water below the level applicable under the  
30 classifications and standards adopted unless the board finds that a particular state water has been classified

1 under a standard or classification of water quality that is higher than the actual water quality that existed at the  
 2 time of classification and only if the action is taken pursuant to 75-5-307. When the board or department is  
 3 presented with facts indicating that a body of water is misclassified, the board shall, within 90 days, initiate  
 4 rulemaking to correct the misclassification.

5 (2) Establishment of a temporary water quality standard or classification does not require a finding that  
 6 the affected state water was classified under a standard or classification that was higher than the actual water  
 7 quality that existed at the time of the prior classification."  
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9 **Section 4.** Section 75-5-310, MCA, is amended to read:

10 **"75-5-310. Site-specific standards of water quality for aquatic life.** (1) Notwithstanding any other  
 11 provisions of this chapter and except as provided in subsection (2), the board, upon application by a permit  
 12 applicant, permittee, or person potentially liable under any state or federal environmental remediation statute,  
 13 shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of  
 14 water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed  
 15 in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.

16 (2) ~~If Subject to [section 1],~~ if the department, based upon its review of an application submitted under  
 17 subsection (1) and sound scientific, technical, and ~~available~~ site-specific evidence, determines that the  
 18 development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria  
 19 would not be protective of beneficial uses, the department, within 90 days of the submission of an application  
 20 under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that  
 21 the applicant is required to comply with in the development of site-specific standards of water quality under this  
 22 section. If there is a dispute between the department and the applicant as to the additional procedures, the board  
 23 shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision  
 24 must be based on sound scientific, technical, and available site-specific evidence."  
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26 **NEW SECTION. Section 5. Repealer.** The following section of the Montana Code Annotated is  
 27 repealed:

28 75-5-309. Standards more stringent than federal standards.  
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30 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [section 1].

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