

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 REVISING IMPLEMENTATION OF WATER QUALITY STANDARDS BE NO THAT ARE PURER~~
7 THAN A NATURAL CONDITION OF A WATERCOURSE OR WATER SOURCE; REVISING THE PROCESS
8 FOR RECLASSIFYING WATER QUALITY STANDARDS; REVISING THE PROCESS FOR ADOPTING
9 SITE-SPECIFIC WATER QUALITY STANDARDS; PROVIDING A DEFINITION; AMENDING SECTIONS
10 SECTION 75-5-203, 75-5-302, AND 75-5-310, MCA; AND REPEALING SECTION 75-5-309, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
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.~~

22
23 NEW SECTION. SECTION 1. STATE REGULATION FOR NATURAL CONDITIONS. (1) UNLESS NECESSARY TO
24 PROTECT DOWNSTREAM USES, THE DEPARTMENT MAY NOT APPLY A STANDARD TO A WATER BODY FOR WATER QUALITY
25 THAT IS MORE STRINGENT THAN THE NONANTHROPOGENIC CONDITION OF THE WATER BODY SHOWN TO EXIST AS A RESULT
26 OF NONANTHROPOGENIC SOURCES. FOR THE PARAMETERS FOR WHICH THE APPLICABLE STANDARDS ARE MORE
27 STRINGENT THAN THE NONANTHROPOGENIC CONDITION, THE STANDARD IS THE NONANTHROPOGENIC CONCENTRATION
28 CONDITION OF THE PARAMETER IN THE WATER BODY. THE DEPARTMENT SHALL IMPLEMENT THE STANDARD IN A MANNER
29 THAT PROVIDES FOR THE WATER QUALITY STANDARDS FOR DOWNSTREAM WATERS TO BE ATTAINED AND MAINTAINED.

30 (2) (A) FOR WATER BODIES WHERE THE STANDARD IS MORE STRINGENT THAN THE CONDITION OF THE WATER

1 BODY BUT SUBSECTION (1) IS NOT APPLICABLE, THE BOARD SHALL ADOPT RULES CONSISTENT WITH COMPARABLE FEDERAL
 2 RULES AND GUIDELINES PROVIDING CRITERIA AND PROCEDURES FOR THE DEPARTMENT TO ISSUE VARIANCES FROM
 3 STANDARDS IF:

4 (I) THE CONDITION CANNOT REASONABLY BE EXPECTED TO BE REMEDIATED DURING THE PERMIT TERM FOR WHICH
 5 THE APPLICATION FOR VARIANCE HAS BEEN RECEIVED; AND

6 (II) THE DISCHARGE TO WHICH THE VARIANCE APPLIES WOULD NOT MATERIALLY CONTRIBUTE TO THE CONDITION.

7 (B) A VARIANCE ISSUED PURSUANT TO SUBSECTION (2)(A) MUST BE REVIEWED EVERY 5 YEARS AND MAY BE
 8 MODIFIED OR TERMINATED AS A RESULT OF THE REVIEW.

9

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

11 **"75-5-203. State regulations no more stringent than federal regulations or guidelines.** (1) ~~After April~~
 12 ~~14, 1995, except~~ Except as provided in subsections (2) through (5) or unless required by state law, the board may
 13 not adopt a rule to implement ~~this chapter~~ 75-5-301, 75-5-302, 75-5-303, or 75-5-310 that is more stringent than
 14 the comparable federal regulations or guidelines that address the same circumstances. The board may
 15 incorporate by reference comparable federal regulations or guidelines.

16 (2) The board may adopt a rule to implement this chapter that is more stringent than comparable federal
 17 regulations or guidelines only if the board makes a written finding after a public hearing and public comment and
 18 based on evidence in the record that:

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

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

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

27 (4) (a) A person affected by a rule of the board ~~adopted after January 1, 1990, and before April 14, 1995,~~
 28 that that person believes to be more stringent than comparable federal regulations or guidelines may petition the
 29 board to review the rule. If the board determines that the rule is more stringent than comparable federal
 30 regulations or guidelines, the board shall comply with this section by either revising the rule to conform to the

1 federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a
 2 reasonable period of time, not to exceed ~~12~~ 3 ~~8~~ months after receiving the petition. A petition under this section
 3 does not relieve the petitioner of the duty to comply with the challenged rule. The board may charge a petition
 4 filing fee in an amount not to exceed \$250.

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

9 (5) This section does not apply to a rule adopted under the emergency rulemaking provisions of
 10 2-4-303(1)."

11
 12 ~~Section 3. Section 75-5-302, MCA, is amended to read:~~
 13 ~~"75-5-302. Revised classifications not to lower water quality standards -- exception. (1) Except~~
 14 ~~as provided in subsection (2) and subject to [section 1], in revising classifications or standards or in adopting new~~
 15 ~~classifications or standards, the board may not formulate standards of water quality or classify state water in a~~
 16 ~~manner that lowers the water quality standard applicable to state water below the level applicable under the~~
 17 ~~classifications and standards adopted unless the board finds that a particular state water has been classified~~
 18 ~~under a standard or classification of water quality that is higher than the actual water quality that existed at the~~
 19 ~~time of classification and only if the action is taken pursuant to 75-5-307. When the board or department is~~
 20 ~~presented with facts indicating that a body of water is misclassified, the board shall, within 90 days, initiate~~
 21 ~~rulemaking to correct the misclassification.~~

22 ~~(2) Establishment of a temporary water quality standard or classification does not require a finding that~~
 23 ~~the affected state water was classified under a standard or classification that was higher than the actual water~~
 24 ~~quality that existed at the time of the prior classification."~~

25
 26 ~~Section 4. Section 75-5-310, MCA, is amended to read:~~
 27 ~~"75-5-310. Site-specific standards of water quality for aquatic life. (1) Notwithstanding any other~~
 28 ~~provisions of this chapter and except as provided in subsection (2), the board, upon application by a permit~~
 29 ~~applicant, permittee, or person potentially liable under any state or federal environmental remediation statute,~~
 30 ~~shall adopt site-specific standards of water quality for aquatic life, both acute and chronic, as the standards of~~

1 water quality required under 75-5-301(2) and (3). The site-specific standards of water quality must be developed
 2 in accordance with the procedures set forth in draft or final federal regulations, guidelines, or criteria.
 3 ~~——— (2) If Subject to [section 1], if the department, based upon its review of an application submitted under~~
 4 ~~subsection (1) and sound scientific, technical, and available site-specific evidence, determines that the~~
 5 ~~development of site-specific criteria in accordance with draft or final federal regulations, guidelines, or criteria~~
 6 ~~would not be protective of beneficial uses, the department, within 90 days of the submission of an application~~
 7 ~~under subsection (1), shall notify the applicant in writing of its determination and of all additional procedures that~~
 8 ~~the applicant is required to comply with in the development of site-specific standards of water quality under this~~
 9 ~~section. If there is a dispute between the department and the applicant as to the additional procedures, the board~~
 10 ~~shall, on the request of the department or the applicant, hear and determine the dispute. The board's decision~~
 11 ~~must be based on sound scientific, technical, and available site-specific evidence."~~

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 13 **NEW SECTION. Section 3. Repealer.** The following section of the Montana Code Annotated is
 14 repealed:

15 75-5-309. Standards more stringent than federal standards.

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 17 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
 18 integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [section 1].

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