

SENATE BILL NO. 112

INTRODUCED BY D. ANKNEY

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PRIORITIZE DEVELOPMENT OF A TOTAL MAXIMUM DAILY LOAD (TMDL) WHEN A COMPLETE TMDL IS REQUIRED FOR ISSUANCE OF A PERMIT TO DISCHARGE INTO STATE WATERS; SETTING DEADLINES FOR TMDL COMPLETION AND PENALTIES FOR MISSING DEADLINES; REQUIRING TMDL DEVELOPMENT FOR EXISTING APPLICATIONS TO DISCHARGE INTO STATE WATERS THAT REQUIRE A COMPLETE TMDL; AMENDING SECTION 75-5-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 75-5-702, MCA, is amended to read:

"75-5-702. Monitoring -- water quality assessment listing -- costs payable by department -- statewide advisory group. (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department

1 shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible
2 data to grant the request, the department shall provide public notice of its intended action and allow 60 days for
3 public comment prior to taking action on the request. A person aggrieved by the department's decision to grant
4 or deny the request may appeal the department's decision to the board.

5 (4) The department shall, in consultation with local conservation districts and watershed advisory groups
6 pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as threatened or
7 impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall
8 make available for public review the data and information used in making any changes in its list of threatened or
9 impaired water bodies that is developed and maintained pursuant to this section.

10 (5) By October 1, 1999, and in consultation with the statewide TMDL advisory group established
11 pursuant to subsection (9), the department shall develop and maintain a data management system that can be
12 used to assess the validity and reliability of the data used in the listing and priority ranking process. The
13 department shall make available to the public, upon request, data from its data management system. The
14 department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the
15 requestor.

16 (6) By October 1, 1999, and in consultation with the statewide TMDL advisory group, the department
17 shall use the data management system developed and maintained pursuant to subsection (5) to revise the list
18 and to remove any water body that lacks sufficient credible data to support its listing. If the department removes
19 a water body because there is a lack of sufficient credible data to support its listing, the department shall monitor
20 and assess that water body during the next field season or as soon as possible thereafter to determine whether
21 it is a threatened water body or an impaired water body.

22 (7) ~~In~~ Except as provided in subsection (9), in prioritizing water bodies for TMDL development, the
23 department shall, in consultation with the statewide TMDL advisory group, take into consideration the following:

- 24 (a) the beneficial uses established for a water body;
- 25 (b) the extent that natural factors over which humans have no control are contributing to any impairment;
- 26 (c) the impacts to human health and aquatic life;
- 27 (d) the degree of public interest and support;
- 28 (e) the character of the pollutant and the severity and magnitude of water quality standard
29 noncompliance;
- 30 (f) whether the water body is an important high-quality resource in an early stage of degradation;

- 1 (g) the size of the water body not achieving standards;
- 2 (h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals
3 and load allocations for new nonpoint sources;
- 4 (i) court orders and decisions relating to water quality;
- 5 (j) state policies and priorities, including the protection and restoration of native fish when appropriate;
- 6 (k) the availability of technology and resources to correct the problems;
- 7 (l) whether actions or voluntary programs that are likely to correct the impairment of a particular water
8 body are currently in place; and
- 9 (m) the recreational, economic, and aesthetic importance of a particular water body.
- 10 (8) ~~The~~ Except as provided in subsection (9), the department shall, in consultation with the statewide
11 TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations
12 described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low
13 priority for TMDL development. The department may not rank a water body as a high priority under this section
14 without first validating the data necessary to support the ranking.
- 15 (9) (a) If department approval of a permit to discharge into state waters pursuant to 75-5-401 would
16 require incorporation of a TMDL but a TMDL is not developed for an affected water body or an affected segment
17 of a water body on the date of the application, the department shall:
- 18 (i) within 30 days of the department's receipt of the application, initiate the development of a TMDL on
19 the affected water body or the affected segment of the water body; and
- 20 (ii) within 180 days of the department's receipt of the application, complete development of the TMDL
21 pursuant to 75-5-703.
- 22 (b) The department may not, in the absence of a TMDL on the affected water body or an affected
23 segment of a water body:
- 24 (i) declare an application incomplete; or
- 25 (ii) cite the lack of a TMDL as a deficiency in the application.
- 26 (c) The department shall, within 180 days of [the effective date of this act], develop a TMDL for an
27 affected water body or an affected segment of a water body for which an application to discharge into state waters
28 was submitted prior to [the effective date of this act] but for which a TMDL is not complete.
- 29 (d) The department shall pay all costs reasonably incurred by an applicant whose permit to discharge
30 into state waters is delayed by the department missing deadlines required by this subsection (9).

1 ~~(9)~~(a)(10) (a) The department shall establish a statewide TMDL advisory group to serve in the
 2 consultation capacity set forth in 75-5-703, 75-5-704, and this section. Fourteen members, and any replacement
 3 members that may be necessary, must be appointed by the director, based upon one nomination from each of
 4 the following interests:

- 5 (i) livestock-oriented agriculture;
- 6 (ii) farming-oriented agriculture;
- 7 (iii) conservation or environmental interests;
- 8 (iv) water-based recreationists;
- 9 (v) the forestry industry;
- 10 (vi) municipalities;
- 11 (vii) point source dischargers;
- 12 (viii) mining;
- 13 (ix) federal land management agencies;
- 14 (x) state trust land management agencies;
- 15 (xi) supervisors of soil and water conservation districts for counties east of the continental divide;
- 16 (xii) supervisors of soil and water conservation districts for counties west of the continental divide;
- 17 (xiii) the hydroelectric industry; and
- 18 (xiv) fishing-related businesses.

19 (b) If the director receives more than one nomination from a particular interest, the director shall notify
 20 the respective nominators and request that they agree on one nominee.

21 ~~(10)~~(11) The department shall provide public notice of meetings of the statewide TMDL advisory group
 22 and shall solicit, document, and consider public comments provided during the deliberations of the advisory
 23 group."

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25 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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