

SENATE BILL NO. 136

INTRODUCED BY T. BECK, WEEDING, GRADY, RANEY,
DRISCOLL, GILBERT, YELLOWTAIL
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

IN THE SENATE

JANUARY 18, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

JANUARY 19, 1991 FIRST READING.

FEBRUARY 21, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 22, 1991 PRINTING REPORT.

FEBRUARY 23, 1991 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 25, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 40; NOES, 9.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

 FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 18, 1991 SECOND READING, CONCURRED IN.

MARCH 19, 1991 THIRD READING, CONCURRED IN.
 AYES, 84; NOES, 14.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 25, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *136*
 2 INTRODUCED BY *Paul Bludny & Tracy Carey*
 3 BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL
 4 *Donnell Elliott Yellowtail*

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 6 ESTABLISHMENT OF LOCAL WATER QUALITY DISTRICTS; AUTHORIZING
 7 ESTABLISHMENT OF FEES; AUTHORIZING GOVERNING BODIES OF
 8 COUNTIES, CITIES, AND TOWNS THAT PARTICIPATE IN A LOCAL
 9 WATER QUALITY DISTRICT TO ADOPT LOCAL LAWS RELATED TO WATER
 10 QUALITY PROTECTION; AUTHORIZING THE BOARD OF HEALTH AND
 11 ENVIRONMENTAL SCIENCES TO APPROVE LOCAL WATER QUALITY
 12 PROGRAMS; AND AUTHORIZING THE DEPARTMENT OF HEALTH AND
 13 ENVIRONMENTAL SCIENCES TO MONITOR IMPLEMENTATION OF LOCAL
 14 WATER QUALITY PROGRAMS."

16 STATEMENT OF INTENT

17 A statement of intent is required for this bill in order
 18 to provide guidance to the board of health and environmental
 19 sciences concerning rulemaking and approval of local water
 20 quality programs. The board shall adopt rules concerning the
 21 format of local water quality programs, including the level
 22 of information necessary for a local water quality district
 23 to show that its proposed program will be consistent with
 24 Title 75, chapter 5, and that its program will be effective
 25 in protecting, preserving, and improving the quality of

1 surface water and ground water. The board of health and
 2 environmental sciences shall ensure that local water quality
 3 programs do not duplicate department of health and
 4 environmental sciences requirements and procedures relating
 5 to the regulation and permitting of waste discharge sources,
 6 enforcement of water quality standards, implementation of
 7 the nondegradation policy, or other water quality protection
 8 authorities. It is the intent of the legislature that
 9 administrative responsibilities for water quality protection
 10 be clearly allocated and, when necessary, clearly divided
 11 between the department of health and environmental sciences
 12 and a local water quality district, insofar as possible, to
 13 ensure that permitholders, permit applicants, and citizens
 14 are not subject to conflicting or duplicative requirements.
 15 Through its approval of local water quality programs, the
 16 board of health and environmental sciences shall ensure that
 17 the department of health and environmental sciences' ability
 18 to continue to administer federally delegated water quality
 19 protection programs is not impaired.

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

22 NEW SECTION. Section 1. Findings and purpose. (1)
 23 Pollution and degradation of surface water and ground water
 24 pose both immediate and long-term threats to the health,
 25 safety, and welfare of citizens of this state.



1 (2) Because of the expense and difficulty of ground
2 water rehabilitation and cleanup, policies and programs to
3 prevent ground water contamination must be implemented.

4 (3) The purpose of [sections 1 through 23] is to
5 provide for the creation of local water quality districts to
6 protect, preserve, and improve the quality of surface water
7 and ground water.

8 NEW SECTION. Section 2. Definitions. As used in
9 [sections 1 through 23], unless the context indicates
10 otherwise, the following definitions apply:

11 (1) "Board of health and environmental sciences" as
12 used in [sections 1 through 23] means the board of health
13 and environmental sciences as provided in 2-15-2104.

14 (2) "Board of directors" means the board of directors
15 provided for in [section 12] or a joint board of directors
16 provided for in [section 21].

17 (3) "Commissioners" means the board of county
18 commissioners or the governing body of a city-county
19 consolidated government.

20 (4) "Family residential unit" means a single-family
21 dwelling.

22 (5) "Fee-assessed units" means all real property with
23 improvements, including taxable and tax-exempt property as
24 shown on the property assessment records maintained by the
25 county.

1 (6) "Local water quality district" means an area
2 established with definite boundaries for the purpose of
3 protecting, preserving, and improving the quality of surface
4 water and ground water in the district.

5 NEW SECTION. Section 3. Authorization to initiate
6 creation of a local water quality district. (1) The
7 commissioners may initiate the creation of a local water
8 quality district for the purpose of protecting, preserving,
9 and improving the quality of surface water and ground water
10 by holding a public meeting, passing a resolution of
11 intention, providing an opportunity for owners of
12 fee-assessed units to protest, and conducting a public
13 hearing to hear and decide upon protests, as provided in
14 [sections 5 through 8].

15 (2) A city or town may be included in the district if
16 approved by the governing body of the city or town.

17 NEW SECTION. Section 4. Public meeting -- resolution
18 of intention to create local water quality district. (1) The
19 commissioners shall hold at least one public meeting
20 concerning the creation of a local water quality district
21 prior to the passage of a resolution of intention to create
22 the district.

23 (2) The resolution of intention must designate:

24 (a) the proposed name of the district;

25 (b) the necessity for the proposed district;

1 (c) a general description of the territory or lands
2 included in the district, including identification of the
3 district boundaries;

4 (d) a general description of the proposed water quality
5 program;

6 (e) the initial estimated cost of the water quality
7 program; and

8 (f) the initial proposed fees to be charged.

9 NEW SECTION. Section 5. Participation of cities and
10 towns. (1) Upon passage of a resolution of intention, the
11 commissioners shall transmit a copy of the resolution to the
12 governing body of any incorporated city or town within the
13 proposed local water quality district for consideration by
14 the governing body.

15 (2) If the governing body of the city or town by
16 resolution concurs in the resolution of intention, a copy of
17 the resolution of concurrence must be transmitted to the
18 commissioners.

19 (3) If the governing body of the incorporated city or
20 town does not concur in the resolution of intention, the
21 commissioners may not include the city or town in the
22 district but may continue to develop a district that
23 excludes the city or town.

24 NEW SECTION. Section 6. Notice of resolutions of
25 intention and concurrence. (1) The commissioners shall give

1 notice of the passage of the resolution of intention and
2 resolution of concurrence, if applicable, and publish a
3 notice that:

4 (a) describes the local water quality program that
5 would be implemented in the local water quality district;

6 (b) specifies the initial proposed fees to be charged;

7 (c) designates the time and place where the
8 commissioners will hear and decide upon protests made
9 against the operation of the proposed district; and

10 (d) states that a description of the boundaries for the
11 proposed district is included in the resolution on file in
12 the county clerk's office.

13 (2) The notice must be published as provided in
14 7-1-2121 and must also be posted in three public places
15 within the boundaries of the proposed district.

16 (3) The commissioners shall mail to all owners of
17 proposed fee-assessed units, as listed in the county
18 assessor's office, a postcard that identifies the location
19 where the resolution of intention, resolution of
20 concurrence, and protest forms may be obtained.

21 NEW SECTION. Section 7. Right to protest -- procedure.

22 (1) At any time within 30 days after the date of the first
23 publication of the notice provided for in [section 6(1)], a
24 person owning a fee-assessed unit located within the
25 proposed local water quality district may make written

1 protest, on forms provided by the county clerk, against the
2 proposed district and the fees proposed to be charged.

3 (2) The protest must be in writing on the forms
4 provided by the county clerk and must be delivered to the
5 county clerk, who shall endorse on it the date the completed
6 form is received.

7 (3) Owners may file one protest per fee-assessed unit.

8 NEW SECTION. Section 8. Hearing on protest. (1) At the
9 next regular meeting of the commissioners after the
10 expiration of the time period provided for in [section 7],
11 the commissioners shall hear and decide upon all protests.
12 The commissioners' decision is final and conclusive.

13 (2) The commissioners may adjourn the hearing as
14 necessary.

15 NEW SECTION. Section 9. Sufficient protest to bar
16 proceedings. If the owners of more than 20% of the
17 fee-assessed units in the proposed district protest the
18 creation of the proposed district and the fees proposed to
19 be charged, the commissioners are barred from further
20 proceedings on the matter unless the registered voters who
21 reside within the proposed district approve the creation of
22 the district and establish the fees by approving a
23 referendum on the issue.

24 NEW SECTION. Section 10. Referendum. (1) The
25 commissioners may adopt a resolution causing a referendum to

1 be submitted to the registered voters who reside within a
2 proposed local water quality district to authorize the
3 creation of the district and establish fees.

4 (2) The referendum must state:

5 (a) the type and maximum rate of the initial proposed
6 fees that would be imposed, consistent with the requirements
7 of [section 18];

8 (b) the maximum dollar amount for a family residential
9 unit; and

10 (c) the type of activities proposed to be financed.

11 NEW SECTION. Section 11. Insufficient protest to bar
12 proceedings -- resolution creating district -- power to
13 implement local water quality program. (1) The commissioners
14 may create a local water quality district, establish fees,
15 and appoint a board of directors if the commissioners find
16 that insufficient protests have been made in accordance with
17 [section 9] or if the registered voters who reside in the
18 proposed district have approved a referendum as provided in
19 [section 10].

20 (2) To create a local water quality district, the
21 commissioners shall pass a resolution in accordance with the
22 resolution of intention introduced and passed by the
23 commissioners or with the terms of the referendum.

24 (3) The commissioners and board of directors may
25 implement a local water quality program after the program is

1 approved by the board of health and environmental sciences
2 pursuant to [section 24].

3 NEW SECTION. Section 12. Board of directors. (1)
4 Except as provided in subsections (3)(b) and (5), the
5 commissioners shall appoint a board of directors for the
6 local water quality district.

7 (2) The board of directors consists of not less than
8 five members, including one county commissioner or member of
9 the governing body of a city-county consolidated government,
10 one member from the governing body of each incorporated city
11 or town that is included in the district, and one member of
12 the county or city-county board of health.

13 (3) The remaining members of the board of directors are
14 selected from interested persons, as follows:

15 (a) from persons whose residences are distributed
16 equally throughout the district if a county is the only unit
17 of local government participating in the district; or

18 (b) through mutual agreement by all governing bodies if
19 a county and one or more incorporated cities and towns are
20 participating in the district.

21 (4) Terms of members of the board of directors are
22 staggered and, after the initial terms, are for 3 years.

23 (5) In counties that have a full-time city-county
24 health department, the city-county board of health, created
25 as authorized by 50-2-106, may be designated as the board of

1 directors for the local water quality district.

2 NEW SECTION. Section 13. Powers and duties of board of
3 directors. The board of directors of a local water quality
4 district, with the approval of the commissioners, may:

5 (1) develop a local water quality program, to be
6 submitted to the board of health and environmental sciences,
7 for the protection, preservation, and improvement of the
8 quality of surface water and ground water in the district;

9 (2) implement a local water quality program;

10 (3) administer the budget of the local water quality
11 district;

12 (4) employ personnel;

13 (5) purchase, rent, or lease equipment and material
14 necessary to develop and implement an effective program;

15 (6) cooperate or contract with any corporation,
16 association, individual, or group of individuals, including
17 any agency of the federal, state, or local governments, in
18 order to develop and implement an effective program;

19 (7) receive gifts, grants, or donations for the purpose
20 of advancing the program and acquire by gift, deed, or
21 purchase, land necessary to implement the local water
22 quality program;

23 (8) administer local ordinances that are adopted by the
24 commissioners and governing bodies of the participating
25 cities and towns and that pertain to the protection,

1 preservation, and improvement of the quality of surface
2 water and ground water;

3 (9) apply for and receive from the federal government
4 or the state government, on behalf of the local water
5 quality district, money to aid the local water quality
6 program;

7 (10) borrow money for assistance in planning or
8 refinancing a local water quality district and repay loans
9 with the money received from the established fees; and

10 (11) construct facilities that cost not more than \$5,000
11 and maintain facilities necessary to accomplish the purposes
12 of the district, including but not limited to facilities for
13 removal of water-borne contaminants; water quality
14 improvement; sanitary sewage collection, disposal, and
15 treatment; and storm water or surface water drainage
16 collection, disposal, and treatment.

17 NEW SECTION. Section 14. Powers and duties of
18 commissioners. In addition to the other powers and duties of
19 the commissioners authorized by [sections 1 through 23], the
20 commissioners may:

21 (1) adopt local ordinances in accordance with the
22 requirements of [section 24];

23 (2) establish fees;

24 (3) review and approve the annual budget of the local
25 water quality district; and

1 (4) approve the construction of facilities that cost
2 more than \$5,000 but not more than \$100,000 a year and that
3 are necessary to accomplish the purposes of [sections 1
4 through 23], including but not limited to facilities for
5 removal of water-borne contaminants; water quality
6 improvement; sanitary sewage collection, disposal, and
7 treatment; and storm water or surface water drainage
8 collection, disposal, and treatment.

9 NEW SECTION. Section 15. Implementation of program.
10 The board of directors may implement a local water quality
11 program in parts of a local water quality district before
12 the program is implemented in the district as a whole. If a
13 program is initially implemented in only a portion of a
14 district, the fees may be levied only against that part of
15 the district where the program is being implemented. As the
16 program is expanded throughout the district, each additional
17 part of the district that is covered by the program shall
18 pay the fee.

19 NEW SECTION. Section 16. Changes in district
20 boundaries. The board of directors may by resolution make
21 changes in the boundaries of a local water quality district
22 that the board determines are reasonable and proper,
23 following the same procedures of notice and hearing provided
24 in [sections 6 through 8] except that the notice provisions
25 of [section 6(3)] apply only to the owners of proposed

1 fee-assessed units in new areas that are proposed to be
 2 included in the district. If 20% of the owners of
 3 fee-assessed units in the new areas protest the inclusion in
 4 the district and the fees proposed to be charged, the board
 5 of directors is barred from further proceedings on the
 6 matter unless the registered voters who reside in the areas
 7 proposed for inclusion agree to be included in the district
 8 and accept the proposed fees by approving a referendum in
 9 accordance with the provisions of [section 10].

10 NEW SECTION. Section 17. Role of county attorney --
 11 contracts for legal services. The board of directors may, by
 12 agreement with the commissioners, contract with the county
 13 attorney or an attorney licensed to practice law in the
 14 state of Montana to perform legal services for the local
 15 water quality district.

16 NEW SECTION. Section 18. Fees -- determination of
 17 rates -- increases -- exemption for agricultural water use.

18 (1) The commissioners shall determine fee rates according to
 19 a classification system that is based upon the volume of
 20 water withdrawn and the volume and type of waste produced at
 21 each fee-assessed unit in the local water quality district.

22 (2) Fees for commercial and industrial units must be
 23 based on a comparison with a typical family residential unit
 24 as to volume of water withdrawn and volume and type of waste
 25 produced. Commercial and industrial units may be assessed

1 fees that are not greater than 50 times the fees assessed on
 2 a family residential unit.

3 (3) The commissioners may increase fees up to 10% a
 4 year by passing a resolution to establish the new fee rate.
 5 The commissioners may not approve a proposed fee increase of
 6 more than 10% a year unless notice of the proposed increase
 7 is given as provided in [section 5(1) and (2)] and
 8 opportunity for protest is provided as set forth in
 9 [sections 7 and 8]. If more than 20% of the owners of fee
 10 assessed units in the district protest, the fee increase may
 11 not be approved except through the referendum procedure
 12 provided for in [section 10].

13 (4) Water withdrawals for irrigation and livestock use
 14 and related water discharges may not be assessed fees.

15 NEW SECTION. Section 19. Procedure to collect fees.

16 The month the local water quality district is created
 17 pursuant to [section 11], the department of revenue or its
 18 agents shall ensure that the amount of the fees is placed on
 19 the county tax assessments for each fee-assessed unit.
 20 Unpaid fees are a lien on the fee-assessed unit and may be
 21 enforced as a lien for nonpayment of property taxes.

22 NEW SECTION. Section 20. Disposition and
 23 administration of proceeds. (1) All fees and other money
 24 received by a local water quality district must be placed in
 25 a separate fund maintained by the county treasurer and must

1 be used solely for the purpose for which the local water
2 quality district was created.

3 (2) The commissioners shall draw warrants upon the fund
4 on claims approved by the board of directors.

5 NEW SECTION. Section 21. Creation of joint local water
6 quality districts. (1) Joint local water quality districts
7 are districts that encompass two or more counties or parts
8 of counties.

9 (2) A joint local water quality district may be created
10 if the commissioners of each affected county:

11 (a) create the district, following the procedures
12 prescribed under [sections 3 through 11]; and

13 (b) appoint a joint board of directors that consists of
14 at least five members and that is consistent with the
15 requirement of [section 22(2)(b)], if applicable.

16 NEW SECTION. Section 22. Composition of board of
17 directors of joint district -- terms. (1) The board of
18 directors for a joint district consists of one commissioner
19 from each county involved, one member from each incorporated
20 city or town included in the district, and one member from
21 each county or city-county board of health.

22 (2) The remaining members of the joint board of
23 directors are selected from interested citizens, as follows:

24 (a) persons whose residences are distributed equally
25 throughout the district if counties are the only units of

1 government participating in the joint district; or

2 (b) through mutual agreement of all commissioners and
3 governing bodies of cities and towns participating in the
4 district.

5 (3) Terms of appointed members are staggered and, after
6 the initial terms, are for 3 years.

7 NEW SECTION. Section 23. Administration of funds in
8 joint districts. Fees and other money collected by a joint
9 local water quality district may be administered by one
10 county treasurer upon mutual agreement by the commissioners
11 of the counties participating in a joint local water quality
12 district.

13 NEW SECTION. Section 24. Local water quality districts
14 -- board approval -- local water quality programs. (1) A
15 county that establishes a local water quality district
16 according to the procedures specified in [sections 1 through
17 23] shall, in consultation with the department, undertake
18 planning and information-gathering activities necessary to
19 develop a proposed local water quality program.

20 (2) A county may implement a local water quality
21 program in a local water quality district if the program is
22 approved by the board after a hearing conducted under
23 75-5-202.

24 (3) In approving a local water quality program, the
25 board shall determine that the program is consistent with

1 the purposes and requirements of Title 75, chapter 5, and
 2 that the program will be effective in protecting,
 3 preserving, and improving the quality of surface water and
 4 ground water, considering the administrative organization,
 5 staff, and financial and other resources available to
 6 implement the program.

7 (4) Subject to the board's approval, the commissioners
 8 and the governing bodies of cities and towns that
 9 participate in a local water quality district may adopt
 10 local ordinances that:

11 (a) are compatible with, more stringent than, or more
 12 extensive than the requirements imposed by 75-5-303 through
 13 75-5-306 and 75-5-401 through 75-5-404 and rules adopted
 14 under those sections, to protect water quality, implement
 15 the nondegradation policy, enforce water quality standards,
 16 regulate sources that discharge wastes into state waters,
 17 establish pollutant discharge permitting requirements, and
 18 ensure proper management of substances that have the
 19 potential to contaminate water quality;

20 (b) provide for administrative procedures,
 21 administrative orders and actions, and civil enforcement
 22 actions that are consistent with 75-5-601 through 75-5-604,
 23 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules
 24 adopted under those sections;

25 (c) provide for penalties not to exceed the penalties

1 provided in 75-5-631 through 75-5-633; and

2 (d) ensure that the provisions imposed by 75-5-605 are
 3 not violated.

4 (5) If the boundaries of a district are changed after
 5 the board has approved the local water quality program for
 6 the district, the board of directors of the local water
 7 quality district shall submit a program amendment to the
 8 board and obtain the board's approval of the program
 9 amendment before implementing the local water quality
 10 program in areas that have been added to the district.

11 (6) The department shall monitor the implementation of
 12 local water quality programs to ensure that the programs are
 13 adequate to protect, preserve, and improve the quality of
 14 the surface water and ground water and are being
 15 administered in a manner consistent with the purposes and
 16 requirements of Title 75, chapter 5. If the department finds
 17 that a local water quality program is not adequate to
 18 protect, preserve, and improve the quality of the surface
 19 water and ground water or is not being administered in a
 20 manner consistent with the purposes and requirements of
 21 Title 75, chapter 5, the department shall report to the
 22 board.

23 (7) If the board determines that a local water quality
 24 program is inadequate to protect, preserve, and improve the
 25 quality of the surface water and ground water in the local

1 water quality district or that the program is being
2 administered in a manner inconsistent with Title 75, chapter
3 5, the board shall give notice and conduct a hearing on the
4 matter.

5 (8) If after the hearing the board determines that the
6 program is inadequate to protect, preserve, and improve the
7 quality of the surface water and ground water in the local
8 water quality district or that it is not being administered
9 in a manner consistent with the purposes of Title 75,
10 chapter 5, the board shall require that necessary corrective
11 measures be taken within a reasonable time, not to exceed 60
12 days.

13 (9) If the local water quality district fails to take
14 corrective measures within the time required, the department
15 shall administer within the district all of the provisions
16 of Title 75, chapter 5. The department's water quality
17 program supersedes all local water quality ordinances,
18 rules, and requirements in the affected local water quality
19 district. The cost of administering the department's water
20 quality program is a charge on the local water quality
21 district.

22 (10) If the board finds that, because of the complexity
23 or magnitude of a particular water pollution source, the
24 control of the source is beyond the reasonable capability of
25 a local water quality district or may be more efficiently

1 and economically performed at the state level, the board may
2 direct the department to assume and retain control over the
3 source. A charge may not be assessed against the local water
4 quality district for that source. Findings made under this
5 subsection may be based on the nature of the source involved
6 or on the source's relationship to the size of the community
7 in which it is located.

8 (11) A local water quality district in which the local
9 water quality program is administered by the department
10 under the provisions of subsection (9) may, with the board's
11 approval, establish or resume a local water quality program
12 that meets the requirements of subsections (1) through (4).

13 NEW SECTION. Section 25. Codification instruction. (1)
14 [Sections 1 through 23] are intended to be codified as an
15 integral part of Title 7, and the provisions of Title 7
16 apply to [sections 1 through 23].

17 (2) [Section 24] is intended to be codified as an
18 integral part of Title 75, chapter 5, and the provisions of
19 Title 75, chapter 5, apply to [section 24].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0136, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing for the establishment of local water quality districts; authorizing establishment of fees; authorizing governing bodies of counties, cities, and towns that participate in a local water quality district to adopt local laws related to water quality protection; authorizing the Board of Health and Environmental Sciences to monitor implementation of local water quality programs.

ASSUMPTIONS:

1. One county per year would propose formation of a water quality district.
2. DHES staff would be required to assist in the development, review, and approval of each district, conduct oversight of water districts, monitor performance, and review enforcement actions taken by water districts.
3. DHES costs would be funded from the general fund.


FISCAL IMPACT:

Expenditures:

| | FY92 | | | FY93 | | |
|--------------------|--------------------|---------------------|-------------------|--------------------|---------------------|-------------------|
| | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> |
| FTE | 0.00 | 0.50 | 0.50 | 0.00 | 0.50 | 0.50 |
| Personal Services | 0 | 15,039 | 15,039 | 0 | 15,004 | 15,004 |
| Operating Expenses | 0 | 3,500 | 3,500 | 0 | 3,500 | 3,500 |
| Total | 0 | 18,539 | 18,539 | 0 | 18,504 | 18,504 |
| <u>Funding:</u> | | | | | | |
| General Fund (01) | 0 | 18,539 | 18,539 | 0 | 18,504 | 18,504 |

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Where created, water quality districts would be authorized to assess fees based on volume of water usage and wastewater quality. Expenditure and revenue amounts would be determined by localities.

 2-7-91
 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 2/8/91
 THOMAS BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0136, as introduced.

SB 136

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 136

INTRODUCED BY T. BECK, WEEDING, GRADY, RANEY,
DRISCOLL, GILBERT, YELLOWTAIL

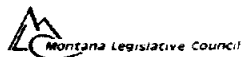
BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
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COUNTIES, CITIES, AND TOWNS THAT PARTICIPATE IN A LOCAL
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ENVIRONMENTAL SCIENCES TO MONITOR IMPLEMENTATION OF LOCAL
WATER QUALITY PROGRAMS; AND AMENDING SECTION 75-5-106, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill in order
to provide guidance to the board of health and environmental
sciences concerning rulemaking and approval of local water
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format of local water quality programs, including the level
of information necessary for a local water quality district
to show that its proposed program will be consistent with
Title 75, chapter 5, and that its program will be effective

in protecting, preserving, and improving the quality of
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to the regulation and permitting of waste discharge sources,
enforcement of water quality standards, implementation of
the nondegradation policy, or other water quality protection
authorities.~~ THE BOARD MAY DEFINE BY RULE THE TYPES OF BEST
MANAGEMENT PRACTICES THAT MAY BE IMPOSED UPON EACH OF THE
TYPES OF FACILITIES AND SOURCES OF POLLUTION THAT MAY BE
REGULATED BY LOCAL ORDINANCES AS AUTHORIZED UNDER [SECTION
24(4)]. It is the intent of the legislature that
administrative responsibilities ~~for water quality protection~~
be clearly allocated and, when necessary, clearly divided
between the department of health and environmental sciences
and a local water quality district, insofar as possible, to
ensure that permitholders, permit applicants, and citizens
are not subject to conflicting or duplicative requirements.
Through its approval of local water quality programs, the
board of health and environmental sciences shall ensure that
the department of health and environmental sciences' ability
to continue to administer federally delegated water quality
protection programs is not impaired. THE BOARD MAY ALSO
ADOPT RULES TO SPECIFY THE PROCEDURES THE DEPARTMENT OF



1 HEALTH AND ENVIRONMENTAL SCIENCES SHALL FOLLOW PURSUANT TO
 2 75-5-106 TO AUTHORIZE A LOCAL WATER QUALITY DISTRICT TO
 3 ENFORCE PROVISIONS OF TITLE 75, CHAPTER 5. IT IS THE INTENT
 4 OF THE LEGISLATURE THAT THE BOUNDARIES OF LOCAL WATER
 5 QUALITY DISTRICTS SHOULD CORRESPOND TO THE AREA OR AREAS IN
 6 WHICH WATER QUALITY PROBLEMS HAVE BEEN DOCUMENTED.

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Findings and purpose. (1)

10 Pollution and degradation of surface water and ground water
 11 pose both immediate and long-term threats to the health,
 12 safety, and welfare of citizens of this state.

13 (2) Because of the expense and difficulty of ground
 14 water rehabilitation and cleanup AND THE NEED TO PROTECT
 15 DRINKING WATER SUPPLIES, policies and programs to prevent
 16 ground water contamination must be implemented.

17 (3) The purpose of [sections 1 through 23] is to
 18 provide for the creation of local water quality districts to
 19 protect, preserve, and improve the quality of surface water
 20 and ground water.

21 NEW SECTION. Section 2. Definitions. As used in
 22 [sections 1 through 23], unless the context indicates
 23 otherwise, the following definitions apply:

24 (1) "Board of health and environmental sciences" as
 25 used in [sections 1 through 23] means the board of health

1 and environmental sciences as provided in 2-15-2104.

2 (2) "Board of directors" means the board of directors
 3 provided for in [section 12] or a joint board of directors
 4 provided for in [section 21].

5 (3) "Commissioners" means the board of county
 6 commissioners or the governing body of a city-county
 7 consolidated government.

8 (4) "Family residential unit" means a single-family
 9 dwelling.

10 (5) "Fee-assessed units" means all real property with
 11 improvements, including taxable and tax-exempt property as
 12 shown on the property assessment records maintained by the
 13 county, AND MOBILE HOMES AS DEFINED IN 15-24-201.

14 (6) "Local water quality district" means an area
 15 established with definite boundaries for the purpose of
 16 protecting, preserving, and improving the quality of surface
 17 water and ground water in the district AS AUTHORIZED BY
 18 [SECTIONS 1 THROUGH 23].

19 NEW SECTION. Section 3. Authorization to initiate
 20 creation of a local water quality district. (1) The
 21 commissioners may initiate the creation of a local water
 22 quality district for the purpose of protecting, preserving,
 23 and improving the quality of surface water and ground water,
 24 AS PROVIDED BY [SECTIONS 1 THROUGH 23], by holding a public
 25 meeting, passing a resolution of intention, providing an

1 opportunity for owners of fee-assessed units to protest, and
 2 conducting a public hearing to hear and decide upon
 3 protests, as provided in [sections 5 through 8].

4 (2) A city or town may be included in the district if
 5 approved by the governing body of the city or town.

6 NEW SECTION. Section 4. Public meeting -- resolution
 7 of intention to create local water quality district. (1) The
 8 commissioners shall hold at least one public meeting
 9 concerning the creation of a local water quality district
 10 prior to the passage of a resolution of intention to create
 11 the district.

12 (2) The resolution of intention must designate:

13 (a) the proposed name of the district;

14 (b) the necessity for the proposed district;

15 (c) a general description of the territory or lands
 16 included in the district, including identification of the
 17 district boundaries THAT MUST CORRESPOND TO THE AREA IN
 18 WHICH THE NEED FOR THE DISTRICT EXISTS PURSUANT TO
 19 SUBSECTION (2)(B);

20 (d) a general description of the proposed water quality
 21 program;

22 (e) the initial estimated cost of the water quality
 23 program; and

24 (f) the initial proposed fees to be charged.

25 NEW SECTION. Section 5. Participation of cities and

1 towns. (1) Upon passage of a resolution of intention, the
 2 commissioners shall transmit a copy of the resolution to the
 3 governing body of any incorporated city or town within the
 4 proposed local water quality district for consideration by
 5 the governing body.

6 (2) If the governing body of the city or town by
 7 resolution concurs in the resolution of intention, a copy of
 8 the resolution of concurrence must be transmitted to the
 9 commissioners.

10 (3) If the governing body of the incorporated city or
 11 town does not concur in the resolution of intention, the
 12 commissioners may not include the city or town in the
 13 district but may continue to develop a district that
 14 excludes the city or town.

15 NEW SECTION. Section 6. Notice of resolutions of
 16 intention and concurrence. (1) The commissioners shall give
 17 notice of the passage of the resolution of intention and
 18 resolution of concurrence, if applicable, and publish a
 19 notice that:

20 (a) describes the local water quality program that
 21 would be implemented in the local water quality district;

22 (b) specifies the initial proposed fees to be charged;

23 (c) designates the time and place where the
 24 commissioners will hear and decide upon protests made
 25 against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the county assessor's office, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

NEW SECTION. **Section 7. Right to protest -- procedure.**

(1) At any time within 30 days after the date of the first publication of the notice provided for in [section 6(1)], a person owning a fee-assessed unit located within the proposed local water quality district may make written protest, ~~on forms provided by the county clerk,~~ against the proposed district and the fees proposed to be charged.

(2) The protest must be in writing ~~on the forms provided by the county clerk~~ and must be delivered to the county clerk, who shall endorse on it the date the ~~completed form~~ PROTEST is received.

(3) Owners may file one protest per fee-assessed unit.

NEW SECTION. **Section 8. Hearing on protest.** (1) At the next regular meeting of the commissioners after the

expiration of the time period provided for in [section 7], the commissioners shall hear and decide upon all protests. ~~The commissioners' decision is final and conclusive.~~

(2) The commissioners may adjourn the hearing as necessary.

NEW SECTION. **Section 9. Sufficient protest to bar proceedings REQUIRE REFERENDUM.** If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless THE COMMISSIONERS SUBMIT A REFERENDUM TO CREATE THE DISTRICT TO the registered voters who reside within the proposed district AND THE REGISTERED VOTERS approve the creation of the district and establish the fees by approving a THE referendum ~~on the issue.~~

NEW SECTION. **Section 10. Referendum.** (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters who reside within a proposed local water quality district to authorize the creation of the district and establish fees.

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed fees that would be imposed, consistent with the requirements of [section 18];

1 (b) the maximum dollar amount for a family residential
2 unit; and

3 (c) the type of activities proposed to be financed,
4 INCLUDING A GENERAL DESCRIPTION OF THE LOCAL WATER QUALITY
5 PROGRAM; AND

6 (D) A GENERAL DESCRIPTION OF THE AREAS INCLUDED IN THE
7 PROPOSED DISTRICT.

8 NEW SECTION. Section 11. Insufficient protest to bar
9 proceedings -- resolution creating district -- power to
10 implement local water quality program. (1) The commissioners
11 may create a local water quality district, establish fees,
12 and appoint a board of directors if the commissioners find
13 that insufficient protests have been made in accordance with
14 [section 9] or if the registered voters who reside in the
15 proposed district have approved a referendum as provided in
16 [section 10].

17 (2) To create a local water quality district, the
18 commissioners shall pass a resolution in accordance with the
19 resolution of intention introduced and passed by the
20 commissioners or with the terms of the referendum.

21 (3) The commissioners and board of directors may
22 implement a local water quality program after the program is
23 approved by the board of health and environmental sciences
24 pursuant to [section 24].

25 NEW SECTION. Section 12. Board of directors. (1)

1 Except as provided in subsections (3)(b) and (5), the
2 commissioners shall appoint a board of directors for the
3 local water quality district.

4 (2) The board of directors consists of not less than
5 five members, including one county commissioner or member of
6 the governing body of a city-county consolidated government,
7 one member from the governing body of each incorporated city
8 or town that is included in the district, and one member of
9 the county or city-county board of health, AND IF THE
10 DISTRICT INCLUDES A SUBSTANTIAL AMOUNT OF LAND THAT IS
11 WITHIN A CONSERVATION DISTRICT OR DISTRICTS, ONE
12 CONSERVATION DISTRICT SUPERVISOR.

13 (3) The remaining members of the board of directors are
14 selected from interested persons, as follows:

15 (a) from persons whose residences OR BUSINESSES are
16 distributed equally throughout the district if a county is
17 the only unit of local government participating in the
18 district; or

19 (b) through mutual agreement by all governing bodies if
20 a county and one or more incorporated cities and towns are
21 participating in the district.

22 (4) Terms of members of the board of directors are
23 staggered and, after the initial terms, are for 3 years.

24 (5) In counties that have a full-time city-county
25 health department, the city-county board of health, created

1 as authorized by 50-2-106, may be designated as the board of
 2 directors for the local water quality district. IF THE
 3 CITY-COUNTY BOARD OF HEALTH IS DESIGNATED AS THE BOARD OF
 4 DIRECTORS AND IF THE LOCAL WATER QUALITY DISTRICT INCLUDES A
 5 SUBSTANTIAL AMOUNT OF LAND THAT IS WITHIN A CONSERVATION
 6 DISTRICT OR DISTRICTS, THE BOARD OF DIRECTORS MUST ALSO
 7 INCLUDE ONE MEMBER WHO IS A CONSERVATION DISTRICT
 8 SUPERVISOR.

9 NEW SECTION. Section 13. Powers and duties of board of
 10 directors. The board of directors of a local water quality
 11 district, with the approval of the commissioners, may:

12 (1) develop a local water quality program, to be
 13 submitted to the board of health and environmental sciences,
 14 for the protection, preservation, and improvement of the
 15 quality of surface water and ground water in the district;
 16 IN DEVELOPING THE PROGRAM, THE BOARD OF DIRECTORS SHALL
 17 CONSULT WITH THE BOARD OR BOARDS OF SUPERVISORS OF
 18 CONSERVATION DISTRICTS, ESTABLISHED AS PROVIDED IN
 19 76-15-201, WHOSE GEOGRAPHICAL AREA OF JURISDICTION IS
 20 INCLUDED WITHIN THE BOUNDARIES OF THE LOCAL WATER QUALITY
 21 DISTRICT.

- 22 (2) implement a local water quality program;
- 23 (3) administer the budget of the local water quality
- 24 district;
- 25 (4) employ personnel;

1 (5) purchase, rent, or lease equipment and material
 2 necessary to develop and implement an effective program;

3 (6) cooperate or contract with any corporation,
 4 association, individual, or group of individuals, including
 5 any agency of the federal, state, or local governments, in
 6 order to develop and implement an effective program;

7 (7) receive gifts, grants, or donations for the purpose
 8 of advancing the program and acquire by gift, deed, or
 9 purchase, land necessary to implement the local water
 10 quality program;

11 (8) administer local ordinances that are adopted by the
 12 commissioners and governing bodies of the participating
 13 cities and towns and that pertain to the protection,
 14 preservation, and improvement of the quality of surface
 15 water and ground water;

16 (9) apply for and receive from the federal government
 17 or the state government, on behalf of the local water
 18 quality district, money to aid the local water quality
 19 program;

20 (10) borrow money for assistance in planning or
 21 refinancing a local water quality district and repay loans
 22 with the money received from the established fees; and

23 (11) construct facilities that cost not more than \$5,000
 24 and maintain facilities necessary to accomplish the purposes
 25 of the district, including but not limited to facilities for

1 removal of water-borne contaminants; water quality
 2 improvement; sanitary sewage collection, disposal, and
 3 treatment; and storm water or surface water drainage
 4 collection, disposal, and treatment.

5 NEW SECTION. Section 14. Powers and duties of
 6 commissioners. In addition to the other powers and duties of
 7 the commissioners authorized by [sections 1 through 23], the
 8 commissioners may:

9 (1) adopt local ordinances in accordance with the
 10 requirements of [section 24];

11 (2) establish fees;

12 (3) review and approve the annual budget of the local
 13 water quality district; and

14 (4) approve the construction of facilities that cost
 15 more than \$5,000 but not more than \$100,000 a year and that
 16 are necessary to accomplish the purposes of [sections 1
 17 through 23], including but not limited to facilities for
 18 removal of water-borne contaminants; water quality
 19 improvement; sanitary sewage collection, disposal, and
 20 treatment; and storm water or surface water drainage
 21 collection, disposal, and treatment.

22 NEW SECTION. Section 15. Implementation of program.

23 The board of directors may implement a local water quality
 24 program in parts of a local water quality district before
 25 the program is implemented in the district as a whole. If a

1 program is initially implemented in only a portion of a
 2 district, the fees may be levied only against that part of
 3 the district where the program is being implemented. As the
 4 program is expanded throughout the district, each additional
 5 part of the district that is covered by the program shall
 6 pay the fee.

7 NEW SECTION. Section 16. Changes in district
 8 boundaries. The board of directors may by resolution make
 9 changes in the boundaries of a local water quality district
 10 that the board determines are reasonable and proper,
 11 following the same procedures of notice and hearing provided
 12 in [sections 6 through 8] except that the notice provisions
 13 of [section 6(3)] apply only to the owners of proposed
 14 fee-assessed units in new areas that are proposed to be
 15 included in the district. If 20% of the owners of
 16 fee-assessed units in the new areas protest the inclusion in
 17 the district and the fees proposed to be charged, the board
 18 of directors is barred from further proceedings on the
 19 matter unless the registered voters who reside in the areas
 20 proposed for inclusion agree to be included in the district
 21 and accept the proposed fees by approving a referendum in
 22 accordance with the provisions of [section 10].

23 NEW SECTION. Section 17. Role of county attorney --
 24 contracts for legal services. The board of directors may, by
 25 agreement with the commissioners, contract with the county

1 attorney or an attorney licensed to practice law in the
2 state of Montana to perform legal services for the local
3 water quality district.

4 NEW SECTION. Section 18. Fees -- determination of
5 rates -- increases -- exemption for agricultural water use.

6 (1) The commissioners shall determine fee rates according to
7 a classification system that is based upon the volume of
8 water withdrawn and the volume and type of waste produced at
9 each fee-assessed unit in the local water quality district.

10 (2) Fees for commercial and industrial units must be
11 based on a comparison with a typical family residential unit
12 as to volume of water withdrawn and volume and type of waste
13 produced. Commercial and industrial units may be assessed
14 fees that are not greater than 50 times the fees assessed on
15 a family residential unit.

16 (3) The commissioners may increase fees up to 10% a
17 year by passing a resolution to establish the new fee rate.
18 The commissioners may not approve a proposed fee increase of
19 more than 10% a year unless notice of the proposed increase
20 is given as provided in [section 6(1) and (2)] and
21 opportunity for protest is provided as set forth in
22 [sections 7 and 8]. If more than 20% of the owners of fee
23 assessed units in the district protest, the fee increase may
24 not be approved except through the referendum procedure
25 provided for in [section 10].

1 (4) Water withdrawals for irrigation and livestock use
2 and related water discharges may not be assessed fees.

3 NEW SECTION. Section 19. Procedure to collect fees.

4 The month the local water quality district is created
5 pursuant to [section 11], the department of revenue or its
6 agents shall ensure that the amount of the fees is placed on
7 the county tax assessments for each fee-assessed unit.
8 Unpaid fees are a lien on the fee-assessed unit and may be
9 enforced as a lien for nonpayment of property taxes.

10 NEW SECTION. Section 20. Disposition and
11 administration of proceeds. (1) All fees and other money
12 received by a local water quality district must be placed in
13 a separate fund maintained by the county treasurer and must
14 be used solely for the purpose for which the local water
15 quality district was created.

16 (2) The commissioners shall draw warrants upon the fund
17 on claims approved by the board of directors.

18 NEW SECTION. Section 21. Creation of joint local water
19 quality districts. (1) Joint local water quality districts
20 are districts that encompass two or more counties or parts
21 of counties.

22 (2) A joint local water quality district may be created
23 if the commissioners of each affected county:

24 (a) create the district, following the procedures
25 prescribed under [sections 3 through 11]; and

1 (b) appoint a joint board of directors that consists of
2 at least five members and that is consistent with the
3 requirement of [section 22(2)(b)], if applicable.

4 NEW SECTION. Section 22. Composition of board of
5 directors of joint district -- terms. (1) The board of
6 directors for a joint district consists of one commissioner
7 from each county involved, one member from each incorporated
8 city or town included in the district, and one member from
9 each county or city-county board of health, AND IF THE JOINT
10 DISTRICT INCLUDES A SUBSTANTIAL AMOUNT OF LAND THAT IS
11 WITHIN A CONSERVATION DISTRICT OR DISTRICTS, ONE
12 CONSERVATION DISTRICT SUPERVISOR.

13 (2) The remaining members of the joint board of
14 directors are selected from interested citizens, as follows:

15 (a) persons whose residences OR BUSINESSES are
16 distributed equally throughout the district if counties are
17 the only units of government participating in the joint
18 district; or

19 (b) through mutual agreement of all commissioners and
20 governing bodies of cities and towns participating in the
21 district.

22 (3) Terms of appointed members are staggered and, after
23 the initial terms, are for 3 years.

24 NEW SECTION. Section 23. Administration of funds in
25 joint districts. Fees and other money collected by a joint

1 local water quality district may be administered by one
2 county treasurer upon mutual agreement by the commissioners
3 of the counties participating in a joint local water quality
4 district.

5 NEW SECTION. Section 24. Local water quality districts
6 -- board approval -- local water quality programs. (1) A
7 county that establishes a local water quality district
8 according to the procedures specified in [sections 1 through
9 23] shall, in consultation with the department, undertake
10 planning and information-gathering activities necessary to
11 develop a proposed local water quality program.

12 (2) A county may implement a local water quality
13 program in a local water quality district if the program is
14 approved by the board after a hearing conducted under
15 75-5-202.

16 (3) In approving a local water quality program, the
17 board shall determine that the program is consistent with
18 the purposes and requirements of Title 75, chapter 5, and
19 that the program will be effective in protecting,
20 preserving, and improving the quality of surface water and
21 ground water, considering the administrative organization,
22 staff, and financial and other resources available to
23 implement the program.

24 (4) Subject to the board's approval, the commissioners
25 and the governing bodies of cities and towns that

1 participate in a local water quality district may adopt
2 local ordinances that:

3 ~~(a) are compatible with, more stringent than, or more~~
4 ~~extensive than the requirements imposed by 75-5-303 through~~
5 ~~75-5-306 and 75-5-401 through 75-5-404 and rules adopted~~
6 ~~under those sections, to protect water quality, implement~~
7 ~~the nondegradation policy, enforce water quality standards,~~
8 ~~regulate sources that discharge wastes into state waters,~~
9 ~~establish pollutant discharge permitting requirements, and~~
10 ~~ensure proper management of substances that have the~~
11 ~~potential to contaminate water quality; TO REGULATE THE~~
12 FOLLOWING SPECIFIC FACILITIES AND SOURCES OF POLLUTION:

- 13 (A) ONSITE WASTE WATER DISPOSAL FACILITIES;
- 14 (B) STORM WATER RUNOFF FROM PAVED SURFACES;
- 15 (C) SERVICE CONNECTIONS BETWEEN BUILDINGS AND PUBLICLY
16 OWNED SEWER MAINS;
- 17 (D) FACILITIES THAT USE OR STORE HALOGENATED AND
18 NONHALOGENATED SOLVENTS, INCLUDING HAZARDOUS SUBSTANCES THAT
19 ARE REFERENCED IN 40 CFR 261.31, UNITED STATES ENVIRONMENTAL
20 PROTECTION AGENCY HAZARDOUS WASTE NUMBERS F001 THROUGH F005,
21 AS AMENDED; AND

22 (E) INTERNAL COMBUSTION ENGINE LUBRICANTS.
23 (5) FOR THE FACILITIES AND SOURCES OF POLLUTION
24 INCLUDED IN SUBSECTION (4) AND CONSISTENT WITH THE
25 PROVISIONS OF SUBSECTION (6), THE LOCAL ORDINANCES MAY:

1 (A) BE COMPATIBLE WITH OR MORE STRINGENT OR MORE
2 EXTENSIVE THAN THE REQUIREMENTS IMPOSED BY 75-5-304,
3 75-5-305, AND 75-5-401 THROUGH 75-5-404 AND RULES ADOPTED
4 UNDER THOSE SECTIONS TO PROTECT WATER QUALITY, ESTABLISH
5 WASTE DISCHARGE PERMIT REQUIREMENTS, AND ESTABLISH BEST
6 MANAGEMENT PRACTICES FOR SUBSTANCES THAT HAVE THE POTENTIAL
7 TO POLLUTE STATE WATERS;

8 (b) provide for administrative procedures,
9 administrative orders and actions, and civil enforcement
10 actions that are consistent with 75-5-601 through 75-5-604,
11 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules
12 adopted under those sections; AND

13 ~~(c) provide for penalties not to exceed the penalties~~
14 ~~provided in 75-5-631 through 75-5-633; and~~

15 ~~(d) ensure that the provisions imposed by 75-5-605 are~~
16 ~~not violated;~~

17 (C) PROVIDE FOR CIVIL PENALTIES NOT TO EXCEED \$1,000
18 PER VIOLATION, PROVIDED THAT EACH DAY OF VIOLATION OF A
19 LOCAL ORDINANCE CONSTITUTES A SEPARATE VIOLATION, AND
20 CRIMINAL PENALTIES NOT TO EXCEED \$500 PER DAY OF VIOLATION
21 OR IMPRISONMENT FOR NOT MORE THAN 30 DAYS, OR BOTH.

22 (6) THE LOCAL ORDINANCES AUTHORIZED BY THIS SECTION MAY
23 NOT:

24 (A) DUPLICATE THE DEPARTMENT'S REQUIREMENTS AND
25 PROCEDURES RELATING TO PERMITTING OF WASTE DISCHARGE SOURCES

1 AND ENFORCEMENT OF WATER QUALITY STANDARDS;

2 (B) REGULATE ANY FACILITY OR SOURCE OF POLLUTION TO THE
3 EXTENT THAT THE FACILITY OR SOURCE IS:

4 (I) REQUIRED TO OBTAIN A PERMIT OR OTHER APPROVAL FROM
5 THE DEPARTMENT OR FEDERAL GOVERNMENT OR IS THE SUBJECT OF AN
6 ADMINISTRATIVE ORDER, A CONSENT DECREE, OR AN ENFORCEMENT
7 ACTION PURSUANT TO TITLE 75, CHAPTER 5, PART 4; TITLE 75,
8 CHAPTER 6; TITLE 75, CHAPTER 10; THE FEDERAL COMPREHENSIVE
9 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF
10 1980, 42 U.S.C. 9601 THROUGH 9675, AS AMENDED; OR FEDERAL
11 ENVIRONMENTAL, SAFETY, OR HEALTH STATUTES AND REGULATIONS;

12 OR

13 (II) EXEMPTED FROM OBTAINING A PERMIT OR OTHER APPROVAL
14 FROM THE DEPARTMENT BECAUSE THE FACILITY OR SOURCE IS
15 REQUIRED TO OBTAIN A PERMIT OR OTHER APPROVAL FROM ANOTHER
16 STATE AGENCY OR IS THE SUBJECT OF AN ENFORCEMENT ACTION BY
17 ANOTHER STATE AGENCY.

18 +5+(7) If the boundaries of a district are changed
19 after the board has approved the local water quality program
20 for the district, the board of directors of the local water
21 quality district shall submit a program amendment to the
22 board and obtain the board's approval of the program
23 amendment before implementing the local water quality
24 program in areas that have been added to the district.

25 (6)+(8) The department shall monitor the implementation

1 of local water quality programs to ensure that the programs
2 are adequate to protect, preserve, and improve the quality
3 of the surface water and ground water and are being
4 administered in a manner consistent with the purposes and
5 requirements of Title 75, chapter 5. If the department finds
6 that a local water quality program is not adequate to
7 protect, preserve, and improve the quality of the surface
8 water and ground water or is not being administered in a
9 manner consistent with the purposes and requirements of
10 Title 75, chapter 5, the department shall report to the
11 board.

12 +7+(9) If the board determines that a local water
13 quality program is inadequate to protect, preserve, and
14 improve the quality of the surface water and ground water in
15 the local water quality district or that the program is
16 being administered in a manner inconsistent with Title 75,
17 chapter 5, the board shall give notice and conduct a hearing
18 on the matter.

19 +8+(10) If after the hearing the board determines that
20 the program is inadequate to protect, preserve, and improve
21 the quality of the surface water and ground water in the
22 local water quality district or that it is not being
23 administered in a manner consistent with the purposes of
24 Title 75, chapter 5, the board shall require that necessary
25 corrective measures be taken within a reasonable time, not

1 to exceed 60 days.
 2 ~~{9}~~ If the local water quality district fails to take
 3 corrective measures within the time required, the department
 4 shall administer within the district all of the provisions
 5 of Title 75, chapter 5. The department's water quality
 6 program supersedes all local water quality ordinances,
 7 rules, and requirements in the affected local water quality
 8 district. The cost of administering the department's water
 9 quality program is a charge on the local water quality
 10 district.

11 (11) IF AN ORDINANCE ADOPTED UNDER THIS SECTION
 12 CONFLICTS WITH A REQUIREMENT IMPOSED BY THE DEPARTMENT'S
 13 WATER QUALITY PROGRAM, THE DEPARTMENT'S REQUIREMENT
 14 SUPERSEDES THE LOCAL ORDINANCE.

15 ~~{10}~~(12) If the board finds that, because of the
 16 complexity or magnitude of a particular water pollution
 17 source, the control of the source is beyond the reasonable
 18 capability of a local water quality district or may be more
 19 efficiently and economically performed at the state level,
 20 the board may direct the department to assume and retain
 21 control over the source. A charge may not be assessed
 22 against the local water quality district for that source.
 23 Findings made under this subsection may be based on the
 24 nature of the source involved or on the source's
 25 relationship to the size of the community in which it is

1 located.

2 ~~{11}~~ A local water quality district in which the local
 3 water quality program is administered by the department
 4 under the provisions of subsection {9} may, with the board's
 5 approval, establish or resume a local water quality program
 6 that meets the requirements of subsections {1} through {4}.

7 **SECTION 25. SECTION 75-5-106, MCA, IS AMENDED TO READ:**

8 "75-5-106. Interagency cooperation -- enforcement
 9 authorization. (1) The council, board, and department may
 10 require the use of records of all state agencies and may
 11 seek the assistance of such agencies. State, county, and
 12 municipal officers and employees, including sanitarians and
 13 other employees of local departments of health, shall
 14 cooperate with the council, board, and department in
 15 furthering the purposes of this chapter, so far as is
 16 practicable and consistent with their other duties.

17 (2) The department may authorize a local water quality
 18 district established according to the provisions of
 19 [sections 1 through 23] to enforce the provisions of this
 20 chapter and rules adopted under this chapter on a
 21 case-by-case basis. If a local water quality district
 22 requests the authorization, the local water quality district
 23 shall present appropriate documentation to the department
 24 that a person is violating permit requirements established
 25 by the department or may be causing pollution, as defined in

1 75-5-103, of state waters or placing or causing to be placed
2 wastes in a location where they are likely to cause
3 pollution of state waters. The board may adopt rules
4 regarding the granting of enforcement authority to local
5 water quality districts."

6 NEW SECTION. Section 26. Codification instruction. (1)
7 [Sections 1 through 23] are intended to be codified as an
8 integral part of Title 7, and the provisions of Title 7
9 apply to [sections 1 through 23].

10 (2) [Section 24] is intended to be codified as an
11 integral part of Title 75, chapter 5, and the provisions of
12 Title 75, chapter 5, apply to [section 24].

-End-

SENATE BILL NO. 136

INTRODUCED BY T. BECK, WEEDING, GRADY, RANEY,
DRISCOLL, GILBERT, YELLOWTAIL

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ESTABLISHMENT OF LOCAL WATER QUALITY DISTRICTS; AUTHORIZING ESTABLISHMENT OF FEES; AUTHORIZING GOVERNING BODIES OF COUNTIES, CITIES, AND TOWNS THAT PARTICIPATE IN A LOCAL WATER QUALITY DISTRICT TO ADOPT LOCAL LAWS RELATED TO WATER QUALITY PROTECTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO APPROVE LOCAL WATER QUALITY PROGRAMS; AND AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO MONITOR IMPLEMENTATION OF LOCAL WATER QUALITY PROGRAMS; AND AMENDING SECTION 75-5-106, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences concerning rulemaking and approval of local water quality programs. The board shall adopt rules concerning the format of local water quality programs, including the level of information necessary for a local water quality district to show that its proposed program will be consistent with Title 75, chapter 5, and that its program will be effective

in protecting, preserving, and improving the quality of surface water and ground water. ~~The board of health and environmental sciences shall ensure that local water quality programs do not duplicate department of health and environmental sciences requirements and procedures relating to the regulation and permitting of waste discharge sources, enforcement of water quality standards, implementation of the nondegradation policy, or other water quality protection authorities.~~ THE BOARD MAY DEFINE BY RULE THE TYPES OF BEST MANAGEMENT PRACTICES THAT MAY BE IMPOSED UPON EACH OF THE TYPES OF FACILITIES AND SOURCES OF POLLUTION THAT MAY BE REGULATED BY LOCAL ORDINANCES AS AUTHORIZED UNDER [SECTION 24(4)]. It is the intent of the legislature that administrative responsibilities for water quality protection be clearly allocated and, when necessary, clearly divided between the department of health and environmental sciences and a local water quality district, insofar as possible, to ensure that permitholders, permit applicants, and citizens are not subject to conflicting or duplicative requirements. Through its approval of local water quality programs, the board of health and environmental sciences shall ensure that the department of health and environmental sciences' ability to continue to administer federally delegated water quality protection programs is not impaired. THE BOARD MAY ALSO ADOPT RULES TO SPECIFY THE PROCEDURES THE DEPARTMENT OF



1 HEALTH AND ENVIRONMENTAL SCIENCES SHALL FOLLOW PURSUANT TO
 2 75-5-106 TO AUTHORIZE A LOCAL WATER QUALITY DISTRICT TO
 3 ENFORCE PROVISIONS OF TITLE 75, CHAPTER 5. IT IS THE INTENT
 4 OF THE LEGISLATURE THAT THE BOUNDARIES OF LOCAL WATER
 5 QUALITY DISTRICTS SHOULD CORRESPOND TO THE AREA OR AREAS IN
 6 WHICH WATER QUALITY PROBLEMS HAVE BEEN DOCUMENTED.

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Findings and purpose. (1)

10 Pollution and degradation of surface water and ground water
 11 pose both immediate and long-term threats to the health,
 12 safety, and welfare of citizens of this state.

13 (2) Because of the expense and difficulty of ground
 14 water rehabilitation and cleanup AND THE NEED TO PROTECT
 15 DRINKING WATER SUPPLIES, policies and programs to prevent
 16 ground water contamination must be implemented.

17 (3) The purpose of [sections 1 through 23] is to
 18 provide for the creation of local water quality districts to
 19 protect, preserve, and improve the quality of surface water
 20 and ground water.

21 NEW SECTION. Section 2. Definitions. As used in
 22 [sections 1 through 23], unless the context indicates
 23 otherwise, the following definitions apply:

24 (1) "Board of health and environmental sciences" as
 25 used in [sections 1 through 23] means the board of health

1 and environmental sciences as provided in 2-15-2104.

2 (2) "Board of directors" means the board of directors
 3 provided for in [section 12] or a joint board of directors
 4 provided for in [section 21].

5 (3) "Commissioners" means the board of county
 6 commissioners or the governing body of a city-county
 7 consolidated government.

8 (4) "Family residential unit" means a single-family
 9 dwelling.

10 (5) "Fee-assessed units" means all real property with
 11 improvements, including taxable and tax-exempt property as
 12 shown on the property assessment records maintained by the
 13 county, AND MOBILE HOMES AS DEFINED IN 15-24-201.

14 (6) "Local water quality district" means an area
 15 established with definite boundaries for the purpose of
 16 protecting, preserving, and improving the quality of surface
 17 water and ground water in the district AS AUTHORIZED BY
 18 [SECTIONS 1 THROUGH 23].

19 NEW SECTION. Section 3. Authorization to initiate
 20 creation of a local water quality district. (1) The
 21 commissioners may initiate the creation of a local water
 22 quality district for the purpose of protecting, preserving,
 23 and improving the quality of surface water and ground water,
 24 AS PROVIDED BY [SECTIONS 1 THROUGH 23], by holding a public
 25 meeting, passing a resolution of intention, providing an

1 opportunity for owners of fee-assessed units to protest, and
 2 conducting a public hearing to hear and decide upon
 3 protests, as provided in [sections 5 through 8].

4 (2) A city or town may be included in the district if
 5 approved by the governing body of the city or town.

6 NEW SECTION. Section 4. Public meeting -- resolution
 7 of intention to create local water quality district. (1) The
 8 commissioners shall hold at least one public meeting
 9 concerning the creation of a local water quality district
 10 prior to the passage of a resolution of intention to create
 11 the district.

12 (2) The resolution of intention must designate:

13 (a) the proposed name of the district;

14 (b) the necessity for the proposed district;

15 (c) a general description of the territory or lands
 16 included in the district, including identification of the
 17 district boundaries THAT MUST CORRESPOND TO THE AREA IN
 18 WHICH THE NEED FOR THE DISTRICT EXISTS PURSUANT TO
 19 SUBSECTION (2)(B);

20 (d) a general description of the proposed water quality
 21 program;

22 (e) the initial estimated cost of the water quality
 23 program; and

24 (f) the initial proposed fees to be charged.

25 NEW SECTION. Section 5. Participation of cities and

1 towns. (1) Upon passage of a resolution of intention, the
 2 commissioners shall transmit a copy of the resolution to the
 3 governing body of any incorporated city or town within the
 4 proposed local water quality district for consideration by
 5 the governing body.

6 (2) If the governing body of the city or town by
 7 resolution concurs in the resolution of intention, a copy of
 8 the resolution of concurrence must be transmitted to the
 9 commissioners.

10 (3) If the governing body of the incorporated city or
 11 town does not concur in the resolution of intention, the
 12 commissioners may not include the city or town in the
 13 district but may continue to develop a district that
 14 excludes the city or town.

15 NEW SECTION. Section 6. Notice of resolutions of
 16 intention and concurrence. (1) The commissioners shall give
 17 notice of the passage of the resolution of intention and
 18 resolution of concurrence, if applicable, and publish a
 19 notice that:

20 (a) describes the local water quality program that
 21 would be implemented in the local water quality district;

22 (b) specifies the initial proposed fees to be charged;

23 (c) designates the time and place where the
 24 commissioners will hear and decide upon protests made
 25 against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the county assessor's office, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

NEW SECTION. Section 7. Right to protest -- procedure.

(1) At any time within 30 days after the date of the first publication of the notice provided for in [section 6(1)], a person owning a fee-assessed unit located within the proposed local water quality district may make written protest, ~~on forms provided by the county clerk,~~ against the proposed district and the fees proposed to be charged.

(2) The protest must be in writing ~~on the forms provided by the county clerk~~ and must be delivered to the county clerk, who shall endorse on it the date the ~~completed form~~ PROTEST is received.

(3) Owners may file one protest per fee-assessed unit.

NEW SECTION. Section 8. Hearing on protest. (1) At the next regular meeting of the commissioners after the

expiration of the time period provided for in [section 7], the commissioners shall hear and decide upon all protests.

~~The commissioners' decision is final and conclusive.~~

(2) The commissioners may adjourn the hearing as necessary.

NEW SECTION. Section 9. Sufficient protest to bar proceedings REQUIRE REFERENDUM. If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless THE COMMISSIONERS SUBMIT A REFERENDUM TO CREATE THE DISTRICT TO the registered voters who reside within the proposed district AND THE REGISTERED VOTERS approve the creation of the district and establish the fees by approving a THE referendum ~~on the issue.~~

NEW SECTION. Section 10. Referendum. (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters who reside within a proposed local water quality district to authorize the creation of the district and establish fees.

(2) The referendum must state:

(a) the type and maximum rate of the initial proposed fees that would be imposed, consistent with the requirements of [section 18];

(b) the maximum dollar amount for a family residential unit; and

(c) the type of activities proposed to be financed, INCLUDING A GENERAL DESCRIPTION OF THE LOCAL WATER QUALITY PROGRAM; AND

(D) A GENERAL DESCRIPTION OF THE AREAS INCLUDED IN THE PROPOSED DISTRICT.

NEW SECTION. Section 11. Insufficient protest to bar proceedings -- resolution creating district -- power to implement local water quality program. (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with [section 9] or if the registered voters who reside in the proposed district have approved a referendum as provided in [section 10].

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the board of health and environmental sciences pursuant to [section 24].

NEW SECTION. Section 12. Board of directors. (1)

Except as provided in subsections (3)(b) and (5), the commissioners shall appoint a board of directors for the local water quality district.

(2) The board of directors consists of not less than five members, including one county commissioner or member of the governing body of a city-county consolidated government, one member from the governing body of each incorporated city or town that is included in the district, and one member of the county or city-county board of health, AND IF THE DISTRICT INCLUDES A SUBSTANTIAL AMOUNT OF LAND THAT IS WITHIN A CONSERVATION DISTRICT OR DISTRICTS, ONE CONSERVATION DISTRICT SUPERVISOR.

(3) The remaining members of the board of directors are selected from interested persons, as follows:

(a) from persons whose residences OR BUSINESSES are distributed equally throughout the district if a county is the only unit of local government participating in the district; or

(b) through mutual agreement by all governing bodies if a county and one or more incorporated cities and towns are participating in the district.

(4) Terms of members of the board of directors are staggered and, after the initial terms, are for 3 years.

(5) In counties that have a full-time city-county health department, the city-county board of health, created

1 as authorized by 50-2-106, may be designated as the board of
 2 directors for the local water quality district. IF THE
 3 CITY-COUNTY BOARD OF HEALTH IS DESIGNATED AS THE BOARD OF
 4 DIRECTORS AND IF THE LOCAL WATER QUALITY DISTRICT INCLUDES A
 5 SUBSTANTIAL AMOUNT OF LAND THAT IS WITHIN A CONSERVATION
 6 DISTRICT OR DISTRICTS, THE BOARD OF DIRECTORS MUST ALSO
 7 INCLUDE ONE MEMBER WHO IS A CONSERVATION DISTRICT
 8 SUPERVISOR.

9 NEW SECTION. Section 13. Powers and duties of board of
 10 directors. The board of directors of a local water quality
 11 district, with the approval of the commissioners, may:

12 (1) develop a local water quality program, to be
 13 submitted to the board of health and environmental sciences,
 14 for the protection, preservation, and improvement of the
 15 quality of surface water and ground water in the district;
 16 IN DEVELOPING THE PROGRAM, THE BOARD OF DIRECTORS SHALL
 17 CONSULT WITH THE BOARD OR BOARDS OF SUPERVISORS OF
 18 CONSERVATION DISTRICTS, ESTABLISHED AS PROVIDED IN
 19 76-15-201, WHOSE GEOGRAPHICAL AREA OF JURISDICTION IS
 20 INCLUDED WITHIN THE BOUNDARIES OF THE LOCAL WATER QUALITY
 21 DISTRICT.

- 22 (2) implement a local water quality program;
- 23 (3) administer the budget of the local water quality
- 24 district;
- 25 (4) employ personnel;

1 (5) purchase, rent, or lease equipment and material
 2 necessary to develop and implement an effective program;

3 (6) cooperate or contract with any corporation,
 4 association, individual, or group of individuals, including
 5 any agency of the federal, state, or local governments, in
 6 order to develop and implement an effective program;

7 (7) receive gifts, grants, or donations for the purpose
 8 of advancing the program and acquire by gift, deed, or
 9 purchase, land necessary to implement the local water
 10 quality program;

11 (8) administer local ordinances that are adopted by the
 12 commissioners and governing bodies of the participating
 13 cities and towns and that pertain to the protection,
 14 preservation, and improvement of the quality of surface
 15 water and ground water;

16 (9) apply for and receive from the federal government
 17 or the state government, on behalf of the local water
 18 quality district, money to aid the local water quality
 19 program;

20 (10) borrow money for assistance in planning or
 21 refinancing a local water quality district and repay loans
 22 with the money received from the established fees; and

23 (11) construct facilities that cost not more than \$5,000
 24 and maintain facilities necessary to accomplish the purposes
 25 of the district, including but not limited to facilities for

1 removal of water-borne contaminants; water quality
 2 improvement; sanitary sewage collection, disposal, and
 3 treatment; and storm water or surface water drainage
 4 collection, disposal, and treatment.

5 NEW SECTION. Section 14. Powers and duties of
 6 commissioners. In addition to the other powers and duties of
 7 the commissioners authorized by [sections 1 through 23], the
 8 commissioners may:

9 (1) adopt local ordinances in accordance with the
 10 requirements of [section 24];

11 (2) establish fees;

12 (3) review and approve the annual budget of the local
 13 water quality district; and

14 (4) approve the construction of facilities that cost
 15 more than \$5,000 but not more than \$100,000 a year and that
 16 are necessary to accomplish the purposes of [sections 1
 17 through 23], including but not limited to facilities for
 18 removal of water-borne contaminants; water quality
 19 improvement; sanitary sewage collection, disposal, and
 20 treatment; and storm water or surface water drainage
 21 collection, disposal, and treatment.

22 NEW SECTION. Section 15. Implementation of program.
 23 The board of directors may implement a local water quality
 24 program in parts of a local water quality district before
 25 the program is implemented in the district as a whole. If a

1 program is initially implemented in only a portion of a
 2 district, the fees may be levied only against that part of
 3 the district where the program is being implemented. As the
 4 program is expanded throughout the district, each additional
 5 part of the district that is covered by the program shall
 6 pay the fee.

7 NEW SECTION. Section 16. Changes in district
 8 boundaries. The board of directors may by resolution make
 9 changes in the boundaries of a local water quality district
 10 that the board determines are reasonable and proper,
 11 following the same procedures of notice and hearing provided
 12 in [sections 6 through 8] except that the notice provisions
 13 of [section 6(3)] apply only to the owners of proposed
 14 fee-assessed units in new areas that are proposed to be
 15 included in the district. If 20% of the owners of
 16 fee-assessed units in the new areas protest the inclusion in
 17 the district and the fees proposed to be charged, the board
 18 of directors is barred from further proceedings on the
 19 matter unless the registered voters who reside in the areas
 20 proposed for inclusion agree to be included in the district
 21 and accept the proposed fees by approving a referendum in
 22 accordance with the provisions of [section 10].

23 NEW SECTION. Section 17. Role of county attorney --
 24 contracts for legal services. The board of directors may, by
 25 agreement with the commissioners, contract with the county

1 attorney or an attorney licensed to practice law in the
2 state of Montana to perform legal services for the local
3 water quality district.

4 NEW SECTION. Section 18. Fees -- determination of
5 rates -- increases -- exemption for agricultural water use.

6 (1) The commissioners shall determine fee rates according to
7 a classification system that is based upon the volume of
8 water withdrawn and the volume and type of waste produced at
9 each fee-assessed unit in the local water quality district.

10 (2) Fees for commercial and industrial units must be
11 based on a comparison with a typical family residential unit
12 as to volume of water withdrawn and volume and type of waste
13 produced. Commercial and industrial units may be assessed
14 fees that are not greater than 50 times the fees assessed on
15 a family residential unit.

16 (3) The commissioners may increase fees up to 10% a
17 year by passing a resolution to establish the new fee rate.
18 The commissioners may not approve a proposed fee increase of
19 more than 10% a year unless notice of the proposed increase
20 is given as provided in [section 6(1) and (2)] and
21 opportunity for protest is provided as set forth in
22 [sections 7 and 8]. If more than 20% of the owners of fee
23 assessed units in the district protest, the fee increase may
24 not be approved except through the referendum procedure
25 provided for in [section 10].

1 (4) Water withdrawals for irrigation and livestock use
2 and related water discharges may not be assessed fees.

3 NEW SECTION. Section 19. Procedure to collect fees.
4 The month the local water quality district is created
5 pursuant to [section 11], the department of revenue or its
6 agents shall ensure that the amount of the fees is placed on
7 the county tax assessments for each fee-assessed unit.
8 Unpaid fees are a lien on the fee-assessed unit and may be
9 enforced as a lien for nonpayment of property taxes.

10 NEW SECTION. Section 20. Disposition and
11 administration of proceeds. (1) All fees and other money
12 received by a local water quality district must be placed in
13 a separate fund maintained by the county treasurer and must
14 be used solely for the purpose for which the local water
15 quality district was created.

16 (2) The commissioners shall draw warrants upon the fund
17 on claims approved by the board of directors.

18 NEW SECTION. Section 21. Creation of joint local water
19 quality districts. (1) Joint local water quality districts
20 are districts that encompass two or more counties or parts
21 of counties.

22 (2) A joint local water quality district may be created
23 if the commissioners of each affected county:

24 (a) create the district, following the procedures
25 prescribed under [sections 3 through 11]; and

1 (b) appoint a joint board of directors that consists of
2 at least five members and that is consistent with the
3 requirement of [section 22(2)(b)], if applicable.

4 NEW SECTION. Section 22. Composition of board of
5 directors of joint district -- terms. (1) The board of
6 directors for a joint district consists of one commissioner
7 from each county involved, one member from each incorporated
8 city or town included in the district, and one member from
9 each county or city-county board of health, AND IF THE JOINT
10 DISTRICT INCLUDES A SUBSTANTIAL AMOUNT OF LAND THAT IS
11 WITHIN A CONSERVATION DISTRICT OR DISTRICTS, ONE
12 CONSERVATION DISTRICT SUPERVISOR.

13 (2) The remaining members of the joint board of
14 directors are selected from interested citizens, as follows:

15 (a) persons whose residences OR BUSINESSES are
16 distributed equally throughout the district if counties are
17 the only units of government participating in the joint
18 district; or

19 (b) through mutual agreement of all commissioners and
20 governing bodies of cities and towns participating in the
21 district.

22 (3) Terms of appointed members are staggered and, after
23 the initial terms, are for 3 years.

24 NEW SECTION. Section 23. Administration of funds in
25 joint districts. Fees and other money collected by a joint

1 local water quality district may be administered by one
2 county treasurer upon mutual agreement by the commissioners
3 of the counties participating in a joint local water quality
4 district.

5 NEW SECTION. Section 24. Local water quality districts
6 -- board approval -- local water quality programs. (1) A
7 county that establishes a local water quality district
8 according to the procedures specified in [sections 1 through
9 23] shall, in consultation with the department, undertake
10 planning and information-gathering activities necessary to
11 develop a proposed local water quality program.

12 (2) A county may implement a local water quality
13 program in a local water quality district if the program is
14 approved by the board after a hearing conducted under
15 75-5-202.

16 (3) In approving a local water quality program, the
17 board shall determine that the program is consistent with
18 the purposes and requirements of Title 75, chapter 5, and
19 that the program will be effective in protecting,
20 preserving, and improving the quality of surface water and
21 ground water, considering the administrative organization,
22 staff, and financial and other resources available to
23 implement the program.

24 (4) Subject to the board's approval, the commissioners
25 and the governing bodies of cities and towns that

1 participate in a local water quality district may adopt
2 local ordinances that:

3 ~~(a) are compatible with, more stringent than, or more~~
4 ~~extensive than the requirements imposed by 75-5-303 through~~
5 ~~75-5-306 and 75-5-401 through 75-5-404 and rules adopted~~
6 ~~under those sections, to protect water quality, implement~~
7 ~~the nondegradation policy, enforce water quality standards,~~
8 ~~regulate sources that discharge wastes into state waters,~~
9 ~~establish pollutant discharge permitting requirements, and~~
10 ~~ensure proper management of substances that have the~~
11 ~~potential to contaminate water quality; TO REGULATE THE~~
12 FOLLOWING SPECIFIC FACILITIES AND SOURCES OF POLLUTION:

- 13 (A) ONSITE WASTE WATER DISPOSAL FACILITIES;
 - 14 (B) STORM WATER RUNOFF FROM PAVED SURFACES;
 - 15 (C) SERVICE CONNECTIONS BETWEEN BUILDINGS AND PUBLICLY
16 OWNED SEWER MAINS;
 - 17 (D) FACILITIES THAT USE OR STORE HALOGENATED AND
18 NONHALOGENATED SOLVENTS, INCLUDING HAZARDOUS SUBSTANCES THAT
19 ARE REFERENCED IN 40 CFR 261.31, UNITED STATES ENVIRONMENTAL
20 PROTECTION AGENCY HAZARDOUS WASTE NUMBERS F001 THROUGH F005,
21 AS AMENDED; AND
 - 22 (E) INTERNAL COMBUSTION ENGINE LUBRICANTS.
- 23 (5) FOR THE FACILITIES AND SOURCES OF POLLUTION
24 INCLUDED IN SUBSECTION (4) AND CONSISTENT WITH THE
25 PROVISIONS OF SUBSECTION (6), THE LOCAL ORDINANCES MAY:

1 (A) BE COMPATIBLE WITH OR MORE STRINGENT OR MORE
2 EXTENSIVE THAN THE REQUIREMENTS IMPOSED BY 75-5-304,
3 75-5-305, AND 75-5-401 THROUGH 75-5-404 AND RULES ADOPTED
4 UNDER THOSE SECTIONS TO PROTECT WATER QUALITY, ESTABLISH
5 WASTE DISCHARGE PERMIT REQUIREMENTS, AND ESTABLISH BEST
6 MANAGEMENT PRACTICES FOR SUBSTANCES THAT HAVE THE POTENTIAL
7 TO POLLUTE STATE WATERS;

8 (b) provide for administrative procedures,
9 administrative orders and actions, and civil enforcement
10 actions that are consistent with 75-5-601 through 75-5-604,
11 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules
12 adopted under those sections; AND

13 ~~(c) provide for penalties not to exceed the penalties~~
14 ~~provided in 75-5-631 through 75-5-633; and~~

15 ~~(d) ensure that the provisions imposed by 75-5-685 are~~
16 ~~not violated;~~

17 (C) PROVIDE FOR CIVIL PENALTIES NOT TO EXCEED \$1,000
18 PER VIOLATION, PROVIDED THAT EACH DAY OF VIOLATION OF A
19 LOCAL ORDINANCE CONSTITUTES A SEPARATE VIOLATION, AND
20 CRIMINAL PENALTIES NOT TO EXCEED \$500 PER DAY OF VIOLATION
21 OR IMPRISONMENT FOR NOT MORE THAN 30 DAYS, OR BOTH.

22 (6) THE LOCAL ORDINANCES AUTHORIZED BY THIS SECTION MAY
23 NOT:

24 (A) DUPLICATE THE DEPARTMENT'S REQUIREMENTS AND
25 PROCEDURES RELATING TO PERMITTING OF WASTE DISCHARGE SOURCES

1 AND ENFORCEMENT OF WATER QUALITY STANDARDS;
2 (B) REGULATE ANY FACILITY OR SOURCE OF POLLUTION TO THE
3 EXTENT THAT THE FACILITY OR SOURCE IS:

4 (I) REQUIRED TO OBTAIN A PERMIT OR OTHER APPROVAL FROM
5 THE DEPARTMENT OR FEDERAL GOVERNMENT OR IS THE SUBJECT OF AN
6 ADMINISTRATIVE ORDER, A CONSENT DECREE, OR AN ENFORCEMENT
7 ACTION PURSUANT TO TITLE 75, CHAPTER 5, PART 4; TITLE 75,
8 CHAPTER 6; TITLE 75, CHAPTER 10; THE FEDERAL COMPREHENSIVE
9 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF
10 1980, 42 U.S.C. 9601 THROUGH 9675, AS AMENDED; OR FEDERAL
11 ENVIRONMENTAL, SAFETY, OR HEALTH STATUTES AND REGULATIONS;

12 OR

13 (II) EXEMPTED FROM OBTAINING A PERMIT OR OTHER APPROVAL
14 FROM THE DEPARTMENT BECAUSE THE FACILITY OR SOURCE IS
15 REQUIRED TO OBTAIN A PERMIT OR OTHER APPROVAL FROM ANOTHER
16 STATE AGENCY OR IS THE SUBJECT OF AN ENFORCEMENT ACTION BY
17 ANOTHER STATE AGENCY; OR

18 (III) SUBJECT TO THE PROVISIONS OF TITLE 80, CHAPTER 8
19 OR CHAPTER 15.

20 {5}(7) If the boundaries of a district are changed
21 after the board has approved the local water quality program
22 for the district, the board of directors of the local water
23 quality district shall submit a program amendment to the
24 board and obtain the board's approval of the program
25 amendment before implementing the local water quality

1 program in areas that have been added to the district.

2 {6}(8) The department shall monitor the implementation
3 of local water quality programs to ensure that the programs
4 are adequate to protect, preserve, and improve the quality
5 of the surface water and ground water and are being
6 administered in a manner consistent with the purposes and
7 requirements of Title 75, chapter 5. If the department finds
8 that a local water quality program is not adequate to
9 protect, preserve, and improve the quality of the surface
10 water and ground water or is not being administered in a
11 manner consistent with the purposes and requirements of
12 Title 75, chapter 5, the department shall report to the
13 board.

14 {7}(9) If the board determines that a local water
15 quality program is inadequate to protect, preserve, and
16 improve the quality of the surface water and ground water in
17 the local water quality district or that the program is
18 being administered in a manner inconsistent with Title 75,
19 chapter 5, the board shall give notice and conduct a hearing
20 on the matter.

21 {8}(10) If after the hearing the board determines that
22 the program is inadequate to protect, preserve, and improve
23 the quality of the surface water and ground water in the
24 local water quality district or that it is not being
25 administered in a manner consistent with the purposes of

1 Title 75, chapter 5, the board shall require that necessary
2 corrective measures be taken within a reasonable time, not
3 to exceed 60 days.

4 ~~{9} If the local water quality district fails to take
5 corrective measures within the time required, the department
6 shall administer within the district all of the provisions
7 of Title 75, chapter 5. The department's water quality
8 program supersedes all local water quality ordinances,
9 rules, and requirements in the affected local water quality
10 district. The cost of administering the department's water
11 quality program is a charge on the local water quality
12 district.~~

13 {11} IF AN ORDINANCE ADOPTED UNDER THIS SECTION
14 CONFLICTS WITH A REQUIREMENT IMPOSED BY THE DEPARTMENT'S
15 WATER QUALITY PROGRAM, THE DEPARTMENT'S REQUIREMENT
16 SUPERSEDES THE LOCAL ORDINANCE.

17 ~~{10}~~{12} If the board finds that, because of the
18 complexity or magnitude of a particular water pollution
19 source, the control of the source is beyond the reasonable
20 capability of a local water quality district or may be more
21 efficiently and economically performed at the state level,
22 the board may direct the department to assume and retain
23 control over the source. A charge may not be assessed
24 against the local water quality district for that source.
25 Findings made under this subsection may be based on the

1 nature of the source involved or on the source's
2 relationship to the size of the community in which it is
3 located.

4 ~~{11} A local water quality district in which the local
5 water quality program is administered by the department
6 under the provisions of subsection {9} may, with the board's
7 approval, establish or resume a local water quality program
8 that meets the requirements of subsections {1} through {4}.~~

9 SECTION 25. SECTION 75-5-106, MCA, IS AMENDED TO READ:

10 *75-5-106. Interagency cooperation -- enforcement
11 authorization. (1) The council, board, and department may
12 require the use of records of all state agencies and may
13 seek the assistance of such agencies. State, county, and
14 municipal officers and employees, including sanitarians and
15 other employees of local departments of health, shall
16 cooperate with the council, board, and department in
17 furthering the purposes of this chapter, so far as is
18 practicable and consistent with their other duties.

19 (2) The department may authorize a local water quality
20 district established according to the provisions of
21 [sections 1 through 23] to enforce the provisions of this
22 chapter and rules adopted under this chapter on a
23 case-by-case basis. If a local water quality district
24 requests the authorization, the local water quality district
25 shall present appropriate documentation to the department

1 that a person is violating permit requirements established
2 by the department or may be causing pollution, as defined in
3 75-5-103, of state waters or placing or causing to be placed
4 wastes in a location where they are likely to cause
5 pollution of state waters. The board may adopt rules
6 regarding the granting of enforcement authority to local
7 water quality districts."

8 NEW SECTION. Section 26. Codification instruction. (1)
9 [Sections 1 through 23] are intended to be codified as an
10 integral part of Title 7, and the provisions of Title 7
11 apply to [sections 1 through 23].

12 (2) [Section 24] is intended to be codified as an
13 integral part of Title 75, chapter 5, and the provisions of
14 Title 75, chapter 5, apply to [section 24].

-End-

HOUSE STANDING COMMITTEE REPORT

March 15, 1991

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Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 136 (third reading copy -- blue) be concurred in as amended .

Signed: _____


Bob Raney, Chairman

Carried by: Rep. Wanzenried

And, that such amendments read:

1. Statement of Intent, page 3, line 7.

Following: line 6

Insert: "Except as expressly provided in this bill, nothing in this bill shall be deemed to limit or restrict the authority of local governments to adopt rules and regulations authorized by other laws of the state."

SB 136

HOUSE

SENATE BILL NO. 136

INTRODUCED BY T. BECK, WEEDING, GRADY, RANEY,

DRISCOLL, GILBERT, YELLOWTAIL

BY REQUEST OF THE ENVIRONMENTAL QUALITY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ESTABLISHMENT OF LOCAL WATER QUALITY DISTRICTS; AUTHORIZING ESTABLISHMENT OF FEES; AUTHORIZING GOVERNING BODIES OF COUNTIES, CITIES, AND TOWNS THAT PARTICIPATE IN A LOCAL WATER QUALITY DISTRICT TO ADOPT LOCAL LAWS RELATED TO WATER QUALITY PROTECTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO APPROVE LOCAL WATER QUALITY PROGRAMS; AND AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO MONITOR IMPLEMENTATION OF LOCAL WATER QUALITY PROGRAMS; AND AMENDING SECTION 75-5-106, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences concerning rulemaking and approval of local water quality programs. The board shall adopt rules concerning the format of local water quality programs, including the level of information necessary for a local water quality district to show that its proposed program will be consistent with Title 75, chapter 5, and that its program will be effective

in protecting, preserving, and improving the quality of surface water and ground water. ~~The board of health and environmental sciences shall ensure that local water quality programs do not duplicate department of health and environmental sciences requirements and procedures relating to the regulation and permitting of waste discharge sources, enforcement of water quality standards, implementation of the nondegradation policy, or other water quality protection authorities.~~ THE BOARD MAY DEFINE BY RULE THE TYPES OF BEST MANAGEMENT PRACTICES THAT MAY BE IMPOSED UPON EACH OF THE TYPES OF FACILITIES AND SOURCES OF POLLUTION THAT MAY BE REGULATED BY LOCAL ORDINANCES AS AUTHORIZED UNDER [SECTION 24(4)]. It is the intent of the legislature that administrative responsibilities ~~for water quality protection~~ be clearly allocated and, when necessary, clearly divided between the department of health and environmental sciences and a local water quality district, insofar as possible, to ensure that permit holders, permit applicants, and citizens are not subject to conflicting or duplicative requirements. Through its approval of local water quality programs, the board of health and environmental sciences shall ensure that the department of health and environmental sciences' ability to continue to administer federally delegated water quality protection programs is not impaired. THE BOARD MAY ALSO ADOPT RULES TO SPECIFY THE PROCEDURES THE DEPARTMENT OF



1 HEALTH AND ENVIRONMENTAL SCIENCES SHALL FOLLOW PURSUANT TO
 2 75-5-106 TO AUTHORIZE A LOCAL WATER QUALITY DISTRICT TO
 3 ENFORCE PROVISIONS OF TITLE 75, CHAPTER 5. IT IS THE INTENT
 4 OF THE LEGISLATURE THAT THE BOUNDARIES OF LOCAL WATER
 5 QUALITY DISTRICTS SHOULD CORRESPOND TO THE AREA OR AREAS IN
 6 WHICH WATER QUALITY PROBLEMS HAVE BEEN DOCUMENTED.

7 EXCEPT AS EXPRESSLY PROVIDED IN THIS BILL, NOTHING IN
 8 THIS BILL MAY BE CONSIDERED TO LIMIT OR RESTRICT THE
 9 AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT RULES AND
 10 REGULATIONS AUTHORIZED BY OTHER LAWS OF THE STATE.

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

13 NEW SECTION. Section 1. Findings and purpose. (1)
 14 Pollution and degradation of surface water and ground water
 15 pose both immediate and long-term threats to the health,
 16 safety, and welfare of citizens of this state.

17 (2) Because of the expense and difficulty of ground
 18 water rehabilitation and cleanup AND THE NEED TO PROTECT
 19 DRINKING WATER SUPPLIES, policies and programs to prevent
 20 ground water contamination must be implemented.

21 (3) The purpose of [sections 1 through 23] is to
 22 provide for the creation of local water quality districts to
 23 protect, preserve, and improve the quality of surface water
 24 and ground water.

25 NEW SECTION. Section 2. Definitions. As used in

1 [sections 1 through 23], unless the context indicates
 2 otherwise, the following definitions apply:

3 (1) "Board of health and environmental sciences" as
 4 used in [sections 1 through 23] means the board of health
 5 and environmental sciences as provided in 2-15-2104.

6 (2) "Board of directors" means the board of directors
 7 provided for in [section 12] or a joint board of directors
 8 provided for in [section 21].

9 (3) "Commissioners" means the board of county
 10 commissioners or the governing body of a city-county
 11 consolidated government.

12 (4) "Family residential unit" means a single-family
 13 dwelling.

14 (5) "Fee-assessed units" means all real property with
 15 improvements, including taxable and tax-exempt property as
 16 shown on the property assessment records maintained by the
 17 county, AND MOBILE HOMES AS DEFINED IN 15-24-201.

18 (6) "Local water quality district" means an area
 19 established with definite boundaries for the purpose of
 20 protecting, preserving, and improving the quality of surface
 21 water and ground water in the district AS AUTHORIZED BY
 22 [SECTIONS 1 THROUGH 23].

23 NEW SECTION. Section 3. Authorization to initiate
 24 creation of a local water quality district. (1) The
 25 commissioners may initiate the creation of a local water

1 quality district for the purpose of protecting, preserving,
 2 and improving the quality of surface water and ground water,
 3 AS PROVIDED BY [SECTIONS 1 THROUGH 23], by holding a public
 4 meeting, passing a resolution of intention, providing an
 5 opportunity for owners of fee-assessed units to protest, and
 6 conducting a public hearing to hear and decide upon
 7 protests, as provided in [sections 5 through 8].

8 (2) A city or town may be included in the district if
 9 approved by the governing body of the city or town.

10 NEW SECTION. Section 4. Public meeting -- resolution
 11 of intention to create local water quality district. (1) The
 12 commissioners shall hold at least one public meeting
 13 concerning the creation of a local water quality district
 14 prior to the passage of a resolution of intention to create
 15 the district.

- 16 (2) The resolution of intention must designate:
 17 (a) the proposed name of the district;
 18 (b) the necessity for the proposed district;
 19 (c) a general description of the territory or lands
 20 included in the district, including identification of the
 21 district boundaries THAT MUST CORRESPOND TO THE AREA IN
 22 WHICH THE NEED FOR THE DISTRICT EXISTS PURSUANT TO
 23 SUBSECTION (2)(B);
 24 (d) a general description of the proposed water quality
 25 program;

1 (e) the initial estimated cost of the water quality
 2 program; and

3 (f) the initial proposed fees to be charged.

4 NEW SECTION. Section 5. Participation of cities and
 5 towns. (1) Upon passage of a resolution of intention, the
 6 commissioners shall transmit a copy of the resolution to the
 7 governing body of any incorporated city or town within the
 8 proposed local water quality district for consideration by
 9 the governing body.

10 (2) If the governing body of the city or town by
 11 resolution concurs in the resolution of intention, a copy of
 12 the resolution of concurrence must be transmitted to the
 13 commissioners.

14 (3) If the governing body of the incorporated city or
 15 town does not concur in the resolution of intention, the
 16 commissioners may not include the city or town in the
 17 district but may continue to develop a district that
 18 excludes the city or town.

19 NEW SECTION. Section 6. Notice of resolutions of
 20 intention and concurrence. (1) The commissioners shall give
 21 notice of the passage of the resolution of intention and
 22 resolution of concurrence, if applicable, and publish a
 23 notice that:

- 24 (a) describes the local water quality program that
 25 would be implemented in the local water quality district;

(b) specifies the initial proposed fees to be charged;

(c) designate: the time and place where the commissioners will hear and decide upon protests made against the operation of the proposed district; and

(d) states that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice must be published as provided in 7-1-2121 and must also be posted in three public places within the boundaries of the proposed district.

(3) The commissioners shall mail to all owners of proposed fee-assessed units, as listed in the county assessor's office, a postcard that identifies the location where the resolution of intention, resolution of concurrence, and protest forms may be obtained.

NEW SECTION. Section 7. Right to protest -- procedure.

(1) At any time within 30 days after the date of the first publication of the notice provided for in [section 6(1)], a person owning a fee-assessed unit located within the proposed local water quality district may make written protest~~7-on-forms-provided-by-the-county-clerk~~ against the proposed district and the fees proposed to be charged.

(2) The protest must be in writing ~~on--the--forms provided--by--the--county-clerk~~ and must be delivered to the county clerk, who shall endorse on it the date the ~~completed~~

form PROTEST is received.

(3) Owners may file one protest per fee-assessed unit.

NEW SECTION. Section 8. Hearing on protest. (1) At the next regular meeting of the commissioners after the expiration of the time period provided for in [section 7], the commissioners shall hear and decide upon all protests. ~~The-commissioners'-decision-is-final-and-conclusive-~~

(2) The commissioners may adjourn the hearing as necessary.

NEW SECTION. Section 9. Sufficient protest to bar proceedings REQUIRE REFERENDUM. If the owners of more than 20% of the fee-assessed units in the proposed district protest the creation of the proposed district and the fees proposed to be charged, the commissioners are barred from further proceedings on the matter unless THE COMMISSIONERS SUBMIT A REFERENDUM TO CREATE THE DISTRICT TO the registered voters who reside within the proposed district AND THE REGISTERED VOTERS approve the creation of the district and establish the fees by approving a THE referendum ~~on--the issue.~~

NEW SECTION. Section 10. Referendum. (1) The commissioners may adopt a resolution causing a referendum to be submitted to the registered voters who reside within a proposed local water quality district to authorize the creation of the district and establish fees.

1 (2) The referendum must state:
 2 (a) the type and maximum rate of the initial proposed
 3 fees that would be imposed, consistent with the requirements
 4 of [section 18];
 5 (b) the maximum dollar amount for a family residential
 6 unit; and
 7 (c) the type of activities proposed to be financed,
 8 INCLUDING A GENERAL DESCRIPTION OF THE LOCAL WATER QUALITY
 9 PROGRAM; AND
 10 (D) A GENERAL DESCRIPTION OF THE AREAS INCLUDED IN THE
 11 PROPOSED DISTRICT.
 12 NEW SECTION. Section 11. Insufficient protest to bar
 13 proceedings -- resolution creating district -- power to
 14 implement local water quality program. (1) The commissioners
 15 may create a local water quality district, establish fees,
 16 and appoint a board of directors if the commissioners find
 17 that insufficient protests have been made in accordance with
 18 [section 9] or if the registered voters who reside in the
 19 proposed district have approved a referendum as provided in
 20 [section 10].
 21 (2) To create a local water quality district, the
 22 commissioners shall pass a resolution in accordance with the
 23 resolution of intention introduced and passed by the
 24 commissioners or with the terms of the referendum.
 25 (3) The commissioners and board of directors may

1 implement a local water quality program after the program is
 2 approved by the board of health and environmental sciences
 3 pursuant to [section 24].

4 NEW SECTION. Section 12. Board of directors. (1)
 5 Except as provided in subsections (3)(b) and (5), the
 6 commissioners shall appoint a board of directors for the
 7 local water quality district.

8 (2) The board of directors consists of not less than
 9 five members, including one county commissioner or member of
 10 the governing body of a city-county consolidated government,
 11 one member from the governing body of each incorporated city
 12 or town that is included in the district, and one member of
 13 the county or city-county board of health, AND IF THE
 14 DISTRICT INCLUDES A SUBSTANTIAL AMOUNT OF LAND THAT IS
 15 WITHIN A CONSERVATION DISTRICT OR DISTRICTS, ONE
 16 CONSERVATION DISTRICT SUPERVISOR.

17 (3) The remaining members of the board of directors are
 18 selected from interested persons, as follows:

19 (a) from persons whose residences OR BUSINESSES are
 20 distributed equally throughout the district if a county is
 21 the only unit of local government participating in the
 22 district; or

23 (b) through mutual agreement by all governing bodies if
 24 a county and one or more incorporated cities and towns are
 25 participating in the district.

1 (4) Terms of members of the board of directors are
2 staggered and, after the initial terms, are for 3 years.

3 (5) In counties that have a full-time city-county
4 health department, the city-county board of health, created
5 as authorized by 50-2-106, may be designated as the board of
6 directors for the local water quality district. IF THE
7 CITY-COUNTY BOARD OF HEALTH IS DESIGNATED AS THE BOARD OF
8 DIRECTORS AND IF THE LOCAL WATER QUALITY DISTRICT INCLUDES A
9 SUBSTANTIAL AMOUNT OF LAND THAT IS WITHIN A CONSERVATION
10 DISTRICT OR DISTRICTS, THE BOARD OF DIRECTORS MUST ALSO
11 INCLUDE ONE MEMBER WHO IS A CONSERVATION DISTRICT
12 SUPERVISOR.

13 NEW SECTION. Section 13. Powers and duties of board of
14 directors. The board of directors of a local water quality
15 district, with the approval of the commissioners, may:

16 (1) develop a local water quality program, to be
17 submitted to the board of health and environmental sciences,
18 for the protection, preservation, and improvement of the
19 quality of surface water and ground water in the district;
20 IN DEVELOPING THE PROGRAM, THE BOARD OF DIRECTORS SHALL
21 CONSULT WITH THE BOARD OR BOARDS OF SUPERVISORS OF
22 CONSERVATION DISTRICTS, ESTABLISHED AS PROVIDED IN
23 76-15-201, WHOSE GEOGRAPHICAL AREA OF JURISDICTION IS
24 INCLUDED WITHIN THE BOUNDARIES OF THE LOCAL WATER QUALITY
25 DISTRICT.

1 (2) implement a local water quality program;

2 (3) administer the budget of the local water quality
3 district;

4 (4) employ personnel;

5 (5) purchase, rent, or lease equipment and material
6 necessary to develop and implement an effective program;

7 (6) cooperate or contract with any corporation,
8 association, individual, or group of individuals, including
9 any agency of the federal, state, or local governments, in
10 order to develop and implement an effective program;

11 (7) receive gifts, grants, or donations for the purpose
12 of advancing the program and acquire by gift, deed, or
13 purchase, land necessary to implement the local water
14 quality program;

15 (8) administer local ordinances that are adopted by the
16 commissioners and governing bodies of the participating
17 cities and towns and that pertain to the protection,
18 preservation, and improvement of the quality of surface
19 water and ground water;

20 (9) apply for and receive from the federal government
21 or the state government, on behalf of the local water
22 quality district, money to aid the local water quality
23 program;

24 (10) borrow money for assistance in planning or
25 refinancing a local water quality district and repay loans

1 with the money received from the established fees; and

2 (11) construct facilities that cost not more than \$5,000
3 and maintain facilities necessary to accomplish the purposes
4 of the district, including but not limited to facilities for
5 removal of water-borne contaminants; water quality
6 improvement; sanitary sewage collection, disposal, and
7 treatment; and storm water or surface water drainage
8 collection, disposal, and treatment.

9 NEW SECTION. Section 14. Powers and duties of
10 commissioners. In addition to the other powers and duties of
11 the commissioners authorized by [sections 1 through 23], the
12 commissioners may:

13 (1) adopt local ordinances in accordance with the
14 requirements of [section 24];

15 (2) establish fees;

16 (3) review and approve the annual budget of the local
17 water quality district; and

18 (4) approve the construction of facilities that cost
19 more than \$5,000 but not more than \$100,000 a year and that
20 are necessary to accomplish the purposes of [sections 1
21 through 23], including but not limited to facilities for
22 removal of water-borne contaminants; water quality
23 improvement; sanitary sewage collection, disposal, and
24 treatment; and storm water or surface water drainage
25 collection, disposal, and treatment.

1 NEW SECTION. Section 15. Implementation of program.

2 The board of directors may implement a local water quality
3 program in parts of a local water quality district before
4 the program is implemented in the district as a whole. If a
5 program is initially implemented in only a portion of a
6 district, the fees may be levied only against that part of
7 the district where the program is being implemented. As the
8 program is expanded throughout the district, each additional
9 part of the district that is covered by the program shall
10 pay the fee.

11 NEW SECTION. Section 16. Changes in district
12 boundaries. The board of directors may by resolution make
13 changes in the boundaries of a local water quality district
14 that the board determines are reasonable and proper,
15 following the same procedures of notice and hearing provided
16 in [sections 6 through 8] except that the notice provisions
17 of [section 6(3)] apply only to the owners of proposed
18 fee-assessed units in new areas that are proposed to be
19 included in the district. If 20% of the owners of
20 fee-assessed units in the new areas protest the inclusion in
21 the district and the fees proposed to be charged, the board
22 of directors is barred from further proceedings on the
23 matter unless the registered voters who reside in the areas
24 proposed for inclusion agree to be included in the district
25 and accept the proposed fees by approving a referendum in

1 accordance with the provisions of [section 10].

2 NEW SECTION. Section 17. Role of county attorney --
3 contracts for legal services. The board of directors may, by
4 agreement with the commissioners, contract with the county
5 attorney or an attorney licensed to practice law in the
6 state of Montana to perform legal services for the local
7 water quality district.

8 NEW SECTION. Section 18. Fees -- determination of
9 rates -- increases -- exemption for agricultural water use.

10 (1) The commissioners shall determine fee rates according to
11 a classification system that is based upon the volume of
12 water withdrawn and the volume and type of waste produced at
13 each fee-assessed unit in the local water quality district.

14 (2) Fees for commercial and industrial units must be
15 based on a comparison with a typical family residential unit
16 as to volume of water withdrawn and volume and type of waste
17 produced. Commercial and industrial units may be assessed
18 fees that are not greater than 50 times the fees assessed on
19 a family residential unit.

20 (3) The commissioners may increase fees up to 10% a
21 year by passing a resolution to establish the new fee rate.
22 The commissioners may not approve a proposed fee increase of
23 more than 10% a year unless notice of the proposed increase
24 is given as provided in [section 6(1) and (2)] and
25 opportunity for protest is provided as set forth in

1 [sections 7 and 8]. If more than 20% of the owners of fee
2 assessed units in the district protest, the fee increase may
3 not be approved except through the referendum procedure
4 provided for in [section 10].

5 (4) Water withdrawals for irrigation and livestock use
6 and related water discharges may not be assessed fees.

7 NEW SECTION. Section 19. Procedure to collect fees.

8 The month the local water quality district is created
9 pursuant to [section 11], the department of revenue or its
10 agents shall ensure that the amount of the fees is placed on
11 the county tax assessments for each fee-assessed unit.
12 Unpaid fees are a lien on the fee-assessed unit and may be
13 enforced as a lien for nonpayment of property taxes.

14 NEW SECTION. Section 20. Disposition and

15 administration of proceeds. (1) All fees and other money
16 received by a local water quality district must be placed in
17 a separate fund maintained by the county treasurer and must
18 be used solely for the purpose for which the local water
19 quality district was created.

20 (2) The commissioners shall draw warrants upon the fund
21 on claims approved by the board of directors.

22 NEW SECTION. Section 21. Creation of joint local water

23 quality districts. (1) Joint local water quality districts
24 are districts that encompass two or more counties or parts
25 of counties.

1 (2) A joint local water quality district may be created
2 if the commissioners of each affected county:

3 (a) create the district, following the procedures
4 prescribed under [sections 3 through 11]; and

5 (b) appoint a joint board of directors that consists of
6 at least five members and that is consistent with the
7 requirement of [section 22(2)(b)], if applicable.

8 NEW SECTION. Section 22. Composition of board of
9 directors of joint district -- terms. (1) The board of
10 directors for a joint district consists of one commissioner
11 from each county involved, one member from each incorporated
12 city or town included in the district, and one member from
13 each county or city-county board of health, AND IF THE JOINT
14 DISTRICT INCLUDES A SUBSTANTIAL AMOUNT OF LAND THAT IS
15 WITHIN A CONSERVATION DISTRICT OR DISTRICTS, ONE
16 CONSERVATION DISTRICT SUPERVISOR.

17 (2) The remaining members of the joint board of
18 directors are selected from interested citizens, as follows:

19 (a) persons whose residences OR BUSINESSES are
20 distributed equally throughout the district if counties are
21 the only units of government participating in the joint
22 district; or

23 (b) through mutual agreement of all commissioners and
24 governing bodies of cities and towns participating in the
25 district.

1 (3) Terms of appointed members are staggered and, after
2 the initial terms, are for 3 years.

3 NEW SECTION. Section 23. Administration of funds in
4 joint districts. Fees and other money collected by a joint
5 local water quality district may be administered by one
6 county treasurer upon mutual agreement by the commissioners
7 of the counties participating in a joint local water quality
8 district.

9 NEW SECTION. Section 24. Local water quality districts
10 -- board approval -- local water quality programs. (1) A
11 county that establishes a local water quality district
12 according to the procedures specified in [sections 1 through
13 23] shall, in consultation with the department, undertake
14 planning and information-gathering activities necessary to
15 develop a proposed local water quality program.

16 (2) A county may implement a local water quality
17 program in a local water quality district if the program is
18 approved by the board after a hearing conducted under
19 75-5-202.

20 (3) In approving a local water quality program, the
21 board shall determine that the program is consistent with
22 the purposes and requirements of Title 75, chapter 5, and
23 that the program will be effective in protecting,
24 preserving, and improving the quality of surface water and
25 ground water, considering the administrative organization,

1 staff, and financial and other resources available to
2 implement the program.

3 (4) Subject to the board's approval, the commissioners
4 and the governing bodies of cities and towns that
5 participate in a local water quality district may adopt
6 local ordinances that:

7 ~~(a) are compatible with, more stringent than, or more~~
8 ~~extensive than the requirements imposed by 75-5-303 through~~
9 ~~75-5-306 and 75-5-401 through 75-5-404 and rules adopted~~
10 ~~under those sections, to protect water quality, implement~~
11 ~~the nondegradation policy, enforce water quality standards,~~
12 ~~regulate sources that discharge wastes into state waters,~~
13 ~~establish pollutant discharge permitting requirements, and~~
14 ~~ensure proper management of substances that have the~~
15 ~~potential to contaminate water quality;~~ TO REGULATE THE
16 FOLLOWING SPECIFIC FACILITIES AND SOURCES OF POLLUTION:

17 (A) ONSITE WASTE WATER DISPOSAL FACILITIES;

18 (B) STORM WATER RUNOFF FROM PAVED SURFACES;

19 (C) SERVICE CONNECTIONS BETWEEN BUILDINGS AND PUBLICLY
20 OWNED SEWER MAINS;

21 (D) FACILITIES THAT USE OR STORE HALOGENATED AND
22 NONHALOGENATED SOLVENTS, INCLUDING HAZARDOUS SUBSTANCES THAT
23 ARE REFERENCED IN 40 CFR 261.31, UNITED STATES ENVIRONMENTAL
24 PROTECTION AGENCY HAZARDOUS WASTE NUMBERS F001 THROUGH F005,
25 AS AMENDED; AND

1 (E) INTERNAL COMBUSTION ENGINE LUBRICANTS.

2 (5) FOR THE FACILITIES AND SOURCES OF POLLUTION
3 INCLUDED IN SUBSECTION (4) AND CONSISTENT WITH THE
4 PROVISIONS OF SUBSECTION (6), THE LOCAL ORDINANCES MAY:

5 (A) BE COMPATIBLE WITH OR MORE STRINGENT OR MORE
6 EXTENSIVE THAN THE REQUIREMENTS IMPOSED BY 75-5-304,
7 75-5-305, AND 75-5-401 THROUGH 75-5-404 AND RULES ADOPTED
8 UNDER THOSE SECTIONS TO PROTECT WATER QUALITY, ESTABLISH
9 WASTE DISCHARGE PERMIT REQUIREMENTS, AND ESTABLISH BEST
10 MANAGEMENT PRACTICES FOR SUBSTANCES THAT HAVE THE POTENTIAL
11 TO POLLUTE STATE WATERS;

12 (b) provide for administrative procedures,
13 administrative orders and actions, and civil enforcement
14 actions that are consistent with 75-5-601 through 75-5-604,
15 75-5-611 through 75-5-616, 75-5-621, and 75-5-622 and rules
16 adopted under those sections; AND

17 ~~(c) provide for penalties not to exceed the penalties~~
18 ~~provided in 75-5-631 through 75-5-633; and~~

19 ~~(d) ensure that the provisions imposed by 75-5-605 are~~
20 ~~not violated;~~

21 (C) PROVIDE FOR CIVIL PENALTIES NOT TO EXCEED \$1,000
22 PER VIOLATION, PROVIDED THAT EACH DAY OF VIOLATION OF A
23 LOCAL ORDINANCE CONSTITUTES A SEPARATE VIOLATION, AND
24 CRIMINAL PENALTIES NOT TO EXCEED \$500 PER DAY OF VIOLATION
25 OR IMPRISONMENT FOR NOT MORE THAN 30 DAYS, OR BOTH.

1 (6) THE LOCAL ORDINANCES AUTHORIZED BY THIS SECTION MAY

2 NOT:

3 (A) DUPLICATE THE DEPARTMENT'S REQUIREMENTS AND
4 PROCEDURES RELATING TO PERMITTING OF WASTE DISCHARGE SOURCES
5 AND ENFORCEMENT OF WATER QUALITY STANDARDS;

6 (B) REGULATE ANY FACILITY OR SOURCE OF POLLUTION TO THE
7 EXTENT THAT THE FACILITY OR SOURCE IS:

8 (I) REQUIRED TO OBTAIN A PERMIT OR OTHER APPROVAL FROM
9 THE DEPARTMENT OR FEDERAL GOVERNMENT OR IS THE SUBJECT OF AN
10 ADMINISTRATIVE ORDER, A CONSENT DECREE, OR AN ENFORCEMENT
11 ACTION PURSUANT TO TITLE 75, CHAPTER 5, PART 4; TITLE 75,
12 CHAPTER 6; TITLE 75, CHAPTER 10; THE FEDERAL COMPREHENSIVE
13 ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF
14 1980, 42 U.S.C. 9601 THROUGH 9675, AS AMENDED; OR FEDERAL
15 ENVIRONMENTAL, SAFETY, OR HEALTH STATUTES AND REGULATIONS;
16 OR

17 (II) EXEMPTED FROM OBTAINING A PERMIT OR OTHER APPROVAL
18 FROM THE DEPARTMENT BECAUSE THE FACILITY OR SOURCE IS
19 REQUIRED TO OBTAIN A PERMIT OR OTHER APPROVAL FROM ANOTHER
20 STATE AGENCY OR IS THE SUBJECT OF AN ENFORCEMENT ACTION BY
21 ANOTHER STATE AGENCY-; OR

22 (III) SUBJECT TO THE PROVISIONS OF TITLE 80, CHAPTER 8
23 OR CHAPTER 15.

24 +5+(7) If the boundaries of a district are changed
25 after the board has approved the local water quality program

1 for the district, the board of directors of the local water
2 quality district shall submit a program amendment to the
3 board and obtain the board's approval of the program
4 amendment before implementing the local water quality
5 program in areas that have been added to the district.

6 +6+(8) The department shall monitor the implementation
7 of local water quality programs to ensure that the programs
8 are adequate to protect, preserve, and improve the quality
9 of the surface water and ground water and are being
10 administered in a manner consistent with the purposes and
11 requirements of Title 75, chapter 5. If the department finds
12 that a local water quality program is not adequate to
13 protect, preserve, and improve the quality of the surface
14 water and ground water or is not being administered in a
15 manner consistent with the purposes and requirements of
16 Title 75, chapter 5, the department shall report to the
17 board.

18 +7+(9) If the board determines that a local water
19 quality program is inadequate to protect, preserve, and
20 improve the quality of the surface water and ground water in
21 the local water quality district or that the program is
22 being administered in a manner inconsistent with Title 75,
23 chapter 5, the board shall give notice and conduct a hearing
24 on the matter.

25 +8+(10) If after the hearing the board determines that

1 the program is inadequate to protect, preserve, and improve
 2 the quality of the surface water and ground water in the
 3 local water quality district or that it is not being
 4 administered in a manner consistent with the purposes of
 5 Title 75, chapter 5, the board shall require that necessary
 6 corrective measures be taken within a reasonable time, not
 7 to exceed 60 days.

8 ~~{9} If the local water quality district fails to take~~
 9 ~~corrective measures within the time required, the department~~
 10 ~~shall administer within the district all of the provisions~~
 11 ~~of Title 75, chapter 5. The department's water quality~~
 12 ~~program supersedes all local water quality ordinances,~~
 13 ~~rules, and requirements in the affected local water quality~~
 14 ~~district. The cost of administering the department's water~~
 15 ~~quality program is a charge on the local water quality~~
 16 ~~district.~~

17 {11} IF AN ORDINANCE ADOPTED UNDER THIS SECTION
 18 CONFLICTS WITH A REQUIREMENT IMPOSED BY THE DEPARTMENT'S
 19 WATER QUALITY PROGRAM, THE DEPARTMENT'S REQUIREMENT
 20 SUPERSEDES THE LOCAL ORDINANCE.

21 ~~{10}~~ {12} If the board finds that, because of the
 22 complexity or magnitude of a particular water pollution
 23 source, the control of the source is beyond the reasonable
 24 capability of a local water quality district or may be more
 25 efficiently and economically performed at the state level,

1 the board may direct the department to assume and retain
 2 control over the source. A charge may not be assessed
 3 against the local water quality district for that source.
 4 Findings made under this subsection may be based on the
 5 nature of the source involved or on the source's
 6 relationship to the size of the community in which it is
 7 located.

8 ~~{11} A local water quality district in which the local~~
 9 ~~water quality program is administered by the department~~
 10 ~~under the provisions of subsection {9} may, with the board's~~
 11 ~~approval, establish or resume a local water quality program~~
 12 ~~that meets the requirements of subsections {1} through {4}.~~

13 **SECTION 25. SECTION 75-5-106, MCA, IS AMENDED TO READ:**

14 "75-5-106. Interagency cooperation -- enforcement
 15 authorization. {1} The council, board, and department may
 16 require the use of records of all state agencies and may
 17 seek the assistance of such agencies. State, county, and
 18 municipal officers and employees, including sanitarians and
 19 other employees of local departments of health, shall
 20 cooperate with the council, board, and department in
 21 furthering the purposes of this chapter, so far as is
 22 practicable and consistent with their other duties.

23 {2} The department may authorize a local water quality
 24 district established according to the provisions of
 25 {sections 1 through 23} to enforce the provisions of this

1 chapter and rules adopted under this chapter on a
2 case-by-case basis. If a local water quality district
3 requests the authorization, the local water quality district
4 shall present appropriate documentation to the department
5 that a person is violating permit requirements established
6 by the department or may be causing pollution, as defined in
7 75-5-101, of state waters or placing or causing to be placed
8 wastes in a location where they are likely to cause
9 pollution of state waters. The board may adopt rules
10 regarding the granting of enforcement authority to local
11 water quality districts."

12 NEW SECTION. Section 26. Codification instruction. (1)
13 [Sections 1 through 23] are intended to be codified as an
14 integral part of Title 7, and the provisions of Title 7
15 apply to [sections 1 through 23].

16 (2) [Section 24] is intended to be codified as an
17 integral part of Title 75, chapter 5, and the provisions of
18 Title 75, chapter 5, apply to [section 24].

-End-