

1 *Roney* *House BILL NO. 538*
 2 INTRODUCED BY *Concha* *Stagner* *Swanson* *Ellinger*
 3 *Concha* *Stagner*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CITIZEN THE PRIVATE RIGHT OF ACTION TO
 5 COMPEL COMPLIANCE WITH WATER QUALITY STATUTES; AND AMENDING SECTION 75-5-636, MCA."
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7 STATEMENT OF INTENT

8 This bill is intended to provide the means to protect the private property of a citizen who has been
 9 harmed by another person's noncompliance with Montana's water quality laws. This bill recognizes that
 10 Montana's water quality laws are essential to the protection of private property rights. The pollution of
 11 state waters can cause real harm, impairing a citizen's exercise of rights. Therefore, this bill addresses the
 12 impairment of private property rights by providing a form of redress to a citizen's involuntary transfer of
 13 risk and wealth.
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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 17 Section 1. Section 75-5-636, MCA, is amended to read:

18 "~~75-5-636. Action by other parties~~ Notice of violation -- private right of action -- citizen suit
 19 provision. (1) A person, association, corporation, or agency of the state or federal government may apply
 20 to the department protesting a violation of this chapter. The department shall make an investigation and
 21 make a written report to the person, association, corporation, or agency ~~which~~ that made the protest. If
 22 a violation is established by the investigation of the department, appropriate enforcement action ~~shall~~ must
 23 be taken.

24 (2) In addition to subsection (1) and except as provided in subsection (3), a person with an interest
 25 that is adversely affected may commence a civil action on the person's own behalf against:

26 (a) a person, alleging a violation of a provision of this chapter or of an effluent standard, order,
 27 permit, or rule under the provisions of this chapter. The district court has jurisdiction to enforce the effluent
 28 standard, order, permit, rule, or provision.

29 (b) the department or board, alleging a failure of the department or board to perform an act or duty
 30 required under this chapter. The district court has jurisdiction to compel the department or board to perform

1 the act or duty.

2 (3) An action may not be commenced:

3 (a) until 60 days after the plaintiff has given notice in writing of the alleged violation to the
4 department and to the alleged violator; or

5 (b) if the state has commenced and is diligently prosecuting a civil or criminal action against an
6 alleged violator for compliance with the provisions of this chapter.

7 (4) (a) The department may intervene in an action brought under subsection (2).

8 (b) A person who has notified the department under subsection (2)(a) may intervene in a
9 subsequent state action.

10 (5) The court, in issuing a final order in an action brought under subsection (2), may award costs
11 of litigation, including reasonable attorney fees and expert witness fees to any party."

12 -END-