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SENATE BILL NO. 346

INTRODUCED BY Forrest Hallgren - Gorfield

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Knox

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO TEMPORARILY MODIFY WATER QUALITY STANDARDS; AMENDING SECTIONS 75-5-301 AND 75-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is provided for this bill because it allows the board of health and environmental sciences to adopt rules establishing temporary water quality standards.

The principle behind establishing temporary water quality standards is that there are Montana surface and ground waters that are of lower quality than the applicable water quality standards. The legislature intends that the temporary water quality standards may not be established for waters that are impaired but still support their beneficial uses. Temporary standards may be established only when substantive information indicates that the water body or water segment does not support a designated use for its classification. The goal of establishing temporary standards is to improve the quality of the water to the point at which it supports the beneficial uses for its classification.

The establishment of temporary standards provides a legal basis that facilitates improvement of the water quality for those waters and allows, in limited circumstances, discharges to those waters. The rules must reflect the legislature's intent that establishing temporary water quality standards will trigger development and implementation of a plan with the overall goal of continuously improving the quality of the water during the period of the modification to the point that beneficial uses are supported. At no time during the period of a modification should a discharge be allowed that will cause water quality to become worse than the quality of the water body or segment prior to the discharge.

The legislature recognizes that persons may desire to commence discharging to the water body or segment for which a standard has been temporarily modified during the period of the modification. Any discharges that are allowed should not in any way slow or impede the improvement of the water body or segment.

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

2
3 **Section 1.** Section 75-5-301, MCA, is amended to read:

4 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
5 75-5-302 through 75-5-307 and 80-15-201, the board shall:

6 (1) establish and modify the classification of all waters in accordance with their present and future
7 most beneficial uses;

8 (2) formulate standards of water ~~purity~~ quality and classification of water according to its most
9 beneficial uses, giving consideration to the economics of waste treatment and prevention. If rules are
10 adopted regarding temporary standards, they must conform with the requirements of [section 3].

11 (3) review, from time to time at intervals of not more than 3 years, established classifications of
12 waters and standards of water ~~purity~~ quality and classification;

13 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
14 department be specifically identified, and requiring that mixing zones have:

15 (a) the smallest practicable size;

16 (b) a minimum practicable effect on water uses; and

17 (c) definable boundaries;

18 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
19 limited to rules that:

20 (a) provide a procedure for department review and authorization of degradation;

21 (b) establish criteria for the following:

22 (i) determining important economic or social development; and

23 (ii) weighing the social and economic importance to the public of allowing the proposed project
24 against the cost to society associated with a loss of water quality; and

25 (c) establish criteria for determining whether a proposed activity or class of activities will result in
26 nonsignificant changes in water quality for any parameter in order that those activities are not required to
27 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

28 (i) equates significance with the potential for harm to human health or the environment;

29 (ii) considers both the quantity and the strength of the pollutant;

30 (iii) considers the length of time the degradation will occur; and

1 (iv) considers the character of the pollutant so that greater significance is associated with
 2 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
 3 substances that are less harmful or less persistent.

4 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 5 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 6 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 7 policy established in 75-5-303(2) and (3).

8 (7) adopt rules to implement this section."
 9

10 **Section 2.** Section 75-5-302, MCA, is amended to read:

11 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** (1) Except
 12 as provided in subsection (2), in revising classifications or standards or in adopting new classifications or
 13 standards, the board may not ~~se~~ formulate standards of water ~~purify~~ quality ~~or classify any state water as~~
 14 ~~to lower~~ in a manner that lowers any water quality standard applicable to any state water below the level
 15 applicable under the classifications and standards adopted ~~except upon a finding~~ unless the board finds that
 16 a particular state water has been classified under a standard or classification of water quality that is higher
 17 than the actual water quality that existed at the time of classification and only if the action is taken
 18 pursuant to 75-5-307.

19 (2) Establishment of a temporary water quality standard under [section 3] does not require a finding
 20 that the affected state water was classified under a standard or classification that was higher than the
 21 actual water quality that existed at the time of the prior classification."
 22

23 **NEW SECTION. Section 3. Temporary water quality standards.** (1) The board may on its own,
 24 upon recommendation of the department, or upon a petition for rulemaking by a person, including a permit
 25 applicant or permittee, temporarily modify a water quality standard for a specific water body or segment
 26 on a parameter-by-parameter basis in those instances in which substantive information indicates that the
 27 water body or segment is not supporting its designated uses. When the board adopts temporary standards,
 28 the goal is to improve water quality to the point at which all designated beneficial uses are supported.

29 (2) As a condition for establishing temporary water quality standards for a particular water body
 30 or segment, the department or the petitioner, as applicable, shall prepare a support document and

1 implementation plan for use by the board in determining whether to adopt a proposed temporary water
2 quality standard.

3 (3) If a person petitions for rulemaking under this section, the petition must specifically describe
4 the affected state water, the existing ambient water quality for the parameter or parameters at issue, the
5 water quality standard or standards affected, and the temporary modifications sought. Within 180 days
6 after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board
7 and the department a proposed support document and implementation plan that sets forth:

8 (a) the water quality limiting factors affecting the water body or segment;

9 (b) existing beneficial uses and the beneficial uses considered attainable in the absence of the
10 water quality limiting factors;

11 (c) an implementation plan to eliminate the water quality limiting factors to the extent considered
12 achievable; and

13 (d) a schedule for implementing the plan that ensures that the water quality standards are met as
14 soon as reasonably practicable and in no event later than the time allowed by the board in the temporary
15 standard.

16 (4) Upon the board's adoption of a temporary water quality standard, the department shall ensure
17 that conditions and limitations designed to achieve compliance with the plan are established in appropriate
18 discharge permits.

19 (5) A temporary modification of a water quality standard may not result in adverse impacts to
20 existing beneficial uses or be established for a period longer than 20 years from the board's initial adoption
21 of the temporary standard.

22 (6) If a state water is designated as having temporary standards, the department shall report to the
23 board at least every 3 years or upon request of the board regarding whether adequate efforts have been
24 made to implement the plans submitted as the basis for the temporary standard.

25 (7) The board shall review temporary standards at least every 3 years at a public hearing for which
26 notice and an opportunity for comment have been provided. The board may terminate the temporary
27 standard based on information submitted at the time of its review.

28 (8) The board shall terminate a temporary standard if:

29 (a) values for the modified parameter or parameters improve to conditions that support all
30 designated uses for that classification;

1 (b) the state water for which the temporary standard is adopted is reclassified as provided for in
2 75-5-302; or

3 (c) the plan submitted in support of the temporary water quality standard is not being implemented
4 according to the plan's schedule or modifications to that schedule made by the board or department.

5 (9) If a temporary standard for a parameter in a particular state water is terminated because the
6 plan submitted in support of the temporary water quality standard is not being implemented according to
7 the plan's schedule or modifications to that schedule made by the board or department, a person may
8 request a new temporary standard by submitting both a petition for rulemaking and a plan that meet the
9 requirements of subsections (2) and (3). However, the board may not adopt another temporary standard
10 for the parameter in the state water that would cumulatively extend beyond 20 years from the date of the
11 board's adoption of the initial temporary standard for the parameter and state water.

12

13 **NEW SECTION.** **Section 4. Codification instruction.** [Section 3] is intended to be codified as an
14 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to
15 [section 3].

16

17 **NEW SECTION.** **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
19 applications, the part remains in effect in all valid applications that are severable from the invalid
20 applications.

21

22 **NEW SECTION.** **Section 6. Effective date.** [This act] is effective on passage and approval.

23

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0346, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

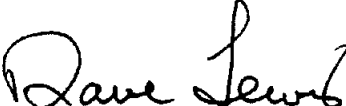
An act allowing the Board of Health and Environmental Sciences to temporarily modify water quality standards.

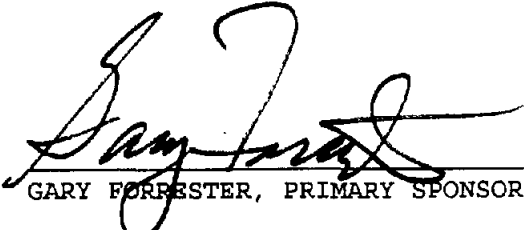
ASSUMPTIONS:

1. This legislation will enable potential water dischargers to request the establishment of temporary standards. The discharger will have the responsibility of preparing and justifying the request.

FISCAL IMPACT:

Passage of SB346 will have no fiscal impact on state government.

 2-17-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


GARY FORRESTER, PRIMARY SPONSOR DATE
Fiscal Note for SB0346, as introduced

SB346

1 SENATE BILL NO. 346

2 INTRODUCED BY FORRESTER, HALLIGAN, GROSFIELD, KNOX

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF HEALTH AND ENVIRONMENTAL
6 SCIENCES TO TEMPORARILY MODIFY WATER QUALITY STANDARDS; AMENDING SECTIONS 75-5-301
7 AND 75-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
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11 environmental sciences to adopt rules establishing temporary water quality standards.

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13 surface and ground waters that are of lower quality than the applicable water quality standards. The
14 legislature intends that the temporary water quality standards may not be established for waters that are
15 impaired but still support their beneficial uses. Temporary standards may be established only when
16 substantive information indicates that the water body or water segment does not support a designated use
17 for its classification. The goal of establishing temporary standards is to improve the quality of the water
18 to the point at which it supports the beneficial uses for its classification.

19 The establishment of temporary standards provides a legal basis that facilitates improvement of the
20 water quality for those waters and allows, in limited circumstances, discharges to those waters. The rules
21 must reflect the legislature's intent that establishing temporary water quality standards will trigger
22 development and implementation of a plan with the overall goal of continuously improving the quality of
23 the water during the period of the modification to the point that beneficial uses are supported. At no time
24 during the period of a modification should a discharge be allowed that will cause water quality to become
25 worse than the quality of the water body or segment prior to the discharge.

26 The legislature recognizes that persons may desire to commence discharging to the water body or
27 segment for which a standard has been temporarily modified during the period of the modification. Any
28 discharges that are allowed should not in any way slow or impede the improvement of the water body or
29 segment.
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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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5 75-5-302 through 75-5-307 and 80-15-201, the board shall:

6 (1) establish and modify the classification of all waters in accordance with their present and future
7 most beneficial uses;

8 (2) formulate standards of water ~~purity~~ quality and classification of water according to its most
9 beneficial uses, giving consideration to the economics of waste treatment and prevention. ~~# WHEN rules~~
10 are adopted regarding temporary standards, they must conform with the requirements of [section 3];

11 (3) review, from time to time at intervals of not more than 3 years, established classifications of
12 waters and standards of water ~~purity~~ quality and classification;

13 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
14 department be specifically identified, and requiring that mixing zones have:

15 (a) the smallest practicable size;

16 (b) a minimum practicable effect on water uses; and

17 (c) definable boundaries;

18 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
19 limited to rules that:

20 (a) provide a procedure for department review and authorization of degradation;

21 (b) establish criteria for the following:

22 (i) determining important economic or social development; and

23 (ii) weighing the social and economic importance to the public of allowing the proposed project
24 against the cost to society associated with a loss of water quality; and

25 (c) establish criteria for determining whether a proposed activity or class of activities will result in
26 nonsignificant changes in water quality for any parameter in order that those activities are not required to
27 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

28 (i) equates significance with the potential for harm to human health or the environment;

29 (ii) considers both the quantity and the strength of the pollutant;

30 (iii) considers the length of time the degradation will occur; and

1 (iv) considers the character of the pollutant so that greater significance is associated with
 2 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
 3 substances that are less harmful or less persistent.

4 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 5 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 6 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 7 policy established in 75-5-303(2) and (3).

8 (7) adopt rules to implement this section."
 9

10 **Section 2.** Section 75-5-302, MCA, is amended to read:

11 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** (1) ~~In~~ Except
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 13 standards, the board may not ~~se~~ formulate standards of water ~~purity~~ quality or classify any state water as
 14 ~~to lower~~ in a manner that lowers any water quality standard applicable to any state water below the level
 15 applicable under the classifications and standards adopted ~~except upon a finding~~ unless the board finds that
 16 a particular state water has been classified under a standard or classification of water quality that is higher
 17 than the actual water quality that existed at the time of classification and only if the action is taken
 18 pursuant to 75-5-307.

19 (2) Establishment of a temporary water quality standard under [section 3] does not require a finding
 20 that the affected state water was classified under a standard or classification that was higher than the
 21 actual water quality that existed at the time of the prior classification."
 22

23 **NEW SECTION. Section 3. Temporary water quality standards.** (1) The board may on its own,
 24 upon recommendation of the department, or upon a petition for rulemaking by a person, including a permit
 25 applicant or permittee, temporarily modify a water quality standard for a specific water body or segment
 26 on a parameter-by-parameter basis in those instances in which substantive information indicates that the
 27 water body or segment is not supporting its designated uses. When the board adopts temporary standards,
 28 the goal is to improve water quality to the point at which ~~all designated~~ **AN ADDITIONAL** beneficial **USE**
 29 **OR** uses are supported.

30 (2) As a condition for establishing temporary water quality standards for a particular water body

1 or segment, the department or the petitioner, as applicable, shall prepare a support document and
2 implementation plan for use by the board in determining whether to adopt a proposed temporary water
3 quality standard.

4 (3) If a person petitions for rulemaking under this section, the petition must specifically describe
5 the affected state water, the existing ambient water quality for the parameter or parameters at issue, the
6 water quality standard or standards affected, and the temporary modifications sought. Within 180 days
7 after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board
8 and the department a proposed support document and implementation plan that sets forth:

9 (a) the water quality limiting factors affecting the water body or segment;

10 (b) THE existing beneficial USE OR uses and the beneficial USE OR uses considered attainable in
11 the absence of the water quality limiting factors;

12 (c) an implementation plan to eliminate the water quality limiting factors to the extent considered
13 achievable; and

14 (d) a schedule for implementing the plan that ensures that the water quality standards FOR THE
15 PARAMETER OR PARAMETERS AT ISSUE are met as soon as reasonably practicable and in no event later
16 than the time allowed by the board in the temporary standard.

17 (4) Upon the board's adoption of a temporary water quality standard, the department shall ensure
18 that REASONABLE conditions and limitations designed to achieve compliance with the IMPLEMENTATION
19 plan are established in appropriate discharge permits.

20 (5) A temporary modification of a water quality standard may not result in adverse impacts to
21 existing beneficial uses or be established for a TOTAL period ~~longer than~~ OF 20 years from the board's
22 initial adoption of the temporary standard.

23 (6) If a state water is designated as having temporary standards, the department shall report to the
24 board at least every 3 years or upon request of the board regarding whether adequate efforts have been
25 made to implement the plans submitted as the basis for the temporary standard.

26 (7) The board shall review temporary standards at least every 3 years at a public hearing for which
27 notice and an opportunity for comment have been provided. The board may terminate the temporary
28 standard based on information submitted at the time of its review THAT THE APPLICANT IS NOT
29 COMPLYING WITH THE APPROVED IMPLEMENTATION PLAN.

30 (8) The board shall terminate a temporary standard FOR A PARAMETER if:

1 (a) values for the modified parameter or parameters improve to conditions that support all
2 designated uses for that classification;

3 (b) the state water for which the temporary standard is adopted is reclassified as provided for in
4 75-5-302; or

5 (c) the plan submitted in support of the temporary water quality standard is not being implemented
6 according to the plan's schedule or modifications to that schedule made by the board or department.

7 (9) THE BOARD MAY MODIFY THE PLAN IF THE PERMITTEE SUBMITS CONVINCING EVIDENCE
8 TO THE BOARD THAT THE PLAN NEEDS MODIFICATION. THE BOARD MAY NOT EXTEND THE PLAN
9 BEYOND A TOTAL PERIOD OF 20 YEARS.

10 ~~(9)(10)~~ If a temporary standard for a parameter in a particular state water is terminated because the
11 plan submitted in support of the temporary water quality standard is not being implemented according to
12 the plan's schedule or modifications to that schedule made by the board or department, a person may
13 request a new temporary standard by submitting both a petition for rulemaking and a plan that meet the
14 requirements of subsections (2) and (3). However, the board may not adopt another temporary standard
15 for the parameter in the state water that would cumulatively ~~extend beyond~~ BE IN EFFECT FOR A TOTAL
16 PERIOD LONGER THAN 20 years from the date of the board's adoption of the initial temporary standard
17 for the parameter ~~and~~ IN THE state water.

18

19 NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an
20 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to
21 [section 3].

22

23 NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
25 applications, the part remains in effect in all valid applications that are severable from the invalid
26 applications.

27

28 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

29

-END-

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SENATE BILL NO. 346
INTRODUCED BY FORRESTER, HALLIGAN, GROSFIELD, KNOX
BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO TEMPORARILY MODIFY WATER QUALITY STANDARDS; AMENDING SECTIONS 75-5-301 AND 75-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

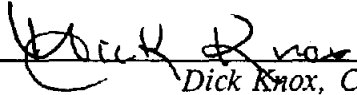


HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that **Senate Bill 346** (third reading copy -- blue) be concurred in as amended.

Signed: 
Dick Knox, Chair

And, that such amendments read:

Carried by: Rep. Knox

1. Page 4, line 20.
Following: "(5)"
Insert: "(a)"

2. Page 4.
Following: line 22
Insert: "(b) During the period of the temporary modification, the board may not allow a discharge that will cause water quality to become worse than the quality of the water body or segment prior to the discharge."

-END-

Committee Vote:
Yes 8, No 0.

SB346
HOUSE
661018SC.Hdh



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

SB 346

Representative Knox

March 25, 1995 8:27 am

Page 1 of 1

Mr. Chairman: I move to amend SB 346 (third reading copy -- blue).

Signed: W. Kirk Knox
Representative Knox

And, that such amendments to SB 346 read as follows:

1. Page 3, line 23.

Following: "(1)"

Strike: "The"

Insert: "Through rulemaking, the"

2. Page 3, line 25.

Following: "modify"

Insert: ", by making less stringent"

-END-

ADOPT

68-21

REJECT

SB 346

HOUSE



HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 346
Representative Knox

March 25, 1995 12:19 pm
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 346 (third reading copy -- blue).

Signed: H. B. Knox
Representative Knox

And, that such amendments to Senate Bill 346 read as follows:

Strip Representative Knox's committee of the whole amendment,
March 25, 1995 8:27 am, on Senate Bill 346 in its entirety.

-END-

ADOPT

82-2

REJECT

SB346

HOUSE

AC ___

691219CW.Hbk

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2 INTRODUCED BY FORRESTER, HALLIGAN, GROSFIELD, KNOX

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

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15 impaired but still support their beneficial uses. Temporary standards may be established only when
16 substantive information indicates that the water body or water segment does not support a designated use
17 for its classification. The goal of establishing temporary standards is to improve the quality of the water
18 to the point at which it supports the beneficial uses for its classification.

19 The establishment of temporary standards provides a legal basis that facilitates improvement of the
20 water quality for those waters and allows, in limited circumstances, discharges to those waters. The rules
21 must reflect the legislature's intent that establishing temporary water quality standards will trigger
22 development and implementation of a plan with the overall goal of continuously improving the quality of
23 the water during the period of the modification to the point that beneficial uses are supported. At no time
24 during the period of a modification should a discharge be allowed that will cause water quality to become
25 worse than the quality of the water body or segment prior to the discharge.

26 The legislature recognizes that persons may desire to commence discharging to the water body or
27 segment for which a standard has been temporarily modified during the period of the modification. Any
28 discharges that are allowed should not in any way slow or impede the improvement of the water body or
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5 75-5-302 through 75-5-307 and 80-15-201, the board shall:

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7 most beneficial uses;

8 (2) formulate standards of water ~~purity~~ quality and classification of water according to its most
9 beneficial uses, giving consideration to the economics of waste treatment and prevention. ~~IF~~ WHEN rules
10 are adopted regarding temporary standards, they must conform with the requirements of [section 3];.

11 (3) review, from time to time at intervals of not more than 3 years, established classifications of
12 waters and standards of water ~~purity~~ quality and classification;

13 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
14 department be specifically identified, and requiring that mixing zones have:

15 (a) the smallest practicable size;

16 (b) a minimum practicable effect on water uses; and

17 (c) definable boundaries;

18 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
19 limited to rules that:

20 (a) provide a procedure for department review and authorization of degradation;

21 (b) establish criteria for the following:

22 (i) determining important economic or social development; and

23 (ii) weighing the social and economic importance to the public of allowing the proposed project
24 against the cost to society associated with a loss of water quality; and

25 (c) establish criteria for determining whether a proposed activity or class of activities will result in
26 nonsignificant changes in water quality for any parameter in order that those activities are not required to
27 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

28 (i) equates significance with the potential for harm to human health or the environment;

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 2 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
 3 substances that are less harmful or less persistent.

4 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 5 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 6 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 7 policy established in 75-5-303(2) and (3).

8 (7) adopt rules to implement this section."
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10 **Section 2.** Section 75-5-302, MCA, is amended to read:

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 15 applicable under the classifications and standards adopted ~~except upon a finding~~ unless the board finds that
 16 a particular state water has been classified under a standard or classification of water quality that is higher
 17 than the actual water quality that existed at the time of classification and only if the action is taken
 18 pursuant to 75-5-307.

19 (2) Establishment of a temporary water quality standard under [section 3] does not require a finding
 20 that the affected state water was classified under a standard or classification that was higher than the
 21 actual water quality that existed at the time of the prior classification."
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23 **NEW SECTION. Section 3. Temporary water quality standards.** (1) The board may on its own,
 24 upon recommendation of the department, or upon a petition for rulemaking by a person, including a permit
 25 applicant or permittee, temporarily modify a water quality standard for a specific water body or segment
 26 on a parameter-by-parameter basis in those instances in which substantive information indicates that the
 27 water body or segment is not supporting its designated uses. When the board adopts temporary standards,
 28 the goal is to improve water quality to the point at which ~~all designated~~ AN ADDITIONAL beneficial USE
 29 OR uses are supported.

30 (2) As a condition for establishing temporary water quality standards for a particular water body

1 or segment, the department or the petitioner, as applicable, shall prepare a support document and
2 implementation plan for use by the board in determining whether to adopt a proposed temporary water
3 quality standard.

4 (3) If a person petitions for rulemaking under this section, the petition must specifically describe
5 the affected state water, the existing ambient water quality for the parameter or parameters at issue, the
6 water quality standard or standards affected, and the temporary modifications sought. Within 180 days
7 after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board
8 and the department a proposed support document and implementation plan that sets forth:

9 (a) the water quality limiting factors affecting the water body or segment;

10 (b) THE existing beneficial USE OR uses and the beneficial USE OR uses considered attainable in
11 the absence of the water quality limiting factors;

12 (c) an implementation plan to eliminate the water quality limiting factors to the extent considered
13 achievable; and

14 (d) a schedule for implementing the plan that ensures that the water quality standards FOR THE
15 PARAMETER OR PARAMETERS AT ISSUE are met as soon as reasonably practicable and in no event later
16 than the time allowed by the board in the temporary standard.

17 (4) Upon the board's adoption of a temporary water quality standard, the department shall ensure
18 that REASONABLE conditions and limitations designed to achieve compliance with the IMPLEMENTATION
19 plan are established in appropriate discharge permits.

20 (5) (A) A temporary modification of a water quality standard may not result in adverse impacts to
21 existing beneficial uses or be established for a TOTAL period ~~longer than~~ OF 20 years from the board's
22 initial adoption of the temporary standard.

23 (B) DURING THE PERIOD OF THE TEMPORARY MODIFICATION, THE BOARD MAY NOT ALLOW
24 A DISCHARGE THAT WILL CAUSE WATER QUALITY TO BECOME WORSE THAN THE QUALITY OF THE
25 WATER BODY OR SEGMENT PRIOR TO THE DISCHARGE.

26 (6) If a state water is designated as having temporary standards, the department shall report to the
27 board at least every 3 years or upon request of the board regarding whether adequate efforts have been
28 made to implement the plans submitted as the basis for the temporary standard.

29 (7) The board shall review temporary standards at least every 3 years at a public hearing for which
30 notice and an opportunity for comment have been provided. The board may terminate the temporary

1 standard based on information submitted at the time of its review THAT THE APPLICANT IS NOT
 2 COMPLYING WITH THE APPROVED IMPLEMENTATION PLAN.

3 (8) The board shall terminate a temporary standard FOR A PARAMETER if:

4 (a) values for the modified parameter or parameters improve to conditions that support all
 5 designated uses for that classification;

6 (b) the state water for which the temporary standard is adopted is reclassified as provided for in
 7 75-5-302; or

8 (c) the plan submitted in support of the temporary water quality standard is not being implemented
 9 according to the plan's schedule or modifications to that schedule made by the board or department.

10 (9) THE BOARD MAY MODIFY THE PLAN IF THE PERMITTEE SUBMITS CONVINCING EVIDENCE
 11 TO THE BOARD THAT THE PLAN NEEDS MODIFICATION. THE BOARD MAY NOT EXTEND THE PLAN
 12 BEYOND A TOTAL PERIOD OF 20 YEARS.

13 ~~(9)(10)~~ If a temporary standard for a parameter in a particular state water is terminated because the
 14 plan submitted in support of the temporary water quality standard is not being implemented according to
 15 the plan's schedule or modifications to that schedule made by the board or department, a person may
 16 request a new temporary standard by submitting both a petition for rulemaking and a plan that meet the
 17 requirements of subsections (2) and (3). However, the board may not adopt another temporary standard
 18 for the parameter in the state water that would cumulatively ~~extend beyond~~ BE IN EFFECT FOR A TOTAL
 19 PERIOD LONGER THAN 20 years ~~from the date of the board's adoption of the initial temporary standard~~
 20 for the parameter ~~and~~ IN THE state water.

21

22 NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an
 23 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to
 24 [section 3].

25

26 NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are
 27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 28 applications, the part remains in effect in all valid applications that are severable from the invalid
 29 applications.

30

Free Conference Committee
on SB 346
Report No.1, April 10, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 346, met and considered:

House Committee on Natural Resources amendments to the third reading copy dated March 22, 1995.

We recommend that SB 346 (reference copy - salmon) be amended as follows:

1. Page 3, line 19.

Strike: "under [section 3]"

Insert: "or classification"

2. Page 4, lines 21 and 22.

Strike: "OF" on line 21

Insert: "longer than"

Strike: "from" on line 21 through "standard" on line 22.

3. Page 4, line 24.

Following: "CAUSE"

Insert: "overall"

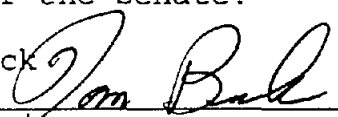
Following: "THAN THE"

Insert: "overall"

And that this Free Conference Committee report be adopted.

For the Senate:

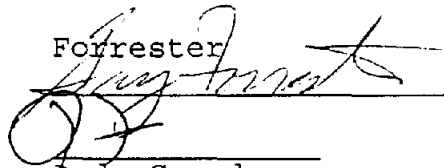
Beck



Chair

Grosfield


Amd. Coord.

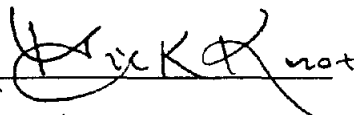
Forrester


Amd. Coord.


Sec. of Senate

For the House:

Knox


Chair

Ohs


Shea

ADOPT

REJECT

SB 346
FCCR#1
821114CC.SRF

1 SENATE BILL NO. 346

2 INTRODUCED BY FORRESTER, HALLIGAN, GROSFIELD, KNOX

3 BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF HEALTH AND ENVIRONMENTAL
6 SCIENCES TO TEMPORARILY MODIFY WATER QUALITY STANDARDS; AMENDING SECTIONS 75-5-301
7 AND 75-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
9 STATEMENT OF INTENT

10 A statement of intent is provided for this bill because it allows the board of health and
11 environmental sciences to adopt rules establishing temporary water quality standards.

12 The principle behind establishing temporary water quality standards is that there are Montana
13 surface and ground waters that are of lower quality than the applicable water quality standards. The
14 legislature intends that the temporary water quality standards may not be established for waters that are
15 impaired but still support their beneficial uses. Temporary standards may be established only when
16 substantive information indicates that the water body or water segment does not support a designated use
17 for its classification. The goal of establishing temporary standards is to improve the quality of the water
18 to the point at which it supports the beneficial uses for its classification.

19 The establishment of temporary standards provides a legal basis that facilitates improvement of the
20 water quality for those waters and allows, in limited circumstances, discharges to those waters. The rules
21 must reflect the legislature's intent that establishing temporary water quality standards will trigger
22 development and implementation of a plan with the overall goal of continuously improving the quality of
23 the water during the period of the modification to the point that beneficial uses are supported. At no time
24 during the period of a modification should a discharge be allowed that will cause water quality to become
25 worse than the quality of the water body or segment prior to the discharge.

26 The legislature recognizes that persons may desire to commence discharging to the water body or
27 segment for which a standard has been temporarily modified during the period of the modification. Any
28 discharges that are allowed should not in any way slow or impede the improvement of the water body or
29 segment.

30

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

2

3 Section 1. Section 75-5-301, MCA, is amended to read:

4 "75-5-301. Classification and standards for state waters. Consistent with the provisions of
5 75-5-302 through 75-5-307 and 80-15-201, the board shall:

6 (1) establish and modify the classification of all waters in accordance with their present and future
7 most beneficial uses;

8 (2) formulate standards of water ~~purity~~ quality and classification of water according to its most
9 beneficial uses, giving consideration to the economics of waste treatment and prevention. If WHEN rules
10 are adopted regarding temporary standards, they must conform with the requirements of [section 3]7.

11 (3) review, from time to time at intervals of not more than 3 years, established classifications of
12 waters and standards of water ~~purity~~ quality and classification;

13 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the
14 department be specifically identified, and requiring that mixing zones have:

15 (a) the smallest practicable size;

16 (b) a minimum practicable effect on water uses; and

17 (c) definable boundaries;

18 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not
19 limited to rules that:

20 (a) provide a procedure for department review and authorization of degradation;

21 (b) establish criteria for the following:

22 (i) determining important economic or social development; and

23 (ii) weighing the social and economic importance to the public of allowing the proposed project
24 against the cost to society associated with a loss of water quality; and

25 (c) establish criteria for determining whether a proposed activity or class of activities will result in
26 nonsignificant changes in water quality for any parameter in order that those activities are not required to
27 undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

28 (i) equates significance with the potential for harm to human health or the environment;

29 (ii) considers both the quantity and the strength of the pollutant;

30 (iii) considers the length of time the degradation will occur; and

1 (iv) considers the character of the pollutant so that greater significance is associated with
 2 carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with
 3 substances that are less harmful or less persistent.

4 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective
 5 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute
 6 guidelines for granting or denying applications for authorization to degrade high-quality waters under the
 7 policy established in 75-5-303(2) and (3).

8 (7) adopt rules to implement this section."
 9

10 **Section 2.** Section 75-5-302, MCA, is amended to read:

11 **"75-5-302. Revised classifications not to lower water quality standards -- exception.** ~~(1) Except~~
 12 ~~as provided in subsection (2),~~ in revising classifications or standards or in adopting new classifications or
 13 standards, the board may not ~~se~~ formulate standards of water purity quality or classify any state water as
 14 ~~to lower in a manner that lowers~~ any water quality standard applicable to any state water below the level
 15 applicable under the classifications and standards adopted ~~except upon a finding~~ unless the board finds that
 16 a particular state water has been classified under a standard or classification of water quality that is higher
 17 than the actual water quality that existed at the time of classification and only if the action is taken
 18 pursuant to 75-5-307.

19 (2) Establishment of a temporary water quality standard under ~~Section 3~~ OR CLASSIFICATION
 20 does not require a finding that the affected state water was classified under a standard or classification that
 21 was higher than the actual water quality that existed at the time of the prior classification."
 22

23 **NEW SECTION. Section 3. Temporary water quality standards.** (1) The board may on its own,
 24 upon recommendation of the department, or upon a petition for rulemaking by a person, including a permit
 25 applicant or permittee, temporarily modify a water quality standard for a specific water body or segment
 26 on a parameter-by-parameter basis in those instances in which substantive information indicates that the
 27 water body or segment is not supporting its designated uses. When the board adopts temporary standards,
 28 the goal is to improve water quality to the point at which ~~all designated~~ AN ADDITIONAL beneficial USE
 29 OR uses are supported.

30 (2) As a condition for establishing temporary water quality standards for a particular water body

1 or segment, the department or the petitioner, as applicable, shall prepare a support document and
 2 implementation plan for use by the board in determining whether to adopt a proposed temporary water
 3 quality standard.

4 (3) If a person petitions for rulemaking under this section, the petition must specifically describe
 5 the affected state water, the existing ambient water quality for the parameter or parameters at issue, the
 6 water quality standard or standards affected, and the temporary modifications sought. Within 180 days
 7 after the board grants a petition to initiate rulemaking, the petitioner shall prepare and submit to the board
 8 and the department a proposed support document and implementation plan that sets forth:

9 (a) the water quality limiting factors affecting the water body or segment;

10 (b) THE existing beneficial USE OR uses and the beneficial USE OR uses considered attainable in
 11 the absence of the water quality limiting factors;

12 (c) an implementation plan to eliminate the water quality limiting factors to the extent considered
 13 achievable; and

14 (d) a schedule for implementing the plan that ensures that the water quality standards FOR THE
 15 PARAMETER OR PARAMETERS AT ISSUE are met as soon as reasonably practicable and in no event later
 16 than the time allowed by the board in the temporary standard.

17 (4) Upon the board's adoption of a temporary water quality standard, the department shall ensure
 18 that REASONABLE conditions and limitations designed to achieve compliance with the IMPLEMENTATION
 19 plan are established in appropriate discharge permits.

20 (5) (A) A temporary modification of a water quality standard may not result in adverse impacts to
 21 existing beneficial uses or be established for a TOTAL period ~~longer than~~ OF LONGER THAN 20 years ~~from~~
 22 ~~the board's initial adoption of the temporary standard.~~

23 (B) DURING THE PERIOD OF THE TEMPORARY MODIFICATION, THE BOARD MAY NOT ALLOW
 24 A DISCHARGE THAT WILL CAUSE OVERALL WATER QUALITY TO BECOME WORSE THAN THE OVERALL
 25 QUALITY OF THE WATER BODY OR SEGMENT PRIOR TO THE DISCHARGE.

26 (6) If a state water is designated as having temporary standards, the department shall report to the
 27 board at least every 3 years or upon request of the board regarding whether adequate efforts have been
 28 made to implement the plans submitted as the basis for the temporary standard.

29 (7) The board shall review temporary standards at least every 3 years at a public hearing for which
 30 notice and an opportunity for comment have been provided. The board may terminate the temporary

1 standard based on information submitted at the time of its review THAT THE APPLICANT IS NOT
 2 COMPLYING WITH THE APPROVED IMPLEMENTATION PLAN.

3 (8) The board shall terminate a temporary standard FOR A PARAMETER if:

4 (a) values for the modified parameter or parameters improve to conditions that support all
 5 designated uses for that classification;

6 (b) the state water for which the temporary standard is adopted is reclassified as provided for in
 7 75-5-302; or

8 (c) the plan submitted in support of the temporary water quality standard is not being implemented
 9 according to the plan's schedule or modifications to that schedule made by the board or department.

10 (9) THE BOARD MAY MODIFY THE PLAN IF THE PERMITTEE SUBMITS CONVINCING EVIDENCE
 11 TO THE BOARD THAT THE PLAN NEEDS MODIFICATION. THE BOARD MAY NOT EXTEND THE PLAN
 12 BEYOND A TOTAL PERIOD OF 20 YEARS.

13 ~~(9)~~(10) If a temporary standard for a parameter in a particular state water is terminated because the
 14 plan submitted in support of the temporary water quality standard is not being implemented according to
 15 the plan's schedule or modifications to that schedule made by the board or department, a person may
 16 request a new temporary standard by submitting both a petition for rulemaking and a plan that meet the
 17 requirements of subsections (2) and (3). However, the board may not adopt another temporary standard
 18 for the parameter in the state water that would cumulatively ~~extend beyond~~ BE IN EFFECT FOR A TOTAL
 19 PERIOD LONGER THAN 20 years ~~from the date of the board's adoption of the initial temporary standard~~
 20 for the parameter ~~and~~ IN THE state water.

21
 22 NEW SECTION. Section 4. Codification instruction. [Section 3] is intended to be codified as an
 23 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to
 24 [section 3].

25
 26 NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are
 27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
 28 applications, the part remains in effect in all valid applications that are severable from the invalid
 29 applications.

1 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

2 -END-