

1 *House* BILL NO. *219*
 2 INTRODUCED BY *Wesley Roscoe Jones* *Holland*
 3 *McBlain*

4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NITRATE TESTING REQUIREMENTS FOR
 5 SINGLE-FAMILY SEPTIC SYSTEMS; AND AMENDING SECTIONS 75-5-103, 75-5-301, 75-5-316, AND
 6 75-5-317, MCA."

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

9
 10 **Section 1.** Section 75-5-103, MCA, is amended to read:

11 **"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following
 12 definitions apply:

- 13 (1) "Board" means the board of environmental review provided for in 2-15-3502.
- 14 (2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
 15 or other wastes, creating a hazard to human health.
- 16 (3) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- 17 (4) "Degradation" means a change in water quality that lowers the quality of high-quality waters
 18 for a parameter. The term does not include those changes in water quality determined to be nonsignificant
 19 pursuant to 75-5-301(5)(c) or (5)(d).
- 20 (5) "Department" means the department of environmental quality provided for in 2-15-3501.
- 21 (6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
 22 includes sewage systems and treatment works.
- 23 (7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations
 24 of chemical, physical, biological, and other constituents that are discharged into state waters.
- 25 (8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
 26 whether or not those uses are included in the water quality standards.
- 27 (9) "High-quality waters" means all state waters, except:
 28 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established
 29 by the board's classification rules; and
 30 (b) surface waters that:

- 1 (i) are not capable of supporting any one of the designated uses for their classification; or
2 (ii) have zero flow or surface expression for more than 270 days during most years.

3 (10) "Industrial waste" means a waste substance from the process of business or industry or from
4 the development of any natural resource, together with any sewage that may be present.

5 (11) "Interested person" means a person who has a real property interest, a water right, or an
6 economic interest that is or may be directly and adversely affected by the department's preliminary decision
7 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has
8 requested authorization to degrade high-quality waters.

9 (12) "Local department of health" means the staff, including health officers, employed by a county,
10 city, city-county, or district board of health.

11 (13) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
12 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
13 thallium, and zinc.

14 (14) "Mixing zone" means an area established in a permit or final decision on nondegradation issued
15 by the department where water quality standards may be exceeded, subject to conditions that are imposed
16 by the department and that are consistent with the rules adopted by the board.

17 (15) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
18 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
19 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state
20 waters.

21 (16) "Outstanding resource waters" means:

22 (a) state surface waters located wholly within the boundaries of areas designated as national parks
23 or national wilderness areas as of October 1, 1995; or

24 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316
25 and approved by the legislature.

26 (17) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
27 point source.

28 (18) "Parameter" means a physical, biological, or chemical property of state water when a value
29 of that property affects the quality of the state water.

30 (19) "Person" means the state, a political subdivision of the state, an institution, firm, corporation,

1 partnership, or individual, or other entity and includes persons resident in Canada.

2 (20) "Point source" means a discernible, confined, and discrete conveyance, including but not
3 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel
4 or other floating craft, from which pollutants are or may be discharged.

5 (21) (a) "Pollution" means:

6 (i) contamination or other alteration of the physical, chemical, or biological properties of state
7 waters that exceeds that permitted by Montana water quality standards, including but not limited to
8 standards relating to change in temperature, taste, color, turbidity, or odor; or

9 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
10 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
11 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals,
12 birds, fish, or other wildlife.

13 (b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
14 discharge permit rules of the board is not pollution under this chapter. Activities conducted under the
15 conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered
16 pollution under this chapter.

17 (22) "Sewage" means water-carried waste products from residences, public buildings, institutions,
18 or other buildings, including discharge from human beings or animals, together with ground water infiltration
19 and surface water present.

20 (23) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
21 other wastes to an ultimate disposal point.

22 (24) "Standard of performance" means a standard adopted by the board for the control of the
23 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application
24 of the best available demonstrated control technology, processes, operating methods, or other alternatives,
25 including, when practicable, a standard permitting no discharge of pollutants.

26 (25) (a) "State waters" means a body of water, irrigation system, or drainage system, either
27 surface or underground.

28 (b) The term does not apply to:

29 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

30 (ii) irrigation waters or land application disposal waters when the waters are used up within the

1 irrigation or land application disposal system and the waters are not returned to state waters.

2 (26) "Treatment works" means works, including sewage lagoons, installed for treating or holding
3 sewage, industrial wastes, or other wastes.

4 (27) "Water quality protection practices" means those activities, prohibitions, maintenance
5 procedures, or other management practices applied to point and nonpoint sources designed to protect,
6 maintain, and improve the quality of state waters. Water quality protection practices include but are not
7 limited to treatment requirements, standards of performance, effluent standards, and operating procedures
8 and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material
9 storage.

10 (28) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted,
11 or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of
12 ground water."

13

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

15 **"75-5-301. Classification and standards for state waters.** Consistent with the provisions of
16 80-15-201 and this chapter, the board shall:

17 (1) establish the classification of all state waters in accordance with their present and future most
18 beneficial uses, creating an appropriate classification for streams that, ~~due to~~ because of sporadic flow, do
19 not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

20 (2) (a) formulate and adopt standards of water quality, giving consideration to the economics of
21 waste treatment and prevention. When rules are adopted regarding temporary standards, they must
22 conform with the requirements of 75-5-312.

23 (b) Standards adopted by the board must meet the following requirements:

24 (i) for carcinogens, the water quality standard for protection of human health must be the value
25 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed
26 1×10^{-3} in the case of arsenic and 1×10^{-5} for other carcinogens. However, if a standard established at
27 a risk level of 1×10^{-3} for arsenic or 1×10^{-5} for other carcinogens violates the maximum contaminant
28 level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the
29 standard for that carcinogen.

30 (ii) standards for the protection of aquatic life do not apply to ground water.

1 (3) review, from time to time at intervals of not more than 3 years, and, to the extent permitted
2 by this chapter, revise established classifications of waters and adopted standards of water quality;

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

5 (a) the smallest practicable size;

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

7 (c) definable boundaries;

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

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

11 (b) establish criteria for the following:

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

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

15 (c) establish criteria for determining whether a proposed activity or class of activities, in addition
16 to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any
17 parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria
18 must be established in a manner that generally:

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

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

21 (iii) considers the length of time that the degradation will occur;

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

25 (d) provide that changes of nitrate [as nitrogen] in ground water are nonsignificant from septic
26 systems serving single-family residences or if the discharge will not cause degradation of surface water and
27 the predicted concentration of nitrate [as nitrogen] at the boundary of the ground water mixing zone does
28 not exceed:

29 (i) 7.5 milligrams per liter for nitrate [as nitrogen] sources other than domestic sewage;

30 (ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic

1 system;

2 (iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level
3 two treatment, which must be defined in the rules; or

4 (iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic
5 system in areas where the ground water nitrate [as nitrogen] level exceeds 5.0 milligrams per liter primarily
6 from sources other than human waste;

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

11 (7) adopt rules to implement this section."
12

13 **Section 3.** Section 75-5-316, MCA, is amended to read:

14 **"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure.**

15 (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the
16 classification of waters as outstanding resource waters. Neither this section nor rules adopted pursuant to
17 this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) or (5)(d) and that
18 is exempted from nondegradation review required under 75-5-303.

19 (2) The department may not:

20 (a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

21 (b) grant an authorization to degrade if that authorization would cause significant degradation, as
22 defined by board rules adopted under 75-5-301(5), in outstanding resource waters.

23 (3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource
24 waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to
25 determine whether the petition contains sufficient credible information for the board to accept the petition.

26 (b) The board may reject a petition without further review if it determines that the petition does
27 not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition
28 under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's
29 deficiencies.

30 (c) The board may not adopt a rule classifying state waters as outstanding resource waters until

1 it accepts a petition and finds that, based on a preponderance of the evidence:

2 (i) the waters identified in the petition constitute an outstanding resource based on the criteria
3 provided in subsection (4);

4 (ii) the classification is necessary to protect the outstanding resource identified under subsection
5 (3)(a); and

6 (iii) there is no other effective process available that will achieve the necessary protection.

7 (4) The board shall consider the following criteria in determining whether certain state waters are
8 outstanding resource waters. However the board may determine that compliance with one or more of these
9 criteria is insufficient to warrant classification of the water as an outstanding resource water. The board
10 shall consider:

11 (a) whether the waters have been designated as wild and scenic;

12 (b) the presence of endangered or threatened species in the waters;

13 (c) the presence of an outstanding recreational fishery in the waters;

14 (d) whether the waters provide the only source of suitable water for a municipality or industry;

15 (e) whether the waters provide the only source of suitable water for domestic water supply; and

16 (f) other factors that indicate outstanding environmental or economic values not specifically
17 mentioned in this subsection (4).

18 (5) After acceptance of a petition, the board shall require the preparation of an environmental
19 impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding
20 resource water may cause significant adverse impacts to the environment, including significant adverse
21 impacts to social or economic values.

22 (6) The board shall consult with other relevant state agencies when reviewing outstanding resource
23 water classification petitions.

24 (7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water
25 classification petition if it finds that:

26 (i) the requirements of subsection (3) have not been met; or

27 (ii) based on information available to the board from the environmental impact statement or
28 otherwise, approving the outstanding resource waters classification petition would cause significant adverse
29 environmental, social, or economic impacts.

30 (b) If the board denies the petition, it shall identify its reasons for petition denial.

1 (8) A rule classifying state waters as outstanding resource waters under this section may be
2 adopted but is not effective until approved by the legislature.

3 (9) The board may not postpone or deny an application for an authorization to degrade state waters
4 under 75-5-303 based on pending:

5 (a) board action on an outstanding resource water classification petition regarding those waters;
6 or

7 (b) legislative approval of board action designating those waters as outstanding resource waters."
8

9 **Section 4.** Section 75-5-317, MCA, is amended to read:

10 **"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in
11 subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm
12 to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c) and
13 (5)(d).

14 (2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

15 (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

16 (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable
17 land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be
18 fully protected;

19 (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water
20 management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental
21 protection agency-approved label and when existing and anticipated uses will be fully protected;

22 (d) changes in existing water quality resulting from an emergency or remedial activity that is
23 designed to protect public health or the environment and is approved, authorized, or required by the
24 department;

25 (e) changes in existing water quality resulting from treatment of a public water supply system, as
26 defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar
27 means that is designed to protect the public health or the environment and that is approved, authorized,
28 or required by the department;

29 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water
30 well or monitoring well drilling, development, or abandonment, if used according to department-approved

1 water quality protection practices;

2 (g) short-term changes in existing water quality resulting from activities authorized by the
3 department pursuant to 75-5-308;

4 (h) land application of animal waste, domestic septage, or waste from public sewage treatment
5 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application
6 rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

7 (i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from
8 a public sewage system, as defined in 75-6-102, ~~utilizing~~ using best practicable control technology
9 designed and constructed in accordance with Title 75, chapter 6;

10 (j) discharges of water from water well or monitoring well tests, hydrostatic pressure and leakage
11 tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in
12 accordance with department-approved water quality protection practices;

13 (k) oil and gas drilling, production, abandonment, plugging, and restoration activities performed in
14 accordance with Title 82, chapter 10, or ~~Title 82, chapter 11~~;

15 (l) short-term changes in existing water quality resulting from ordinary and everyday activities of
16 humans or domesticated animals, including but not limited to:

17 (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

18 (ii) fording of streams or other bodies of water by vehicular or other means; and

19 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated
20 animals;

21 (m) coal and uranium prospecting performed in accordance with Title 82, chapter 4;

22 (n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle
23 graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or ~~Title 75, chapter 10,~~
24 ~~part 5~~;

25 (o) hazardous waste management facilities permitted and operated in accordance with Title 75,
26 chapter 10, part 4;

27 (p) metallic and nonmetallic mineral exploration permitted under and performed in accordance with
28 Title 82, chapter 4, parts 3 and 4;

29 (q) nonpoint sources of pollution that cause short-term changes in existing water quality resulting
30 from:

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0219, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating Nitrate testing for single family septic systems.

ASSUMPTIONS:

1. Counties are obligated to review septic systems under the Subdivision and Platting Acts and the water quality standards of the Water Quality Act would continue to be applicable to development.
2. A possible increase in workload would occur in the water quality program of the Department of Environmental Quality (DEQ). The DEQ, in a reactive role, would be required to take remedial actions as cumulative impacts from single family septic systems or poorly designed, sited or constructed septic systems resulted in exceedences of water quality standards in ground or surface waters.
3. The DEQ would not monitor surface and ground waters in or adjacent to subdivisions to determine compliance with water quality standards.
4. The DEQ would respond to complaints about water quality resulting from individual systems and/or from cumulative effects of many septic systems.
5. An average of 5,535 septic systems (based on 5 years of data) serving single family dwellings would be constructed per year. Approximately 75% of these systems, if reviewed, would be modified to ensure compliance with the Water Quality Act. Protests would be received on about 10 percent of these.
6. Initially, changes to ground-water quality caused by subdivisions built under this provision would be minor. As homes are built and discharges from septic systems occur, the anticipated changes in water quality will cause citizens to complain to the department. Initially a few complaints would be received and costs could be absorbed.
7. After about 5 years, the effects from poorly designed, sited, or constructed individual systems or the cumulative effects of growth will become visible and/or measurable. A corresponding increase in the number of citizen complaints would occur--mirroring complaints received in the past from high-growth areas such as Kalispell, Missoula, and Bozeman.
8. The DEQ assumes that, after about 5 years, staff will be required to respond to a minimum of 10 citizen complaints related to changes in water quality caused by septic systems built under this provision at a total cost of \$2,418 per year (2 hours of grade 9 administrative support time [\$21.12], 8 hours of Grade 14 investigative time [\$122.44] and operating costs [\$24.41 indirect @17%, plus \$73.88 for one day of travel up to 300 miles at \$.1946 + meals] for a total of \$241.85).
9. Because of anticipated violations of Montana ground water quality standards caused by septic system discharges, approximately 10% of these complaints would likely require an enforcement action to bring the site into compliance. Estimated costs for processing a simple administrative order enforcement action total \$1,988 (8 hours of grade 9 administrative support time [\$84.48], 40 hours of grade 15 case management time [\$662.31], 40 hours of grade 18 legal support time [\$848.98], and operating costs [271.28 indirect plus \$120.58 in travel] of \$391.86).
10. The DEQ will absorb the identified costs during the 1999 biennium.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Costs for system upgrades, when water quality problems result from poorly designed, sited, or constructed systems, would be borne by individual homeowners and local governments. There may be long-term financial impacts to counties because local government loans from the state revolving fund may be necessary to construct water systems necessary to ensure federal and state drinking water standards are not violated.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There may be a future need for FTE to resolve water quality complaints.

Dave Lewis 1-16-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

WESLEY PROUSE, PRIMARY SPONSOR DATE

Fiscal Note for HB0219, as introduced

HB 219