HOUSE BILL NO. 24

INTRODUCED BY T. MILLETT

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING MEMBER QUALIFICATIONS OF THE STATEWIDE TOTAL MAXIMUM DAILY LOAD ADVISORY GROUP TO INCLUDE COUNTY SOIL AND CONSERVATION DISTRICT STAFF; AMENDING SECTION 75-5-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

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

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

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

(3) A person may request that the department add or remove a water body or reprioritize a water

body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 180 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board.

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

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

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

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

(a) the beneficial uses established for a water body;

(b) the extent that natural factors over which humans have no control are contributing to any impairment;

(c) the impacts to human health and aquatic life;

(d) the degree of public interest and support;

(e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;

(f) whether the water body is an important high-quality resource in an early stage of degradation;

(g) the size of the water body not achieving standards;

(h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;

(i) court orders and decisions relating to water quality;

(j) state policies and priorities, including the protection and restoration of native fish when appropriate;

(k) the availability of technology and resources to correct the problems;

(l) whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and

(m) the recreational, economic, and aesthetic importance of a particular water body.

(8) Except as provided in subsection (9), the department shall, in consultation with the statewide TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a water body as a high priority under this section without first validating the data necessary to support the ranking.

(9) (a) When the department receives an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for that water body or segment, the department shall:

(i) within 30 days of the department's receipt of the application, initiate the development of a TMDL on the water body or segment; and

(ii) except as provided in subsection (9)(b), within 180 days of the department's receipt of the application, complete development of the TMDL pursuant to 75-5-703.

(b) If the department is not able to complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall, within 30 days of the department's receipt of the application, specify in writing to the applicant why the department is not able to complete development of a TMDL in accordance with subsection (9)(a)(ii). The department and the applicant shall make reasonable efforts to mutually agree in writing to a timeframe in which the department shall complete development of the TMDL. If the department specifies a lack of resources as a reason why the department cannot complete development of the TMDL in accordance with subsection (9)(a)(ii), the department shall clearly explain in its written specification what resources are not available, why those resources are not available, and when those resources will be available.

(c) If the department and the applicant cannot mutually agree to a timeframe in accordance with subsection (9)(b), the department shall, within 60 days of the department's receipt of the application, specify in writing to the applicant the timeframe in which the TMDL will be completed by the department and the reasons why that timeframe is appropriate. If the department specifies a lack of resources as a reason why the department's timeframe is appropriate, the department may request the applicant provide funding for the development of the TMDL in order to accelerate the completion of the TMDL.

(d) The applicant may, within 15 days of the department's written specification provided in accordance with subsection (9)(c), request in writing a hearing before the board for the purpose of petitioning the board to reverse or modify the department's decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection. If the parties to the contested case waive a formal proceeding pursuant to 2-4-603, the informal proceeding must be conducted within 30 days after the board's receipt of the written request. After the hearing and in a reasonable time, the board shall affirm, modify, or reverse the action of the department, and the board shall make findings and conclusions that explain its decision. Pending the board's decision, the department shall develop the TMDL in accordance with the timeframe specified in subsection (9)(a)(ii).

(e) The department may not declare an application incomplete or deficient because a TMDL has not been prepared.

(f) If on April 27, 2015, an application for a new individual permit to discharge into a surface water body or a segment of a surface water body pursuant to 75-5-401 is pending, the surface water body or segment of a surface water body has been listed pursuant to subsection (2) of this section, the discharge would contain

a pollutant for which the water body or segment is threatened or impaired, and a TMDL has not been developed for the water body or segment, the department shall, except as provided in subsection (9)(g), complete a TMDL for the water body or segment within 180 days of April 27, 2015.

(g) If the department is not able to complete development of the TMDL within 180 days of April 27, 2015, pursuant to subsection (9)(f), then the timeframes established in accordance with subsections (9)(b), (9)(c), and (9)(d) apply to the application, but the timeframes are measured from April 27, 2015, not from the date the department receives an application.

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

(i) livestock-oriented agriculture;

(ii) farming-oriented agriculture;

(iii) conservation or environmental interests;

(iv) water-based recreationists;

(v) the forestry industry;

(vi) municipalities;

(vii) point source dischargers;

(viii) mining;

(ix) federal land management agencies;

(x) state trust land management agencies;

(xi) supervisors or staff of soil and water conservation districts for counties east of the continental divide;

(xii) supervisors or staff of soil and water conservation districts for counties west of the continental divide;

(xiii) the hydroelectric industry; and

(xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall

notify the respective nominators and request that they agree on one nominee.

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

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

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