

HB0420S01 compared with HB0420

~~deleted text~~ shows text that was in HB0420 but was deleted in HB0420S01.

inserted text shows text that was not in HB0420 but was inserted into HB0420S01.

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Representative Julie Fisher proposes the following substitute bill:

WATER QUALITY BOARD POWERS AND DUTIES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Water Quality Act by modifying the duties and responsibilities of the Water Quality Board and requiring legislative approval for certain recommendations.

Highlighted Provisions:

This bill:

- ▶ defines the term "total maximum daily load";
- ▶ authorizes the Water Quality Board to review all total daily maximum load reports and recommendations before submission to the EPA;
- ▶ authorizes the Water Quality Board to disapprove, approve, or approve with conditions all total daily maximum load recommendations;
- ▶ authorizes the Water Quality Board to provide suggestions to the Division of Water

HB0420S01 compared with HB0420

Quality in the event a total daily maximum load strategy is rejected;

- ▶ requires that any board-approved strategy or recommendation that will cost between ~~(\$3)~~ \$5,000,000 and \$100,000,000 be reviewed by the Legislative Interim Committee for Natural Resources, Agriculture~~(,)~~ and Environment~~(Interim Committee)~~;
- ▶ requires that any board-approved strategy or recommendation that will cost over ~~(\$1)~~ \$100,000,000 be approved by the Legislature; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{None}~~ This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

AMENDS:

19-5-102, as last amended by Laws of Utah 2001, Chapter 274

19-5-104, as last amended by Laws of Utah 2008, Chapters 336 and 382

ENACTS:

19-5-104.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-5-102** is amended to read:

19-5-102. Definitions.

As used in this chapter:

- (1) "Board" means the Water Quality Board created in Section 19-1-106.
- (2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
- (3) "Discharge" means the addition of any pollutant to any waters of the state.
- (4) "Discharge permit" means a permit issued to a person who:
 - (a) discharges or whose activities would probably result in a discharge of pollutants into the waters of the state; or
 - (b) generates or manages sewage sludge.

HB0420S01 compared with HB0420

(5) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

(6) "Effluent limitations" means any restrictions, requirements, or prohibitions, including schedules of compliance established under this chapter which apply to discharges.

(7) "Executive secretary" means the executive secretary of the board.

(8) "Point source":

(a) means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged; and

(b) does not include return flows from irrigated agriculture.

(9) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for the public health and safety.

(10) "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, its political subdivisions, or other public entity.

(11) "Schedule of compliance" means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with this chapter.

(12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

(13) "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

(14) "Total maximum daily load" means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards.

~~(14)~~ (15) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

~~(15)~~ (16) "Underground injection" means the subsurface emplacement of fluids by well injection.

~~(16)~~ (17) "Underground wastewater disposal system" means a system for disposing of

HB0420S01 compared with HB0420

domestic wastewater discharges as defined by the board and the executive director.

~~[(17)]~~ (18) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

~~[(18)]~~ (19) "Waters of the state":

(a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state; and

(b) does not include bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, a public health hazard, or a menace to fish or wildlife.

Section 2. Section **19-5-104** is amended to read:

19-5-104. Powers and duties of board.

(1) The board has the following powers and duties:

(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies, and with affected groups, political subdivisions, and industries to further the purposes of this chapter;

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as the board finds necessary to discharge its duties;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;

(f) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, taking into account Subsection (3), to:

HB0420S01 compared with HB0420

- (i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:
 - (A) requirements pertaining to applications for loans;
 - (B) requirements for determination of eligible projects;
 - (C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;
 - (D) a priority schedule for awarding loans, in which the board may consider in addition to water pollution control needs any financial needs relevant, including per capita cost, in making a determination of priority; and
 - (E) requirements for determination of the amount of the loan;
- (ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;
- (iii) set effluent limitations and standards subject to Section 19-5-116;
- (iv) implement or effectuate the powers and duties of the board; and
- (v) protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;
 - (g) issue, modify, or revoke orders:
 - (i) prohibiting or abating discharges;
 - (ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;
 - (iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; and
 - (iv) requiring compliance with this chapter and with rules made under this chapter;
 - (h) (i) review plans, specifications, or other data relative to disposal systems or any part of disposal systems;
 - (ii) issue construction or operating permits for the installation or modification of

HB0420S01 compared with HB0420

treatment works or any parts of the treatment works; and

(iii) delegate the authority to issue an operating permit to a local health department;

(i) after public notice and opportunity for a public hearing, issue, continue in effect, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to:

(i) control the management of sewage sludge; or

(ii) prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

(j) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;

(k) exercise all incidental powers necessary to carry out the purposes of this chapter, including delegation to the department of its duties as appropriate to improve administrative efficiency;

(l) meet the requirements of federal law related to water pollution;

(m) establish and conduct a continuing planning process for control of water pollution including the specification and implementation of maximum daily loads of pollutants;

(n) make rules governing inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for them, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that underground injection endangers drinking water sources if:

(i) injection may result in the presence of any contaminant in underground water that supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may:

(A) result in the public water system not complying with any national primary drinking water standards; or

(B) otherwise adversely affect the health of persons;

(o) make rules governing sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements;

(p) adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political

HB0420S01 compared with HB0420

subdivisions;

(q) notwithstanding the provisions of Section 19-4-112, make rules governing design and construction of irrigation systems that:

(i) convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes; and

(ii) are constructed after May 4, 1998; and

(r) (i) approve, approve in part, approve with conditions, or deny, in writing, an application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; ~~and~~

(ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act[-]; and

(s) (i) review all total daily maximum load reports and recommendations for water quality end points and implementation strategies developed by the division before submission of the report, recommendation, or implementation strategy to the EPA;

(ii) disapprove, approve, or approve with conditions all staff total daily maximum load recommendations; and

(iii) provide suggestions for further consideration to the Division of Water Quality in the event a total daily maximum load strategy is rejected.

(2) In performing the duties listed in Subsection (1), the board shall give priority to pollution that results in a hazard to the public health.

(3) The board shall take into consideration the availability of federal grants:

(a) in determining eligible project costs; and

(b) in establishing priorities pursuant to Subsection (1)(f)(i).

(4) In establishing certification rules under Subsection (1)(p), the board shall:

(a) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;

(b) allow operators until three years after the date of adoption of the rules to obtain initial certification;

(c) allow a new operator one year from the date the operator is hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;

HB0420S01 compared with HB0420

(d) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and

(e) issue a certification upon application and without testing that is valid only at the treatment works or sewerage system where that operator is currently employed if the operator:

(i) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;

(ii) has been employed at least 10 years in the operation of that treatment works or sewerage system prior to March 16, 1991; and

(iii) demonstrates to the board the operator's capability to operate the treatment works or sewerage system at which the operator is currently employed by providing employment history and references as required by the board.

Section 3. Section **19-5-104.5** is enacted to read:

19-5-104.5. Legislative approval.

(1) Before sending a board-approved report, strategy, or recommendation that will recommend a total maximum daily load end point and implementation strategy to the EPA for review and approval, the Water Board shall submit the report, strategy, or recommendation:

(a) for review to the Natural Resources, Agriculture, and Environment Interim Committee if the report, strategy, or recommendation will require a public expenditure in excess of ~~the~~ \$5,000,000 but less than ~~the~~ \$100,000,000 for compliance; or

(b) for approval to the Legislature if the strategy will require a public expenditure of ~~the~~ \$100,000,000 or more.

(2) In reviewing a report, strategy, or recommendation, the Natural Resources, Agriculture, and Environment Interim Committee may:

(a) suggest additional areas of consideration; or

(b) recommend the report, strategy, or recommendation be re-evaluated by the Water ~~Board.~~

HB0420S01 compared with HB0420

Legislative Review Note

as of 2-25-11 12:11 PM

Office of Legislative Research and General Counsel; Quality Board.

Section 4. Effective date.

This bill takes effect on July 1, 2012.