

Senator David P. Hinkins proposes the following substitute bill:

WATER QUALITY AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Mike K. McKell

LONG TITLE

General Description:

This bill modifies provisions of the Water Quality Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes an independent peer review process for challenges made to proposals from the Division of Water Quality; and
- ▶ establishes the requirements, including selecting the panel of independent experts, for an independent peer review.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

19-5-105.3, Utah Code Annotated 1953

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



26 Section 1. Section **19-5-105.3** is enacted to read:

27 **19-5-105.3. Independent peer review of a proposal.**

28 (1) As used in this section:

29 (a) "Challenging party" means a person who has or is seeking a permit in accordance
30 with this chapter and chooses to use the independent peer review process described in this
31 section to challenge a proposal.

32 (b) "Independent peer review" is a review conducted:

33 (i) in accordance with this section;

34 (ii) by experts having technical expertise in the proposal being reviewed; and

35 (iii) by individuals who are not:

36 (A) currently conducting research funded by the division or the challenging party;

37 (B) employed by an entity that is regulated under this chapter;

38 (C) a spouse or family member of someone who is employed by the division or the
39 challenging party; or

40 (D) an active, participatory member of a non-profit organization that advocates
41 positions with the division or the Legislature.

42 (c) "Proposal" means any science-based initiative proposed by the division on or after
43 January 1, 2016, that would financially impact a challenging party and that would:

44 (i) change water quality standards;

45 (ii) develop or modify total maximum daily load requirements;

46 (iii) modify wasteloads or other regulatory requirements for permits; or

47 (iv) change rules or other regulatory guidance.

48 (d) "Study" means a written analysis conducted by or otherwise relied upon by the
49 division in support of a proposal.

50 (e) "Technology based nutrient effluent limits" are maximum nutrient limitations based
51 on the availability of technology to achieve the limitations, rather than on a water quality
52 standard or a total maximum daily load standard.

53 (2) The director shall initiate an independent peer review when the following
54 conditions are met:

55 (a) a challenging party challenges in writing a study or the technical or scientific data
56 upon which a proposal is based and requests an independent peer review;

57 (b) if the independent peer review is related to examining a technology based nutrient
58 effluent limit, the challenging party provides written notice to the division requesting an
59 independent peer review before the technology based nutrient effluent limit is adopted into a
60 permit issued by the division;

61 (c) if the independent peer review is not related to examining a technology based
62 nutrient effluent limit, the challenging party provides written notice to the division requesting
63 an independent peer review related to a proposal before the proposal has been adopted by the
64 division or the board;

65 (d) the challenging party agrees to provide the funding to pay for the independent peer
66 review; and

67 (e) the challenging party would be substantially impacted by the adoption of the
68 proposal.

69 (3) The director shall ensure that the independent peer review is completed within one
70 year from the date the peer review panel described in Subsection (5) is selected.

71 (4) (a) If there is more than one challenging party challenging a study or the technical
72 or scientific data upon which a proposal is based, the challenges will be consolidated into one
73 independent peer review.

74 (b) If challenges are consolidated into one independent peer review, the challenging
75 parties will be responsible for allocating the costs of the independent peer review among the
76 challenging parties.

77 (5) (a) When an independent peer review is conducted, there shall be appointed to a
78 peer review panel a minimum of three independent experts who are mutually agreeable to both
79 the division and the challenging party.

80 (b) Any additional independent experts appointed to the panel shall be mutually
81 agreeable to both the division and the challenging party.

82 (c) If an independent peer review panel has not been appointed within 60 days of the
83 day on which the director receives a written request for an independent peer review, a
84 three-person panel shall be selected as follows:

85 (i) one independent expert selected by the division;

86 (ii) one independent expert selected by the challenging party or, if more than one
87 challenge has been consolidated as described in Subsection (4), one independent expert

88 selected and mutually agreed to by the challenging parties; and

89 (iii) one independent expert mutually agreeable to the independent experts described in
90 Subsections (5)(c)(i) and (ii).

91 (6) (a) An independent peer review panel shall conduct its review in general
92 accordance with the guidance contained in the United States Environmental Protection
93 Agency's Peer Review Handbook.

94 (b) As part of an independent peer review, the independent peer review panel shall
95 allow for written public comment on the proposal being reviewed prior to issuing a written
96 report.

97 (7) An independent peer review panel shall prepare a final written report that:

98 (a) includes the findings of each member of the panel;

99 (b) is supported by the majority of the panel;

100 (c) includes an analysis of the panel's confidence, certainty, and major data gaps, if any,
101 related to the scientific basis behind the proposal; and

102 (d) includes one of the following findings:

103 (i) the proposal is scientifically defensible;

104 (ii) the proposal is not scientifically defensible; or

105 (iii) the proposal is scientifically defensible with conditions developed by the panel.

106 (8) In addition to the requirements described in Subsection (7), if an independent peer
107 review panel is examining a technology based nutrient effluent limit for a specified
108 downstream water body or a series of hydrologically connected water bodies, the panel's
109 written report shall find one of the following:

110 (a) the technology based nutrient effluent limit is scientifically necessary to protect the
111 designated beneficial uses of the specified downstream water body or the series of
112 hydrologically connected water bodies; or

113 (b) the technology based nutrient effluent limit is not scientifically necessary to protect
114 the designated beneficial uses of the specified downstream water body or the series of
115 hydrologically connected water bodies.

116 (9) The findings and any conditions of an independent peer review panel shall be
117 incorporated into a proposal as needed to ensure the scientific accuracy of the proposal.

118 (10) A proposal reviewed by an independent peer review panel that is found

119 scientifically defensible or scientifically defensible with conditions may be forwarded to the
120 board or to the director for further consideration and action as applicable.

121 (11) If technology based nutrient effluent limits in a proposal are found by an
122 independent peer review to not be scientifically necessary to protect a specified downstream
123 water body or series of hydrologically connected water bodies, the challenging party shall be
124 granted a variance by the division exempting compliance with the technology based effluent
125 limitation.