

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: David P. Hinkins

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 Quality in the event a total daily maximum load strategy is rejected;
- ▶ requires that any board-approved strategy or recommendation that will cost between \$5,000,000 and \$100,000,000 be reviewed by the Legislative Interim Committee for Natural Resources, Agriculture and Environment;
- ▶ requires that any board-approved strategy or recommendation that will cost over \$100,000,000 be approved by the Legislature; and



26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill takes effect on July 1, 2012.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **19-5-102**, as last amended by Laws of Utah 2001, Chapter 274

34 **19-5-104**, as last amended by Laws of Utah 2008, Chapters 336 and 382

35 ENACTS:

36 **19-5-104.5**, Utah Code Annotated 1953



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

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

40 **19-5-102. Definitions.**

41 As used in this chapter:

42 (1) "Board" means the Water Quality Board created in Section 19-1-106.

43 (2) "Contaminant" means any physical, chemical, biological, or radiological substance
44 or matter in water.

45 (3) "Discharge" means the addition of any pollutant to any waters of the state.

46 (4) "Discharge permit" means a permit issued to a person who:

47 (a) discharges or whose activities would probably result in a discharge of pollutants
48 into the waters of the state; or

49 (b) generates or manages sewage sludge.

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

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

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

55 (8) "Point source":

56 (a) means any discernible, confined, and discrete conveyance, including but not limited

57 to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
58 concentrated animal feeding operation, or vessel or other floating craft, from which pollutants
59 are or may be discharged; and

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

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

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

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

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

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

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

75 [~~(14)~~] (15) "Treatment works" means any plant, disposal field, lagoon, dam, pumping
76 station, incinerator, or other works used for the purpose of treating, stabilizing, or holding
77 wastes.

78 [~~(15)~~] (16) "Underground injection" means the subsurface emplacement of fluids by
79 well injection.

80 [~~(16)~~] (17) "Underground wastewater disposal system" means a system for disposing of
81 domestic wastewater discharges as defined by the board and the executive director.

82 [~~(17)~~] (18) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator
83 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,
84 radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and
85 industrial, municipal, and agricultural waste discharged into water.

86 [~~(18)~~] (19) "Waters of the state":

87 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,

88 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface
89 and underground, natural or artificial, public or private, which are contained within, flow
90 through, or border upon this state or any portion of the state; and

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

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

95 **19-5-104. Powers and duties of board.**

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

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

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

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

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

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

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

112 (i) implement the awarding of construction loans to political subdivisions and
113 municipal authorities under Section 11-8-2, including:

114 (A) requirements pertaining to applications for loans;

115 (B) requirements for determination of eligible projects;

116 (C) requirements for determination of the costs upon which loans are based, which
117 costs may include engineering, financial, legal, and administrative expenses necessary for the
118 construction, reconstruction, and improvement of sewage treatment plants, including major

- 119 interceptors, collection systems, and other facilities appurtenant to the plant;
- 120 (D) a priority schedule for awarding loans, in which the board may consider in addition
121 to water pollution control needs any financial needs relevant, including per capita cost, in
122 making a determination of priority; and
- 123 (E) requirements for determination of the amount of the loan;
- 124 (ii) implement the awarding of loans for nonpoint source projects pursuant to Section
125 73-10c-4.5;
- 126 (iii) set effluent limitations and standards subject to Section 19-5-116;
- 127 (iv) implement or effectuate the powers and duties of the board; and
- 128 (v) protect the public health for the design, construction, operation, and maintenance of
129 underground wastewater disposal systems, liquid scavenger operations, and vault and earthen
130 pit privies;
- 131 (g) issue, modify, or revoke orders:
- 132 (i) prohibiting or abating discharges;
- 133 (ii) requiring the construction of new treatment works or any parts of them, or requiring
134 the modification, extension, or alteration of existing treatment works as specified by board rule
135 or any parts of them, or the adoption of other remedial measures to prevent, control, or abate
136 pollution;
- 137 (iii) setting standards of water quality, classifying waters or evidencing any other
138 determination by the board under this chapter; and
- 139 (iv) requiring compliance with this chapter and with rules made under this chapter;
- 140 (h) (i) review plans, specifications, or other data relative to disposal systems or any part
141 of disposal systems;
- 142 (ii) issue construction or operating permits for the installation or modification of
143 treatment works or any parts of the treatment works; and
- 144 (iii) delegate the authority to issue an operating permit to a local health department;
- 145 (i) after public notice and opportunity for a public hearing, issue, continue in effect,
146 revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe
147 to:
- 148 (i) control the management of sewage sludge; or
- 149 (ii) prevent or control the discharge of pollutants, including effluent limitations for the

150 discharge of wastes into the waters of the state;

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

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

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

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

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

163 (i) injection may result in the presence of any contaminant in underground water that
164 supplies or can reasonably be expected to supply any public water system, as defined in Section
165 19-4-102; and

166 (ii) the presence of the contaminant may:

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

169 (B) otherwise adversely affect the health of persons;

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

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

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

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

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

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

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

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

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

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

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

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

195 (a) in determining eligible project costs; and

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

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

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

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

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

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

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

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

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

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

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

218 **19-5-104.5. Legislative approval.**

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

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

225 (b) for approval to the Legislature if the strategy will require a public expenditure of
226 \$100,000,000 or more.

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

229 (a) suggest additional areas of consideration; or

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

232 Section 4. **Effective date.**

233 This bill takes effect on July 1, 2012.