

Representative Keven J. Stratton proposes the following substitute bill:

DEPARTMENT OF ENVIRONMENTAL QUALITY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions relating to the Water Quality Board.

Highlighted Provisions:

This bill:

- ▶ provides for review of certain Water Quality Board rules or standards;
- ▶ modifies the duties of the Administrative Rules Review Committee; and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-5-104.5, as enacted by Laws of Utah 2011, Chapter 304

63G-3-501, as last amended by Laws of Utah 2016, Chapter 193

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

Section 1. Section **19-5-104.5** is amended to read:



26 **19-5-104.5. Legislative approval.**

27 (1) Before sending a board-approved report, strategy, or recommendation that will
 28 recommend a total maximum daily load end point and implementation strategy to the EPA for
 29 review and approval, ~~[the Water Quality Board]~~ or before the board adopts a state established
 30 nitrogen, phosphorus, or ammonia rule or standard, the board shall submit the report, strategy,
 31 rule, standard, or recommendation:

32 (a) for review to the Natural Resources, Agriculture, and Environment Interim
 33 Committee if the report, strategy, rule, standard, or recommendation will require [a] an
 34 individual ~~H→~~ public ~~←H~~ facility ~~H→~~ , or a group of private agricultural facilities, ~~←H~~ with
 34a an approved Utah pollutant discharge elimination system permit ~~H→~~ or a group of private
 34b entities ~~←H~~ to
 35 make ~~H→~~ [a public or private] an ~~←H~~ expenditure in excess of \$10,000,000 but less than
 35a \$100,000,000 for
 36 compliance either through an initial capital investment or through operational costs over a
 37 20-year period; or

38 (b) for approval to the Legislature if the strategy, rule, or standard will require [a] an
 39 individual ~~H→~~ public ~~←H~~ facility ~~H→~~ , or a group of private agricultural facilities, ~~←H~~ with
 39a an approved Utah pollutant discharge elimination system permit ~~H→~~ or a group of private
 39b entities ~~←H~~ to
 40 make ~~H→~~ [a public or private] an ~~←H~~ expenditure of \$100,000,000 or more either through an
 40a initial capital
 41 investment or through operational costs over a 20-year period.

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

44 ~~[(a) suggest additional areas of consideration; or]~~

45 ~~[(b) recommend the report, strategy, or recommendation be re-evaluated by the Water~~
 46 ~~Quality Board.]~~

47 (2) (a) An impacted facility, using an independent licensed engineer employed by a
 48 facility, shall determine an expenditure under Subsection (1)(a) or (b) using industry accepted
 49 project budgetary cost estimate methods.

50 (b) The board may evaluate and report on an expenditure estimate determined under
 51 Subsection (2)(a).

52 (3) In conducting a review under Subsection (1)(a), the Natural Resources, Agriculture,
 53 and Environment Interim Committee:

54 (a) shall consider the impact of the report, strategy, rule, standard, or recommendation
 55 on:

56 (i) economic costs and benefits;

- 57 (ii) public health; and
- 58 (iii) the environment; and
- 59 (b) may refer the report, strategy, rule, standard, or recommendation to the board:
- 60 (i) for final action; or
- 61 (ii) for re-evaluation followed by further review by the committee.

62 Section 2. Section **63G-3-501** is amended to read:

63 **63G-3-501. Administrative Rules Review Committee.**

64 (1) (a) There is created an Administrative Rules Review Committee of the following
65 10 permanent members:

66 (i) five members of the Senate appointed by the president of the Senate, no more than
67 three of whom may be from the same political party; and

68 (ii) five members of the House of Representatives appointed by the speaker of the
69 House of Representatives, no more than three of whom may be from the same political party.

70 (b) Each permanent member shall serve:

71 (i) for a two-year term; or

72 (ii) until the permanent member's successor is appointed.

73 (c) (i) A vacancy exists when a permanent member ceases to be a member of the
74 Legislature, or when a permanent member resigns from the committee.

75 (ii) When a vacancy exists:

76 (A) if the departing member is a member of the Senate, the president of the Senate
77 shall appoint a member of the Senate to fill the vacancy; or

78 (B) if the departing member is a member of the House of Representatives, the speaker
79 of the House of Representatives shall appoint a member of the House of Representatives to fill
80 the vacancy.

81 (iii) The newly appointed member shall serve the remainder of the departing member's
82 unexpired term.

83 (d) (i) The president of the Senate shall designate a member of the Senate appointed
84 under Subsection (1)(a)(i) as a cochair of the committee.

85 (ii) The speaker of the House of Representatives shall designate a member of the
86 House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.

87 (e) Three representatives and three senators from the permanent members are a quorum

88 for the transaction of business at any meeting.

89 (f) (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each
90 month to review new agency rules, amendments to existing agency rules, and repeals of
91 existing agency rules.

92 (ii) The committee chairs may suspend the meeting requirement described in
93 Subsection (1)(f)(i) at the committee chairs' discretion.

94 (2) The office shall submit a copy of each issue of the bulletin to the committee.

95 (3) (a) The committee shall exercise continuous oversight of the rulemaking process.

96 (b) The committee shall examine each rule submitted by an agency to determine:

97 (i) whether the rule is authorized by statute;

98 (ii) whether the rule complies with legislative intent;

99 (iii) the rule's impact on the economy and the government operations of the state and
100 local political subdivisions; [~~and~~]

101 (iv) the rule's impact on affected persons[-];

102 (v) the rule's total cost to entities regulated by the state;

103 (vi) the rule's benefits to the citizens of the state; and

104 (vii) whether adoption of the rule requires legislative notice or approval.

105 (c) To carry out these duties, the committee may examine any other issues that the
106 committee considers necessary. The committee may also notify and refer rules to the chairs of
107 the interim committee that has jurisdiction over a particular agency when the committee
108 determines that an issue involved in an agency's rules may be more appropriately addressed by
109 that committee.

110 (d) In reviewing a rule, the committee shall follow generally accepted principles of
111 statutory construction.

112 (4) When the committee reviews existing rules, the committee chairs shall invite the
113 Senate and House chairs of the standing committee and of the appropriation subcommittee that
114 have jurisdiction over the agency whose existing rules are being reviewed to participate as
115 nonvoting, ex officio members with the committee.

116 (5) (a) The committee may request that the Office of the Legislative Fiscal Analyst
117 prepare a fiscal note on any rule.

118 (b) If the fiscal impact of a rule is greater than \$10,000,000 to a single entity or

119 \$100,000,000 to a group of entities, as determined by the Office of the Legislative Fiscal
120 Analyst under Subsection (5)(a), the rule shall be referred to the relevant appropriations
121 subcommittee for review.

122 (6) In order to accomplish the committee's functions described in this chapter, the
123 committee has all the powers granted to legislative interim committees under Section 36-12-11.

124 (7) (a) The committee may prepare written findings of the committee's review of a rule
125 and may include any recommendations, including legislative action.

126 (b) When the committee reviews a rule, the committee shall provide to the agency that
127 enacted the rule:

128 (i) the committee's findings, if any; and

129 (ii) a request that the agency notify the committee of any changes the agency makes to
130 the rule.

131 (c) The committee shall provide a copy of the committee's findings, if any, to:

132 (i) any member of the Legislature, upon request;

133 (ii) any person affected by the rule, upon request;

134 (iii) the president of the Senate;

135 (iv) the speaker of the House of Representatives;

136 (v) the Senate and House chairs of the standing committee that has jurisdiction over the
137 agency that made the rule; and

138 (vi) the Senate and House chairs of the appropriation subcommittee that has
139 jurisdiction over the agency that made the rule.

140 (8) (a) The committee may submit a report on its review of state agency rules to each
141 member of the Legislature at each regular session.

142 (b) The report shall include:

143 (i) any findings and recommendations the committee made under Subsection (7);

144 (ii) any action an agency took in response to committee recommendations; and

145 (iii) any recommendations by the committee for legislation.