HOUSE BILL 153

Full Bill Information

Individual Links:

Bill Text

Statement of Purpose / Fiscal Note

H0153

by ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

WATER QUALITY - Amends existing law relating to water quality to provide a policy relating to Tier I, II and III protections associated with water quality; to provide for an antidegradation review associated with the issuance of certain general permits, to provide that the department may presume certain discharges are insignificant or that certain pollution controls are the least degrading alternative if supported by the permit record; to provide for the identification of Tier II waters; to provide for the determination of appropriate levels of protection; to provide that the department shall determine whether certain activities or discharges are insignificant; and to provide for the approval of specified rules.

02/11 House intro - 1st rdg - to printing

02/14 Rpt prt - to Env

02/17 Rpt out - rec d/p - to 2nd rdg

02/18 2nd rdg - to 3rd rdg

02/23 3rd rdg - PASSED - 54-14-2

AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Bayer, Bedke, Bell, Bilbao, Black, Block, Bolz, Boyle, Chadderdon(Chadderdon), Collins, Crane, DeMordaunt, Ellsworth, Eskridge, Gibbs(Wheeler), Guthrie, Hagedorn, Hart, Hartgen, Harwood, Henderson, Lake, Loertscher, Luker, Marriott, McGeachin, McMillan, Nesset, Nielsen, Nonini, Palmer, Patrick, Perry, Raybould, Roberts, Schaefer, Shepherd, Shirley, Sims, Smith(24), Stevenson, Takasugi(Batt), Thayn, Thompson, Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker

NAYS -- Buckner-Webb, Burgoyne, Chew, Cronin, Higgins, Jaquet, Killen, King, Lacey, Pence, Ringo, Rusche, Smith(30), Trail

Absent and excused -- Moyle, Simpson

Floor Sponsor - Raybould

Title apvd - to Senate

02/24 Senate intro - 1st rdg - to Res/Env

03/08 Rpt out - rec d/p - to 2nd rdg

03/09 2nd rdg - to 3rd rdg

03/11 3rd rdg - PASSED - 26-6-3

AYES -- Andreason, Bair, Brackett, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Keough, Lodge, McGee, McKague, Mortimer, Nuxoll, Pearce, Siddoway, Smyser, Stegner, Tippets,

Toryanski, Vick, Winder

NAYS -- Bilyeu, Bock, LeFavour, Malepeai, Stennett, Werk

Absent and excused -- Broadsword, McKenzie, Schmidt

Floor Sponsor - Bair

Title apvd - to House

03/14 To enrol

03/15 Rpt enrol - Sp signed

03/16 Pres signed

03/17 To Governor

03/18 Delivered to Governor on 03/17

03/22 Governor signed

Session Law Chapter 116 Effective: 03/22/11

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 153

BY ENVIRONMENT, ENERGY, AND TECHNOLOGY COMMITTEE

AN ACT

RELATING TO WATER QUALITY; AMENDING SECTION 39-3601, IDAHO CODE, TO RE-VISE PROVISIONS OF LEGISLATIVE INTENT; AMENDING SECTION 39-3602, IDAHO CODE, TO DEFINE TERMS, TO REMOVE A DEFINITION AND TO REVISE A DEFINI-TION; AMENDING SECTION 39-3603, IDAHO CODE, TO PROVIDE A POLICY RELAT-ING TO TIER I, II AND III PROTECTIONS ASSOCIATED WITH WATER QUALITY, TO PROVIDE FOR IMPLEMENTATION, TO PROVIDE FOR ANTIDEGRADATION REVIEWS AS-SOCIATED WITH THE ISSUANCE OF CERTAIN GENERAL PERMITS, TO PROVIDE THAT THE DEPARTMENT MAY PRESUME CERTAIN DISCHARGES ARE INSIGNIFICANT OR THAT CERTAIN POLLUTION CONTROLS ARE THE LEAST DEGRADING ALTERNATIVE IF SUP-PORTED BY THE PERMIT RECORD, TO PROVIDE FOR THE IDENTIFICATION OF TIER II WATERS, TO PROVIDE FOR THE DETERMINATION OF APPROPRIATE LEVELS OF PROTECTION, TO PROVIDE THAT THE DEPARTMENT SHALL DETERMINE WHETHER CER-TAIN ACTIVITIES OR DISCHARGES ARE INSIGNIFICANT, TO PROVIDE A GUIDELINE AND TO PROVIDE THAT THE DEPARTMENT MAY REQUEST ADDITIONAL INFORMATION; AMENDING SECTION 39-3623, IDAHO CODE, TO PROVIDE FOR THE APPROVAL OF SPECIFIED RULES; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

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SECTION 1. That Section 39-3601, Idaho Code, be, and the same is hereby amended to read as follows:

39-3601. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE IN-TENT. The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the director of the department of environmental quality in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of streams, lakes and other surface navigable waters of the United States, the legislature declares that it is the purpose of this chapter to enhance and preserve the quality and value of the surface water resources of navigable waters of the United States within the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this chapter, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this chapter. It is the intent of the legislature that the state of Idaho fully

meet the goals and requirements of the federal clean water act and that the rules promulgated under this chapter not impose requirements beyond those of the federal clean water act.

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 SECTION 2. That Section 39-3602, Idaho Code, be, and the same is hereby amended to read as follows:

- 39-3602. DEFINITIONS. Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:
- (1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.
- (2) "Attainable" beneficial uses means uses that can be achieved by the implementation of required effluent limits for point sources and cost-effective and reasonable best management practices for nonpoint sources.
- (3) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.
 - (4) "Board" means the board of environmental quality.
- (5) "Control strategies" means cost-effective actions in TMDL implementation plans to control the discharge of pollutants that can reasonably be taken to improve the water quality within the physical, operational, economic and other constraints that affect individual enterprises and communities.
- (6) "Degradation" or "lower water quality" means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body.
 - (7) "Department" means the department of environmental quality.
- (78) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil and water conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of environmental quality for all other activities.
- $(\frac{89}{2})$ "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.
- $(9\underline{10})$ "Director" means the director of the department of environmental quality, or his or her designee.
- (101) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

 (1 ± 2) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses may form the basis for subcategories of designated uses.

- (123) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.
- (13) "Lower water quality" means a measurable adverse change in a chemical, physical, or biological parameter of water relevant to a designated beneficial use, and which can be expressed numerically. Measurable adverse change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices.
- (14) "General permit" means an NPDES permit issued by the U.S. environmental protection agency authorizing a category of discharges under the federal clean water act or a nationwide or regional permit issued by the U.S. army corps of engineers under the federal clean water act.
- (15) "Integrated report" means the consolidated listing and reporting of the state's water quality status pursuant to the federal clean water act.
- $(14\underline{6})$ "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.
- (157) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.
- (168) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.
- (179) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(1820) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(1921) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(202) "Point source" 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. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(213) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(224) "Reference stream or condition" means one (1) of the following:

- (a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or
- (b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or
- (c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(235) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

 $(24\underline{6})$ "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees

to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

- (257) "Soil and water conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.
- (268) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.
 - (279) "State" means the state of Idaho.

- (2830) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.
- (2931) "Subbasin assessment" means a document that describes a watershed or watersheds for which a total maximum daily load is proposed, the water quality concerns, the status and attainability of designated uses and water quality criteria for individual water bodies, the nature and location of pollutant sources, past and ongoing pollutant control activities, and such other information that the director with the advice of the local watershed advisory group determines is pertinent to the analysis of water quality and the development and implementation of a total maximum daily load.
- (302) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.
- (3±3) "Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state the navigable waters of the United States as defined in the federal clean water act. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state.
- (324) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.
- $(3\frac{3}{5})$ "Water quality standards" are the designated uses of a water body and water quality criteria necessary to support those uses, and an antidegradation policy.
- $(34\underline{6})$ "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this

chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

SECTION 3. That Section 39-3603, Idaho Code, be, and the same is hereby amended to read as follows:

- 39-3603. GENERAL WATER QUALITY STANDARD AND ANTIDEGRADATION POLICY AND IMPLEMENTATION. (1) Policy.
 - (a) Maintenance of existing uses for all waters -- Tier I protection. The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected.
 - (b) High quality waters -- Tier II protection. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully.
 - (c) Outstanding resource waters -- Tier III protection. Where an outstanding resource water has been designated by the legislature that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.
 - (2) Implementation.

(a) General permits. For general permits issued on or after July 1, 2011, the department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the department determines do not adequately address antidegradation, the department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation If supported by the permit record, the department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in the department's rules. (b) Identification of Tier II waters. The department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved integrated report and supporting data will be used to determine

the appropriate level of protection as follows:

Water bodies identified in the integrated report as fully supporting assessed uses will be provided Tier II protection. (ii) Water bodies identified in the integrated report as not as-sessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. (iii) Water bodies identified in the integrated report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows: 1. For aquatic life uses identified as impaired for dis-solved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological com-munity is present, as described in the water body assessment guidance published by the department, then the water body shall receive Tier II protection for aquatic life. 2. For recreational uses, if water quality data show com-pliance with those levels of water quality criteria listed in the department's rules, then the water body shall receive Tier II protection for recreational uses. (iv) Special resource waters listed in the department's rules shall be evaluated in the same fashion as all other waters. Tier II analysis for insignificant activity or discharge. department shall consider the size and character of an activity or dis-

charge or the magnitude of its effect on the receiving stream and shall determine whether it is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls, alternatives analysis or socioeconomic justification is required.

(i) The department shall determine insignificance when the pro-

posed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%).

(ii) The department may request additional information from the applicant in making a determination whether a proposed change in an activity or discharge is insignificant.

SECTION 4. That Section 39-3623, Idaho Code, be, and the same is hereby amended to read as follows:

39-3623. EFFECT OF RULES. Every rule promulgated within the authority conferred in sections 39-3617 through 39-3622, Idaho Code, shall be of temporary effect and shall become permanent only by enactment of statute at the first regular session following adoption of the rule. Rules not approved in the above manner shall be rejected, null, void and of no force and effect on July 1, following submission of the rules to the legislature.

(1) The rules promulgated within the authority conferred in this act and adopted by the board of health and welfare on January 31, 1990, and contained in IDAPA 16.01.2003,31 and 16.01.2003,32 and 16.01.2053,01 through 16.01.2053,07, are hereby approved by the legislature.

(2) The rules promulgated within the authority conferred in this act and adopted by the board of environmental quality on November 10, 2010, and

contained in IDAPA 58.01.02.010.71, 58.01.02.010.72, 58.01.02.051.03 and 58.01.02.052.09 are hereby approved by the legislature.

 SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

STATEMENT OF PURPOSE

RS20340

The Department of Environmental Quality is required by the Clean Water Act to have a plan to implement the State's antidegradation policy. In 2010 the agency undertook negotiated rulemaking to revise its water quality standards to include procedures for implementing that policy. This process produced a pending rule that is before the legislature. For that rule to work properly, several changes to the water quality statute are needed.

- 1. This legislation changes the definition of "Lower water quality" in Idaho Code Section 39-3602 (13). The current definition of lower water quality will not work with the proposed implementation plan.
- 2. This legislation approves changes to the Outstanding Resource Water antidegradation provisions in the water quality standards. Idaho Code requires that any rule relating to outstanding resource waters won't take effect unless enacted by statute.
- 3. It is anticipated that some provisions of the pending rule will be rejected by the legislature. This legislation replaces those provisions with language that is more consistent with the intent of Title 39, Chapter 36.

FISCAL NOTE

No fiscal impact.

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