

House Bill 3676

Sponsored by COMMITTEE ON RULES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes legislative findings regarding water quality.

Requires Environmental Quality Commission and Department of Environmental Quality to consider certain costs of implementing water quality standards in relation to human health benefits.

Requires Department of Environmental Quality to identify certain permittees to apply for pilot water quality variance, and, if department approves variances, to submit variances to United States Environmental Protection Agency. Requires department to develop certain water quality variance templates if permittees do not apply for variance. Requires report to Legislative Assembly.

Requires Department of Environmental Quality to begin work on multiple discharger water quality variance, or multiple discharger variances for multiple sectors, from applicable human health criteria for polychlorinated biphenyls or certain other pollutant and to submit variance to Environmental Quality Commission and, if adopted by commission, to United States Environmental Protection Agency. Requires report to Legislative Assembly.

Requires Department of Environmental Quality to identify certain surface water of state where arsenic concentrations naturally exceed, or are likely to naturally exceed, applicable water quality standard and into which certain permittees discharge arsenic concentrations, and to propose revisions to water quality standards. Requires department to submit proposed revisions to Environmental Quality Commission and, if adopted by commission, to United States Environmental Protection Agency. Requires report to Legislative Assembly.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to water; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS**
5 **chapter 468B.**

6 **SECTION 2. The Legislative Assembly finds and declares that:**

7 (1) **ORS 468B.035 and the Federal Water Pollution Control Act, P.L. 92-500, as amended,**
8 **require the Environmental Quality Commission to establish water quality standards for the**
9 **protection of human health in surface waters of the state that are waters of the United**
10 **States. These standards are implemented through wastewater discharge permits for municipi-**
11 **pal and industrial facilities and through other legal mechanisms.**

12 (2) **A source of pollutants in waters of the state is not always within the legal or practi-**
13 **cable control of this state. This is often especially true of naturally occurring earth metals**
14 **that may be designated pollutants, pollutants from past human activities, pollutants con-**
15 **tributed in small amounts from many different human activities and pollutants generated**
16 **outside this state that ultimately reach waters of the state through combustion sources,**
17 **global air deposition and other means. As water quality standards for the protection of hu-**
18 **man health become more stringent, achieving these standards becomes increasingly difficult**
19 **because the sources of pollutants that are outside this state's legal or practicable control**
20 **become a larger proportion of the pollutant sources and may alone cause the standards to**
21 **be exceeded.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) As water quality standards for the protection of human health become increasingly
 2 stringent, the marginal benefits to human health may decrease, and the absolute and mar-
 3 ginal economic, social and environmental costs of achieving the standards may increase.

4 (4) Because of the factors described in this section, excessively stringent water quality
 5 standards for the protection of human health may result in wastewater permit discharge
 6 limits or other requirements that are unreasonable because they are infeasible or impossible
 7 to achieve and provide negligible or no human health benefits.

8 **SECTION 3.** When implementing water quality standards intended to protect human
 9 health, the Environmental Quality Commission and the Department of Environmental Qual-
 10 ity shall, to the extent allowed by the Federal Water Pollution Control Act, P.L. 92-500, as
 11 amended, and available agency resources, consider whether the economic, social and envi-
 12 ronmental costs are reasonable in relation to the human health benefits likely to be
 13 achieved.

14 **SECTION 4.** (1) By October 1, 2011, the Department of Environmental Quality shall
 15 identify one major municipal and one major industrial National Pollutant Discharge Elimi-
 16 nation System permittee in this state that are willing to apply for a pilot water quality var-
 17 iance from a water quality standard for the protection of human health not later than
 18 December 15, 2011. Not later than December 15, 2012, the department shall either approve
 19 the variances and submit the variances to the United States Environmental Protection
 20 Agency for its approval or disapprove the variances.

21 (2) If by December 15, 2011, the department does not receive applications for the pilot
 22 water quality variances described in subsection (1) of this section, the department shall de-
 23 velop by December 15, 2012, water quality variance templates for major municipal and major
 24 industrial National Pollutant Discharge Elimination System permittees, in lieu of the pilot
 25 water quality variances. The water quality variance templates shall address permittees that
 26 cannot achieve effluent limits based on human health water quality criteria and shall iden-
 27 tify:

28 (a) The information that the permittee must submit to the department to support the
 29 variance;

30 (b) The specific criteria that must be met to obtain the variance; and

31 (c) The types of conditions that apply to the variance.

32 (3) By March 31, 2013, the department shall report to the Seventy-seventh Legislative
 33 Assembly on the pilot water quality variances and the water quality variance templates de-
 34 scribed in subsections (1) and (2) of this section. The report shall include, but need not be
 35 limited to:

36 (a) A description of the water quality variances or water quality variance templates;

37 (b) The department's reasons for approving or disapproving any applications made under
 38 subsection (1) of this section if the department develops pilot water quality variances with
 39 the permittee;

40 (c) The United States Environmental Protection Agency's approval or disapproval of the
 41 water quality variances, or comment on the water quality variances described in the water
 42 quality variance templates;

43 (d) The department personnel and other resources required to process the water quality
 44 variance applications or water quality variances described in the water quality variance
 45 templates, as well as the permittees' costs to apply for the variances or estimated costs to

1 apply for the water quality variances described in the water quality variance templates, to
2 the extent that information is available to the department or that the information can be
3 estimated; and

4 (e) The department's process for seeking comments on the water quality variances or
5 water quality variances described in the water quality variance templates from the public,
6 the United States Environmental Protection Agency and other appropriate state and federal
7 agencies and tribal governments.

8 **SECTION 5.** (1) Not later than January 1, 2013, the Department of Environmental Quality
9 shall begin work on a multiple discharger water quality variance, or multiple discharger
10 variances for multiple sectors, from the applicable human health criteria for polychlorinated
11 biphenyls or another pollutant for which there is a more immediate need. The multiple
12 discharger variances shall be prepared with conditions or criteria that identify the
13 permittees that are eligible for the multiple discharger water quality variances. Separate
14 multiple discharger variances may be prepared for different categories of permittees.

15 (2) Within 20 months of beginning work on a single multiple discharge variance, or within
16 24 months of beginning work on multiple discharge variances for multiple sectors, the de-
17 partment shall submit the multiple discharger variance or variances described in this section
18 to the Environmental Quality Commission for adoption, and if so adopted, to the United
19 States Environmental Protection Agency for approval.

20 (3) By March 13, 2015, the department shall report to the Seventy-eighth Legislative As-
21 sembly on whether the multiple discharger variances required by this section were adopted
22 by the Environmental Quality Commission and, if so, whether the variances were submitted
23 to and approved by the United States Environmental Protection Agency.

24 **SECTION 6.** (1) By November 1, 2011, the Department of Environmental Quality shall
25 identify one or more surface waters of the state that are waters of the United States where
26 arsenic concentrations naturally exceed or are likely to naturally exceed the applicable water
27 quality standard for the protection of human health and into which one or more major Na-
28 tional Pollutant Discharge Elimination System permittees discharge arsenic concentrations.
29 The department shall use readily available information to identify the waters, including
30 listings pursuant to section 303(d) of the Federal Water Pollution Control Act, P.L. 92-500,
31 as amended.

32 (2)(a) For any waters identified pursuant to subsection (1) of this section for which there
33 are discharges permitted by the Department of Environmental Quality under the National
34 Pollutant Discharge Elimination System permit program, the department shall propose re-
35 visions to the human health water quality standards for arsenic or relevant beneficial uses
36 that result in arsenic standards that are no more stringent than naturally occurring
37 pollutant levels. In determining the appropriate revisions to water quality standards, the
38 department shall consider whether and to what extent drinking water, fishing and other
39 beneficial uses protected by the human health water quality standards are attainable at the
40 natural arsenic concentrations.

41 (b) The department shall prepare and submit to the Environmental Quality Commission
42 by February 28, 2013, proposed revisions to the water quality standards for arsenic pursuant
43 to paragraph (a) of this subsection that are no more stringent than standards that reflect
44 the natural pollutant levels.

45 (c) If the commission adopts the revised water quality standards, the department shall

1 submit the water quality standards revised pursuant to paragraph (b) of this subsection to
2 the United States Environmental Protection Agency for approval.

3 (3) The Department of Environmental Quality shall report to the Seventy-seventh Legis-
4 lative Assembly not later than March 31, 2013, on its actions and those of the Environmental
5 Quality Commission pursuant to the provisions of this section.

6 SECTION 7. This 2011 Act being necessary for the immediate preservation of the public
7 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
8 on its passage.

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