

HOUSE BILL NO. 736

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR NUTRIENT POLLUTANT-LOADING OFFSETS,
OFFSET AMOUNTS, AND TRADING CREDITS FOR WATER QUALITY DISCHARGE PERMITS; PROVIDING
RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Nutrient pollutant-loading offsets AND TRADING CREDITS. (1) A point
source discharger permitted UNDER A PERMIT ISSUED pursuant to this part 75-5-401, A POINT SOURCE DISCHARGER
TO STATE SURFACE WATERS may receive a nutrient pollutant-loading offset OFFSETS OR TRADING CREDITS to
achieve SATISFY PERMITTING REQUIREMENTS, INCLUDING NUTRIENT EFFLUENT LIMITATIONS ESTABLISHED PURSUANT
TO THIS PART AND NUTRIENT EFFLUENT LIMITATIONS DERIVED FROM waste load allocations set by: ESTABLISHED
PURSUANT TO 75-5-703.

(a) — a total maximum daily load requirement established pursuant to 75-5-703; or

(b) — a numeric nutrient effluent limitation established pursuant to this part.

(2) — If the actions in subsections (1)(a) and (1)(b) decrease the nutrient loading in a watershed, the
department may:

(a) — issue or modify a discharge permit authorized pursuant to this part to allow discharges of
nutrients to a receiving water body; or

(b) — authorize a reduction in nutrient loading from point and nonpoint pollution sources within the
same 12-digit hydrologic unit code subbasin as designated by the United States geological survey.

(2) NUTRIENT LOADING OFFSETS AND TRADING CREDITS MAY BE AUTHORIZED FOR INCREASES IN OR
CONTINUATION OF NUTRIENT DISCHARGES WHEN A NET DECREASE IN NUTRIENT LOADING WITHIN THE UNITED STATES
GEOLOGICAL SURVEY-DESIGNATED 12-DIGIT HYDROLOGIC UNIT CODE SUBBASIN, OR IMMEDIATELY ADJACENT 12-DIGIT
HYDROLOGIC UNIT CODE SUBBASIN WHEN THE PROJECT IS IN CLOSE PROXIMITY TO THE ADJACENT 12-DIGIT HYDROLOGIC
UNIT CODE SUBBASIN, IS ACHIEVED THROUGH REDUCTIONS FROM OTHER POINT SOURCES OR NONPOINT SOURCES

1 WITHIN THE SUBBASIN, EITHER UP GRADIENT OR DOWN GRADIENT OF THE APPLICANT. THE APPLICANT SHALL QUANTIFY
2 AND VERIFY REDUCTIONS FROM PROJECTS BASED ON THE METHODOLOGIES DEVELOPED BY THE DEPARTMENT
3 PURSUANT TO SUBSECTION (4) OR BASED ON SUFFICIENT AND CREDIBLE SITE-SPECIFIC DATA AND METHODOLOGIES
4 THAT ARE REVIEWED AND ACCEPTED BY THE DEPARTMENT.

5 (3) ~~A point source discharger permitted pursuant to this part may receive a nutrient pollutant~~
6 ~~loading offset due to a reduction in nutrient loading from a point or nonpoint source pollution discharger either~~
7 ~~up-gradient or down-gradient of the permitted point source discharger. FOR REDUCTIONS THAT SATISFY~~
8 ~~SUBSECTIONS (2) AND (4), The THE offset OR TRADING CREDIT must be measured as not less than:~~

9 (a) 100% of a reduction from point source ~~pollution~~ discharges;

10 (b) 80% of a reduction from an up-gradient, nonpoint source ~~pollution~~ discharge; or

11 (c) 50% of a reduction from a down-gradient, nonpoint source ~~pollution~~ discharge.

12 (4) (A) ~~The department shall establish statewide nutrient pollutant loading ACCEPTABLE~~
13 ~~METHODOLOGIES, BASED ON READILY AVAILABLE WATERSHED CHARACTERISTICS, TO DETERMINE THE REDUCTION IN~~
14 ~~NUTRIENT LOADING FOR NONPOINT SOURCES offset amount s for nonpoint pollution sources, including offset~~
15 ~~amounts for:~~

16 (a)(I) ~~riparian fencing programs based on the number of acres fenced FEET OF STREAMBANK;~~

17 (b)(II) ~~riparian vegetation programs based on the number of acres vegetated;~~

18 (c)(III) ~~development of wetlands in areas of irrigation water return flows based on the number of acres~~
19 ~~associated with the return flows; OR~~

20 (d)(IV) ~~removal of septic systems based on the number and size of septic systems removed ; or,~~

21 (e)(B) ~~other OTHER projects AND METHODS MAY BE submitted PROPOSED by an applicant OR PERMITTEE~~
22 ~~that are supported by science and data modeling, unless the amounts are AND ARE NOT contrary to existing~~
23 ~~empirical data.~~

24 (C) THE DEPARTMENT SHALL USE THE METHODOLOGIES ESTABLISHED PURSUANT TO THIS SUBSECTION (4)
25 UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE NUTRIENT LOADING OF THE PROPOSED ACTION WOULD
26 BE SUBSTANTIALLY DIFFERENT FROM THAT DETERMINED BY THE ESTABLISHED METHODOLOGIES.

27
28 NEW SECTION. Section 2. Directions to department. To implement the provisions of [section 1],

1 the department shall amend:

2 (1) department circular DEQ-13, Montana's policy for nutrient trading, as adopted in December
3 2012; and

4 (2) ARM 17.30.1701.

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6 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
7 integral part of Title 75, chapter 5, part 4, and the provisions of Title 75, chapter 5, part 4, apply to [section 1].

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9 NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

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13 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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