

1 HOUSE BILL NO. 664

2 INTRODUCED BY B. MERCER, J. ESP

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE NUTRIENT CRITERIA FOR MONTANA WATER
5 QUALITY STANDARDS; REMOVING REFERENCES TO NUMERIC NUTRIENT STANDARDS IN
6 ADMINISTRATIVE RULE; REPEALING BASE NUMERIC NUTRIENT STANDARDS; PROVIDING
7 DIRECTIONS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING RULEMAKING
8 AUTHORITY; ELIMINATING THE NUTRIENT WORK GROUP; AMENDING SECTION 75-5-103, MCA;
9 REPEALING SECTION 75-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
10

11 WHEREAS, the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and
12 biological integrity of the Nation's waters"; and

13 WHEREAS, the Environmental Protection Agency (EPA) authorized the Montana Department of
14 Environmental Quality (DEQ) to regulate most water quality programs in the state; and

15 WHEREAS, beginning in 1998, the EPA "strongly encouraged" numeric nutrient standards, which the
16 DEQ adopted in 2015; and

17 WHEREAS, from 2011 through 2014, members of the Nutrient Work Group and the public endeavored
18 to develop rules to govern numeric nutrient criteria, rules, and guidance. The work involved interactions
19 between the DEQ and EPA on the proposed rules, variances, and guidance and led to the adoption of rule
20 packages by the Board of Environmental Review. Even though the EPA had clarity on the proposals before
21 they were finalized and had indicated its support for Montana's approach, the agency adopted a rule that made
22 it impossible for Montana's rules and variances from working as intended. The EPA never approved a general
23 variance for private sector dischargers; and

24 WHEREAS, these numeric nutrient standards were not explicitly required by law, and many states have
25 not adopted numeric nutrient standards for all of their bodies of water; and

26 WHEREAS, the 2021 Montana Legislature, recognizing this, chose to re-establish narrative nutrient
27 standards in Senate Bill 358; and

28 WHEREAS, the Nutrient Work Group, which included participants from the DEQ and EPA, worked

1 diligently to assess the viability of a general variance to allow compliance with numeric standards and to
2 develop narrative standards without widespread economic consequences, but to no avail; and

3 WHEREAS, the failure to adopt narrative nutrient standards means that Montana again operates under
4 the old, unattainable numeric nutrient standards; and

5 WHEREAS, Montana's numeric nutrient standards and variances provided for in law and in ARM
6 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626,
7 17.30.627, 17.30.628, 17.30.629, 17.30.660, 17.30.702, 17.30.715, and 17.30.1388 have subsequently proven
8 to be unachievable and burdensome, especially for Montana's municipal wastewater treatment systems.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 NEW SECTION. **Section 1. Department to amend rules.** The department shall amend ARM
13 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626,
14 17.30.627, 17.30.628, 17.30.629, 17.30.702, and 17.30.715 to delete all references to department circular
15 DEQ-12A, base numeric nutrient standards, and nutrient standards variances.

16
17 NEW SECTION. **Section 2. Directions to department.** The department shall:

18 (1) repeal department circular DEQ-12A Montana base numeric nutrient standards as adopted into
19 administrative rule on August 8, 2014; and

20 (2) amend all guidance, assessment methods, total maximum daily load calculations, and other
21 policies and procedures to eliminate reference to or reliance on department circular DEQ-12A.

22
23 **Section 3.** Section 75-5-103, MCA, is amended to read:

24 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter the
25 following definitions apply:

26 (1) "Associated supporting infrastructure" means:

27 (a) electric transmission and distribution facilities;

28 (b) pipeline facilities;

- 1 (c) aboveground ponds and reservoirs and underground storage reservoirs;
- 2 (d) rail transportation;
- 3 (e) aqueducts and diversion dams;
- 4 (f) devices or equipment associated with the delivery of an energy form or product produced at an
- 5 energy development project; or
- 6 (g) other supporting infrastructure, as defined by department rule, that is necessary for an energy
- 7 development project.
- 8 (2) "Board" means the board of environmental review provided for in 2-15-3502.
- 9 (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
- 10 or other wastes, creating a hazard to human health.
- 11 (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- 12 (5) (a) "Currently available data" means data that is readily available to the department at the time
- 13 a decision is made, including information supporting its previous lists of water bodies that are threatened or
- 14 impaired.
- 15 (b) The term does not mean new data to be obtained as a result of department efforts.
- 16 (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
- 17 a parameter. The term does not include those changes in water quality determined to be nonsignificant
- 18 pursuant to 75-5-301(5)(c).
- 19 (7) "Department" means the department of environmental quality provided for in 2-15-3501.
- 20 (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
- 21 includes sewage systems and treatment works.
- 22 (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
- 23 chemical, physical, biological, and other constituents that are discharged into state waters.
- 24 (10) "Energy development project" means each plant, unit, or other development and associated
- 25 developments, including any associated supporting infrastructure, designed for or capable of:
- 26 (a) generating electricity;
- 27 (b) producing gas derived from coal;
- 28 (c) producing liquid hydrocarbon products;

1 (d) refining crude oil or natural gas;

2 (e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
3 incentive pursuant to Title 15, chapter 70, part 5; or

4 (f) transmitting electricity through an electric transmission line with a design capacity of equal to or
5 greater than 50 kilovolts.

6 (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
7 whether or not those uses are included in the water quality standards.

8 (12) "High-quality waters" means all state waters, except:

9 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established
10 by the department's classification rules; and

11 (b) surface waters that:

12 (i) are not capable of supporting any one of the designated uses for their classification; or

13 (ii) have zero flow or surface expression for more than 270 days during most years.

14 (13) "Impaired water body" means a water body or stream segment for which sufficient credible data
15 shows that the water body or stream segment is failing to achieve compliance with applicable water quality
16 standards.

17 (14) "Industrial waste" means a waste substance from the process of business or industry or from
18 the development of any natural resource, together with any sewage that may be present.

19 (15) "Interested person" means a person who has a real property interest, a water right, or an
20 economic interest that is or may be directly and adversely affected by the department's preliminary decision
21 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
22 authorization to degrade high-quality waters.

23 (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to
24 one of its existing or future nonpoint sources or to natural background sources.

25 (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a
26 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
27 maximum change that can occur from the best practicable condition in a surface water without causing a
28 violation of the surface water quality standards.

1 (18) "Local department of health" means the staff, including health officers, employed by a county,
2 city, city-county, or district board of health.

3 (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
4 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
5 thallium, and zinc.

6 (20) "Mixing zone" means an area established in a permit or final decision on nondegradation
7 issued by the department where water quality standards may be exceeded, subject to conditions that are
8 imposed by the department and that are consistent with the rules adopted by the department.

9 ~~(21) "Nutrient work group" means an advisory work group, convened by the department,~~
10 ~~representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and~~
11 ~~other interested parties that will advise the department on nutrient standards, the implementation of those~~
12 ~~standards, and associated economic impacts.~~

13 ~~(22)~~(21) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,
14 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
15 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

16 ~~(23)~~(22) "Outstanding resource waters" means:

17 (a) state surface waters located wholly within the boundaries of areas designated as national parks
18 or national wilderness areas as of October 1, 1995; or

19 (b) other surface waters or ground waters classified by the department under the provisions of 75-
20 5-316 and approved by the legislature.

21 ~~(24)~~(23) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
22 point source.

23 ~~(25)~~(24) "Parameter" means a physical, biological, or chemical property of state water when a value of
24 that property affects the quality of the state water.

25 ~~(26)~~(25) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
26 partnership, individual, or other entity and includes persons resident in Canada.

27 ~~(27)~~(26) "Point source" means a discernible, confined, and discrete conveyance, including but not
28 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or

1 other floating craft, from which pollutants are or may be discharged.

2 ~~(28)~~(27)(a) "Pollution" means:

3 (i) contamination or other alteration of the physical, chemical, or biological properties of state
4 waters that exceeds that permitted by Montana water quality standards, including but not limited to standards
5 relating to change in temperature, taste, color, turbidity, or odor; or

6 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
7 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
8 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds,
9 fish, or other wildlife.

10 (b) The term does not include:

11 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
12 discharge permit rules adopted by the department under this chapter;

13 (ii) activities conducted under this chapter that comply with the conditions imposed by the
14 department in short-term authorizations pursuant to 75-5-308;

15 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal
16 gasification and operating in accordance with a permit issued under 82-4-221.

17 (c) Contamination referred to in ~~subsections (28)(b)(iii) and (28)(b)(iv)~~ subsection (27)(b)(iii) does
18 not require a mixing zone.

19 ~~(29)~~(28)"Sewage" means water-carried waste products from residences, public buildings, institutions,
20 or other buildings, including discharge from human beings or animals, together with ground water infiltration
21 and surface water present.

22 ~~(30)~~(29)"Sewage system" means a device for collecting or conducting sewage, industrial wastes, or
23 other wastes to an ultimate disposal point.

24 ~~(34)~~(30)"Standard of performance" means a standard adopted by the department for the control of the
25 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of
26 the best available demonstrated control technology, processes, operating methods, or other alternatives,
27 including, when practicable, a standard permitting no discharge of pollutants.

28 ~~(32)~~(31)(a) "State waters" means a body of water, irrigation system, or drainage system, either surface

1 or underground.

2 (b) The term does not apply to:

3 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

4 (ii) irrigation waters or land application disposal waters when the waters are used up within the
5 irrigation or land application disposal system and the waters are not returned to state waters.

6 ~~(33)~~(32)"Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in
7 combination with narrative information, that supports a finding as to whether a water body is achieving
8 compliance with applicable water quality standards.

9 ~~(34)~~(33)"Threatened water body" means a water body or stream segment for which sufficient credible
10 data and calculated increases in loads show that the water body or stream segment is fully supporting its
11 designated uses but threatened for a particular designated use because of:

12 (a) proposed sources that are not subject to pollution prevention or control actions required by a
13 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

14 (b) documented adverse pollution trends.

15 ~~(35)~~(34)"Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
16 for point sources and load allocations for both nonpoint sources and natural background sources established at
17 a level necessary to achieve compliance with applicable surface water quality standards.

18 ~~(36)~~(35)"Treatment works" means works, including sewage lagoons, installed for treating or holding
19 sewage, industrial wastes, or other wastes.

20 ~~(37)~~(36)"Waste load allocation" means the portion of a receiving water's loading capacity that is
21 allocated to one of its existing or future point sources.

22 ~~(38)~~(37)"Water quality protection practices" means those activities, prohibitions, maintenance
23 procedures, or other management practices applied to point and nonpoint sources designed to protect,
24 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
25 to treatment requirements, standards of performance, effluent standards, and operating procedures and
26 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

27 ~~(39)~~(38)"Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
28 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

1 ~~(40)~~(39)"Watershed advisory group" means a group of individuals who wish to participate in an
2 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
3 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
4 participate in an advisory capacity as provided in 75-5-704.

5 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires
6 otherwise, in this chapter the following definitions apply:

7 (1) "Associated supporting infrastructure" means:

8 (a) electric transmission and distribution facilities;

9 (b) pipeline facilities;

10 (c) aboveground ponds and reservoirs and underground storage reservoirs;

11 (d) rail transportation;

12 (e) aqueducts and diversion dams;

13 (f) devices or equipment associated with the delivery of an energy form or product produced at an
14 energy development project; or

15 (g) other supporting infrastructure, as defined by department rule, that is necessary for an energy
16 development project.

17 (2) "Board" means the board of environmental review provided for in 2-15-3502.

18 (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,
19 or other wastes, creating a hazard to human health.

20 (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

21 (5) (a) "Currently available data" means data that is readily available to the department at the time
22 a decision is made, including information supporting its previous lists of water bodies that are threatened or
23 impaired.

24 (b) The term does not mean new data to be obtained as a result of department efforts.

25 (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
26 a parameter. The term does not include those changes in water quality determined to be nonsignificant
27 pursuant to 75-5-301(5)(c).

28 (7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

(10) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (a) generating electricity;
- (b) producing gas derived from coal;
- (c) producing liquid hydrocarbon products;
- (d) refining crude oil or natural gas;
- (e) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5; or
- (f) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(12) "High-quality waters" means all state waters, except:

- (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the department's classification rules; and
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 - (i) are not capable of supporting any one of the designated uses for their classification; or
 - (ii) have zero flow or surface expression for more than 270 days during most years.

(13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(15) "Interested person" means a person who has a real property interest, a water right, or an

1 economic interest that is or may be directly and adversely affected by the department's preliminary decision
2 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested
3 authorization to degrade high-quality waters.

4 (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to
5 one of its existing or future nonpoint sources or to natural background sources.

6 (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a
7 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the
8 maximum change that can occur from the best practicable condition in a surface water without causing a
9 violation of the surface water quality standards.

10 (18) "Local department of health" means the staff, including health officers, employed by a county,
11 city, city-county, or district board of health.

12 (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,
13 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,
14 thallium, and zinc.

15 (20) "Mixing zone" means an area established in a permit or final decision on nondegradation
16 issued by the department where water quality standards may be exceeded, subject to conditions that are
17 imposed by the department and that are consistent with the rules adopted by the department.

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20 ~~other interested parties that will advise the department on nutrient standards, the implementation of those~~
21 ~~standards, and associated economic impacts.~~

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23 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or
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1 5-316 and approved by the legislature.

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3 point source.

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5 that property affects the quality of the state water.

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7 partnership, individual, or other entity and includes persons resident in Canada.

8 ~~(27)~~(26)"Point source" means a discernible, confined, and discrete conveyance, including but not
9 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
10 other floating craft, from which pollutants are or may be discharged.

11 ~~(28)~~(27)(a) "Pollution" means:

12 (i) contamination or other alteration of the physical, chemical, or biological properties of state
13 waters that exceeds that permitted by Montana water quality standards, including but not limited to standards
14 relating to change in temperature, taste, color, turbidity, or odor; or

15 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or
16 other substance into state water that will or is likely to create a nuisance or render the waters harmful,
17 detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds,
18 fish, or other wildlife.

19 (b) The term does not include:

20 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution
21 discharge permit rules adopted by the department under this chapter;

22 (ii) activities conducted under this chapter that comply with the conditions imposed by the
23 department in short-term authorizations pursuant to 75-5-308;

24 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined
25 in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter
26 11, part 1;

27 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal
28 gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(28)(b)(iii)~~ and ~~(28)(b)(iv)~~ (27)(b)(iii) and (27)(b)(iv) does not require a mixing zone.

~~(29)~~(28)"Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(30)~~(29)"Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(34)~~(30)"Standard of performance" means a standard adopted by the department for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(32)~~(31)(a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(33)~~(32)"Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(34)~~(33)"Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(35)~~(34)"Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at

1 a level necessary to achieve compliance with applicable surface water quality standards.

2 ~~(36)~~(35)"Treatment works" means works, including sewage lagoons, installed for treating or holding
3 sewage, industrial wastes, or other wastes.

4 ~~(37)~~(36)"Waste load allocation" means the portion of a receiving water's loading capacity that is
5 allocated to one of its existing or future point sources.

6 ~~(38)~~(37)"Water quality protection practices" means those activities, prohibitions, maintenance
7 procedures, or other management practices applied to point and nonpoint sources designed to protect,
8 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
9 to treatment requirements, standards of performance, effluent standards, and operating procedures and
10 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

11 ~~(39)~~(38)"Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
12 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

13 ~~(40)~~(39)"Watershed advisory group" means a group of individuals who wish to participate in an
14 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
15 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
16 participate in an advisory capacity as provided in 75-5-704."

17

18 NEW SECTION. **Section 4. Repealer.** The following section of the Montana Code Annotated is
19 repealed:

20 75-5-321. Transition for nutrient standards.

21

22 NEW SECTION. **Section 5. Repealer.** ARM 17.30.660 and 17.30.1388 are repealed.

23

24 NEW SECTION. **Section 6. Codification instruction.** [Section 2] is intended to be codified as an
25 integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 2].

26

27 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

28

- END -