

1 HOUSE BILL NO. 58

2 INTRODUCED BY J. SCHILLINGER

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DISTRIBUTION OF FUNDS FOR THE
6 REMEDIATION OF ABANDONED METAL MINES; REQUIRING A BIENNIAL TRANSFER FOR
7 MAINTENANCE AND WATER TREATMENT AT THE CR KENDALL MINE RECLAMATION SITE;
8 EXTENDING THE STATE CONTRIBUTION FOR CLEANUP, OPERATION, AND MAINTENANCE AT THE
9 LIBBY ASBESTOS SUPERFUND SITE; AMENDING SECTIONS 75-10-704 AND 75-10-743, MCA;
10 AMENDING SECTION 5, CHAPTER 387, LAWS OF 2015; AND PROVIDING AN EFFECTIVE DATE AND A
11 TERMINATION DATE."

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

14
15 **Section 1.** Section 75-10-704, MCA, is amended to read:

16 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is
17 in the state special revenue fund an environmental quality protection fund to be administered as a revolving
18 fund by the department. The department is authorized to expend amounts from the fund necessary to carry out
19 the purposes of this part.

20 (2) The fund may be used by the department only to carry out the provisions of this part and for
21 remedial actions taken by the department pursuant to this part in response to a release of hazardous or
22 deleterious substances.

23 (3) The department shall:

24 (a) except as provided in subsection (7), establish and implement a system, including the
25 preparation of a priority list, for prioritizing sites for remedial action based on potential effects on human health
26 and the environment; and

27 (b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain
28 the participation and financial contribution of liable persons for the remedial action, to achieve remedial action,

1 and to recover costs and damages incurred by the state.

2 (4) There must be deposited in the fund:

3 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action
4 costs recovered pursuant to 75-10-715;

5 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed
6 pursuant to 75-10-711(5);

7 (c) funds allocated to the fund by the legislature;

8 (d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-
9 38-106;

10 (e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-
11 202;

12 (f) funds received from the interest income of the fund;

13 (g) funds received from settlements pursuant to 75-10-719(7);

14 (h) funds received from the interest paid pursuant to 75-10-722;

15 (i) costs recovered pursuant to 75-8-106(7) and penalties recovered pursuant to 75-8-109; and

16 (j) funds transferred from the orphan share account pursuant to 75-10-743(10). The full amount of
17 these funds must be dedicated each fiscal year as follows:

18 (i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at
19 the Libby asbestos superfund site and allocated pursuant to 75-10-1603 and 75-10-1604; and

20 (ii) (A) except for the amount provided in subsection (4)(j)(ii)(B), 50% to metal mine reclamation
21 projects at abandoned mine sites, as provided in 82-4-371. This subsection (4)(j)(ii) does not apply to
22 exploration or mining work performed after March 9, 1971, except as provided in subsection (4)(j)(ii)(B).

23 Projects funded under this subsection (4)(j)(ii) are not subject to the requirements of Title 75, chapter 10, part 7.

24 (B) \$500,000 a year through June 30, 2038, for long-term maintenance and water treatment at the
25 CR Kendall mine reclamation site. This transfer must be completed before initiating the transfer provided in
26 subsection (4)(j)(ii)(A).

27 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and
28 additional money remains in the fund, the department shall seek additional authority to spend money from the

1 fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

2 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the
3 department may apply to the governor for a grant from the environmental contingency account established
4 pursuant to 75-1-1101.

5 (7) (a) There is established a state special revenue account for all funds donated or granted from
6 private parties to remediate a specific release at a specific facility. There must be deposited into the account the
7 interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing
8 to this account.

9 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be
10 accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the
11 department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are
12 donated.

13 (c) If the balance of the fund created in this subsection (7), as determined by the department
14 pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date
15 of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds,
16 must be returned to the grantor.

17 (d) If the balance for a specific project is determined by the department to be sufficient to
18 remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority
19 for remedial action, using the funds donated under this subsection (7).

20 (e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or
21 actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable
22 persons, to obtain the participation and financial contribution of liable persons for the remedial action, to
23 achieve remedial action, and to recover costs and damages incurred by the state.

24 (f) The department shall expend the funds in a manner that maximizes the application of the funds
25 to physically remediating the specific release.

26 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility
27 pursuant to subsection (7). A person who donates in-kind services is not liable under 75-10-715 solely as a
28 result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action. (Subsection (4)(j) terminates June 30, 2027 ~~2038~~ ~~sec. 5, Ch. 387, L. 2015.~~)"

Section 2. Section 75-10-743, MCA, is amended to read:

"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9), (10), and (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751, to provide funding for the department of justice for investigations pursuant to its natural resource damage program, to pay costs incurred by the department in defending the orphan share, and to pay remedial action costs incurred by the department pursuant to subsection (12). Any amounts provided for investigations must be returned to the account, with interest, from the settlement proceeds of a claim made under the natural resource damage program within 30 days of receiving settlement proceeds.

(2) There must be deposited in the orphan share account:

- 1 (a) all penalties assessed pursuant to 75-10-750(12);
2 (b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-
3 331;
4 (c) unencumbered funds remaining in the abandoned mines state special revenue account;
5 (d) interest income on the account;
6 (e) funds received from settlements pursuant to 75-10-719(7); and
7 (f) funds received from reimbursement of the department's orphan share defense costs pursuant
8 to subsection (6).

9 (3) If the orphan share account contains sufficient money, valid claims must be reimbursed
10 subsequently in the order in which they were received by the department. If the orphan share account does not
11 contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be
12 made and the orphan share account, the department, and the state are not liable for making any
13 reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share
14 account does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding
15 claims.

16 (4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial
17 action costs may not be reimbursed from the orphan share account until all remedial actions, except for
18 operation and maintenance, are completed at a facility.

19 (5) Except as provided in subsection (6), reimbursement from the orphan share account must be
20 limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-
21 745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

22 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
23 participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The
24 orphan share account is responsible for a portion of the department's costs incurred in defending the orphan
25 share in proportion to the orphan share's allocated share, as follows:

26 (i) If sufficient funds are available in the orphan share account, the department's costs incurred in
27 defending the orphan share must be paid from the orphan share account in proportion to the share of liability
28 allocated to the orphan share.

1 (ii) If sufficient funds are not available in the orphan share account, persons participating in the
2 allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the
3 department's costs incurred in defending the orphan share in proportion to each person's allocated share of
4 liability.

5 (b) A person who pays the orphan share's proportional share of costs has a claim against the
6 orphan share account and must be reimbursed as provided in subsection (3).

7 (c) A state agency that is liable for remedial action costs incurred has a claim against the orphan
8 share account and must be reimbursed as provided in subsection (3). The agency may submit a claim before or
9 after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation
10 and maintenance costs. The agency may be reimbursed only after:

11 (i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of
12 competent jurisdiction;

13 (ii) it has received a notice letter pursuant to 75-10-711; and

14 (iii) the department has approved the costs.

15 (7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the
16 person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement
17 will cause undue financial hardship on the person, the department may allow the submission of claims and may
18 reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early
19 reimbursement unless the person is in substantial compliance with all department-approved remedial action
20 plans.

21 (b) The department may reimburse claims from a lead liable person upon completion and
22 department approval of a report evaluating the nature and extent of contamination and a report formulating and
23 evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by
24 the lead liable person for the preparation of the reports.

25 (8) A person participating in the allocation process who received funds under the mixed funding
26 pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
27 reimbursement from the orphan share account for the amount of funds received under the mixed funding pilot
28 program that are later attributed to the orphan share under the allocation process.

1 (9) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the
2 department to pay the costs incurred by the department in contracting for evaluating the extent of contamination
3 and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery
4 company, and Yale oil corporation facility complex. If the department spends less than \$1.25 million for those
5 purposes, the remaining funds must be spent for remediation of the facility complex. The department may not
6 seek recovery of the \$1.25 million from potentially liable persons.

7 (b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by
8 the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility
9 for which the money was spent.

10 (10) (a) The After making the biennial deposit required in 75-10-704(4)(j)(ii)(A) and if sufficient funds
11 remain, the department shall transfer from the orphan share account to the long-term or perpetual water
12 treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of
13 investments makes the certification pursuant to subsection (10)(b) of this section.

14 (b) (i) The board of investments shall monitor the long-term or perpetual water treatment
15 permanent trust fund provided for in 82-4-367 to determine when the amount of money in the long-term or
16 perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance
17 of \$19.3 million on January 1, 2018.

18 (ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the
19 board of investments shall notify the department and certify to the department the amount of money, if any, that
20 must be transferred during the fiscal year in which the board of investments makes its determination pursuant
21 to subsection (10)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

22 (iii) In the fiscal year that the board of investments makes its determination and notifies the
23 department, the department shall transfer only the amount certified by the board of investments, if any, and
24 may not make additional transfers during subsequent fiscal years.

25 (c) After July 1, 2018, the department shall transfer \$1.2 million in each fiscal year from the orphan
26 share state special revenue account to the environmental quality protection fund provided in 75-10-704.

27 (11) The orphan share account is subject to legislative fund transfers.

28 (12) Except as provided in subsection (13), the department may use the orphan share account to:

(a) take remedial action at a facility where there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment and there is no readily apparent person who is financially viable and potentially liable under 75-10-715 to conduct the remedial action; or

(b) fund the administration of data collection, the monitoring of the performance of remedial action, and the initial assessment of a facility to determine whether that facility may be closed or delisted.

(13) The department may not use for data collection, initial assessments, or monitoring pursuant to subsection (12)(b) more than 20% of the funds appropriated from the orphan share account for the bienniums beginning July 1, 2015, and ending June 30, 2025. For the bienniums beginning July 1, 2025, no more than 15% of the funds appropriated from the orphan share account may be used for data collection, initial assessments, or monitoring pursuant to subsection (12)(b).

(14) The department shall report annually to the environmental quality council in accordance with 5-11-210 the amount of funds from the orphan share account used pursuant to subsection (12), the type of expenditures made, and the identity and location of facilities addressed. (Subsection (10)(c) terminates June 30, 2027 ~~2038~~ sec. 5, Ch. 387, L. 2015.)"

Section 3. Section 5, Chapter 387, Laws of 2015, is amended to read:

"Section 5. Termination. [This act] terminates June 30, ~~2027~~ 2038."

NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2025.

NEW SECTION. **Section 6. Termination.** [This act] terminates June 30, 2038.

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