

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE COMPREHENSIVE ENVIRONMENTAL
7 CLEANUP AND RESPONSIBILITY ACT TO SPECIFICALLY AUTHORIZE THE DEPARTMENT OF
8 ENVIRONMENTAL QUALITY TO COLLECT INTEREST ON PAST-DUE REMEDIAL ACTION COSTS AND TO
9 DEPOSIT THOSE FUNDS INTO THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING
10 SECTIONS 75-10-704 AND 75-10-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 75-10-704, MCA, is amended to read:

15 **"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund
16 an environmental quality protection fund to be administered as a revolving fund by the department. The
17 department is authorized to expend amounts from the fund necessary to carry out the purposes of this
18 part.

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

22 (3) The department shall:

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

26 (b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain
27 the participation and financial contribution of liable persons for the remedial action, to achieve remedial
28 action, and to recover costs and damages incurred by the state.

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

30 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs

1 recovered pursuant to 75-10-715;

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

4 (c) funds appropriated to the fund by the legislature;

5 (d) funds received from the interest income of the resource indemnity trust fund pursuant to
6 15-38-202;

7 (e) funds received from the interest income of the fund; ~~and~~

8 (f) funds received from settlements pursuant to 75-10-719(7); and

9 (g) funds received from the interest paid pursuant to 75-10-722.

10 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and
11 additional money remains in the fund, the department shall seek additional authority to spend money from
12 the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

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

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

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

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

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

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

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

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

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

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

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

22 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
23 subsection (8) must be approved by the department as appropriate remedial action."
24

25 **Section 2.** Section 75-10-722, MCA, is amended to read:

26 **"75-10-722. Payment of state costs and penalties.** (1) The department shall keep a record of the
27 state's remedial action costs.

28 (2) Based on this record, the department may require a person liable under 75-10-715 to pay the
29 amount of the state's remedial action costs, including interest and, if applicable, penalties under
30 75-10-715(3).

1 (3) If the state's remedial action costs and penalties are not paid by the liable person to the
2 department within 60 days after receipt of notice that the costs and penalties are due, the department
3 shall:

4 (a) assess and collect interest on the unpaid amount at the rate provided for in 25-9-205; and
5 (b) bring an action in the name of the state to recover the amount owed plus reasonable legal
6 expenses.

7 (4) An action to recover remedial action costs may be brought under this section at any time after
8 any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability
9 for remedial action costs that is binding on any subsequent action or actions to recover further remedial
10 action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show
11 on the record that the costs are not reasonable and are not consistent with this part.

12 (5) An initial action brought under 75-10-715(4) or a contribution action for costs incurred under
13 this part must be commenced within 6 years after initiation of physical onsite construction of the final
14 permanent remedy.

15 (6) Remedial action costs, interest, and any penalties recovered by the state under 75-10-715
16 must be deposited into the environmental quality protection fund established in 75-10-704."

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18 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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