



AN ACT ESTABLISHING THE MONTANA CONTAMINATED PROPERTY COMPENSATION AND RESTORATION ACT; REVISING DAMAGES AWARDED FOR CONTAMINATION OF REAL PROPERTY; DEFINING "RESTORATION DAMAGES" AND "SPECIAL USE PROPERTY"; ESTABLISHING A PROVISION FOR BURDEN OF PROOF FOR A COMMON LAW CLAIM FOR CONTAMINATION OF SPECIAL USE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

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

Section 1. Short title -- scope. (1) [Sections 1 through 5] may be cited as the "Montana Contaminated Property Compensation and Restoration Act".

(2) [Sections 1 through 5] apply only to common law claims brought in judicial proceedings on behalf of private interests of individuals or entities.

Section 2. Definitions. For purposes of [sections 1 through 5], the following definitions apply:

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

(2) (a) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils that occurred from a petroleum storage tank, as defined in 75-11-302.

(b) The term does not include a release from the following petroleum storage tanks:

(i) a tank located at a refinery or a terminal of a refiner;

(ii) a tank located at an oil and gas production facility; or

(iii) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations.

(3) "Restoration damages" means the amount of compensation determined necessary by a trier of fact to restore a contaminated special use property to its function and use prior to the contamination upon which a common law claim is based. The term includes reasonable attorney fees and costs incurred by the plaintiff.

(4) "Special use property" means real property contaminated by a release from a petroleum storage tank, as defined in 75-11-302, that is found by a trier of fact to have personal value to the plaintiff not reflected in the market value of the property or to have unique public, historic, cultural, or religious value not reflected in the market value of the property.

Section 3. Restoration damages for contamination of special use property. (1) Restoration damages for a common law claim alleging contamination of special use property may be granted by the trier of fact and may only be obtained pursuant to [sections 1 through 5].

(2) Nothing in this section precludes the award of other damages allowed under common law and statute.

Section 4. Use of restoration damages -- request for trust account. (1) Restoration damages awarded pursuant to [section 3], exclusive of damages awarded for attorney fees and costs, must be used to conduct any remedial and corrective action necessary to restore the special use property for which the damages were awarded to its function and use prior to the contamination for which the damages were awarded.

(2) Any party may request that a court awarding restoration damages may also order that those damages be deposited in a segregated trust account at a commercial bank or trust company to ensure compliance with subsection (1). The plaintiff may create a trust to be overseen by a qualified professional to restore the special use property.

Section 5. Burden of proof. The plaintiff in an action for restoration damages resulting from the contamination of special use property has the burden of proof to show that a property meets the definition of a special use property.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 5].

Section 7. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Applicability. [This act] applies to judicial proceedings begun on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 0427, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 427

INTRODUCED BY LASLOVICH

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