

HOUSE BILL NO. 121

INTRODUCED BY B. HANDS

BY REQUEST OF THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA TRUST LAND COAL DEVELOPMENT LANDOWNER PROTECTION ACT AND PROGRAM; ESTABLISHING A LANDOWNER PROTECTION ACCOUNT TO COMPENSATE PRIVATE LANDOWNERS AND WATER RIGHT HOLDERS FOR DAMAGES CAUSED TO LAND OR WATER BY DEVELOPMENT OF TRUST LAND COAL TRACTS; TRANSFERRING MONEY INTO THE ACCOUNT; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE ADMINISTRATION OF THE PROGRAM AND THE EVALUATION OF CLAIMS FOR COMPENSATION; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Trust Land Coal Development Landowner Protection Act".

**NEW SECTION. Section 2. Legislative findings and declaration of purpose.** (1) The legislature finds that development of trust land coal tracts may result in adverse impacts to land and to water quality and availability.

(2) The legislature declares that there is a compelling public need to both develop trust land coal tracts and promote efforts that preserve the environment and protect the right to use and enjoy private property.

(3) The legislature further declares that the purpose of [sections 1 through 5] is to establish a long-term trust land coal development landowner protection program and an account within the program for the purpose of compensating private landowners and water right holders for damage to land and to water quality and availability that is attributable to the development of trust land coal tracts.

(4) The legislature further declares that the provisions of [sections 1 through 5] do not relieve trust land coal tract developers or operators that own, develop, or operate mining operations on trust land coal tracts of their legal obligation to compensate landowners and water right holders for damages caused by the development of



1 trust land coal tracts.

2 (5) The legislature further declares that the provisions of [sections 1 through 5] do not relieve trust land  
3 coal tract developers or operators of:

4 (a) any liability associated with the development of trust land coal tracts; or

5 (b) the responsibility to comply with any applicable provision of Titles 75, 82, and 85 and any other  
6 provision of law applicable to the protection of natural resources or the environment.

7  
8 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 5], unless the context requires  
9 otherwise, the following definitions apply:

10 (1) "Department" means the department of natural resources and conservation provided for in Title 2,  
11 chapter 15, part 33.

12 (2) "Trust land coal tract developer or operator" means a person or entity that acquires a lease or  
13 authority through any other mechanism for the purpose of extracting coal from trust land coal tracts.

14 (3) "Trust land coal tracts" means land or property used for coal development that is held in trust by the  
15 state:

16 (a) pursuant to Article X, sections 2 and 11, of the Montana constitution;

17 (b) pursuant to The Enabling Act of 1889, as amended; or

18 (c) for specified trust beneficiaries through the operation of law.

19  
20 **NEW SECTION. Section 4. Landowner protection account -- purposes.** (1) There is a landowner  
21 protection account in the state special revenue fund.

22 (2) All money transferred to the account by the legislature, all monetary contributions, gifts, and grants  
23 donated to the account, and all interest and income earned on money in the account must be deposited into the  
24 account.

25 (3) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department for the  
26 purposes of [sections 1 through 5].

27 (4) All money paid into the account must be invested by the board of investments. Earnings from  
28 investments must be deposited in the account.

29 (5) Money deposited in the account must be used to compensate private landowners and water right  
30 holders for damages to land or water attributable to development of trust land coal tracts in Montana as provided

1 in [sections 1 through 5], except that:

2 (a) the department may pay its reasonable administrative costs from the account; and

3 (b) a trust land coal tract developer or operator, or subcontractor or agent of a developer or operator,  
4 is not eligible for compensation under [sections 1 through 5].

5 (6) Money deposited in the fund and earnings of the fund may not be expended until after  
6 commencement of exploration or commercial production on trust land coal tracts.

7

8 **NEW SECTION. Section 5. Landowner protection program -- restrictions -- rulemaking authority.**

9 (1) There is a landowner protection program administered by the department. The purpose of the program is to  
10 compensate private landowners or water right holders for damages to land or water caused by development of  
11 trust land coal tracts.

12 (2) The department shall promulgate rules for the administration of the program and for evaluating claims  
13 for compensation submitted by a private landowner or water right holder. The rules must include but are not  
14 limited to:

15 (a) a method for submitting an application for compensation for damages caused by development of the  
16 trust land coal tracts;

17 (b) a process for determining the amount of the damage to land, surface water, or ground water, if any,  
18 caused by development of the trust land coal tracts;

19 (c) the development of eligibility criteria for compensation that are consistent with the requirements of  
20 this section and the availability of funds and that take into consideration an applicant's access to existing sources  
21 of state funding, including state-mandated payments that compensate for damages; and

22 (d) criteria for ranking applications in relation to available resources.

23 (3) To be eligible for compensation under the program, a private landowner or water right holder shall  
24 demonstrate that development of the trust land coal tracts caused the landowner or water right holder:

25 (a) a decrease in the value of land, including a reduction in production and income derived from the land;

26 (b) a reduction in the quantity or quality of water available from a surface water or ground water source  
27 that affects the beneficial use of water; or

28 (c) the contamination of surface water or ground water that prevents its beneficial use.

29 (4) (a) Subject to the conditions of [section 4(5) and (6)], an eligible landowner may be compensated for  
30 damages incurred by the landowner for loss of the value of land, including a loss to production and income

1 derived from the land and loss in the value of improvements made to the land, caused by development of the trust  
2 land coal tracts.

3 (b) Subject to the conditions of [section 4(5) and (6)], an eligible water right holder may be compensated  
4 for damages for the contamination, diminution, or interruption of surface water or ground water caused by  
5 development of the trust land coal tracts.

6 (5) In order to qualify for a payment of damages under this section, the landowner or water right holder  
7 shall demonstrate that it is unlikely that compensation will be made by a trust land coal tract developer or  
8 operator, or subcontractor or agent of a developer or operator, who is liable for the damage to land or the  
9 contamination, diminution, or interruption of surface water or ground water as the result of development of the  
10 trust land coal tracts.

11

12 **Section 6.** Section 17-7-502, MCA, is amended to read:

13 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
14 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the  
15 need for a biennial legislative appropriation or budget amendment.

16 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both  
17 of the following provisions:

18 (a) The law containing the statutory authority must be listed in subsection (3).

19 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
20 appropriation is made as provided in this section.

21 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;  
22 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;  
23 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;  
24 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;  
25 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;  
26 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;  
27 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101;  
28 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;  
29 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; [section 4]; 80-2-222; 80-4-416; 80-11-518;  
30 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and

1 90-9-306.

2 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
3 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
4 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
5 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
6 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
7 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
8 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is  
9 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.  
10 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and  
11 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.  
12 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the  
13 supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113  
14 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30,  
15 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

16

17 NEW SECTION. **Section 7. Fund transfer.** On or before June 30, 2013, the state treasurer shall  
18 transfer \$5 million from the state general fund to the landowner protection account provided for in [section 4].

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20 NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified  
21 as an integral part of Title 77, chapter 3, and the provisions of Title 77, chapter 3, apply to [sections 1 through 5].

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23 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2011.

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