

HOUSE BILL NO. 604

INTRODUCED BY R. COOK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FUND TRANSFERS; AUTHORIZING ~~A FUND~~
5 ~~TRANSFERS~~ ~~TRANSFER~~ ~~TRANSFERS~~ FROM THE TELECOMMUNICATIONS SERVICES AND SPECIALIZED
6 TELECOMMUNICATIONS EQUIPMENT ACCOUNT AND THE OLDER MONTANANS TRUST FUND; TO THE
7 GENERAL FUND; AUTHORIZING FUND TRANSFERS FROM THE MOTOR VEHICLE AND RECYCLING
8 ACCOUNT, THE ORPHAN SHARE ACCOUNT, THE COAL BED METHANE PROTECTION ACCOUNT, AND
9 THE OIL AND GAS CONSERVATION ACCOUNT TO THE GUARANTEE ACCOUNT FOR DISTRIBUTION TO
10 SCHOOL DISTRICTS; AUTHORIZING A FUND TRANSFER TO THE OLD STATE FUND WORKERS'
11 COMPENSATION ACCOUNT FROM THE GENERAL FUND AND THE STATE COMPENSATION INSURANCE
12 FUND; AMENDING SECTIONS 39-71-2311, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2323,
13 39-71-2351, 39-71-2352, 52-3-115, 53-19-310, 75-10-532, 75-10-743, 76-15-904, AND 82-11-135, MCA; AND
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 NEW SECTION. Section 1. Transfer of funds to guarantee account. (1) ~~By August 15, 2011, the~~
19 ~~state treasurer shall transfer \$1.85 million from the telecommunications services and specialized~~
20 ~~telecommunications equipment account provided for in 53-19-310 to the guarantee account provided for in~~
21 ~~20-9-622 GENERAL FUND.~~

22 ~~———~~(2) By August 15, 2011, the state treasurer shall transfer \$2.5 million from the account that is established
23 for the motor vehicle recycling and disposal program under the provisions of 75-10-532 to the guarantee account
24 provided for in 20-9-622.

25 ~~(3)~~(2) By August 15, 2011, the state treasurer shall transfer ~~\$8~~ \$4.4 million from the orphan share
26 account provided for in 75-10-743 to the guarantee account provided for in 20-9-622.

27 ~~(4)~~(3) By August 15, 2011, the state treasurer shall transfer ~~\$8~~ \$8.5 million from the coal bed methane
28 protection account provided for in 76-15-904 to the guarantee account provided for in 20-9-622.

29 ~~(5)~~(4) By August 15, 2011, the state treasurer shall transfer \$12 million from the board of oil and gas
30 conservation account provided for in 82-11-135 to the guarantee account provided for in 20-9-622.

1
 2 NEW SECTION. SECTION 2. TRANSFER OF FUNDS TO GENERAL FUND. (1) BY AUGUST 15, 2011, THE STATE
 3 TREASURER SHALL TRANSFER \$1.85 MILLION FROM THE TELECOMMUNICATIONS SERVICES AND SPECIALIZED
 4 TELECOMMUNICATIONS EQUIPMENT ACCOUNT PROVIDED FOR IN 53-19-310 TO THE GENERAL FUND.

5 (2) THE STATE TREASURER SHALL TRANSFER \$9,166,502 FROM THE OLDER MONTANANS TRUST FUND, PROVIDED
 6 FOR IN 52-3-115, TO THE GENERAL FUND FOR THE BIENNIUM BEGINNING JULY 1, 2011, FOR THE PURPOSE OF FUNDING
 7 THE PRESCRIPTION DRUG PLUS DISCOUNT PROGRAM PROVIDED FOR IN TITLE 53, CHAPTER 6, PART 10, AND FOR
 8 PROVIDING GRANTS TO THE AREA AGENCIES ON AGING AND FUNDS FOR TOBACCO PREVENTION AND CESSATION.

9
 10 NEW SECTION. Section 3. Transfer of funds to old state fund account. (1) By June 30, 2011, the
 11 state treasurer shall transfer the lesser of the amount required to pay off the unfunded liability of the old state fund
 12 account or \$50 \$13 million from the state general fund to the old state fund account.

13 (2) (A) THE STATE FUND SHALL, BY AUGUST 12, 2012, TRANSFER FROM ITS SURPLUS TO THE OLD STATE FUND
 14 ACCOUNT THE AMOUNT OF THE OUTSTANDING LIABILITY DETERMINED IN SUBSECTION (2)(B) FROM EITHER OF THE
 15 FOLLOWING OR A COMBINATION OF BOTH:

16 (I) INVESTMENT EARNINGS AND INTEREST ON PREMIUMS PAID BETWEEN FISCAL YEAR 1999 AND FISCAL YEAR
 17 2003; OR

18 (II) THE AMOUNT OF SURPLUS AS OF JUNE 30, 2012, THAT IS GREATER THAN A RESERVE-TO-SURPLUS RATIO OF
 19 2.5 TO 1.

20 (B) THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING SHALL DETERMINE THE OUTSTANDING
 21 LIABILITY OF THE OLD STATE FUND ACCOUNT AS REPORTED IN THE FINANCIAL STATEMENTS AS OF JUNE 30, 2012, AND
 22 INFORM THE STATE FUND OF THE AMOUNT TO BE TRANSFERRED.

23 (2)(3) For the purpose of this section "old state fund account" means the account in 39-71-2321 that is
 24 used to pay for claims and administrative expenses for accidents occurring before July 1, 1990.

25
 26 SECTION 4. SECTION 39-71-2311, MCA, IS AMENDED TO READ:

27 "39-71-2311. Intent and purpose of plan -- expense constant defined. (1) It is the intent and purpose
 28 of the state fund to allow employers an option to insure their liability for workers' compensation and occupational
 29 disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium
 30 rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program,

1 including the costs of administration, benefits, and adequate reserves, during and at the end of the period for
2 which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately
3 predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund
4 shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover
5 those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden
6 on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.

7 (2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher
8 than necessary because of a high estimate of the cost of a factor or factors may be refunded, subject to
9 39-71-2316(1)(h), by the declaration of a dividend as provided in this part. For the purpose of keeping the state
10 fund solvent, the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may
11 assess an expense constant, a minimum premium, or both.

12 (3) As used in this section, "expense constant" means a premium charge applied to each workers'
13 compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the
14 policy."

15

16 **SECTION 5. SECTION 39-71-2316, MCA, IS AMENDED TO READ:**

17 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund
18 may:

19 (a) insure any employer for workers' compensation and occupational disease liability as the coverage
20 is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance
21 upon approval of the board;

22 (b) sue and be sued;

23 (c) enter into contracts relating to the administration of the state fund, including claims management,
24 servicing, and payment;

25 (d) collect and disburse money received;

26 (e) adopt classifications and charge premiums for the classifications so that the state fund will be neither
27 more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using
28 a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through
29 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter
30 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter

1 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed
 2 workers' compensation advisory organization or a licensed workers' compensation rating organization under Title
 3 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers'
 4 compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a
 5 basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation
 6 advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part
 7 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute
 8 an employer's specific payroll or loss information, including but not limited to experience modification factors.

9 (f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

10 (g) hire personnel;

11 (h) declare dividends if there is an excess of assets over liabilities. ~~However, dividends may not be paid~~
 12 ~~until~~ adequate actuarially determined reserves are have been set aside, and the reserve-to-surplus ratio is 2.5
 13 to 1 or better.

14 (i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

15 (j) upon approval of the board, contract with licensed resident insurance producers;

16 (k) upon approval of the board, enter into agreements with licensed workers' compensation insurers,
 17 insurance associations, or insurance producers to provide workers' compensation coverage in other states to
 18 Montana-domiciled employers insured with the state fund;

19 (l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

20 (m) upon approval of the board, including terms and conditions, provide employers coverage under the
 21 federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine
 22 Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

23 (n) perform all functions and exercise all powers of a private insurance carrier that are necessary,
 24 appropriate, or convenient for the administration of the state fund.

25 (2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that
 26 incorporates the restriction on the use and transfer of ~~money~~ premiums collected by the state fund as provided
 27 for in 39-71-2320."
 28

29 **SECTION 6. SECTION 39-71-2320, MCA, IS AMENDED TO READ:**

30 **"39-71-2320. Property of state fund -- investment required -- exception. At (1) Except as provided**

1 in subsection (2), all premiums and other money paid to the state fund, all property and securities acquired
 2 through the use of money belonging to the state fund, and all interest and dividends earned upon money
 3 belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations
 4 and obligations of the state fund. The ~~money~~ premiums collected by the state fund for claims for injuries occurring
 5 on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to
 6 other funds or used for other programs. However, state fund ~~money~~ premiums and other money paid to the state
 7 fund must be invested by the board of investments provided for in 2-15-1808, and subject to the investment
 8 agreement with the board of investments and the provisions of subsection (2) of this section, the earnings on
 9 investments are the sole property of the state fund except as provided in subsection (2) of this section.

10 (2) A transfer by the state fund from the account for injuries occurring on or after July 1, 1990, to the
 11 account for injuries occurring before July 1, 1990, is not a transfer as described in subsection (1) if the transfer
 12 involves interest income or other money paid prior to July 1, 2003, and does not include premiums paid after July
 13 1, 1990."

14
 15 **SECTION 7. SECTION 39-71-2321, MCA, IS AMENDED TO READ:**

16 **"39-71-2321. What to be deposited in state fund.** (1) All premiums, penalties, recoveries by
 17 subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of
 18 premiums, interest, and other money earned or recovered by the state fund, and all interest and penalties on
 19 taxes in accordance with 17-2-124 must be deposited in the state fund. Except for a transfer authorized under
 20 39-71-2320(2) or 39-71-2352, the money must be separated into two accounts based upon whether they relate
 21 to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from
 22 accidents that occur on or after that date.

23 (2) All ~~funds~~ premiums, penalties, recoveries, interest earned, and other money deposited in the state
 24 fund may be spent as provided in 17-8-101(2)(b)."

25
 26 **SECTION 8. SECTION 39-71-2322, MCA, IS AMENDED TO READ:**

27 **"39-71-2322. Money in state fund held in trust -- disposition of funds upon repeal of chapter.** The
 28 ~~money~~ premiums, penalties, interest, and other money earned, as listed in 39-71-2321, and coming into the state
 29 fund must be held in trust for the purpose for which the premiums and other money ~~was~~ were collected. If this
 30 chapter is repealed, the ~~money is~~ premiums, penalties, interest, and other money earned are subject to the

1 disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution
2 must be in accordance with the justice of the matter, due regard being given to obligations of compensation
3 incurred and existing."

4

5 **SECTION 9. SECTION 39-71-2323, MCA, IS AMENDED TO READ:**

6 **"39-71-2323. Surplus in state fund -- payment of dividends.** Subject to the provisions of 39-71-2316,
7 if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries
8 resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including
9 ~~necessary~~ actuarially adequate reserves set aside, and an appropriate surplus a reserve-to-surplus ratio of 2.5
10 ~~to 1 as determined by the board in accordance with 39-71-2330;~~ and if the excess may be refunded safely as
11 determined by the board, then the board, after consultation with the independent actuary engaged pursuant to
12 39-71-2330, may declare a dividend. The rules of the state fund must prescribe the manner of payment to those
13 employers who have paid premiums into the state fund in excess of liabilities."

14

15 **SECTION 10. SECTION 39-71-2351, MCA, IS AMENDED TO READ:**

16 **"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate**
17 **funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has
18 existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the
19 problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the
20 problem has not been solved.

21 (2) The legislature has determined that it is necessary to the public welfare to make workers'
22 compensation insurance available to all employers through the state fund as the insurer of last resort. In making
23 this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that
24 the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded
25 liability and the best way to administer the unfunded liability is to separate the liability of the state fund on the
26 basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an
27 accident that occurs on or after that date. The legislature also recognizes that the separation of accounts does
28 not absolve the unfunded liability of the state fund and that through the use of accrued interest, sound business
29 practices, and savings that may be achieved there is an opportunity to provide limited transfers to the account
30 for injuries that occurred before July 1, 1990, to help resolve the unfunded liability.

1 (3) The legislature further determines that in order to prevent the creation of a new unfunded liability with
2 respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund
3 should be clarified and legislative oversight of the state fund should be increased."
4

5 **SECTION 11. SECTION 39-71-2352, MCA, IS AMENDED TO READ:**

6 **"39-71-2352. Separate payment structure and sources for claims for injuries resulting from**
7 **accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing**
8 **transfer of money.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may
9 be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990.
10 Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to
11 administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

12 (2) The state fund shall:

13 (a) determine the cost of administering and paying claims for injuries resulting from accidents that
14 occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries
15 resulting from accidents that occur on or after July 1, 1990;

16 (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

17 (c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents
18 that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1,
19 1990, separately from the sources provided by law.

20 (3) The state fund may not spend more than \$1.25 million a year to administer claims for injuries resulting
21 from accidents that occurred before July 1, 1990.

22 (4) As used in this section, "adequately funded" means the present value of:

23 (a) the total cost of future benefits remaining to be paid; and

24 (b) the cost of administering the claims.

25 (5) An amount of funds in excess of the adequate funding amount established in subsection (4), based
26 on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.

27 (6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from
28 accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims from
29 the account for injuries resulting from accidents that occurred before July 1, 1990, must be transferred to that
30 account by the state fund, based on an adequate surplus as provided in 39-71-2323, or by the state treasurer

1 from the general fund to the account provided for in 39-71-2324.

2 (7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid
3 claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year
4 until all claims are paid."

5

6 **SECTION 12. SECTION 52-3-115, MCA, IS AMENDED TO READ:**

7 **"52-3-115. (Temporary) Older Montanans trust fund.** (1) There is an older Montanans trust fund within
8 the permanent fund type. The trust fund is subject to legislative appropriation as provided in this section.

9 (2) (a) The money in the fund may be used to create new, innovative services or to expand existing
10 services for the benefit of Montana residents 60 years of age or older that will enable those Montanans to live
11 an independent lifestyle in the least restrictive setting and will promote the dignity of and respect for those
12 Montanans. The interest and income produced by the trust fund and appropriated to the department by the
13 legislature is intended to increase services referred to in this subsection and not to supplant other sources of
14 revenue for those programs in the trended traditional level of appropriations for those services.

15 (b) As used in subsection (2)(a), the phrase "trended traditional level of appropriations" means the
16 appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility
17 standards, services authorized, and payment amount during the past five biennial budgets.

18 (3) The department may accept contributions and gifts for the trust fund in money or other forms, and
19 when accepted, the contributions and gifts must be deposited in the trust fund.

20 (4) Interest and income earned on money in the trust fund must be retained within the fund except as
21 provided in this section. Until the year 2015, if assets in the fund reach the following amounts, money may be
22 appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

23 (a) When the fund balance reaches \$20 million, 50% of the interest earned may be appropriated.

24 (b) When the fund balance reaches \$50 million, 60% of the interest earned may be appropriated.

25 (c) When the fund balance reaches \$100 million, 80% of the interest earned may be appropriated.

26 (5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for
27 the programs specified in subsection (2).

28 (6) The department shall provide to the legislature a biennial report of the expenditures of the money
29 appropriated from the older Montanans trust fund as provided in 5-11-210. (Terminates June 30, 2011--sec. 82,
30 Ch. 489, L. 2009.)

1 **52-3-115. (Effective July 1, 2011) Older Montanans trust fund.** (1) There is an older Montanans trust
 2 fund within the permanent fund type. The trust fund is subject to legislative appropriation as provided in this
 3 section.

4 (2) The money in the fund may be used to ~~create;~~

5 (a) fund new, innovative services or ~~to expand~~ existing services for the benefit of Montana residents 60
 6 years of age or older that will enable those Montanans to live an independent lifestyle in the least restrictive
 7 setting and will promote the dignity of and respect for those Montanans; and ~~The interest and income produced~~
 8 ~~by the trust fund and appropriated to the department by the legislature is intended to increase services referred~~
 9 ~~to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional~~
 10 ~~level, as used in 53-6-1201, of appropriations for those services.~~

11 (b) fund tobacco prevention and cessation activities.

12 (3) The department may accept contributions and gifts for the trust fund in money or other forms, and
 13 when accepted, the contributions and gifts must be deposited in the trust fund.

14 (4) Interest and income earned on money in the trust fund must be retained within the fund except as
 15 provided in this section. ~~Until the year 2015, if assets in the fund reach the following amounts, money~~ Money may
 16 be appropriated by the legislature and used ~~in the following amounts~~ for the programs specified in subsection (2):

17 ~~(a) When the fund balance reaches \$20 million, 50% of the interest earned may be appropriated.~~

18 ~~—— (b) When the fund balance reaches \$50 million, 60% of the interest earned may be appropriated.~~

19 ~~—— (c) When the fund balance reaches \$100 million, 80% of the interest earned may be appropriated.~~

20 ~~—— (5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for~~
 21 ~~the programs specified in subsection (2).~~

22 ~~(6)~~(5) The department shall provide to the legislature a biennial report of the expenditures of the money
 23 appropriated from the older Montanans trust fund as provided in 5-11-210."

24

25 **Section 13.** Section 53-19-310, MCA, is amended to read:

26 **"53-19-310. Account for telecommunications services and specialized telecommunications**
 27 **equipment for persons with disabilities.** (1) There is an account for telecommunications services and
 28 specialized telecommunications equipment for persons with disabilities in the state special revenue fund in the
 29 state treasury. The account consists of:

30 (a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

1 (b) all fees billed and collected pursuant to 53-19-311.

2 (2) ~~The Subject to legislative fund transfers.~~ money in the account is allocated to the committee for
3 purposes of implementing this part. Gifts and grants received by the committee as provided in 53-19-309 are not
4 subject to legislative fund transfers.

5 (3) All expenditures of the committee in administering this part must be paid from money deposited in
6 the account."

7

8 **Section 14.** Section 75-10-532, MCA, is amended to read:

9 **"75-10-532. Disposition of money collected.** All money received from the sale of junk vehicles or from
10 recycling of the material and all motor vehicle wrecking facility license fees must be remitted to the state, as
11 provided in 15-1-504. ~~The Subject to legislative fund transfers,~~ the money must be used for the control, collection,
12 recycling, and disposal of junk vehicles and component parts and for the removal of abandoned vehicles."

13

14 **Section 15.** Section 75-10-743, MCA, is amended to read:

15 **"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment**
16 **of department costs.** (1) There is an orphan share account in the state special revenue fund established in
17 17-2-102 that is to be administered by the department. Money in the account is available to the department by
18 appropriation and, except as provided in subsections (9), ~~and (10), and (11),~~ must be used to reimburse remedial
19 action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in
20 defending the orphan share.

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

22 (a) all penalties assessed pursuant to 75-10-750(12);

23 (b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

24 (c) unencumbered funds remaining in the abandoned mines state special revenue account;

25 (d) interest income on the account;

26 (e) funds received from settlements pursuant to 75-10-719(7); and

27 (f) funds received from reimbursement of the department's orphan share defense costs pursuant to
28 subsection (6).

29 (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently
30 in the order in which they were received by the department. If the orphan share fund does not contain sufficient

1 money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan
2 share fund, the department, and the state are not liable for making any reimbursement for the costs. The
3 department and the state are not liable for any penalties if the orphan share fund does not contain sufficient
4 money to reimburse claims, and interest may not accrue on outstanding claims.

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

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

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

15 (i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending
16 the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the
17 orphan share.

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

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

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

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

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

30 (iii) the department has approved the costs.

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

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

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

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

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

23 (10) (a) The department shall transfer from the orphan share account to the long-term or perpetual water
24 treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of
25 investments makes the certification pursuant to subsection (10)(b) of this section.

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

30 (ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board

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

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

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

8

9 **Section 16.** Section 76-15-904, MCA, is amended to read:

10 **"76-15-904. Coal bed methane protection account -- use.** (1) There is a coal bed methane protection
 11 account in the state special revenue fund.

12 (2) There must be deposited in the account the proceeds from the distribution of oil and natural gas
 13 production taxes, as provided in 15-36-331.

14 (3) All money paid into the account must be invested by the board of investments. Earnings from
 15 investments must be deposited in the account.

16 (4) Subject to the conditions of ~~subsection~~ subsections (5) and (6), money deposited in the account must
 17 be used to compensate landowners and water right holders for damages attributable to coal bed methane
 18 development as provided in this part.

19 (5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005.
 20 For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an
 21 emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be
 22 expended for any purpose authorized pursuant to this part.

23 (6) ~~Money~~ Subject to legislative fund transfers, money in the account must be appropriated to the
 24 department for use by conservation districts that have private landowners or water right holders who qualify for
 25 compensation as provided in 76-15-905. (Subsection (2) terminates June 30, 2011--sec. 10, Ch. 531, L. 2001.)"

26

27 **Section 17.** Section 82-11-135, MCA, is amended to read:

28 **"82-11-135. Money earmarked for board expenses.** The state treasurer shall deposit all money
 29 distributed to the board under 15-36-331 and collected under this chapter in the state special revenue fund. ~~The~~
 30 Subject to legislative fund transfers, the money must be used for the purpose of paying all expenses of the board

1 and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature.
2 Income and interest from investment of the board's money in the state special revenue fund must be credited to
3 the board."
4

5 COORDINATION SECTION. Section 18. Coordination instruction. (1) If House Bill No. 42 is passed
6 and approved in a form that contains a fund transfer from the coal bed methane protection account provided for
7 in 76-15-904 to the state treasury, then the fund transfer in [section ~~1(4)~~ 1(3)] is reduced by the amount of the
8 difference between the amount specified in House Bill No. 42 and the amount specified in [section ~~1(4)~~]. FOR THE
9 PURPOSE OF THIS SECTION, THE FUND TRANSFER IN [SECTION ~~1(4)~~ 1(3)] MAY NOT BE DECREASED BELOW \$0.

10 (2) IF SENATE BILL NO. 424 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN SENATE BILL NO. 424 IS
11 VOID.
12

13 NEW SECTION. Section 19. Severability. If a part of [this act] is invalid, all valid parts that are
14 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
15 the part remains in effect in all valid applications that are severable from the invalid applications.
16

17 NEW SECTION. Section 20. Effective date. [This act] is effective on passage and approval.
18

19 NEW SECTION. SECTION 21. TERMINATION. [SECTIONS 2 AND 12] TERMINATE JUNE 30, 2013.
20

- END -