

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 GENERALLY REVISING THE DEPARTMENT OF ENVIRONMENTAL
7 QUALITY'S USE OF STATE SPECIAL REVENUE FUNDS TO OBTAIN MATCHING FEDERAL FUNDS FOR
8 REMEDIAL ACTIONS; ESTABLISHING THE MONTANA BROWNFIELDS GRANT AND LOAN ACT; CREATING
9 A BROWNFIELDS GRANT AND LOAN FUND; ESTABLISHING A STATE SPECIAL REVENUE ACCOUNT AND
10 A FEDERAL STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING CRITERIA FOR USE OF THE
11 ACCOUNTS; ALLOWING THE DEPARTMENT TO MAKE GRANTS AND LOANS FOR BROWNFIELDS
12 REMEDIATION PURPOSES; ESTABLISHING CERTAIN RESTRICTIONS ON GRANTS AND LOANS;
13 GRANTING THE DEPARTMENT RULEMAKING AUTHORITY TO ADMINISTER A BROWNFIELDS GRANT
14 AND LOAN PROGRAM; ALLOWING THE DEPARTMENT TO USE CERTAIN HAZARDOUS WASTE/CERCLA
15 FUNDS TO OBTAIN MATCHING FEDERAL FUNDS; ALLOWING THE DEPARTMENT TO USE CERTAIN
16 ENVIRONMENTAL QUALITY PROTECTION FUNDS TO OBTAIN MATCHING FEDERAL FUNDS; ALLOWING
17 THE DEPARTMENT TO USE CERTAIN PETROLEUM TANK RELEASE CLEANUP FUNDS TO OBTAIN
18 MATCHING FEDERAL FUNDS; AMENDING SECTIONS 75-10-621, 75-10-704, AND 75-11-313, MCA; AND
19 PROVIDING AN EFFECTIVE DATE."

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
23 NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana
24 Brownfields Grant and Loan Act".

25
26 NEW SECTION. **Section 2. Findings and intent -- purpose.** (1) The legislature finds that real
27 properties exist across the state where the stigma of environmental contamination hinders their development or
28 best use. These contaminated properties are brownfields. Development may be hindered at brownfields because
29 private lenders are reluctant to provide loans or because developers are reluctant to assume unknown
30 environmental risks for projects on potentially contaminated properties.



1 (2) The legislature further finds that the cleanup of brownfields should be encouraged and facilitated for
2 the benefit of the state's citizens. Cleanup can reduce threats to human health and the environment and prepare
3 properties for reuse and redevelopment.

4 (3) Montana's existing local and regional brownfields loan providers do not have sufficient funding or
5 geographic coverage to award loans for otherwise eligible cleanup projects across Montana. To ensure that
6 entities and people have the opportunity to compete for federal brownfields revolving loan grants, [sections 1
7 through 6] are necessary.

8 (4) The legislature further intends that the department, in implementing [sections 1 through 6]:

9 (a) maximize the environmental and economic benefits of prompt cleanup activities; and

10 (b) minimize administrative processes and costs.

11 (5) The purpose of [sections 1 through 6] is to provide grants and low-interest loans to help address
12 brownfields. These grants and loans can fill the gap in private financing and allow for the cleanup or assessment
13 of brownfields to restore and sustain communities and ecological systems.

14
15 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 6], the following definitions

16 apply:

17 (1) "Accounts" means the brownfields grant and loan accounts established in [section 4].

18 (2) "Brownfields" means real property where expansion, redevelopment, or reuse is complicated by the
19 presence or potential presence of a hazardous or deleterious substance as defined in 75-10-701.

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

21
22 **NEW SECTION. Section 4. Brownfields grant and loan accounts -- uses -- limitations.** (1) There

23 are brownfields grant and loan special revenue accounts administered by the department within the state special
24 revenue fund and the federal special revenue fund established in 17-2-102.

25 (2) (a) Money allocated or budgeted for the purposes of [sections 1 through 6] must be deposited in the
26 state special revenue account provided for in subsection (1) of this section.

27 (b) Money received by the state in the form of interest and income earned on the account, loan
28 repayments, fees collected pursuant to [section 5(3)], and money received by the department in the form of gifts,
29 grants, bequests, or contributions from any source intended to be used for the purposes of [sections 1 through
30 6] must be deposited in the appropriate account provided for in subsection (1).

1 (c) All federal funds awarded to the state from the U.S. environmental protection agency under the
2 federal Brownfields Revitalization and Environmental Restoration Act of 2001, Public Law 107-118, 115 Stat.
3 2356, must be deposited in the federal special revenue account provided for in subsection (1) for the purposes
4 of [sections 1 through 6].

5 (3) The department may spend funds in the accounts to:

6 (a) in accordance with subsection (6), provide matching grant funds;

7 (b) in accordance with [section 5] and subsection (5) of this section, provide grants and loans pursuant
8 to [sections 1 through 6];

9 (c) support cleanup, redevelopment, and reuse of brownfields pursuant to [sections 1 through 6]; and

10 (d) administer [sections 1 through 6].

11 (4) (a) The federal special revenue fund must be used by the department as follows:

12 (i) a minimum of 50% must be used to award loans to remediate brownfields and for eligible
13 programmatic costs for managing the accounts; and

14 (ii) no more than 50% may be used to award grants to remediate brownfields.

15 (b) The department shall ensure that awards made in accordance with this subsection (4):

16 (i) comply with applicable federal laws, requirements, or guidelines; and

17 (ii) provide for a 20% cost share from nonfederal sources in the form of money, labor, materials, or
18 services.

19 (5) (a) The department may not grant a recipient an award of more than \$200,000 for a brownfields site.

20 (b) The department may require loan recipients to provide a cost share of up to 20% in the form of
21 money, labor, materials, or services.

22 (6) Only funds in the state special revenue account may be used to match federal funds.

23
24 **NEW SECTION. Section 5. Issuance of grants and loans.** (1) The department may award grants and
25 loans for the purposes of [sections 1 through 6] to a:

26 (a) department, agency, board, commission, or other division of state government;

27 (b) city, county, or other political subdivision or local government body of the state; or

28 (c) nonprofit organization.

29 (2) The department may award loans to private entities or individuals.

30 (3) (a) The department may impose and collect a fee from grant and loan recipients for the administration

1 of [sections 1 through 6].

2 (b) The fee may not exceed the costs of administering the accounts established in [section 4(1)].

3 (4) The department may contract for assistance in administering [sections 1 through 6].

4 (5) The department may enter into agreements with the federal government to secure additional funding
5 for the purposes of [sections 1 through 6].

6
7 **NEW SECTION. Section 6. Rulemaking authority.** The department may adopt rules to implement
8 [sections 1 through 6]. Rules may include:

9 (1) eligibility criteria for grant and loan recipients;

10 (2) site eligibility and cost reimbursement criteria;

11 (3) criteria and procedures for ranking and selecting recipients for loans and grants;

12 (4) procedures for making and administering loans and grants;

13 (5) loan interest rates, not to exceed 10%, and the terms of loans;

14 (6) procedures for ensuring loan repayment, including late payment penalty fees;

15 (7) fees paid by grant and loan recipients for the administration of [sections 1 through 6] in accordance
16 with [section 5(3)];

17 (8) procedures and requirements for loan applicants to meet the requirements of [section 4(5)(b)]; and

18 (9) other rules the department determines to be reasonably necessary to implement this part.

19

20 **Section 7.** Section 75-10-621, MCA, is amended to read:

21 **"75-10-621. Hazardous waste/CERCLA special revenue account.** (1) There is a hazardous
22 waste/CERCLA special revenue account within the state special revenue fund established in 17-2-102.

23 (2) There must be paid into the hazardous waste/CERCLA account:

24 (a) proceeds from the resource indemnity and ground water assessment tax as provided by 15-38-106;

25 (b) revenue obtained from the interest income of the resource indemnity trust fund under the provisions
26 of 15-38-202, together with interest accruing on that revenue;

27 (c) all proceeds of bonds or notes issued under 75-10-623 and all interest earned on proceeds of the
28 bonds or notes; and

29 (d) revenue from penalties or damages collected under the federal Comprehensive Environmental
30 Response, Compensation, and Liability Act of 1980, as amended in 1986 (CERCLA).

1 (3) Appropriations may be made from the hazardous waste/CERCLA account only for the following
2 purposes and subject to the following conditions:

3 (a) not more than one-half of the interest income received for any biennium from the resource indemnity
4 trust fund may be appropriated on a biennial basis for:

5 (i) implementation of the Montana Hazardous Waste Act, including regulation of underground storage
6 tanks and the state share to obtain matching federal funds;

7 (ii) implementation of Title 75, chapter 10, part 6, pertaining to state assistance to and cooperation with
8 the federal government for remedial action under CERCLA;

9 (iii) expenses of the department in administering and overseeing the implementation of Title 75, chapter
10 10, parts 4 and 6; and

11 (iv) state expenses relating to investigation and remedial action for any hazardous substance defined in
12 75-10-602; and

13 (b) to the extent funds are available after the appropriations in subsection (3)(a), the department may,
14 as appropriate, seek authorization from the legislature or, when the legislature is not in session, through the
15 budget amendment process provided for in Title 17, chapter 7, part 4, to spend funds for:

16 (i) state participation in remedial action under section 104 of CERCLA;

17 (ii) state costs for maintenance of sites at which remedial action under CERCLA has been completed;

18 and

19 (iii) the state share to obtain matching federal funds for underground storage tank corrective action or
20 the Montana Brownfields Grant and Loan Act provided for in [sections 1 through 6] or to obtain any other federal
21 grant funds used for environmental remediation.

22 (4) For the purposes of subsection (3)(b), the legislature finds that a need for state special revenue to
23 obtain matching federal funds for underground storage tank corrective action or for remedial action under section
24 104 of CERCLA constitutes a serious unforeseen and unanticipated circumstance for the purpose of meeting the
25 definition of "emergency" in 17-7-102. The legislature further finds that the inability of the department to match
26 the federal funds as the funds become available would seriously impair the functions of the department in carrying
27 out its responsibilities under Title 75, chapter 10, parts 4 and 6.

28 (5) There is no dollar limit to the hazardous waste/CERCLA account. Unused balances remain in the
29 account until appropriated by the legislature for the purposes specified in this section."
30

1 **Section 8.** Section 75-10-704, MCA, is amended to read:

2 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is
3 in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund
4 by the department. The department is authorized to expend amounts from the fund necessary to carry out the
5 purposes of this part.

6 (2) The fund may be used by the department ~~only~~ to carry out the provisions of this part, ~~and~~ for remedial
7 actions taken by the department pursuant to this part in response to a release of hazardous or deleterious
8 substances, or to provide the state share to obtain matching federal funds for underground storage tank corrective
9 action or the Montana Brownfields Grant and Loan Act provided for in [sections 1 through 6] or to obtain any other
10 federal grant funds used for environmental remediation.

11 (3) The department shall:

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

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

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

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

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

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

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

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

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

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

28 (h) funds received from the interest paid pursuant to 75-10-722.

29 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and
30 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 department
3 may apply to the governor for a grant from the environmental contingency account established pursuant to
4 75-1-1101.

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

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

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

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

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

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

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

28 (b) A person who donates in-kind services with respect to remediating a specific release at a specific
29 facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that
30 results from the release or threatened release, including but not limited to claims for indemnification or

1 contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or
2 economic loss.

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

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

10 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
11 subsection (8) must be approved by the department as appropriate remedial action."
12

13 **Section 9.** Section 75-11-313, MCA, is amended to read:

14 **"75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup fund
15 in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the
16 board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections
17 (3)(c) and (3)(d). Administrative costs under subsections (3)(a), ~~and (3)(b), and (3)(e)~~ must be paid pursuant to
18 a legislative appropriation.

19 (2) There is deposited in the fund:

20 (a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

21 (b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any
22 source, intended to be used for the purposes of this fund;

23 (c) money appropriated or advanced to the fund by the legislature;

24 (d) money loaned to the board by the board of investments; and

25 (e) all interest earned on money in the fund.

26 (3) As provided in 75-11-318, the fund may be used only:

27 (a) to administer this part, including payment of board expenses associated with administration;

28 (b) to pay the actual and necessary department expenses associated with administration;

29 (c) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage
30 tank and approved by the board; ~~and~~

1 (d) for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the
2 advance or loan; and

3 (e) to provide the state share to obtain matching federal funds for underground storage tank corrective
4 action or the Montana Brownfields Grant and Loan Act provided for in [sections 1 through 6] or to obtain any other
5 federal grant funds used for environmental remediation.

6 (4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts
7 from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for
8 the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year."

9

10 NEW SECTION. Section 10. Codification instruction. [Sections 1 through 6] are intended to be
11 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 6].

12

13 NEW SECTION. Section 11. 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 12. Effective date. [This act] is effective July 1, 2015.

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- END -