

1 HOUSE BILL NO. 389

2 INTRODUCED BY E. STAFMAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING QUALIFYING SMALL POWER
5 PRODUCTION FACILITY BONDING LAWS; REQUIRING AN OWNER OF CERTAIN QUALIFYING SMALL
6 POWER PRODUCTION FACILITIES TO FILE A BOND OR OTHER FINANCIAL ASSURANCE; REQUIRING
7 THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ESTABLISH THE AMOUNT OF THE BOND OR
8 OTHER FINANCIAL ASSURANCE; PROVIDING FOR THE RELEASE OF THE BOND OR FINANCIAL
9 ASSURANCE; PROVIDING FOR A PENALTY IF A BOND OR FINANCIAL ASSURANCE IS NOT FILED;
10 ALLOWING A PENALTY, BOND, OR OTHER FINANCIAL ASSURANCE TO BE APPEALED TO THE BOARD
11 OF ENVIRONMENTAL REVIEW; ALLOWING THE DEPARTMENT TO COLLECT A FEE; PROVIDING
12 RULEMAKING AUTHORITY; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **NEW SECTION. Section 1. Qualifying small power production facility -- bond or financial**
18 **assurance.** (1) (a) Within 1 year of [the effective date of this act], the department of environmental quality shall
19 request that the owner of a qualifying small power production facility submit a bond or other financial assurance
20 in a sum determined by the department in accordance with subsection (2), conditioned on the faithful
21 remediation of the facility and the site where the facility is located.

22 (b) Within 60 days of a request by the department in accordance with subsection (1)(a), an owner of a
23 facility shall submit a bond or other financial assurance payable to the state in a form acceptable by the
24 department and in a sum determined by the department.

25 (2) In determining the amount of the bond or other financial assurance required in accordance with
26 subsection (1), the department shall take into consideration:

27 (a) the lands subject to impact by the facility over the estimated life of the facility;

28 (b) the condition of the land impacted by the facility prior to development of the facility including:

- 1 (i) the uses existing at the time of construction, and if the land has a history of previous development,
2 the uses that preceded development;
- 3 (ii) the capability of the land prior to any development to support a variety of uses giving consideration
4 to soil and foundation characteristics, topography, and vegetative cover, and, if applicable, a soil survey; and
- 5 (iii) the productivity of the land prior to development, including appropriate classification as prime
6 farmlands, as well as the average yield of food, fiber, forage, or wood products from lands obtained under high
7 levels of management;
- 8 (c) the use that is proposed to be made of the land following reclamation, including a discussion of the
9 utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those
10 uses to existing land use policies and plans, and the comments of any owner of the surface, state and local
11 governments, or agencies that would have to initiate, implement, approve, or authorize the proposed use of the
12 land following reclamation;
- 13 (d) a detailed description of how the proposed postdevelopment land use is to be achieved and the
14 necessary support activities that may be needed to achieve the proposed land use;
- 15 (e) (i) the engineering techniques proposed to be used in reclamation and a description of the major
16 equipment;
- 17 (ii) a plan for the control of surface water drainage and of water accumulation; and
- 18 (iii) a plan, where appropriate, for backfilling, soil stabilization, and compacting, grading, and
19 appropriate revegetation;
- 20 (f) a detailed estimated timetable for the accomplishment of each major step in the reclamation plan;
- 21 (g) the steps to be taken to comply with applicable air and water quality laws and regulations and any
22 applicable health and safety standards;
- 23 (h) the consideration that has been given to developing the reclamation plan in a manner consistent
24 with local physical, environmental, and climatological conditions;
- 25 (i) the results of test boring, which the applicant has made at the area impacted by development, or
26 other equivalent information and data in a form satisfactory to the department, including the location of
27 subsurface water and an analysis of the chemical properties, including acid forming properties of the mineral
28 and overburden; and

1 (j) other information determined relevant by the department.

2 (3) If an owner fails to submit a bond or other financial assurance acceptable to the department within
3 the timeframe required by this section, the department may assess an administrative penalty of \$25,000 and an
4 additional administrative penalty of \$1,500 for each day the failure to submit the bond or financial assurance
5 continues.

6 (4) An owner may appeal the department's penalty assessment or the amount of the bond or other
7 financial assurance determined by the department to the board of environmental review within 20 days after
8 receipt of written notice of the penalty or bond amount. The contested case provisions of the Montana
9 Administrative Procedures Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this
10 subsection.

11 (5) (a) The department shall release the bond or other financial assurance held in accordance with
12 subsections (1) through (4) if it is satisfied that the cleanup at the site where the facility is located is complete.

13 (b) If an owner fails to attain a satisfactory degree of cleanup at the site where the facility is located
14 and has not commenced action to rectify deficiencies within 30 days after notification by the department, the
15 department shall cause the bond or other financial assurance to be forfeited.

16 (6) (a) The department may charge the owner a fee, which must be commensurate with costs, to
17 cover costs incurred in accordance with this section.

18 (b) All fees collected under this subsection (6) must be deposited in the state special revenue fund
19 provided for in 17-2-102. All fees paid pursuant to this section must be used as provided in this section.

20 (7) The department may adopt rules as necessary to administer this section.

21 (8) For the purposes of this section, the following definitions apply:

22 (a) "Owner" means the owner of a qualifying small power production facility.

23 (b) "Qualifying small power production facility" has the meaning provided for in 69-3-601 that:

24 (i) is owned and operated by a person not primarily engaged in the generation or sale of electricity
25 other than electric power from a small power production facility; and

26 (ii) produces electricity using waste coal or waste petroleum coke.

27

28 **Section 2.** Section 75-10-704, MCA, is amended to read:

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

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

8 (3) The department shall:

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

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

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

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

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

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

21 (d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-
22 106;

23 (e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-
24 202;

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

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

27 (h) funds received from the interest paid pursuant to 75-10-722;

28 (i) costs recovered pursuant to 75-8-106(7) and penalties recovered pursuant to 75-8-109; and

1 (i) penalties recovered pursuant to [section 1]; and

2 ~~(j)(k)~~ funds transferred from the orphan share account pursuant to 75-10-743(10). The full amount of
3 these funds must be dedicated each fiscal year as follows:

4 (i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the
5 Libby asbestos superfund site and allocated pursuant to 75-10-1603 and 75-10-1604; and

6 (ii) 50% to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371. This
7 subsection ~~(4)(j)(ii)-(4)(k)(ii)~~ does not apply to exploration or mining work performed after March 9, 1971.

8 Projects funded under this subsection ~~(4)(j)(ii)-(4)(k)(ii)~~ are not subject to the requirements of Title 75, chapter
9 10, part 7.

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 the
12 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 account the
18 interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing
19 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 the
22 department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are
23 donated.

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

28 (d) If the balance for a specific project is determined by the department to be sufficient to remediate

1 the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for
2 remedial action, using the funds donated under this subsection (7).

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

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

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

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

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

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

24 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
25 subsection (8) must be approved by the department as appropriate remedial action. (Subsection ~~(4)(j)~~ (4)(k)
26 terminates June 30, 2027--sec. 5, Ch. 387, L. 2015.)"

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28 **NEW SECTION. Section 3. Notification to tribal governments.** The secretary of state shall send a

1 copy of [this act] to each federally recognized tribal government in Montana.

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3 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
4 integral part of Title 75, and the provisions of Title 75 apply to [section 1].

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6 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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