

HOUSE BILL NO. 116  
INTRODUCED BY R. RIPLEY  
BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RESOURCE INDEMNITY TRUST AND GROUND WATER ASSESSMENT LAWS; ELIMINATING THE RECLAMATION AND DEVELOPMENT GRANTS ACCOUNT AND THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT; CREATING THE NATURAL RESOURCES OPERATIONS STATE SPECIAL REVENUE ACCOUNT AND THE NATURAL RESOURCES PROJECTS STATE SPECIAL REVENUE ACCOUNT; REALLOCATING CERTAIN OIL AND GAS PRODUCTION TAXES AND METALLIFEROUS MINES TAXES INTO THE NEW SPECIAL REVENUE ACCOUNTS; REALLOCATING CERTAIN RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; ELIMINATING CERTAIN STATUTORY APPROPRIATIONS; REALLOCATING CERTAIN RESOURCE INDEMNITY TRUST FUND INTEREST DISTRIBUTIONS; CLARIFYING THE USE OF THE RESOURCE INDEMNITY TRUST FUND; ELIMINATING THE CAP ON THE GROUND WATER ASSESSMENT SPECIAL REVENUE ACCOUNT; CLARIFYING THE USE OF THE WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-36-331, 15-37-117, 15-38-106, 15-38-202, 15-38-203, 17-5-702, 17-7-502, 19-5-404, 75-10-621, 75-10-704, 75-10-743, 80-7-823, 82-11-161, 85-1-102, 85-1-603, 85-1-605, 85-1-606, 85-1-613, 85-1-614, 85-1-615, 85-1-616, 85-1-631, 85-2-905, 90-2-1103, 90-2-1111, AND 90-2-1121, MCA; REPEALING SECTIONS 85-1-604 AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 15-36-331, MCA, is amended to read:

**"15-36-331. Distribution of taxes.** (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 15-1-501, in the state special

revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

	2005	2006 and succeeding tax years
Big Horn	45.04%	45.05%
Blaine	58.11%	58.39%
Carbon	48.93%	48.27%
Chouteau	57.65%	58.14%
Custer	80.9%	69.53%
Daniels	49.98%	50.81%
Dawson	50.64%	47.79%
Fallon	41.15%	41.78%
Fergus	83.52%	69.18%
Garfield	48.81%	45.96%
Glacier	64.74%	58.83%
Golden Valley	57.41%	58.37%
Hill	65.33%	64.51%
Liberty	59.73%	57.94%
McCone	52.86%	49.92%
Musselshell	51.44%	48.64%
Petroleum	54.62%	48.04%
Phillips	53.78%	54.02%
Pondera	70.89%	54.26%
Powder River	62.17%	60.9%
Prairie	39.73%	40.38%
Richland	46.72%	47.47%
Roosevelt	46.06%	45.71%
Rosebud	38.69%	39.33%

Sheridan	<del>47.54%</del>	47.99%
Stillwater	<del>54.35%</del>	53.51%
Sweet Grass	<del>60.24%</del>	61.24%
Teton	<del>48.4%</del>	46.1%
Toole	<del>57.14%</del>	57.61%
Valley	<del>54.22%</del>	51.43%
Wibaux	<del>48.68%</del>	49.16%
Yellowstone	<del>48.06%</del>	46.74%
All other counties	<del>50.15%</del>	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 2.95% to the ~~reclamation and development grants~~ natural resources operations state special revenue account established in ~~90-2-1104~~ [section 27];

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 4.18% to the ~~reclamation and development grants~~ natural resources operations state special revenue account established in ~~90-2-1104~~ [section 27];

(ii) 2.95% to the orphan share account established in 75-10-743;

(iii) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(iv) all remaining proceeds to the state general fund."

**Section 2.** Section 15-37-117, MCA, is amended to read:

**"15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

- (a) to the credit of the general fund of the state, 57% of total collections each year;
  - (b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;
  - (c) to the hard-rock mining reclamation debt service fund ~~created~~ established in 82-4-312, 8.5% of total collections each year;
  - (d) to the ~~reclamation and development grants program~~ natural resources operations state special revenue account established in [section 27], 7% of total collections each year; and
  - (e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:
    - (i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and
    - (ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:
      - (A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);
      - (B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and
      - (C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.
- (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.
- (3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502."

**Section 3.** Section 15-38-106, MCA, is amended to read:

**"15-38-106. (Temporary) Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit the proceeds from the resource indemnity and ground water assessment tax in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) \$366,000 of the proceeds ~~of the resource indemnity and ground water assessment taxes~~ from the tax in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

~~(e)(d)~~ 50% of the remaining proceeds ~~in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects~~ from the tax divided equally between the environmental quality protection fund established in 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621;

~~(d)(e)~~ \$150,000 ~~of the remaining proceeds of the resource indemnity and ground water assessment taxes in the natural resource workers' tuition scholarship account established in 39-10-106 for the first fiscal year following July 1 immediately after the date that the governor certifies that the resource indemnity trust fund balance has reached \$100 million and for each succeeding fiscal years year~~ from the proceeds from the tax, the amount required under 39-10-106(4);

~~(e)(f)~~ all remaining proceeds from the tax in the ~~orphan share account established in 75-10-743~~ natural resources projects state special revenue account, established in [section 28], for the purpose of making grants to be used for mineral development reclamation projects and renewable resource projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer. (Terminates June 30, 2007--sec. 10, Ch. 586, L. 2001.)

**15-38-106. (Effective July 1, 2007) Payment of tax -- records -- collection of taxes -- refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before the due date of the annual statement established in 15-38-105, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit the proceeds from the resource indemnity and ground water assessment tax in the following order:

(a) annually in due course, from the proceeds of the tax to the CERCLA match debt service fund provided in 75-10-622, the amount necessary, as certified by the department of environmental quality, after crediting to the CERCLA match debt service fund amounts transferred from the CERCLA cost recovery account established under 75-10-631, to pay the principal of, premium, if any, and interest during the next fiscal year on bonds or notes issued pursuant to 75-10-623;

(b) \$366,000 of the proceeds from the tax in the ground water assessment account established by 85-2-905;

(c) for the biennium beginning July 1, 2007, \$150,000 of the proceeds from the tax in the water storage state special revenue account established in 85-1-631;

~~(e)~~(d) 50% of the remaining proceeds in the orphan share account from the tax divided equally between the environmental quality protection fund established in 75-10-743 75-10-704 and the hazardous waste/CERCLA special revenue account established in 75-10-621; and

~~(d)~~(e) all remaining proceeds from the tax in the ~~reclamation and development grants~~ natural resources projects state special revenue account, established by ~~90-2-1104~~ in [section 28], for the purpose of making grants to be used for mineral development reclamation projects and renewable resource projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

**Section 4.** Section 15-38-202, MCA, is amended to read:

**"15-38-202. (Temporary) Investment of resource indemnity trust fund -- expenditure -- minimum balance.** (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. After the fund balance reaches \$100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) ~~\$240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.~~

(ii)(i) ~~\$2~~ \$3.5 million to be deposited into in the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account, ~~created by 85-1-604~~ established in [section 28], for the purpose of making grants;

(iii) ~~for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, \$1.2 million and for fiscal years beginning on or after July 1, 2005, \$1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants;~~

(iv)(ii) ~~\$300,000 to be deposited into~~ in the ground water assessment account ~~created by~~ established in

85-2-905; and

~~(v)(iii)~~ for the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, \$350,000 and for fiscal years beginning on or after July 1, 2005, \$500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed \$175,000 to be deposited in the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed \$50,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) \$500,000 to be deposited ~~into~~ in the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 25.5% and for fiscal years beginning on or after July 1, 2005, 30% Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the ~~renewable resource grant and loan program~~ natural resources operations state special revenue account created by ~~85-1-604~~ established in [section 27].

(ii) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 22% and for fiscal years beginning on or after July 1, 2005, 26% Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 45% and for fiscal years beginning on or after July 1, 2005, 35% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

~~(iv)(iii)~~ For the fiscal year beginning July 1, 2002, through the fiscal year ending June 30, 2005, 7.5% and for fiscal years beginning on or after July 1, 2005, 9% Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal



budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. (Terminates July 1, 2009--sec. 9, Ch. 529, L. 1999.)

**15-38-202. (Effective July 1, 2009) Investment of resource indemnity trust fund -- expenditure -- minimum balance.** (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. After the fund balance reaches \$100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

~~(i) \$240,000, which is statutorily appropriated, as provided in 17-7-502, to be deposited into the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs. Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a permanent fund account, the income from which may be used for the purposes provided in this subsection.~~

~~(ii)(i) \$2 \$3.5 million to be deposited into in the renewable resource grant and loan program natural resources projects state special revenue account, created by 85-1-604 established in [section 28], for the purpose of making grants; and~~

~~(iii) \$1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and~~

~~(iv)(ii) \$300,000 to be deposited into in the ground water assessment account created by 85-2-905.~~

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed \$175,000 to be deposited in the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed \$50,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) \$500,000 to be deposited ~~into~~ in the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) ~~Thirty~~ Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the ~~renewable resource grant and loan program~~ natural resources operations state special revenue account created by ~~85-1-604~~ established in [section 27].

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

~~(iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

~~(iv)~~(iii) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session. ~~(Terminates June 30, 2014--sec. 5, Ch. 497, L. 1999.)~~

~~**15-38-202. (Effective July 1, 2014) Investment of resource indemnity trust fund -- expenditure -- minimum balance.** (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches \$100 million. After the fund balance reaches \$100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than \$100 million.~~

~~———— (2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:~~

~~———— (i) \$2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;~~

~~———— (ii) \$1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants; and~~

~~——— (iii) \$300,000 to be deposited into the ground water assessment account created by 85-2-905.~~

~~——— (b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:~~

~~——— (i) an amount not to exceed \$175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;~~

~~——— (ii) an amount not to exceed \$50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and~~

~~——— (iii) \$500,000 to be deposited into the water storage state special revenue account created by 85-1-631.~~

~~——— (c) The remainder of the interest income is allocated as follows:~~

~~——— (i) Thirty percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.~~

~~——— (ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/GERCLA special revenue account provided for in 75-10-621.~~

~~——— (iii) Thirty-five percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.~~

~~——— (iv) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.~~

~~——— (3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."~~

**Section 5.** Section 15-38-203, MCA, is amended to read:

**"15-38-203. Purpose of fund usage -- limitation on future use Use of funds.** (1) Any funds made available under this chapter must be used and expended to improve the total environment and rectify damage to the environment.

~~(2) It is the intent of the legislature that future appropriations from the resource indemnity trust interest not be made to fund general operating expenses of state agencies."~~

**Section 6.** Section 17-5-702, MCA, is amended to read:

**"17-5-702. Purpose and intent.** (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by an act of the legislature for financing specific renewable resource projects in the state authorized by the legislature and to guarantee redemption of the bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and ~~such other money as~~ that the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include renewable resource projects as part of the program established in Title 85, chapter 1, part 6. The legislature further intends that the income from renewable resource projects in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in ~~85-1-604~~ [section 28]."

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

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

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; ~~15-38-202~~; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 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; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 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; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; ~~82-11-161~~; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; ~~pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014;~~ pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

**Section 8.** Section 19-5-404, MCA, is amended to read:

**"19-5-404. State employer contribution.** (1) Except as provided in subsection (2), the state shall pay as employer contributions 25.81% of the compensation paid to all of the employer's employees, except those properly excluded from membership.

(2) The state shall contribute monthly from the ~~renewable resource grant and loan program account in the state special revenue fund~~ natural resources operations state special revenue account, established in ~~section 27]~~, to the judges' pension trust fund an amount equal to 25.81% of the compensation paid to the chief water court judge. The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."

**Section 9.** Section 75-10-621, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the state share to obtain matching federal funds for underground storage tank corrective action.

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

(5) There is no dollar limit to the hazardous waste/CERCLA account. Except as provided in subsection (6), unused balances remain in the account until appropriated by the legislature for the purposes specified in this

section.

(6) (a) If funds are transferred from the orphan share fund to the hazardous waste/CERCLA account pursuant to 75-10-743(9), the department shall, subject to the limitations in subsections (6)(b) and (6)(c) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the hazardous waste/CERCLA account to the orphan share fund the unencumbered amount remaining in the hazardous waste/CERCLA account at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the hazardous waste/CERCLA account.

(b) The total amount transferred pursuant to subsection (6)(a) may not exceed the total amount transferred to the hazardous waste/CERCLA account pursuant to 75-10-743(9).

(c) Subsection (6)(a) does not apply to the proceeds of bonds or notes sold pursuant to 75-10-623, to interest on the proceeds of those bonds or notes, or to appropriations of those proceeds or interest."

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

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

(2) Except as provided in subsection (9), the fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

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

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

(4) There must be deposited in the fund:

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

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

(c) funds ~~appropriated~~ allocated to the fund by the legislature;

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

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

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

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

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

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

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

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

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

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

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



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

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

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

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

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

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

(9) (a) If funds are transferred from the orphan share fund to the environmental quality protection fund pursuant to 75-10-743(9), the department shall, subject to the limitation in subsection (9)(b) of this section, at the end of the fiscal year in which the transfer is made and in each subsequent fiscal year, transfer from the environmental quality protection fund to the orphan share fund the unencumbered amount remaining in the environmental quality protection fund at the end of the fiscal year that is in excess of the amount appropriated for the next fiscal year from the environmental quality protection fund.

(b) The total transferred pursuant to subsection (9)(a) may not exceed the total amount transferred to the environmental quality protection fund pursuant to 75-10-743(9)."

**Section 11.** Section 75-10-743, MCA, is amended to read:

**"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment of department costs.** (1) There is an orphan share account in the state special revenue fund established in

17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9) through (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in defending the orphan share.

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

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

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

~~———— (c) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;~~

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

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

~~(f)~~(d) interest income on the account;

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

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

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

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

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

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

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

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

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

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

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

(9) For the biennium beginning July 1, 2005, and subject to the provisions of section 3, Chapter 355, Laws of 2005, the department may transfer funds from the orphan share fund to the environmental quality protection fund established in 75-10-704, the hazardous waste/CERCLA account established in 75-10-621, or both. The total amount transferred pursuant to this subsection may not exceed \$600,000.

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

(b) The money spent pursuant to subsection (10)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(c) The department shall consult with the noticed potentially liable persons regarding contractor selection

and determination of the scope of the work for contract tasks. The department shall also provide the noticed potentially liable persons with contract performance updates and shall consult with the noticed potentially liable persons regarding expenses and progress on contract tasks.

(d) The department shall contract for the compilation, assessment, and summarization of the existing data pertaining to the complex described in subsection (10)(a), for recommendations for and conducting of additional investigations and studies necessary to develop remediation alternatives, and for development and assessment of remediation alternatives.

(e) Unless the department is delayed by a challenge to a contracting action, multiple contractor selection processes, or other unanticipated circumstances, the activities authorized under subsection (10)(a) must meet the following schedule:

(i) Contracts for investigations and studies must be in place by August 31, 2005.

(ii) A summary of existing data must be prepared by December 31, 2005.

(iii) The contract or contract task order for investigations, studies, and development and evaluation of final remediation alternatives must be in place by April 30, 2006.

(iv) All intended field work must be completed by November 30, 2006, and to the extent that this field work indicates that followup is necessary, the followup field work must be completed as soon as possible or addressed in the report that must be submitted pursuant to subsection (10)(g).

(v) The contractor shall submit evaluations of the extent of contamination by October 31, 2006.

(vi) The contractor shall submit final remediation alternatives by July 31, 2007.

(f) The department shall report to the environmental quality council quarterly during calendar years 2005, 2006, and 2007 regarding the progress being made to meet the requirements of subsection (10)(e). The report must include information on expenditures.

(g) If investigations completed under this subsection (10) indicate the need for additional information or for pilot tests and other related remedial action process activities, the department shall prepare a report identifying the rationale and estimated costs for additional work and present it to the environmental quality council during the spring of 2007.

(h) The department shall provide to the environmental quality council copies of investigations and reports completed pursuant to subsection (10)(d).

(11) (a) Beginning in the fiscal year that commences July 1, 2005, the department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection

(11)(b) of this section.

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

(ii) When the board of investments makes the determination pursuant to subsection (11)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection (11)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

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

**Section 12.** Section 80-7-823, MCA, is amended to read:

**"80-7-823. Transfer of funds.** ~~(1)~~ There is transferred \$100,000 annually from the highway nonrestricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in 80-7-705.

~~(2) There is a one-time transfer in fiscal year 2003 of up to \$300,000 from the resource indemnity trust fund, as provided in 15-38-202, from the first money paid into the resource indemnity trust fund that exceeds \$100 million for the purposes provided in 80-7-705."~~

**Section 13.** Section 82-11-161, MCA, is amended to read:

**"82-11-161. Oil and gas production damage mitigation account -- statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account \$50,000 from the interest income of the resource indemnity trust fund, except that if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds \$200,000, no allocation will be made; or

(b) is less than \$200,000, then an amount less than or equal to the difference between the unobligated cash balance and \$200,000, but not more than \$50,000, must be allocated to the oil and gas production damage

mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account all funds received by the board pursuant to 82-11-136.

(4) ~~If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502;~~ Funds from the oil and gas production damage mitigation account, upon the authorization of the board, may be used to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, sump, hole, drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account."

**Section 14.** Section 85-1-102, MCA, is amended to read:

**"85-1-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

- (a) for the purpose of protecting the department's properties and assets;
- (b) to oversee the operation and maintenance of the projects;
- (c) to administer contracts and receivables;
- (d) to maintain project financial records;
- (e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and
- (f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(3) "Cost of works" means:

- (a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired that are considered necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with the works;

(d) the cost of all machinery and equipment, financing charges, and interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal services, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses that are necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

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

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations that have any title or interest in any properties, rights, easements, or franchises to be acquired.

(6) (a) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity that is not eligible for loans and grants under 85-1-605.

(b) The term does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency of the United States, or any other governmental entity.

(7) "Project" means any one of the works defined in this section or any combination of works that are physically connected or jointly managed and operated as a single unit.

(8) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

~~(9) "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the renewable resource grant and loan program as set forth in 85-1-604.~~

~~(10)~~(9) "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

~~(11)~~(10) "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, to private persons, and to any other eligible recipients; and

(b) purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

~~(12)~~(11) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized group or community that is located in Montana, that exercises self-government powers, and that is recognized as eligible for those services that are provided by the United States to Indians because of their status as Indians.

~~(13)~~(12) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation in rivers and streams, and the provision of greater local and state control of Montana's water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

~~(14)~~(13) "Water development project" means a project as defined in subsection (7), except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

~~(15)~~(14) (a) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works.

(b) The term includes:

(i) all means of conserving and distributing water, including but not limited to reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) all works for the conservation, development, storage, distribution, and utilization of water, including



but not limited to works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, and supplying water for public, domestic, industrial, or other uses and for fire protection."

**Section 15.** Section 85-1-603, MCA, is amended to read:

**"85-1-603. Renewable resource loan debt service fund created -- coal severance tax allocated -- renewable resource loan loss reserve fund created.** (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan debt service fund, as received:

(i) 0.95% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35;

(ii) any principal and accrued interest under 85-1-613(5)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account pursuant to ~~85-1-604~~ [section 28], as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under 85-1-613(5)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

**Section 16.** Section 85-1-605, MCA, is amended to read:

**"85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance.** (1) The

department may recommend to the legislature that grants and loans be made from revenue deposited in the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28], that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, including an authority as defined in 75-6-304, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the grant funds available and up to \$10 million for loans from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature.

(6) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from

the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government."

**Section 17.** Section 85-1-606, MCA, is amended to read:

**"85-1-606. Grants and loans to private persons.** (1) To encourage the construction and development of water-related projects, the department may make grants and loans to private persons from funds appropriated from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] and may make loans to private persons from the renewable resource loan proceeds account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for water-related projects, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select the water-related projects for which grants or loans may be awarded."

**Section 18.** Section 85-1-613, MCA, is amended to read:

**"85-1-613. (Temporary) Limits on loans.** (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] or the renewable resource loan proceeds account if the loan exceeds the lesser of \$400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] or the renewable resource loan proceeds account if the loan would exceed the lesser of \$3 million or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] or renewable resource loan proceeds account if the loan exceeds the lesser of \$200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

(5) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

(6) A loan made under this part may not be used for the cost of operation and maintenance of a project.

(Terminates June 30, 2007--sec. 2, Ch. 418, L. 2005.)

**85-1-613. (Effective July 1, 2007) Limits on loans.** (1) A loan to a private person that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, for a renewable resource grant and loan program project may not be made from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] or the renewable resource loan proceeds account if the loan exceeds the lesser of \$400,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors that it considers important.

(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 35, chapter 1, part 2, or Title 85, chapter 6, part 1, may not be made from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] or the renewable resource loan proceeds account if the loan would exceed the lesser of \$300,000 or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.

(3) A loan to the state, a local government, or a tribal government for a renewable resource grant and loan program project may not be made by the department from the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in [section 28] or renewable resource loan proceeds account if the loan exceeds the lesser of \$200,000 or the project sponsor's remaining debt capacity.

(4) The period for repayment of loans may not exceed 30 years.

- (5) The interest rate at which loans may be made under this part must be sufficient to:
- (a) cover the bond debt service for a loan; and
  - (b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.
- (6) A loan made under this part may not be used for the cost of operation and maintenance of a project."

**Section 19.** Section 85-1-614, MCA, is amended to read:

**"85-1-614. Limits on grants from ~~renewable resource grant and loan program~~ natural resources projects state special revenue account.** (1) The maximum grant awarded to a private person may not exceed the lesser of:

- (a) 5% of the estimated total funds potentially available in the ~~renewable resource grant and loan~~ natural resources projects state special revenue account, established in [section 28], for public and private grants in the biennium in which the grant will be made; or
  - (b) 25% of the total project cost.
- (2) This part does not limit the amount of grant funds that may be appropriated by the legislature to fund a state or local government project."

**Section 20.** Section 85-1-615, MCA, is amended to read:

**"85-1-615. Security interests -- purchase, operation, and resale of encumbered property.** (1) The state has a lien upon a project constructed with money from the ~~renewable resource grant and loan~~ natural resources projects state special revenue account established in [section 28] or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

- (2) From the funds available under ~~85-1-604~~ [section 27] or 85-1-617, the state may:
  - (a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and that the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

**Section 21.** Section 85-1-616, MCA, is amended to read:

**"85-1-616. Administration of loans and grants.** The department shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. The fees and charges must be deposited in the ~~renewable resource grant and loan program~~ natural resources projects state special revenue account established in ~~85-1-604~~ [section 28]."

**Section 22.** Section 85-1-631, MCA, is amended to read:

**"85-1-631. Water storage state special revenue account created -- revenues allocated -- appropriations from account.** (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account:

(a) for the biennium beginning July 1, 2007, the proceeds of the resource indemnity and ground water assessment tax as provided in 15-38-106; and

(b) money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202 and all revenue of the works and other money as provided in 85-1-332.

(3) All revenue provided from 85-1-332(1)(e) and (1)(f) deposited in the water storage state special revenue account must be appropriated solely for the construction, operation, ~~maintenance, and~~ rehabilitation.

expansion, maintenance, and modification of the works state-owned water storage projects.

(4) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(5) Deposits to the water storage state special revenue account ~~are to~~ must be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

(6) The purpose of the water storage state special revenue account is to provide money ~~for loans and grants~~ exclusively for:

- ~~(a) water storage projects, including the purchase or lease of property;~~
- ~~—— (b) planning, feasibility, and design studies; and~~
- ~~—— (c) other costs related to construction, operation, rehabilitation, expansion, maintenance, and modification of state-owned water storage projects.~~

~~(7) The department shall administer this section as an integral part of the renewable resource grant and loan program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage project proposals and for administering grants and loans, subject to the same limitations, as applied to other renewable resource grants and loans.~~

~~—— (8) The following preferences must be considered in ranking proposals for water storage grants and loans:~~

- ~~—— (a) first preference is for the rehabilitation of water storage projects that resolve threats to life and property;~~
- ~~—— (b) second preference is for the improvement or expansion of existing water storage projects; and~~
- ~~—— (c) third preference is for the development of new water storage projects."~~

**Section 23.** Section 85-2-905, MCA, is amended to read:

**"85-2-905. Ground water assessment account.** (1) There is a ground water assessment account within the special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, ~~\$366,000~~ of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and ~~\$300,000~~ of the interest earnings from the resource indemnity trust fund, as authorized by 15-38-202, ~~unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:~~

~~—— (i) equals or exceeds \$666,000, in which case an allocation may not be made and the proceeds must be deposited in the resource indemnity trust fund established by 15-38-201; or~~

~~—— (ii) is less than \$666,000, in which case an amount equal to the difference between the unobligated cash balance and \$666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;~~

(b) funds provided by state government agencies and by local governments to carry out the purposes of this part; and

~~(c) proceeds allocated to the account as provided in 15-38-106; and~~

~~(d)~~(c) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

**Section 24.** Section 90-2-1103, MCA, is amended to read:

**"90-2-1103. Definitions.** As used in this part, the following definitions apply:

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

(2) "Financially feasible" means that adequate funds are available to complete the project as approved.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Mineral development" means exploration, extraction, processing, or other activity related to the production of a mineral.

(5) "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

(6) "Project" means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the reclamation and development grants program. A project may consist



of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(7) "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(8) "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

~~(9) "Reclamation and development grants account" means the reclamation and development grants special revenue account established in 90-2-1104.~~

(9) "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts."

**Section 25.** Section 90-2-1111, MCA, is amended to read:

**"90-2-1111. State and local grants.** (1) Any department, agency, board, commission, or other division of state government or any city, county, or other political subdivision or tribal government within the state may apply, in accordance with the procedures established by the department, for a grant from the ~~reclamation and development grants~~ natural resources projects state special revenue account, established in [section 28], for a project that is consistent with the policy and purpose of the reclamation and development grants program.

(2) The department shall evaluate applications under the eligibility criteria provided in 90-2-1112 and the evaluation criteria provided in 90-2-1113.

(3) The department shall solicit and consider in its evaluation of applications the views of interested persons and public agencies.

(4) Based on its evaluation of eligible applications, the department shall recommend to the governor projects to receive grants from the ~~reclamation and development grants~~ natural resources projects state special revenue account established in [section 28].

(5) The governor shall submit all proposals, with his recommended priorities, to the legislature by the first day of any regular legislative session. The legislature may approve by appropriation or other appropriate means grants for those projects it finds consistent with the policies and purposes of the reclamation and development grants program. The department shall administer and oversee the grants to approved projects and monitor the projects."

**Section 26.** Section 90-2-1121, MCA, is amended to read:

**"90-2-1121. Prohibited compensation to public officers or employees -- penalty.** (1) An officer, attorney, or other employee of the department may not directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation received as an officer, attorney, or employee.

(2) A person convicted of violating any provision of this section shall be punished by a fine not to exceed \$2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both. Any fines collected under this section must be deposited in the ~~reclamation and development grants~~ natural resources projects state special revenue account established in [section 28]."

NEW SECTION. **Section 27. Natural resources operations state special revenue account created -- revenue allocated -- appropriations from account.** (1) There is a natural resources operations state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the natural resources operations state special revenue account:

(a) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(b) the metal mines license tax proceeds as provided in 15-37-117(1)(d);

(c) the oil and natural gas production tax as provided in 15-36-331; and

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the natural resources operations state special revenue account for administrative expenses, including salaries and expenses for personnel and equipment, office space, and other expenses necessarily incurred in the administration of natural resources operations.

NEW SECTION. **Section 28. Natural resources projects state special revenue account created -- revenue allocated -- limitations on appropriations from account.** (1) There is a natural resources projects state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the natural resources projects state special revenue account money allocated from:

- (a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;
  - (b) the resource indemnity and ground water assessment tax under the provisions of 15-38-106; and
  - (c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619.
- (3) Appropriations may be made from the natural resources projects state special revenue account for grants and loans for designated projects and the activities authorized in 85-1-602 and 90-2-1102.

NEW SECTION. **Section 29. Repealer.** Sections 85-1-604 and 90-2-1104, MCA, are repealed.

NEW SECTION. **Section 30. Codification instruction.** [Sections 27 and 28] are intended to be codified as an integral part of Title 15, chapter 38, and the provisions of Title 15, chapter 38, apply to [sections 27 and 28].

NEW SECTION. **Section 31. Effective date.** [This act] is effective July 1, 2007.

- END -

