

HOUSE BILL NO. 625

INTRODUCED BY J. ELLIS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN OWNER OF A COAL-FIRED GENERATING UNIT
5 TO FILE A BOND OR OTHER FINANCIAL ASSURANCE; REQUIRING THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY TO ESTABLISH THE AMOUNT OF BOND OR OTHER FINANCIAL ASSURANCE;
7 PROVIDING FOR THE RELEASE OF THE BOND OR FINANCIAL ASSURANCE; PROVIDING FOR A PENALTY
8 IF A BOND OR FINANCIAL ASSURANCE IS NOT FILED; ALLOWING A PENALTY, BOND, OR OTHER
9 FINANCIAL ASSURANCE TO BE APPEALED TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING
10 SECTION 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

13
14 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions
15 apply:

16 (1) "Coal-fired generating unit" means an individual unit or units of a coal-fired generating facility located
17 in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts but not more
18 than 400 megawatts, was placed in service prior to 1980, and will shut down on or before July 1, 2022. The term
19 includes all property used to manage the waste from the operation of the coal-fired generating unit.

20 (2) "Owner" means an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451
21 that owns a coal-fired generating unit.

22
23 NEW SECTION. **Section 2. Coal-fired generating unit bond or financial assurance.** (1) (a) Within
24 60 days of [the effective date of this act], the department of environmental quality shall request that an owner of
25 a coal-fired generating unit submit a bond or other financial assurance in a sum determined by the department
26 in accordance with subsection (2), conditioned upon the faithful remediation of the coal-fired generating unit.

27 (b) Within 60 days of a request by the department in accordance with subsection (1)(a), an owner of a
28 coal-fired generating unit shall submit a bond or other financial assurance payable to the state of Montana in a
29 form acceptable by the department and in a sum determined by the department.

30 (c) If the coal-fired generating unit has more than one owner, the bond required in accordance with this

1 subsection (1) must cover only the individual owner's share of remediation costs at the site where the coal-fired
2 generating unit is located.

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

5 (a) the character and nature of the site where the coal-fired generating unit is located;

6 (b) the current and reasonably anticipated uses of the property where the unit is located;

7 (c) reports, studies, or other evaluation related to remediation and specific remediation measures already
8 completed or under way pursuant to other legal obligations at the site where the unit is located; and

9 (d) other information determined relevant by the department.

10 (3) If an owner fails to submit a bond or other financial assurance acceptable to the department within
11 the timeframe required by this section, the department may assess an administrative penalty of \$10,000 and an
12 additional administrative penalty of \$10,000 for each day the failure to submit the bond or financial assurance
13 continues.

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

19
20 **NEW SECTION. Section 3. Release of bond or other financial assurance.** (1) The department shall
21 release the bond or other financial assurance held in accordance with [section 2] if it is satisfied that the owner's
22 share of cleanup at the site where the coal-fired generating unit is located is complete.

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

26
27 **Section 4.** Section 75-10-704, MCA, is amended to read:

28 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is
29 in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund
30 by the department. The department is authorized to expend amounts from the fund necessary to carry out the

1 purposes of this part.

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

5 (3) The department shall:

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

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

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

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

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

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

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

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

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

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

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

23 (i) penalties recovered pursuant to [section 2]; and

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

26 (i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the
27 Libby asbestos superfund site; and

28 (ii) 50% to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371. This
29 subsection ~~(4)(i)(iii)~~ (4)(j)(ii) does not apply to exploration or mining work performed after March 9, 1971. Projects
30 funded under this subsection ~~(4)(i)(iii)~~ (4)(j)(ii) are not subject to the requirements of Title 75, chapter 10, part 7.

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

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

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

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

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

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

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

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

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

30 (b) A person who donates in-kind services with respect to remediating a specific release at a specific

1 facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that
2 results from the release or threatened release, including but not limited to claims for indemnification or
3 contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or
4 economic loss.

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

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

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

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16 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 3] are intended to be codified
17 as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 3].

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

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