

## 1 SENATE BILL NO. 262

2 INTRODUCED BY J. BRENDEN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
 5 FROM INVESTIGATING CERTAIN ANONYMOUS REPORTS OF ENVIRONMENTAL VIOLATIONS; AMENDING  
 6 SECTIONS 75-5-636, 75-6-104, 75-10-704, 75-10-707, 76-4-108, AND 82-4-356, MCA; AND PROVIDING AN  
 7 IMMEDIATE EFFECTIVE DATE."

8

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

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11 NEW SECTION. Section 1. Anonymous report -- investigation prohibited. (1) Except as provided  
 12 in ~~subsection~~ SUBSECTIONS (2) AND (3), the department may not conduct an initial investigation into a release of  
 13 a hazardous or deleterious substance under Title 75, chapter 10, part 7, or a violation under Title 75 or Title 76,  
 14 chapter 4, based solely on an anonymous report received by the department. For the purposes of this part, an  
 15 anonymous report includes a report to the department made by a person identified by name but requesting that  
 16 the person's name not be disclosed to the public.

17 (2) The department may investigate an anonymous report in order to retain primacy of a program and  
 18 to comply with the requirements of:

- 19 (a) 40 CFR 51.212(c)(1);  
 20 (b) 40 CFR 239.7(b) and (c)(4);  
 21 (c) 40 CFR 271.15(a), (b)(3), and (b)(4);  
 22 (d) 40 CFR 281.40(f); and  
 23 (e) 40 CFR 123.26(a), (b)(3), and (b)(4).

24 (3) NOTHING IN THIS SECTION LIMITS AN EMPLOYEE'S RIGHT TO REPORT, ANONYMOUSLY OR OTHERWISE, AN  
 25 ALLEGED VIOLATION OF LAW BY AN EMPLOYER.

26

27 NEW SECTION. Section 2. Anonymous report -- investigation prohibited. (1) Except as provided  
 28 in ~~subsection~~ SUBSECTIONS (2) AND (3), the department may not conduct an initial investigation into a violation  
 29 under Title 82, chapters 1 through 4, based solely on an anonymous report received by the department. For the  
 30 purposes of this part, an anonymous report includes a report to the department made by a person who provides

1 a name but requests that the person's name not be disclosed to the public.

2 (2) The department may investigate an anonymous report in order to retain primacy of a program and  
3 to comply with the requirements of 30 CFR 840.15 and 30 CFR 842.12(a) and (b).

4 (3) NOTHING IN THIS SECTION LIMITS AN EMPLOYEE'S RIGHT TO REPORT, ANONYMOUSLY OR OTHERWISE, AN  
5 ALLEGED VIOLATION OF LAW BY AN EMPLOYER.

6

7 **Section 3.** Section 75-5-636, MCA, is amended to read:

8 **"75-5-636. Investigation of complaints by other parties.** A person, association, corporation, or agency  
9 of the state or federal government may notify the department of an alleged violation of this chapter. ~~Based~~ Except  
10 as provided in [section 1], based upon information submitted by the person, association, corporation, or agency,  
11 the department shall conduct an investigation to determine the validity of the complaint. If a violation is  
12 established by the department's investigation, the department shall initiate an appropriate enforcement response  
13 as described in 75-5-617. If the investigation proves the protest to have been without reasonable cause, the  
14 department may seek recovery of investigative costs from the person who made the notification."

15

16 **Section 4.** Section 75-6-104, MCA, is amended to read:

17 **"75-6-104. Duties of department.** The department shall:

18 (1) except as provided in [section 1], upon its own initiative or complaint to the department, to the mayor  
19 or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation  
20 of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering  
21 removal of the cause of pollution;

22 (2) have waters examined to determine their quality and the possibility that they may endanger public  
23 health;

24 (3) consult and advise authorities of cities and towns and persons having or about to construct systems  
25 for water supply, drainage, wastewater, and sewage as to the most appropriate source of water supply and the  
26 best method of ensuring its quality;

27 (4) advise persons as to the best method of treating and disposing of their drainage, sewage, or  
28 wastewater with reference to the existing and future needs of other persons and to prevent pollution;

29 (5) consult with persons engaged in or intending to engage in manufacturing or other business whose  
30 drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

- 1 (6) collect fees, as described in 75-6-108, for services and deposit the fees collected in the public  
2 drinking water special revenue fund established in 75-6-115;
- 3 (7) establish and maintain experiment stations and conduct experiments to study the best methods of  
4 treating water, drainage, wastewater, and sewage to prevent pollution, including investigation of methods used  
5 in other states;
- 6 (8) enter on premises at reasonable times to determine sources of pollution or danger to water supply  
7 systems and whether rules and standards of the board are being obeyed;
- 8 (9) enforce and administer the provisions of this part;
- 9 (10) establish a plan for the provision of safe drinking water under emergency circumstances;
- 10 (11) maintain an inventory of public water supply systems and establish a program for conducting sanitary  
11 surveys; and
- 12 (12) enter into agreements with local boards of health whenever appropriate for the performance of  
13 surveys and inspections under the provisions of this part."  
14

15 **Section 5.** Section 75-10-704, MCA, is amended to read:

16 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is  
17 in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund  
18 by the department. The department is authorized to expend amounts from the fund necessary to carry out the  
19 purposes of this part.

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

23 (3) The department shall:

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

27 (b) except as provided in [section 1], investigate, negotiate, and take legal action, as appropriate, to  
28 identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial  
29 action, to achieve remedial action, and to recover costs and damages incurred by the state.

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

- 1 (a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs  
2 recovered pursuant to 75-10-715;
- 3 (b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant  
4 to 75-10-711(5);
- 5 (c) funds allocated to the fund by the legislature;
- 6 (d) proceeds from the resource indemnity and ground water assessment tax as authorized by 15-38-106;
- 7 (e) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;
- 8 (f) funds received from the interest income of the fund;
- 9 (g) funds received from settlements pursuant to 75-10-719(7); and
- 10 (h) funds received from the interest paid pursuant to 75-10-722.
- 11 (5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and  
12 additional money remains in the fund, the department shall seek additional authority to spend money from the  
13 fund through the budget amendment process provided for in Title 17, chapter 7, part 4.
- 14 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department  
15 may apply to the governor for a grant from the environmental contingency account established pursuant to  
16 75-1-1101.
- 17 (7) (a) There is established a state special revenue account for all funds donated or granted from private  
18 parties to remediate a specific release at a specific facility. There must be deposited into the account the interest  
19 income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this  
20 account.
- 21 (b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated  
22 in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to  
23 remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.
- 24 (c) If the balance of the fund created in this subsection (7), as determined by the department pursuant  
25 to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial  
26 contribution, all donated or granted funds, including any interest on those donated or granted funds, must be  
27 returned to the grantor.
- 28 (d) If the balance for a specific project is determined by the department to be sufficient to remediate the  
29 facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial  
30 action, using the funds donated under this subsection (7).

1 (e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions  
2 of the department, except as provided in [section 1], to investigate, negotiate, and take legal action, as  
3 appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for  
4 the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

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

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

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

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

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

22 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this  
23 subsection (8) must be approved by the department as appropriate remedial action."  
24

25 **Section 6.** Section 75-10-707, MCA, is amended to read:

26 **"75-10-707. Information gathering and access.** (1) ~~The~~ Except as provided in [section 1], the  
27 department may undertake any investigative or other information-gathering action that it considers necessary or  
28 appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise  
29 enforcing the provisions of this part.

30 (2) Any authorized officer, employee, or representative of the department may require a person who has

1 or may have information relevant to a release or threatened release of a hazardous or deleterious substance to  
2 furnish, upon request, any information or documents relating to but not limited to the following matters:

3 (a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is  
4 being generated, treated, stored, or disposed of at or transported from a facility;

5 (b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at  
6 or from a facility;

7 (c) information relating to the ability of a person to pay for or to perform a cleanup; and

8 (d) any other information relevant to the department's determination of the appropriate remedial action  
9 to be taken or to the enforcement of this part.

10 (3) For purposes of assisting the department in acquiring information relevant to the need for, the  
11 determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized  
12 officer, employee, or representative of the department is authorized to:

13 (a) enter or have access at reasonable times to any facility or other place or property where:

14 (i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of,  
15 or transported from;

16 (ii) there has been or may be a release of a hazardous or deleterious substance;

17 (iii) records or other relevant information regarding a release or threatened release is located;

18 (iv) entry is necessary to determine the need for any appropriate remedial action; or

19 (v) entry is necessary to effectuate a remedial action under this part; and

20 (b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a)  
21 or from any location where a suspected hazardous or deleterious substance may be located. Any authorized  
22 officer, employee, or representative of the department is authorized to inspect and obtain samples of containers  
23 or labeling for suspected hazardous or deleterious substances. Each inspection must be completed with  
24 reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving  
25 the premises that person shall give to the owner, operator, tenant, or other person in charge of the place from  
26 which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each  
27 sample. A copy of the results of any analysis made of the samples must be furnished promptly to the owner,  
28 operator, tenant, or other person in charge if that person can be located.

29 (4) The department may issue subpoenas for the attendance and testimony of witnesses and the  
30 production of relevant papers, books, or documents relating to the matters in subsections (2)(a) through (2)(d).

1 The method for service of subpoenas and payment of witness fees and mileage is the same as that required in  
2 civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a  
3 person pursuant to this subsection, the district court for a district in which the person is found, resides, or  
4 transacts business, upon application of the department and after notice to the person, has jurisdiction to issue  
5 an order requiring the person to appear and either give testimony or produce documents, or both, before a  
6 hearings officer. A failure to obey the order of the court may be punished by the court as a contempt.

7 (5) If consent is not granted regarding a request made by an authorized officer, employee, or  
8 representative under this section, the director of the department may issue an order directing compliance with  
9 the request.

10 (6) The department may commence a civil action to compel compliance with an order issued pursuant  
11 to this section.

12 (7) In any action commenced pursuant to subsection (6) when the court determines that there may be  
13 an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin  
14 any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless,  
15 under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with  
16 law.

17 (8) Persons subject to the requirements of this section may make a written claim of confidentiality for  
18 information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes  
19 entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials  
20 at the time they are obtained by the department. If the department accepts the characterization, it shall maintain  
21 that information as confidential. Information describing physical or chemical characteristics of hazardous or  
22 deleterious substances that have been or may be released into the environment are not considered confidential.  
23 The department has access to and may use any trade secret information in carrying out the activities of this part  
24 as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the  
25 information as confidential."

26

27 **Section 7.** Section 76-4-108, MCA, is amended to read:

28 **"76-4-108. Enforcement.** (1) If Except as provided in [section 1], if the reviewing authority has reason  
29 to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the  
30 reviewing authority may have written notice and an order served personally or by certified mail on the alleged

1 violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged  
2 to constitute the violation, the corrective action required by the reviewing authority, and the time within which the  
3 action is to be taken. A notice and order issued by the department under this section may also assess an  
4 administrative penalty as provided in 76-4-109. The alleged violator may, no later than 30 days after service of  
5 a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice  
6 of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in  
7 writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must  
8 be held within a reasonable time.

9 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate  
10 action to compel compliance with this part.

11 (3) The provisions of this part may be enforced by a reviewing authority other than the department or  
12 board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce  
13 the provisions of this part, the department or the board may compel compliance with this part under the provisions  
14 of this section.

15 (4) When a local reviewing authority exercises the authority delegated to it by this section, the local  
16 reviewing authority is legally responsible for its actions under this part.

17 (5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted  
18 under this part, or an order issued under this part has occurred, the department or the local reviewing authority  
19 may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice  
20 to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a  
21 hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must  
22 state the reason for the request. The hearing is before the board if the department revoked the certificate or  
23 before the local reviewing authority if the local reviewing authority revoked the certificate.

24 (6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part  
25 6, apply to a hearing held under this section."

26

27 **Section 8.** Section 82-4-356, MCA, is amended to read:

28 **"82-4-356. Action in response to complaints related to use of explosives.** (1) An owner of an interest  
29 in real property or an individual who resides within an area subject to property damage or safety hazards related  
30 to the use of explosives by any person subject to the provisions of this part may file a complaint with the



1 department, describing the alleged property damage or safety hazards. The complainant shall provide credible  
2 evidence to the department to substantiate allegations of property damage or safety hazards.

3 (2) Upon receipt of a complaint, the department:

4 (a) except as provided in [section 2], shall investigate the statements and charges in the complaint, using  
5 all available information, including mine or exploration blasting records and other data obtained through an  
6 examination of the dwelling, structure, or site identified in the complaint;

7 (b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that  
8 may have caused property damage or safety hazards, and may require the allegedly responsible person to  
9 cooperate as necessary to investigate the complaint;

10 (c) shall issue a written finding specifying the cause of any property damage or safety hazards that are  
11 validated by the investigation; and

12 (d) shall, if it determines that the preponderance of evidence indicates that property damage or safety  
13 hazards are or were caused by exploration or mining activities, order the responsible person to make changes  
14 in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards."

15  
16 **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as an  
17 integral part of Title 75, chapter 1, part 10, and the provisions of Title 75, chapter 1, part 10, apply to [section 1].

18 (2) [Section 2] is intended to be codified as an integral part of Title 82, chapter 4, part 10, and the  
19 provisions of Title 82, chapter 4, part 10, apply to [section 2].

20

21 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

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- END -