

SENATE BILL NO. 336

INTRODUCED BY J. ELLIS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING FINANCIAL ASSURANCE LAWS RELATED TO
5 COAL-FIRED GENERATING UNITS; REQUIRING AN OWNER OF A COAL-FIRED GENERATING UNIT TO
6 FILE A BOND OR OTHER FINANCIAL ASSURANCE; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL
7 QUALITY TO ESTABLISH THE AMOUNT OF BOND OR OTHER FINANCIAL ASSURANCE; PROVIDING FOR
8 THE RELEASE OF THE BOND OR FINANCIAL ASSURANCE; PROVIDING FOR A PENALTY IF A BOND OR
9 FINANCIAL ASSURANCE IS NOT FILED; ALLOWING A PENALTY, BOND, OR OTHER FINANCIAL
10 ASSURANCE TO BE APPEALED TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTION
11 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

17 (1) "Coal-fired generating unit" means an individual unit or units of a coal-fired generating facility located
18 in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts. 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.

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23 NEW SECTION. **Section 2. Coal-fired generating unit bond or financial assurance.** (1) (a) On or
24 before December 31, 2019, the department of environmental quality shall request that an owner of a coal-fired
25 generating unit submit a bond or other financial assurance in a sum determined by the department in accordance
26 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 Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

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19 **NEW SECTION. Section 3. Release of bond or other financial assurance.** (1) The department shall
20 release the bond or other financial assurance held in accordance with [section 2] if:

21 (a) it is satisfied that the owner's share of cleanup at the site where the coal-fired generating unit is
22 located is complete; or

23 (b) the bond or other financial assurance held by the department for the purposes of [sections 1 through
24 3] is replaced with a bond or other financial assurance that reflects the owner's share of cleanup at the site where
25 the coal-fired generating unit is located based on additional information received by and analysis completed by
26 the department.

27 (2) If an owner fails to attain a satisfactory degree of cleanup at the site where the unit is located and
28 has not commenced action to rectify deficiencies within 60 days after notification by the department, the
29 department shall cause the bond or other financial assurance to be forfeited.

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

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

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

9 (3) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department
10 may apply to the governor for a grant from the environmental contingency account established pursuant to
11 75-1-1101.

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

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

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

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

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

30 (f) The department shall expend the funds in a manner that maximizes the application of the funds to

1 physically remediating the specific release.

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

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

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

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

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

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

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

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