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House BILL NO. 288

INTRODUCED BY

Chris Repbein Beaudry Knox Josh Cole Linnard Wagner

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LIABILITY PROVISIONS FOR PERSONS WHO MAKE VOLUNTARY CONTRIBUTIONS TO A SPECIFIC REMEDIATION ACCOUNT; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. 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) 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 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 to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to

1 15-38-202.

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

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

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

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

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

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

23 (e) This subsection (7) is not intended to interfere with or to diminish the authority or actions of
24 the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons,
25 to obtain the participation and financial contribution of liable persons for the remedial action, to achieve
26 remedial action, and to recover costs and damages incurred by the state. ~~Subsections (7) and (8) do not~~
27 ~~pertain to facilities where the department has initiated actions under this part.~~

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

30 (8) (a) A person may donate in-kind services to remediate a specific release at a specific facility

1 pursuant to subsection (7). A person ~~that~~ who donates in-kind services is not liable under 75-10-715 solely
2 as a result of the contribution of in-kind services.

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

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

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

18 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
19 subsection (8) must be approved by the department as appropriate remedial action."
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21 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.
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23 NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the
24 meaning of 1-2-109, to private funds or in-kind services donated after April 14, 1995.
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APPROVED BY COM ON
NATURAL RESOURCES

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2 INTRODUCED BY OHS, REHBEIN, BEAUDRY, KNOX, TASH, COLE, GRIMES, WAGNER

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17 (2) The fund may be used by the department only to carry out the provisions of this part and for
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THIRD READING

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12 ~~shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or~~
13 ~~damages incurred as a result of a release or threatened release of a hazardous or deleterious substance~~
14 When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or
15 threatened release of a hazardous or deleterious substance, the person may not avoid that liability OR
16 RESPONSIBILITY UNDER 75-10-711 by subsequent donations of money or in-kind services under the
17 provisions of subsection (7) and this subsection (8).

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

20

21 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

22

23 **NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the
24 meaning of 1-2-109, to private funds or in-kind services donated after April 14, 1995.

25

-END-