

SENATE BILL NO. 315

INTRODUCED BY C. VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE CLEANUP OF THE LIBBY ASBESTOS SUPERFUND SITE; CREATING AN OVERSIGHT TEAM; CREATING A TRUST FUND AND AN OPERATION AND MAINTENANCE ACCOUNT; CREATING A LIAISON; ESTABLISHING DUTIES AND FUNDING; REQUIRING REPORTING; AND AMENDING SECTION 75-10-704, MCA."

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

NEW SECTION. Section 1. Libby asbestos superfund oversight team -- duties. (1) There is a Libby asbestos superfund oversight team. The oversight team is attached to the department of environmental quality for administrative purposes only, as prescribed in 2-15-121.

(2) The oversight team consists of:

(a) the director of the department of environmental quality;

(b) a Lincoln County commissioner designated by the commission;

(c) a citizen of Lincoln County nominated by the Lincoln County commission and selected by the governor; and

(d) two nonvoting members as follows:

(i) one member of the house of representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the house; and

(ii) one member of the senate whose district includes at least a portion of Lincoln County appointed by the senate president.

(2) The oversight team shall select a presiding officer.

(3) The oversight team shall meet at least quarterly to fulfill the requirements of this section.

(4) Duties of the oversight team include to:

(a) administer the Libby asbestos cleanup trust fund provided for in [section 3];

(b) administer the Libby asbestos cleanup operation and maintenance account provided for in [section 4]; and

(c) supervise, evaluate, and, if necessary, terminate the Libby asbestos superfund liaison.

(5) Unless otherwise provided by law, each member is entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while performing oversight team duties.

NEW SECTION. Section 2. Libby asbestos superfund liaison. (1) There is a Libby asbestos superfund liaison who is an employee of the department of environmental quality but serves at the pleasure of the Libby asbestos superfund oversight team created by [section 1].

(2) The Lincoln County commission shall nominate three candidates for the liaison position. The governor shall select the liaison from those candidates. The liaison reports to the oversight team.

(3) The liaison shall represent the interests of Lincoln County and the state in dealing with federal agencies related to the Libby asbestos superfund site. In carrying out these duties, the liaison shall:

- (a) monitor activities related to the Libby asbestos superfund site;
- (b) assist in the implementation of the final cleanup plan for the Libby asbestos superfund site;
- (c) review documents and provide comments and recommendations to the department, local governments, and the appropriate federal agencies regarding the Libby asbestos superfund site;
- (d) assist in the preparation and dissemination of reports and other information as necessary; and
- (e) other duties as assigned by the oversight team.

(4) The liaison shall submit a report to the environmental quality council by July 1 of each year.

NEW SECTION. Section 3. Libby asbestos cleanup trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of cleanup and long-term operation and maintenance at the Libby asbestos superfund site.

(2) The fund is financed with:

- (a) 20% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant to 75-10-704;

- (b) any funds remaining at the end of each fiscal year in the Libby asbestos cleanup operation and maintenance account provided for in [section 4]; and

- (c) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2028.

(4) The annual earnings on the fund for the year 2029 and for each succeeding year may be

1 appropriated for the purposes of subsection (1).

2 (5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the
3 members of each house of the legislature. An appropriation of the principal may be made only for payment of the
4 costs of cleanup and long-term operation and maintenance costs.

5
6 **NEW SECTION. Section 4. Libby asbestos cleanup operation and maintenance account.** (1) There
7 is a Libby asbestos cleanup operation and maintenance account in the state special revenue fund established
8 in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used for:

9 (a) cleanup and long-term operation and maintenance costs at the Libby asbestos superfund site; and

10 (b) administrative costs for the Libby asbestos superfund oversight team and the Libby asbestos
11 superfund liaison, not to exceed 25% of the annual appropriation.

12 (2) The following funds must be deposited in the account:

13 (a) 80% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant
14 to 75-10-704;

15 (b) money received by the department of environmental quality in the form of grants, gifts, transfers,
16 bequests, and donations, including donations limited in their purpose by the grantor, or appropriations from any
17 source intended to be used for the purposes of this account; and

18 (c) any interest or income earned on the account.

19 (3) Any unspent or unencumbered money in the account at the end of a fiscal year must be transferred
20 to the Libby asbestos cleanup trust fund.

21
22 **Section 5.** Section 75-10-704, MCA, is amended to read:

23 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is
24 in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund
25 by the department. The department is authorized to expend amounts from the fund necessary to carry out the
26 purposes of this part.

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

30 (3) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

20 (i) 50% to the state's contribution for cleanup and long-term operation and maintenance costs at the
21 Libby asbestos superfund site and allocated pursuant to [sections 3 and 4]; and

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

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

28 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department
29 may apply to the governor for a grant from the environmental contingency account established pursuant to
30 75-1-1101.

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

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

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

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

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

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

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

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

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

1 intentional misconduct.

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

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

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10 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 4] are intended to be codified
11 as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through
12 4].

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