

SENATE BILL NO. 20

INTRODUCED BY C. VINCENT

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REALLOCATING A PORTION OF METALLIFEROUS MINES LICENSE TAX COLLECTIONS TO THE ENVIRONMENTAL QUALITY PROTECTION FUND; PROVIDING A TRANSFER OF FUNDS TO THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 20-9-231, AND 75-10-704, AND 75-10-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

~~Section 1.~~ Section 7-6-2225, MCA, is amended to read:

~~"7-6-2225. County hard-rock mine trust account--expenditure restrictions.~~ (1) The governing body of a county receiving an allocation under 15-37-117(1)(e) 15-37-117(1)(f) shall establish a county hard-rock mine trust account.

~~(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the hard-rock mine trust account and may not be appropriated by the governing body until:~~

~~(a) a mining operation has permanently ceased all mining-related activity; or~~

~~(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.~~

~~(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county shall allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county and may use the remaining funds in the hard-rock mine trust account to:~~

~~(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force workforce described in subsection (2)(b);~~

~~(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;~~

~~(c) promote diversification and development of the economic base within the jurisdiction of a local~~

1 government unit through assistance to existing business for retention and expansion or to assist new business;
 2 ——— (d) attract new industry to the impact area;
 3 ——— (e) provide cash incentives for expanding the employment base of the area impacted by the changes
 4 in mining activity described in subsection (2); or
 5 ——— (f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the
 6 changes in mining activity described in subsection (2).
 7 ——— (4) Except as provided in subsection (3)(b), money held in the hard-rock mine trust account may not be
 8 considered as cash balance for the purpose of reducing mill levies.
 9 ——— (5) Money in the hard-rock mine trust account must be invested as provided by law. Interest and income
 10 from the investment of funds in the account must be credited to the account."

11
 12 ——— **Section 2.** Section 7-6-2226, MCA, is amended to read:
 13 ——— "**7-6-2226. Metal mines license tax account.** (1) The governing body of a county receiving tax
 14 collections under 15-37-117(1)(e) ~~15-37-117(1)(f)~~ may establish a metal mines license tax account to be used
 15 to hold the collections. The governing body may hold money in the account for any time period considered
 16 appropriate by the governing body. Money held in the account may not be considered as cash balance for the
 17 purpose of reducing mill levies.
 18 ——— (2) Money may be expended from the account as provided in 7-6-2225.
 19 ——— (3) Money in the account must be invested as provided by law. Interest and income from the investment
 20 of the metal mines license tax account must be credited to the account."

21
 22 **Section 1.** Section 15-37-117, MCA, is amended to read:
 23 "**15-37-117. Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes
 24 collected under the provisions of this part must, in accordance with the provisions of 17-2-124, be allocated as
 25 follows:
 26 (a) to the credit of the general fund of the state, 57% ~~40%~~ 47% of total collections each year;
 27 (b) to the state special revenue fund to the credit of a the hard-rock mining impact trust account
 28 established in 90-6-304(2), 2.5% of total collections each year;
 29 (c) to the hard-rock mining reclamation debt service fund established in 82-4-312, 8.5% of total
 30 collections each year;

1 (d) to the natural resources operations state special revenue account established in 15-38-301, 7% of
2 total collections each year; and AND

3 ~~(e) to the environmental quality protection state special revenue fund established in 75-10-704, 47% of~~
4 ~~total collections each year; and~~

5 ~~(e)(f)(E)~~ within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties
6 identified as experiencing fiscal and economic impacts, resulting in increased employment or local government
7 costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307,
8 in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been
9 prepared, to the county in which the mine is located, ~~25%~~ 35% of total collections each year, to be allocated by
10 the county commissioners as follows:

11 (i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

12 (ii) all money not allocated to the account pursuant to subsection ~~(1)(e)(f)~~ ~~(1)(f)(f)~~ ~~(1)(E)(I)~~ to be further
13 allocated as follows:

14 (A) 33 1/3% is allocated to the county for general planning functions or economic development activities
15 as described in 7-6-2225(3)(c) through (3)(e);

16 (B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by
17 the development or operation of the metal mine; and

18 (C) 33 1/3% is allocated to the high school districts within the county that have been affected by the
19 development or operation of the metal mine.

20 (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies
21 a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection ~~(1)(e)~~ ~~(1)(f)~~
22 ~~(1)(E)~~ in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

23 (3) The department shall return to the county in which metals are produced the tax collections allocated
24 under subsection ~~(1)(e)~~ ~~(1)(f)~~ ~~(1)(E)~~. The allocation to the county described by subsection ~~(1)(e)~~ ~~(1)(f)~~ ~~(1)(E)~~ is a
25 statutory appropriation pursuant to 17-7-502."

26
27 ~~Section 4.~~ Section 20-9-231, MCA, is amended to read:

28 ~~"20-9-231. Metal mines tax reserve fund. (1) The governing body of a local school district receiving~~
29 ~~tax collections under 15-37-117(1)(e) 15-37-117(1)(f) may establish a metal mines tax reserve fund to be used~~
30 ~~to hold the collections. The governing body may hold money in the fund for any time period considered~~

1 appropriate by the governing body. Money held in the fund may not be considered as fund balance for the
 2 purpose of reducing mill levies.

3 ~~——— (2) Money may be expended from the fund for any purpose provided by law.~~

4 ~~——— (3) Money in the fund must be invested as provided by law. Interest and income from the investment of
 5 the metal mines tax reserve fund must be credited to the fund.~~

6 ~~——— (4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title."~~

7

8 **Section 2.** Section 75-10-704, MCA, is amended to read:

9 **"75-10-704. Environmental quality protection fund.** (1) Subject to legislative fund transfers, there is
 10 in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund
 11 by the department. The department is authorized to expend amounts from the fund necessary to carry out the
 12 purposes of this part.

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

16 (3) The department shall:

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

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

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

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

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

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

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

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

1 (f) funds received from the interest income of the fund;
 2 (g) funds received from settlements pursuant to 75-10-719(7); and
 3 (h) funds received from the interest paid pursuant to 75-10-722; and
 4 ~~(i) funds received from collections of metalliferous mines license taxes, as provided in 15-37-117. These~~
 5 ~~funds must be dedicated to metal mine reclamation projects at abandoned mine sites, as provided in 82-4-371.~~
 6 ~~This subsection (4)(i) does not apply to exploration or mining work performed after March 9, 1971. Projects~~
 7 ~~funded under this subsection (4)(i) are not subject to the requirements of Title 75, chapter 10, part 7.~~

8 (I) FUNDS TRANSFERRED FROM THE ORPHAN SHARE ACCOUNT PURSUANT TO 75-10-743(10). THE FULL AMOUNT
 9 OF THESE FUNDS MUST BE DEDICATED EACH FISCAL YEAR AS FOLLOWS:

10 (i) 50% TO THE STATE'S CONTRIBUTION FOR CLEANUP AND LONG-TERM OPERATION AND MAINTENANCE COSTS
 11 AT THE LIBBY ASBESTOS SUPERFUND SITE; AND

12 (ii) 50% TO METAL MINE RECLAMATION PROJECTS AT ABANDONED MINE SITES, AS PROVIDED IN 82-4-371. THIS
 13 SUBSECTION (4)(I)(II) DOES NOT APPLY TO EXPLORATION OR MINING WORK PERFORMED AFTER MARCH 9, 1971. PROJECTS
 14 FUNDED UNDER THIS SUBSECTION (4)(I)(II) ARE NOT SUBJECT TO THE REQUIREMENTS OF TITLE 75, CHAPTER 10, PART
 15 7.

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

19 (6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department
 20 may apply to the governor for a grant from the environmental contingency account established pursuant to
 21 75-1-1101.

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

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

29 (c) If the balance of the fund created in this subsection (7), as determined by the department pursuant
 30 to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial

1 contribution, all donated or granted funds, including any interest on those donated or granted funds, must be
2 returned to the grantor.

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

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

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

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

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

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

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

27 (e) Any donated in-kind services that are employed as part of a remedial action pursuant to this
28 subsection (8) must be approved by the department as appropriate remedial action."
29

30 **SECTION 3. SECTION 75-10-743, MCA, IS AMENDED TO READ:**

1 **"75-10-743. Orphan share state special revenue account -- reimbursement of claims -- payment**

2 **of department costs.** (1) There is an orphan share account in the state special revenue fund established in
3 17-2-102 that is to be administered by the department. Money in the account is available to the department by
4 appropriation and, except as provided in subsections (9), (10), and (11), must be used to reimburse remedial
5 action costs claimed pursuant to 75-10-742 through 75-10-751 and to pay costs incurred by the department in
6 defending the orphan share.

7 (2) There must be deposited in the orphan share account:

8 (a) all penalties assessed pursuant to 75-10-750(12);

9 (b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

10 (c) unencumbered funds remaining in the abandoned mines state special revenue account;

11 (d) interest income on the account;

12 (e) funds received from settlements pursuant to 75-10-719(7); and

13 (f) funds received from reimbursement of the department's orphan share defense costs pursuant to
14 subsection (6).

15 (3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently
16 in the order in which they were received by the department. If the orphan share fund does not contain sufficient
17 money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan
18 share fund, the department, and the state are not liable for making any reimbursement for the costs. The
19 department and the state are not liable for any penalties if the orphan share fund does not contain sufficient
20 money to reimburse claims, and interest may not accrue on outstanding claims.

21 (4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs
22 may not be reimbursed from the orphan share fund until all remedial actions, except for operation and
23 maintenance, are completed at a facility.

24 (5) Except as provided in subsection (6), reimbursement from the orphan share fund must be limited to
25 actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745.
26 Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

27 (6) (a) The department's costs incurred in defending the orphan share must be paid by the persons
28 participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The
29 orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share
30 in proportion to the orphan share's allocated share, as follows:

1 (i) If sufficient funds are available in the orphan share fund, the department's costs incurred in defending
2 the orphan share must be paid from the orphan share fund in proportion to the share of liability allocated to the
3 orphan share.

4 (ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation
5 under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated share of the department's costs
6 incurred in defending the orphan share in proportion to each person's allocated share of liability.

7 (b) A person who pays the orphan share's proportional share of costs has a claim against the orphan
8 share fund and must be reimbursed as provided in subsection (3).

9 (c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share
10 fund and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after
11 remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and
12 maintenance costs. The agency may be reimbursed only after:

13 (i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent
14 jurisdiction;

15 (ii) it has received a notice letter pursuant to 75-10-711; and

16 (iii) the department has approved the costs.

17 (7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person
18 cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause
19 undue financial hardship on the person, the department may allow the submission of claims and may reimburse
20 the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless
21 the person is in substantial compliance with all department-approved remedial action plans.

22 (b) The department may reimburse claims from a lead liable person upon completion and department
23 approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating
24 final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable
25 person for the preparation of the reports.

26 (8) A person participating in the allocation process who received funds under the mixed funding pilot
27 program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive
28 reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot
29 program that are later attributed to the orphan share under the allocation process.

30 (9) (a) For the biennium beginning July 1, 2005, up to \$1.25 million may be used by the department to

1 pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating
2 final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale
3 oil corporation facility complex. If the department spends less than \$1.25 million for those purposes, the remaining
4 funds must be spent for remediation of the facility complex. The department may not seek recovery of the \$1.25
5 million from potentially liable persons.

6 (b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the
7 state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for
8 which the money was spent.

9 (10) (a) The department shall transfer from the orphan share account to the long-term or perpetual water
10 treatment permanent trust fund provided for in 82-4-367 \$1.2 million in each fiscal year until the board of
11 investments makes the certification pursuant to subsection (10)(b) of this section.

12 (b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust
13 fund provided for in 82-4-367 to determine when the amount of money in the long-term or perpetual water
14 treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of \$19.3 million
15 on January 1, 2018.

16 (ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board
17 of investments shall notify the department and certify to the department the amount of money, if any, that must
18 be transferred during the fiscal year in which the board of investments makes its determination pursuant to
19 subsection (10)(b)(i) in order to provide a fund balance of \$19.3 million on January 1, 2018.

20 (iii) In the fiscal year that the board of investments makes its determination and notifies the department,
21 the department shall transfer only the amount certified by the board of investments, if any, and may not make
22 additional transfers during subsequent fiscal years.

23 (c) After July 1, 2018, the department shall transfer \$1.2 million in each fiscal year from the orphan share
24 state special revenue account to the environmental quality protection fund provided in 75-10-704.

25 (11) The orphan share account is subject to legislative fund transfers."
26

27 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2015.
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29 NEW SECTION. Section 5. Termination. [This act] terminates June 30, ~~2024~~ 2027.
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- END -