

SENATE BILL NO. 355

INTRODUCED BY D. ANKNEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE USE OF FEDERAL BROWNFIELDS MONEY AT
5 BROWNFIELDS SITES; ESTABLISHING THE MONTANA BROWNFIELDS REVITALIZATION ACT;
6 ESTABLISHING REQUIREMENTS TO BE USED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN
7 DETERMINING ELIGIBILITY FOR THE USE OF FEDERAL BROWNFIELDS GRANTS AT PETROLEUM TANK
8 RELEASE SITES; PROHIBITING THE DEPARTMENT FROM LIMITING THE USE OF FEDERAL
9 BROWNFIELDS MONEY AT PETROLEUM TANK RELEASE SITES UNDER CERTAIN CONDITIONS;
10 REQUIRING THE DEPARTMENT TO COORDINATE WITH CERTAIN ENTITIES WHEN USING FEDERAL
11 BROWNFIELDS GRANTS OBTAINED BY THE DEPARTMENT; DEFINING TERMS; AMENDING SECTION
12 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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16 NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana
17 Brownfields Revitalization Act".

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19 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions
20 apply:

21 (1) "Brownfields sites" means real property where expansion, redevelopment, or reuse is complicated
22 by the presence or potential presence of a hazardous or deleterious substance as defined in 75-10-701.

23 (2) "Department" means the department of environmental quality provided for in 2-15-3501.

24 (3) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic
25 development organization, or nonprofit organization that has received federal brownfields money from the
26 environmental protection agency.

27 (4) "Petroleum tank release site" means a site where there has been a release from a petroleum storage
28 tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

29 (5) "Reasonable steps" means stopping the release of contamination and limiting future human exposure
30 to the release.

1 (6) (a) "Viable party" means a person with the financial capacity to pay for the assessment and
2 remediation of a petroleum tank release site.

3 (b) The term does not include an individual who owns or operates a petroleum tank release site where
4 petroleum is no longer dispensed on the site.

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6 **NEW SECTION. Section 3. Findings and intent -- purpose.** The legislature finds that:

7 (1) real properties exist across the state where the stigma of environmental contamination hinders their
8 development or best use. These contaminated properties are brownfields sites.

9 (2) the cleanup of brownfields sites should be encouraged and facilitated to reduce threats to human
10 health and the environment, prepare properties for reuse and redevelopment, and to return property to local tax
11 rolls;

12 (3) current petroleum site eligibility determinations by the department of environmental quality are limiting
13 the use of federal brownfields grant money obtained by grant recipients for assessment and remediation at
14 brownfields sites that include petroleum tank release sites;

15 (4) the petroleum tank release cleanup fund established in 75-11-313 is not sufficient to address all
16 petroleum tank release sites in Montana in a timely and comprehensive manner; and

17 (5) the department should encourage the use of federal brownfields money obtained by grant recipients
18 for assessment and remediation at brownfields sites that include petroleum tank release sites and to leverage
19 federal funds and limit costs imposed on Montana citizens.

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21 **NEW SECTION. Section 4. Brownfields site eligibility at petroleum tank release sites --**
22 **limitations.** (1) The department may not deny or limit the use of federal brownfields funding received by a grant
23 recipient from the United States environmental protection agency under the federal Brownfields Revitalization
24 and Environmental Restoration Act of 2001, Title II of Public Law 107-118, 115 Stat. 2360, at a petroleum tank
25 release site where the owner or operator, as defined in 75-11-302, at the site:

26 (a) is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313;

27 (b) did not cause a release of petroleum contamination by dispensing petroleum at the site;

28 (c) has taken reasonable steps to address the contamination at the site; or

29 (d) is not a viable party.

30 (2) The department may not limit the use of money from the petroleum tank release cleanup fund

1 established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient
2 for remediation at a petroleum tank release site.

3 (3) (a) Except as provided in subsection (3)(b), the department's decision concerning the use of
4 brownfields funding at brownfields sites that include petroleum tank release sites in accordance with this section
5 does not limit or alter the owner or operator's responsibility to assess or remediate a petroleum tank release site
6 in accordance with Title 75, chapter 11.

7 (b) If the grant recipient proposes timely and comprehensive remediation at a petroleum tank release
8 site using federal brownfields funding, and the proposed remediation meets or exceeds remediation standards
9 required by the department and financial commitments required by the petroleum tank release compensation
10 board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation and the use
11 of brownfields money at the petroleum tank release site.

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13 **NEW SECTION. Section 5. Use of brownfields funding acquired by state -- limitations.** Prior to
14 using federal funds awarded to the state from the United States environmental protection agency under the
15 federal Brownfields Revitalization and Environmental Restoration Act of 2001, Title II of Public Law 107-118, 115
16 Stat. 2360, the department shall:

17 (1) determine whether a grant recipient has secured federal brownfields money for assessment and
18 remediation of brownfields sites where the money is proposed for use and whether the grant recipient intends
19 to use the money to assess or to remediate the sites; and

20 (2) obtain written approval from the grant recipient allowing for the use of the federal funds by the
21 department at the brownfields site.

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23 **Section 6.** Section 75-11-309, MCA, is amended to read:

24 **"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans.** (1) An owner
25 or operator seeking reimbursement for eligible costs and the department shall comply with the following
26 procedures:

27 (a) If an owner or operator discovers or is provided evidence that a release may have occurred from the
28 owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of
29 the release and conduct an initial response to the release in accordance with state and federal laws and rules
30 to protect the public health and safety and the environment.

1 (b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within 120
2 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in
3 compliance with applicable state and federal laws and rules that the board determines pertain to prevention and
4 mitigation of petroleum releases.

5 (c) The owner or operator shall conduct a thorough investigation of the release, report the findings to
6 the department, and, as determined necessary by the department, prepare and submit for approval by the
7 department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective
8 action requirements.

9 (d) (i) The department shall review the corrective action plan and forward a copy to a local government
10 office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release.
11 The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

12 (ii) Based on its own review and comments received from a local government, tribal government, or other
13 source, the department, subject to [section 4], may approve the proposed corrective action plan, make or request
14 the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or
15 operator. A plan finally approved by the department through any process provided in this subsection (1)(d) is the
16 approved corrective action plan.

17 (iii) After the department approves a corrective action plan, a local government or tribal government may
18 not impose different corrective action requirements on the owner or operator.

19 (e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage
20 tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

21 (f) The department shall notify the owner or operator of its approval of a corrective action plan and shall
22 promptly submit a copy of the approved corrective action plan to the board. Upon review, the board may request
23 that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone. If the
24 department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the
25 corrective action plan must be amended to include a petroleum mixing zone.

26 (g) The owner or operator shall implement the corrective action plan or plans approved by the
27 department until the release is resolved. The department may oversee the implementation of the plan, require
28 reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority
29 concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable
30 law and rules.

1 (h) (i) The owner or operator shall document in the manner required by the board all expenses incurred
2 in preparing and implementing the corrective action plan. The owner or operator shall submit claims and
3 substantiating documents to the board in the form and manner required by the board.

4 (ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary
5 costs of responding to the release and implementing the corrective action plan.

6 (iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and
7 necessary, the board may request comment from the department and the owner or operator.

8 (iv) If the department determines that an owner or operator is failing to properly implement a corrective
9 action plan, it shall notify the board.

10 (i) The owner or operator shall document, in the manner required by the board, any payments to a third
11 party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and
12 substantiating documents to the board in the form and manner required by the board.

13 (j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have
14 originated from a properly designed and installed double-walled tank system, the owner or operator shall
15 document, in the manner required by the board, the following:

16 (i) the date that the release was discovered; and

17 (ii) that the originating tank was part of a properly designed and installed double-walled tank system.

18 (2) If an owner or operator is issued an administrative order for failure to comply with requirements
19 imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5,
20 all reimbursement of claims submitted after the date of the order must be suspended. Upon a written
21 determination by the department that the owner or operator has returned to compliance with the requirements
22 of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future
23 claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board
24 shall consider the effect and duration of the noncompliance.

25 (3) The board shall review each claim received under subsections (1)(h) and (1)(i), make the
26 determination required by this subsection, inform the owner or operator of its determination, and, as appropriate,
27 reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively
28 determine that:

29 (a) the expenses for which reimbursement is claimed:

30 (i) are eligible costs; and

1 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
2 corrective action plan approved by the department or for payments to a third party for bodily injury or property
3 damage; and

4 (b) the owner or operator:

5 (i) is eligible for reimbursement under 75-11-308; and

6 (ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination
7 by the board that the owner or operator has not complied with this section or rules adopted pursuant to this
8 section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board
9 that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section,
10 suspended and future claims may be reimbursed according to criteria established by the board. In establishing
11 the criteria, the board shall consider the effect and duration of the noncompliance.

12 (4) (a) If an owner or operator disagrees with a board determination under subsection (3), the owner or
13 operator may submit a written request for a hearing before the board.

14 (b) A written request for a hearing must be received by the board within 120 days after notice of the
15 board's determination is served on the owner or operator by certified mail. The notice of determination must
16 advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board.
17 Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall
18 serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline
19 for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

20 (c) If a written request is received within 120 days, the hearing must be held at a meeting of the board
21 or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following
22 receipt of the request or at a time mutually agreed to by the board and the owner or operator.

23 (d) If a written request is not received within 120 days, the determination of the board is final.

24 (5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the
25 order that the costs are finally approved by the board.

26 (6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement
27 of eligible costs that have been approved by the board but for which money is not currently available from the fund
28 for reimbursement.

29 (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible
30 costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under

1 this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

2 (c) When considering a request for a guarantee of payment, the board may require pertinent information
3 or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for
4 a guarantee."

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6 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified
7 as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 5].

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9 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that matured,
10 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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12 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
14 remains in effect in all valid applications that are severable from the invalid applications.

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

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