AN ACT REVISING LAWS RELATED TO THE CLEANUP OF THE LIBBY ASBESTOS SUPERFUND SITE; CREATING AN ADVISORY TEAM; CREATING A TRUST FUND AND AN OPERATION AND MAINTENANCE ACCOUNT; CREATING A LIAISON; ESTABLISHING DUTIES AND FUNDING; PROVIDING FUND TRANSFERS AND APPROPRIATIONS; REQUIRING REPORTING; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

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

(2) The advisory team consists of:

(a) the director of the department of environmental quality or the director's designated representative;

(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;

(d) 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

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

(3) The advisory team shall select a presiding officer.

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

(5) Duties of the advisory team include to:

(a) advise the department of environmental quality regarding the administration of the Libby asbestos cleanup trust fund provided for in [section 3];

(b) advise the department of environmental quality regarding the administration of the Libby asbestos

cleanup operation and maintenance account provided for in [section 4]; and

(c) recommend tasks and work priorities for the Libby asbestos superfund liaison.

(6) 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 advisory team duties.

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 as staff to the Libby asbestos superfund advisory 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 director of the department of environmental quality or the director's designated representative.

(3) The liaison shall represent the interests of Lincoln County and the state by assisting the department of environmental quality 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 final cleanup plans for the Libby asbestos superfund site;

(c) review documents and provide comments and recommendations to the department and, at the department's request, to local governments and 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 director of the department of environmental quality or the director's designated representative.

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

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 appropriated for the purposes of subsection (1).

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

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

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

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

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

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

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

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

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

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

"75-10-704. Environmental quality protection fund. (1) Subject to legislative fund transfers, 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, including the preparation of a priority list, 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 allocated to the fund by the legislature;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) This subsection (7) is not intended to delay, to interfere with, or to diminish the authority or actions of the department to 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.

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

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

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

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

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

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

Section 6. Transfer of funds. The department of environmental quality is authorized to transfer money as required in [sections 3 and 4].

Section 7. Appropriations. There is appropriated to the department of environmental quality in each of the fiscal years 2018 and 2019:

(1) $120,000 from the Libby asbestos cleanup trust fund for the purposes of [section 3]; and

(2) $480,000 from the Libby asbestos cleanup operation and maintenance account for the purposes of [section 4].

Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 4].

Section 9. Effective date. [This act] is effective July 1, 2017.

- END -

I hereby certify that the within bill,

SB 0315, originated in the Senate.

_____

President of the Senate

Signed this _____ day

of _____, 2017.

_____

Secretary of the Senate

_____

Speaker of the House

Signed this _____ day

of _____, 2017.

SENATE BILL NO. 315

INTRODUCED BY C. VINCENT

AN ACT REVISING LAWS RELATED TO THE CLEANUP OF THE LIBBY ASBESTOS SUPERFUND SITE; CREATING AN ADVISORY TEAM; CREATING A TRUST FUND AND AN OPERATION AND MAINTENANCE ACCOUNT; CREATING A LIAISON; ESTABLISHING DUTIES AND FUNDING; PROVIDING FUND TRANSFERS AND APPROPRIATIONS; REQUIRING REPORTING; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN EFFECTIVE DATE.