

SENATE BILL NO. 19

INTRODUCED BY MANGAN

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3
4 A BILL FOR AN ACT ENTITLED: "~~AN ACT CREATING A CLASS FOURTEEN TAX CATEGORY PROPERTY~~
5 ~~TAX INCENTIVES FOR NEW OR AND EXPANDING BUSINESS ENTERPRISE PROPERTY; DEFINING "NEW~~
6 ~~OR EXPANDING BUSINESS ENTERPRISE" AND "NEW OR EXPANDING BUSINESS ENTERPRISE~~
7 ~~PROPERTY"; REMOVING NEW INDUSTRIAL PROPERTY FROM THE CLASS FIVE TAX CATEGORY;~~
8 ALLOWING STATE AND LOCAL GOVERNMENT TAX ABATEMENTS; AMENDING SECTIONS 15-2-302,
9 15-6-135, ~~15-24-1402, AND 20-9-407~~ 15-24-1401, 20-1-208, AND 90-6-205, MCA; AND REPEALING SECTION
10 ~~15-24-1401, SECTIONS 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2404, 15-24-2405, AND 20-9-407,~~
11 MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 (Refer to Introduced Bill)

15 Strike everything after the enacting clause and insert:

16
17 NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 6] is to permit local
18 governments and the state of Montana to work cooperatively to generate good-paying jobs and economic growth
19 by encouraging, through tax incentives, the creation and expansion of business enterprises that produce goods
20 or services within the state and then export those goods or services to customers located outside of Montana
21 for use outside of the state.

22
23 NEW SECTION. **Section 2. Definitions.** For purposes of [sections 1 through 6], the following
24 definitions apply:

25 (1) "Business enterprise" means a business that derives more than 50% of its annual gross revenue
26 from sales outside of Montana or one that produces value-added products or commodities.

27 (2) "Expanding business enterprise" means a business enterprise that expands its existing operations
28 on or after January 1, 2006, by employing a minimum of 10 additional qualifying employees.

29 (3) "Expanding business enterprise property" means buildings, machinery, and fixtures, owned by an
30 expanding business enterprise and acquired on or after the date of expansion, that are:

- 1 (a) necessary for the employment of qualifying employees; and
- 2 (b) utilized by the business enterprise throughout the qualifying period.
- 3 (4) "New business enterprise" means a business enterprise commencing initial operations within the
- 4 state on or after January 1, 2006, and employing at least 10 qualifying employees.
- 5 (5) "New business enterprise property" means buildings, machinery, and fixtures owned by a new
- 6 business enterprise that are:
- 7 (a) necessary for the employment of qualifying employees; and
- 8 (b) utilized by the business enterprise throughout the qualifying period.
- 9 (6) "Qualifying employee" means a permanent, full-time employee who is:
- 10 (a) paid the lesser of either the county average annual wage or the Montana average annual wage as
- 11 determined by the department of labor and industry through its quarterly census of employment and wages
- 12 program;
- 13 (b) necessary for the new or expanded business enterprise to produce value-added products or
- 14 commodities; and
- 15 (c) employed during the entire applicable qualifying period.
- 16 (7) "Qualifying period" means:
- 17 (a) for the purposes of [sections 1 through 5]:
- 18 (i) the first 3 years of a new business enterprise's operation; or
- 19 (ii) the first 3 years of an expanding business enterprise's expanded operations; or
- 20 (b) for the purposes of [section 6], the time period during which the new or expanding business
- 21 enterprise may qualify for the local tax abatement.
- 22 (8) (a) "Value-added products or commodities" means products or commodities that are manufactured,
- 23 processed, produced, or created by changing the form of raw materials or intermediate products into more
- 24 valuable products or commodities that are capable of being sold or traded in interstate commerce.
- 25 (b) The term does not include services, transportation, or sales, unless they are incidental to the
- 26 production of the product or commodity.
- 27 (c) Examples of value-added products or commodities include but are not limited to processed foods,
- 28 lumber products, matte, software, manufactured homes, processed dairy products, slaughter-ready and
- 29 butchered livestock, refined petroleum products, and ethanol. Examples of products or commodities that are
- 30 not valued-added include but are not limited to unprocessed grain, logs, Christmas trees, milled ore, residential

1 or commercial construction affixed to real estate, raw milk, feeder cattle, crude oil, and natural gas.

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3 **NEW SECTION. Section 3. New and expanding business enterprise property tax abatement.** (1)

4 A new or expanding business enterprise may qualify for an abatement of the business enterprise's property tax
5 liability pursuant to [section 4].

6 (2) If the abatement is granted, the qualifying new or expanding business enterprise property must be
7 taxed at 33% of its taxable value for the qualifying period.

8 (3) The abatement applies to all mills levied against the qualifying property.

9 (4) Upon the termination of the qualifying period, the abatement ceases and the property for which the
10 abatement had been granted must be taxed according to its classification.

11 (5) A taxpayer that has been granted an abatement pursuant to this section may not be granted an
12 abatement pursuant to [section 6].

13

14 **NEW SECTION. Section 4. Application -- approval.** (1) In order for a taxpayer to receive the

15 abatement described in [section 3], the taxpayer shall submit an application for abatement to the department.

16 The taxpayer shall submit a copy of the application to the governing body of the county or city or town in which
17 the property for which the abatement is requested is located. The application must be on a form prescribed by
18 the department and must include a requirement that the applicant:

19 (a) disclose any potential environmental impacts caused by the project; and

20 (b) be in compliance with all federal and state environmental and health standards and permit
21 requirements.

22 (2) The application must be accompanied by payroll, sales, and other records necessary to allow the
23 department and the local governing body to determine the applicant's ability to qualify for the abatement.

24 (3) Following due notice and opportunity for hearing, the governing body shall approve or deny the
25 application. The governing body shall immediately notify the department and all taxing jurisdictions affected by
26 the abatement of its decision.

27 (4) The governing body may prescribe additional criteria upon which it will approve or deny an
28 application for abatement under this section.

29 (5) If the governing body denies the application, the application is considered to be denied in its entirety
30 and the abatement will not be granted. The department is not required to further process the application.

1 (6) If the governing body approves the application, the department shall, upon receipt of the notice
2 described in subsection (3) and a fee paid by the applicant in an amount determined by the department, process
3 the application and grant or deny the abatement. The department shall notify the applicant and the governing
4 body of its decision.

5 (7)(a) For purposes of determining whether a new business enterprise will qualify for the abatement in
6 its initial year of operation, the department may consider, among other things, the business enterprise's projected
7 or contracted sales for that year and whether the abatement is necessary for the investment to occur.

8 (b) If the department determines that the business enterprise did not actually derive more than 50% of
9 its annual gross revenue from sales of goods or services produced within the state to customers located outside
10 of Montana for use outside of the state during the first full year of the business enterprise's operation, the
11 business enterprise must be considered to be in default.

12
13 **NEW SECTION. Section 5. Reporting -- default -- remedy.** (1) A taxpayer who has been granted
14 an abatement under [section 3] shall submit quarterly reports to the department on a form prescribed by the
15 department. The reports must include payroll, sales, and other records necessary to allow the department to
16 determine the applicant's continuing qualification for the abatement.

17 (2) The department shall review the quarterly reports and make an annual determination regarding the
18 taxpayer's continued qualification for the abatement.

19 (3) If, after having been granted the abatement under [section 3], the department determines that a
20 taxpayer has failed to meet the annual qualification requirements for any year, the taxpayer must be considered
21 to be in default.

22 (4) If a taxpayer is considered to be in default, the taxpayer shall forfeit the abatement. Upon default,
23 the property must be taxed at 100% of its taxable value beginning January 1 of the year in which the taxpayer
24 defaulted and any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional
25 taxes resulting from the default.

26 (5) A taxpayer that has forfeited any portion of its abatement due to default may not reapply for an
27 abatement under [section 4].

28
29 **NEW SECTION. Section 6. New or expanding business enterprise local tax abatement.** (1) In the
30 first 5 years after a construction permit is issued, qualifying improvements or modernized processes that

1 represent a new business enterprise or expansion of an existing business enterprise, as designated in the
2 approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year thereafter,
3 the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year.
4 In subsequent years, the property must be taxed at 100% of its taxable value.

5 (2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body
6 of the affected county or the incorporated city or town must have approved by separate resolution for each
7 project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for
8 in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until
9 all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

10 (b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but
11 the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

12 (c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or
13 modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The
14 resolution may provide that real property other than land, personal property, improvements, or any combination
15 thereof is eligible for the tax benefits described in subsection (1).

16 (3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The
17 application must be accompanied by a fee established by the department. The application by the taxpayer must
18 first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall
19 indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section.
20 If the local governing body of the affected taxing jurisdiction has approved the application and the department
21 has determined that the investment would not occur without the abatement, the department shall make the
22 assessment change pursuant to this section.

23 (4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed
24 for local high school district and elementary school district purposes and to the number of mills levied and
25 assessed by the governing body approving the benefit over which the governing body has sole discretion. The
26 benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10,
27 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

28 (5) Prior to approving the resolution under this section, the governing body shall notify by certified mail
29 all taxing jurisdictions affected by the tax benefit.

30 (6) A taxpayer that has been granted an abatement pursuant to this section may not be granted an

1 abatement pursuant to [section 3].

2

3 **Section 7.** Section 15-2-302, MCA, is amended to read:

4 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A
5 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

6 (a) property centrally assessed under chapter 23;

7 ~~(b) classification of property as new industrial property;~~

8 ~~(e)(b)~~ any other tax, other than the property tax, imposed under this title; or

9 ~~(d)(c)~~ any other matter in which the appeal is provided by law.

10 (2) (a) Except as provided in subsection (2)(b), the appeal is made by filing a complaint with the board
11 within 30 days following receipt of notice of the department's final decision. The complaint must set forth the
12 grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the
13 complaint to the department.

14 (b) An appeal from the department's determination of whether wages earned by an unemployment
15 insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the
16 board within 10 days following receipt of notice of the department's final determination. The board shall promptly
17 mail a copy of the complaint to each interested party at the last-known address of each party.

18 (3) The department shall file with the board an answer within 30 days following filing of a complaint, or
19 in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant
20 were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the
21 department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with
22 the board, and at that time mail a copy to the complainant. The answer must set forth the department's response
23 to each ground for and type of relief demanded in the complaint.

24 (4) (a) Except as provided in subsection (4)(b), the board shall conduct the appeal in accordance with
25 the contested case provisions of the Montana Administrative Procedure Act.

26 (b) (i) In an appeal regarding the determination of whether wages earned by an unemployment
27 insurance claimant were properly reported to the department, the appeal must be conducted informally and may,
28 in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a
29 contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the
30 hearing or making its decision, is not bound by the Montana Rules of Evidence.

- 1 (ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.
- 2 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
- 3 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board
- 4 under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to
- 5 the extent that it does not conflict with 15-2-303."

6

7 **Section 8.** Section 15-6-135, MCA, is amended to read:

8 **"15-6-135. Class five property -- description -- taxable percentage.** (1) Class five property includes:

- 9 (a) all property used and owned by cooperative rural electrical and cooperative rural telephone
- 10 associations organized under the laws of Montana, except property owned by cooperative organizations
- 11 described in 15-6-137(1)(a);
- 12 (b) air and water pollution control equipment as defined in this section;
- 13 ~~(c) new industrial property as defined in this section;~~
- 14 ~~(d)~~(c) any personal or real property used primarily in the production of gasohol during construction and
- 15 for the first 3 years of its operation;
- 16 ~~(e)~~(d) all land and improvements and all personal property owned by a research and development firm,
- 17 provided that the property is actively devoted to research and development;
- 18 ~~(f)~~(e) machinery and equipment used in electrolytic reduction facilities;
- 19 ~~(g)~~(f) all property used and owned by persons, firms, corporations, or other organizations that are
- 20 engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas
- 21 and cities and towns of 1,200 permanent residents or less.

22 (2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities,

23 machinery, devices, or equipment designed, constructed, under construction, or operated for removing,

24 disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or

25 preventing the creation of air or water pollutants that, except for the use of the item, would be released to the

26 environment. Reduction in pollutants obtained through operational techniques without specific facilities,

27 machinery, devices, or equipment is not eligible for certification under this section.

28 (b) Requests for certification must be made on forms available from the department of revenue.

29 Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws,

30 orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

1 (c) The department of environmental quality shall promulgate rules specifying procedures, including
 2 timeframes for certification application, and definitions necessary to identify air and water pollution control
 3 equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the
 4 valuation of qualifying air and water pollution control equipment. The department of environmental quality shall
 5 identify and track compliance in the use of certified air and water pollution control equipment and report
 6 continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated
 7 incidents of noncompliance at a facility do not affect certification.

8 (d) A person may appeal the certification, classification, and valuation of the property to the state tax
 9 appeal board. Appeals on the property certification must name the department of environmental quality as the
 10 respondent, and appeals on the classification or valuation of the equipment must name the department of
 11 revenue as the respondent.

12 ~~(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery,
 13 and fixtures, used by new industries during the first 3 years of their operation. The property may not have been
 14 assessed within the state of Montana prior to July 1, 1961.~~

15 ~~———— (b) New industrial property does not include:~~

16 ~~———— (i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades,
 17 or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

18 ~~———— (ii) a plant that will create adverse impact on existing state, county, or municipal services; or~~

19 ~~———— (iii) property used or employed in an industrial plant that has been in operation in this state for 3 years
 20 or longer.~~

21 ~~———— (4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that
 22 establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere
 23 expansion, reorganization, or merger of an existing industry.~~

24 ~~———— (b) New industry includes only those industries that:~~

25 ~~———— (i) manufacture, mill, mine, produce, process, or fabricate materials;~~

26 ~~———— (ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state
 27 are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial
 28 products or materials;~~

29 ~~———— (iii) engage in the mechanical or chemical transformation of materials or substances into new products
 30 in the manner defined as manufacturing in the North American Industry Classification System Manual prepared~~

1 ~~by the United States office of management and budget;~~
 2 ~~—— (iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50%~~
 3 ~~or more of an industry's gross sales or receipts are earned from outside the state; or~~
 4 ~~—— (v) earn 50% or more of their annual gross income from out-of-state sales.~~
 5 ~~(5)(3)~~ Class five property is taxed at 3% of its market value."
 6

7 **Section 9.** Section 15-24-1401, MCA, is amended to read:

8 **"15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires
 9 otherwise:

10 (1) "Expansion" means that the industry has added after July 1, 1987, and before [the effective date of
 11 this act] at least \$50,000 worth of qualifying improvements or modernized processes to its property within the
 12 same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received
 13 or in the preceding tax year.

14 (2) "Industry" includes but is not limited to a firm that:

15 (a) engages in the mechanical or chemical transformation of materials or substances into products in
 16 the manner defined as manufacturing in the North American Industry Classification System Manual prepared
 17 by the United States office of management and budget;

18 (b) engages in the extraction or harvesting of minerals, ore, or forestry products;

19 (c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products,
 20 and forestry products;

21 (d) engages in the transportation, warehousing, or distribution of commercial products or materials if
 22 50% or more of the industry's gross sales or receipts are earned from outside the state;

23 (e) earns 50% or more of its annual gross income from out-of-state sales; or

24 (f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an
 25 alternative renewable energy source as defined in 15-6-225.

26 (3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in
 27 15-24-1402(2) and has invested after July 1, 1987, and before [the effective date of this act] at least \$125,000
 28 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which
 29 the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not
 30 include property treated as new ~~industrial~~ or expanding business enterprise property under ~~15-6-135~~ [section

1 3].

2 (4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable
3 value under 15-24-1402 and this section."

4

5 **Section 10.** Section 20-1-208, MCA, is amended to read:

6 **"20-1-208. Educational impact statements.** When a county superintendent of schools finds that a
7 person ~~intends to construct or locate a major industrial facility, as defined in 20-9-407,~~ or intends to open a new
8 strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with
9 the county an educational impact statement. An educational impact statement is a report estimating the
10 increased demands on public schools in the county as a consequence of the ~~major industrial facility or strip~~
11 mine. The statement shall indicate:

12 (1) the number of persons to be employed during the construction or preparation and during the
13 operation of the ~~major industrial facility or strip mine~~ and their anticipated residential distribution;

14 (2) the number and anticipated distribution of persons employed in providing goods and services to the
15 persons enumerated in the preceding category;

16 (3) the number of school-age children anticipated to be living with the persons enumerated in the
17 preceding categories; and

18 (4) the time periods covered by each preceding estimate."

19

20 **Section 11.** Section 90-6-205, MCA, is amended to read:

21 **"90-6-205. Coal board -- general powers.** The board may:

22 (1) retain professional consultants and advisors;

23 (2) adopt rules governing its proceedings;

24 (3) consider applications for grants from available funds; and

25 (4) award grants, subject to 90-6-207, from available funds:

26 (a) to local governmental units, state agencies, and governing bodies of federally recognized Indian
27 tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal
28 development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling
29 them to adequately provide governmental services and facilities that are needed as a direct consequence of an
30 increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and

1 (b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in
2 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area
3 designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development
4 of coal resources; and
5 ~~—— (5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that~~
6 ~~the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes~~
7 ~~under 15-16-201. The board shall award the grant in accordance with 90-6-206."~~

8
9 **NEW SECTION. Section 12. Repealer.** Sections 15-6-192, 15-16-201, 15-24-2401, 15-24-2402,
10 15-24-2404, 15-24-2405, and 20-9-407, MCA, are repealed.

11
12 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 6] are intended to be
13 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 6].

14 - END -