

1 SENATE BILL NO. 245

2 INTRODUCED BY E. BUTTREY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING MUNICIPALITIES TO LEVY ASSESSMENTS ON
5 CERTAIN ELECTRICITY SUPPLIER CUSTOMERS TO DEFRAY DEBT; OUTLINING THE TERMS OF THE
6 ASSESSMENT; PROVIDING A JUDICIAL REMEDY; AMENDING SECTION 7-6-4401 AND 15-10-420, MCA;
7 AND PROVIDING AN EFFECTIVE DATE."

8

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

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11 NEW SECTION. **Section 1. Definitions.** Unless the context requires otherwise, in [sections 1 through
12 3], the following definitions apply:

13 (1) (a) "Customer" means the owner of any premises that receives electricity from an electricity supplier
14 for use or consumption and not for resale.

15 (b) The term does not mean premises owned by:

16 (i) the United States;

17 (ii) the state;

18 (iii) counties;

19 (iv) cities and towns; or

20 (v) school districts.

21 (2) "Electricity supplier" means a nonprofit corporation created by a municipality that is selling electricity
22 to customers at retail rates in the state of Montana and that is not:

23 (a) a utility as defined in 69-3-601;

24 (b) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

25 (c) an existing municipal electric utility as of May 2, 1997.

26 (3) "Municipality" means an incorporated city or town.

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28 NEW SECTION. **Section 2. Special assessments for electric utilities.** (1) If an electricity supplier
29 incurs a debt greater than \$500,000, the municipality shall levy an assessment on customers who receive
30 electricity from the electricity supplier during the period of time during which the deficit was accrued.

1 (2) (a) In accordance with subsection (2)(b), an ordinance establishing the annual assessment must be
2 passed by the governing body of the municipality fixing the rate to be levied upon customers to defray the debt.

3 (b) The assessment must be based on the pro rata share of total electricity sales made by the electricity
4 supplier to the customer over the lifetime of the contract between the customer and the electricity supplier.

5 (c) The ordinance must:

6 (i) contain a description of each customer, the amount of each payment, when required, and the day
7 when the payment becomes delinquent; and

8 (ii) provide for the waiver of an assessment in accordance with subsection (4).

9 (3) (a) In a municipality that provides for the collection of its taxes for general, municipal, and
10 administrative purposes by the county treasurer, the county treasurer shall collect the assessment levied pursuant
11 to this section in the same manner and at the same time as taxes for general, municipal, and administrative
12 purposes are collected. The provisions of 7-6-4423 apply to the collection of the assessments in the same
13 manner as the provisions apply to the collection of other municipal taxes.

14 (b) The installments of assessments remaining unpaid bear simple interest at an annual rate equal to
15 the sum of:

16 (i) 5/6 of 1% per month until the assessment is paid; and

17 (ii) a 2% penalty for late payment.

18 (4) (a) In accordance with subsection (4)(b), if a municipality and a customer agree to a monetary
19 settlement in lieu of an assessment pursuant to subsection (2), the governing body of the municipality may waive
20 the assessment.

21 (b) Monetary settlements must be approved by a majority of the municipality's governing body.

22
23 **NEW SECTION. Section 3. Judicial review.** (1) (a) If an action is filed in district court to challenge the
24 assessment levied pursuant to [section 2], the court shall require a surety bond from the person filing the action.
25 If the person filing the action is a customer, the bond must be set at an amount equal to the amount owed by the
26 customer pursuant to [section 2].

27 (b) The bonding requirements of this subsection (1) do not apply to an indigent person.

28 (2) If the bond required under subsection (1) is not paid within 30 days of the filing of the action, the
29 action must be dismissed.

30 (3) An action to challenge an assessment must be brought in the district court with jurisdiction for the

1 county in which the municipality is located.

2 (4) This section does not prevent a defendant in an action brought pursuant to this section from filing an
3 action or counterclaim for any claim for relief available by law and does not limit the recovery that may be
4 obtained in a claim for relief.

5
6 **Section 4.** Section 7-6-4401, MCA, is amended to read:
7 **"7-6-4401. General taxing power of municipalities.** (1) Subject to 15-10-420, the city or town council
8 may levy and collect taxes for general and special public or governmental purposes on all property within the city
9 or town subject to taxation under the laws of the state.

10 (2) A municipality may levy an assessment on premises outside the city or town limits in accordance with
11 [sections 1 through 3]."

12
13 **Section 5.** Section 15-10-420, MCA, is amended to read:

14 **"15-10-420. Procedure for calculating levy.** (1) (a) Subject to the provisions of this section, a
15 governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount
16 of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3
17 years. The maximum number of mills that a governmental entity may impose is established by calculating the
18 number of mills required to generate the amount of property tax actually assessed in the governmental unit in the
19 prior year based on the current year taxable value, less the current year's value of newly taxable property, plus
20 one-half of the average rate of inflation for the prior 3 years.

21 (b) A governmental entity that does not impose the maximum number of mills authorized under
22 subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between
23 the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority
24 carried forward may be imposed in a subsequent tax year.

25 (c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of
26 inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using
27 the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

28 (2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional
29 levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly
30 taxable property.

1 (3) (a) For purposes of this section, newly taxable property includes:

2 (i) annexation of real property and improvements into a taxing unit;

3 (ii) construction, expansion, or remodeling of improvements;

4 (iii) transfer of property into a taxing unit;

5 (iv) subdivision of real property; and

6 (v) transfer of property from tax-exempt to taxable status.

7 (b) Newly taxable property does not include an increase in value that arises because of an increase in
8 the incremental value within a tax increment financing district.

9 (4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the
10 release of taxable value from the incremental taxable value of a tax increment financing district because of:

11 (i) a change in the boundary of a tax increment financing district;

12 (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

13 (iii) the termination of a tax increment financing district.

14 (b) If a tax increment financing district terminates prior to the certification of taxable values as required
15 in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment
16 financing district terminates. If a tax increment financing district terminates after the certification of taxable values
17 as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

18 (c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was
19 constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current
20 year market value of that property less the previous year market value of that property.

21 (d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real
22 property that results in the property being taxable as class four property under 15-6-134 or as nonqualified
23 agricultural land as described in 15-6-133(1)(c).

24 (5) Subject to subsection (8), subsection (1)(a) does not apply to:

25 (a) school district levies established in Title 20; or

26 (b) a mill levy imposed for a newly created regional resource authority.

27 (6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received
28 under 15-6-131 and 15-6-132.

29 (7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may
30 increase the number of mills to account for a decrease in reimbursements.

1 (8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes
 2 of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the
 3 department may not exceed the mill levy limits established in those sections. The mill calculation must be
 4 established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the
 5 calculation must be rounded up to the nearest tenth of a mill.

6 (9) (a) The provisions of subsection (1) do not prevent or restrict:

7 (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

8 (ii) a levy to repay taxes paid under protest as provided in 15-1-402;

9 (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

10 (iv) a levy for the support of a study commission under 7-3-184;

11 (v) a levy for the support of a newly established regional resource authority; ~~or~~

12 (vi) the portion that is the amount in excess of the base contribution of a governmental entity's property
 13 tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; or

14 (vii) a levy to repay the debt of an electricity supplier pursuant to [sections 1 through 3].

15 (b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes
 16 actually assessed in a subsequent year.

17 (10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402,
 18 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport
 19 authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating
 20 funds by a county or municipality during that time.

21 (11) The department may adopt rules to implement this section. The rules may include a method for
 22 calculating the percentage of change in valuation for purposes of determining the elimination of property, new
 23 improvements, or newly taxable property in a governmental unit."

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 25 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified
 26 as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 3].

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 28 **NEW SECTION. Section 7. Nonseverability.** It is the intent of the legislature that each part of [this act]
 29 is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts
 30 are invalid.

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2 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2011.

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