

SENATE BILL NO. 21

INTRODUCED BY K. TOOLE

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A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A 0.25 CENT PER KILOWATT-HOUR TAX ON CERTAIN HYDROELECTRIC FACILITIES FOR THE PRIVILEGE OF USING THE STATE'S WATERS; PROVIDING EXEMPTIONS FROM THE KILOWATT-HOUR TAX; PROVIDING FOR THE DISTRIBUTION OF THE KILOWATT-HOUR TAX REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Legislative findings and declaration of purpose. (1) The legislature finds that the owners of hydroelectric facilities in Montana derive benefits from use of the state's water for generating electricity.

(2) The legislature further finds that hydroelectric facilities incur insubstantial costs for use of the state's waters and derive an economic benefit greater than other users derive from the use of the state's waters.

(3) The legislature further finds that because of different physical characteristics of hydroelectric facilities in the state, it is more equitable to impose a kilowatt-hour tax on electrical generation from hydroelectric facilities rather than a water use fee.

(4) The legislature therefore declares that it is just and reasonable to impose a kilowatt-hour tax on electricity generated by hydroelectric facilities for the privilege of using the state's waters.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Hydroelectric facility" means any combination of a physically connected turbine generator or generators at a single site that produces electricity from the turbine generators that are driven by falling water.

(2) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity.

NEW SECTION. Section 3. Water use kilowatt-hour tax -- rate of tax -- exemptions. (1) Except as



1 provided in subsection (2), for the privilege of using surface water within the boundaries of the state, a
2 kilowatt-hour tax is imposed on electricity generated from a hydroelectric facility with a nameplate capacity of
3 5 megawatts or greater. The tax is imposed at the rate of 0.25 cent per kilowatt hour of electricity generated by
4 the owner or operator of a hydroelectric facility.

5 (2) Electricity produced from a hydroelectric facility owned by the state or by an agency of the United
6 States government is exempt from the tax imposed by this section.

7

8 **NEW SECTION. Section 4. Returns -- payment -- authority of department.** (1) On or before the 30th
9 day of the month following the end of the calendar quarter in which the tax imposed by [sections 1 through 12]
10 is payable, a return, on a form provided by the department, and payment of the fee for the preceding calendar
11 quarter must be filed with the department.

12 (2) Each person engaged in producing electricity from a hydroelectric facility in this state that is subject
13 to the tax under [sections 1 through 12] shall file a return.

14 (3) (a) A person required to collect and pay to the department the tax imposed by [sections 1 through
15 12] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through
16 12] and the rules prescribed by the department. Each return or statement must include the information required
17 by the rules of the department.

18 (b) For the purpose of determining compliance with the provisions of [sections 1 through 12], the
19 department is authorized to examine or cause to be examined any books, papers, records, or memoranda
20 relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda
21 are the property of or in the possession of the person filing the return or another person. In determining
22 compliance, the department may use statistical sampling and other sampling techniques consistent with
23 generally accepted auditing standards. The department may also:

24 (i) require the attendance of a person having knowledge or information relevant to a return;

25 (ii) compel the production of books, papers, records, or memoranda by the person required to attend;

26 (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is
27 or may be jeopardized because of delay;

28 (iv) take testimony on matters material to the determination; and

29 (v) administer oaths or affirmations.

30 (4) Pursuant to rules established by the department, returns may be computer-generated and

1 electronically filed.

2

3 **NEW SECTION. Section 5. Examination of return -- adjustments -- delivery of notices and**
4 **demands.** (1) If the department determines that the amount of tax due is different from the amount reported,
5 the amount of tax computed on the basis of the examination conducted pursuant to [section 4] constitutes the
6 tax to be paid.

7 (2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must
8 be paid to the department within 30 days after notice of the amount and demand for payment is mailed or
9 delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211.
10 If the amount of the tax found due by the department is less than that reported as due on the return and the tax
11 has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person
12 making the return.

13 (3) The notice and demand provided for in this section must contain a statement of the computation of
14 the tax and interest and must be:

15 (a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's
16 last-known address; or

17 (b) served personally upon the taxpayer.

18 (4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform
19 tax review procedure provided in 15-1-211.

20

21 **NEW SECTION. Section 6. Penalties and interest for violation.** (1) (a) A person who fails to file a
22 return as required by [section 4] must be assessed a penalty as provided in 15-1-216. The department may
23 waive the penalty as provided in 15-1-206.

24 (b) A person who fails to file the return required by [section 4] and to pay the tax before the due date
25 must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty
26 pursuant to 15-1-206.

27 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as
28 provided in 15-1-216.

29

30 **NEW SECTION. Section 7. Authority to collect delinquent taxes.** (1) (a) The department shall collect

1 taxes that are delinquent as determined under [sections 1 through 12].

2 (b) If a tax imposed by [sections 1 through 12] or any portion of the tax is not paid when due, the
3 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

4 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has
5 expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from the
6 state, except wages subject to the provisions of 25-13-614 and retirement benefits.

7 (3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset
8 by the department.

9 (4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before
10 funds are available for offset.

11

12 **NEW SECTION. Section 8. Interest on deficiency -- penalty.** (1) Interest accrues on unpaid or
13 delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and
14 tax were originally due.

15 (2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the
16 deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by
17 15-1-216(1)(c) must be added to the amount of the deficiency.

18

19 **NEW SECTION. Section 9. Limitations.** (1) Except in the case of a person who purposely or
20 knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of
21 [sections 1 through 12], a deficiency may not be assessed or collected with respect to a month or quarter for
22 which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally
23 served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this section,
24 a return filed before the last day prescribed for filing is considered to be filed on the last day.

25 (2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax,
26 the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be
27 assessed at any time prior to the expiration of the period consented to.

28

29 **NEW SECTION. Section 10. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as
30 a result of overpayment of taxes collected under [sections 1 through 12] must be filed within 5 years of the date

1 on which the return was due, without regard to any extension of time for filing.

2 (2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate charged
3 on unpaid taxes as provided in 15-1-216.

4 (b) Except as provided in subsection (2)(c), interest must be paid from the date on which the return was
5 due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the
6 processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary
7 information.

8 (c) The department is not required to pay interest if:

9 (i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed; or

10 (ii) the amount of overpayment and interest does not exceed \$1.

11

12 **NEW SECTION. Section 11. Administration -- rules.** The department shall:

13 (1) administer and enforce the provisions of [sections 1 through 12];

14 (2) cause to be prepared and distributed forms and information that may be necessary to administer
15 the provisions of [sections 1 through 12]; and

16 (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of
17 [sections 1 through 12].

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19 **NEW SECTION. Section 12. Disposition of revenue.** (1) Except as provided in subsection (2), taxes
20 collected under [sections 1 through 12] must be deposited into the general fund.

21 (2) (a) Thirty-three percent of the water use kilowatt-hour tax collected for electricity generated each
22 quarter in calendar year 2005 must be deposited in an account in the state special revenue fund to the credit
23 of the Montana power commission for the purpose of conducting the assessment of hydroelectric facilities as
24 provided in [section 5 of Initiative Measure No. 145]. Money remaining in the account after all costs for
25 conducting the assessment have been paid must be deposited into the general fund.

26 (b) Beginning January 1, 2005, 5% of the taxes collected each quarter under [sections 1 through 12]
27 must be deposited in an account in the state special revenue fund to the credit of the Montana power
28 commission. An appropriation from the special revenue account must be made for regular operating expenses
29 of the commission.

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

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4 NEW SECTION. **Section 14. Coordination instruction.** If Initiative Measure No. 145 is not approved
5 by the electorate of Montana at the election to be held November 5, 2002, then [section 12(2) of this act] is void
6 and [section 12] must read as follows:

7 "NEW SECTION. **Section 12. Disposition of revenue.** Taxes collected under [sections 1 through 12]
8 must be deposited into the general fund."

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10 NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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12 NEW SECTION. **Section 16. Applicability.** [This act] applies to electricity produced from hydroelectric
13 facilities and to tax years beginning after December 31, 2002.

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