

SENATE BILL NO. 506
INTRODUCED BY J. COBB

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS RELATING TO ALTERNATIVE ENERGY AND OTHER ENERGY SYSTEMS; PROVIDING A REVOLVING LOAN FUND TO FINANCE ALTERNATIVE ENERGY SYSTEMS; ~~INCREASING THE WHOLESALE ENERGY TRANSACTION TAX TO FUND THE REVOLVING FUND~~; PROVIDING THAT AIR QUALITY NONCOMPLIANCE PENALTY FEES BE DEPOSITED IN THE REVOLVING FUND; ELIMINATING BUSINESS PROPERTY TAXES ON CERTAIN GENERATING EQUIPMENT; PROVIDING A 5-YEAR ABATEMENT OF BUSINESS PROPERTY TAXES ON LARGE GENERATING EQUIPMENT; AMENDING VARIOUS TAX AND BONDING INCENTIVE LAWS TO ENCOURAGE PRODUCTION OF ENERGY BY USING ALTERNATIVE RENEWABLE ENERGY SOURCES; ~~ELIMINATING THE RURAL ELECTRIC COOPERATIVE UTILITY EXCLUSION FROM NET-METERING~~; AMENDING SECTIONS 7-12-4102, 15-6-156, 15-24-1401, 15-31-124, 15-32-102, 15-32-103, 15-32-109, 15-32-115, 15-32-201, 15-32-401, 15-32-402, ~~15-72-104, 15-72-106~~, 17-6-403, 17-6-503, 30-16-103, 69-8-103, ~~75-2-427, 75-2-401, 75-2-413~~, 80-12-201, 90-4-102, 90-5-101, 90-6-701, AND 90-8-104, MCA; ~~REPEALING SECTION 6, CHAPTER 323, LAWS OF 1999~~; AND PROVIDING AN EFFECTIVE DATE AND AN ~~APPLICABILITY DATES~~ DATE."

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

NEW SECTION. Section 1. Alternative energy revolving loan account. (1) There is a special revenue account called the alternative energy revolving loan account to the credit of the department of environmental quality.

(2) The alternative energy revolving loan account consists of money deposited into the account from ~~the wholesale energy transaction tax as provided in 15-72-106 and air quality noncompliance penalty fees~~ PENALTIES from 75-2-427 75-2-401 AND 75-2-413. Any INTEREST EARNED BY THE ACCOUNT AND ANY interest that is generated from a loan repayment must be deposited into the account and used to sustain the program.

(3) Funds from the alternative energy revolving loan account may be used to provide loans to individuals and small businesses for the purpose of building alternative energy systems, as defined in 15-32-102, for residences and small businesses to generate energy for their own use and for net metering as defined in 69-8-103.

- (4) The amount of a loan may not exceed \$10,000, and the loan must be repaid within 5 years.

NEW SECTION. Section 2. Administration of revolving loan account -- rulemaking authority. (1)

The department of environmental quality shall adopt rules establishing:

- (a) eligibility criteria, including criteria for defining residences and small businesses;
 - (b) processes and procedures for disbursing loans, including the agencies or organizations that are allowed to process the loan application for the department; and
 - (c) terms and conditions for the loans, including repayment schedules and interest.
- (2) The department shall solicit assistance in the development and operation of the program from individuals familiar with financial services and persons knowledgeable in alternative energy systems.
- (3) Administrative costs may not exceed 5% of the total loans. Legal fees and costs associated with collection of debt on principal are not considered administrative fees.
- (4) The loan repayment period may not exceed 5 years. The department may seek recovery of the amount of principal loaned in the event of default.

NEW SECTION. Section 3. Outcome measures. The department of environmental quality shall develop reasonable outcome measures by which the success of the alternative energy system loan program provided for in [sections 1 through 3] must be measured on an annual basis. Minimal outcome that must be measured includes:

- (1) a loan loss ratio of under 5%;
- (2) the types of alternative energy systems that provided the best overall results for residences and those for small businesses; and
- (3) a determination of the amount of energy that was produced because of participation in the program.

Section 4. Section 7-12-4102, MCA, is amended to read:

"7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council ~~has power to~~ may:

- (a) create special improvement districts, designating them by number;
- (b) ~~to~~ extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years;

~~(c)~~ to make the assessments payable in installments; and

~~(d)~~ to pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or a portion, either in length or width, of one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary ~~and/or~~ or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, and hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect them from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary ~~and/or~~ or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes and hose connections for irrigating; and hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order work to be done that is considered necessary to improve the whole or a portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land;

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314; and

(j) create special improvement districts for the purchase, installation, maintenance, and management of alternative energy production facilities; and

~~(j)~~(k) maintain, preserve, and care for any of the improvements authorized in this section.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city ~~where~~ when the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the

resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Section 5. Section 15-6-156, MCA, is amended to read:

"15-6-156. Class thirteen property -- description -- taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(f), class thirteen property includes:

- (a) electrical generation facilities of a centrally assessed electric power company;
- (b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;
- (c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy producer; and

- (d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

- (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;
 - (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137;
 - (c) allocations of electric power company property under 15-6-141;
 - (d) electrical generation facilities included in another class of property;
 - (e) property owned by cooperative rural telephone associations and classified in class five; ~~and~~
 - (f) property owned by organizations providing telecommunications services and classified in class five;
- and

- (g) generation facilities that are exempt under [section 6].

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined

in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

NEW SECTION. Section 6. Energy equipment exemption. (1) (a) Except as provided in subsection (1)(b), the machinery and equipment used in qualifying generation facilities built and operated after [the effective date of this act] are exempt from taxation.

(b) A generation facility that generates more than 1 megawatt of electrical energy is exempt from taxation for ONLY 5 years after commercial generation of electricity begins.

(2) (a) For the purposes of this section, "generation facility" includes any combination of a physically connected generator or generators, associated prime movers, and other associated machinery and equipment that is necessary for the operation of the noncommercial generator, but does not include the owner's business improvements and personal property.

(b) To qualify for the exemption under this section, the generation facilities may include those powered by ~~water, solar energy, fossil fuels, biomass, geothermal, fuel cells, wind, cogeneration, or other processes that do not rely on nuclear fuel~~ SOLAR ENERGY, BIOMASS, GEOTHERMAL ENERGY, FUEL CELLS, OR WIND.

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

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

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

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

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

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

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

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

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

(f) engages in the production of energy by means of an alternative renewable energy source as defined in 90-4-102.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

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

Section 8. Section 15-31-124, MCA, is amended to read:

"15-31-124. New or expanded industry credit -- definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means:

(a) the process of mechanical or chemical transformation of materials or substances into new products, as described in the North American Industry Classification System Manual prepared by the United States office of management and budget; or

(b) the production of energy by means of an alternative renewable energy source as defined in 90-4-102.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state.

A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) A new corporation does not include:

(i) a corporation reorganized from a previously existing corporation that has been engaged in

manufacturing in this state; or

(ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation."

Section 9. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative energy system" means the generation system or equipment used to convert energy sources into usable sources using fuel cells, geothermal systems, low emission wood or biomass, wind, photovoltaics, geothermal, small hydropower plants under 50 kilowatts, and other recognized nonfossil forms of energy generation.

~~(1)~~(2) "Building" means:

- (a) a single or multiple dwelling, including a mobile home or manufactured home; or
- (b) a building used for commercial, industrial, or agricultural purposes that is enclosed with walls and a roof.

~~(2)~~(3) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

~~(3)~~(4) "Energy conservation purpose" means one or both of the following results of an investment:

- (a) reducing the waste or dissipation of energy; or
- (b) reducing the amount of energy required to accomplish a given quantity of work.

~~(4)~~(5) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

~~(5)~~(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

- (a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and
- (ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or
- (iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.

~~(6)~~(7) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

~~(7)~~(8) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources, including electricity, by using:

(i) solar energy, including passive solar systems;

(ii) wind;

(iii) solid waste; ~~or~~

(iv) the decomposition of organic wastes;

(v) geothermal;

(vi) fuel cells; or

(vii) an alternative energy system;

(b) a system that produces electric power from biomass or solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area and produces less than 50 megawatts of electricity."

Section 10. Section 15-32-103, MCA, is amended to read:

"15-32-103. Deduction for energy-conserving investments. (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, or individual income allowed in computing net income under chapter 30, part 1, a taxpayer may deduct a portion of ~~his~~ the taxpayer's expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

(a) If the installation or investment is made in a residential building, 100% of the first \$12,000 expended may be deducted over a 4-year period.

(b) If the installation or investment is made in a building not used as a residence, 100% of the first

\$20,000 expended may be deducted over a 4-year period.

| | | |
|---|------------------|--|
| If the installation or investment is | _____ | If the installation or investment |
| made in a residential building: | _____ | is made in a building not used |
| _____ | _____ | as a residence: |
| 100% of first \$1,000 expended | _____ | 100% of first \$2,000 expended |
| 50% of next \$1,000 expended | _____ | 50% of next \$2,000 expended |
| 20% of next \$1,000 expended | _____ | 20% of next \$2,000 expended |
| 10% of next \$1,000 expended | _____ | 10% of next \$2,000 expended |

(2) This tax treatment is subject to approval of the department as provided in 15-32-106 and may not be claimed for ~~so much~~ the portion of the expenditure and capital investment ~~as~~ that is financed by a state, federal, or private grant for energy conservation."

Section 11. Section 15-32-109, MCA, is amended to read:

"15-32-109. Credit for energy-conserving expenditures. (1) Subject to the restrictions of subsections (2) and (3), a resident individual taxpayer may take ~~as~~ a credit against the taxpayer's tax liability under chapter 30 ~~for all or~~ a portion of his the taxpayer's expenditure for a capital investment in a building for an energy conservation purpose, ~~determined as follows:~~

- ~~_____ (a) in the case of an expenditure for a residential building, the lesser of:~~
 - ~~_____ (i) \$150; or~~
 - ~~_____ (ii) 5% of the expenditure; and~~
- ~~_____ (b) in the case of an expenditure for a building not used as a residence, the lesser of:~~
 - ~~_____ (i) \$300; or~~
 - ~~_____ (ii) 5% of the expenditure in an amount not to exceed \$1,500.~~

(2) The credit or the sum of the credits under subsection (1):

- (a) may not exceed the taxpayer's tax liability; and
- (b) is subject to the provisions of 15-32-104.

(3) ~~There is no carryback or~~ The credit allowed under this section may be used as a carry-forward of the credit permitted under this section, and the credit must be applied in the year the expenditure is incurred, as determined by the taxpayer's accounting method against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year."

Section 12. Section 15-32-115, MCA, is amended to read:

"15-32-115. Credit for geothermal system -- to whom available -- eligible costs -- limitations. (1)

A resident individual taxpayer who completes installation of a geothermal system, as defined in 15-32-102, in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, ~~up to \$250 per year for 4 years not to exceed \$5,000. The credit may not exceed the taxpayer's income tax liability for the taxable year in which the credit is claimed.~~ The amount of the credit not used in the year in which the installation is made may be carried forward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(2) For the purposes of this section, installation costs include the cost of:

- (a) trenching, well drilling, casing, and downhole heat exchangers;
- (b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;
- (c) ground source or ground coupled heat pumps;
- (d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and
- (e) design and labor.

~~(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability for the taxable year in which the installation costs were incurred and for the next 3 taxable years succeeding the taxable year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section."~~

Section 13. Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit -- to whom available. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in the taxpayer's principal dwelling ~~prior to January 1, 1993~~ after December 31, 2001, ~~or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed~~ is entitled to claim a tax credit in an amount equal to ~~10% of the first \$1,000 and 5% of the next \$3,000~~ of the cost of the system, including installation costs, less grants received, not to exceed \$5,000, ~~or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first \$1,000 and~~

~~2 1/2%~~ of the next \$3,000 of the cost of the system, including installation costs, less grants received, against the income tax liability imposed against the taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102(5)(a), in the taxpayer's principal dwelling ~~prior to January 1, 1996~~ after December 31, 2001, is entitled to claim a tax credit in an amount equal to ~~20% of the first \$1,000 and 10% of the next \$3,000~~ of the cost of the system, including the installation costs, not to exceed \$750, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

~~(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102(5)(b), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."~~

Section 14. Section 15-32-401, MCA, is amended to read:

"15-32-401. Purpose and statement of policy. The purpose of this part is to encourage the development of ~~a wind~~ the alternative energy industry in Montana without adversely affecting tax ~~revenues~~ revenue received from existing economic activity in the state. Because of the ~~wind~~ alternative energy potential within the state, it is desirable to encourage ~~wind~~ alternative energy generation for the purpose of attracting ~~wind~~ alternative energy manufacturing industries to the state. It is also desirable for new or expanded industry to secure ~~wind-generated~~ alternatively generated electricity on a direct contract sales basis without adversely affecting rates charged to other electricity users. Sound fiscal policy requires that encouragement be given to a ~~wind~~ an alternative energy industry without subtracting from existing sources of revenue to the state."

Section 15. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit -- ~~wind-generated electricity~~ alternative energy systems. (1) An individual, corporation, partnership, or small business corporation as defined in 15-31-201 that makes an investment of \$5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana ~~which~~ and that generates ~~electricity~~ energy by means of ~~wind power~~ an alternative energy system, as defined in 15-32-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to ~~35%~~ 40% of the eligible costs, to be taken as a credit only against

taxes due as a consequence of taxable or net income produced by one of the following:

- (a) manufacturing plants located in Montana that produce ~~wind~~ alternative energy generating equipment;
- (b) a new business facility or the expanded portion of an existing business facility for which the ~~wind~~ alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or
- (c) the ~~wind~~ alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

- (a) generating equipment;
- (b) safety devices and storage components;
- (c) transmission lines necessary to connect with existing transmission facilities; and
- (d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

~~Section 16.~~ Section 15-72-104, MCA, is amended to read:

~~"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery. (1) (a)~~ Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 0.030 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

~~(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.~~

~~(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.~~

~~———(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.~~

~~———(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.~~

~~———(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.~~

~~———(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.~~

~~———(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.~~

~~———(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.~~

~~———(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.~~

~~———(b) Electricity produced in the state by an agency of the of the United States government for delivery outside of the state is exempt from the tax imposed by this section.~~

~~———(c) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.~~

~~———(d) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.~~

~~———(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts~~

or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.]

— (4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. (Bracketed language terminates January 1, 2003--sec. 40, Ch. 556, L. 1999.)"

— **Section 17.** Section 15-72-106, MCA, is amended to read:

— **"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

— (2) A self-assessing distribution services provider is subject to the provisions of this part.

— (3) The wholesale energy transaction tax collected under this part must be deposited as follows:

— (a) 50% in the general fund; and

— (b) 50% in the alternative energy revolving loan account established in [section 1]."

Section 16. Section 17-6-403, MCA, is amended to read:

"17-6-403. Definitions. As used in this part, the following definitions apply:

(1) "Certified community lead organization" means an organization that has sponsored community certification under the certified communities program of the department.

(2) "Certified microbusiness development corporation" means a microbusiness development corporation certified pursuant to 17-6-408.

(3) "Council" means the microbusiness advisory council established in 17-6-411.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Development loan" means money loaned to a certified microbusiness development corporation by the department for the purpose of making microbusiness loans under the provisions of this part.

(6) "Microbusiness development corporation" means a nonprofit corporation organized and existing under the laws of the state to provide training, technical assistance, and access to capital for the startup or expansion of qualified microbusinesses.

(7) "Microbusiness loan" means a loan made from or guaranteed by a revolving loan fund contributed to by the microbusiness finance program.

(8) "Program" means the microbusiness finance program established in 17-6-406.

(9) "Qualified microbusiness" means a business enterprise located in the state that:

(a) produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than \$500,000; or

(b) produces energy using an alternative renewable energy source as defined in 90-4-102.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan."

Section 17. Section 17-6-503, MCA, is amended to read:

"17-6-503. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of commerce provided for in 2-15-1801.

(2) "Job investment administrative account" means the account established in 17-6-509.

(3) "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the department the approval or denial of job investment loans subject to this part and rules implementing this part.

(4) "Qualified business" means a business enterprise that either is or will be located in the state, ~~and that produces goods, or provides services,~~ or produces energy using an alternative renewable energy source, as defined in 90-4-102, and that will, as a result of receiving a job investment loan, create jobs for Montana workers."

Section 18. Section 30-16-103, MCA, is amended to read:

"30-16-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of review" means the body established to provide policy direction to the department of revenue in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of revenue established in 2-15-1301.

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale,

consumer service, manufacturing, or distributing activity, including the production of energy using an alternative renewable energy source as defined in 90-4-102.

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, chapters 1 through 3, 5 through 7, 10, 15, 16, and 20, which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system and the procedures developed by the board of review that are under the administrative control of the department."

Section 19. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electric energy, and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

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

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

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single

retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(13)(a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(14) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(15) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(16) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that

individual load.

(17) "Local governing body" means a local board of trustees of a rural electric cooperative.

(18) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(19) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(20) "Net metering system" means a facility for the production of electric energy that:

(a) uses as its fuel solar, wind, geothermal, biomass, fuel cell, or hydropower;

(b) has a generating capacity of not more than ~~50~~ 100 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(21) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(22) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(24) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(25) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

(26) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(30) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(31) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

(32) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition

amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(33) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(35)~~(34) "Transmission services provider" means a person controlling or operating transmission facilities.

(35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(36) "Universal system benefits programs" means public purpose programs for:

- (a) cost-effective local energy conservation;
- (b) low-income customer weatherization;
- (c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;
- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs; and
- (f) low-income energy assistance.

(37) "Utility" means any public utility or cooperative utility."

~~Section 22. Section 75-2-427, MCA, is amended to read:~~

~~"75-2-427. Deposit of noncompliance penalty fees. All noncompliance penalties collected by the department pursuant to 75-2-421 through 75-2-429 shall must be deposited in the state special revenue fund until a final determination and adjustment have been made as provided in 75-2-424 and amounts have been deducted by the department for costs attributable to implementation of 75-2-421 through 75-2-429 and for contract costs incurred pursuant to 75-2-422(3), if any. After a final determination has been made and additional payments or refunds have been made, the penalty money remaining shall must be transferred to the state general fund alternative energy revolving loan account established in [section 1]."~~

SECTION 20. SECTION 75-2-401, MCA, IS AMENDED TO READ:

"75-2-401. Enforcement -- notice -- order for corrective action -- administrative penalty. (1) When

the department believes that a violation of this chapter, a rule adopted under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this chapter, the rule, or the permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order or an order to pay an administrative penalty, or both. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1), the board finds that violations have occurred, it shall issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action or assess an administrative penalty, or both. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease; time limits for particular action in preventing, abating, or controlling the emissions; or the date by which the administrative penalty must be paid. If, after a hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the ~~state general fund~~ alternative energy revolving loan account established in [section 1].

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

- (i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;
- (ii) the alleged violator's full compliance history and good faith efforts to comply;
- (iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;
- (iv) payment by the violator of penalties previously assessed for the same violation;

- (v) the economic benefit of noncompliance;
- (vi) the seriousness of the violation; and
- (vii) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(5) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(6) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(7) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

SECTION 21. SECTION 75-2-413, MCA, IS AMENDED TO READ:

"75-2-413. Civil penalties -- out-of-state litigants -- effect of action -- presumption of continuing violation under certain circumstances. (1) A person who violates any provision of this chapter, a rule adopted under this chapter, or any order or permit made or issued under this chapter is subject to a civil penalty not to exceed \$10,000 per violation. Each day of each violation constitutes a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412, except for civil penalties for violation of the operating permit program required by Subchapter V of the federal Clean Air Act.

(2) (a) Action under subsection (1) is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under this chapter by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under this chapter may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) If the department has notified a person operating a commercial hazardous waste incinerator of a violation and if the department makes a prima facie showing that the conduct or events giving rise to the violations

are likely to have continued or recurred past the date of notice, the days of violation are presumed to include the date of the notice and every day after the notice until the person establishes that continuous compliance has been achieved. This presumption may be overcome to the extent that the person operating a commercial hazardous waste incinerator can prove by a preponderance of evidence that there were intervening days when a violation did not occur, that the violation was not continuing in nature, or that the telemetering device was compromised or otherwise tampered with.

(4) Money collected under this section must be deposited in the ~~state general fund~~ alternative energy revolving loan account established in [section 1]. This subsection does not apply to money collected by an approved local air pollution control program."

Section 22. Section 80-12-201, MCA, is amended to read:

"80-12-201. Loan agreements -- general provisions. (1) Each loan approved by the authority for issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30 years.

(2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate provided the method of determination is contained in the loan agreement.

(3) Loans approved by the authority for issuance of a bond may be secured by any liens or collateral the financial institution considers necessary.

(4) The money received under a loan agreement may be used for:

- (a) acquisition of farm or ranch land;
- (b) a down payment on the acquisition of farm or ranch land; ~~or~~
- (c) acquisition or construction of depreciable property used in the operation of a farm or ranch; or
- (d) production of energy using an alternative renewable energy source as defined in 90-4-102."

Section 23. Section 90-4-102, MCA, is amended to read:

"90-4-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, geothermal energy, conversion of biomass, fuel cells, small hydroelectric generators producing less than 50 kilowatts, or methane from solid waste, that is capable of being converted into forms of energy useful to mankind, including electricity, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Department" means the department of environmental quality.

(3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

(4) "Person" means a natural person; a corporation, partnership, or other business entity; an association, trust, or foundation; any educational or scientific institution; or any governmental unit.

(5) (a) "State governmental unit" means:

(i) the state;

(ii) the legislature;

(iii) any executive branch department, office, or agency;

(iv) the university system; or

(v) the supreme court or any office of the supreme court.

(b) The term does not include:

(i) a county, incorporated city, town, or other local governmental unit or a public corporation or district created pursuant to state law; or

(ii) any other public body of the state not described in subsection (5)(a)."

Section 24. Section 90-5-101, MCA, is amended to read:

"90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(4) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(5) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(6) "Mortgage" means a mortgage or deed of trust or other security device.

(7) "Municipality" means any incorporated city or town in the state.

(8) "Project" means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, which must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of ~~50~~ 100 megawatts or less; the production of energy using an alternative renewable energy source as defined in 90-4-102; and any combination of these projects."

Section 25. Section 90-6-701, MCA, is amended to read:

"90-6-701. Treasure state endowment program created -- definitions. (1) (a) There is a treasure state endowment program that consists of:

(i) the treasure state endowment fund established in 17-5-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The treasure state endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) systems for the production of energy using an alternative renewable energy source as defined in 90-4-102;

~~(iv)~~(v) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring;

or

~~(v)~~(vi) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, a tribal government, a county or multicounty water, sewer, or solid waste district, or an authority as defined in 75-6-304.

(c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Treasure state endowment program" means the local government infrastructure investment program established in subsection (1).

(e) "Tribal government" means a federally recognized Indian tribe within the state of Montana."

Section 26. Section 90-8-104, MCA, is amended to read:

"90-8-104. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under this chapter.

(2) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce.

(4) "Montana business" means a business ~~which~~ that is located or principally based within Montana.

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, that does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of this chapter, and that is:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in ~~A through E above~~ subsections (5)(a)(i)(A) through (5)(a)(i)(E);

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; ~~and~~

(I) tourism; and

(J) the production of energy using an alternative renewable energy source as defined in 90-4-102; and

(ii) the business is a small business as defined in rules adopted by the department and is a small business pursuant to the regulations promulgated by the United States small business administration at 13 CFR 121, et seq.;

(b) a debt or equity financing of a business outside Montana if the investment is likely to produce a qualified investment in Montana, as long as the investment does not exceed 25% of the capital base of the capital company; or

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated as a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

~~NEW SECTION. Section 28. Repealer. Section 6, Chapter 323, Laws of 1999, is repealed.~~

NEW SECTION. Section 27. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 3].

(2) [Section 6] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 6].

NEW SECTION. **Section 28. Effective date.** [This act] is effective July 1, 2001.

NEW SECTION. **Section 29. Applicability.** (4) [Sections 6 through 13; and 15] apply to tax years beginning after December 31, 2001.

———~~(2) [Section 16] applies to electricity transmitted after June 30, 2001.~~

———~~(3) [Section 17] applies to collections from 15-72-104 after June 30, 2001.~~

- END -

