

HOUSE BILL NO. 774
INTRODUCED BY S. MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WIND ELECTRICAL GENERATION TAXATION; EXEMPTING A WIND ELECTRICAL GENERATION FACILITY AND RELATED DELIVERY FACILITIES FROM PROPERTY TAXATION FOR A 10-YEAR PERIOD; AUTHORIZING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL GOVERNMENTAL UNITS AND SCHOOL DISTRICTS THAT ARE IMPACTED BY A FACILITY EXEMPTED FROM PROPERTY TAXATION; PROVIDING FOR INTERLOCAL IMPACT AGREEMENTS; CHANGING THE TAX RATE FOR PERSONAL PROPERTY ASSOCIATED WITH WIND ELECTRICAL GENERATION FACILITIES; CLARIFYING THE ELIGIBILITY FOR AN ALTERNATIVE RENEWABLE ENERGY COMMERCIAL OR NET METERING SYSTEM TAX CREDIT; CLARIFYING THE CREDIT OFFSET PROVISIONS; ELIMINATING THE CREDIT LIMITATION FOR ALTERNATIVE RENEWABLE ENERGY COMMERCIAL OR NET METERING SYSTEM INVESTMENT; AMENDING SECTIONS 7-1-2111, 15-6-138, 15-24-3006, 15-24-3007, 15-32-402, AND 15-32-404, MCA; REPEALING SECTION 15-32-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Wind electrical generation facility exemptions -- definitions. (1) Except as provided in subsection (2), a wind electrical generation facility and related delivery facilities constructed in the state of Montana after [the effective date of this act] are exempt from property taxation for a 10-year period beginning on the date that an owner or operator of a wind electrical generation facility and related delivery facilities commences to construct the facility, as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from property taxation, an owner or operator of a wind electrical generation facility shall contract to commercially operate the facility during the first 10-year period from the date that an owner or operator commences to operate the facility.

(2) (a) Except as provided in subsection (2)(b), if an owner or operator of property exempt from taxation under subsection (1) fails to perform the contract to commercially operate the wind electrical generation facility during the first 10-year period, the 10-year property tax exemption in subsection (1) is void and the property is subject to a rollback tax as provided in [section 2].

(b) If an owner or operator fails to perform the contract to commercially operate a wind electrical

generation facility due to earthquakes or other acts of God, theft, sabotage, acts of war, other social instabilities, or equipment failure, the property tax exemption in subsection (1) is not void and the owner or operator is not subject to the rollback tax as provided in [section 2].

(3) For the purposes of this section, the following definitions apply:

(a) "Commercially operate" means the production and delivery of electricity from a wind electrical generation facility to a buyer of that electricity under contract with the owner or operator of a wind electrical generation facility.

(b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from the wind electrical generation facility to the existing network transmission system.

(c) (i) "Wind electrical generation facility" means any combination of a physically connected wind turbine or turbines and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce 1 average megawatt or more of electric power.

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

(4) The department shall appraise exempt wind electrical generation facilities for each year that the property is exempt and determine the taxable value of the property as if it were subject to property taxation. The taxable value determined by the department must be included as taxable valuation for the purposes of county classification under 7-1-2111.

NEW SECTION. Section 2. Rollback tax -- computation. (1) (a) If an owner or operator fails to perform a contract to commercially operate a wind electrical generation facility pursuant to [section 1], the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property within 180 days after failure to commercially operate the wind electrical generation facility.

(b) As used in this section, "rollback" means the period of time that an owner or operator of a wind electrical generation facility was exempt from property taxes pursuant to [section 1].

(2) The department shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property in each class in which the property would have been taxed;

(b) multiplying this value by the applicable tax rate and this product by the sum of the annual mill levies that would have been levied had the property exemption pursuant to [section 1] not been applied in the taxing

jurisdiction in which the wind electrical generation facility is located during the rollback period; and

(c) subtracting from this figure the actual property tax paid on the property during this period, less any impact fee paid pursuant to [section 3].

NEW SECTION. Section 3. Wind electrical generation facility impact fee for local governmental units and school districts. (1) If an owner or operator of a wind electrical generation facility, as defined in [section 1], is exempt from property taxation pursuant to [section 1], the owner or operator of the facility is subject to an initial local government and local school impact fee. In the first 2 years from the commencement of commercial operation, the impact fee may not exceed 0.75% of the total cost of constructing the wind electrical generation facility. The cost of constructing the wind electrical generation facility does not include overhead costs, financing costs, professional services, or any other costs not directly associated with the construction of the wind electrical generation facility. The impact fee may not exceed 0.25% in the remaining 8 years of the tax exemption period as provided in [section 1].

(2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which a wind electrical generation facility is located is the local governmental unit that is authorized to assess the impact fee pursuant to subsection (1).

(3) The impact fee must be distributed to the local governmental unit for local impacts and the impacted school districts.

(4) Subject to the conditions of 15-24-3006 and subsection (5) of this section, if the facility is located within the jurisdictional areas of multiple local governmental units of the county or contiguous counties, the local governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine how the fee should be distributed among the various local governmental units and impacted school districts pursuant to the allocation required in subsection (3). The county in which the wind electrical generation facility is located is authorized to assess the fee under the interlocal agreement.

(5) For purposes of this section, a "local governmental unit" means a county, city, or town. If an exempt wind electrical generation facility is located within a tax increment financing district, the tax increment financing district is considered a local governmental unit and is entitled to the distribution of impact fees under this section. A tax increment financing district may not receive a distribution of impact fees if an exempt wind electrical generation facility is not located within the district.

(6) Impact fees imposed under subsection (1) must be deposited in the county electrical energy generation impact fee reserve account established in 15-24-3006 for the county in which the wind electrical

generation facility is located. Money in the account may not be expended until the multiple local governmental units have entered into an interlocal agreement.

NEW SECTION. Section 4. Wind electrical generation facility property tax rate. In lieu of the property tax imposed under 15-6-138, a wind electrical generation facility, as defined in [section 1], must be taxed on eligible equipment beginning after the first year the equipment is acquired at a rate of 3% for the useful life of the equipment or for 20 years. A straight-line depreciation schedule of 20 years must be used, with the minimum taxable valuation of not less than 25% of the depreciated, taxable value.

Section 5. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made as follows:

- (a) first class--all counties having a taxable valuation of \$50 million or more;
- (b) second class--all counties having a taxable valuation of \$30 million or more and less than \$50 million;
- (c) third class--all counties having a taxable valuation of \$20 million or more and less than \$30 million;
- (d) fourth class--all counties having a taxable valuation of \$15 million or more and less than \$20 million;
- (e) fifth class--all counties having a taxable valuation of \$10 million or more and less than \$15 million;
- (f) sixth class--all counties having a taxable valuation of \$5 million or more and less than \$10 million;
- (g) seventh class--all counties having a taxable valuation of less than \$5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

- (e) the value provided by the department of revenue under 15-36-324(14);
- (f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141;
- (g) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141;
- (h) the value provided by the department of revenue under [section 1];
- (i) the value provided by the department of revenue under 15-24-3001; and
- ~~(h)~~(j) 6% of the taxable value of the county on January 1 of each tax year."

Section 6. Section 15-6-138, MCA, is amended to read:

"15-6-138. (Temporary) Class eight property -- description -- taxable percentage. (1) Class eight property includes:

- (a) all agricultural implements and equipment that are not exempt under 15-6-201(1)(bb);
- (b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;
- (c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;
- (d) all manufacturing machinery, fixtures, equipment, tools, except a certain value of hand-held tools and personal property related to space vehicles, ethanol manufacturing, and industrial dairies and milk processors as providers as provided in 15-6-201, and supplies except those included in class five;
- (e) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;
- (f) special mobile equipment as defined in 61-1-104;
- (g) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;
- (h) x-ray and medical and dental equipment;
- (i) citizens' band radios and mobile telephones;
- (j) radio and television broadcasting and transmitting equipment;

(k) cable television systems;

(l) coal and ore haulers;

(m) personal property associated with wind electrical generation facilities defined in [section 1];

~~(m)~~(n) theater projectors and sound equipment; and

~~(n)~~(o) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) ~~Class (a)~~ Except as provided in subsection (4)(b), class eight property is taxed at 3% of its market value.

(b) Property described in subsection (1)(m) is taxed at one-half the taxable percentage rate established in subsection (4)(a).

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property under subsection (4)(a) will be reduced by ~~4%~~ 1 percentage point each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula $(W/CPI) - 1$, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) The class eight property of a person or business entity that owns an aggregate of \$5,000 or less in

market value of class eight property is exempt from taxation. (Repealed on occurrence of contingency--secs. 27(2), 31(4), Ch. 285, L. 1999.)"

Section 7. Section 15-24-3006, MCA, is amended to read:

"15-24-3006. Electrical energy generation impact fee reserve account. (1) The governing body of a county receiving impact fees under 15-24-3005(4) or [section 3] shall establish an electrical energy generation impact fee reserve account to be used to hold the collections. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose of an interlocal agreement provided for in 15-24-3005 or [section 3]. The county treasurer shall distribute money in the account to each local governmental unit according to the terms of the interlocal agreement.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the electrical energy generation impact fee reserve account must be credited to the account."

Section 8. Section 15-24-3007, MCA, is amended to read:

"15-24-3007. Electrical generation impact fund. (1) A local governmental unit, as defined in 15-24-3005 or [section 3], and a school district that receives impact fees pursuant to 15-24-3005(2), or 15-24-3006, or [section 3] shall establish an electrical generation impact fund for the deposit of the fees. A local governmental unit or school district may retain the money in the fund for any time period considered appropriate by the governing body of the local governmental unit or school district. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund by a city, town, or county under the provisions of Title 7, chapter 6, part 40, or by a school district under the provisions of Title 20, chapter 9, part 5."

Section 9. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit -- alternative energy systems.

(1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-1101, or an owner

or operator of a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), 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 and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs; to be taken as a credit only against taxes due as a consequence of taxable or net income produced by from an investment in one of the following:

- (a) manufacturing plants located in Montana that produce alternative energy generating equipment;
- (b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or
- (c) the 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 10. Section 15-32-404, MCA, is amended to read:

"15-32-404. Carryover of credit. (1) The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit, ~~subject to the limitation of 15-32-403,~~ has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system."

NEW SECTION. **Section 11. Repealer.** Section 15-32-403, MCA, is repealed.

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 4].

NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 2003.

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