

SENATE BILL NO. 146
INTRODUCED BY ANDERSON
BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING UNUSED STATE GRANT AND LOAN PROGRAMS; ELIMINATING THE ENERGY CONSERVATION IN AGRICULTURE GRANT PROGRAM, THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION PROGRAM, THE SOLID WASTE MANAGEMENT GRANT AND LOAN PROGRAM, AND THE STATE-OWNED BUILDING ENERGY RETROFITTING GRANT AND LOAN PROGRAM; AMENDING SECTIONS 15-6-225, 15-24-1401, 15-31-124, 15-32-402, 17-6-403, 30-16-103, 75-10-103, 75-10-104, 75-10-105, 75-10-106, 80-12-201, 90-5-101, AND 90-8-104, MCA; AND REPEALING SECTIONS 75-10-121, 75-10-122, 75-10-123, 75-10-124, 75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104, 90-4-105, 90-4-106, 90-4-109, 90-4-111, AND 90-4-112, MCA."

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

Section 1. Section 15-6-225, MCA, is amended to read:

"15-6-225. 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 July 1, 2001, are exempt from taxation.

(b) A generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.

(c) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source.

(2) ~~(a)~~ For the purposes of this section;

(a) "alternative renewable energy source" means a form of energy or matter 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 technology is not in general commercial use. The term includes but is not limited to:

(i) solar energy;

(ii) wind energy;

(iii) geothermal energy;

(iv) conversion of biomass;

(v) fuel cells that do not require hydrocarbon fuel;

(vi) small hydroelectric generators producing less than 1 megawatt; or

(vii) methane from solid waste.

(b) "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property.

~~—— (b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102."~~

Section 2. 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;

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

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225.

(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 3. 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~~ 15-6-225.

(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 4. 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 that makes an investment of \$5,000 or more in certain depreciable property qualifying under section ~~38~~ 48(A) of the Internal Revenue Code of ~~1954~~ 1986, as amended, 26 U.S.C. 48(A), 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~~ 15-6-225, 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 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~~ 48(A) of the Internal Revenue Code of ~~1954~~ 1986, as amended, 26 U.S.C. 48(A), 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 5. 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~~ revenue of less than \$500,000; or

(b) produces energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225.

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

Section 6. 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~~ 15-6-225.

(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 7. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards;
or

(b) receives waste from waste collection vehicles and:

(i) receives no more than 3,000 tons of waste each year;

(ii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

(iii) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system:~~

~~———(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations:~~

~~———(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts:~~

~~(7)~~(4) "Local government" means a county, incorporated city or town, or solid waste management district organized under the laws of this state.

~~(8)~~(5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or local governmental entity or any other state, federal, or private entity, whether organized for profit or not.

~~(9)~~(6) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(10)~~(7) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

~~(11)~~(8) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

~~(12)~~(9) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 8. Section 75-10-104, MCA, is amended to read:

"75-10-104. Duties of department. The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

~~(b) governing procedures to be followed in applying for and making loans;~~

~~— (c) governing agreements between a local government and the department for grants or loans under this part;~~

~~(d)~~(b) establishing, for the purpose of determining the tonnage or volume-based solid waste

management fee that a facility is subject to under 75-10-115(1)(c), methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

~~(e)~~(c) establishing the license application fee that a facility is subject to under 75-10-115(1)(a);

~~(f)~~(d) establishing the flat annual license renewal fee that a facility is subject to under 75-10-115(1)(b);

~~(g)~~(e) establishing the tonnage or volume-based annual renewal fee that a facility is subject to under 75-10-115(1)(c);

~~(h)~~(f) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-204(6); and

~~(i)~~(g) providing guidelines for integrated waste management;

~~(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system that is compatible with the state plan whenever financial assistance is available;~~

~~(4)~~(3) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and ~~conditionally exempt~~ small quantities of hazardous waste ~~as defined in ARM 16.44.402~~ that are exempt from regulation under Title 75, chapter 10, part 4;

~~(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;~~

~~(6)~~(4) enforce and administer the provisions of this part;

~~(7) administer loans made by the state under the provisions of this part;~~

~~(8)~~(5) approve plans for a proposed solid waste management system submitted by a local government;

and

~~(9)~~(6) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 9. Section 75-10-105, MCA, is amended to read:

"75-10-105. Powers of department. The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part; and

~~(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;~~

~~— (3) make grants for a local government for planning or implementation of a solid waste management system; and~~

~~(4)~~(2) collect the solid waste management fees provided for in 75-10-115."

Section 10. Section 75-10-106, MCA, is amended to read:

"75-10-106. Duties of board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in 75-10-111; and

(2) adopt rules necessary for the implementation of this part, including but not limited to rules governing the following:

(a) submission of plans for a solid waste management system; and

~~(b) the procedures to be followed in applying for and making loans and grants;~~

~~— (c) the requirements for eligibility for grants;~~

~~— (d) the agreements between the local government and the department for grants and loans under this part; and~~

~~(e)~~(b) the application fee, flat annual license renewal fee, and tonnage or volume-based renewal fee for solid waste management systems prepared by the department pursuant to 75-10-104 and 75-10-115."

Section 11. 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;

(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~~ 15-6-225."

Section 12. Section 90-5-101, MCA, is amended to read:

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

(1) "Agricultural enterprises" includes but is 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) "Electric energy generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

(4) "Family services provider" means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health services, social services, habilitative services, rehabilitative services, preventive care, and supportive services, and training, educational, and referral activities in support of human services.

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

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

(7) "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.

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

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

(10) "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, that 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; electric energy generation facilities; family services provider facilities; the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225; and any combination of these projects."

Section 13. 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 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 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;

(I) tourism; and

(J) the production of energy using an alternative renewable energy source as defined in ~~90-4-102~~ 15-6-225; 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 14. Repealer. Sections 75-10-121, 75-10-122, 75-10-123, 75-10-124, 75-10-125, 90-2-140, 90-2-141, 90-4-101, 90-4-102, 90-4-103, 90-4-104, 90-4-105, 90-4-106, 90-4-109, 90-4-111, and 90-4-112, MCA, are repealed.

NEW SECTION. SECTION 15. COORDINATION INSTRUCTION. (1) IF HOUSE BILL NO. 76 AND [THIS ACT] ARE BOTH PASSED AND APPROVED AND IF [THIS ACT] REPEALS 90-4-102, THEN THE REFERENCE TO 90-4-102 IN [SECTION 3

OF HOUSE BILL NO. 76], AMENDING 17-6-403, IS CHANGED TO 15-6-225.

(2) IF SENATE BILL NO. 338 AND [THIS ACT] ARE BOTH PASSED AND APPROVED AND IF SENATE BILL NO. 338 REPEALS 15-30-103, THEN THE REFERENCE TO 15-30-103 IN [SECTION 4 OF THIS ACT] IS CHANGED TO [SECTIONS 1 THROUGH 6 OF SENATE BILL NO. 338].

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