

HOUSE BILL NO. 463
INTRODUCED BY D. VILLA

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING NEW BUSINESS PROPERTY TAX INCENTIVES; CREATING PROPERTY TAX INCENTIVES FOR NEW AND EXPANDING BUSINESS ENTERPRISE PROPERTY; ALLOWING STATE AND LOCAL GOVERNMENT TAX ABATEMENTS FOR NEW AND EXPANDING BUSINESS ENTERPRISE PROPERTY; REMOVING NEW INDUSTRIAL PROPERTY FROM CLASS FIVE PROPERTY; ELIMINATING CERTAIN PROVISIONS RELATED TO A MAJOR INDUSTRIAL FACILITY; RESTRICTING THE APPLICATION OF THE PROPERTY TAX ABATEMENT FOR NEW INDUSTRIAL PROPERTY; ELIMINATING THE PERSONAL PROPERTY TAX INCENTIVE FOR VALUE ADDED-MANUFACTURING; AMENDING SECTIONS 15-2-302, 15-6-134, 15-6-135, 15-24-1401, 20-1-208, AND 90-6-205, MCA; REPEALING SECTIONS 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, 15-24-2405, AND 20-9-407, MCA."

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

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 6] is to permit local governments and the state of Montana to work cooperatively to generate good-paying jobs and economic growth by encouraging, through tax incentives, the creation and expansion of business enterprises that produce goods or services within the state and then export those goods or services to customers located outside of Montana for use outside of the state.

NEW SECTION. **Section 2. Definitions.** For purposes of [sections 1 through 6], the following definitions apply:

(1) "Business enterprise" means a business that derives more than 50% of its annual gross revenue from sales outside of Montana or one that produces value-added products or commodities.

(2) "Expanding business enterprise" means a business enterprise that expands its existing operations on or after January 1, 2008, by employing at least 10 additional qualifying employees.

(3) "Expanding business enterprise property" means buildings, machinery, and fixtures owned by an expanding business enterprise and acquired on or after the date of expansion that are:

(a) necessary for the employment of qualifying employees; and

(b) utilized by the business enterprise throughout the qualifying period.

(4) "New business enterprise" means a business enterprise commencing initial operations within the state on or after January 1, 2008, and employing at least 10 qualifying employees.

(5) "New business enterprise property" means buildings, machinery, and fixtures owned by a new business enterprise that are:

(a) necessary for the employment of qualifying employees; and

(b) utilized by the business enterprise throughout the qualifying period.

(6) "Qualifying employee" means a permanent, full-time employee who is:

(a) paid the lesser of either the county average annual wage or the Montana average annual wage as determined by the department of labor and industry through its quarterly census of employment and wages program;

(b) necessary for the new or expanding business enterprise to produce value-added products or commodities; and

(c) employed during the entire applicable qualifying period.

(7) "Qualifying period" means:

(a) for the purposes of [sections 1 through 5]:

(i) the first 3 years of a new business enterprise's operation; or

(ii) the first 3 years of an expanding business enterprise's expanded operations; or

(b) for the purposes of [section 6], the time period during which the new or expanding business enterprise may qualify for the local tax abatement.

(8) (a) "Value-added products or commodities" means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce.

(b) The term does not include services, transportation, or sales unless they are incidental to the production of the product or commodity.

(c) (i) Examples of value-added products or commodities include but are not limited to processed foods, lumber products, matte, software, manufactured homes, processed dairy products, slaughter-ready and butchered livestock, refined petroleum products, and ethanol.

(ii) Examples of products or commodities that are not valued-added include but are not limited to unprocessed grain, logs, Christmas trees, milled ore, residential or commercial construction affixed to real estate, raw milk, feeder cattle, crude oil, and natural gas.

NEW SECTION. Section 3. New and expanding business enterprise property tax abatement. (1)

A new or expanding business enterprise may qualify for an abatement of the business enterprise's property tax liability pursuant to [section 4].

(2) If the abatement is granted, the qualifying new or expanding business enterprise property must be taxed at 33% of its taxable value for the qualifying period.

(3) The abatement applies to all mills levied against the qualifying property.

(4) Upon the termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be taxed according to its classification.

(5) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 6].

NEW SECTION. Section 4. Application -- approval. (1) In order for a taxpayer to receive the abatement described in [section 3], the taxpayer shall submit an application for abatement to the department. The taxpayer shall submit a copy of the application to the governing body of the county, city, or town in which the property for which the abatement is requested is located. The application must be on a form prescribed by the department and must include a requirement that the applicant:

(a) disclose any potential environmental impacts caused by the project; and

(b) be in compliance with all federal and state environmental and health standards and permit requirements.

(2) The application must be accompanied by payroll, sales, and other records necessary to allow the department and the local governing body to determine the applicant's ability to qualify for the abatement.

(3) Following notice and opportunity for hearing, the governing body shall approve or deny the application. The governing body shall immediately notify the department and all taxing jurisdictions affected by the abatement of its decision.

(4) The governing body may prescribe additional criteria upon which it will approve or deny an application for abatement under this section.

(5) If the governing body denies the application, the application is considered to be denied in its entirety and the abatement will not be granted. The department is not required to further process the application.

(6) If the governing body approves the application, the department shall, upon receipt of the notice described in subsection (3) and a fee paid by the applicant in an amount determined by the department, process the application and grant or deny the abatement. The department shall notify the applicant and the governing

body of its decision.

(7) (a) For purposes of determining whether a new business enterprise will qualify for the abatement in its initial year of operation, the department may consider, among other things, the business enterprise's projected or contracted sales for that year and whether the abatement is necessary for the investment to occur.

(b) If the department determines that the business enterprise did not actually derive more than 50% of its annual gross revenue from sales of goods or services produced within the state to customers located outside of Montana for use outside of the state during the first full year of the business enterprise's operation, the business enterprise must be considered to be in default.

NEW SECTION. Section 5. Reporting -- default -- remedy. (1) A taxpayer who has been granted an abatement under [section 3] shall submit quarterly reports to the department on a form prescribed by the department. The reports must include payroll, sales, and other records necessary to allow the department to determine the applicant's continuing qualification for the abatement.

(2) The department shall review the quarterly reports and make an annual determination regarding the taxpayer's continued qualification for the abatement.

(3) If, after a taxpayer has been granted the abatement under [section 3], the department determines that the taxpayer has failed to meet the annual qualification requirements for any year, the taxpayer must be considered to be in default.

(4) If a taxpayer is considered to be in default, the taxpayer forfeits the abatement. Upon default, the property must be taxed at 100% of its taxable value beginning January 1 of the year in which the taxpayer defaulted and any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional taxes resulting from the default.

(5) A taxpayer that has forfeited any portion of its abatement due to default may not reapply for an abatement under [section 4].

NEW SECTION. Section 6. New or expanding business enterprise local tax abatement. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent a new business enterprise or expansion of an existing business enterprise, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, for each succeeding year, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103, and a public hearing, the use of the tax rate schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied to a business enterprise that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(d) Property taxes abated from the reduction in taxable value allowed by this section are subject to recapture by the local governing body if the property does not meet the requirements for new or expanding business enterprise property or the requirements of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application must be accompanied by a fee established by the department. The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. If the local governing body of the affected taxing jurisdiction has approved the application and the department has determined that the investment would not occur without the abatement, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The

benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, 20-9-360, 20-25-423, or 20-25-439 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

(6) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 3].

Section 7. Section 15-2-302, MCA, is amended to read:

"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

(a) property centrally assessed under chapter 23;

~~(b) classification of property as new industrial property;~~

~~(e)~~(b) any other tax, other than the property tax, imposed under this title; or

~~(d)~~(c) any other matter in which the appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file an answer with the board ~~an answer~~ within 30 days following filing of a complaint.

(4) The board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

Section 8. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property -- description -- taxable percentage. (1) Class four property includes:

(a) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all improvements, including

trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than \$15,000 for a single person or \$20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-222(1), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, ~~and 15-24-1502~~, [section 3], and [section 6], property described in subsections (1)(a), (1)(b), and (1)(e) through (1)(g) of this section is taxed at:

(i) 3.22% of its taxable market value in tax year 2005;

(ii) 3.14% of its taxable market value in tax year 2006;

(iii) 3.07% of its taxable market value in tax year 2007; and

(iv) 3.01% of its taxable market value in tax years after 2007.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on income

and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$0 - \$ 6,000	\$0 - \$8,000	20%
\$6,001 - \$9,200	\$8,001 - \$14,000	50%
\$9,201 - \$15,000	\$14,001 - \$20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 9. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property -- description -- taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

~~(c) new industrial property as defined in this section;~~

~~(c)~~ any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

~~(e)~~(d) all land and improvements and all personal property owned by a research and development firm,

provided that the property is actively devoted to research and development;

~~(f)~~(e) machinery and equipment used in electrolytic reduction facilities;

~~(g)~~(f) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

~~(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.~~

~~————(b) New industrial property does not include:~~

~~————(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

- ~~—— (ii) a plant that will create adverse impact on existing state, county, or municipal services; or~~
- ~~—— (iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.~~
- ~~—— (4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.~~
- ~~—— (b) New industry includes only those industries that:~~
- ~~—— (i) manufacture, mill, mine, produce, process, or fabricate materials;~~
- ~~—— (ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;~~
- ~~—— (iii) engage in the mechanical or chemical transformation of materials or substances into new 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;~~
- ~~—— (iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or~~
- ~~—— (v) earn 50% or more of their annual gross income from out-of-state sales.~~
- ~~(5)(3) Class five property is taxed at 3% of its market value."~~

Section 10. 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, and before [the effective date of this act] 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 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, and before [the effective date of this act] 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~~ or expanding business enterprise property under ~~15-6-135~~ [section 3].

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

Section 11. Section 20-1-208, MCA, is amended to read:

"20-1-208. Educational impact statements. When a county superintendent of schools finds that a person ~~intends to construct or locate a major industrial facility, as defined in 20-9-407,~~ or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require ~~such~~ the person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the ~~major industrial facility or~~ strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the ~~major industrial facility or~~ strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school-age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate."

Section 12. Section 90-6-205, MCA, is amended to read:

"90-6-205. Coal board -- general powers. The board may:

- (1) retain professional consultants and advisors;
- (2) adopt rules governing its proceedings;
- (3) consider applications for grants from available funds; and
- (4) award grants, subject to 90-6-207, from available funds:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and

(b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; ~~and~~

~~———(5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board shall award the grant in accordance with 90-6-206."~~

NEW SECTION. **Section 13. Repealer.** Sections 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, 15-24-2405, and 20-9-407, MCA, are repealed.

NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 6] 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 6].

NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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