

HOUSE BILL NO. 635
INTRODUCED BY B. HANDS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING FINANCIAL INCENTIVES FOR COMMERCIAL CONSTRUCTION OR BUILDING RENOVATION EMPLOYING INTEGRATED DESIGN AND OTHER ENERGY EFFICIENCY MEASURES; CREATING AN ENERGY CONSERVATION CREDIT AGAINST TAXES FOR COMMERCIAL CONSTRUCTION; ALLOWING FLOW-THROUGH OF CREDITS FROM QUALIFIED ENTITIES TO PARTNERS; PROVIDING CRITERIA FOR CERTIFICATION TO OBTAIN THE CREDITS; PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF REVENUE WITH IMPLEMENTATION AND RULEMAKING AUTHORITY; PROVIDING \$500,000 ANNUALLY FOR CREDITS AGAINST TAXES ON A FIRST-COME, FIRST-SERVED BASIS; DESCRIBING A PROCESS FOR ACQUIRING CERTIFICATION NECESSARY TO OBTAIN CREDITS; ALLOWING FEES FOR THE CERTIFICATION PROCESS; ALLOWING CREDITS TO BE TRANSFERRED; PROVIDING TERMS FOR REVOKING A CERTIFICATE AND COLLECTING CREDITS ASSOCIATED WITH THE REVOKED CERTIFICATE; LIMITING CREDITS IF OTHER TAX CREDITS ARE USED; AMENDING SECTION 15-32-405, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Energy conservation tax credits for commercial construction -- flow-through credits. (1) Except as provided in subsection (2), a business entity required to file income taxes under this chapter may receive a credit against taxes under the provisions of [sections 3 through 9] upon presentation to the department of a certificate from the department of environmental quality indicating the amount of certified costs eligible for a credit against taxes and the annual amount available to claim as a credit against taxes, pursuant to [section 5], if:

(a) the business entity sought financing for and paid for the construction or renovation of a building that meets the criteria for a high-performance building, as defined in [section 3]; or

(b) the business entity partnered with a qualified flow-through entity as provided in [section 7] that sought financing for and paid for construction or renovation of a building that meets the criteria for a high-performance building, as defined in [section 3].

(2) A business entity may not receive a deduction against taxes or a tax credit under 15-32-103,

15-32-107, or 15-32-402 if the business entity claims a credit against taxes under this section.

(3) For the purposes of this chapter, the following apply to business entities described in subsection (1)(a):

(a) if a business entity is an S. corporation, the shareholders may claim a pro rata share of the tax credit; and

(b) if a business entity is a partnership, the credit may be claimed by the partners in the same proportion used to report the partnership's income or loss for Montana income tax purposes.

(4) If the high-performance building is constructed or renovated with a federal grant or federal tax credit, other than an investment tax credit or a low-income housing tax credit, the department of environmental quality shall reduce the certified cost on which the credit under this section is based on a proportional basis equivalent to the percentage of federal funds received for all project costs. This subsection does not apply to low-interest, government-sponsored loans.

NEW SECTION. Section 2. Energy conservation tax credits for commercial construction -- flow-through credits. (1) Except as provided in subsection (2), a business entity required to file income taxes under this chapter may receive a credit against taxes under the provisions of [sections 3 through 9] upon presentation to the department of a certificate from the department of environmental quality indicating the amount of certified costs eligible for a credit against taxes and the annual amount available to claim as a credit against taxes, pursuant to [section 5], if:

(a) the business entity sought financing for and paid for the construction or renovation of a building that meets the criteria for a high-performance building, as defined in [section 3]; or

(b) the business entity partnered with a qualified flow-through entity as provided in [section 7] that sought financing for and paid for construction or renovation of a building that meets the criteria for a high-performance building, as defined in [section 3].

(2) A business entity may not receive a deduction against taxes or a tax credit under 15-32-103, 15-32-107, or 15-32-402 if the business entity claims a credit against taxes under this section.

(3) If the high-performance building is constructed or renovated with a federal grant or federal tax credit, other than an investment tax credit or a low-income housing tax credit, the department of environmental quality shall reduce the certified cost on which the credit under this section is based on a proportional basis equivalent to the percentage of federal funds received for all project costs. This subsection does not apply to low-interest, government-sponsored loans.

NEW SECTION. Section 3. Definitions. As used in [sections 3 through 9], the following definitions apply:

(1) "Business entity" means an entity that has registered with the secretary of state under Title 35 and pays income taxes under Title 15, chapter 30 or 31.

(2) "Certified cost" means the cost that is certified by the department as being eligible for credit against taxes and that is up to 35% of the costs of constructing or renovating a building that are greater than the costs for constructing or renovating a reference building as determined by the department by rule.

(3) (a) "Commercial building" means a building designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes.

(b) The term does not include:

- (i) a utility as defined under 69-8-103;
- (ii) distribution facilities as defined in 69-8-103;
- (iii) a net metering system as defined in 69-8-103; or
- (iv) class 9 property as described in 15-6-141.

(4) (a) "Cost" means the capital costs and expenses incurred that relate specifically and necessarily to the construction or renovation of a high-performance building, including amounts paid for site development and related expenses.

(b) The term does not include legal fees associated with certified costs or for finishings or furnishings not consistent with criteria established by the department by rule.

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

(6) "High-performance building" means a commercial building in which building practices are used that reduce the amount of energy, water, or other resources needed for construction and operation of the building and that meet the criteria under [section 4(1)].

(7) "Qualified flow-through entity" means an entity that obtains a final certification and a certificate for a high-performance building, as provided in [section 6], has a partner as provided in [section 7] to whom it intends to transfer the flow-through credit, and is one of the following:

(a) a nonprofit organization exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code that has registered with the secretary of state under Title 35;

(b) a tribal government located in this state; or

(c) a governmental entity as defined in 2-9-101.

NEW SECTION. Section 4. Criteria for certification -- department duties -- rulemaking. (1) To be eligible for final certification under [section 6], a project must meet the silver certification level established by the U.S. green building council's leadership in energy and environmental design rating system or an equivalent system as determined by the department by rule and in effect as of the date on which the department received the application for a preliminary certification.

(2) The department shall verify the project's eligibility.

(3) The department shall work with the department of revenue to develop procedures to implement [sections 3 through 9] and both departments shall adopt rules for the implementation of [sections 3 through 9] in accordance with Title 2, chapter 4.

NEW SECTION. Section 5. Tax credit availability -- limits -- process. (1) (a) A total of \$500,000 is available in each calendar year under this section for tax credits and flow-through credits to certificate holders as provided in [section 6].

(b) In calculating the \$500,000 of tax credits and flow-through credits that may be claimed in a year, the department shall notify the department of revenue of all certificates issued, along with the certified costs and applicable tax credits or flow-through credits for each year in which a credit can be claimed.

(c) Tax credits must be allocated on a first-come, first-served basis.

(2) A tax credit may not be claimed for construction or renovation occurring before December 31, 2007.

(3) There is a limit of \$250,000 for certified costs for each construction or renovation project.

(4) Tax credits or flow-through credits may be claimed or redeemed by a certificate holder only in accordance with conditions set forth in the certificate and this section.

(5) A certificate may be used to claim:

(a) a tax credit, based on 35% of the certified costs for construction or renovation of the high-performance building, as determined by the department; or

(b) a flow-through credit, based on a rate determined annually by the department of less than 35% of the certified cost of the high-performance buildings built or renovated by qualified flow-through entities and their partners.

(6) Except as provided in subsection (8), a certificate holder may apply the tax credit or flow-through credit to tax liabilities for 5 years after the date of certification.

(7) (a) In the first 2 tax years in which the tax credit or flow-through credit is claimed, the amount of the credit may be no greater than 10% of the certified cost of the high-performance building and may not exceed the

tax liability of the certificate holder.

(b) In the succeeding 3 years, the tax credit or flow-through credit allowed under this section may be no greater than 5% of the certified cost of the high-performance building and may not exceed the tax liability of the certificate holder.

(c) Tax credits or flow-through credits not claimed within the 5-year period are forfeited.

(8) If the certified cost of the high-performance building did not exceed \$20,000, the total amount of the tax credit or flow-through credit allowed under this section may be claimed in the first tax year for which the credit may be claimed but may not exceed the tax liability of the certificate holder.

(9) A certificate holder may transfer the certificate and the tax credits associated with the credit as provided in [section 7].

(10) A certificate may be rescinded or terminated as provided in [section 8].

NEW SECTION. Section 6. Certification process -- fee. (1) The department shall establish a certification process by rule that includes a preliminary certification and a final certification.

(2) The following provisions must be met for a preliminary certification:

(a) Prior to construction or renovation, the business entity or qualified flow-through entity that proposes a high-performance building construction or renovation shall submit to the department all plans, specifications, and contract terms for the high-performance building in addition to the names of any partners of the qualified flow-through entity, the projected cost, and a review fee. The department may refund one-half the fee if the application for a preliminary certification is rejected.

(b) The department shall review the information provided in subsection (2)(a) and may suggest changes or revisions for the proposed project to help meet the criteria in [section 4].

(c) (i) The department shall determine whether the proposed project has the potential to meet the criteria in [section 4], is technically feasible, is expected to operate in accordance with the representations made by the applicant, and meets any applicable rules adopted under this section.

(ii) The department shall determine with the applicant the eligible cost of the proposed project.

(iii) If the proposed project meets the terms of subsection (2)(c)(i), the department shall grant a preliminary certification. If the proposed project does not meet the terms of subsection (2)(c)(i), the department may either deny the preliminary certification or require more information.

(d) A business entity that receives a preliminary certification shall retain the preliminary certificate as part of its application for a final certification.

(3) The following provisions must be met for final certification:

(a) The business entity that completes construction or renovation of a proposed high-performance building shall present to the department its preliminary certification and any other information required by the department by rule.

(b) The business entity shall file an application for final certification on a form provided by the department. The application must include:

(i) a statement that the business entity has complied with the conditions of the preliminary certification;

(ii) a report, certified by a certified public accountant who is not an employee of the applicant, listing the actual cost of the commercial building;

(iii) a statement that the commercial building is in use or if not in use that the applicant has contracts with a potential occupant.

(4) The department may require an inspection prior to approving final certification.

(5) The department shall act on an application for final certification before the 60th business day after the filing of the application under this section.

(6) The department shall include in a final certification:

(a) a designation of the commercial building as a high-performance building;

(b) the certified cost of the high-performance building on which a tax credit or a flow-through credit may be requested. The certified cost for a tax credit or a flow-through credit may not be more than 10% greater than the amount estimated in the preliminary certification.

(c) a numbered certificate that contains information needed by the department of revenue to process tax credits or flow-through credits under [section 1 or 2]. The department shall notify the department of revenue when the department issues a numbered certificate.

(7) If the department rejects an application for final certification or authorizes a lesser certified cost of the commercial building than was claimed in the application, the department shall send the applicant a written notice of the action with a statement of the reason for the rejection by certified mail before the 60th day after the filing of the application. An applicant denied a preliminary certification may appeal using the procedures in subsection (9).

(8) The department may adopt a schedule of reasonable fees to be paid by applicants when they request a preliminary certification or a final certification. The fees must be commensurate with the cost of implementing this section and must include the anticipated cost of filing, investigating, granting, or rejecting applications for preliminary certification or final certification, including the cost of hearings and inspection.

(9) The department shall adopt rules necessary to provide a procedure for reviewing a denial or an authorization of a lesser certified cost under subsection (7).

NEW SECTION. Section 7. Flow-through partners -- transferability of tax credit. (1) A business entity with a tax liability under Title 15, chapter 30 or 31, may partner with a qualified flow-through entity seeking certification of a commercial building under [sections 3 through 9] to receive the flow-through credit from final certification of the qualified flow-through entity's high-performance building. The contractual arrangement for the transfer of the certificate needed for a flow-through credit must be described to the department as part of the preliminary certification process described in [section 6].

(2) Subject to subsection (3), a tax credit granted under [section 1 or 2] may be transferred in exchange for a cash payment equal to the present value of the tax credit.

(3) For the transfer of a tax credit to be valid, the department of revenue must be provided with information sufficient to calculate the present value of the tax credit associated with the transfer along with the certificate number and contact information, including the name, address, and tax identification number of the entity to which the certificate is to be transferred.

(4) The department of revenue may establish by rule uniform discount rates to be used in calculating the present value of a tax credit exchanged under subsection (2).

NEW SECTION. Section 8. Revocation of certificate -- forfeiture of tax credits -- collection. (1) (a) After holding a contested case hearing under the Montana Administrative Procedure Act, the department may order the revocation of a certificate provided after final certification if:

(i) the final certification was obtained by fraud or misrepresentation; or

(ii) the builder or renovator of the commercial building failed substantially to operate the high-performance building in compliance with the plans, specifications, and procedures provided in the application for a preliminary certification.

(b) The department may not revoke a certificate that has been issued or transferred as provided in [section 7].

(2) Upon revoking the certificate, the department shall provide notice that the certificate is no longer valid to:

(a) the department of revenue; and

(b) the certificate holder.

(3) After a certificate is revoked under subsection (1) and the department of revenue is notified under subsection (2), all prior tax credits provided to the certificate holder and granted under [section 1 or 2] are forfeited from the date determined as being a date of noncompliance.

(4) The department of revenue shall, after a certificate is revoked, begin collection of income taxes that, absent use of the tax credits associated with the certificate, would have been due after the date of noncompliance. The department of revenue shall notify the certificate holder of collection requirements. A statute of limitations may not preclude collection of taxes due under this subsection.

Section 9. Section 15-32-405, MCA, is amended to read:

"15-32-405. Exclusion from other tax incentives. If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-31-124 and 15-31-125 or [section 1 or 2], may be claimed for the investment. Property tax reduction allowed by 15-6-224 may not be applied to a facility for which a credit is claimed pursuant to this part."

NEW SECTION. **Section 10. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 11. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 2].

(3) [Sections 3 through 9] are intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [sections 3 through 9].

NEW SECTION. **Section 12. Effective date.** [This act] is effective January 1, 2008.

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