

SENATE BILL NO. 318

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR APPROVAL OF AN ABATEMENT FOR NEW OR EXPANDING INDUSTRY PRIOR TO COMMENCEMENT OF CONSTRUCTION; AMENDING SECTIONS 15-24-1401 AND 15-24-1402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** 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,~~ or will add 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;

(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; or

(g) operates a qualified data center or dedicated communications infrastructure classified under 15-6-162.



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

6 (4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable  
 7 value under 15-24-1402 and this section."  
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9 **Section 2.** Section 15-24-1402, MCA, is amended to read:

10 **"15-24-1402. New or expanding industry -- assessment -- notification.** (1) In the first 5 years after  
 11 ~~a construction permit is issued~~ commencement of construction, qualifying improvements or modernized  
 12 processes that represent new industry or expansion of an existing industry, as designated in the approving  
 13 resolution, must be taxed at 25% or 50% of their taxable value. Subject to 15-10-420, each year thereafter, the  
 14 percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In  
 15 subsequent years, the property must be taxed at 100% of its taxable value.

16 (2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the taxpayer may  
 17 submit an application for a project with a project plan and receive approval for an abatement prior to  
 18 commencement of construction. A taxpayer that does not seek approval prior to commencing construction must  
 19 have applied by March 1 of the year during which the benefit is first applicable. The governing body of the affected  
 20 county or the incorporated city or town must have approved by separate resolution for each project, following due  
 21 notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing, the  
 22 use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant  
 23 approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not  
 24 preclude approval. If a taxpayer receives approval of a tax abatement prior to commencement of construction,  
 25 the abatement does not extend to property that is outside the scope of the project plan that was submitted to the  
 26 governing body with the application.

27 (b) The governing body shall:

28 (i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment  
 29 provided for in this section; and

30 (ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and

1 deny or approve it within 120 days of receiving the application as provided in subsection (2)(b)(i).

2 (c) If the governing body fails to hold a hearing or deny or approve the application within 120 days of  
3 receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city,  
4 or town is located a writ of mandamus to compel the governing body to make a determination.

5 (d) Subject to 15-10-420, the governing body may end the tax benefits by majority vote ~~at any time, but~~  
6 ~~the tax benefits may not be denied an industrial facility that previously qualified for the benefits~~ if the conditions  
7 of the resolution provided for in subsection (2)(a) are not met.

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

12 (f) Property taxes abated from the reduction in taxable value allowed by this section are subject to  
13 recapture by the local governing body if the ownership or use of the property does not meet the requirements of  
14 15-24-1401, this section, or the resolution required by subsections (2)(a) and (2)(e) of this section. The recapture  
15 is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided  
16 in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The  
17 amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts  
18 subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this  
19 section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary  
20 conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body  
21 determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control  
22 of the taxpayer.

23 (3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The  
24 application by the taxpayer must first be approved by the governing body of the appropriate local taxing  
25 jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the  
26 tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the  
27 affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

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

1 benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10,  
2 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

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

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6 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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8 NEW SECTION. **Section 4. Applicability.** [This act] applies to new or expanding industry tax  
9 abatements granted on or after [the effective date of this act].

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