

HOUSE BILL NO. 167

INTRODUCED BY Z. PERRY

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ABILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TAX CREDITS FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO PRODUCE BIOGAS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Credit for biogas production.** (1) An individual, corporation, partnership, or small business corporation, as defined in 15-30-3301, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for the costs of investments in depreciable property in Montana that is used primarily for biogas production.

(2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a credit, as provided in subsection (3), for the costs described in subsection (1) incurred in the 2 tax years before the facility begins producing biogas or in any tax year in which the facility is producing biogas.

(3) The total amount of credits for all years that may be claimed for a facility under this section is 15% of the costs described in subsection (1), up to a total of \$500,000.

(4) The following requirements must also be met for a taxpayer to be entitled to a tax credit under this section:

(a) The depreciable property for which the credit is claimed must begin to be used for the purposes described in subsection (1) before January 1, 2029.

(b) (i) The taxpayer claiming a credit must be a person who is an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that produces biogas.

(ii) If more than one person has an interest in a business with qualifying property, the persons may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (4)(b), and, except for the 2 tax-year period claimed in subsection (2), must have been using the depreciable property for the purposes described in subsection (1) during the tax year for



1 which the credit is claimed and during each year for which the credit is carried forward.

2 (5) Except as provided in subsection (9), the credit provided by this section is not in lieu of any
3 depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise
4 may be entitled under Title 15.

5 (6) (a) Subject to subsection (6)(b), tax credit allowable under this section that is not completely used by
6 the taxpayer in the tax year for which the credit is initially claimed may be carried forward for credit against a
7 taxpayer's tax liability for any succeeding tax year until the total amount of the credit has been deducted from tax
8 liability.

9 (b) A credit may not be carried forward to a tax year during which the facility where the depreciable
10 property is installed is not producing biogas or beyond the 7th tax year after the tax year for which the credit was
11 initially claimed. If a facility where property is installed and for which a credit is claimed ceases to produce biogas
12 for a period of 12 continuous months within 5 years after the initial claiming of a credit under this section or within
13 5 years after a year in which the credit was carried forward, the credit is subject to recapture. The person claiming
14 the credit is liable for the total amount of the credit in the event of recapture.

15 (7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by a tax
16 credit allowed under this section.

17 (8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed
18 using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to produce
19 biogas. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise
20 provided by law.

21 (9) If a credit is claimed for an investment pursuant to this part, no other state energy or investment tax
22 credit, including but not limited to the tax credits allowed by 15-31-124 and 15-31-125, may be claimed for the
23 investment.

24 (10) The department of revenue may adopt rules necessary to carry out the provisions of this section.

25 (11) As used in this section, the following definitions apply:

26 (a) "Biogas" means methane gas produced through controlled biochemical processes in which bacteria
27 digest animal, municipal, or other organic wastes in an oxygen-free environment. The term includes naturally
28 occurring methane gas formed underground in landfills.

29 (b) "Biogas production" means the production of biogas to generate electricity.

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1 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
2 integral part of Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [section 1].

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

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6 NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the
7 meaning of 1-2-109, to tax years beginning after December 31, 2018.

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