

## SENATE BILL NO. 505

INTRODUCED BY M. TAYLOR, STORY, BECK, BERRY, BITNEY, D. BROWN, COLE, DEPRATU, FUCHS,  
MILLER, MOOD, SLITER, SOMERVILLE, F. THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ELECTRIC ENERGY; EXEMPTING CERTAIN ELECTRICAL GENERATION AND TRANSMISSION OR DISTRIBUTION FACILITIES FROM PROPERTY TAXATION FOR A CERTAIN PERIOD OF TIME; EXEMPTING NONCOMMERCIAL GENERATION FACILITIES FROM PROPERTY TAXATION; AUTHORIZING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR INFRASTRUCTURE AND SCHOOL DISTRICT IMPACTS OF A FACILITY EXEMPTED FROM PROPERTY TAXATION; INCREASING THE TAX DEDUCTION FOR ENERGY CONSERVATION INVESTMENTS; ~~INCREASING AND CLARIFYING THE TAX CREDIT FOR WIND-GENERATED ELECTRICITY~~ PROVIDING A TAX CREDIT FOR THE PURCHASE AND INSTALLATION OF SOLAR AND WIND ELECTRICAL ENERGY GENERATING EQUIPMENT, INCLUDING NET METERING SYSTEMS, THAT IS USED TO PROVIDE ELECTRICAL ENERGY TO THE OWNER; AMENDING ~~SECTIONS~~ SECTION 15-32-103 ~~AND 15-32-402~~, MCA; AND PROVIDING ~~A DELAYED EFFECTIVE DATE~~ EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the State of Montana is potentially facing unprecedented increases in electricity supply costs;  
and

WHEREAS, the impacts from these increases in electricity supply costs could have significant impacts on Montanans and Montana's economy; and

WHEREAS, it is imperative that the State of Montana attempt to protect Montanans and the Montana economy through the use of a variety of policy initiatives, including tax incentives that would induce new generation and conservation of electricity within the State of Montana and at the same time create and protect high quality jobs for Montanans.

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

NEW SECTION. **Section 1. Electrical generation, transmission, and distribution facility exemption.** (1) (a) If an owner or operator of a commercial electrical generation facility WITH A GENERATING CAPACITY OF LESS THAN 50 MEGAWATTS constructed after [the effective date of this act] OR FACILITY WITH A

GENERATING CAPACITY OF 50 MEGAWATTS OR GREATER CONSTRUCTED AFTER JANUARY 1, 2002, offers contracts OF AT LEAST 5 YEARS DURATION to sell at least 33% of that commercial electrical generation facility's net generating output at the cost of production plus a rate of return as designated by the public service commission for a 10-year period to customers for use within the state of Montana, then that commercial electrical generation facility is exempt from property taxation, INCLUDING GROSS PROCEEDS OF COAL MINES, for a 10-year period starting from the date that an owner or operator of an electrical ~~transmission or distribution~~ GENERATION facility commences to construct, as defined in 75-20-104(6).

(b) Except as provided in subsection (1)(c), if an owner or operator signs a contract to sell power in state, as required in subsection (1)(a), and then fails to perform the contract for the full 10-year period, the 10-year exemption in subsection (1)(a) is void and the property is subject to a rollback tax, as provided in [section 2].

(c) If an owner or operator fails to perform the contract because of earthquakes or other acts of God, theft, sabotage, acts of war, ~~other social instabilities~~, or the failure of reasonably maintained equipment, the 10-year exemption in this subsection (1) is not void and the owner or operator is not subject to the rollback tax, as provided in [section 2].

(D) COST OF PRODUCTION IS TO BE DETERMINED BY DIVIDING THE COST AND OPERATION OF THE ELECTRICAL GENERATION FACILITY OVER AN APPROPRIATE TIME PERIOD BY THE KILOWATT OUTPUT OF THE FACILITY.

(2) A new electrical transmission or distribution facility, constructed after [the effective date of this act], is exempt from property taxation for a 5-year period starting from the date that an owner or operator of an electrical transmission or distribution facility commences to construct, as defined in 75-20-104(6).

(3) A noncommercial electrical generation facility built and operating after [the effective date of this act] that is used for the production of energy for use by the owner in the owner's business is exempt from property taxation.

(4) For the purposes of this section, the following definitions apply:

(a) "Commercial electrical generation facility" means an electrical generation facility that produces electricity for sale, other than sale of electricity incidental to production for the owner's own use.

(b) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce 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.

(c) "Electrical transmission or distribution facility" means:

(i) a facility used to provide transmission services as determined by the federal energy regulatory commission and the public service commission; or

(ii) a facility by and through which electricity is received from a transmission services provider, as defined in 69-8-103, and distributed to the customer and that is controlled and operated by a distribution services provider.

(d) "Noncommercial electrical generation facility" means an electrical generation facility that is not a commercial electrical generation facility.

**NEW SECTION. Section 2. Rollback tax -- computation.** (1) (a) If an owner or operator fails to perform the contract pursuant to [section 1(1)(b)], the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable by the owner of the property within 180 days after failure to perform the contract.

(b) As used in this section, "rollback" means the period of time that an owner or operator of an electrical generation facility was exempt from property taxes pursuant to [section 1].

(2) The department shall determine the amount of rollback tax due on the property by:

(a) determining the taxable value of the property;

(b) multiplying the value determined in subsection (2)(a) by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollback period;

~~(c) THE AMOUNT OF TAX ON THE GROSS VALUE OF COAL THAT WAS EXEMPT FROM TAXATION UNDER [SECTION 1]; and~~

~~(e)(D) subtracting from the figure AMOUNTS ascertained in subsection SUBSECTIONS (2)(b) AND (2)(C) the actual property tax paid on the property during this period less any impact fee paid pursuant to [section 3], if any.~~

**NEW SECTION. Section 3. Electrical generation facility impact fee for local governmental units and school districts.** (1) If an owner or operator of an electrical generation facility, as defined in [section 1], exempts itself from property taxation pursuant to [section 1], the owner or operator of the electrical generation facility is subject to a one-time initial local government infrastructure impact fee to be assessed in the first year that the property is exempt from taxation pursuant to [section 1], not to exceed 1% of the total cost of constructing the electrical generation facility.

(2) Except as provided in subsection (4), the jurisdictional area of a local governmental unit in which an electrical generation facility is located is the local governmental unit that is authorized to assess the impact fee

pursuant to subsection (1).

(3) Thirty percent of the impact fee must be distributed to the local governmental unit for infrastructure impacts, and 70% of the impact fee must be distributed to the impacted school districts.

(4) If the electrical generation facility is located within the jurisdictional areas of multiple local governmental units, the local governmental units may enter into an interlocal agreement under 7-11-101 through 7-11-105, 7-11-107, and 7-11-108 to determine which local governmental unit is authorized to assess the impact fee and how the fee should be distributed among the various local governmental units and impacted school districts pursuant to the percentage allocation required in subsection (3).

(5) For purposes of this section, "local governmental unit" means a county, city, or town.

**Section 4.** Section 15-32-103, MCA, is amended to read:

**"15-32-103. Deduction for energy-conserving investments.** (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, or individual income allowed in computing net income under chapter 30, part 1, a taxpayer may deduct a portion of his the taxpayer's expenditure for a capital investment in a building for an energy conservation purpose; ~~in accordance with the following schedule:~~ If the installation or investment is made in a building, then 100% of the first \$10,000 expended may be deducted over a 4-year period.

~~If the installation or investment is made in a residential building:~~ If the installation or investment is made in a building not used as a residence:

~~100% of first \$1,000 expended~~ 100% of first \$2,000 expended

~~50% of next \$1,000 expended~~ 50% of next \$2,000 expended

~~20% of next \$1,000 expended~~ 20% of next \$2,000 expended

~~10% of next \$1,000 expended~~ 10% of next \$2,000 expended

(2) This tax treatment is subject to approval of the department, as provided in 15-32-106, and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation."

~~**Section 5.** Section 15-32-402, MCA, is amended to read:~~

~~**"15-32-402. Commercial or net metering system investment credit -- wind-generated electricity.**~~

~~(1) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, that makes an investment of \$5,000 or more in certain depreciable property qualifying under section 38 of the Internal~~

~~Revenue Code of 1954, as amended, for a commercial system or a net metering system, as defined in 69-8-103, located in Montana which that generates electricity by means of wind power is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% 40% 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 wind energy generating equipment;~~
- ~~—— (b) a new business facility or the expanded portion of an existing business facility for which the wind energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or~~
- ~~—— (c) the wind 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 of the Internal Revenue Code of 1954, as amended, 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."~~

**NEW SECTION. SECTION 5. ELECTRICAL GENERATION -- TAX CREDIT FOR SOLAR OR WIND ELECTRICAL ENERGY GENERATING EQUIPMENT OR NET METERING SYSTEM -- NONCOMMERCIAL USE. (1) THERE IS ALLOWED AS A CREDIT AGAINST TAXES IMPOSED BY 15-30-103 OR 15-31-101 AN AMOUNT EQUAL TO 50% OF THE COST OF PURCHASING AND INSTALLING:**

**(A) SOLAR OR WIND ELECTRICAL ENERGY GENERATING EQUIPMENT TO PROVIDE ELECTRICAL ENERGY TO BE USED BY THE OWNER OF THE EQUIPMENT; OR**

**(B) A NET METERING SYSTEM, AS DEFINED IN 69-8-103.**

**(2) THE MAXIMUM AMOUNT OF THE CREDIT THAT MAY BE CLAIMED IS \$10,000. THE CREDIT MUST BE CLAIMED IN FOUR EQUAL AMOUNTS ANNUALLY OVER A 4-YEAR PERIOD BEGINNING IN THE YEAR THAT THE GENERATING EQUIPMENT OR NET METERING SYSTEM IS ACQUIRED. THE AMOUNT CLAIMED ANNUALLY MAY NOT EXCEED THE AMOUNT OF TAX LIABILITY OF THE OWNER, BUT THE EXCESS MAY BE USED AS A CARRYFORWARD AGAINST TAXES IMPOSED BY 15-30-103**

OR 15-31-101 FOR THE 3 SUCCEEDING TAX YEARS. ANY PART OF AN ANNUAL CLAIMED AMOUNT THAT IS NOT USED IN THE YEAR IN WHICH IT MAY BE CLAIMED MUST BE CARRIED FIRST TO THE EARLIEST TAX YEAR IN WHICH IT MAY BE APPLIED AND THEN TO EACH SUCCEEDING TAX YEAR. AN ANNUAL CLAIMED AMOUNT MUST BE CLAIMED BEFORE ANY CARRYFORWARD AMOUNT.

(3) A TAXPAYER MAY NOT CLAIM A CREDIT IF THE TAXPAYER HAS INCLUDED THE COST OF THE GENERATING EQUIPMENT OR NET METERING SYSTEM UPON WHICH THE AMOUNT OF THE CREDIT WAS COMPUTED AS A DEDUCTION UNDER 15-30-121, 15-30-136, OR 15-31-114.

(4) IF THE TAXPAYER IS A SMALL BUSINESS CORPORATION, AS DEFINED IN 15-31-201, OR A PARTNERSHIP, THE CREDIT MUST BE ATTRIBUTED TO SHAREHOLDERS OR PARTNERS, USING THE SAME PROPORTION USED TO REPORT THE SMALL BUSINESS CORPORATION'S OR PARTNERSHIP'S INCOME OR LOSS FOR MONTANA TAX PURPOSES.

NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [sections 1 through 3].

(2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 32, PART 1, AND THE PROVISIONS OF TITLE 15, CHAPTER 32, PART 1, APPLY TO [SECTION 5].

NEW SECTION. Section 7. Effective date DATES -- APPLICABILITY. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

(2) ~~[This act] is [SECTIONS 4 AND 5] ARE~~ effective January 1, 2002, AND APPLY TO TAX YEARS BEGINNING AFTER DECEMBER 31, 2001.

NEW SECTION. Section 8. Termination. [This act] terminates January 1, 2012.

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