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As of: August 26, 2004 (11:15am)

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act creating a class fourteen tax category for new or expanding business enterprise property; defining new or expanding business enterprise and new or expanding business enterprise property; removing new industrial property from the class five tax category; amending sections 15-6-135, 15-24-1402, and 20-9-407, MCA; and repealing section 15-24-1401, MCA."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property is all new or expanding business enterprise property as defined in this section.

(2) (a) "New or expanding business enterprise" means:

(i) a new business enterprise whose initial operation results in the creation of a business employing at least 10 people in Montana on a permanent, full-time basis; or

(ii) an expanding business enterprise whose expansion of its operation results in the employment at least an additional 10 people in Montana on a permanent, full-time basis.

(b) The term only applies to business enterprises that are

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producing or will produce value-added products or commodities and that maintain the required number of new jobs provided for in subsection (2)(a) for the entire 3 year period established in subsection (3).

(3) "New or expanding business enterprise property" means any new or expanding business enterprise plant, including land, buildings, machinery, and fixtures, used by new or expanding business enterprises during the first 3 years of their initial operation or the first 3 years of their expanded operation.

(4) Class fourteen property is taxed at 1% of its market value.

**Section 2.** 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;~~

~~(d)~~(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

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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~~

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~~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."

{ Internal References to 15-6-135:

15-1-101 x      15-6-156x      15-6-201 x      15-24-1401 r

15-24-2404 x    20-9-407 a }

**Section 3.** Section 15-24-1402, MCA, is amended to read:

**"15-24-1402. New or expanding industry business enterprise**  
**-- assessment -- notification.** (1) In the first 5 years ~~after a~~  
~~construction permit is issued, qualifying improvements or~~  
~~modernized processes that represent new industry or expansion of~~  
~~an existing industry~~ of the initial operation or expanded  
operation of a new or expanding business enterprise as defined in  
[section 1], the new or expanding business property as defined in  
[section 1], and as designated in the approving resolution, must  
be taxed at 50% of ~~their~~ its taxable value. Subject to 15-10-420,  
each following year ~~thereafter~~, the percentage must be increased  
by equal percentages until the full taxable value is attained in  
the 10th year. ~~In subsequent~~ After 10 years 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  
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.

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(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 ~~an industrial facility~~ a new or expanding business enterprise that previously qualified for the benefits unless the new or expanding business entity fails to maintain requisite number of full time jobs provided for in [section 1].

(c) The resolution provided for in subsection (2) (a) must include a ~~definition~~ description of the ~~improvements or modernized processes~~ new or expanding business enterprise property that ~~qualify~~ qualifies 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~~ of real property other than land, personal property, or improvements is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). 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. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, 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, or 20-9-360 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."

{ Internal References to 15-24-1402:

15-1-112 x	15-6-134 x	15-24-1401 r	15-24-1401 r
15-24-1401 r	15-24-1401 r	15-24-1401 r	15-24-2402 x
15-24-2404 x			

**Section 4.** Section 20-9-407, MCA, is amended to read:

**"20-9-407. Industrial facility agreement for bond issue in excess of maximum.** (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class five fourteen property under ~~15-6-135~~ [section 1] is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five fourteen property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 45% limitation prescribed in 20-9-406. Under ~~such an~~ the agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation

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prescribed in this section by a maximum of 45% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation ~~shall~~ must be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value ~~shall~~ must be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class ~~five~~ fourteen property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility ~~shall be~~ is entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of ~~no~~ not more than 20 years. The credit ~~shall~~ as a total amount must be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the

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district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

{ Internal References to 20-9-407:  
20-1-208 x 20-15-404\*x }

NEW SECTION. **Section 5. {standard} Repealer.** Section 15-24-1401, MCA, is repealed.

{ Internal References to 15-24-1401: None. }

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{Name : Bartley J. Campbell  
Title : Staff Attorney  
Agency : LSD  
Phone : 444-3087  
E-Mail : bacampbell@mt.gov }