

SENATE BILL NO. 510

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROPERTY TAX INCENTIVES FOR ALTERNATIVE FUEL PRODUCTION; PROVIDING A PROPERTY TAX ABATEMENT FOR RENEWABLE DIESEL AND SUSTAINABLE AVIATION FUEL PRODUCTION FACILITIES; PROVIDING THE ABATEMENT MAY NOT BE CLAIMED SIMULTANEOUSLY WITH THE NEW OR EXPANDING INDUSTRY PROPERTY TAX ABATEMENT; REVISING CLASS FOURTEEN PROPERTY TO INCLUDE TAXATION OF RENEWABLE DIESEL AND SUSTAINABLE AVIATION FUEL PRODUCTION FACILITIES; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-6-157, 15-6-158, 15-24-1402, 15-24-3102, AND 15-24-3111, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 15-6-157, MCA, is amended to read:

**"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property includes:

- (a) wind generation facilities of a centrally assessed electric power company;
- (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;
- (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;
- (d) wind generation facilities owned or operated by cooperative rural electric associations described under 15-6-137;
- (e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed electric power company;
- (f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by

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1 an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C.  
2 16451;

3 (g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity  
4 owned or operated by any electrical energy producer;

5 (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by  
6 cooperative rural electric associations described under 15-6-137;

7 (i) energy storage facilities of a centrally assessed electric power company;

8 (j) energy storage facilities owned or operated by an exempt wholesale generator or an entity  
9 certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

10 (k) noncentrally assessed energy storage facilities owned or operated by any electrical energy  
11 producer;

12 (l) energy storage facilities owned or operated by cooperative rural electrical associations  
13 described under 15-6-137;

14 (m) battery energy storage systems that comply with federal standards on the manufacture and  
15 installation of the systems that are owned and operated by an electrical energy storage producer, electrical  
16 energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;

17 (n) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced  
18 construction after June 1, 2007;

19 (o) all property of a biogas production facility, as defined in 15-24-3102, that has commenced  
20 construction after June 1, 2007;

21 (p) all property of a biomass gasification facility, as defined in 15-24-3102;

22 (q) all property of a coal gasification facility, as defined in 15-24-3102, except for property in  
23 subsection (1)(t) of this section, that sequesters carbon dioxide;

24 (r) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced  
25 construction after June 1, 2007;

26 (s) all property of a geothermal facility, as defined in 15-24-3102;

27 (t) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that

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sequesters carbon dioxide, as required by 15-24-3111(4)(c);

(u) all property or a portion of the property of a renewable energy manufacturing facility, as defined in 15-24-3102, that has commenced construction after June 1, 2007;

(v) all property of a natural gas combined cycle facility;

(w) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that commence construction after December 31, 2007;

(x) high-voltage direct-current transmission lines and associated equipment and structures, including converter stations and interconnections, other than property classified under 15-6-159, that:

(i) originate in Montana with a converter station located in Montana east of the continental divide and that are constructed after July 1, 2007;

(ii) are certified under the Montana Major Facility Siting Act; and

(iii) provide access to energy markets for Montana electrical generation facilities listed in this section that commenced construction after June 1, 2007;

(y) all property of electric transmission lines, including substations, that originate at facilities specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this subsection (1) and terminating at an existing transmission line or substation that has commenced construction after June 1, 2007;

(z) the qualified portion of an alternating current transmission line and its associated equipment and structures, including interconnections, that has commenced construction after June 1, 2007;

(aa) all property of a renewable diesel production facility, as defined in 15-24-3102, that has commenced construction after December 31, 2020-2022 2020; and

(bb) all property of a sustainable aviation fuel production facility, as defined in 15-24-3102, that has commenced construction after December 31, 2020-2022 2020.

(2) (a) The qualified portion of an alternating current transmission line in subsection (1)(z) is that percentage, as determined by the department of environmental quality, of rated transmission capacity of the

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1 line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in  
2 subsection (1) that are located in Montana.

3 (b) The department of revenue shall classify the total value of an alternating current transmission  
4 line in accordance with the determination made by the department of environmental quality pursuant to  
5 subsection (2)(a).

6 (c) The owner of property described under this subsection (2) shall disclose the location of the  
7 generation facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm  
8 contract for transmission capacity available throughout the year. For purposes of the initial qualification, the  
9 owner is not required to disclose financial terms and conditions of contracts beyond that needed for  
10 classification.

11 (3) Class fourteen property does not include facilities:

12 (a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414,  
13 was not paid during the construction phase; or

14 (b) that are exempt under 15-6-225.

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

16 (a) "Biomass generation facilities" means any combination of boilers, generators, associated prime  
17 movers, and other associated property, including appurtenant land and improvements and personal property,  
18 that are normally operated together to produce electric power from the burning of organic material other than  
19 coal, petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of  
20 natural gas or other fuels allowed for ignition and to stabilize boiler operations.

21 (b) (i) "Compressed air energy storage" means the conversion of electrical energy to compressed  
22 air by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the  
23 earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas  
24 reservoirs, abandoned mines, and mined rock cavities.

25 (ii) The term includes the conversion of compressed air into electrical energy by using  
26 turboexpander equipment and electrical generation equipment.

27 (c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air

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energy storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy storage facilities directly connected to the electrical power grid and associated property, appurtenant land and improvements, and personal property that are designed to:

(A) receive and store electrical energy as potential energy; and

(B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid, including but not limited to frequency regulation ancillary services and frequency control.

(ii) The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has a power rating of at least 1 megawatt for a period of at least 0.25 hour.

(iii) The term does not include property, including associated property and appurtenant land and improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric pumped storage as defined in subsection (4)(e).

(d) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel. Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated electric generator.

(e) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through hydraulic turbines and generate electrical energy.

(f) (i) "Regenerative fuel cell" means a device that produces hydrogen and oxygen from electricity and water and alternately produces electrical energy and water from stored hydrogen and oxygen.

(ii) The term does not include a green hydrogen facility, green hydrogen pipeline, or green hydrogen storage system as defined in 15-6-163.

(g) "Wind generation facilities" means any combination of a physically connected wind turbine or turbines, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power from wind.

(5) (a) The department of environmental quality shall determine whether to certify that a transmission line meets the criteria of subsection (1)(x), (1)(y), or (1)(z), as applicable, based on an application

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provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is operational, and if the property no longer meets the requirements of subsection (1)(x), (1)(y), or (1)(z), the certification must be revoked.

(b) If the department of revenue finds that a certification previously granted was based on an application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time that the certification was in effect.

(6) Class fourteen property is taxed at 3% of its market value."

**Section 2.** Section 15-6-158, MCA, is amended to read:

**"15-6-158. Class fifteen property -- description -- taxable percentage.** (1) Class fifteen property includes:

(a) carbon dioxide pipelines certified by the department of environmental quality under 15-24-3112 for the transportation of carbon dioxide for the purposes of sequestration or for use in closed-loop enhanced oil recovery operations;

(b) qualified liquid pipelines certified by the department of environmental quality under 15-24-3112;

(c) carbon sequestration equipment;

(d) equipment used in closed-loop enhanced oil recovery operations; and

(e) all property of pipelines, including pumping and compression equipment, carrying products other than carbon dioxide, that originate at facilities specified in 15-6-157(1), with at least 90% of the product carried by the pipeline originating at facilities specified in 15-6-157(1) and terminating at an existing pipeline or facility.

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

(a) "Carbon dioxide pipeline" means a pipeline that transports carbon dioxide from a plant or facility that produces or captures carbon dioxide to a carbon sequestration point, including a closed-loop enhanced oil recovery operation.

(b) "Carbon sequestration" means the long-term storage of carbon dioxide from a carbon dioxide

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provided in subsection (5) and that has a current granted tax abatement under 15-24-3111 is taxed at 1.5% of its reduced market value during the qualifying period provided for in 15-24-3111(7).

(5) (a) 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.

(b) The board of oil and gas conservation shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify carbon sequestration equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of carbon sequestration equipment. The board of oil and gas conservation shall identify and track compliance in the use of carbon sequestration 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.

(c) A person may appeal the certification, classification, and valuation of the property to the Montana tax appeal board. Appeals on the property certification must name the board of oil and gas conservation as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent."

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

**"15-24-1402. New or expanding industry -- assessment -- notification.** (1) In the first 5 years after commencement of construction, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 25% or 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent 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 taxpayer may submit an application for a project with a project plan and receive approval for an abatement prior to commencement of construction. A taxpayer that does not seek approval prior to commencing construction must

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1 have applied by March 1 of the year during which the benefit is first applicable. The governing body of the  
2 affected county or the incorporated city or town must have approved by separate resolution for each project,  
3 following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public  
4 hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body  
5 may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under  
6 protest do not preclude approval. If a taxpayer receives approval of a tax abatement prior to commencement of  
7 construction, the abatement does not extend to property that is outside the scope of the project plan that was  
8 submitted to the governing body with the application.

9 (b) The governing body shall:

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

12 (ii) conduct a public hearing regarding an application for the tax treatment provided for in this  
13 section and deny or approve it within 120 days of receiving the application as provided in subsection (2)(b)(i).

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

17 (d) Subject to 15-10-420 and subsection (2)(f) of this section, a tax benefit may not be denied once  
18 approved.

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

23 (f) Property taxes abated from the reduction in taxable value allowed by this section are subject to  
24 termination or recapture by the local governing body if the ownership or use of the property does not meet the  
25 requirements of 15-24-1401, this section, or the resolution required by subsections (2)(a) and (2)(e) of this  
26 section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of  
27 property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this



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section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

(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.

(6) The taxpayer may terminate an abatement provided pursuant to this section on a form promulgated by the department."

**Section 4.** Section 15-24-3102, MCA, is amended to read:

**"15-24-3102. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Biodiesel" has the meaning provided in 15-70-401.

(2) "Biodiesel production facility" means improvements and personal property used for the production and onsite storage of biodiesel.

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(24) "Sustainable aviation fuel production facility" means improvements and personal property used for the production and onsite storage of sustainable aviation fuel."

**Section 5.** Section 15-24-3111, MCA, is amended to read:

**"15-24-3111. Energy production or development -- tax abatement -- eligibility.** (1) A facility listed in subsection (3), clean advanced coal research and development equipment, and renewable energy research and development equipment may qualify for an abatement of property tax liability pursuant to this part.

(2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be assessed at 50% of its taxable value for the qualifying period.

(b) If the abatement is granted for clean advanced coal research and development equipment or renewable energy research and development equipment, the qualifying equipment, up to the first \$1 million of the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There is no abatement for any portion of the value of equipment at a facility in excess of \$1 million.

(c) The abatement applies to all mills levied against the qualifying facility or equipment.

(d) A renewable diesel production facility or sustainable aviation fuel production facility, or both, may not receive the abatement provided for in this section during the same tax year that the new or expanding industry property tax abatement provided for in 15-24-1402 is claimed on the same property.

(3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement allowed under this part:

(a) biodiesel production facilities;

(b) biogas production facilities;

(c) biomass gasification facilities;

(d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;

(e) ethanol production facilities;

(f) geothermal facilities;

(g) renewable diesel production facilities;

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- 1           ~~(g)~~(h) renewable energy manufacturing facilities;
- 2           ~~(h)~~(i) clean advanced coal research and development equipment and renewable energy research
- 3 and development equipment;
- 4           ~~(i)~~(j) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced
- 5 through carbon credit offsets;
- 6           ~~(j)~~(k) transmission lines and associated equipment and structures classified in 15-6-157;
- 7           ~~(k)~~(l) converter stations classified under 15-6-159;
- 8           ~~(l)~~(m) carbon sequestration equipment as defined in 15-6-158; and
- 9           ~~(m)~~(n) pipelines classified under 15-6-158; and
- 10           ~~(n)~~(o) sustainable aviation fuel production facilities.
- 11           (4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must
- 12 meet the following requirements:
- 13           (i) commencement of construction of the facility must occur after June 1, 2007; and
- 14           (ii) the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, must be
- 15 paid during the construction phase of the facility.
- 16           (b) In order to qualify for the abatement under this part, clean advanced coal research and
- 17 development equipment and renewable energy research and development equipment must be placed into
- 18 service after June 30, 2007.
- 19           (c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the
- 20 gasification process must be sequestered at a rate that is practically obtainable but may not be less than 65%.
- 21           (d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is
- 22 applied for after December 31, 2014, do not qualify under subsection (3)(d).
- 23           (e) To qualify under subsection ~~(3)(i)~~ (3)(j), the facility shall offset carbon dioxide emissions by the
- 24 percentage determined in 15-24-3116.
- 25           (5) To qualify for an abatement, the facility or clean advanced coal research and development
- 26 equipment and renewable energy research and development equipment must be certified as provided in 15-24-
- 27 3112.

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1           (6)       Upon termination of the qualifying period, the abatement ceases and the property for which the  
2    abatement had been granted must be assessed at 100% of its taxable value.

3           (7)       For the purposes of this section, "qualifying period" means the construction period and the first  
4    15 years after the facility commences operation or the clean advanced coal research and development  
5    equipment or renewable energy research and development equipment is purchased. The total time of the  
6    qualifying period may not exceed 19 years."

7  
8           NEW SECTION. **Section 6.   Applicability.** [This act] applies to a renewable diesel production facility  
9    or a sustainable aviation fuel production facility that commences construction after December 31, ~~2020~~ 2022  
10   2020, and the abatement provided by [this act] applies to property tax years beginning after December 31,  
11    2023.

12                               - END -