

SENATE BILL NO. 205

INTRODUCED BY R. DRISCOLL

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A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PERCENTAGE OF BONA FIDE MONTANA RESIDENTS EMPLOYED IN PUBLIC WORKS PROJECTS AND IN THE CONSTRUCTION OF CERTAIN FACILITIES ELIGIBLE FOR TAX ABATEMENTS OR PUBLIC FINANCING; PROVIDING A PENALTY FOR NONCOMPLIANCE; AMENDING SECTIONS 15-6-157, 15-24-3111, 18-2-403, 18-2-409, 18-2-432, AND 20-15-403, MCA; AND PROVIDING AN EFFECTIVE DATE AND 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 -- definitions. (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 an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;
- (g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by any electrical energy producer;
- (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by cooperative rural electric associations described under 15-6-137;
- (i) energy storage facilities of a centrally assessed electric power company;
- (j) energy storage facilities owned or operated by an exempt wholesale generator or an entity certified

- 1 as an exempt wholesale generator pursuant to 42 U.S.C. 16451;
- 2 (k) noncentrally assessed energy storage facilities owned or operated by any electrical energy producer;
- 3 (l) energy storage facilities owned or operated by cooperative rural electrical associations described
4 under 15-6-137;
- 5 (m) battery energy storage systems that comply with federal standards on the manufacture and
6 installation of the systems that are owned and operated by an electrical energy storage producer, electrical
7 energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;
- 8 (n) all property of a biodiesel production facility, as defined in 15-24-3102, ~~that has commenced~~ on which
9 construction commenced after June 1, 2007;
- 10 (o) all property of a biogas production facility, as defined in 15-24-3102, ~~that has commenced~~ on which
11 construction commenced after June 1, 2007;
- 12 (p) all property of a biomass gasification facility, as defined in 15-24-3102;
- 13 (q) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection
14 (1)(t) of this section, that sequesters carbon dioxide;
- 15 (r) all property of an ethanol production facility, as defined in 15-24-3102, ~~that has commenced~~ on which
16 construction commenced after June 1, 2007;
- 17 (s) all property of a geothermal facility, as defined in 15-24-3102;
- 18 (t) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that
19 sequesters carbon dioxide, as required by 15-24-3111(4)(c);
- 20 (u) all property or a portion of the property of a renewable energy manufacturing facility, as defined in
21 15-24-3102, ~~that has commenced~~ on which construction commenced after June 1, 2007;
- 22 (v) all property of a natural gas combined cycle facility;
- 23 (w) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered
24 or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion
25 plants of the types that are generally in commercial use as of December 31, 2007, ~~that commence~~ on which
26 construction commenced after December 31, 2007;
- 27 (x) high-voltage direct-current transmission lines and associated equipment and structures, including
28 converter stations and interconnections, other than property classified under 15-6-159, that:
- 29 (i) originate in Montana with a converter station located in Montana east of the continental divide and
30 ~~that are constructed~~ on which construction commenced after July 1, 2007;

1 (ii) are certified under the Montana Major Facility Siting Act; and
2 (iii) provide access to energy markets for Montana electrical generation facilities listed in this section ~~that~~
3 ~~commenced on which~~ construction commenced after June 1, 2007;

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

8 (z) the qualified portion of an alternating current transmission line and its associated equipment and
9 structures, including interconnections, ~~that has commenced on which~~ construction commenced after June 1,
10 2007.

11 (2) (a) The qualified portion of an alternating current transmission line in subsection (1)(z) is that
12 percentage, as determined by the department of environmental quality, of rated transmission capacity of the line
13 contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1)
14 that are located in Montana.

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

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

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

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

25 (ii) at which the Montana resident employment requirements provided for in 18-2-409 were not met during
26 the construction phase; or

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

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

29 (a) "Biomass generation facilities" means any combination of boilers, generators, associated prime
30 movers, and other associated property, including appurtenant land and improvements and personal property, that

1 are normally operated together to produce electric power from the burning of organic material other than coal,
2 petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas
3 or other fuels allowed for ignition and to stabilize boiler operations.

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

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

10 (c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy
11 storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy
12 storage facilities directly connected to the electrical power grid and associated property, appurtenant land and
13 improvements, and personal property that are designed to:

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

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

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

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

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

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

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

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

4 (5) (a) The department of environmental quality shall determine whether to certify that a transmission
5 line meets the criteria of subsection (1)(x), (1)(y), or (1)(z), as applicable, based on an application provided for
6 in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is
7 operational, and if the property no longer meets the requirements of subsection (1)(x), (1)(y), or (1)(z), the
8 certification must be revoked.

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

13 (6) Class fourteen property is taxed at 3% of its market value."
14

15 **Section 2.** Section 15-24-3111, MCA, is amended to read:

16 **"15-24-3111. Energy production or development -- tax abatement -- eligibility.** (1) A facility listed
17 in subsection (3), clean advanced coal research and development equipment, and renewable energy research
18 and development equipment may qualify for an abatement of property tax liability pursuant to this part.

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

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

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

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

28 (a) biodiesel production facilities;

29 (b) biogas production facilities;

30 (c) biomass gasification facilities;

- 1 (d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;
- 2 (e) ethanol production facilities;
- 3 (f) geothermal facilities;
- 4 (g) renewable energy manufacturing facilities;
- 5 (h) clean advanced coal research and development equipment and renewable energy research and
- 6 development equipment;
- 7 (i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through
- 8 carbon credit offsets;
- 9 (j) transmission lines and associated equipment and structures classified in 15-6-157;
- 10 (k) converter stations classified under 15-6-159;
- 11 (l) carbon sequestration equipment as defined in 15-6-158; and
- 12 (m) pipelines classified under 15-6-158.
- 13 (4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet
- 14 the following requirements:
- 15 (i) commencement of construction of the facility must occur after June 1, 2007; ~~and~~
- 16 (ii) the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, must be paid
- 17 during the construction phase of the facility; and
- 18 (iii) the Montana resident employment requirements provided for in 18-2-409 must be adhered to during
- 19 the construction phase of the facility.
- 20 (b) In order to qualify for the abatement under this part, clean advanced coal research and development
- 21 equipment and renewable energy research and development equipment must be placed into service after June
- 22 30, 2007.
- 23 (c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification
- 24 process must be sequestered at a rate that is practically obtainable but may not be less than 65%.
- 25 (d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied
- 26 for after December 31, 2014, do not qualify under subsection (3)(d).
- 27 (e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage
- 28 determined in 15-24-3116.
- 29 (5) To qualify for an abatement, the facility or clean advanced coal research and development equipment
- 30 and renewable energy research and development equipment must be certified as provided in 15-24-3112.

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 15
4 years after the facility commences operation or the clean advanced coal research and development equipment
5 or renewable energy research and development equipment is purchased. The total time of the qualifying period
6 may not exceed 19 years."

7

8 **Section 3.** Section 18-2-403, MCA, is amended to read:

9 **"18-2-403. Preference Use of Montana labor in public works -- wages -- tax-exempt project --**
10 **federal exception.** (1) In every public works contract, there must be inserted in the bid specification and the
11 public works contract a provision requiring the contractor and each subcontractor ~~to give preference to ensure~~
12 the employment of bona fide Montana residents in the performance of the work as provided in 18-2-409.

13 (2) All public works contracts for construction services under subsection (1), except those for heavy and
14 highway construction, that are conducted at the project location or under special circumstances must contain a
15 provision requiring the contractor to pay:

16 (a) the travel allowance that is in effect and applicable to the district in which the work is being performed;
17 and

18 (b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the
19 district in which the work is being performed.

20 (3) In every public works contract for heavy and highway construction, there must be inserted a provision
21 to require the contractor to pay the standard prevailing wage rates established statewide for heavy and highway
22 construction services conducted at the project location or under special circumstances.

23 (4) Except as provided in subsection (5), all public works contracts for nonconstruction services under
24 subsection (1) must contain a provision requiring the contractor to pay:

25 (a) the travel allowance that is in effect and applicable to the district in which the work is being performed;
26 and

27 (b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the
28 district in which the work is being performed.

29 (5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation,
30 performs a public works contract for nonconstruction services and who employs an individual whose earning

1 capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than
 2 the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor
 3 Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the
 4 minimum wage required in 39-3-409.

5 (6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the
 6 project location is not subject to payment of the standard prevailing rate of wages.

7 (7) A contract, other than a public works contract, let for a project costing more than \$25,000 and
 8 financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must
 9 contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to
 10 the district in which the work is being performed unless the contractor performing the work has entered into a
 11 collective bargaining agreement covering the work to be performed.

12 (8) A public works contract may not be let to any person, firm, association, or corporation refusing to
 13 execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public
 14 works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to
 15 conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans
 16 of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the
 17 United States.

18 (9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the
 19 contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on
 20 the public contracting agency."
 21

22 **Section 4.** Section 18-2-409, MCA, is amended to read:

23 **"18-2-409. Montana residents to be employed on state construction contracts.** (1) On any ~~state~~
 24 ~~construction~~ public works project ~~funded by state or federal funds~~, except a project partially funded with ~~federal~~
 25 ~~aid~~ federal-aid money from the United States department of transportation or when residency preference laws
 26 are specifically prohibited by federal law and ~~to~~ for which the state, a county, a municipality, a school district, or
 27 a political subdivision is a signatory to the ~~construction~~ contract, each contractor and subcontractor shall ensure
 28 that at least ~~50%~~ 75% of the contractor's workers performing labor on the project are bona fide Montana
 29 residents, as defined in 18-2-401.

30 (2) For any contract awarded for a ~~state construction~~ public works project, except a project partially

1 funded with ~~federal aid~~ federal-aid money from the United States department of transportation or when residency
 2 preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the
 3 contract a provision, in language approved by the commissioner of labor and industry, implementing the
 4 requirements of subsection (1). The bid specification and the contract must provide that at least ~~50%~~ 75% of the
 5 workers on the project will be bona fide Montana residents. If due to a lack of qualified personnel ~~each a~~
 6 contractor or a subcontractor cannot guarantee that at least ~~50%~~ 75% of ~~the~~ that contractor's or subcontractor's
 7 workers on the project will be Montana residents, the contract must provide that the percentage that the
 8 commissioner of labor and industry believes possible will be Montana residents.

9 (3) A contract, other than a public works contract, awarded for a project costing more than \$25,000 and
 10 financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must
 11 contain a provision requiring the contractor and each subcontractor to comply with the bona fide Montana resident
 12 employment requirement provisions of this section.

13 ~~(3)~~(4) The commissioner of labor and industry shall enforce this section and investigate complaints of
 14 its violation and may adopt rules to implement this section."
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16 **Section 5.** Section 18-2-432, MCA, is amended to read:

17 **"18-2-432. Penalty for violation.** (1) (a) (i) Except as provided in subsection (1)(a)(ii), ~~if~~ if a person, firm,
 18 or corporation fails to comply with the provisions of this part, the state, county, municipality, school district, or
 19 officer of a political subdivision that executed the public works contract shall retain \$1,000 of the contract price
 20 as liquidated damages for the violation of the terms of the public works contract, and the money must be credited
 21 to the proper funds of the state, county, municipality, school district, or other political subdivision.

22 (ii) If a person, firm, or corporation fails to comply with the provisions of 18-2-409, the amount to be
 23 retained as liquidated damages must be \$1,000 for each calendar week or portion of a calendar week during
 24 which bona fide Montana residents were not employed during the performance of the public works project as
 25 required by 18-2-409. The total amount retained in a public works contract for a contractor's or subcontractor's
 26 failure to comply with the provisions of 18-2-409 may not exceed \$10,000. The amount retained pursuant to this
 27 subsection (1)(a)(ii) must be credited to the proper funds of the state, county, municipality, school district, or other
 28 political subdivision.

29 (b) If a person, firm, or corporation fails to comply with the provisions of this part due to gross negligence,
 30 as determined by the commissioner, the commissioner may retain up to an additional \$10,000 above the amount

1 provided for in subsection (1)(a) as a penalty for the violation of the terms of the public works contract. The money
 2 retained pursuant to this subsection (1)(b) must be credited to the proper funds of the state, county, municipality,
 3 school district, or other political subdivision.

4 (2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully
 5 violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation,
 6 partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a
 7 period not to exceed 3 years after the date of the final judgment, to receive any public works contracts or
 8 subcontracts that are subject to the provisions of this chapter.

9 (3) Whenever an action has been instituted in a district court in this state against any person, firm, or
 10 corporation for the violation of this part, the court in which the action is pending is authorized to issue an injunction
 11 to restrain the person, firm, or corporation from proceeding with a public works contract with the state, county,
 12 municipality, school district, or other political subdivision, pending the final determination of the instituted action."
 13

14 **Section 6.** Section 20-15-403, MCA, is amended to read:

15 **"20-15-403. Applications of other school district provisions.** (1) When the term "school district"
 16 appears in the following sections outside of Title 20, the term includes community college districts and the
 17 provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111,
 18 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216,
 19 7-11-103, 7-12-4106, 7-13-110, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301,
 20 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114,
 21 18-2-401, 18-2-404, 18-2-409, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 19-20-302, 22-1-309, 25-1-402,
 22 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237,
 23 49-3-101, 49-3-102, 50-71-112, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208
 24 and Rules 4(k) and 15(c), M.R.Civ.P., as amended.

25 (2) When the term "school district" appears in a section outside of Title 20 but the section is not listed
 26 in subsection (1), the school district ~~provision does~~ provisions do not apply to a community college district."
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28 **NEW SECTION. Section 7. Notification to tribal governments.** The secretary of state shall send a
 29 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
 30 Chippewa tribe.

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NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2015.

NEW SECTION. **Section 9. Applicability.** (1) [This act] applies to public works contracts advertised for bid on or after [the effective date of this act].

(2) [This act] applies to any construction project for which a tax credit or abatement is sought pursuant to 15-24-3111 and for which the contract for the construction phase was signed on or after [the effective date of this act].

(3) [This act] applies to any contract, other than a public works contract, awarded for a project costing more than \$25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, first advertised for bid on or after [the effective date of this act].

- END -