

HOUSE BILL NO. 326

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAXATION OF COAL AND ELECTRICAL ENERGY PRODUCED IN THE STATE; CREATING THE STATE ENERGY RESOURCE SEVERANCE ACT; PROVIDING FOR A TAX ON ELECTRICAL ENERGY PRODUCTION; PROVIDING AN EXEMPTION FROM THE ELECTRICAL ENERGY PRODUCTION TAX FOR COAL; PROVIDING THE ELECTRICAL ENERGY PRODUCTION TAX IS BASED ON SALE PRICE BY THE ELECTRICAL ENERGY PRODUCER; ~~REDUCING THE TAX RATE OF THE COAL SEVERANCE TAX TO MATCH THE ELECTRICAL ENERGY PRODUCTION TAX RATE;~~ PROVIDING DEFINITIONS; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT OF THE ELECTRICAL ENERGY PRODUCTION TAX BY THE DEPARTMENT OF REVENUE; CREATING STATE SPECIAL REVENUE ACCOUNTS FOR DISTRIBUTION OF ELECTRICAL ENERGY TAX REVENUE; ALLOCATING REVENUE TO A TRUST ACCOUNT; PROVIDING THAT REVENUE FROM THE TRUST ACCOUNT AND THE ELECTRICAL ENERGY PRODUCTION TAX MUST BE USED FOR LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS TRADITIONALLY FUNDED BY COAL; PROVIDING CONTINGENT FUNDING FOR A STATE ENERGY AUTHORITY; PROVIDING RULEMAKING AUTHORITY; ~~AMENDING SECTION 15-35-103, MCA;~~ AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] may be cited as the "State Energy Resource Severance Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 16], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Electrical energy producer" means each person or other organization engaged in the

generation, manufacture, or production of electricity and electrical energy in the state, either through water, wind, solar, or any other means, for barter, sale, or exchange.

(2) "Sale price" means the gross sale price without any deduction measured at the place of production.

NEW SECTION. Section 3. Rate of tax -- exemption. (1) Except as provided in subsection (2), an energy severance tax is imposed for the use of the state's resources to produce electricity. The tax is imposed at a rate of ~~40%~~ 2% of the sale price of electricity by an electrical energy producer.

(2) The following electrical generation is exempt from the provisions of [sections 1 through 16]:

- (a) electrical generation from coal or coal-fired steam turbines; and
- (b) electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

NEW SECTION. Section 4. Returns -- payment -- authority of department -- rulemaking. (1) On or before the 30th day of the month following the end of the calendar quarter in which the tax imposed by [sections 1 through 16] is payable, a return, on a form provided by the department, and payment of the tax for the preceding calendar quarter must be filed with the department.

(2) Each electrical energy producer in this state that is subject to the tax under [sections 1 through 16] shall file a return.

(3) (a) A person required to collect and pay to the department the tax imposed by [sections 1 through 16] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 16] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 16], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent

1 with generally accepted auditing standards. The department may also:

2 (i) require the attendance of a person having knowledge or information relevant to a return;

3 (ii) compel the production of books, papers, records, or memoranda by the person required to
4 attend;

5 (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax
6 is or may be jeopardized because of delay;

7 (iv) take testimony on matters material to the determination; and

8 (v) administer oaths or affirmations.

9 (4) Pursuant to rules established by the department, returns may be computer-generated and
10 electronically filed.

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12 **NEW SECTION. Section 5. Examination of return -- adjustments -- delivery of notices and**

13 **demands.** (1) If the department determines that the amount of tax due is different from the amount reported,
14 the amount of tax computed on the basis of the examination conducted pursuant to 15-72-110 constitutes the
15 tax to be paid.

16 (2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess
17 must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or
18 delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If
19 the amount of the tax found due by the department is less than that reported as due on the return and has been
20 paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making
21 the return.

22 (3) The notice and demand provided for in this section must contain a statement of the
23 computation of the tax and interest and must be:

24 (a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the
25 taxpayer's last-known address; or

26 (b) served personally on the taxpayer.

27 (4) A taxpayer filing an objection to the demand for payment is subject to and governed by the
28 uniform tax review procedure provided in 15-1-211.

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2 NEW SECTION. Section 6. Penalties and interest for violation. (1) (a) A person who fails to file a
3 return as required by 15-72-110 must be assessed a penalty as provided in 15-1-216. The department may
4 waive the penalty as provided in 15-1-206.

5 (b) A person who fails to file the return required by 15-72-110 and to pay the tax on or before the
6 due date must be assessed penalty and interest as provided in 15-1-216. The department may waive any
7 penalty pursuant to 15-1-206.

8 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty
9 as provided in 15-1-216.

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11 NEW SECTION. Section 7. Authority to collect delinquent taxes. (1) (a) The department shall
12 collect taxes that are delinquent as determined under [sections 1 through 16].

13 (b) If a tax imposed by [sections 1 through 16] or any portion of the tax is not paid when due, the
14 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

15 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal
16 has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from
17 the state, except for wages subject to the provisions of 25-13-614 and retirement benefits.

18 (3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to an
19 offset by the department.

20 (4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required
21 before funds are available for offset.

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23 NEW SECTION. Section 8. Penalty and interest on deficiency. Penalty and interest must be
24 added to any deficiency assessment as provided in 15-1-216.

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26 NEW SECTION. Section 9. Limitations. (1) Except in the case of a person who purposely or
27 knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of
28 [sections 1 through 16], a deficiency may not be assessed or collected with respect to a month or quarter for

1 which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally
2 served on the taxpayer within 5 years from the date on which the return was filed. For the purposes of this
3 section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

4 (2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the
5 tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be
6 assessed at any time prior to the expiration of the period consented to by the taxpayer.

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8 **NEW SECTION. Section 10. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a
9 result of overpayment of taxes collected under [sections 1 through 16] must be filed within 5 years of the date
10 on which the return was due, without regard to any extension of time for filing.

11 (2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate
12 charged on unpaid taxes as provided in 15-1-216.

13 (b) Except as provided in subsection (2)(c), interest must be paid from the date on which the return
14 was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the
15 processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary
16 information.

17 (c) The department is not required to pay interest if:

- 18 (i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed;
19 or
20 (ii) the amount of overpayment and interest does not exceed \$1.

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22 **NEW SECTION. Section 11. Administration -- rules.** The department shall:

23 (1) administer and enforce the provisions of [sections 1 through 16];

24 (2) cause to be prepared and distributed forms and information that may be necessary to
25 administer the provisions of [sections 1 through 16]; and

26 (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of
27 [sections 1 through 16].

NEW SECTION. Section 12. Collection of tax -- disposition of revenue. (1) An electrical energy producer shall remit the tax imposed under [section 3] to the department pursuant to the provisions of [sections 1 through 16].

(2) The tax collected under [sections 1 through 16] must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 50% in the state energy resources trust account for state projects established in [section 13]; and

(b) 50% to the Montana coal endowment regional special revenue account to meet the obligations of the state that are payable from the account in accordance with 90-6-710.

NEW SECTION. Section 13. State energy resources trust account for state projects. (1) There is state energy resources trust account within the permanent fund type. There must be deposited in the fund money received from an electrical energy producer that is allocated to the fund pursuant to [sections 1 through 16].

(2) The state treasurer shall transfer on a quarterly basis the amount of earnings, excluding unrealized gains and losses, to the regional special revenue account to meet the obligations of the state that are payable from the account in accordance with 90-6-710.

(3) The principal in the trust fund must be retained and may not be appropriated unless the balance exceeds \$250 million.

NEW SECTION. Section 14. Collection of tax -- disposition of revenue. (1) An electrical energy producer shall remit the tax imposed under [section 3] to the department pursuant to the provisions of [sections 1 through 16].

(2) The tax collected under [sections 1 through 16] must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) 50% in the state energy resources trust account for state projects established in [section 13];

(b) 40% in the Montana energy authority operations account established in [section 15]; and

(c) 10% in the Montana energy authority resource trust account established in [section 16].

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NEW SECTION. Section 15. Montana energy authority operations account. (1) There is a Montana energy authority operations account within the state special revenue fund established in 17-2-102.

(2) There must be deposited in the account money received from an electrical energy producer that is allocated to the fund pursuant to [sections 1 through 16].

(3) The money in the account may be used to fund the operating expenses of an energy authority if an energy authority is created by the legislature to diversify and expand the state's economy by developing and advising in this state the energy production facilities and the energy transmission facilities necessary to produce and transport energy to markets within the state and regionally.

NEW SECTION. Section 16. Montana energy authority resource trust account. (1) There is a Montana energy authority resource trust account within the permanent fund type.

(2) The state treasurer shall transfer on a quarterly basis the amount of earnings, excluding unrealized gains and losses, to the Montana energy authority operations account established in [section 15].

(3) The principal in the trust fund must be retained within the fund.

Section 17. Section 15-35-103, MCA, is amended to read:

~~"15-35-103. Severance tax -- rates imposed. (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:~~

Heating-quality (Btu per pound of coal):	Surface Mining	Auger Mining	Underground Mining
Under 7,000	10% of value	3.75% of value	3% of value
7,000 and over	15% of value	5% of value	4% of value

~~(2) "Value" means the contract sales price.~~

~~(3) A person is not liable for any severance tax upon 50,000 tons of the coal that the person~~

1 produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the
2 producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

3 (4) ~~_____ The reduced tax rate on coal produced by auger mining applies only to coal recovered from a~~
4 ~~mining operation that would otherwise be uneconomical to recover by conventional strip-mining methods as~~
5 ~~specified in the coal conservation plan submitted to and approved by the department of environmental quality~~
6 ~~under the provisions of Title 82, chapter 4, part 2."~~

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8 **NEW SECTION. Section 17. Codification instruction.** [Sections 1 through 16] are intended to be
9 codified as a new part in Title 15, chapter 72, and the provisions of Title 15, chapter 72, apply to [sections 1
10 through 16].

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12 **NEW SECTION. Section 18. Effective dates -- contingent effective date.** (1) Except as provided in
13 subsection (2), [this act] is effective January 1, 2026.

14 (2) [Sections 14 through 16] are effective on the date that the department of commerce certifies to
15 the code commissioner that a state energy authority was created by the legislature to diversify and expand the
16 state's economy by developing and advising in this state the energy production facilities and the energy
17 transmission facilities necessary to produce and transport energy to markets within the state and regionally.
18 The department of commerce shall submit certification within 14 days of the occurrence of the contingency.

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20 **NEW SECTION. Section 19. Applicability.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS-THIS act]
21 applies to tax years beginning after December 31, 2025.

22 (2) _____ THE ENERGY SEVERANCE TAX PROVIDED FOR IN [SECTION 3] APPLIES TO NEW CONTRACTS FOR THE
23 SALE OF ELECTRICITY ENTERED INTO ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

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25 **NEW SECTION. Section 20. Contingent termination.** [Section 12] terminates on the date that the
26 department of commerce certifies to the code commissioner that a state energy authority was created by the
27 legislature to diversify and expand the state's economy by developing and advising in this state the energy
28 production facilities and the energy transmission facilities necessary to produce and transport energy to

1 markets within the state and regionally. The department of commerce shall submit certification within 14 days of
2 the occurrence of the contingency.

3 - END -