HOUSE BILL NO. 970

INTRODUCED BY COCCHIARELLA, BROOKE, O'KEEFE, QUILICI, STANG, HARRINGTON, LARSON, HOFFMAN, GRADY, THOMAS, GILBERT, DRISCOLL, FOSTER, DAILY, KILPATRICK, SQUIRES, BENEDICT, PAVLOVICH, T. NELSON, KIMBERLEY, REAM, HALLIGAN

IN THE HOUSE

| | |
|---|---|
| FEBRUARY 22, 1991 | INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION. |
| | FIRST READING. |
| MARCH 23, 1991 | COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. |
| MARCH 25, 1991 | PRINTING REPORT. |
| APRIL 3, 1991 | SECOND READING, DO PASS AS AMENDED. |
| | ON MOTION, RULES SUSPENDED. BILL PLACED ON THIRD READING THIS DAY. |
| | THIRD READING, PASSED. AYES, 93; NOES, 7. |
| APRIL 4, 1991 | ENGROSSING REPORT. |

IN THE SENATE

| | |
|---|---|
| APRIL 4, 1991 | INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION. |
| | FIRST READING. |
| APRIL 12, 1991 | COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED. |
| APRIL 15, 1991 | SECOND READING, CONCURRED IN. |
| APRIL 16, 1991 | THIRD READING, CONCURRED IN. AYES, 49; NOES, 0. |
| | RETURNED TO HOUSE WITH AMENDMENTS. |

IN THE HOUSE

| | |
|---|---|
| APRIL 18, 1991 | RECEIVED FROM SENATE. |

SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 19, 1991

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 970

INTRODUCED BY [illegible signatures] Foster Benedict

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE TAX TREATMENT OF NEW AND EXPANDING INDUSTRY; REVISING THE DEFINITION OF A NEW INDUSTRY THAT QUALIFIES AS CLASS FIVE PROPERTY TO INCLUDE TRANSPORTATION, WAREHOUSING, DISTRIBUTION, AND COMMUNICATION SERVICES; REQUIRING THAT A NEW INDUSTRY RECEIVE 50 PERCENT OR MORE OF ITS INCOME FROM OUT-OF-STATE SALES IN ORDER TO QUALIFY FOR CLASS FIVE PROPERTY; REVISING THE DEFINITION OF A NEW OR EXPANDING INDUSTRY THAT QUALIFIES FOR CERTAIN PROPERTY TAX BENEFITS; REQUIRING THAT A QUALIFYING INDUSTRY RECEIVE 50 PERCENT OR MORE OF ITS INCOME FROM SALES OUTSIDE THE JURISDICTION IN WHICH IT IS LOCATED; APPLYING THE PROPERTY TAX BENEFIT TO ALL MILLS LEVIED AGAINST THE QUALIFYING PROPERTY; REVISING THE DEFINITION OF A NEW CORPORATION QUALIFYING FOR THE NEW OR EXPANDED INDUSTRY CREDIT; AND AMENDING SECTIONS 15-6-135, 15-24-1401, 15-24-1402, AND 15-31-124, MCA."

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

**Section 1.** 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 subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) 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) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and



INTRODUCED BILL
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environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "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.

(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~~,~~ and that earns 50% or more of its gross operating income from out-of-state sales. ~~as~~ New industry is 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; ~~or~~





(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1972~~ 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget; or

(iv) provide transportation, warehousing, distribution, or communications services.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

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

**Section 2.** Section 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least $250,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which

the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" means a firm that receives 50% or more of its gross operating income from sales outside the jurisdiction approving the tax benefits described in 15-24-1402. Industry includes but is not limited to a firm that engages in the:

(a) mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) extraction or harvesting of minerals, ore, or forestry products; ~~or~~

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products; or

(d) provision of transportation, warehousing, distribution, or communications services.

(3) "New" means that the industry is new to the jurisdiction approving the resolution provided for in 15-24-1402~~(3)~~(2) and has invested after July 1, 1987, at least $500,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402



LC 1847/01

are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402."

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

"**15-24-1402. New or expanding industry -- assessment.** (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, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall 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.

(b) 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 that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify 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 is eligible for the tax benefits described in subsection (1).

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue 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 must 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 assessor shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies





~~only~~ to ~~the--number--of~~ all mills levied and assessed, including ~~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;--In--no case--may--the--benefit-described-in-subsection-(1)-apply-to~~ levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or otherwise required under state law in the taxing units in which the qualifying property is located."

**Section 4.** Section 15-31-124, MCA, is amended to read:

**"15-31-124. New or expanded industry credit -- definitions.** As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state, ~~and manufacturing--a--product--not--currently--manufactured---or~~

~~substantially-similar-to-a-product-currently-manufactured-by that-corporation-or-any-affiliate-corporation-in-this-state;~~ A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) ~~it~~ A new corporation does not include:

(i) ~~reorganizing--an~~ a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) ~~the--creation-of~~ a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which ~~50%~~ 20% or more of the ownership is ~~owned-or-controlled~~ held by the ~~same--person,--corporation,-or-association~~ corporation or by the stockholders of the corporation."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0970, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the tax treatment of new and expanding industry; revising the definition of a new industry that qualifies as class five property to include transportation, warehousing, distribution, and communication services; requiring that a new industry receive 50 percent or more of its income from out-of state sales in order to qualify for class five property; revising the definition of a new or expanding industry that qualifies for certain property tax benefits; requiring that a qualifying industry receive 50 percent or more of its income from sales outside the jurisdiction in which it is located; applying the property tax benefit to all mills levied against the qualifying property; revising the definition of a new corporation qualifying for the new or expanded industry credit.

FISCAL IMPACT:

Under the proposal, class 5 new industry property is expanded to include industries that provide transportation, warehousing, distribution, or communications services. To the extent that this additional language results in property currently being taxed being provided class 5 status, local and state revenue could decline. This impact is expected to be small. It also further restricts new industry to those industries which receive 50% or more of gross operating income from out-of-state sales.

Under the proposal, the benefit is extended to all mills levied and assessed against the property rather than just local property. Also new and expanding industry is expanded to include industries that provide transportation, warehousing, distribution, or communications services. To the extent that this additional language results in property currently being fully taxed at the state and school level being provided with reduced rates, state and school revenues could decline. To the extent that the expansion of the definition of new and expanding industry results in property currently being fully taxed being provided with reduced rates; local, state, and school revenues could decline. The impact of these is expected to be small. In addition, the proposal restricts new and expanding industry to those industries with 50% or more of gross operating income from outside the jurisdiction approving the tax benefits.

This proposal would significantly expand the number of companies that could potentially qualify for the new or expanded corporate tax benefit, impacting revenue to the state. Since the department does not have the number of potential qualifiers nor the dollar value of the claims, it is not possible to quantify this impact.

Rod Sundsted 3-5-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Vicki Cocchiarella 4/5/91
VICKI COCCHIARELLA, PRIMARY SPONSOR DATE



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TECHNICAL NOTES:

Language in section 1, 4b(iv), allowing warehousing industries to be considered new industry, may conflict with language in section 1 (5a), which excludes retail or wholesale merchants from new industry.

Language in section 1 (4a), restricting new industry to those industries with 50% or more of gross operating income from sales out-of-state and in section 2 (2), restricting new and expanding industry to those industries with 50% or more of gross operating income from sales outside the jurisdiction approving the tax benefits, may restrict industries currently receiving tax benefits under these sections.

HB 970

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 970

INTRODUCED BY COCCHIARELLA, BROOKE, O'KEEFE, QUILICI, STANG, HARRINGTON, LARSON, HOFFMAN, GRADY, THOMAS, GILBERT, DRISCOLL, FOSTER, DAILY, KILPATRICK, SQUIRES, BENEDICT, PAVLOVICH, T. NELSON, KIMBERLEY, REAM, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE TAX TREATMENT OF NEW AND EXPANDING INDUSTRY; REVISING THE DEFINITION OF A NEW INDUSTRY THAT QUALIFIES AS CLASS FIVE PROPERTY TO INCLUDE COMPANIES THAT ENGAGE IN TRANSPORTATION, WAREHOUSING, OR DISTRIBUTION~~,--AND--COMMUNICATION--SERVICES, REQUIRING--THAT-A-NEW-INDUSTRY-RECEIVE-50-PERCENT-OR-MORE-OF ITS-INCOME-FROM-OUT-OF-STATE-SALES-IN-ORDER-TO--QUALIFY--FOR CLASS--FIVE--PROPERTY~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50 PERCENT OR MORE OF THE INDUSTRY'S GROSS OPERATING SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE AND BUSINESSES THAT EARN 50 PERCENT OR MORE OF THEIR ANNUAL GROSS OPERATING INCOME FROM OUT-OF-STATE SALES; REVISING THE DEFINITION OF A NEW OR EXPANDING INDUSTRY THAT QUALIFIES FOR CERTAIN PROPERTY TAX BENEFITS; ~~REQUIRING-THAT-A-QUALIFYING--INDUSTRY RECEIVE--50-PERCENT-OR-MORE-OF-ITS-INCOME-FROM-SALES-OUTSIDE THE-JURISDICTION--IN--WHICH--IT--IS--LOCATED,~~ APPLYING THE PROPERTY TAX BENEFIT TO ALL MILLS LEVIED AGAINST THE QUALIFYING PROPERTY; REVISING THE DEFINITION OF A NEW CORPORATION QUALIFYING FOR THE NEW OR EXPANDED INDUSTRY





CREDIT; ~~AND~~ AMENDING SECTIONS 15-6-135, 15-24-1401, 15-24-1402, AND 15-31-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** 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 subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) 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) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means

facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "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.

(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~~, and-that-earns-50%-or-more-of-its gross-operating--income--from--out-of-state--sales,~~ ~~as~~ New ~~industry---is,~~ AS distinguished from a mere expansion,





reorganization, or merger of an existing industry.

(b) New industry includes ~~only--those~~ 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; ~~or~~

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1972~~ 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget; ~~or~~

(iv) ~~provide~~ ENGAGE IN THE transportation, warehousing, OR distribution~~,--or--communications-services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS OPERATING SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(V) EARN 50% OR MORE OF THEIR ANNUAL GROSS OPERATING INCOME FROM OUT-OF-STATE SALES.

(5) New industrial property does not include:

(a) 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);

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

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

**Section 2.** Section 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least $250,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" ~~means--a-firm-that-receives-50%-or-more of--its--gross--operating--income--from--sales--outside--the jurisdiction--approving--the--tax--benefits---described---in 15-24-1402.--Industry~~ includes but is not limited to a firm that engages in the:

(a) mechanical or chemical transformation of materials or substances into products in the manner defined as





manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) extraction or harvesting of minerals, ore, or forestry products; ~~or~~

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products; ~~or~~

(d) ~~provision---of~~ transportation, warehousing, OR distribution~~,--or--communications--services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS OPERATING SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(E) EARN 50% OR MORE OF THEIR ANNUAL GROSS OPERATING INCOME FROM OUT-OF-STATE SALES.

(3) "New" means that the ~~industry~~ FIRM is new to the jurisdiction approving the resolution provided for in 15-24-1402~~(3)~~(2) and has invested after July 1, 1987, at least $500,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms,

conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402."

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

"**15-24-1402. New or expanding industry -- assessment.** (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, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall 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.

(b) 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 that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify 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 is eligible for the tax benefits described in subsection (1).

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue 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 must 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 assessor shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies ~~only~~ to ~~the--number--of~~ all mills levied and assessed, including ~~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;--In--no case--may--the--benefit-described-in-subsection-(i)-apply-to~~ levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or otherwise required under state law in the taxing units in which the qualifying property is located."

**Section 4.** Section 15-31-124, MCA, is amended to read:

"**15-31-124. New or expanded industry credit -- definitions.** As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. ~~and manufacturing--a--product--not--currently--manufactured---or substantially-similar-to-a-product-currently-manufactured-by that-corporation-or-any-affiliate-corporation-in-this-state;~~ A new corporation includes:

(i) a manufacturing corporation existing outside of





Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) ~~it~~ A new corporation does not include:

(i) ~~reorganizing--an~~ a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) ~~the--creation-of~~ a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which ~~50%~~ 20% or more of the ownership is ~~owned-or-controlled~~ held by the ~~same--person,--corporation,-or-association~~ corporation or by the stockholders of the corporation."

NEW SECTION. **SECTION 5.** EFFECTIVE DATE -- RETROACTIVE APPLICABILITY. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL AND APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1990.

-End-

HOUSE BILL NO. 970

INTRODUCED BY COCCHIARELLA, BROOKE, O'KEEFE, QUILICI, STANG, HARRINGTON, LARSON, HOFFMAN, GRADY, THOMAS, GILBERT, DRISCOLL, FOSTER, DAILY, KILPATRICK, SQUIRES, BENEDICT, PAVLOVICH, T. NELSON, KIMBERLEY, REAM, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE TAX TREATMENT OF NEW AND EXPANDING INDUSTRY; REVISING THE DEFINITION OF A NEW INDUSTRY THAT QUALIFIES AS CLASS FIVE PROPERTY TO INCLUDE COMPANIES THAT ENGAGE IN TRANSPORTATION, WAREHOUSING, OR DISTRIBUTION~~,--AND--COMMUNICATION--SERVICES, REQUIRING--THAT-A-NEW-INDUSTRY-RECEIVE-50-PERCENT-OR-MORE-OF ITS-INCOME-FROM-OUT-OF-STATE-SALES-IN-ORDER-TO--QUALIFY--FOR CLASS--FIVE--PROPERTY~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50 PERCENT OR MORE OF THE INDUSTRY'S GROSS OPERATING SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE AND BUSINESSES THAT EARN 50 PERCENT OR MORE OF THEIR ANNUAL GROSS OPERATING INCOME FROM OUT-OF-STATE SALES; REVISING THE DEFINITION OF A NEW OR EXPANDING INDUSTRY THAT QUALIFIES FOR CERTAIN PROPERTY TAX BENEFITS; ~~REQUIRING-THAT-A-QUALIFYING--INDUSTRY RECEIVE--50-PERCENT-OR-MORE-OF-ITS-INCOME-FROM-SALES-OUTSIDE THE-JURISDICTION--IN--WHICH--IT--IS--LOCATED; APPLYING--THE PROPERTY--TAX--BENEFIT--TO--ALL--MILLS--LEVIED--AGAINST--THE QUALIFYING--PROPERTY;~~ REVISING THE DEFINITION OF A NEW CORPORATION QUALIFYING FOR THE NEW OR EXPANDED INDUSTRY





CREDIT; ~~AND~~ AMENDING SECTIONS 15-6-135, 15-24-1401, ~~15-24-1402,~~ AND 15-31-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** 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 subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) 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) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means

facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "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.

(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~~,~~ ~~and-that-earns-50%-or-more-of-its gross-operating--income--from--out-of-state--sales.~~ ~~as~~ ~~New industry---is,~~ AS distinguished from a mere expansion,





reorganization, or merger of an existing industry.

(b) New industry includes ~~only--those~~ 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; ~~or~~

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1972~~ 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget; or

(iv) ~~provide~~ ENGAGE IN THE transportation, warehousing, OR distribution~~,--or--communications-services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS OPERATING SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(V) EARN 50% OR MORE OF THEIR ANNUAL GROSS OPERATING INCOME FROM OUT-OF-STATE SALES.

(5) New industrial property does not include:

(a) 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);

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

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

**Section 2.** Section 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least ~~$250,000~~ $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" ~~means--a-firm-that-receives-50%-or-more of--its--gross--operating--income--from--sales--outside--the jurisdiction--approving--the--tax--benefits---described---in 15-24-1402.--Industry~~ includes but is not limited to a firm that engages in the:

(a) mechanical or chemical transformation of materials or substances into products in the manner defined as





manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) extraction or harvesting of minerals, ore, or forestry products; ~~or~~

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products; ~~or~~

(d) ~~provision---of~~ transportation, warehousing, OR distribution~~,--or--communications--services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS OPERATING SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(E) EARN 50% OR MORE OF THEIR ANNUAL GROSS OPERATING INCOME FROM OUT-OF-STATE SALES.

(3) "New" means that the ~~industry~~ FIRM is new to the jurisdiction approving the resolution provided for in 15-24-1402~~(3)~~(2) and has invested after July 1, 1987, at least ~~$500,000~~ $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms,

conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402."

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

~~"15-24-1402. New or expanding industry -- assessment. (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, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall 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.~~

~~(b) 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 that previously qualified for the benefits.~~

~~(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify 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 is eligible for the tax benefits described in subsection (1).~~

~~(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue 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 must 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 assessor shall make the assessment change pursuant to this section.~~

~~(4) The tax benefit described in subsection (1) applies only to the number of all mills levied and assessed~~, including ~~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.---In--no case--may--the--benefit-described-in-subsection-(1)-apply-to levies-or-assessments-required-under-Title-15,--chapter--10, 20-9-331,-20-9-333,-or-otherwise-required-under-state-law~~ ~~in the--taxing--units--in--which--the--qualifying--property--is located.~~"

**Section 3.** Section 15-31-124, MCA, is amended to read:

"**15-31-124. New or expanded industry credit -- definitions.** As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. ~~and manufacturing--a--product--not--currently--manufactured---or substantially-similar-to-a-product-currently-manufactured-by that-corporation-or-any-affiliate-corporation-in-this-state;~~ A new corporation includes:

(i) a manufacturing corporation existing outside of





Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) ~~It~~ A new corporation does not include:

(i) ~~reorganizing--an~~ a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) ~~the--creation-of~~ a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which ~~50%~~ 20% or more of the ownership is ~~owned-or-controlled~~ held by the ~~same--person,--corporation,-or-association~~ corporation or by the stockholders of the corporation."

NEW SECTION. **SECTION 4.** EFFECTIVE DATE -- RETROACTIVE APPLICABILITY. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL AND APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1990.

-End-

**SENATE STANDING COMMITTEE REPORT**


April 12, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 970 (third reading copy -- blue), respectfully report that House Bill No. 970 be amended and as so amended be concurred in:

1. Title, lines 15 and 17.
Strike: "OPERATING"

2. Title, page 2, line 1.
Following: "CREDIT;"
Insert: "REQUIRING THAT A GOVERNING BODY NOTIFY AFFECTED TAXING JURISDICTIONS BY CERTIFIED MAIL PRIOR TO APPROVAL OF A TAX BENEFIT;"

3. Title, page 2, line 2.
Following: "~~15-24-1402,~~"
Insert: "15-24-1402,"

4. Title, page 2, line 3.
Strike: "A RETROACTIVE"
Insert: "AN"

5. Page 4, lines 19 and 21.
Page 6, lines 12 and 14.
Strike: "OPERATING"

6. Page 9.
Following: line 6
Insert: "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 a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall 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.

(b) The governing body may end the tax benefits by majority




April 12, 1991

vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify 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 is eligible for the tax benefits described in subsection (1).

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue 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 must 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 assessor 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. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, 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.""
Renumber: subsequent sections

7. Page 10, line 16.
Strike: "RETROACTIVE"

8. Page 10, lines 18 and 19.
Strike: "RETROACTIVELY" on line 18 through "1-2-109," on line 19

9. Page 10, line 19.
Strike: "1990"
Insert: "1991"

Signed: Mike Halligan, Chairman

LB 4/12/91
Amd. Coord.

SB 4/12 3:35
Sec. of Senate

**SENATE**

HB 970

HOUSE BILL NO. 970

INTRODUCED BY COCCHIARELLA, BROOKE, O'KEEFE, QUILICI, STANG, HARRINGTON, LARSON, HOFFMAN, GRADY, THOMAS, GILBERT, DRISCOLL, FOSTER, DAILY, KILPATRICK, SQUIRES, BENEDICT, PAVLOVICH, T. NELSON, KIMBERLEY, REAM, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE TAX TREATMENT OF NEW AND EXPANDING INDUSTRY; REVISING THE DEFINITION OF A NEW INDUSTRY THAT QUALIFIES AS CLASS FIVE PROPERTY TO INCLUDE COMPANIES THAT ENGAGE IN TRANSPORTATION, WAREHOUSING, OR DISTRIBUTION~~,--AND--COMMUNICATION--SERVICES; REQUIRING--THAT-A-NEW-INDUSTRY-RECEIVE-50-PERCENT-OR-MORE-OF ITS-INCOME-FROM-OUT-OF-STATE-SALES-IN-ORDER-TO--QUALIFY--FOR CLASS--FIVE--PROPERTY~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50 PERCENT OR MORE OF THE INDUSTRY'S GROSS ~~OPERATING~~ SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE AND BUSINESSES THAT EARN 50 PERCENT OR MORE OF THEIR ANNUAL GROSS ~~OPERATING~~ INCOME FROM OUT-OF-STATE SALES; REVISING THE DEFINITION OF A NEW OR EXPANDING INDUSTRY THAT QUALIFIES FOR CERTAIN PROPERTY TAX BENEFITS; ~~REQUIRING-THAT-A-QUALIFYING--INDUSTRY RECEIVE--50-PERCENT-OR-MORE-OF-ITS-INCOME-FROM-SALES-OUTSIDE THE-JURISDICTION--IN--WHICH--IT--IS--LOCATED; APPLYING--THE PROPERTY--TAX--BENEFIT--TO--ALL--MILLS--LEVIED--AGAINST--THE QUALIFYING--PROPERTY;~~ REVISING THE DEFINITION OF A NEW CORPORATION QUALIFYING FOR THE NEW OR EXPANDED INDUSTRY





CREDIT; REQUIRING THAT A GOVERNING BODY NOTIFY AFFECTED TAXING JURISDICTIONS BY CERTIFIED MAIL PRIOR TO APPROVAL OF A TAX BENEFIT; ~~AND~~ AMENDING SECTIONS 15-6-135, 15-24-1401, ~~15-24-1402,~~ 15-24-1402, AND 15-31-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND ~~A-RETROACTIVE~~ AN APPLICABILITY DATE."

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

**Section 1.** 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 subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) 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;



REFERENCE BILL
AS AMENDED

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "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.

(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



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new industrial endeavor~~,~~ ~~and-that-earns-50%-or-more-of-its gross-operating--income--from--out-of-state--sales.~~ ~~as~~ New ~~industry---is,~~ AS distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes ~~only--those~~ 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; ~~or~~

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1972~~ 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget; ~~or~~

(iv) ~~provide~~ ENGAGE IN THE transportation, warehousing, OR distribution~~,--or--communications-services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS ~~OPERATING~~ SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(V) EARN 50% OR MORE OF THEIR ANNUAL GROSS ~~OPERATING~~ INCOME FROM OUT-OF-STATE SALES.

(5) New industrial property does not include:

(a) 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);

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

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

**Section 2.** Section 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least ~~$250,000~~ $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" ~~means--a-firm-that-receives-50%-or-more of--its--gross--operating--income--from--sales--outside--the jurisdiction--approving--the--tax--benefits---described---in 15-24-1402,--industry~~ includes but is not limited to a firm





that engages in the:

(a) mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) extraction or harvesting of minerals, ore, or forestry products; ~~or~~

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products; ~~or~~

(d) ~~provision---of~~ transportation, warehousing, OR distribution~~,--or--communications--services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS ~~OPERATING~~ SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(E) EARN 50% OR MORE OF THEIR ANNUAL GROSS ~~OPERATING~~ INCOME FROM OUT-OF-STATE SALES.

(3) "New" means that the ~~industry~~ FIRM is new to the jurisdiction approving the resolution provided for in 15-24-1402~~(3)~~(2) and has invested after July 1, 1987, at least ~~$500,000~~ $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New

industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402."

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

~~"15-24-1402. New or expanding industry — assessment. (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, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall 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.~~

~~(b) 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 that previously qualified for the benefits.~~

~~(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify 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 is eligible for the tax benefits described in subsection (1).~~

~~(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue 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 must 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 assessor shall make the assessment change pursuant to this section.~~

~~(4) The tax benefit described in subsection (1) applies only to the number of~~ all ~~mills levied and assessed,~~

~~including~~ ~~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.--In--no case--may--the--benefit-described-in-subsection-(1)-apply-to levies-or-assessments-required-under-Title-15,--chapter--10, 20-9-331,-20-9-333,-or-otherwise-required-under-state-law~~ ~~in the--taxing--units--in--which--the--qualifying--property--is located.~~"

**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 a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall 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.

(b) 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 that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify 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 is eligible for the tax benefits described in subsection (1).

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue 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 must 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

assessor 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. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, 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."

**Section 4.** Section 15-31-124, MCA, is amended to read:

"**15-31-124. New or expanded industry credit -- definitions.** As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management





and budget of the United States.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. ~~and manufacturing a product not currently manufactured or substantially similar to a product currently manufactured by that corporation or any affiliate corporation in this state;~~ A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) ~~it~~ A new corporation does not include:

(i) ~~reorganizing an~~ a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) ~~the creation of~~ a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which ~~50%~~ 20% or more of the ownership is ~~owned or controlled~~ held by the ~~same person, corporation, or association~~ corporation or by the stockholders of the corporation."

NEW SECTION. **SECTION 5.** EFFECTIVE DATE ~~-- RETROACTIVE APPLICABILITY.~~ [THIS ACT] IS EFFECTIVE ON PASSAGE AND

APPROVAL AND APPLIES ~~RETROACTIVELY,-WITHIN--THE--MEANING--OF 1-2-109,~~ TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, ~~1990~~ 1991.

-End-

HOUSE BILL NO. 970

INTRODUCED BY COCCHIARELLA, BROOKE, O'KEEFE, QUILICI, STANG, HARRINGTON, LARSON, HOFFMAN, GRADY, THOMAS, GILBERT, DRISCOLL, FOSTER, DAILY, KILPATRICK, SQUIRES, BENEDICT, PAVLOVICH, T. NELSON, KIMBERLEY, REAM, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE TAX TREATMENT OF NEW AND EXPANDING INDUSTRY; REVISING THE DEFINITION OF A NEW INDUSTRY THAT QUALIFIES AS CLASS FIVE PROPERTY TO INCLUDE COMPANIES THAT ENGAGE IN TRANSPORTATION, WAREHOUSING, OR DISTRIBUTION~~,--AND--COMMUNICATION--SERVICES, REQUIRING--THAT-A-NEW-INDUSTRY-RECEIVE-50-PERCENT-OR-MORE-OF ITS-INCOME-FROM-OUT-OF-STATE-SALES-IN-ORDER-TO--QUALIFY--FOR CLASS--FIVE--PROPERTY~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50 PERCENT OR MORE OF THE INDUSTRY'S GROSS ~~OPERATING~~ SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE AND BUSINESSES THAT EARN 50 PERCENT OR MORE OF THEIR ANNUAL GROSS ~~OPERATING~~ INCOME FROM OUT-OF-STATE SALES; REVISING THE DEFINITION OF A NEW OR EXPANDING INDUSTRY THAT QUALIFIES FOR CERTAIN PROPERTY TAX BENEFITS; ~~REQUIRING-THAT-A-QUALIFYING--INDUSTRY RECEIVE--50-PERCENT-OR-MORE-OF-ITS-INCOME-FROM-SALES-OUTSIDE THE-JURISDICTION--IN--WHICH--IT--IS--LOCATED; APPLYING--THE PROPERTY--TAX--BENEFIT--TO--ALL--MILLS--LEVIED--AGAINST--THE QUALIFYING--PROPERTY;~~ REVISING THE DEFINITION OF A NEW CORPORATION QUALIFYING FOR THE NEW OR EXPANDED INDUSTRY





CREDIT; REQUIRING THAT A GOVERNING BODY NOTIFY AFFECTED TAXING JURISDICTIONS BY CERTIFIED MAIL PRIOR TO APPROVAL OF A TAX BENEFIT; ~~AND~~ AMENDING SECTIONS 15-6-135, 15-24-1401, ~~15-24-1402,~~ 15-24-1402, AND 15-31-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND ~~A-RETROACTIVE~~ AN APPLICABILITY DATE."

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

**Section 1.** 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 subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) 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;



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(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "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.

(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~~,~~ ~~and-that-earns-50%-or-more-of-its gross-operating--income--from--out-of-state--sales.~~ ~~as New industry---is,~~ AS distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes ~~only--those~~ 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; ~~or~~

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1972~~ 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget; ~~or~~

(iv) ~~provide~~ ENGAGE IN THE transportation, warehousing, OR distribution~~,--or--communications-services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS ~~OPERATING~~ SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(V) EARN 50% OR MORE OF THEIR ANNUAL GROSS ~~OPERATING~~ INCOME FROM OUT-OF-STATE SALES.

(5) New industrial property does not include:

(a) 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);

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

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

**Section 2.** Section 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least ~~$250,000~~ $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" ~~means--a-firm-that-receives-50%-or-more of--its--gross--operating--income--from--sales--outside--the jurisdiction--approving--the--tax--benefits---described---in 15-24-1402.--Industry~~ includes but is not limited to a firm





that engages in the:

(a) mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(b) extraction or harvesting of minerals, ore, or forestry products; ~~or~~

(c) processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products; ~~or~~

(d) ~~provision---of~~ transportation, warehousing, OR distribution~~,--or--communications--services~~ OF COMMERCIAL PRODUCTS OR MATERIALS IF 50% OR MORE OF THE INDUSTRY'S GROSS ~~OPERATING~~ SALES OR RECEIPTS ARE EARNED FROM OUTSIDE THE STATE; OR

(E) EARN 50% OR MORE OF THEIR ANNUAL GROSS ~~OPERATING~~ INCOME FROM OUT-OF-STATE SALES.

(3) "New" means that the ~~industry~~ FIRM is new to the jurisdiction approving the resolution provided for in 15-24-1402~~(3)~~(2) and has invested after July 1, 1987, at least ~~$500,000~~ $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New

industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1401 and 15-24-1402."

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

~~"15-24-1402.--New-or-expanding-industry------assessment.~~ ~~(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,-as-designated-in-the-approving-resolution,-shall-be-taxed-at-50%-of--their--taxable--value.--Each--year--thereafter,--the-percentage-shall-be-increased-by-equal-percentages-until-the-full--taxable--value--is--attained--in--the--10th--year.--In-subsequent-years,-the-property-shall-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.~~





~~(b)--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-that-previously-qualified-for-the-benefits.~~

~~(c)--The-resolution-provided-for--in--subsection--(2)(a)-shall-include-a-definition-of-the-improvements-or-modernized-processes--that--qualify-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---is-eligible-for-the-tax-benefits-described-in-subsection-(1).~~

~~(3)--The-taxpayer-must-apply-to-the-county-assessor-on-a-form--provided--by--the--department--of--revenue-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--must-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-assessor--shall--make-the-assessment-change-pursuant-to-this-section.~~

~~(4)--The-tax-benefit-described-in-subsection-(1)-applies-only-to--the--number--of~~ ~~all~~ ~~mills--levied--and--assessed~~,

~~including~~ ~~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.--In--no case--may--the--benefit-described-in-subsection-(1)-apply-to levies-or-assessments-required-under-Title-15,--chapter--10, 20-9-331,-20-9-333,-or-otherwise-required-under-state-law~~ ~~in the--taxing--units--in--which--the--qualifying--property--is located.~~"

**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 a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, shall be taxed at 50% of their taxable value. Each year thereafter, the percentage shall be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property shall 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.

(b) 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 that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) shall include a definition of the improvements or modernized processes that qualify 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 is eligible for the tax benefits described in subsection (1).

(3) The taxpayer must apply to the county assessor on a form provided by the department of revenue 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 must 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

assessor 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. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, 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."

**Section 4.** Section 15-31-124, MCA, is amended to read:

"**15-31-124. New or expanded industry credit -- definitions.** As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management





and budget of the United States.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. ~~and manufacturing---a--product--not--currently--manufactured--or substantially-similar-to-a-product-currently-manufactured-by that-corporation-or-any-affiliate-corporation-in-this-state;~~ A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) ~~it~~ A new corporation does not include:

(i) ~~reorganizing-an~~ a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) ~~the-creation-of~~ a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which ~~50%~~ 20% or more of the ownership is ~~owned-or-controlled~~ held by the ~~same-person,-corporation,-or-association~~ corporation or by the stockholders of the corporation."

NEW SECTION. **SECTION 5.** EFFECTIVE DATE ~~-- RETROACTIVE~~ APPLICABILITY. [THIS ACT] IS EFFECTIVE ON PASSAGE AND

APPROVAL AND APPLIES ~~RETROACTIVELY, WITHIN THE MEANING OF 1-2-109,~~ TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, ~~1990~~ 1991.

-End-