

SENATE BILL NO. 532

INTRODUCED BY M. DUNWELL, J. ELLIS, A. OLSEN, D. HAYMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REGULATION AND TAXATION OF LARGE EMISSION SOURCES IN MONTANA; ESTABLISHING THE MONTANA CLIMATE ACTION ACT; ESTABLISHING CARBON CONTENT REDUCTION TARGETS; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO COMPLETE A CARBON CONTENT REDUCTION PLAN; REQUIRING THE REPORTING AND MONITORING OF CARBON CONTENT EMISSIONS; GRANTING THE BOARD OF ENVIRONMENTAL REVIEW THE AUTHORITY TO ADOPT RULES AND FEES FOR QUANTIFICATION OF CARBON CONTENT; ESTABLISHING A CARBON TAX; REQUIRING THE DEPARTMENT OF REVENUE TO COLLECT THE TAX; GRANTING THE DEPARTMENT OF REVENUE RULEMAKING AUTHORITY; PROVIDING FOR THE DISTRIBUTION OF THE CARBON TAX; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 75-2-111 AND 75-2-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 17] may be cited as the "Montana Climate Action Act".

NEW SECTION. **Section 2. Purpose -- legislative intent.** (1) The legislature finds that because climate change is adversely affecting the state's people, economy, and environment, it is in the best interest of the public that the state reduce emissions of carbon content.

(2) The intent of [sections 1 through 17] is to protect the state for our children, our grandchildren, and future generations by quickly and effectively reducing emissions of carbon content and addressing its negative impacts.

(3) Because of uncertainty about how or whether greenhouse gas emissions will be regulated and reduced at the federal level, it is incumbent on the state to develop a plan to reduce emissions, independent of

1 any federal effort.

2 (4) The legislature further recognizes the risks entailed in a unilateral effort to reduce emissions
3 but finds that the risks of inaction are of greater significance.

4
5 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 17], the following definitions
6 apply:

7 (1) "Carbon content" includes the following gases:

8 (a) carbon dioxide;

9 (b) methane;

10 (c) nitrous oxide;

11 (d) hydrofluorocarbons;

12 (e) black carbon;

13 (f) perfluorocarbons; and

14 (g) sulfur hexafluoride.

15 (2) (a) "Large emission source" means a major stationary source that emits 25,000 metric tons
16 or more of carbon content annually and is subject to regulation by the department of environmental quality
17 in accordance with Title 75, chapter 2, parts 1 and 2.

18 (b) The term does not include a municipal solid waste landfill that is publicly owned and
19 receives household waste or other types of waste.

20 (3) "Owner" means a person who has a legal or equitable interest in a large emission source
21 subject to [sections 1 through 17] or the person's legal representative.

22 (4) "Person" means an individual, partnership, corporation, association, or other legal entity or
23 any political subdivision or agency of the state.

24
25 **NEW SECTION. Section 4. Carbon content reduction targets.** (1) The state shall limit emissions
26 of carbon content to achieve the following emission reductions for the state:

27 (a) by 2035, reduce overall emissions of carbon content in the state to 25% below 2005 levels; and

28 (b) by 2050, the state will do its part to reach global climate stabilization levels by reducing

1 overall emissions to 50% below 2005 levels.

2 (2) By September 1, 2024, the department of environmental quality shall complete a carbon
3 content reduction plan, describing actions necessary to achieve the emission reductions in subsection (1).

4 (3) In order to complete the plan required in subsection (2), the department shall:

5 (a) establish a monitoring and reporting program for emissions as required in [section 5]; and

6 (b) track progress toward meeting the emission reductions established in subsection (1), including
7 the impacts of the carbon tax included in [section 7].

8 (4) On or before September 1 of each year preceding the convening of a regular session of
9 the legislature, the department of environmental quality shall report to the environmental quality council in
10 accordance with 5-11-210 summarizing the state's progress toward meeting emission reductions and the
11 impacts of the carbon tax.

12

13 **NEW SECTION. Section 5. Emission reporting -- rules -- fees.** (1) Before January 1, 2024,
14 the board of environmental review established in 2-15-3502 shall adopt rules that:

15 (a) require the reporting and verification of carbon content emitted by an owner of a large
16 emission source in the state to the department of environmental quality;

17 (b) in accordance with subsection (2), adopt a schedule requiring the quantification and reporting
18 of carbon content emitted by an owner of a large emission source;

19 (c) ensure rigorous and consistent accounting of carbon content and provide reporting tools
20 and formats to ensure the collection of necessary information, including third-party verification, as needed;

21 (d) ensure that an owner of a large emission source and the department of environmental
22 quality provide for the maintenance of comprehensive records of all reported carbon content; and

23 (e) are consistent with comparable regional and national efforts.

24 (2) (a) Before January 1, 2024, the board shall adopt rules that establish a schedule of fees to
25 be paid to the department by an owner of a large emission source required to report and verify emissions
26 pursuant to rules established under this section.

27 (b) The fees must be sufficient to cover the reasonable costs, direct and indirect, of administering
28 and complying with the rules and requirements established pursuant to [section 4] and this section.

1 (c) All fees collected must be deposited in the large emission source reduction and reporting
2 account provided for in [section 6].

3
4 **NEW SECTION. Section 6. Large emission source reduction and reporting account.** (1) There
5 is a large emission source reduction and reporting account in the state special revenue fund as provided in 17-
6 2-102.

7 (2) There must be deposited in the account:
8 (a) all revenue from the fees collected pursuant to rules established under [section 5]; and
9 (b) money received by the department of environmental quality in the form of legislative
10 allocations, reimbursements, gifts, or appropriations from any source that is intended to be used for the
11 purposes of the account.

12 (3) The account may be used by the department of environmental quality only for administering
13 and complying with the rules and requirements established pursuant to [sections 4 and 5].

14
15 **NEW SECTION. Section 7. Carbon tax -- authority of department of revenue.** (1) A carbon tax
16 is imposed on and must be collected from the owners of large emission sources.

17 (2) (a) Beginning January 1, 2024, the carbon tax on owners of large emission sources is equal
18 to \$10 per metric ton of carbon content. Beginning January 1, 2025, the carbon tax on owners of large
19 emission sources increases annually by \$1 per metric ton, plus the rate of inflation.

20 (b) The carbon tax is fixed and no longer increases, except for annual increases for inflation,
21 when the state's carbon content emissions are on a trajectory that indicates compliance with [section 4].

22 (3) The tax is deposited and distributed as provided in [section 15].

23 (4) The carbon tax must be paid to the department of revenue in quarterly installments, and
24 the amount of the tax for each quarter must be paid to the department within 30 days after the end of each
25 quarter. The owner of a large emission source shall pay the tax.

26 (5) The owner shall complete on forms prescribed by the department of revenue a
27 statement showing:

28 (a) the name and address of the owner of the large emission source;

1 (b) the description and location of the large emission source;

2 (c) the metric tons of carbon content emitted by the large emission source during the period
3 covered by the statement; and

4 (d) a statement from the department of environmental quality verifying the tonnage provided
5 in subsection (5)(c).

6 (6) The statement must be signed by the person making the statement.

7 (7) The statement must be accompanied by the tax due.

8 (8) For the purpose of determining compliance with the provisions of [sections 7 through 14],
9 the department of revenue may examine or cause to be examined any books, papers, records, or
10 memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records,
11 or memoranda are the property of or in the possession of the person filing the return or another person.
12 In determining compliance, the department may use statistical sampling and other sampling techniques
13 consistent with generally accepted auditing standards. The department may also:

14 (a) require the attendance of a person having knowledge or information relevant to a statement;

15 (b) compel the production of books, papers, records, or memoranda by the person required to
16 attend;

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

19 (d) take testimony on matters material to the determination; and

20 (e) administer oaths or affirmations.

21 (9) In the case of a bankruptcy, the liability of the person remains unaffected by the discharge
22 of penalty and interest against the large emission source. The person remains liable for any statements and
23 the amount of taxes, penalties, and interest unpaid by the owner.

24
25 **NEW SECTION. Section 8. Examination of statement -- adjustments -- delivery of notices and**
26 **demands.** (1) If the department of revenue determines that the amount of tax due is different from the
27 amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section
28 7] constitutes the tax to be paid.

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

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

9 (a) sent by mail to the taxpayer at the address given in the taxpayer's statement, if any, or to
 10 the taxpayer's last-known address; or

11 (b) served personally upon the taxpayer.

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

14
 15 NEW SECTION. Section 9. Penalties and interest for violation. (1) (a) A person who fails to file
 16 a statement as required by [section 7] must be assessed a penalty as provided in 15-1-216. The department
 17 of revenue may waive the penalty as provided in 15-1-206.

18 (b) A person who fails to file the statement required by [section 7] and to pay the tax on or before
 19 the due date must be assessed a penalty and interest as provided in 15-1-216. The department may waive
 20 any penalty pursuant to 15-1-206.

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

23
 24 NEW SECTION. Section 10. Authority to collect delinquent taxes. (1) (a) The department
 25 of revenue shall collect taxes that are delinquent as determined under [sections 7 through 14].

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

28 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal

1 has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from
2 the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

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

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

7

8 **NEW SECTION. Section 11. Interest on deficiency -- penalty.** (1) Interest accrues on unpaid
9 or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the
10 statement and tax were originally due.

11 (2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if
12 the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-
13 216(2) must be added to the amount of the deficiency.

14

15 **NEW SECTION. Section 12. Limitations.** (1) Except in the case of a person who purposely
16 or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent statement violating the
17 provisions of [sections 7 through 14], a deficiency may not be assessed or collected with respect to a tax period
18 for which a statement is filed unless the notice of additional tax proposed to be assessed is mailed to or
19 personally served upon the taxpayer within 5 years from the date on which the statement was filed. For
20 purposes of this section, a statement filed before the last day prescribed for filing is considered to be filed on
21 the last day.

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

25

26 **NEW SECTION. Section 13. Credit or refund for overpayment -- refund -- interest on payment.**
27 (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any semiannual
28 period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty,

1 or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through
2 reorganization, merger, or consolidation or to its shareholders upon dissolution.

3 (2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any
4 tax period or any refund or portion of a refund, which has not been distributed, must be withheld from the
5 current distribution.

6 (b) If the amount of the refund reduces the amount of tax previously distributed and if the
7 current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of
8 the refund from the department to which the tax was originally distributed.

9 (3) Except as provided in subsection (4), interest must be allowed on overpayments at the same
10 rate as is charged on unpaid taxes provided in 15-1-216 beginning from the due date of the statement or from
11 the date of overpayment, whichever date is later, to the date on which the department approves refunding
12 or crediting of the overpayment.

13 (4) (a) Interest may not accrue during any period in which the processing of a claim for refund
14 is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by
15 the department for the purpose of verifying the amount of the overpayment.

16 (b) Interest is not allowed:

17 (i) if the overpayment is refunded within 6 months from the date on which the statement is due or
18 from the date on which the statement is filed, whichever is later; or

19 (ii) if the amount of interest is less than \$1.

20

21 **NEW SECTION. Section 14. Administration -- rules.** The department of revenue shall:

22 (1) administer and enforce the provisions of [sections 7 through 13];

23 (2) cause to be prepared and distributed forms and information that may be necessary to
24 administer the provisions of [sections 7 through 13]; and

25 (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions
26 of [sections 7 through 13].

27

28 **NEW SECTION. Section 15. Distribution of taxes.** For each quarter, the department of

1 revenue shall determine the amount of tax, late payment interest, and penalties collected under [sections 7
2 through 14] from the carbon tax. The tax is allocated to the ratepayer impact account in accordance with
3 [section 16].
4

5 **NEW SECTION. Section 16. Ratepayer impact account.** (1) There is a ratepayer impact account in
6 the state special revenue fund established in 17-2-102.

7 (2) There must be deposited in the account:

- 8 (a) allocations made in accordance with [section 15]; and
- 9 (b) interest or other income earned on the money in the account.

10 (3) The account must be used by the department of revenue:

- 11 (a) to provide annual pollution cost payments to Montana citizens in accordance with [section 17];

12 and

- 13 (b) for the department's costs of administering [section 16].
14

15 **NEW SECTION. Section 17. Ratepayer impact payments -- rulemaking.** (1) The department
16 of revenue shall award annual pollution cost payments using the account established in [section 16] to Montana
17 citizens.

18 (2) In awarding payments, the department shall calculate and issue an equal payment for each
19 citizen.

20 (3) The department shall adopt rules necessary for the administration of this section. The rules
21 may include but are not limited to:

- 22 (a) eligibility requirements for citizens;
- 23 (b) methodology for payment calculation; and
- 24 (c) reporting procedures for the payment program.
25

26 **Section 18.** Section 75-2-111, MCA, is amended to read:

27 **"75-2-111. Powers of board.** The board shall, subject to the provisions of 75-2-207:

- 28 (1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place

1 designated by the board. The board may compel the attendance of witnesses and the production of evidence at
 2 hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter
 3 who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will
 4 be available to the public at cost.

5 (2) issue orders necessary to effectuate the purposes of this chapter;

6 (3) by rule adopt a schedule of fees to cover the costs of administering [sections 3 through 6] for
 7 large emission sources consistent with this chapter; and

8 ~~(3)~~(4) have the power to issue orders under and in accordance with 42 U.S.C. 7419."
 9

10 **Section 19.** Section 75-2-221, MCA, is amended to read:

11 **"75-2-221. Deposit of air quality permitting and registration fees.** (1) ~~All~~ Except as provided in
 12 [section 5(2)], all money collected by the department pursuant to 75-2-112 and 75-2-220 must be deposited in
 13 an account in the state special revenue fund to be appropriated by the legislature to the department for the
 14 development and administration of the permitting and registration requirements of this chapter.

15 (2) Upon request, the expenditure by the department of funds in this account may be audited by a
 16 qualified auditor at the end of each fiscal year. The cost of the audit must be paid by the person requesting the
 17 audit."
 18

19 NEW SECTION. Section 20. Codification instruction. [Sections 1 through 17] are intended to be
 20 codified as a new chapter in Title 75, and the provisions of Title 75 apply to [sections 1 through 17].
 21

22 NEW SECTION. Section 21. Severability. If a part of [this act] is invalid, all valid parts that are
 23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 24 the part remains in effect in all valid applications that are severable from the invalid applications.
 25

26 NEW SECTION. Section 22. Effective date. [This act] is effective on passage and approval.
 27

28 NEW SECTION. Section 23. Retroactive applicability. [This act] applies retroactively, within the

1 meaning of 1-2-109, to carbon content emissions beginning after December 31, 2022.

2 - END -