

HOUSE BILL NO. 407

INTRODUCED BY D. FERN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROPERTY TAX ABATEMENTS FOR AFFORDABLE RENTAL HOUSING; PROVIDING THAT A LOCAL GOVERNMENT MAY CHOOSE TO OFFER THE ABATEMENTS; PROVIDING FOR AN ABATEMENT FOR AFFORDABLE MULTIFAMILY RENTAL HOUSING WITH FIVE UNITS OR MORE; PROVIDING FOR AN ABATEMENT FOR AFFORDABLE RENTAL HOUSING WITH FOUR UNITS OR FEWER OR FOR AN AFFORDABLE ACCESSORY DWELLING UNIT; PROVIDING AN ABATEMENT FOR AFFORDABLE TRAILER COURTS; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accessory dwelling unit" means a self-contained living unit subordinate to and on the same parcel as a single-family dwelling that includes its own cooking, sleeping, and sanitation facilities and is created within or detached from the single-family dwelling, including but not limited to an attached or detached garage.

(2) "Affordable accessory dwelling unit" means a rent-restricted accessory dwelling unit with a lease term of 30 days or longer.

(3) "Affordable multifamily rental housing" means rental housing with a minimum of 5 units and a lease term of 30 days or longer for which 20% or more of units are rent restricted.

(4) "Affordable rental housing" means one or more rent-restricted units of a multifamily rental dwelling with 4 units or fewer and with a lease term of 30 days or longer.

(5) "AFFORDABLE TRAILER COURT" MEANS A TRAILER COURT DETERMINED TO BE AFFORDABLE BY A LOCAL GOVERNMENT OFFERING AN ABATEMENT UNDER [SECTION 4].

(6) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(7) (a) "Income" means, except as provided in subsection ~~(6)~~ ~~(b)~~ (7)(B), federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

(ii) the amount of capital gains excluded from adjusted gross income;

(iii) alimony;

(iv) support money;

(v) nontaxable strike benefits;

(vi) cash public assistance and relief;

(vii) interest on federal, state, county, and municipal bonds; and

(viii) all payments received under federal social security except social security income paid directly to a nursing home.

(b) For the purposes of this subsection ~~(6)~~ (7), income is reduced by the taxpayer's basis.

(8) "MARKET RENT" MEANS A SCHEDULE ADOPTED BY A LOCAL GOVERNMENT OF RENT BY DWELLING SIZE THAT CAN BE EXPECTED FOR THE USE OF A PROPERTY IN COMPARISON WITH SIMILAR PROPERTIES IN THE SAME AREA.

(9) "Rent restricted" means the tenant's gross household income is between 60% and 120% 100% of area median income for the county and the tenant's rent is 35% 30% or less of gross household income OR 80% OR LESS OF MARKET RENT.

(10) "TRAILER COURT" HAS THE MEANING PROVIDED IN 50-52-101.

NEW SECTION. Section 2. Affordable multifamily rental housing abatement. (1) A local government may provide for a program for abatements for affordable multifamily rental housing as provided in this section. The governing body of the county or the incorporated city or town that wishes to offer the abatement shall approve the program by resolution AND ADOPT MARKET RENTS FOR THE COUNTY OR INCORPORATED CITY OR TOWN. The governing body may cease the abatement program by resolution, but any abatements already granted remain in effect.

(2) If approved by the county or incorporated city or town, affordable multifamily rental housing that

meets the requirements of this section is eligible for an exemption as provided in this section. ~~Eligible~~ THE
VALUE OF RENT-RESTRICTED UNITS OF ELIGIBLE affordable multifamily rental housing is fully exempt in the first
year, and, subject to 15-10-420, each year afterward the taxable percentage must be increased by ~~9.09%~~ 11%
until the full taxable value is attained in the ~~12th~~ 10TH year. In subsequent years, the property must be taxed at
100% of its taxable value UNLESS THE TAXPAYER REAPPLIES FOR AND IS GRANTED A NEW ABATEMENT. THE
EXEMPTION APPLIES ONLY TO THE VALUE OF ELIGIBLE IMPROVEMENTS AND EXCLUDES THE LAND VALUE.

(3) (a) In order for a taxpayer to receive the tax benefits described in subsection (2), the taxpayer
may submit an application with a project plan and receive approval for an abatement prior to construction. A
taxpayer that does not seek approval prior to commencing construction shall apply by March 1 of the year
during which the benefit is first applicable. The governing body of the county or the incorporated city or town in
which the affordable multifamily rental housing is located shall approve the abatement by separate resolution
for each property, following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or
town and a public hearing. The governing body may not grant approval for the exemption until all of the
applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. If a taxpayer
receives approval of a tax abatement prior to commencement of construction, the abatement does not extend
to property that is outside the scope of the project plan that was submitted to the governing body with the
application.

(b) The governing body shall:

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

(ii) request a determination as to whether the project plan qualifies as affordable multifamily rental
housing from the county housing authority or municipal housing authority as applicable or, if there is no county
housing authority or municipal housing authority, from county or municipal staff; and

(iii) conduct a public hearing regarding an application for the tax treatment provided for in this
section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a).

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

(d) Subject to 15-10-420 and subsection (3)(f) of this section, a tax benefit may not be denied after it has been approved.

(e) The resolution provided for in subsection (3)(a) must include a description of the affordable multifamily rental housing that qualifies 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 of these is eligible for the tax benefits described in subsection (2).

(f) Property taxes abated from the reduction in taxable value allowed by this section are subject to termination or recapture by the local governing body if the ownership or use of the property does not meet the requirements of [section 1], this section, or the resolution required by subsections (3)(a) and (3)(e) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

(4) The taxpayer shall apply to the department for the tax treatment allowed under subsection (2). The application by the taxpayer must be approved first by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. On receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(5) The tax benefit described in subsection (2) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The tax benefit described in subsection (2) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, 20-9-360, 20-25-439, or otherwise required under state law.

(6) Prior to approving the resolution under this section, the governing body shall notify by certified

mail all taxing jurisdictions affected by the tax benefit.

NEW SECTION. Section 3. Affordable rental housing and accessory dwelling unit abatement.

(1) A local government may provide for a program for abatements for affordable rental housing and affordable accessory dwelling units as provided in this section. The governing body of the county or the incorporated city or town that wishes to offer the abatement shall approve the program by resolution AND ADOPT MARKET RENTS FOR THE COUNTY OR INCORPORATED CITY OR TOWN. The governing body may cease the abatement program by resolution, but any abatements already granted remain in effect.

(2) ~~(a)~~ If approved by the county or incorporated city or town, affordable rental housing or an affordable accessory dwelling unit that meets the requirements of this section is eligible for an abatement as provided in this section. ~~Eligible~~ THE VALUE OF RENT-RESTRICTED UNITS OF ELIGIBLE affordable rental housing or an eligible affordable accessory dwelling unit is fully exempt in the first year, and, subject to 15-10-420, each year afterward the taxable percentage must be increased by ~~9.09%~~ 11% until the full taxable value is attained in the ~~42th~~ 10TH year. In subsequent years, the property must be taxed at 100% of its taxable value UNLESS THE TAXPAYER REAPPLIES FOR AND IS GRANTED A NEW ABATEMENT. THE EXEMPTION APPLIES ONLY TO THE VALUE OF ELIGIBLE IMPROVEMENTS AND EXCLUDES THE LAND VALUE.

~~(b) A taxpayer may receive the abatement for affordable rental housing for a portion of the rental housing if all units do not qualify as affordable rental housing. The abatement applies only to the eligible unit's share of assessed value.~~

~~(c) An abatement for an affordable accessory dwelling unit only applies to the value associated with the improvement and does not include an abatement for value of land.~~

(3) (a) In order for a taxpayer to receive the tax benefits described in subsection (2), the taxpayer shall submit an application with a description of the affordable rental housing or affordable accessory dwelling unit and a copy of the lease agreement that shows the monthly rent and includes a signed statement from the tenant indicating that the tenant's gross household income is between 60% and 120% of area median income for the county and the tenant's rent is ~~35%~~ 30% or less of gross household income. A taxpayer shall apply by March 1 of the year during which the benefit is first applicable. The governing body may not grant approval for the exemption until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude

1 approval.

2 (b) A city or county that participates in the abatement program provided for in this section shall
3 administer an application and review process for determining eligibility for the abatement. The city or county
4 shall recertify annually eligibility for the abatement by collecting an updated lease agreement and signed
5 statement from the tenant.

6 (c) Property taxes abated from the reduction in taxable value allowed by this section are subject to
7 termination or recapture by the local governing body if the ownership or use of the property does not meet the
8 requirements of [section 1] or this section. The recapture is equal to the amount of taxes avoided, plus interest
9 and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an
10 abatement under the provisions of this section was in effect. The amount recaptured, including penalty and
11 interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio
12 as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to
13 property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated
14 taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to
15 meet the requirements is a result of circumstances beyond the control of the taxpayer.

16 (4) The taxpayer shall apply to the department for the tax treatment allowed under subsection (2).
17 The application by the taxpayer must be approved first by the city or county of the appropriate local taxing
18 jurisdiction, and the city or county shall indicate in its approval that the property of the applicant qualifies for the
19 tax treatment provided for in this section. On receipt of the form with the approval of the city or county of the
20 affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

21 (5) The tax benefit described in subsection (2) applies only to the number of mills levied and
22 assessed for local high school district and elementary school district purposes and to the number of mills levied
23 and assessed by the governing body approving the benefit over which the governing body has sole discretion.
24 The tax benefit described in subsection (2) may not apply to levies or assessments required under Title 15,
25 chapter 10, 20-9-331, 20-9-333, 20-9-360, 20-25-439, or otherwise required under state law.

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27 NEW SECTION. SECTION 4. AFFORDABLE TRAILER COURT ABATEMENT. (1) A LOCAL GOVERNMENT MAY
28 PROVIDE FOR A PROGRAM FOR ABATEMENTS FOR THE DEVELOPMENT OF AFFORDABLE TRAILER COURTS AS PROVIDED IN

1 THIS SECTION. THE GOVERNING BODY OF THE COUNTY OR THE INCORPORATED CITY OR TOWN THAT WISHES TO OFFER
2 THE ABATEMENT SHALL APPROVE THE PROGRAM BY RESOLUTION. THE GOVERNING BODY MAY CEASE THE ABATEMENT
3 PROGRAM BY RESOLUTION, BUT ANY ABATEMENTS ALREADY GRANTED REMAIN IN EFFECT.

4 (2) IF APPROVED BY THE COUNTY OR INCORPORATED CITY OR TOWN, AN AFFORDABLE TRAILER COURT
5 THAT MEETS THE REQUIREMENTS OF THIS SECTION IS ELIGIBLE FOR AN EXEMPTION AS PROVIDED IN THIS SECTION. THE
6 VALUE OF AFFORDABLE TRAILER COURT LOTS IS FULLY EXEMPT IN THE FIRST YEAR, AND, SUBJECT TO 15-10-420, EACH
7 YEAR AFTERWARD THE TAXABLE PERCENTAGE MUST BE INCREASED BY 11% UNTIL THE FULL TAXABLE VALUE IS ATTAINED
8 IN THE 10TH YEAR. IN SUBSEQUENT YEARS, THE PROPERTY MUST BE TAXED AT 100% OF ITS TAXABLE VALUE, UNLESS
9 THE TAXPAYER REAPPLIES FOR AND IS GRANTED A NEW ABATEMENT. THE EXEMPTION APPLIES ONLY TO THE LAND VALUE
10 OF THE AFFORDABLE TRAILER COURT.

11 (3) (A) IN ORDER FOR A TAXPAYER TO RECEIVE THE TAX BENEFITS DESCRIBED IN SUBSECTION (2), THE
12 TAXPAYER MAY SUBMIT AN APPLICATION BY MARCH 1 OF THE YEAR DURING WHICH THE BENEFIT IS FIRST APPLICABLE.
13 THE GOVERNING BODY OF THE COUNTY OR THE INCORPORATED CITY OR TOWN IN WHICH THE AFFORDABLE TRAILER
14 COURT IS LOCATED SHALL APPROVE THE ABATEMENT BY SEPARATE RESOLUTION FOR EACH PROPERTY, FOLLOWING DUE
15 NOTICE AS PROVIDED IN 7-1-2121 IF A COUNTY OR 7-1-4127 IF AN INCORPORATED CITY OR TOWN AND A PUBLIC
16 HEARING. THE GOVERNING BODY MAY NOT GRANT APPROVAL FOR THE EXEMPTION UNTIL ALL OF THE APPLICANT'S TAXES
17 HAVE BEEN PAID IN FULL. TAXES PAID UNDER PROTEST DO NOT PRECLUDE APPROVAL.

18 (B) THE GOVERNING BODY SHALL:

19 (i) PUBLISH DUE NOTICE WITHIN 60 DAYS OF RECEIVING A TAXPAYER'S COMPLETE APPLICATION FOR THE
20 TAX TREATMENT PROVIDED FOR IN THIS SECTION;

21 (ii) REQUEST A DETERMINATION AS TO WHETHER THE TRAILER COURT QUALIFIES AS AN AFFORDABLE
22 TRAILER COURT FROM THE COUNTY HOUSING AUTHORITY OR MUNICIPAL HOUSING AUTHORITY AS APPLICABLE OR, IF
23 THERE IS NO COUNTY HOUSING AUTHORITY OR MUNICIPAL HOUSING AUTHORITY, FROM COUNTY OR MUNICIPAL STAFF;
24 AND

25 (iii) CONDUCT A PUBLIC HEARING REGARDING AN APPLICATION FOR THE TAX TREATMENT PROVIDED FOR IN
26 THIS SECTION AND DENY OR APPROVE IT WITHIN 120 DAYS OF RECEIVING THE APPLICATION AS PROVIDED IN SUBSECTION
27 (3)(A).

28 (C) IF THE GOVERNING BODY FAILS TO HOLD A HEARING OR TO DENY OR APPROVE THE APPLICATION WITHIN

120 DAYS OF RECEIVING THE APPLICATION, THE APPLICANT MAY SEEK FROM THE DISTRICT COURT IN THE JURISDICTION IN WHICH THE COUNTY, CITY, OR TOWN IS LOCATED A WRIT OF MANDAMUS TO COMPEL THE GOVERNING BODY TO MAKE A DETERMINATION.

(D) SUBJECT TO 15-10-420 AND SUBSECTION (3)(F) OF THIS SECTION, A TAX BENEFIT MAY NOT BE DENIED AFTER IT HAS BEEN APPROVED.

(E) THE RESOLUTION PROVIDED FOR IN SUBSECTION (3)(A) MUST INCLUDE A DESCRIPTION OF THE AFFORDABLE TRAILER COURT THAT QUALIFIES FOR THE TAX TREATMENT THAT IS TO BE ALLOWED IN THE TAXING JURISDICTION.

(F) PROPERTY TAXES ABATED FROM THE REDUCTION IN TAXABLE VALUE ALLOWED BY THIS SECTION ARE SUBJECT TO TERMINATION OR RECAPTURE BY THE LOCAL GOVERNING BODY IF THE OWNERSHIP OR USE OF THE PROPERTY DOES NOT MEET THE REQUIREMENTS OF [SECTION 1], THIS SECTION, OR THE RESOLUTION REQUIRED BY SUBSECTIONS (3)(A) AND (3)(E) OF THIS SECTION. THE RECAPTURE IS EQUAL TO THE AMOUNT OF TAXES AVOIDED, PLUS INTEREST AND PENALTIES FOR NONPAYMENT OF PROPERTY TAXES PROVIDED IN 15-16-102, DURING ANY PERIOD IN WHICH AN ABATEMENT UNDER THE PROVISIONS OF THIS SECTION WAS IN EFFECT. THE AMOUNT RECAPTURED, INCLUDING PENALTY AND INTEREST, MUST BE DISTRIBUTED BY THE TREASURER TO FUNDS AND ACCOUNTS SUBJECT TO THE ABATEMENT IN THE SAME RATIO AS THE PROPERTY TAX WAS ABATED. A RECAPTURE OF TAXES ABATED BY THIS SECTION IS NOT ALLOWED WITH REGARD TO PROPERTY CEASING TO QUALIFY FOR THE ABATEMENT BY REASON OF AN INVOLUNTARY CONVERSION. THE RECAPTURE OF ABATED TAXES MAY BE CANCELED, IN WHOLE OR IN PART, IF THE LOCAL GOVERNING BODY DETERMINES THAT THE TAXPAYER'S FAILURE TO MEET THE REQUIREMENTS IS A RESULT OF CIRCUMSTANCES BEYOND THE CONTROL OF THE TAXPAYER.

(4) THE TAXPAYER SHALL APPLY TO THE DEPARTMENT FOR THE TAX TREATMENT ALLOWED UNDER SUBSECTION (2). THE APPLICATION BY THE TAXPAYER MUST BE APPROVED FIRST BY THE GOVERNING BODY OF THE APPROPRIATE LOCAL TAXING JURISDICTION, AND THE GOVERNING BODY SHALL INDICATE IN ITS APPROVAL THAT THE PROPERTY OF THE APPLICANT QUALIFIES FOR THE TAX TREATMENT PROVIDED FOR IN THIS SECTION. ON RECEIPT OF THE FORM WITH THE APPROVAL OF THE GOVERNING BODY OF THE AFFECTED TAXING JURISDICTION, THE DEPARTMENT SHALL MAKE THE ASSESSMENT CHANGE PURSUANT TO THIS SECTION.

(5) THE TAX BENEFIT DESCRIBED IN SUBSECTION (2) APPLIES ONLY TO THE NUMBER OF MILLS LEVIED AND ASSESSED FOR LOCAL HIGH SCHOOL DISTRICT AND ELEMENTARY SCHOOL DISTRICT PURPOSES AND TO THE NUMBER OF

MILLS LEVIED AND ASSESSED BY THE GOVERNING BODY APPROVING THE BENEFIT OVER WHICH THE GOVERNING BODY HAS SOLE DISCRETION. THE TAX BENEFIT DESCRIBED IN SUBSECTION (2) MAY NOT APPLY TO LEVIES OR ASSESSMENTS REQUIRED UNDER TITLE 15, CHAPTER 10, 20-9-331, 20-9-333, 20-9-360, OR 20-25-439, OR OTHERWISE REQUIRED UNDER STATE LAW.

(6) PRIOR TO APPROVING THE RESOLUTION UNDER THIS SECTION, THE GOVERNING BODY SHALL NOTIFY BY CERTIFIED MAIL ALL TAXING JURISDICTIONS AFFECTED BY THE TAX BENEFIT.

NEW SECTION. Section 5. Codification instruction. [Sections 1 through 3 4] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 3 4].

NEW SECTION. Section 6. Applicability. [This act] applies to property tax years beginning after December 31, 2023.

- END -