HOUSE BILL NO. 424

INTRODUCED BY K. ZOLNIKOV, M. BERTOGLIO, D. FERN, D. HARVEY, M. REGIER, S. FITZPATRICK, B. LER, G. HERTZ, K. BOGNER

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING PROPERTY INCLUDED IN CLASS SEVENTEEN AS DATA CENTER PROPERTY; EXTENDING THE TIMEFRAME IN WHICH THE DATA CENTER PROPERTY MUST BE BUILT~~,~~; REVISING OWNERSHIP REQUIREMENTS; PROVIDING THAT THE SCHOOL EQUALIZATION MILLS MUST BE PAID ON CLASS SEVENTEEN PROPERTY WITHIN A DISTRICT THAT USES TAX INCREMENT FINANCING; AMENDING SECTIONS 7-15-4286, 15-6-156, AND 15-6-162, 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 7-15-4286, MCA, is amended to read:

"**7-15-4286. Procedure to determine and disburse tax increment -- remittance of excess portion of tax increment for targeted economic development district.** (1) (a) Except as provided in subsection (1)(b), mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or targeted economic development district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(b) If a mill levy is excluded from the tax increment calculation pursuant to subsections (2)(b) through (2)(d), the calculation pursuant to subsection (1)(a) must use the total taxable value of all property located within the area or district.

(2) (a) Except as provided in 15-6-162 and subsections (2)(b) through (2)(d) and (3) of this section, the tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district must be paid into a special fund held by

the treasurer of the local government and used as provided in 7-15-4282 through 7-15-4294.

(b) For targeted economic development districts and urban renewal areas created before April 6, 2017, the combined mill rates used to calculate the tax increment may not include the mill rates for the university system mills levied pursuant to 15-10-109 and 20-25-439.

(c) For targeted economic development districts created on or after April 6, 2017, and before July 1, 2022, and urban renewal areas created on or after April 6, 2017, the combined mill rates used to calculate the tax increment may not include mill rates for:

(i) the university system mills levied pursuant to 15-10-109 and 20-25-439; and

(ii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision.

(d) For targeted economic development districts created after June 30, 2022, the combined mill rates used to calculate the tax increment may not include mill rates for:

(i) the university system mills levied pursuant to 15-10-109 and 20-25-439;

(ii) one-half of the elementary, high school, and state equalization mills levied pursuant to 20-9-331, 20-9-333, and 20-9-360;

(iii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision; and

(iv) any portion of an existing mill levy designated by the local government as excluded from the tax increment.

(3) (a) Subject to 7-15-4287 and subsection (3)(b) of this section, a targeted economic development district with a tax increment provision adopted after October 1, 2019, may expend or accumulate tax increment for:

(i) the payment of the costs listed in 7-15-4288;

(ii) the cost of issuing bonds; or

(iii) any pledge to the payment of the principal of any premium, if any, and interest on the bonds issued pursuant to 7-15-4289 and sufficient to fund any reserve fund in respect of the bonds in an amount not to exceed 125% of the maximum principal and interest on the bonds in any year during the term of the bonds.

(b) Any excess tax increment remaining after the use or accumulation of funds as set forth in subsection (3)(a) must be:

(i) remitted to each taxing jurisdiction for which the mill rates are included in the calculation of the tax increment as provided in subsections (1) and (2); and

(ii) proportional to the taxing jurisdiction's share of the total mills levied.

(c) A targeted economic development district is not subject to the provisions of this subsection (3) if bonds have not been issued to finance the project.

(4) Any portion of the excess tax increment remitted to a school district pursuant to subsection (3) is subject to the provisions of 7-15-4291(2) through (5).

(5) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law."

Section 2. Section 15-6-156, MCA, is amended to read:

"**15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in subsections (2)(a) through (2)(i), class thirteen property includes:

(a) electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157, of a centrally assessed electric power company;

(b) electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

(c) noncentrally assessed electrical generation facilities, except wind generation facilities, biomass generation facilities, and energy storage facilities classified under 15-6-157, owned or operated by any electrical energy producer;

(d) allocations of centrally assessed telecommunications services companies; and

(e) dedicated communications infrastructure described in 15-6-162(5) for which construction commenced after June 30, ~~2027~~ 2037, or for which the ~~15-year~~ 25-year period provided for in 15-6-162(5)(c) has expired.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-

fiber cable in Montana as provided in subsection (4)(b) or otherwise violates the provisions of this section.

(b) Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of this section was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.

(c) The recapture of abated taxes may be cancelled, 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."

Section 3. Section 15-6-162, MCA, is amended to read:

"**15-6-162. Class seventeen property -- description -- taxable percentage.** (1) Class seventeen property includes the land, improvements, furniture, fixtures, equipment, tools that are not exempt under 15-6-219, and supplies except those included in class five under 15-6-135 of a qualified data center.

(2) (a) "Qualified data center" means the land, improvements, and personal property of a facility designed or modified to house networked computers or equipment supporting computing, networking, or data storage that is composed of one or more buildings under single ownership, provided that a single ownership entity includes a wholly owned subsidiary or a parent company with 100% ownership interest, on contiguous parcels of land that consist of at least:

(i) 300,000 square feet, where the total cost of land, improvements, personal property, and software is at least $150 million with construction commencing after June 30, 2017; or

(ii) 25,000 square feet of new or expanded area, where the total cost of land, improvements, personal property, and software is at least $50 million invested during a 48-month period with construction commencing after January 1, 2019.

(b) The term includes but is not limited to:

(i) cooling systems, cooling towers, and other temperature infrastructure;

(ii) power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the facility, ~~such as~~ including:

(A) exterior dedicated business-owned substations~~,~~;

(B) backup power generation systems, battery systems, and related infrastructure; and

(C) electrical generation and storage systems THAT COMMENCE OPERATION AFTER [THE EFFECTIVE DATE OF THIS ACT] AND ARE located on the facility side of the utility meter and primarily used by a qualified data center for onsite power, UNLESS THE QUALIFIED DATA CENTER HAS A DOCUMENTED HISTORY OF ALREADY BEING SERVED BY AN ELECTRICAL GENERATION OR STORAGE SYSTEM LOCATED ON THE FACILITY SIDE OF THE UTILITY METER; and

(iii) any other equipment necessary for the maintenance and operation of the facility.

(3) During construction, property not meeting the requirements of subsection (2) must be classified as class seventeen property if, prior to March 1 of the first tax year for which the classification will be applied, the taxpayer certifies to the department that the facility under construction will meet the requirements of subsection (2) within 2 years of the date of the certification.

(4) ~~The~~ Except as provided in subsection (5), the taxable property of a qualified data center must be locally assessed.

(5) (a) Class seventeen property includes centrally assessed interstate or intrastate dedicated communications infrastructure that is owned or leased by the owner of a qualified data center and is composed of telecommunication or data lines, equipment, and services, including but not limited to copper or fiber optic lines or microwave, satellite, or other wireless communication systems.

(b) To qualify under this subsection (5), construction of the owned or leased interstate or intrastate communications infrastructure must commence after June 30, 2017, and before July 1, ~~2027~~ 2037, and must satisfy the criteria of this section.

(c) Dedicated communications infrastructure provided for in this subsection (5) is taxed at the rate provided for in subsection (6) for a period of ~~15~~ 25 years from the time that construction commences. After the ~~15-year~~ 25-year period, the dedicated communications infrastructure is taxed as class thirteen property at the rate provided in 15-6-156.

(6) (a) Except as provided in subsection (6)(b), electrical generation and storage systems are considered primarily used onsite if used at least 80% for onsite consumption as measured on an annualized kilowatt hour basis as certified annually to the department.

(b) If the governor declares an electrical generation emergency, the 80% requirement in subsection (6)(a) does not apply to a qualified data center that relies on backup power generation systems and makes ~~available~~electricity generated on the facility side of the utility meter ~~to~~ AVAILABLE TO THE UTILITY TO HELP service residential and business customers during the emergency period.

(7) Class seventeen property included in an urban renewal area or targeted economic development district is subject to the elementary, high school, and state equalization mills levied pursuant to 20-9-331, 20-9-333, and 20-9-360.

~~(6)~~~~(7)~~(8) ~~Class~~ Property identified as class seventeen property under this section, whether centrally or locally assessed, is taxed at 0.9% of its market value."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2024.

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