

SENATE BILL NO. 540

INTRODUCED BY B. BEARD, S. VINTON

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROPERTY TAXATION OF CLASS 17 PROPERTY; PROVIDING FOR LOCAL ASSESSMENT OF CERTAIN DEDICATED COMMUNICATIONS INFRASTRUCTURE PROPERTY; PROVIDING THAT PROPERTY OF A CERTAIN VALUE REMAINS SUBJECT TO CLASS 17 PROPERTY TAXATION AND LOCAL ASSESSMENT; AMENDING SECTIONS 15-6-156, 15-6-162, AND 15-23-101, 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 15-6-156, 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 period provided for in 15-6-162(5)(c) has expired.

(2) Class thirteen property does not include:

- 1 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-
- 2 135;
- 3 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137
- 4 or 15-6-157;
- 5 (c) allocations of electric power company property under 15-6-141;
- 6 (d) electrical generation facilities included in another class of property;
- 7 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;
- 8 (f) property owned by organizations providing telecommunications services and classified under
- 9 15-6-135;
- 10 (g) generation facilities that are exempt under 15-6-225;
- 11 (h) qualified data centers classified under 15-6-162; and
- 12 (i) property classified under 15-6-163.

13 (3) For the purposes of this section, the following definitions apply:

14 (a) (i) "Electrical generation facilities" means any combination of a physically connected generator
 15 or generators, associated prime movers, and other associated property, including appurtenant land and
 16 improvements and personal property, that are normally operated together to produce electric power. The term
 17 includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or
 18 gas turbines, turbine generators that are driven by falling water, or solar panel systems.

19 (ii) The term does not include electrical generation facilities used for noncommercial purposes or
 20 exclusively for agricultural purposes.

21 (iii) (A) The term also does not include a qualifying facility certified by the federal energy regulatory
 22 commission.

23 (B) To qualify for consideration of an abatement as allowed in 15-24-1402, the requesting entity
 24 must disclose, in writing, its intent to request certification as a qualifying facility to the governing body.

25 (C) If the intent is not disclosed and an abatement granted, abatement may be rescinded by the
 26 governing body.

27 (D) Certified qualifying facilities are classified under 15-6-134 and 15-6-138.

28 (iv) The term also does not include a facility that is owned and operated by a person not primarily

1 engaged in the generation or sale of electricity other than power from a small power production facility and
2 classified under 15-6-134 and 15-6-138.

3 (b) (i) "Fiber optic or coaxial cable" means any fiber optic or coaxial cable, including all capitalized
4 costs associated with installing and placing in service the fiber optic or coaxial cable, and other property that is
5 normally operated when installing and placing in service fiber optic or coaxial cable to deliver digital
6 communication and access to the internet.

7 (ii) The term does not include routers, head-end equipment, central office equipment and other
8 electronics, or hardware or software not directly associated with installing and placing in service fiber optic or
9 coaxial cable or the buildings used to house equipment.

10 (4) (a) Except as provided in subsection (4)(b), class thirteen property is taxed at 6% of its market
11 value.

12 (b) (i) Except as provided in subsection (4)(b)(ii), fiber optic or coaxial cable installed and placed in
13 service on or after July 1, 2021, is exempt from taxation for a period of 5 years starting from the date the fiber
14 optic or coaxial cable was placed in service, after which the property exemption is phased out at a rate of 20%
15 a year, with the property being assessed at 100% of its taxable value after a 10-year period. In order to
16 maintain the exemption, the owner of fiber optic or coaxial cable shall reinvest the tax savings from the
17 exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from
18 the date the owner first claimed the exemption provided for in this subsection (4)(b) without charging those
19 costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the
20 reinvested tax savings without charging those costs to the consumer must be equal to or greater than the value
21 of the tax savings received from the tax incentive.

22 (ii) Fiber optic or coaxial cable installed using federal funds received pursuant to Section 9901 of
23 the American Rescue Plan Act is not eligible for exemption from taxation under this section.

24 (iii) An entity that claims a tax exemption under this subsection (4)(b) shall maintain adequate
25 books and records demonstrating the investment the owner made when installing and placing in service fiber
26 optic or coaxial cable in Montana. The property owners shall make those records available to the department
27 for inspection upon request.

28 (5) (a) The property taxes exempted from taxation by subsection (4)(b) are subject to termination

1 or recapture if the department determines that the owner failed to install and place in service new coaxial or
2 fiber cable in Montana as provided in subsection (4)(b) or otherwise violates the provisions of this section.

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

8 (c) The recapture of abated taxes may be cancelled, in whole or in part, if the local governing body
9 determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control
10 of the taxpayer."
11

12 **Section 2.** Section 15-6-162, MCA, is amended to read:

13 **"15-6-162. Class seventeen property -- description -- taxable percentage.** (1) Class seventeen
14 property includes the land, improvements, furniture, fixtures, equipment, tools that are not exempt under 15-6-
15 219, and supplies except those included in class five under 15-6-135 of a qualified data center.

16 (2) (a) "Qualified data center" means the land, improvements, and personal property of a facility
17 designed or modified to house networked computers or equipment supporting computing, networking, or data
18 storage that is composed of one or more buildings under single ownership on contiguous parcels of land that
19 consist of at least:

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

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

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

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

27 (ii) power infrastructure for transformation, distribution, or management of electricity used for the
28 maintenance and operation of the facility, such as exterior dedicated business-owned substations, backup

1 power generation systems, battery systems, and related infrastructure; and

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

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

7 (4) The taxable property of a qualified data center must be locally assessed.

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

13 (ii) If the dedicated communications infrastructure:

14 (A) is in the county where the qualified data center is located as well as another contiguous county
15 or state, all the dedicated communications infrastructure of the qualified data center must be centrally
16 assessed; or

17 (B) is solely within the county where the qualified data center is located, all the dedicated
18 communications infrastructure must be locally assessed.

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

22 (c) Dedicated communications infrastructure provided for in this subsection (5) is taxed at the rate
23 provided for in subsection ~~(6)~~ (7) for a period of 15 years from the time that construction commences. After the
24 15-year period, the dedicated communications infrastructure is taxed as class thirteen property at the rate
25 provided in 15-6-156.

26 (6) (a) Subject to subsection (6)(b), for construction commencing after July 1, 2025, the property of
27 a qualified data center described in subsection (2) and the dedicated communications infrastructure property
28 described in subsection (5)(a)(i) must be locally assessed if it is located solely within one county.

1 (b) In order to qualify under subsection (6)(a), the property must exceed \$500 million of market
2 value.

3 (c) The property provided for in this subsection (6) is taxed at the rate provided for in subsection
4 (7) starting from the calendar year when the property exceeds the value threshold in subsection (6)(b).

5 ~~(6)~~ (7) Class seventeen property is taxed at 0.9% of its market value."
6

7 **Section 3.** Section 15-23-101, MCA, is amended to read:

8 **"15-23-101. Properties centrally assessed -- valuation cycles.** (1) ~~The~~ Except as provided in
9 subsection (3), the department shall centrally assess:

10 (a) the railroad transportation property of railroads and railroad car companies operating in more
11 than one county in the state or more than one state;

12 (b) property owned by a corporation or other person operating a single and continuous property
13 operated in more than one county or more than one state including but not limited to:

14 (i) telegraph, telephone, microwave, and electric power or transmission lines;

15 (ii) rate-regulated natural gas transmission or oil transmission pipelines regulated by the public
16 service commission or the federal energy regulatory commission;

17 (iii) common carrier pipelines as defined in 69-13-101;

18 (iv) natural gas distribution utilities;

19 (v) the gas gathering facilities specified in 15-6-138(5);

20 (vi) the dedicated communications infrastructure specified in 15-6-162(5)(a)(ii)(A);

21 (vii) canals, ditches, flumes, or like properties; and

22 (viii) if congress passes legislation that allows the state to tax property owned by an agency created
23 by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public
24 agency created by congress to transmit or distribute electrical energy produced at privately owned generating
25 facilities, not including rural electric cooperatives;

26 (c) all property of scheduled airlines;

27 (d) the net proceeds of mines, except bentonite mines;

28 (e) the gross proceeds of coal mines; and

1 (f) property described in subsections (1)(a) and (1)(b) that is subject to the provisions of Title 15,
2 chapter 24, part 12.

3 (2) Beginning January 1, 2024, the department shall centrally assess property as provided in this
4 subsection.

5 (a) The department shall centrally assess annually the property described in subsections (1)(a),
6 (1)(d), (1)(e), and (1)(f).

7 (b) The department shall centrally assess once every 2 years in odd-numbered years:

8 (i) telegraph, telephone, and microwave property described in subsection (1)(b)(i);

9 (ii) the allocations of centrally assessed telecommunication services companies; and

10 (iii) the property described in subsections (1)(b)(ii), (1)(b)(iii), (1)(b)(v), and (1)(b)(vi).

11 (c) The department shall centrally assess once every 2 years in even-numbered years:

12 (i) electric power or transmission lines property described in subsection (1)(b)(i);

13 (ii) property described in subsections (1)(b)(iv) and (1)(c); and

14 (iii) centrally assessed property not otherwise provided for in subsection (2)(a) or (2)(b).

15 (3) The department shall locally assess a qualified data center and dedicated communications
16 infrastructure property subject to taxation as class seventeen property in 15-6-162 if the property satisfies the
17 provisions of 15-6-162(4), 15-6-162(5)(a)(ii)(B), or 15-6-162(6)."

18

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

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

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- END -