

1 SENATE BILL NO. 540

2 INTRODUCED BY B. BEARD, S. VINTON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROPERTY TAXATION OF CLASS 17 PROPERTY;
5 PROVIDING FOR LOCAL ASSESSMENT OF CERTAIN DEDICATED COMMUNICATIONS
6 INFRASTRUCTURE PROPERTY; ~~PROVIDING THAT PROPERTY OF A CERTAIN VALUE REMAINS~~
7 ~~SUBJECT TO CLASS 17 PROPERTY TAXATION AND LOCAL ASSESSMENT; PROVIDING DEFINITIONS;~~
8 AMENDING SECTIONS 15-6-156, 15-6-162, AND 15-23-101, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 15-6-156, MCA, is amended to read:

14 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
15 subsections (2)(a) through (2)(i), class thirteen property includes:

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

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

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

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

25 (e) dedicated communications infrastructure described in 15-6-162~~(5)~~(4) for which construction
26 commenced after June 30, ~~2027~~ 2037, or for which the 15-year period provided for in 15-6-162~~(5)(e)~~(4)(C) has
27 expired.

28 (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 AND LOCAL DEDICATED COMMUNICATIONS INFRASTRUCTURE classified under
12 15-6-162; and
- 13 (i) property classified under 15-6-163.
- 14 (3) For the purposes of this section, the following definitions apply:
- 15 (a) (i) "Electrical generation facilities" means any combination of a physically connected generator
16 or generators, associated prime movers, and other associated property, including appurtenant land and
17 improvements and personal property, that are normally operated together to produce electric power. The term
18 includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or
19 gas turbines, turbine generators that are driven by falling water, or solar panel systems.
- 20 (ii) The term does not include electrical generation facilities used for noncommercial purposes or
21 exclusively for agricultural purposes.
- 22 (iii) (A) The term also does not include a qualifying facility certified by the federal energy regulatory
23 commission.
- 24 (B) To qualify for consideration of an abatement as allowed in 15-24-1402, the requesting entity
25 must disclose, in writing, its intent to request certification as a qualifying facility to the governing body.
- 26 (C) If the intent is not disclosed and an abatement granted, abatement may be rescinded by the
27 governing body.
- 28 (D) Certified qualifying facilities are classified under 15-6-134 and 15-6-138.

1 (iv) The term also does not include a facility that is owned and operated by a person not primarily
2 engaged in the generation or sale of electricity other than power from a small power production facility and
3 classified under 15-6-134 and 15-6-138.

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

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

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

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

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

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

1 (5) (a) The property taxes exempted from taxation by subsection (4)(b) are subject to termination
2 or recapture if the department determines that the owner failed to install and place in service new coaxial or
3 fiber cable in Montana as provided in subsection (4)(b) or otherwise violates the provisions of this section.

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

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

12

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

14 ~~"15-6-162. Class seventeen property -- description -- taxable percentage. (1) Class seventeen~~
15 ~~property includes the land, improvements, furniture, fixtures, equipment, tools that are not exempt under 15-6-~~
16 ~~219, and supplies except those included in class five under 15-6-135 of a qualified data center.~~

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

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

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

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

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

28 ~~(ii) power infrastructure for transformation, distribution, or management of electricity used for the~~

1 maintenance and operation of the facility, such as exterior dedicated business-owned substations, backup
2 power generation systems, battery systems, and related infrastructure; and

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

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

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

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

14 ~~(ii) — If the dedicated communications infrastructure :~~

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

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

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

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

27 ~~(6) — (a) Subject to subsection (6)(b), for construction commencing after July 1, 2025, the property of~~
28 ~~a qualified data center described in subsection (2) and the dedicated communications infrastructure property~~

1 ~~described in subsection (5)(a)(i) must be locally assessed if it is located solely within one county.~~

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

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

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

7

8 **SECTION 2.** SECTION 15-6-162, MCA, IS AMENDED TO READ:

9 **"15-6-162. Class seventeen property -- description -- taxable percentage.** (1) Class seventeen
10 property includes the land, improvements, furniture, fixtures, equipment, tools that are not exempt under 15-6-
11 219, and supplies except those included in class five under 15-6-135 of a qualified data center and local
12 dedicated communications infrastructure.

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

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

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

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

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

24 (ii) — power infrastructure for transformation, distribution, or management of electricity used for the
25 maintenance and operation of the facility, such as exterior dedicated business-owned substations, backup
26 power generation systems, battery systems, and related infrastructure; and

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

28 ~~(3)(2) During construction, property not meeting the requirements of subsection (2) a qualified data~~

1 center must be classified as class seventeen property if, prior to March 1 of the first tax year for which the
2 classification will be applied, the taxpayer certifies to the department that the facility under construction will
3 meet the requirements of ~~subsection (2)~~ a qualified data center within 2 years of the date of the certification.
4 The classification extends to local dedicated communications infrastructure.

5 ~~(4)(3)~~ The taxable property of a qualified data center, including local dedicated communications
6 infrastructure, must be locally assessed.

7 ~~(5)(4)~~ (a) Class seventeen property includes centrally assessed interstate or intrastate dedicated
8 communications infrastructure ~~that is owned or leased by the owner of a qualified data center and is composed~~
9 ~~of telecommunication or data lines, equipment, and services, including but not limited to copper or fiber optic~~
10 ~~lines or microwave, satellite, or other wireless communication systems.~~

11 (b) To qualify under this subsection ~~(5)~~ (4), construction of the owned or leased interstate or
12 intrastate communications infrastructure must commence after June 30, 2017, and before July 1, ~~2027~~ 2037,
13 and must satisfy the criteria of this section.

14 (c) Dedicated communications infrastructure provided for in this subsection ~~(5)~~ (4) is taxed at the
15 rate provided for in subsection (6) for a period of 15 years from the time that construction commences. After the
16 15-year period, the dedicated communications infrastructure is taxed as class thirteen property at the rate
17 provided in 15-6-156.

18 ~~(5)~~ The property owner shall report the installed costs of a qualified data center property, including
19 any dedicated communications infrastructure that is a part of the qualified data center, on a form prescribed by
20 the department by March 1 each year.

21 (6) Class seventeen property is taxed at 0.9% of its market value.

22 (7) For the purposes of this section, the following definitions apply:

23 (a) "Dedicated communications infrastructure" means telecommunication or data lines, equipment,
24 and services, including but not limited to copper or fiber optic lines or microwave, satellite, or other wireless
25 communication systems, that are owned or leased by the owner of a qualified data center.

26 (b) "Local dedicated communications infrastructure" means dedicated communications
27 infrastructure that is located in a single county and within the external boundary of the parcels where a qualified
28 data center is located.

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

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

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

10 (ii) The term includes but is not limited to:

11 (A) cooling systems, cooling towers, and other temperature infrastructure;

12 (B) power infrastructure for transformation, distribution, or management of electricity used for the
13 maintenance and operation of the facility, such as exterior dedicated business-owned substations, backup
14 power generation systems, battery systems, and related infrastructure; and

15 (C) any other equipment necessary for the maintenance and operation of the facility."

16

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

18 **"15-23-101. Properties centrally assessed -- valuation cycles.** (1) The Except as provided in
19 subsection (3), theTHE department shall centrally assess:

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

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

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

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

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

28 (iv) natural gas distribution utilities;

- 1 (v) the gas gathering facilities specified in 15-6-138(5);
- 2 (vi) the dedicated communications infrastructure specified in 15-6-162(5)(a)(ii)(A)(4);
- 3 (vii) canals, ditches, flumes, or like properties; and
- 4 (viii) if congress passes legislation that allows the state to tax property owned by an agency created
- 5 by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public
- 6 agency created by congress to transmit or distribute electrical energy produced at privately owned generating
- 7 facilities, not including rural electric cooperatives;

8 (c) all property of scheduled airlines;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

