

Amendment - 2nd Reading-yellow - Requested by: John Fitzpatrick - (H) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Megan Moore,

HB0424.002.004

1 HOUSE BILL NO. 424

2 INTRODUCED BY K. ZOLNIKOV, M. BERTOGLIO, D. FERN, D. HARVEY, M. REGIER, S. FITZPATRICK, B.

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4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROPERTY INCLUDED IN CLASS SEVENTEEN AS

6 DATA CENTER PROPERTY; EXTENDING THE TIMEFRAME IN WHICH THE DATA CENTER PROPERTY

7 MUST BE BUILT; REVISING OWNERSHIP REQUIREMENTS; PROVIDING REQUIREMENTS FOR THE

8 SALE OF POWER PRODUCED BY A DATA CENTER; PROVIDING A DEFINITION; AMENDING SECTIONS

9 15-6-156 AND 15-6-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE

10 APPLICABILITY DATE."

11

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

13

14 NEW SECTION. Section 1. Sale of power produced by data center. (1) Electrical power produced

15 by a generator owned by a qualified data center must be sold to a public utility or an electric cooperative at a

16 price equal to the cost of production.

- 17 (2) The cost of production includes:
- 18 (a) the capital cost of constructing the generator;
- 19 (b) depreciation;
- 20 (c) wages, salaries, and employee benefits of personnel located at the generator who operate and
- 21 maintain the facility;
- 22 (d) fuel;
- 23 (e) operating supplies and materials;
- 24 (f) utilities; and
- 25 (g) contracted services necessary to operate and maintain the generator.
- 26 (3) The cost of the production does not include:
- 27 (a) any cost for corporation administration;

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(b) travel; or

(c) corporate legal services.

(4) The public utility or electric cooperative has the right to annually audit the operating costs of the generator at the utility's sole expense. The public utility or electric cooperative has the right to dispute costs included in the cost of production and to appeal the charges to the commission. The commission shall determine whether the costs are reasonable.

(5) As used in this section:

(a) "Electric cooperative" has the same meaning as "cooperative" as provided in 35-18-102.

(b) "Public utility" has the same meaning as provided in 69-3-101.

(c) "Qualified data center" has the same meaning as provided in 15-6-162.

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:

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- 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.

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

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

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

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

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

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

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

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1 for inspection upon request.

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

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

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

13

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

15 **"15-6-162. Class seventeen property -- description -- taxable percentage.** (1) Class seventeen
16 property includes the land, improvements, furniture, fixtures, equipment, tools that are not exempt under 15-6-
17 219, and supplies except those included in class five under 15-6-135 of a qualified data center.

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

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

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

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- 1 (b) The term includes but is not limited to:
- 2 (i) cooling systems, cooling towers, and other temperature infrastructure;
- 3 (ii) power infrastructure for transformation, distribution, or management of electricity used for the
- 4 maintenance and operation of the facility, ~~such as~~ including:
- 5 (A) exterior dedicated business-owned substations;
- 6 (B) backup power generation systems, battery systems, and related infrastructure; and
- 7 (C) electrical generation and storage systems THAT COMMENCE OPERATION AFTER [THE EFFECTIVE
- 8 DATE OF THIS ACT] AND ARE located on the facility side of the utility meter and primarily used by a qualified data
- 9 center for onsite power, UNLESS THE QUALIFIED DATA CENTER HAS A DOCUMENTED HISTORY OF ALREADY BEING
- 10 SERVED BY AN ELECTRICAL GENERATION OR STORAGE SYSTEM LOCATED ON THE FACILITY SIDE OF THE UTILITY METER;
- 11 and
- 12 (iii) any other equipment necessary for the maintenance and operation of the facility.
- 13 (3) During construction, property not meeting the requirements of subsection (2) must be classified
- 14 as class seventeen property if, prior to March 1 of the first tax year for which the classification will be applied,
- 15 the taxpayer certifies to the department that the facility under construction will meet the requirements of
- 16 subsection (2) within 2 years of the date of the certification.
- 17 (4) The Except as provided in subsection (5), the taxable property of a qualified data center must
- 18 be locally assessed.
- 19 (5) (a) Class seventeen property includes centrally assessed interstate or intrastate dedicated
- 20 communications infrastructure that is owned or leased by the owner of a qualified data center and is composed
- 21 of telecommunication or data lines, equipment, and services, including but not limited to copper or fiber optic
- 22 lines or microwave, satellite, or other wireless communication systems.
- 23 (b) To qualify under this subsection (5), construction of the owned or leased interstate or intrastate
- 24 communications infrastructure must commence after June 30, 2017, and before July 1, ~~2027~~ 2037, and must
- 25 satisfy the criteria of this section.
- 26 (c) Dedicated communications infrastructure provided for in this subsection (5) is taxed at the rate
- 27 provided for in subsection (6) for a period of ~~45~~ 25 years from the time that construction commences. After the

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1 ~~15-year~~ 25-year period, the dedicated communications infrastructure is taxed as class thirteen property at the
2 rate provided in 15-6-156.

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

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

10 (6)(7) Glass Property identified as class seventeen property under this section, whether centrally or
11 locally assessed, is taxed at 0.9% of its market value."

13 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
14 integral part of Title 69, chapter 3, part 2, and the provisions of Title 69, chapter 3, part 2, apply to [section 1].

16 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

18 **NEW SECTION. Section 6. Retroactive applicability.** [This act] applies retroactively, within the
19 meaning of 1-2-109, to property tax years beginning after December 31, 2024.

20 - END -