

SENATE BILL NO. 359

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PROPERTY TAXATION AND CLASSIFICATION
OF QUALIFIED DATA CENTERS AND RELATED PROPERTY; CREATING A CLASS SEVENTEEN PROPERTY
TAX CLASSIFICATION FOR QUALIFIED DATA CENTERS; PROVIDING FOR LOCAL ASSESSMENT OF
QUALIFIED DATA CENTERS AND CENTRAL ASSESSMENT OF DEDICATED COMMUNICATIONS
INFRASTRUCTURE; PROVIDING A REDUCED TAX RATE FOR DEDICATED COMMUNICATIONS
INFRASTRUCTURE FOR A 15-YEAR PERIOD; PROVIDING FOR NEW OR EXPANDING INDUSTRY
PROPERTY TAX ABATEMENTS; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-6-156, 15-23-101,
AND 15-24-1401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, no large-scale commercial data centers currently operate in Montana; and

WHEREAS, Montana's current property tax classes and assessment methodologies prevent large data
center operators from locating in Montana due to valuation uncertainty and noncompetitive tax rates; and

WHEREAS, Montana needs to create a new property tax class and valuation certainty while expanding
existing abatements and incentives to allow local governments in Montana to compete against locations outside
Montana for data center investment.

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

~~NEW SECTION. Section 1. 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 and
its dedicated communications infrastructure.~~

~~(2) For the purposes of this section, the following definitions apply:~~

~~(a) "Dedicated communications infrastructure" means telecommunications or data lines, equipment, and
services, including but not limited to copper or fiber optic lines or microwave, satellite, or other wireless
communications systems, that are owned or leased by the owner of a qualified data center and devoted at least~~

1 ~~50% to data transfer associated with a qualified data center.~~

2 ~~—— (b) (i) "Qualified data center" means the land, improvements, and personal property of a facility designed~~
 3 ~~or modified to house networked computers or equipment supporting computing, networking, or data storage that~~
 4 ~~is:~~

5 ~~—— (A) composed of one or more buildings UNDER SINGLE OWNERSHIP ON CONTIGUOUS PARCELS OF LAND that~~
 6 ~~consist in the aggregate of at least 150,000 300,000 square feet, where the total cost of land, improvements,~~
 7 ~~personal property, and software is at least \$50 \$150 million; and~~

8 ~~—— (B) constructed after June 30, 2017.~~

9 ~~—— (ii) The term includes but is not limited to:~~

10 ~~—— (A) cooling systems, cooling towers, and other temperature infrastructure;~~

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

14 ~~—— (C) any other equipment necessary for the maintenance and operation of the facility.~~

15 ~~—— (3) During construction, property not meeting the requirements of subsections (2)(a) and (2)(b)(i)(A) must~~
 16 ~~be classified as class seventeen property if, prior to March 1 of the first tax year for which the classification will~~
 17 ~~be applied, the taxpayer certifies to the department that the facility under construction will meet the requirements~~
 18 ~~of subsections (2)(a) and (2)(b)(i)(A) within 2 years of the date of the certification.~~

19 ~~—— (4) The interstate or intercounty portions of dedicated communications infrastructure may be centrally~~
 20 ~~assessed, but the fair market value of dedicated communications infrastructure is the original cost less book~~
 21 ~~depreciation.~~

22 ~~—— (5) The taxable property of a qualified data center must be locally assessed.~~

23 ~~—— (6) Class seventeen property is taxed at 0.5% 0.9% of its market value.~~

24
 25 **NEW SECTION. SECTION 1. CLASS SEVENTEEN PROPERTY -- DESCRIPTION -- TAXABLE PERCENTAGE. (1)**

26 **CLASS SEVENTEEN PROPERTY INCLUDES THE LAND, IMPROVEMENTS, FURNITURE, FIXTURES, EQUIPMENT, TOOLS THAT**
 27 **ARE NOT EXEMPT UNDER 15-6-219, AND SUPPLIES EXCEPT THOSE INCLUDED IN CLASS FIVE UNDER 15-6-135 OF A**
 28 **QUALIFIED DATA CENTER.**

29 **(2) (A) "QUALIFIED DATA CENTER" MEANS THE LAND, IMPROVEMENTS, AND PERSONAL PROPERTY OF A FACILITY**
 30 **DESIGNED OR MODIFIED TO HOUSE NETWORKED COMPUTERS OR EQUIPMENT SUPPORTING COMPUTING, NETWORKING,**

1 OR DATA STORAGE THAT IS:

2 (I) COMPOSED OF ONE OR MORE BUILDINGS UNDER SINGLE OWNERSHIP ON CONTIGUOUS PARCELS OF LAND THAT
 3 CONSIST OF AT LEAST 300,000 SQUARE FEET, WHERE THE TOTAL COST OF LAND, IMPROVEMENTS, PERSONAL PROPERTY,
 4 AND SOFTWARE IS AT LEAST \$150 MILLION; AND

5 (II) COMMENCES CONSTRUCTION AFTER JUNE 30, 2017.

6 (B) THE TERM INCLUDES BUT IS NOT LIMITED TO:

7 (I) COOLING SYSTEMS, COOLING TOWERS, AND OTHER TEMPERATURE INFRASTRUCTURE;

8 (II) POWER INFRASTRUCTURE FOR TRANSFORMATION, DISTRIBUTION, OR MANAGEMENT OF ELECTRICITY USED
 9 FOR THE MAINTENANCE AND OPERATION OF THE FACILITY, SUCH AS EXTERIOR DEDICATED BUSINESS-OWNED
 10 SUBSTATIONS, BACKUP POWER GENERATION SYSTEMS, BATTERY SYSTEMS, AND RELATED INFRASTRUCTURE; AND

11 (III) ANY OTHER EQUIPMENT NECESSARY FOR THE MAINTENANCE AND OPERATION OF THE FACILITY.

12 (3) DURING CONSTRUCTION, PROPERTY NOT MEETING THE REQUIREMENTS OF SUBSECTION (2) MUST BE
 13 CLASSIFIED AS CLASS SEVENTEEN PROPERTY IF, PRIOR TO MARCH 1 OF THE FIRST TAX YEAR FOR WHICH THE
 14 CLASSIFICATION WILL BE APPLIED, THE TAXPAYER CERTIFIES TO THE DEPARTMENT THAT THE FACILITY UNDER
 15 CONSTRUCTION WILL MEET THE REQUIREMENTS OF SUBSECTION (2) WITHIN 2 YEARS OF THE DATE OF THE CERTIFICATION.

16 (4) THE TAXABLE PROPERTY OF A QUALIFIED DATA CENTER MUST BE LOCALLY ASSESSED.

17 (5) (A) CLASS SEVENTEEN PROPERTY INCLUDES CENTRALLY ASSESSED INTERSTATE OR INTRASTATE DEDICATED
 18 COMMUNICATIONS INFRASTRUCTURE THAT IS OWNED OR LEASED BY THE OWNER OF A QUALIFIED DATA CENTER AND IS
 19 COMPOSED OF TELECOMMUNICATION OR DATA LINES, EQUIPMENT, AND SERVICES, INCLUDING BUT NOT LIMITED TO COPPER
 20 OR FIBER OPTIC LINES OR MICROWAVE, SATELLITE, OR OTHER WIRELESS COMMUNICATION SYSTEMS.

21 (B) TO QUALIFY UNDER THIS SUBSECTION (5), CONSTRUCTION OF THE OWNED OR LEASED INTERSTATE OR
 22 INTRASTATE COMMUNICATIONS INFRASTRUCTURE MUST COMMENCE AFTER JUNE 30, 2017, AND BEFORE JULY 1, 2027,
 23 AND MUST SATISFY THE CRITERIA OF THIS SECTION.

24 (C) DEDICATED COMMUNICATIONS INFRASTRUCTURE PROVIDED FOR IN THIS SUBSECTION (5) IS TAXED AT THE
 25 RATE PROVIDED FOR IN SUBSECTION (6) FOR A PERIOD OF 15 YEARS FROM THE TIME THAT CONSTRUCTION COMMENCES.
 26 AFTER THE 15-YEAR PERIOD, THE DEDICATED COMMUNICATIONS INFRASTRUCTURE IS TAXED AS CLASS THIRTEEN
 27 PROPERTY AT THE RATE PROVIDED IN 15-6-156.

28 (6) CLASS SEVENTEEN PROPERTY IS TAXED AT 0.9% OF ITS MARKET VALUE.

29

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

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

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

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

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

11 (d) allocations of centrally assessed telecommunications services companies; AND

12 (E) DEDICATED COMMUNICATIONS INFRASTRUCTURE DESCRIBED IN [SECTION 1(5)] FOR WHICH CONSTRUCTION
 13 COMMENCED AFTER JUNE 30, 2027, OR FOR WHICH THE 15-YEAR PERIOD PROVIDED FOR IN [SECTION 1(5)(C)] HAS
 14 EXPIRED.

15 (2) Class thirteen property does not include:

16 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

17 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or
 18 15-6-157;

19 (c) allocations of electric power company property under 15-6-141;

20 (d) electrical generation facilities included in another class of property;

21 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;

22 (f) property owned by organizations providing telecommunications services and classified under
 23 15-6-135; ~~and~~

24 (g) generation facilities that are exempt under 15-6-225; and

25 (h) ~~property~~ QUALIFIED DATA CENTERS classified under [section 1].

26 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a
 27 physically connected generator or generators, associated prime movers, and other associated property, including
 28 appurtenant land and improvements and personal property, that are normally operated together to produce
 29 electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired
 30 steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

1 (b) The term does not include electrical generation facilities used for noncommercial purposes or
2 exclusively for agricultural purposes.

3 (c) The term also does not include a qualifying small power production facility, as that term is defined
4 in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of
5 electricity other than electric power from a small power production facility and classified under 15-6-134 and
6 15-6-138.

7 (4) Class thirteen property is taxed at 6% of its market value."
8

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

10 **"15-23-101. Properties centrally assessed.** The department shall centrally assess each year:

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

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

15 (a) telegraph, telephone, microwave, and electric power or transmission lines;

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

18 (c) common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C.
19 15102(2);

20 (d) natural gas distribution utilities;

21 (e) the gas gathering facilities specified in 15-6-138(5);

22 (f) the dedicated communications infrastructure specified in ~~section 1(2)(a)~~ [SECTION 1(5)]:

23 ~~(f)~~(g) canals, ditches, flumes, or like properties; and

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

28 (3) all property of scheduled airlines;

29 (4) the net proceeds of mines, except bentonite mines;

30 (5) the gross proceeds of coal mines; and

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

3

4 **Section 4.** Section 15-24-1401, MCA, is amended to read:

5 **"15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires
6 otherwise:

7 (1) "Expansion" means that the industry has added after July 1, 1987, at least \$50,000 worth of qualifying
8 improvements or modernized processes to its property within the same jurisdiction either in the first tax year in
9 which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

10 (2) "Industry" includes but is not limited to a firm that:

11 (a) engages in the mechanical or chemical transformation of materials or substances into products in
12 the manner defined as manufacturing in the North American Industry Classification System Manual prepared by
13 the United States office of management and budget;

14 (b) engages in the extraction or harvesting of minerals, ore, or forestry products;

15 (c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and
16 forestry products;

17 (d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50%
18 or more of the industry's gross sales or receipts are earned from outside the state;

19 (e) earns 50% or more of its annual gross income from out-of-state sales; ~~or~~

20 (f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an
21 alternative renewable energy source as defined in 15-6-225; or

22 (g) operates a qualified data center or dedicated communications infrastructure classified under [section
23 1].

24 (3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in
25 15-24-1402(2) and has invested after July 1, 1987, at least \$125,000 worth of qualifying improvements or
26 modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402
27 are to be received or in the preceding tax year. New industry does not include property treated as new industrial
28 property under 15-6-135.

29 (4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable
30 value under 15-24-1402 and this section."

