

## SENATE BILL NO. 172

INTRODUCED BY B. LAKE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CLASSIFYING CERTAIN ENERGY STORAGE FACILITIES AS  
5 CLASS FOURTEEN PROPERTY; EXEMPTING CLASS FOURTEEN ENERGY STORAGE FACILITIES FROM  
6 THE PROVISIONS OF THE MAJOR FACILITY SITING ACT; AMENDING SECTIONS 15-6-137, 15-6-141,  
7 15-6-156, 15-6-157, 75-20-104, AND 75-20-201, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

10  
11 **Section 1.** Section 15-6-137, MCA, is amended to read:  
12 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Except as provided in  
13 subsection (2), class seven property includes:

14 (a) all property owned by cooperative rural electrical associations that serve less than 95% of the  
15 electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties  
16 described in 15-6-141~~(1)(a)~~(1)(c);

17 (b) electric transformers and meters; electric light and power substation machinery; natural gas  
18 measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally  
19 assessed public utilities; and tools used in the repair and maintenance of this property.

20 (2) Class seven property does not include wind generation facilities, ~~and~~ biomass generation facilities,  
21 and energy storage facilities classified under 15-6-157.

22 (3) Class seven property is taxed at 8% of its market value."  
23

24 **Section 2.** Section 15-6-141, MCA, is amended to read:  
25 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property includes:

26 (a) centrally assessed allocations of an electric power company or centrally assessed allocations of an  
27 electric power company that owns or operates transmission or distribution facilities or both; ~~including;~~

28 (b) if congress passes legislation that allows the state to tax property owned by an agency created by  
29 congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by  
30 a public agency created by congress to transmit or distribute electrical energy produced at privately owned

1 generating facilities, not including rural electric cooperatives; ~~However,~~  
 2 ~~(c)~~ rural electric cooperatives' property, except wind generation facilities, ~~and~~ biomass generation  
 3 facilities, ~~and energy storage facilities~~ classified under 15-6-157 ~~and property used for headquarters, office, shop,~~  
 4 ~~or other similar facilities~~, used for the sole purpose of serving customers representing less than 95% of the  
 5 electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which  
 6 a centrally assessed electric power company also owns property or serving an incorporated municipality with a  
 7 population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998,  
 8 received service from the facilities of an electric cooperative; ~~is included. For purposes of this subsection (1)(a),~~  
 9 ~~"property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.~~

10 ~~(b)~~(d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas  
 11 transmission or oil transmission pipelines regulated by either the public service commission or the federal energy  
 12 regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49  
 13 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and

14 ~~(e)~~(e) centrally assessed companies' allocations except:

- 15 (i) electrical generation facilities classified under 15-6-156;
  - 16 (ii) all property classified under 15-6-157;
  - 17 (iii) all property classified under 15-6-158 and 15-6-159;
  - 18 (iv) property owned by cooperative rural electric and cooperative rural telephone associations and  
 19 classified under 15-6-135;
  - 20 (v) property owned by organizations providing telephone communications to rural areas and classified  
 21 under 15-6-135;
  - 22 (vi) railroad transportation property included in 15-6-145;
  - 23 (vii) airline transportation property included in 15-6-145; and
  - 24 (viii) telecommunications property included in 15-6-156.
- 25 (2) Class nine property is taxed at 12% of market value."  
 26

27 **Section 3.** Section 15-6-156, MCA, is amended to read:

28 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in  
 29 subsections (2)(a) through (2)(g), class thirteen property includes:

30 (a) electrical generation facilities, except wind generation facilities, ~~and~~ biomass generation facilities, ~~and~~

- 1 energy storage facilities classified under 15-6-157, of a centrally assessed electric power company;
- 2 (b) electrical generation facilities, except wind generation facilities, ~~and~~ biomass generation facilities, and
- 3 energy storage facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an
- 4 entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;
- 5 (c) noncentrally assessed electrical generation facilities, except wind generation facilities, ~~and~~ biomass
- 6 generation facilities, and energy storage facilities classified under 15-6-157, owned or operated by any electrical
- 7 energy producer; and
- 8 (d) allocations of centrally assessed telecommunications services companies.
- 9 (2) Class thirteen property does not include:
- 10 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;
- 11 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or
- 12 15-6-157;
- 13 (c) allocations of electric power company property under 15-6-141;
- 14 (d) electrical generation facilities included in another class of property;
- 15 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;
- 16 (f) property owned by organizations providing telecommunications services and classified under
- 17 15-6-135; and
- 18 (g) generation facilities that are exempt under 15-6-225.
- 19 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a
- 20 physically connected generator or generators, associated prime movers, and other associated property, including
- 21 appurtenant land and improvements and personal property, that are normally operated together to produce
- 22 electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired
- 23 steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.
- 24 (b) The term does not include electrical generation facilities used for noncommercial purposes or
- 25 exclusively for agricultural purposes.
- 26 (c) The term also does not include a qualifying small power production facility, as that term is defined
- 27 in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of
- 28 electricity other than electric power from a small power production facility and classified under 15-6-134 and
- 29 15-6-138.
- 30 (4) Class thirteen property is taxed at 6% of its market value."

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2 **Section 4.** Section 15-6-157, MCA, is amended to read:

3 **"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property  
4 includes:

5 (a) wind generation facilities of a centrally assessed electric power company;

6 (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified  
7 as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

8 (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;

9 (d) wind generation facilities owned or operated by cooperative rural electric associations described  
10 under 15-6-137;

11 (e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed  
12 electric power company;

13 (f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an  
14 exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

15 (g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned  
16 or operated by any electrical energy producer;

17 (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by  
18 cooperative rural electric associations described under 15-6-137;

19 (i) energy storage facilities of a centrally assessed electric power company;

20 (j) energy storage facilities owned or operated by an exempt wholesale generator or an entity certified  
21 as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

22 (k) noncentrally assessed energy storage facilities owned or operated by any electrical energy producer;

23 (l) energy storage facilities owned or operated by cooperative rural electrical associations described  
24 under 15-6-137;

25 ~~(m)~~ all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced  
26 construction after June 1, 2007;

27 ~~(n)~~ all property of a biogas production facility, as defined in 15-24-3102, that has commenced  
28 construction after June 1, 2007;

29 ~~(o)~~ all property of a biomass gasification facility, as defined in 15-24-3102;

30 ~~(p)~~ all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection

1 ~~(1)(e)~~ (1)(s) of this section, that sequesters carbon dioxide;

2 ~~(m)~~(q) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced  
3 construction after June 1, 2007;

4 ~~(n)~~(r) all property of a geothermal facility, as defined in 15-24-3102;

5 ~~(o)~~(s) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that  
6 sequesters carbon dioxide, as required by 15-24-3111(4)(c);

7 ~~(p)~~(t) all property or a portion of the property of a renewable energy manufacturing facility, as defined  
8 in 15-24-3102, that has commenced construction after June 1, 2007;

9 ~~(q)~~(u) all property of a natural gas combined cycle facility;

10 ~~(r)~~(v) equipment that is used to capture and to prepare for transport carbon dioxide that will be  
11 sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at  
12 coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that  
13 commence construction after December 31, 2007;

14 ~~(s)~~(w) high-voltage direct-current transmission lines and associated equipment and structures, including  
15 converter stations and interconnections, other than property classified under 15-6-159, that:

16 (i) originate in Montana with a converter station located in Montana east of the continental divide and  
17 that are constructed after July 1, 2007;

18 (ii) are certified under the Montana Major Facility Siting Act; and

19 (iii) provide access to energy markets for Montana electrical generation facilities listed in this section that  
20 commenced construction after June 1, 2007;

21 ~~(t)~~(x) all property of electric transmission lines, including substations, that originate at facilities specified  
22 in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this  
23 subsection (1) and terminating at an existing transmission line or substation that has commenced construction  
24 after June 1, 2007;

25 ~~(u)~~(y) the qualified portion of an alternating current transmission line and its associated equipment and  
26 structures, including interconnections, that has commenced construction after June 1, 2007.

27 (2) (a) The qualified portion of an alternating current transmission line in subsection ~~(1)(u)~~ (1)(y) is that  
28 percentage, as determined by the department of environmental quality, of rated transmission capacity of the line  
29 contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1)  
30 that are located in Montana.

1 (b) The department of revenue shall classify the total value of an alternating current transmission line  
2 in accordance with the determination made by the department of environmental quality pursuant to subsection  
3 (2)(a).

4 (c) The owner of property described under this subsection (2) shall disclose the location of the generation  
5 facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for  
6 transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not  
7 required to disclose financial terms and conditions of contracts beyond that needed for classification.

8 (3) Class fourteen property does not include facilities:

9 (a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was  
10 not paid during the construction phase; or

11 (b) that are exempt under 15-6-225.

12 (4) For the purposes of this section, the following definitions apply:

13 (a) "Biomass generation facilities" means any combination of boilers, generators, associated prime  
14 movers, and other associated property, including appurtenant land and improvements and personal property, that  
15 are normally operated together to produce electric power from the burning of organic material other than coal,  
16 petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas  
17 or other fuels allowed for ignition and to stabilize boiler operations.

18 (b) (i) "Compressed air energy storage" means the conversion of electrical energy to compressed air  
19 by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the  
20 earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas  
21 reservoirs, abandoned mines, and mined rock cavities.

22 (ii) The term includes the conversion of compressed air into electrical energy by using turboexpander  
23 equipment and electrical generation equipment.

24 (c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy  
25 storage property, regenerative fuel cells, batteries, superconducting magnetic energy storage property, flywheel  
26 storage property, and other energy storage property, or any combination of energy storage property and other  
27 associated property, including appurtenant land and improvements and personal property, that is directly  
28 connected to the electrical power grid and that is designed to:

29 (A) receive and store electrical energy as potential energy; and

30 (B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity

1 services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid,  
 2 including but not limited to frequency regulation ancillary services and frequency control.

3 (ii) The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has  
 4 a power rating of at least 1 megawatt for a period of at least 0.25 hour.

5 (d) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel.  
 6 Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated  
 7 electric generator.

8 (e) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy  
 9 by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through  
 10 hydraulic turbines and generate electrical energy.

11 (f) "Regenerative fuel cell" means a device that produces hydrogen and oxygen from electricity and water  
 12 and alternately produces electrical energy and water from stored hydrogen and oxygen.

13 (g) "Superconducting magnetic energy storage" means a system that stores electrical energy in a  
 14 magnetic field created by the flow of direct current electricity in a coil of cryogenically cooled, superconducting  
 15 material. The stored electrical energy from the system is available almost instantaneously for the electrical power  
 16 grid.

17 ~~(b)~~(h) "Wind generation facilities" means any combination of a physically connected wind turbine or  
 18 turbines, associated prime movers, and other associated property, including appurtenant land and improvements  
 19 and personal property, that are normally operated together to produce electric power from wind.

20 (5) (a) The department of environmental quality shall determine whether to certify that a transmission  
 21 line meets the criteria of subsection ~~(1)(s)~~ (1)(w), ~~(1)(t)~~ (1)(x), or ~~(1)(u)~~ (1)(y), as applicable, based on an  
 22 application provided for in 15-24-3112. The department of environmental quality shall review the certification 10  
 23 years after the line is operational, and if the property no longer meets the requirements of subsection ~~(1)(s)~~ (1)(w),  
 24 ~~(1)(t)~~ (1)(x), or ~~(1)(u)~~ (1)(y), the certification must be revoked.

25 (b) If the department of revenue finds that a certification previously granted was based on an application  
 26 that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the  
 27 application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time  
 28 that the certification was in effect.

29 (6) Class fourteen property is taxed at 3% of its market value."  
 30

1           **Section 5.** Section 75-20-104, MCA, is amended to read:

2           **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions  
3 apply:

4           (1) "Addition thereto" means the installation of new machinery and equipment that would significantly  
5 change the conditions under which the facility is operated.

6           (2) "Application" means an application for a certificate submitted in accordance with this chapter and the  
7 rules adopted under this chapter.

8           (3) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,  
9 diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the  
10 delivery of the energy form or product produced by a facility.

11           (b) The term does not include a transmission substation, a switchyard, voltage support, or other control  
12 equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

13           (4) "Board" means the board of environmental review provided for in 2-15-3502.

14           (5) "Certificate" means the certificate of compliance issued by the department under this chapter that  
15 is required for the construction or operation of a facility.

16           (6) "Commence to construct" means:

17           (a) any clearing of land, excavation, construction, or other action that would affect the environment of  
18 the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility  
19 purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

20           (b) the fracturing of underground formations by any means if the activity is related to the possible future  
21 development of a gasification facility or a facility employing geothermal resources but does not include the  
22 gathering of geological data by boring of test holes or other underground exploration, investigation, or  
23 experimentation;

24           (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or  
25 rights-of-way upon or over which a facility may be constructed;

26           (d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including  
27 upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal  
28 maintenance or repair of an existing facility.

29           (7) "Department" means the department of environmental quality provided for in 2-15-3501.

30           (8) "Facility" means:



1 (a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts,  
2 except that the term:

3 (i) does not include an electric transmission line and associated facilities of a design capacity of 230  
4 kilovolts or less and 10 miles or less in length;

5 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less  
6 than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or  
7 options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property  
8 along the centerline;

9 (iii) does not include an electric transmission line that is less than 150 miles in length and extends from  
10 an electrical generation facility, as defined in 15-24-3001(4), or a wind generation facility, ~~or~~ biomass generation  
11 facility, or energy storage facility, as defined in 15-6-157, to the point at which the transmission line connects to  
12 a regional transmission grid at an existing transmission substation or other facility for which the person planning  
13 to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of  
14 the owners who collectively own more than 75% of the property along the centerline;

15 (iv) does not include an upgrade to an existing transmission line to increase that line's capacity to less  
16 than or equal to 230 kilovolts, including construction outside the existing easement or right-of-way. Except for a  
17 newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly  
18 acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection  
19 (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission  
20 right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited  
21 areas.

22 (v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

23 (vi) does not include an energy storage facility, as defined in 15-6-157;

24 (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter  
25 and 50 miles in length, and associated facilities, except that the term does not include:

26 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural  
27 crops or for drinking water; or

28 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person  
29 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more  
30 than 75% of the owners who collectively own more than 75% of the property along the centerline;

1 (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter  
2 and 30 miles in length, and associated facilities used to transport coal suspended in water;

3 (c) any use of geothermal resources, including the use of underground space in existence or to be  
4 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived  
5 power equivalent to 50 megawatts or more or any addition thereto, except pollution control facilities approved by  
6 the department and added to an existing plant, except that the term does not include a compressed air energy  
7 storage facility, as defined in 15-6-157; or

8 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts  
9 of hydroelectric power or more or any addition thereto.

10 (9) "Person" means any individual, group, firm, partnership, corporation, limited liability company,  
11 cooperative, association, government subdivision, government agency, local government, or other organization  
12 or entity.

13 (10) "Sensitive areas" means government-designated areas that have been recognized for their  
14 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national  
15 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and  
16 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national  
17 parks, monuments, or historic sites.

18 (11) "Transmission substation" means any structure, device, or equipment assemblage, commonly  
19 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or  
20 operation of a proposed transmission line.

21 (12) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions  
22 including but not limited to:

23 (a) installing larger conductors;

24 (b) replacing insulators;

25 (c) replacing pole or tower structures; or

26 (d) changing structure spacing, design, or guying.

27 (13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or  
28 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

29

30 **Section 6.** Section 75-20-201, MCA, is amended to read:

1           **"75-20-201. Certificate required -- operation in conformance -- certificate for nuclear facility --**  
2 **applicability to federal facilities.** (1) Except for a facility under diligent onsite physical construction or in

3 operation on January 1, 1973, a person may not commence to construct a facility in the state without first applying  
4 for and obtaining a certificate of compliance issued with respect to the facility by the department.

5           (2) A facility with respect to which a certificate is issued may not be constructed, operated, or maintained  
6 except in conformity with the certificate and any terms, conditions, and modifications contained within the  
7 certification.

8           (3) A certificate may only be issued pursuant to this chapter.

9           (4) If the department decides to issue a certificate for a nuclear facility, it shall report the recommendation  
10 to the applicant and may not issue the certificate until the recommendation is approved by a majority of the voters  
11 in a statewide election called by initiative or referendum according to the laws of this state.

12           (5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant  
13 to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this  
14 chapter. The construction or installation of an energy storage facility, as defined in 15-6-157, is not considered  
15 an energy-related project under the provisions of this chapter. A certificate for the construction or installation of  
16 an energy storage facility is not required under this chapter.

17           (6) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all  
18 facilities over which an agency of the federal government has jurisdiction.

19           (7) All judicial challenges of certificates for projects with a project cost, as determined by the court, of  
20 more than \$1 million must have precedence over any civil cause of a different nature pending in that court. If the  
21 court determines that the challenge was without merit or was for an improper purpose, such as to harass, to  
22 cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees  
23 and costs incurred in defending the action."

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25           NEW SECTION. **Section 7. Applicability.** [Sections 1 through 4] apply to tax years beginning after  
26 December 31, 2011.

27

- END -