

## 1 SENATE BILL NO. 274

2 INTRODUCED BY B. LAKE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF CERTAIN HYDROELECTRIC  
5 FACILITIES; PROVIDING FOR THE PROPERTY TAX VALUATION AND CLASSIFICATION OF CAPACITY  
6 EXPANSIONS TO EXISTING HYDROELECTRIC FACILITIES; PROVIDING THAT THE PROPERTY  
7 PRODUCES RENEWABLE ENERGY FOR PURPOSES RELATING TO ENERGY PRODUCTION OR  
8 DEVELOPMENT; AMENDING SECTIONS 15-6-156, 15-6-157, 15-24-3102, AND 15-24-3111, MCA; AND  
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

10

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

12

13 NEW SECTION. **Section 1. Valuation of capacity expansion of hydroelectric facility.** (1) As used  
14 in this section, "capacity expansion" means that portion of an existing hydroelectric facility's property that has  
15 been added to increase the facility's capacity to generate electricity.

16 (2) A taxpayer shall provide the department with the original cost of all added land, site preparation,  
17 fixtures, machinery, buildings, and equipment and all construction costs that are associated with a capacity  
18 expansion. The taxpayer shall annually provide the department with any additions and deletions to these costs  
19 and the accrued depreciation of the property. The taxpayer shall also provide the full capacity of the facility both  
20 prior to a capacity expansion and after the capacity expansion and the full capacity of generation that is not  
21 replaced.

22 (3) The department shall determine the market value of capacity expansion property and equipment by  
23 multiplying the depreciated cost by a market-to-book ratio to determine the value of the class fourteen property  
24 under 15-6-157. The market-to-book ratio is determined by dividing the system value after deduction of the  
25 exempt intangible personal property by the system net book value after deduction of the exempt intangible  
26 personal property.

27 (4) If the capacity expansion replaces the existing full capacity of a facility, the department shall  
28 determine the market value of the capacity expansion property and equipment by reducing the depreciated cost  
29 of the expansion by the depreciated cost of the property that is replaced and multiplying it by the market-to-book  
30 ratio determined in subsection (3).

1 (5) If the capacity expansion replaces part of the existing capacity of a facility, the department shall  
2 determine market value of the capacity expansion property and equipment as provided in subsection (4). To  
3 determine the depreciated cost of the property that is replaced, the department shall multiply the depreciated cost  
4 of the facility prior to capacity expansion by the ratio of the full capacity of the generating property that is replaced  
5 by the full capacity of the facility prior to expansion.

6 (6) During construction, the capacity expansion property is considered replacement construction work  
7 in progress and may not be included in the market value of the facility until it is placed in commercial operation.

8

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

10 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in  
11 subsections (2)(a) through (2)(g), class thirteen property includes:

12 (a) electrical generation facilities, except wind generation facilities, capacity expansions to existing  
13 hydroelectric facilities, and biomass generation facilities classified under 15-6-157, of a centrally assessed electric  
14 power company;

15 (b) electrical generation facilities, except wind generation facilities, capacity expansions to existing  
16 hydroelectric facilities, and biomass generation facilities classified under 15-6-157, owned or operated by an  
17 exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

18 (c) noncentrally assessed electrical generation facilities, except wind generation facilities, capacity  
19 expansions to existing hydroelectric facilities, and biomass generation facilities classified under 15-6-157, owned  
20 or operated by any electrical energy producer; and

21 (d) allocations of centrally assessed telecommunications services companies.

22 (2) Class thirteen property does not include:

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

24 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or  
25 15-6-157;

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

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

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

29 (f) property owned by organizations providing telecommunications services and classified under  
30 15-6-135; and

1 (g) generation facilities that are exempt under 15-6-225.

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

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

9 (c) The term also does not include a qualifying small power production facility, as that term is defined  
10 in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of  
11 electricity other than electric power from a small power production facility and classified under 15-6-134 and  
12 15-6-138.

13 (4) Class thirteen property is taxed at 6% of its market value."  
14

15 **Section 3.** Section 15-6-157, MCA, is amended to read:

16 **"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property  
17 includes:

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

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

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

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

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

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

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

30 (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by

- 1 cooperative rural electric associations described under 15-6-137;
- 2 (i) all property of a biodiesel production facility, as defined in 15-24-3102, that has commenced  
3 construction after June 1, 2007;
- 4 (j) all property of a biogas production facility, as defined in 15-24-3102, that has commenced construction  
5 after June 1, 2007;
- 6 (k) all property of a biomass gasification facility, as defined in 15-24-3102;
- 7 (l) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection  
8 (1)(o) of this section, that sequesters carbon dioxide;
- 9 (m) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced  
10 construction after June 1, 2007;
- 11 (n) all property of a geothermal facility, as defined in 15-24-3102;
- 12 (o) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that  
13 sequesters carbon dioxide, as required by 15-24-3111(4)(c);
- 14 (p) all property or a portion of the property of a renewable energy manufacturing facility, as defined in  
15 15-24-3102, that has commenced construction after June 1, 2007;
- 16 (q) all property of a natural gas combined cycle facility;
- 17 (r) equipment that is used to capture and to prepare for transport carbon dioxide that will be sequestered  
18 or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at coal combustion  
19 plants of the types that are generally in commercial use as of December 31, 2007, that commence construction  
20 after December 31, 2007;
- 21 (s) high-voltage direct-current transmission lines and associated equipment and structures, including  
22 converter stations and interconnections, other than property classified under 15-6-159, that:
- 23 (i) originate in Montana with a converter station located in Montana east of the continental divide and  
24 that are constructed after July 1, 2007;
- 25 (ii) are certified under the Montana Major Facility Siting Act; and
- 26 (iii) provide access to energy markets for Montana electrical generation facilities listed in this section that  
27 commenced construction after June 1, 2007;
- 28 (t) all property of electric transmission lines, including substations, that originate at facilities specified in  
29 this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this  
30 subsection (1) and terminating at an existing transmission line or substation that has commenced construction

1 after June 1, 2007;

2 (u) the qualified portion of an alternating current transmission line and its associated equipment and  
3 structures, including interconnections, that has commenced construction after June 1, 2007;

4 (v) all property that is a part of a capacity expansion to an existing hydroelectric facility as provided in  
5 [section 1].

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

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

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

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

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

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

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

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

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

30 (5) (a) The department of environmental quality shall determine whether to certify that a transmission

1 line meets the criteria of subsection (1)(s), (1)(t), or (1)(u), as applicable, based on an application provided for  
2 in 15-24-3112. The department of environmental quality shall review the certification 10 years after the line is  
3 operational, and if the property no longer meets the requirements of subsection (1)(s), (1)(t), or (1)(u), the  
4 certification must be revoked.

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

9 (6) Class fourteen property is taxed at 3% of its market value."  
10

11 **Section 4.** Section 15-24-3102, MCA, is amended to read:

12 **"15-24-3102. Definitions.** As used in this part, unless the context requires otherwise, the following  
13 definitions apply:

14 (1) "Biodiesel" has the meaning provided in 15-70-301.

15 (2) "Biodiesel production facility" means improvements and personal property used for the production  
16 and onsite storage of biodiesel.

17 (3) "Biogas" means methane gas produced through controlled biochemical processes in which bacteria  
18 digest animal, municipal, or other organic wastes in an oxygen-free environment. The term includes naturally  
19 occurring methane gas formed underground in landfills.

20 (4) "Biogas production facility" means improvements and personal property used for the production of  
21 biogas and the generation of electricity at the facility.

22 (5) "Biomass" means any renewable organic matter, including dedicated energy crops and trees,  
23 agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic  
24 plants, animal wastes, municipal wastes, and other organic waste materials.

25 (6) "Biomass gasification" means a technology that uses a thermochemical process to convert biomass  
26 into a low-Btu or medium-Btu gas for the purpose of producing electricity, methane gas, transportation fuels, or  
27 chemicals. The technology includes the pretreatment of biomass feedstock involving drying, pulverizing, and  
28 screening.

29 (7) "Biomass gasification facility" means improvements and personal property used for the production  
30 of fuel or chemicals and the generation of electricity from biomass at the facility.

1 (8) "Carbon sequestration" means the long-term storage of carbon dioxide from a plant or facility that  
2 produces or captures carbon dioxide, as defined in 15-6-158, in geologic formations, including but not limited to  
3 deep saline formations, basalt or oil shale formations, depleted oil and gas reservoirs, unminable coal beds, and  
4 closed-loop enhanced oil recovery operations.

5 (9) "Clean advanced coal research and development equipment" means equipment used primarily for  
6 research and development of emerging methods for pollution control, carbon capture, and carbon sequestration.  
7 The term includes equipment used for research and development of effective and efficient removal of various  
8 pollutants and the capture, storage, transportation, compression, and injection of carbon dioxide from coal  
9 combustion utility and industrial facilities and advanced coal conversion facilities.

10 (10) "Coal gasification" means a process that converts coal into a synthesis gas composed of carbon  
11 monoxide, hydrogen, and other gases. The coal gasification process includes the reaction of coal feedstock,  
12 prepared in either a dry or slurried form, with steam and oxygen at high temperature and pressure in a reducing  
13 atmosphere. The synthesis gas is then used to produce electricity, liquid fuels, methane gas, or chemicals.

14 (11) "Coal gasification facility" means improvements and personal property used for coal gasification that  
15 are used for the production of fuel or chemicals, the generation of electricity, or any combination of those things  
16 at the facility. The term includes a coal-to-liquid facility or an integrated gasification combined cycle facility.

17 (12) "Coal-to-liquid facility" means improvements and personal property used for the production of  
18 synthetic liquid fuels from coal. The term includes a facility that uses the Fischer-Tropsch process or other  
19 processes to convert synthesis gas produced by coal gasification into liquid fuel.

20 (13) "Commencement of construction" means initiation of onsite fabrication, erection, or installation of,  
21 but not limited to, the following:

- 22 (a) building supports or foundations;
- 23 (b) laying of underground pipework; or
- 24 (c) construction of storage structures.

25 (14) "Ethanol" means nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR,  
26 parts 20 and 21, and that meets the standards for ethanol adopted pursuant to 82-15-103.

27 (15) "Ethanol production facility" means improvements and personal property used for the production and  
28 onsite storage of ethanol made from cellulose or other nonfoodstuff materials.

29 (16) "Geothermal facility" means improvements and personal property used for the production of  
30 electricity from geothermal sources.

1 (17) "Integrated gasification combined cycle facility" means improvements and personal property of an  
2 electrical generation facility that uses a coal gasification process and routes synthesis gas to a combustion turbine  
3 to generate electricity and captures the heat from the combustion to drive a steam turbine to produce more  
4 electricity. The facility may also use incidental amounts of natural gas or other fuels in the combustion turbine.

5 (18) "Renewable energy" includes the following:

6 (a) solar energy;

7 (b) wind energy;

8 (c) geothermal energy;

9 (d) energy from the conversion of biomass;

10 (e) energy from biogas;

11 (f) energy from fuel cells that do not require a petroleum-based fuel;

12 (g) energy from waste heat; ~~and~~

13 (h) cellulosic ethanol; and

14 (i) energy from capacity expansions to existing hydroelectric facilities.

15 (19) (a) "Renewable energy manufacturing facility" means improvements and personal property used by  
16 a facility with its principal business being the manufacturing of material, component parts, systems, or similar  
17 equipment for use in facilities that convert renewable energy into forms of energy useful to people, including  
18 electricity. The term includes facilities for manufacturing of electric motor vehicles or hybrid electric motor  
19 vehicles.

20 (b) For purposes of subsection (19)(a), "principal business" means a renewable energy manufacturing  
21 facility with at least 50%, by value, of its annual production suitable for sale as renewable energy material,  
22 component parts, systems, or similar equipment.

23 (20) "Renewable energy research and development equipment" means equipment used primarily for  
24 research and development of the efficient use of renewable energy sources. The term includes equipment used  
25 for research and development of electric motor vehicles or hybrid electric motor vehicles."  
26

27 **Section 5.** Section 15-24-3111, MCA, is amended to read:

28 **"15-24-3111. Energy production or development -- tax abatement -- eligibility.** (1) A facility listed  
29 in subsection (3), clean advanced coal research and development equipment, and renewable energy research  
30 and development equipment may qualify for an abatement of property tax liability pursuant to this part.



1 (2) (a) If the abatement is granted for a facility listed in subsection (3), the qualifying facility must be  
2 assessed at 50% of its taxable value for the qualifying period.

3 (b) If the abatement is granted for clean advanced coal research and development equipment or  
4 renewable energy research and development equipment, the qualifying equipment, up to the first \$1 million of  
5 the value of equipment at a facility, must be assessed at 50% of its taxable value for the qualifying period. There  
6 is no abatement for any portion of the value of equipment at a facility in excess of \$1 million.

7 (c) The abatement applies to all mills levied against the qualifying facility or equipment.

8 (3) Subject to subsections (4) and (5), the following facilities or property may qualify for the abatement  
9 allowed under this part:

10 (a) biodiesel production facilities;

11 (b) biogas production facilities;

12 (c) biomass gasification facilities;

13 (d) coal gasification facilities for which carbon dioxide from the coal gasification process is sequestered;

14 (e) ethanol production facilities;

15 (f) geothermal facilities;

16 (g) renewable energy manufacturing facilities;

17 (h) clean advanced coal research and development equipment and renewable energy research and  
18 development equipment;

19 (i) a natural gas combined cycle facility that offsets a portion of the carbon dioxide produced through  
20 carbon credit offsets;

21 (j) transmission lines and associated equipment and structures classified in 15-6-157;

22 (k) converter stations classified under 15-6-159;

23 (l) carbon sequestration equipment as defined in 15-6-158; ~~and~~

24 (m) pipelines classified under 15-6-158; and

25 (n) all property that is a part of a capacity expansion to an existing hydroelectric facility as provided in  
26 [section 1].

27 (4) (a) In order to qualify for the abatement under this part, a facility listed in subsection (3) must meet  
28 the following requirements:

29 (i) commencement of construction of the facility must occur after June 1, 2007; and

30 (ii) the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, must be paid

1 during the construction phase of the facility.

2 (b) In order to qualify for the abatement under this part, clean advanced coal research and development  
3 equipment and renewable energy research and development equipment must be placed into service after June  
4 30, 2007.

5 (c) For the facility to qualify under subsection (3)(d), the carbon dioxide produced from the gasification  
6 process must be sequestered at a rate that is practically obtainable but may not be less than 65%.

7 (d) Integrated gasification combined cycle facilities for which a permit under Title 75, chapter 2, is applied  
8 for after December 31, 2014, do not qualify under subsection (3)(d).

9 (e) To qualify under subsection (3)(i), the facility shall offset carbon dioxide emissions by the percentage  
10 determined in 15-24-3116.

11 (5) To qualify for an abatement, the facility or clean advanced coal research and development equipment  
12 and renewable energy research and development equipment must be certified as provided in 15-24-3112.

13 (6) Upon termination of the qualifying period, the abatement ceases and the property for which the  
14 abatement had been granted must be assessed at 100% of its taxable value.

15 (7) For the purposes of this section, "qualifying period" means the construction period and the first 15  
16 years after the facility commences operation or the clean advanced coal research and development equipment  
17 or renewable energy research and development equipment is purchased. The total time of the qualifying period  
18 may not exceed 19 years."

19  
20 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an  
21 integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [section 1].

22  
23 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

24  
25 **NEW SECTION. Section 8. Applicability.** [This act] applies to capacity expansions to existing  
26 hydroelectric facilities commencing operations after [the effective date of this act].

27 - END -