

## 1 SENATE BILL NO. 85

2 INTRODUCED BY D. ANKNEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TAXATION OF RENEWABLE  
5 ENERGY GENERATION FACILITIES; CHANGING THE TAXATION OF WIND AND SOLAR ENERGY;  
6 ELIMINATING USE OF THE NEW OR EXPANDING INDUSTRY TAX ABATEMENT BY WIND AND SOLAR  
7 ENERGY GENERATION FACILITIES; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-6-137, 15-6-  
8 141, 15-6-156, 15-6-157, AND 15-24-1401, MCA; AND PROVIDING EFFECTIVE DATES AND  
9 APPLICABILITY DATES."

10

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

12

13 **Section 1.** Section 15-6-137, MCA, is amended to read:

14 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Except as provided in  
15 subsection (2), class seven property includes:

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

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

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

24 (3) Class seven property is taxed at 8% of its market value."  
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27 **Section 2.** Section 15-6-141, MCA, is amended to read:

28 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property  
includes:

- 1 (a) centrally assessed allocations of an electric power company or centrally assessed allocations of  
2 an electric power company that owns or operates transmission or distribution facilities or both;
- 3 (b) if congress passes legislation that allows the state to tax property owned by an agency created by  
4 congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by  
5 a public agency created by congress to transmit or distribute electrical energy produced at privately owned  
6 generating facilities, not including rural electric cooperatives;
- 7 (c) rural electric cooperatives' property, except ~~wind-generation facilities~~, biomass generation facilities,  
8 and energy storage facilities classified under 15-6-157 and property used for headquarters, office, shop, or  
9 other similar facilities, used for the sole purpose of serving customers representing less than 95% of the electric  
10 consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a  
11 centrally assessed electric power company also owns property or serving an incorporated municipality with a  
12 population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998,  
13 received service from the facilities of an electric cooperative;
- 14 (d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas  
15 transmission or oil transmission pipelines regulated by either the public service commission or the federal  
16 energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined  
17 in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5); and
- 18 (e) centrally assessed companies' allocations except:
- 19 (i) electrical generation facilities classified under 15-6-156;
- 20 (ii) all property classified under 15-6-157;
- 21 (iii) all property classified under 15-6-158 and 15-6-159;
- 22 (iv) property owned by cooperative rural electric and cooperative rural telephone associations and  
23 classified under 15-6-135;
- 24 (v) property owned by organizations providing telephone communications to rural areas and classified  
25 under 15-6-135;
- 26 (vi) railroad transportation property included in 15-6-145;
- 27 (vii) airline transportation property included in 15-6-145; and
- 28 (viii) telecommunications property included in 15-6-156.

1 (2) Class nine property is taxed at 12% of market value."

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

4 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in  
5 subsections (2)(a) through (2)(h), class thirteen property includes:

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

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

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

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

15 (e) dedicated communications infrastructure described in 15-6-162(5) for which construction  
16 commenced after June 30, 2027, or for which the 15-year period provided for in 15-6-162(5)(c) has expired.

17 (2) Class thirteen property does not include:

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

19 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or  
20 15-6-157;

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

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

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

24 (f) property owned by organizations providing telecommunications services and classified under 15-6-  
25 135;

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

27 (h) qualified data centers classified under 15-6-162.

28 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a

1 physically connected generator or generators, associated prime movers, and other associated property,  
 2 including appurtenant land and improvements and personal property, that are normally operated together to  
 3 produce electric power. The term includes but is not limited to generating facilities that produce electricity from  
 4 coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

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

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

11 (4) Class thirteen property is taxed at 6% of its market value."  
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13 **Section 4.** Section 15-6-157, MCA, is amended to read:

14 **"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen  
 15 property includes:

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

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

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

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

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

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

28 ~~(g)~~(c) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity

1 owned or operated by any electrical energy producer;

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

4 ~~(i)~~(e) energy storage facilities of a centrally assessed electric power company;

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

7 ~~(k)~~(g) noncentrally assessed energy storage facilities owned or operated by any electrical energy  
8 producer;

9 ~~(l)~~(h) energy storage facilities owned or operated by cooperative rural electrical associations  
10 described under 15-6-137;

11 ~~(m)~~(i) battery energy storage systems that comply with federal standards on the manufacture and  
12 installation of the systems that are owned and operated by an electrical energy storage producer, electrical  
13 energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;

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

16 ~~(o)~~(k) all property of a biogas production facility, as defined in 15-24-3102, that has commenced  
17 construction after June 1, 2007;

18 ~~(p)~~(l) all property of a biomass gasification facility, as defined in 15-24-3102;

19 ~~(q)~~(m) all property of a coal gasification facility, as defined in 15-24-3102, except for property in  
20 subsection ~~(4)~~(1)~~(t)~~ (p) of this section, that sequesters carbon dioxide;

21 ~~(r)~~(n) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced  
22 construction after June 1, 2007;

23 ~~(s)~~(o) all property of a geothermal facility, as defined in 15-24-3102;

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

26 ~~(u)~~(q) all property or a portion of the property of a renewable energy manufacturing facility, as defined  
27 in 15-24-3102, that has commenced construction after June 1, 2007;

28 ~~(v)~~(r) all property of a natural gas combined cycle facility;

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

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

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

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

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

12           ~~(y)~~(u) all property of electric transmission lines, including substations, that originate at facilities  
 13 specified in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified  
 14 in this subsection (1) and terminating at an existing transmission line or substation that has commenced  
 15 construction after June 1, 2007;

16           ~~(z)~~(v) the qualified portion of an alternating current transmission line and its associated equipment  
 17 and structures, including interconnections, that has commenced construction after June 1, 2007.

18           (2) (a) The qualified portion of an alternating current transmission line in subsection ~~(1)~~~~(z)~~ (1)(v) is  
 19 that percentage, as determined by the department of environmental quality, of rated transmission capacity of  
 20 the line contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in  
 21 subsection (1) that are located in Montana.

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

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

1 classification.

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

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

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

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

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

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

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

18 (c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air  
19 energy storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of  
20 energy storage facilities directly connected to the electrical power grid and associated property, appurtenant  
21 land and improvements, and personal property that are designed to:

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

23 (B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity  
24 services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid,  
25 including but not limited to frequency regulation ancillary services and frequency control.

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

28 (iii) The term does not include property, including associated property and appurtenant land and

1 improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric  
2 pumped storage as defined in subsection (4)(e).

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

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

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

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

14 (5) (a) The department of environmental quality shall determine whether to certify that a transmission  
15 line meets the criteria of subsection ~~(4)(x)~~ (1)(t), ~~(4)(y)~~ (1)(u), or ~~(4)(z)~~ (1)(v), as applicable, based on an  
16 application provided for in 15-24-3112. The department of environmental quality shall review the certification 10  
17 years after the line is operational, and if the property no longer meets the requirements of subsection ~~(4)(x)~~  
18 (1)(t), ~~(4)(y)~~ (1)(u), or ~~(4)(z)~~ (1)(v), the certification must be revoked.

19 (b) If the department of revenue finds that a certification previously granted was based on an  
20 application that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-  
21 6-141. If the application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest  
22 from the time that the certification was in effect.

23 (6) Class fourteen property is taxed at 3% of its market value."  
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25 **Section 5.** Section 15-24-1401, MCA, is amended to read:

26 **"15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires  
27 otherwise:

28 (1) "Expansion" means that the industry has added or will add at least \$50,000 worth of qualifying



1 improvements or modernized processes to its property within the same jurisdiction either in the first tax year in  
 2 which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

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

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

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

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

10 (d) engages in the transportation, warehousing, or distribution of commercial products or materials if  
 11 50% or more of the industry's gross sales or receipts are earned from outside the state;

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

13 (f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an  
 14 alternative renewable energy source as defined in 15-6-225, except that for the purposes of this chapter,  
 15 "alternative renewable energy source" does not include wind energy or solar energy; or

16 (g) operates a qualified data center or dedicated communications infrastructure classified under 15-6-  
 17 162.

18 (3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-  
 19 1402(2) and has invested or will invest at least \$125,000 worth of qualifying improvements or modernized  
 20 processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be  
 21 received or in the preceding tax year. New industry does not include property treated as new industrial property  
 22 under 15-6-135.

23 (4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable  
 24 value under 15-24-1402 and this section."  
 25

26 **NEW SECTION. Section 6. Saving clause.** [This act] does not affect rights and duties that matured,  
 27 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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