

SENATE BILL NO. 160

INTRODUCED BY B. PHALEN, E. ALBUS, E. BYRNE, B. GILLESPIE, B. LER, J. SCHILLINGER, B. USHER,
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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WIND AND SOLAR DECOMMISSIONING
AND BONDING LAWS; REQUIRING DECOMMISSIONING BONDING PRIOR TO THE CONSTRUCTION
AND COMMENCEMENT OF COMMERCIAL OPERATION; REVISING PLAN AND BOND REQUIREMENTS
AND TIMELINES; ESTABLISHING PENALTIES; AMENDING SECTIONS 75-26-301, 75-26-304, 75-26-308,
AND 75-26-310, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

Section 1. Section 75-26-301, MCA, is amended to read:

"75-26-301. Definitions. As used in this part, unless the context requires otherwise, the following
definitions apply:

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

(2) "Commission" means the public service commission provided for in 2-15-2602.

~~(2)~~(3) "Decommission" or "decommissioning" means:

(a) except as provided in ~~75-26-304(2)~~ [section 2(4)], the removal of buildings, cabling, electrical
components, roads, or any other facilities associated with a wind generation or solar facility;

(b) except as provided in ~~75-26-304(2)~~ [section 2(4)], reclamation of surface lands to the previous
grade and to comparable productivity in order to prevent adverse hydrologic effects; and

(c) (i) the removal of the solar facility after the end of the facility's useful life or abandonment; or

(ii) the removal of an aboveground wind turbine tower after the end of a wind generation facility's
useful life or abandonment.

~~(3)~~(4) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(4)~~(5) "Owner" means a person who owns a wind generation or solar facility used for the generation
of electricity.

1 ~~(5)(6)~~ "Person" means any individual, firm, partnership, company, association, corporation, city, town,
2 or local ~~governmental~~ government entity or any other state, federal, or private entity, whether organized for
3 profit or not.

4 ~~(6)(7)~~ "Repurposed" means having made a significant investment in an existing wind generation or
5 solar facility to extend the useful life of the facility by more than 5 years.

6 ~~(7)(8)~~ "Solar facility" means an installation or combination of solar panels or plates, including a
7 canopy or array, that captures and converts solar radiation to produce electricity and includes flat plate,
8 focusing solar collectors, or photovoltaic solar cells that:

9 (a) has a nameplate capacity greater than or equal to 2 megawatts; and

10 (b) produces electricity that is not consumed on the premises of the solar facility or on land
11 immediately adjacent to the premises of the solar facility.

12 ~~(8)(9)~~ "Wind generation facility" means any combination of a physically connected wind turbine or
13 turbines, associated prime movers, and other associated property, including appurtenant land and
14 improvements and personal property, that are normally operated together to produce electric power from wind
15 and that have a nameplate capacity greater than or equal to 25 megawatts."

16
17 NEW SECTION. Section 2. Decommissioning period -- requirements. (1) The owner of a wind
18 generation or solar facility shall begin decommissioning within 12 months after abandonment or the end of its
19 useful life. Decommissioning must be completed within 24 months after abandonment or the end of its useful
20 life unless the department approves a plan specifying the steps and schedules to return the facility to operation.

21 (2) Decommissioning the facility includes but is not limited to:

22 (a) dismantling, removal, and disposal of all panels, plates, towers, turbine generators,
23 transformers, fencing, overhead cables, inverters, substations and any other associated equipment;

24 (b) removal of all underground cabling;

25 (c) removal of all cement, foundations, buildings, and ancillary equipment; and

26 (d) site restoration and reclamation to the approximate original topography that existed prior to the
27 construction of the facility with topsoil respread over the disturbed areas at a depth similar to that in existence
28 prior to the disturbance.

1 (3) If a decommissioning plan includes in-state disposal, the disposal of materials is subject to the
2 provisions of Title 75, chapter 10.

3 (4) If a property owner and the owner of a wind generation facility or solar facility located on the
4 property of the property owner reach an agreement concerning alternative restoration of buildings, cabling,
5 electrical components, roads, or any other associated facilities, instead of removal, or alternative plans for
6 reclamation of surface lands, or both, decommissioning does not include removal, plans for reclamation, or
7 both, if a copy of the agreement is provided to the department.

8
9 **NEW SECTION. Section 3. Decommissioning plan.** (1) (a) Prior to the construction and
10 commencement of operation of a wind generation or solar facility, the owner of a wind generation facility or
11 solar facility operating in Montana shall:

12 (i) notify the department in writing of the date that the facility intends to begin construction and
13 commercial operation;

14 (ii) subject to [section 2], submit a plan for decommissioning the facility to the department,
15 including the scope of work to be completed and cost estimates for completion;

16 (iii) if applicable, provide the department a copy of the commission-approved power purchase
17 agreement as described in 69-8-421;

18 (iv) provide the department with any other necessary information in accordance with this part and
19 rules adopted pursuant to this part in order for the department to determine bond requirements in accordance
20 with 75-26-304; and

21 (v) submit a decommissioning bond for the facility to the department in the amount calculated by
22 the department pursuant to 75-26-304.

23 (b) If a wind generation facility or solar facility was constructed and commenced commercial
24 operation before January 1, 2026, and the owner of the facility submitted information required by subsection
25 (1)(a) on or before this date, the owner is not required to resubmit the information.

26 (2) (a) If necessary, the department may modify a plan for decommissioning to determine bond
27 requirements in accordance with 75-26-304.

28 (b) The department shall notify the owner of the facility of any modification. The owner of the wind

1 generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to
2 the board within 60 days after receiving notice of the modification to the plan.

3
4 **Section 4.** Section 75-26-304, MCA, is amended to read:

5 **"75-26-304. Bond Decommissioning bond -- exemptions -- penalty for failure to submit. (1) (a)**

6 ~~Within 12 months of a wind generation facility or solar facility commencing commercial operation, the owner of~~
7 ~~a wind generation facility or solar facility operating in Montana shall:~~

8 (i) ~~notify the department in writing of the date that the facility began commercial operation;~~

9 (ii) ~~subject to subsection (2), submit a plan for decommissioning the facility to the department,~~
10 ~~including the scope of work to be completed and cost estimates for completion; and~~

11 (iii) ~~provide the department with any other necessary information in accordance with this part and~~
12 ~~rules adopted pursuant to this part in order for the department to determine bond requirements in accordance~~
13 ~~with this section.~~

14 (b) ~~Except as provided in subsection (1)(c), if a wind generation facility or solar facility commenced~~
15 ~~commercial operation before May 7, 2019, the owner of the facility shall submit to the department the~~
16 ~~information required in subsection (1)(a) on or before July 1, 2020.~~

17 (c) ~~If a wind generation facility commenced commercial operation before May 7, 2019, and the~~
18 ~~owner of the facility submitted information required by subsection (1)(a) on or before July 1, 2018, the owner is~~
19 ~~not required to resubmit the information.~~

20 (2) ~~If a property owner and the owner of a wind generation facility or solar facility reach an~~
21 ~~agreement concerning alternative restoration of buildings, cabling, electrical components, roads, or any other~~
22 ~~associated facilities, instead of removal, or alternative plans for reclamation of surface lands, or both,~~
23 ~~decommissioning does not include removal, plans for reclamation, or both, as long as a copy of the agreement~~
24 ~~is provided to the department.~~

25 (3) (a) ~~If necessary, the department may modify a plan for decommissioning to determine bond~~
26 ~~requirements in accordance with subsections (4) through (8).~~

27 (b) ~~The department shall notify the owner of the facility of any modification. The owner of the wind~~
28 ~~generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to~~

1 the board within 60 days of receiving notice of the modification to the plan.

2 (4) — In determining the amount of ~~a~~ the initial decommissioning bond required in accordance with
3 subsection ~~(6)~~ (2), the department shall consider:

4 (a) the character and nature of the site where the wind generation facility or solar facility is located;
5 and

6 (b) the current market salvage value of the wind generation facility or solar facility, as determined
7 by an independent evaluator; and.

8 (c) estimated contracting, equipment, and personnel costs.

9 (2) The final amount of the decommissioning bond a facility must pay prior to the construction of
10 the facility is 125% of the initial bond amount calculated pursuant to subsection (1).

11 ~~(5)(3)~~ Except as provided in subsections ~~(7)~~ (5) and ~~(8)~~ (6) and ~~in accordance with subsection (6)~~, the
12 owner of a wind generation facility or solar facility shall submit to the department a decommissioning bond
13 payable to the state of Montana in a form acceptable by the department and in the sum determined by the
14 department pursuant to subsection (2), conditioned on the faithful decommissioning of the wind generation
15 facility or solar facility.

16 ~~(6)(4)~~ (a) Except as provided in subsections ~~(7)~~ (5) and ~~(8)~~ (6), if a wind generation facility or solar
17 facility was constructed and commenced commercial operation on or before January 1, ~~2007~~ 2026, the operator
18 shall submit the decommissioning bond to the department on or before January 1, 2026, ~~prior to the conclusion~~
19 ~~of the 16th year to continue~~ of operation of the wind generation facility or solar facility without penalty as
20 provided in subsection (7).

21 ~~(b) —~~ Except as provided in subsections ~~(7)~~ and ~~(8)~~, if a wind generation facility or solar facility
22 commenced commercial operation after January 1, 2007, the operator shall submit the decommissioning bond
23 to the department prior to the conclusion of the ~~15th year of operation of the wind generation facility or solar~~
24 ~~facility.~~

25 ~~(7)(5)~~ If a wind generation facility or solar facility is repurposed, as determined by the department in
26 consultation with the owner, the owner is not required to provide a bond, and any existing bond must be
27 released until the repurposed facility reaches its 5th year of operation.

28 ~~(8)(6)~~ An owner of a wind generation facility or solar facility is exempt from the requirements of

1 subsection ~~(6)~~ (4) if:

2 (a) the owner posts a bond with a federal agency, with the department of natural resources and
3 conservation for the lease of state land, or with a tribal, county, or local government;

4 (b) the owner furnishes documents to the department that prove the owner is responsible under
5 the terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release
6 of the agreed upon bond is subject to the approval of the department upon completion of reclamation.

7 (c) the private landowner on whose land the wind generation facility or solar facility is located owns
8 a 10% or greater share of the wind generation facility or solar facility, as determined by the department; or

9 (d) the facility:

10 (i) commenced commercial operation on or before January 1, 2018, is a wind generation facility,
11 and has less than 25 megawatts in nameplate capacity; or

12 (ii) commenced commercial operation on or before January 1, 2020, is a solar facility, and has less
13 than 2 megawatts in nameplate capacity.

14 ~~(9)(7)~~ (a) If the owner of the wind generation facility or solar facility fails to submit a decommissioning
15 bond acceptable to the department within the timeframe required by this section, the department shall provide
16 notice to the facility owner. If after 30 days the owner of a wind generation facility or solar facility has not
17 submitted a decommissioning bond, the department may assess an administrative penalty of not more than
18 \$1,500 and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the
19 decommissioning bond continues.

20 (b) The owner of the wind generation facility or solar facility may appeal the department's penalty
21 assessment to the board within 20 days after receipt of written notice of the penalty. The contested case
22 provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the
23 board under this subsection ~~(9)~~ (7).

24 ~~(10)(8)~~ If the owner of a wind generation facility or solar facility transfers ownership of the facility to a
25 successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any
26 necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this
27 section.

28 (9) (a) The department shall review each decommissioning plan and bond amount annually after a

1 facility is bonded or when a new owner submits a revised decommissioning plan. The department may increase
2 the amount of the bond if the facility has expanded or the cost to decommission a facility has otherwise
3 increased due to inflation.

4 (b) If the department determines that the bond amount must be increased, it shall mail to the
5 owner a written justification for the increase. The owner shall increase the bond amount within 90 days after the
6 date the written justification was mailed to avoid penalties in accordance with this section.

7 ~~(14)~~(10) Once every 5 years, the owner of a wind generation facility or solar facility may submit an
8 amended plan for the department's approval. As part of the submission, the owner of a wind generation facility
9 or solar facility may also apply to the department for a reduction in the amount of the decommissioning bond
10 applicable to the wind energy facility or solar facility. The owner's application to the department must include a
11 detailed description of any material changes to information considered by the department in setting the initial
12 amount of the bond.

13 ~~(12)~~(11) Submitting a bond in accordance with this section does not absolve the owner of a wind
14 generation facility or solar facility from complying with applicable regulations and requirements for:

- 15 (a) areas subject to local zoning adopted under Title 76, chapter 2;
16 (b) military affected areas under Title 10, chapter 1, part 15; or
17 (c) airport affected areas under Title 67, chapter 7."
18

19 **Section 5.** Section 75-26-308, MCA, is amended to read:

20 **"75-26-308. Wind and solar decommissioning account -- use of existing resources.** (1) There is
21 a wind and solar decommissioning account within the state special revenue fund established in 17-2-102. There
22 must be paid into the account:

- 23 (a) penalties collected in accordance with 75-26-304~~(9)~~(7); and
24 (b) interest income earned on the account.

25 (2) Funds in the wind and solar decommissioning account are statutorily appropriated, as provided
26 in 17-7-502, to the department.

27 (3) (a) Money in the account may only be used by the department in implementing this part and
28 rules adopted pursuant to this part.

(b) The department shall administer this part using existing resources and money in the account pursuant to subsection (1).

(4) The department shall maintain and hold bonds or other surety received by the department as authorized in 75-26-304 for use in accordance with this part."

Section 6. Section 75-26-310, MCA, is amended to read:

"75-26-310. Rulemaking. The department shall adopt rules prescribing:

(1) standards and procedures for the submission of reasonable bonds with good and sufficient surety by the owners of wind generation facilities and solar facilities;

(2) the collection of penalties in accordance with 75-26-304(9)(7);

(3) criteria and the process for releasing a bond in accordance with 75-26-309;

(4) the department's use of a bond in the event that the owner of a wind generation facility or solar facility fails to decommission a wind generation facility or solar facility;

(5) information required by the department to determine bond requirements in accordance with 75-26-304; and

(6) any additional requirements to ensure compliance with this part."

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 9. Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 75, chapter 26, part 3, and the provisions of Title 75, chapter 26, part 3, apply to [sections 2 and 3].

NEW SECTION. **Section 10. Effective date.** [This act] is effective January 1, 2026.

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