

Amendment - 1st Reading-white - Requested by: Denise Hayman - (S) Energy, Technology & Federal Relations

- 2025

69th Legislature 2025

Drafter: Jason Mohr,

SB0160.001.002

SENATE BILL NO. 160

INTRODUCED BY B. PHALEN, E. ALBUS, E. BYRNE, B. GILLESPIE, B. LER, J. SCHILLINGER, B. USHER,
G. PARRY, T. TEZAK

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; AND~~ AMENDING SECTIONS ~~75-26-301,~~ 75-26-301, AND 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:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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) "Decommission" or "decommissioning" means:
 - (a) except as provided in 75-26-304(2)(b), 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)(b), 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.

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

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

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

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

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

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

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

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

Section 2. Section 75-26-304, MCA, is amended to read:

"75-26-304. Bond -- penalty for failure to submit. (1) (a) ~~Within 12 months of a~~ Prior to the wind generation facility or solar facility commencing commercial operation, the owner of a wind generation facility or solar facility operating in Montana shall:

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

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

~~(iii) — provide the department with any other necessary information in accordance with this part and~~

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~~rules adopted pursuant to this part in order for the department to determine bond requirements in accordance with this section.~~

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

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

(2) ~~(a) Except as provided in subsection (2)(b), the plan for decommissioning the facility must include provisions for:~~

~~(i) dismantling, removing, and disposing all panels, plates, towers, turbine generators, transformers, fencing, overhead cables, inverters, substations, and any other associated equipment; and~~

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

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

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

(b) The department shall notify the owner of the facility of any modification. The owner of the wind generation facility or solar facility may appeal a modification by the department of a plan for decommissioning to the board within 60 days of receiving notice of the modification to the plan.

(4) In determining the amount of a bond required in accordance with subsection (6), the department shall consider:

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

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

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

(6) (a) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility commenced commercial operation on or before January 1, 2007, the operator shall submit the decommissioning bond to the department prior to the conclusion of the 16th year of operation of the wind generation facility or solar facility.

(b) Except as provided in subsections (7) and (8) and prior to the conclusion of the 15th year of operation of the wind generation facility or solar facility, if a wind generation facility or solar facility commenced commercial operation after January 1, 2007, the operator shall:

(i) provide the department with any other necessary information pursuant to this part for the department to determine bond requirements; and

(ii) submit the decommissioning bond to the department ~~prior to the conclusion of the 15th year of operation of the wind generation facility or solar facility.~~

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

(8) An owner of a wind generation facility or solar facility is exempt from the requirements of subsection (6) if:

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

(b) the owner furnishes documents to the department that prove the owner is responsible under

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1 the terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release
2 of the agreed upon bond is subject to the approval of the department upon completion of reclamation.

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

5 (d) the facility:

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

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

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

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

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

24 (11) Once every 5 years, the owner of a wind generation facility or solar facility may submit an
25 amended plan for the department's approval. As part of the submission, the owner of a wind generation facility
26 or solar facility may also apply to the department for a reduction in the amount of the decommissioning bond
27 applicable to the wind energy facility or solar facility. The owner's application to the department must include a

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1 detailed description of any material changes to information considered by the department in setting the initial
2 amount of the bond.

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

5 (a) areas subject to local zoning adopted under Title 76, chapter 2;

6 (b) military affected areas under Title 10, chapter 1, part 15; or

7 (c) airport affected areas under Title 67, chapter 7."

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9
10 **NEW SECTION. Section 3. Notification to tribal governments.** The secretary of state shall send a
11 copy of [this act] to each federally recognized tribal government in Montana.

12 - END -