

HOUSE BILL NO. 31

INTRODUCED BY N. DURAM

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CERTAIN BONDING REQUIREMENTS FOR WIND AND SOLAR GENERATION FACILITIES; PROVIDING FOR A DECOMMISSIONING LIEN; AMENDING SECTION SECTIONS 75-26-304, AND 75-26-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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 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 commercial operation;

(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) SUBMIT TO THE DEPARTMENT AN ABSTRACT OF ANY LEASING AGREEMENT BETWEEN A FACILITY OWNER AND A LANDOWNER ON WHOSE PROPERTY THE FACILITY IS SITED; AND

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

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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.

(D) WITHIN 90 DAYS OF A WIND GENERATION FACILITY OR SOLAR FACILITY COMMENCING CONSTRUCTION, THE OWNER OF THE WIND GENERATION FACILITY OR SOLAR FACILITY SHALL NOTIFY THE DEPARTMENT THAT CONSTRUCTION OF THE FACILITY HAS COMMENCED.

(2) (a) Except as provided in subsection (2)(b), decommissioning a facility includes but is not limited to:

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

(ii) removal of all underground cabling;

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

(iv) pursuant to Article IX, section 2, of the Montana constitution, 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, cement, foundations, buildings, ancillary equipment, 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) (A) In determining the amount of a bond required in accordance with subsection (6), the department shall consider:

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

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1 and

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

4 (B) THE AMOUNT OF THE DECOMMISSIONING BOND A FACILITY OWNER SHALL PAY IS 100% OF THE AMOUNT
5 CALCULATED BY THE DEPARTMENT PURSUANT TO SUBSECTIONS (3) THROUGH (5) AND (12).

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

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

14 (B) EXCEPT AS PROVIDED IN SUBSECTIONS (6)(D), (7), AND (8), IF A WIND GENERATION FACILITY OR SOLAR
15 FACILITY COMMENCED COMMERCIAL OPERATION AFTER JANUARY 1, 2007, BUT BEFORE OCTOBER 1, 2025, THE OWNER
16 SHALL SUBMIT THE DECOMMISSIONING BOND TO THE DEPARTMENT PRIOR TO THE CONCLUSION OF THE ~~15TH~~ 8th YEAR
17 OF OPERATION OF THE WIND GENERATION FACILITY OR SOLAR FACILITY.

18 ~~(b)(C)~~ Except as provided in subsections ~~(6)(D)~~, (7), and (8), if a wind generation facility or solar
19 facility commenced commercial operation ~~after January 1, 2007~~ ON OR AFTER OCTOBER 1, 2025, the ~~operator~~
20 OWNER shall submit the decommissioning bond to the department prior to the conclusion of the ~~15th~~ 12TH 8th
21 year of operation of the wind generation facility or solar facility.

22 (D) EXCEPT AS PROVIDED IN SUBSECTIONS (7) AND (8), FOR A WIND GENERATION FACILITY OR SOLAR
23 FACILITY WITH ASSETS THAT ARE OPERATING, CONSTRUCTED, OR PARTIALLY CONSTRUCTED, IF A PROPERTY LEASE FOR
24 THE FACILITY TERMINATES PRIOR TO THE CONCLUSION OF THE ~~12TH~~ 8th YEAR OF OPERATION OF THE FACILITY, THE
25 OWNER SHALL SUBMIT THE DECOMMISSIONING BOND TO THE DEPARTMENT 1 YEAR PRIOR TO THE PROPERTY LEASE
26 TERMINATION DATE.

27 (7) If a wind generation facility or solar facility is repurposed, as determined by the department in

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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) for that portion of a wind generation facility or solar facility, the owner posts~~has posted~~ a decommissioning 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 the terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release of the agreed ~~upon~~on bond is subject to the approval of the department ~~upon~~on completion of reclamation.

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

(d) the facility:

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

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

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

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

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

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

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

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

NEW SECTION. SECTION 2. DECOMMISSIONING LIEN. (1) FOR A WIND GENERATION FACILITY OR SOLAR FACILITY THAT HAS NOT SUBMITTED A BOND TO THE DEPARTMENT OR WITHIN 30 DAYS OF ABANDONMENT OF A WIND GENERATION FACILITY OR SOLAR FACILITY, THE DEPARTMENT SHALL FILE A LIEN ON THE GENERATION ASSETS OF THE FACILITY IN AN AMOUNT NOT LESS THAN THE ESTIMATED DECOMMISSIONING COSTS IN THE DECOMMISSIONING PLAN FILED PURSUANT TO 75-26-304 PLUS AN ANNUAL INFLATIONARY AMOUNT DETERMINED BY THE DEPARTMENT.

(2) THE DEPARTMENT SHALL RELEASE A LIEN SECURED PURSUANT TO SUBSECTION (1) FOLLOWING THE RECEIPT AND ACCEPTANCE OF A DECOMMISSIONING BOND SUBMITTED AS REQUIRED BY 75-26-304(6)(B), (6)(C), OR (6)(D).

(3) IF THE OWNER OF A WIND GENERATION FACILITY OR SOLAR FACILITY FAILS TO PROPERLY DECOMMISSION A WIND GENERATION FACILITY OR SOLAR FACILITY AND THE OWNER HAS NOT COMMENCED ACTION TO

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1 RECTIFY DEFICIENCIES WITHIN 90 DAYS AFTER NOTICE BY THE DEPARTMENT, THE DEPARTMENT MAY FORECLOSE ON THE
2 LIEN. THE DEPARTMENT, THROUGH DEPARTMENT STAFF, EQUIPMENT, RESOURCES, AND MATERIAL UNDER ITS CONTROL
3 OR A CONTRACT WITH OTHERS, MAY TAKE ANY ACTION NECESSARY TO DECOMMISSION THE WIND GENERATION FACILITY
4 OR SOLAR FACILITY.

5
6 **SECTION 3.** SECTION 75-26-308, MCA, IS AMENDED TO READ:

7 **"75-26-308. Wind and solar decommissioning account -- use of existing resources.** (1) There is
8 a wind and solar decommissioning account within the state special revenue fund established in 17-2-102. There
9 must be paid into the account:

10 (a) penalties collected in accordance with 75-26-304(9);

11 (b) proceeds from the sale of assets secured by liens on a wind generation facility or solar facility
12 that has been liquidated pursuant to [section 2(3)]; and

13 ~~(b)(c)~~ interest income earned on the account.

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

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

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

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

22
23 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

24
25 **NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION.** [SECTION 2] IS INTENDED TO BE CODIFIED AS AN
26 INTEGRAL PART OF TITLE 75, CHAPTER 26, PART 3, AND THE PROVISIONS OF TITLE 75, CHAPTER 26, PART 3, APPLY TO
27 [SECTION 2].

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