

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 RECLAMATION LIEN; AMENDING SECTION  
75-26-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY 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) 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  
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) If a property owner and the owner of a wind generation facility or solar facility reach an

1 agreement concerning alternative restoration of buildings, cabling, electrical components, roads, or any other  
2 associated facilities, instead of removal, or alternative plans for reclamation of surface lands, or both,  
3 decommissioning does not include removal, plans for reclamation, or both, as long as a copy of the agreement  
4 is provided to the department.

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

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

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

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

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

16 (b) The final amount of the decommissioning bond a facility owner shall pay is 100% of the amount  
17 calculated pursuant to this subsection (4).

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

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

26 (b) Except as provided in subsections (7) and (8), if a wind generation facility or solar facility  
27 commenced commercial operation after January 1, 2007, the operator shall submit the decommissioning bond

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1 to the department prior to the conclusion of the ~~15th-12th~~ year of operation of the wind generation facility or  
2 solar facility.

3 (c) The facility owner shall pay the full decommissioning bond amount calculated pursuant to  
4 subsection (4) in the event a lease is terminated or not renewed by the facility owner or the landowner.

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

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

10 (a) for that portion of a wind generation facility or solar facility, the owner posts has posted a  
11 decommissioning bond with a federal agency, with the department of natural resources and conservation for  
12 the lease of state land, or with a tribal, county, or local government;

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

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

18 (d) the facility:

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

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

23 (9) (a) If the owner of the wind generation facility or solar facility fails to submit a decommissioning  
24 bond acceptable to the department within the timeframe required by this section, the department shall provide  
25 notice to the facility owner. If after 30 days the owner of a wind generation facility or solar facility has not  
26 submitted a decommissioning bond, the department may assess an administrative penalty of not more than  
27 \$1,500 and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the

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1 decommissioning bond continues.

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

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

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

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

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

22  
23 **NEW SECTION. Section 2. Reclamation lien.** The day before a wind generation facility or solar  
24 facility files for bankruptcy, the state of Montana has a lien on generation assets of a wind generation facility or  
25 solar facility for the amount of reclamation costs in a decommissioning plan filed as required by 75-26-304.

26  
27 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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2        NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an  
3 integral part of Title 75, chapter 26, part 3, and the provisions of Title 75, chapter 26, part 3, apply to [section 2].

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5        NEW SECTION. **Section 5. Applicability.** [This act] applies to a wind generation facility or solar  
6 facility finally constructed on or after October 1, 2025.

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