

HOUSE BILL NO. 584

INTRODUCED BY A. NOONAN

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A VOLUNTARY WIND GENERATION CERTIFICATION PROGRAM ~~BEST MANAGEMENT PRACTICE~~ COMMITTEE; REQUIRING THE COMMITTEE TO PROVIDE RECOMMENDATIONS TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR A VOLUNTARY WIND GENERATION ~~CERTIFICATION PROGRAM~~ BEST MANAGEMENT PRACTICES; REQUIRING THE DEPARTMENT TO PROVIDE A REPORT TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Legislative intent.** It is the intent of the legislature that:

- (1) Montana's world-class wildlife, intact ecosystems, and rich cultural and historic heritage deserve protection;
- (2) Montana's outstanding wind resources need to be developed to ensure that Montana leads the nation in producing the clean, renewable energy that wind power can provide;
- (3) improperly sited wind generation facilities can impact wildlife, fragment wildlife habitat, and degrade or destroy historical and cultural sites;
- (4) Montana has an interest in ensuring that new wind generation facilities do not have unintended impacts to wildlife, wildlife habitat, and historical and cultural sites that could be avoided;
- (5) the key to successful wind power development will be siting wind generation facilities in areas capable of sustaining those facilities, while not unnecessarily impacting Montana's treasured natural and cultural heritage;
- (6) wind generators willing to protect Montana's wildlife, wildlife habitat, and historical and cultural sites should be recognized for their efforts ~~through a certification program~~; and
- (7) wind generators and developers should have the opportunity to participate in a process developed by stakeholders to minimize impacts to wildlife, wildlife habitat, and historical and cultural sites.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions



1 apply:

2 ~~———— (1) "Applicant" means the owner of a proposed wind generation facility with a nameplate capacity greater~~
 3 ~~than 5 megawatts.~~

4 ~~———— (2) "Certification" means a voluntary permit certifying that an applicant's wind generation facility will have~~
 5 ~~minimal impacts on wildlife, wildlife habitat, and cultural and historic sites.~~

6 (1) "BEST MANAGEMENT PRACTICE" MEANS ACTIVITIES, PROCEDURES, AND PRACTICES ESTABLISHED BY THE
 7 DEPARTMENT BASED ON RECOMMENDATIONS BY THE COMMITTEE ESTABLISHED IN [SECTION 4] THAT A WIND GENERATION
 8 FACILITY CAN USE TO MINIMIZE IMPACTS ON WILDLIFE, WILDLIFE HABITAT, AND HISTORICAL AND CULTURAL SITES.

9 ~~(3)(2)~~ "Crucial wildlife habitat" means:

- 10 (a) bodies of water or wetland complexes that attract large numbers of birds and wildlife;
 11 (b) areas where species of special concern are concentrated;
 12 (c) areas where large numbers of raptors nest or roost;
 13 (d) areas where greater sage grouse (*Centrocercus urophasianus*) leks are concentrated;
 14 (e) areas identified by the department as significant for game animals; and
 15 (f) areas known to be critical migration corridors or stopover locations for migratory birds, bats, or large
 16 mammals.

17 ~~(4)(3)~~ "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

18 ~~(5)(4)~~ "Sensitive areas" means government-designated areas that have been recognized for their
 19 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national
 20 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and
 21 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national
 22 parks, monuments, or historic sites.

23 (5) "WIND GENERATION FACILITY" MEANS THE OWNER OF A PROPOSED WIND GENERATION FACILITY WITH A
 24 NAMEPLATE CAPACITY GREATER THAN 5 MEGAWATTS.

25
 26 **NEW SECTION. Section 3. Voluntary wind generation ~~certification program~~ BEST MANAGEMENT**
 27 **PRACTICES -- criteria.** (1) Using recommendations provided pursuant to [section 5], the department shall DEVELOP
 28 PROPOSED VOLUNTARY BEST MANAGEMENT PRACTICES.

29 (2) PRIOR TO ADOPTING THE PROPOSED BEST MANAGEMENT PRACTICES, THE DEPARTMENT SHALL provide a
 30 report on a voluntary wind generation ~~certification program~~ BEST MANAGEMENT PRACTICES to the 62nd legislature

1 pursuant to 5-11-210.

2 ~~(2)~~(3) The report must include an overview of the proposed program and recommendations for BEST
3 MANAGEMENT PRACTICES, INCLUDING:

4 (a) ~~applicant requirements and criteria necessary for certification;~~

5 ~~— (b) fees necessary to implement the program;~~

6 ~~— (c) requirements for public notice and opportunity for comment or public hearing when certification is~~
7 ~~requested~~ ON THE PROPOSED BEST MANAGEMENT PRACTICES;

8 ~~— (d) inspection, monitoring, recordkeeping, and reporting necessary to administer the program;~~

9 ~~(e)~~(B) incentives for the program; THAT ARE AVAILABLE OR ARE RECOMMENDED TO BE AVAILABLE SO THAT
10 WIND GENERATION FACILITIES USE BEST MANAGEMENT PRACTICES; AND

11 ~~— (f) criteria for the suspension or revocation of certification;~~

12 ~~— (g) requirements for certification processes for wind generating facilities that plan to expand existing~~
13 ~~facilities; and~~

14 ~~— (h) proposed changes in existing law to implement a voluntary wind generation certification program.~~

15 (C) PLACES WHERE THE DEPARTMENT'S PROPOSED BEST MANAGEMENT PRACTICES ARE DIFFERENT FROM THOSE
16 RECOMMENDED BY THE COMMITTEE ESTABLISHED IN [SECTION 4].

17 ~~(3)~~(4) If the voluntary wind generation ~~certification~~ BEST MANAGEMENT PRACTICE committee is unable to
18 reach a consensus on a ~~recommendation~~ BEST MANAGEMENT PRACTICE RECOMMENDATION, the department may
19 develop a ~~recommendation~~ BEST MANAGEMENT PRACTICE PROPOSAL to fulfill the requirements pursuant to
20 subsection ~~(2)~~ (3).

21
22 NEW SECTION. Section 4. Voluntary wind generation certification BEST MANAGEMENT PRACTICE

23 committee -- composition. (1) There is a voluntary wind generation ~~certification~~ BEST MANAGEMENT PRACTICE
24 committee established in the department with members appointed by the department director.

25 (2) The committee is composed of ~~at least~~ 12 members including ~~a minimum of~~:

26 (a) ~~four~~ SIX representatives of wind ~~generating~~ facilities working or operating in Montana, DEVELOPERS
27 OF WIND FACILITIES, OR BOTH;

28 (b) two representatives of organizations focused on wildlife conservation;

29 (c) ~~two representatives~~ ONE REPRESENTATIVE from the historic preservation office;

30 (d) ~~two representatives~~ ONE REPRESENTATIVE of organizations focused on protecting cultural sites or

1 historic sites, or both; and

2 (e) two individuals representing the department.

3 (3) Additional EX OFFICIO members may be appointed by the director.

4 (4) The director shall make the appointments prior to September 1, 2009, and shall consult with the state
5 historical society provided for in 22-3-101 in determining appointments pursuant to subsections (2)(c) and (2)(d)
6 of this section.

7 (5) The committee shall meet as needed.

8 (6) Members are not entitled to compensation for their service as committee members and are not
9 entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

10
11 NEW SECTION. Section 5. Voluntary wind generation certification BEST MANAGEMENT PRACTICE

12 committee -- duties. (1) Before July 1, 2010, the committee shall provide recommendations to the department
13 for developing a voluntary wind generation ~~certification program~~ BEST MANAGEMENT PRACTICES, including:

14 (a) pursuant to subsection (2), criteria and methods for determining how to establish whether ~~an~~
15 ~~applicant intends to implement measures~~ A WIND GENERATION FACILITY IMPLEMENTS BEST MANAGEMENT PRACTICES
16 in project siting, construction, and operation that will minimize impacts to wildlife, wildlife habitat, and cultural and
17 historic sites;

18 (b) preconstruction and postconstruction studies that ~~an applicant~~ A WIND GENERATION FACILITY should
19 ~~be required to~~ conduct to ensure that wildlife, wildlife habitat, and cultural and historic sites are not negatively
20 impacted by a wind generation facility or expansion;

21 (c) ~~measures necessary~~ BEST MANAGEMENT PRACTICES RECOMMENDED to mitigate impacts if
22 postconstruction studies show impacts are greater than anticipated;

23 ~~— (d) consequences for failure to implement mitigation measures pursuant to subsection (1)(c);~~

24 ~~(e)~~(D) incentives necessary to encourage wind generation facilities to ~~pursue certification;~~ USE BEST
25 MANAGEMENT PRACTICES; AND

26 ~~— (f) application fees, if necessary, to pay the costs of the program;~~

27 ~~— (g) timeframes for:~~

28 ~~— (i) the submittal of applications for certification by applicants prior to construction; and~~

29 ~~— (ii) the review of and action on certification applications by the department; and~~

30 ~~(h)~~(E) any other matters the committee feels are necessary to implement a voluntary wind generation

1 ~~certification program~~ BEST MANAGEMENT PRACTICES.

2 (2) Criteria for the program must include recommendations to minimize impacts to:

3 (a) crucial wildlife habitat;

4 (b) large tracts of wildlife habitat where roads and transmission lines are generally absent;

5 (c) historic sites, trails, and traditional cultural areas; and

6 (d) sensitive areas.

7 (3) Whenever possible, the committee shall use a consensus process to develop BEST MANAGEMENT

8 PRACTICE recommendations to be submitted to the department. ~~Recommendations~~ BEST MANAGEMENT PRACTICE

9 RECOMMENDATIONS that are not based upon consensus must be so noted by the committee.

10 (4) Upon consideration of the committee's recommendations, the department shall prepare the

11 PROPOSED BEST MANAGEMENT PRACTICES AND THE report ~~and recommendations~~ pursuant to [section 3].

12

13 NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2009.

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15 NEW SECTION. Section 7. Termination. [This act] terminates January 1, 2011.

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