

## SENATE BILL NO. 93

INTRODUCED BY T. RICHMOND

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SOLAR FACILITY DECOMMISSIONING  
5 AND BONDING LAWS; REQUIRING THE OWNERS OF SOLAR FACILITIES TO SUBMIT A  
6 DECOMMISSIONING PLAN AND BOND TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY;  
7 ESTABLISHING PLAN AND BOND REQUIREMENTS AND TIMELINES; PROVIDING EXCEPTIONS TO BOND  
8 REQUIREMENTS; ESTABLISHING CRITERIA FOR BOND RELEASE; PROVIDING A PENALTY FOR FAILURE  
9 TO SUBMIT A BOND; ALLOWING THE DEPARTMENT TO PROPERLY DECOMMISSION A FACILITY IN  
10 CERTAIN CASES; PROVIDING FOR APPEALS; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY;  
11 AMENDING SECTIONS 75-26-301, 75-26-304, 75-26-308, 75-26-309, AND 75-26-310, MCA; AND PROVIDING  
12 AN IMMEDIATE EFFECTIVE DATE."

13

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

15

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

17 **"75-26-301. Definitions.** As used in this part, unless the context requires otherwise, the following  
18 definitions apply:

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

20 (2) "Decommission" or "decommissioning" means:

21 ~~(a) the removal of an aboveground wind turbine tower after the end of a wind generation facility's useful~~  
22 ~~life or abandonment;~~

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

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

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

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

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

1 (4) "ELECTRIC UTILITY" MEANS ANY PUBLIC UTILITY OR COOPERATIVE UTILITY THAT PROVIDES ELECTRICITY FOR  
 2 SALE TO CUSTOMERS.

3 ~~(4)~~(5) "Owner" means a person who owns a wind generation or solar facility used for the generation of  
 4 electricity.

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

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

9 ~~(7)~~(8) "Solar facility" means an installation or combination of solar panels or plates, including a canopy  
 10 or array, that captures and converts solar radiation to produce electricity and includes flat plate, focusing solar  
 11 collectors, or photovoltaic solar cells that have:

12 (A) HAS a nameplate capacity greater than or equal to 2 megawatts.; AND

13 (B) PRODUCES ELECTRICITY THAT IS OWNED BY OR SOLD TO AN ELECTRIC UTILITY.

14 ~~(7)~~(8) "Wind generation facility" means any combination of a physically connected wind turbine or  
 15 turbines, associated prime movers, and other associated property, including appurtenant land and improvements  
 16 and personal property, that are normally operated together to produce electric power from wind and that have  
 17 a nameplate capacity greater than or equal to 25 megawatts."

18

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

20 **"75-26-304. Bond -- penalty for failure to submit.** (1) ~~(a) On or before July 1, 2018, the~~ Within 6 12  
 21 months of a wind generation facility or solar facility commencing commercial operation, the owner of a wind  
 22 generation facility or solar facility operating in Montana shall:

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

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

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

29 (b) Except as provided in subsection (1)(c), if a wind generation facility or solar facility commenced  
 30 commercial operation before [the effective date of this act], the owner of the facility shall submit to the department

1 the information required in subsection (1)(a) on or before July 1, 2020.

2 (c) If a wind generation facility commenced commercial operation before [the effective date of this act]  
 3 and the owner of the facility submitted information required by subsection (1)(a) on or before July 1, 2018, the  
 4 owner is not required to resubmit the information.

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

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

12 (B) THE DEPARTMENT SHALL NOTIFY THE OWNER OF THE FACILITY OF ANY MODIFICATION. THE OWNER OF THE  
 13 WIND GENERATION FACILITY OR SOLAR FACILITY MAY APPEAL A MODIFICATION BY THE DEPARTMENT OF A PLAN FOR  
 14 DECOMMISSIONING TO THE BOARD WITHIN 60 DAYS OF RECEIVING NOTICE OF THE MODIFICATION TO THE PLAN.

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

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

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

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

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

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

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

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

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

8 (b) THE OWNER FURNISHES DOCUMENTS TO THE DEPARTMENT THAT PROVE THE OWNER IS RESPONSIBLE UNDER  
 9 THE TERMS AND CONDITIONS OF A LEASE AGREEMENT TO PROVIDE PRIVATE BONDING. THE PARTIES SHALL AGREE THAT  
 10 RELEASE OF THE AGREED UPON BOND IS SUBJECT TO THE APPROVAL OF THE DEPARTMENT UPON COMPLETION OF  
 11 RECLAMATION.

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

14 ~~(e)(D)~~ the ~~wind-generation~~ facility;

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

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

19 (9) (a) If the owner of the wind generation facility or solar facility fails to submit a decommissioning bond  
 20 acceptable to the department within the timeframe required by this section, the department SHALL PROVIDE NOTICE  
 21 TO THE FACILITY OWNER. IF AFTER 30 DAYS THE OWNER OF A WIND GENERATION FACILITY OR SOLAR FACILITY HAS NOT  
 22 SUBMITTED A DECOMMISSIONING BOND, THE DEPARTMENT may assess an administrative penalty of not more than  
 23 \$1,500; and an additional administrative penalty of not more than \$1,500 for each day the failure to submit the  
 24 decommissioning bond continues.

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

29 (10) If the owner of a wind generation facility or solar facility transfers ownership of the facility to a  
 30 successor owner, the first owner's bond must be released after 90 days. The new owner shall submit any

1 necessary bond within 90 days after transfer of ownership or be subject to penalties in accordance with this  
2 section.

3 (11) Once every 5 years, the owner of a wind generation facility or solar facility may SUBMIT AN AMENDED  
4 PLAN FOR THE DEPARTMENT'S APPROVAL. AS PART OF THE SUBMISSION, THE OWNER OF A WIND GENERATION FACILITY  
5 OR SOLAR FACILITY MAY ALSO apply to the department for a reduction in the amount of the decommissioning bond  
6 applicable to the wind energy facility or solar facility. The owner's application to the department must include a  
7 detailed description of any material changes to information considered by the department in setting the initial  
8 amount of the bond.

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

- 11 (a) areas subject to local zoning adopted under Title 76, chapter 2;  
12 (b) military affected areas under Title 10, chapter 1, part 15; or  
13 (c) airport affected areas under Title 67, chapter 7."  
14

15 **Section 3.** Section 75-26-308, MCA, is amended to read:

16 **"75-26-308. Wind and solar decommissioning account -- use of existing resources.** (1) There is  
17 a wind and solar decommissioning account within the state special revenue fund established in 17-2-102. There  
18 must be paid into the account:

- 19 (a) penalties collected in accordance with 75-26-304(9); and  
20 (b) interest income earned on the account.

21 (2) Funds in the wind and solar decommissioning account are statutorily appropriated, as provided in  
22 17-7-502, to the department.

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

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

27 (4) The department shall maintain and hold bonds or other surety received by the department as  
28 authorized in 75-26-304 for use in accordance with this part."  
29

30 **Section 4.** Section 75-26-309, MCA, is amended to read:

1           **"75-26-309. Release of bond -- use of bond by department.** (1) (a) Subject to subsection (1)(b), the  
 2 department shall release the bond if it is satisfied that an owner has properly decommissioned a wind generation  
 3 facility or solar facility IN ACCORDANCE WITH THE PLAN REQUIRED IN 75-26-304.

4           (b) At any time, an owner of a wind generation facility or solar facility may petition the department for  
 5 release of the bond, and the department shall reply with a determination within 90 days.

6           (2) If the owner of a wind generation facility or solar facility fails to properly decommission a wind  
 7 generation facility or solar facility and has not commenced action to rectify deficiencies within 90 days after  
 8 notification by the department, the department shall cause the bond to be forfeited. The department, with staff,  
 9 equipment, and material under its control or by contract with others, may take any necessary actions to  
 10 decommission the wind generation facility or solar facility."

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12           **Section 5.** Section 75-26-310, MCA, is amended to read:

13           **"75-26-310. Rulemaking.** ~~On or before January 1, 2018, the~~ The department shall adopt rules  
 14 prescribing:

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

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

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

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

21           (5) information required by the department to determine bond requirements in accordance with  
 22 75-26-304; and

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

24

25           NEW SECTION. **Section 6. Notification to tribal governments.** The secretary of state shall send a  
 26 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
 27 Chippewa tribe.

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

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2           NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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