



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

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

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

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

~~(c)(b)~~ except as provided in 75-26-304(2), 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.

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

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

~~(5)~~(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)~~(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.

~~(7)~~(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) On or before July 1, 2018, the~~ 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:

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

~~(b)~~(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

~~(c)~~(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 [the effective date of this act], 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 [the effective date of this act] 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 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, ~~alternative restoration and alternative plans for reclamation~~, 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:

(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), if a wind generation facility or solar facility commenced

commercial operation after January 1, 2007, the operator shall 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 the terms and conditions of a lease agreement to provide private bonding. The parties shall agree that release of the agreed upon bond is subject to the approval of the department upon completion of reclamation.

~~(b)(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

~~(e)(d)~~ the ~~wind-generation~~ 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, 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).

(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, 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.

(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."

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

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

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

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

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

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

(4) The department shall maintain and hold bonds or other surety received by the department as

authorized in 75-26-304 for use in accordance with this part."

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

"75-26-309. Release of bond -- use of bond by department. (1) (a) Subject to subsection (1)(b), the department shall release the bond if it is satisfied that an owner has properly decommissioned a wind generation facility or solar facility in accordance with the plan required in 75-26-304.

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

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

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

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

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

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

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

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

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

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

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

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

Section 8. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0093, originated in the Senate.

President of the Senate

Signed this _____ day
of _____, 2019.

Secretary of the Senate

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 93

INTRODUCED BY T. RICHMOND

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