

HOUSE BILL NO. 216

INTRODUCED BY J. KEANE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE OWNERS OF WIND GENERATION FACILITIES  
5 TO SUBMIT A DECOMMISSIONING BOND TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY;  
6 REQUIRING THE DEPARTMENT TO ADMINISTER THE BOND PROGRAM USING EXISTING RESOURCES;  
7 ESTABLISHING BOND REQUIREMENTS AND TIMELINES; ESTABLISHING CRITERIA FOR BOND RELEASE;  
8 PROVIDING A PENALTY FOR FAILURE TO SUBMIT A BOND; CREATING A STATE SPECIAL REVENUE  
9 ACCOUNT; ALLOWING THE DEPARTMENT TO PROPERLY DECOMMISSION A FACILITY IN CERTAIN  
10 CASES; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING A STATUTORY  
11 APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
12 DATE."

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

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16 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], unless the context requires  
17 otherwise, the following definitions apply:

- 18 (1) "Board" means the board of environmental review provided for in 2-15-3502.
- 19 (2) "Decommission" or "decommissioning" means removal of wind turbines, buildings, cabling, electrical  
20 components, road, and any other associated facilities. The term includes reclamation of surface lands to previous  
21 grade and comparable productivity and to prevent adverse hydrologic effects, unless a property owner and the  
22 owner of a wind generation facility have reached an agreement concerning alternative restoration of the land  
23 surface area and a copy of the agreement is provided to the department.
- 24 (3) "Department" means the department of environmental quality provided for in 2-15-3501.
- 25 (4) "Owner" means a person who owns a wind generation facility used for the generation of electricity.
- 26 (5) "Person" means any individual, firm, partnership, company, association, corporation, city, town, or  
27 local governmental entity or any other state, federal, or private entity, whether organized for profit or not.
- 28 (6) "Wind generation facility" means any combination of a physically connected wind turbine or turbines,  
29 associated prime movers, and other associated property, including appurtenant land and improvements and  
30 personal property, that are normally operated together to produce electric power from wind that have a nameplate

1 capacity greater than or equal to 50 megawatts.

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3 **NEW SECTION. Section 2. Bond -- penalty for failure to submit.** (1) On or before July 1, 2017, the  
4 owner of a wind generation facility operating in Montana shall:

5 (a) notify the department in writing as to the date that the facility began commercial operation; and

6 (b) provide the department with the necessary information in accordance with [sections 1 through 5] and  
7 rules adopted pursuant to [sections 1 through 5] in order for the department to determine bond requirements.

8 (2) The owner of a wind generation facility shall submit to the department a bond payable to the state  
9 of Montana in a form acceptable by the department and in the sum determined by the department, conditioned  
10 upon the faithful decommissioning of the wind generation facility.

11 (3) (a) If a wind generation facility commenced commercial operation on or before January 1, 2017, the  
12 operator shall submit the decommissioning bond to the department prior to the conclusion of the 15th year of  
13 operation of the wind generation facility.

14 (b) If a wind generation facility commenced commercial operation after January 1, 2017, the operator  
15 shall submit the decommissioning bond to the department prior to the conclusion of the 5th year of operation of  
16 the wind generation facility.

17 (4) In determining the amount of the bond, the department shall take into consideration the character  
18 and nature of the site where the wind generation facility is located.

19 (5) (a) If the owner of a wind generation facility fails to submit a decommissioning bond acceptable to  
20 the department within the timeframe required by this section, the department may assess an administrative  
21 penalty of not more than \$1,500 and an additional administrative penalty of not more than \$1,500 for each day  
22 the failure to submit the decommissioning bond continues.

23 (b) The owner of a wind generation facility may appeal the department's penalty assessment to the board  
24 within 20 days after receipt of written notice of the penalty. The contested case provisions of the Montana  
25 Administrative Procedures Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection  
26 (5).

27 (6) If the owner of a wind generation facility transfers ownership of the facility to a successor owner, the  
28 first owner remains responsible for decommissioning the wind generation facility, and the department may not  
29 release the bond submitted by the first owner until the successor owner submits a bond acceptable to the  
30 department.

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

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

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7 **NEW SECTION. Section 3. Wind decommissioning account -- use of existing resources.** (1) There  
8 is a wind decommissioning account within the state special revenue fund established in 17-2-102. There must  
9 be paid into the account:

- 10 (a) penalties collected in accordance with [section 2(5)]; and
  - 11 (b) interest income earned on the account.
- 12 (2) Funds in the wind decommissioning account are statutorily appropriated, as provided in 17-7-502,  
13 to the department.
- 14 (3) (a) Money in the account may only be used by the department in implementing [sections 1 through  
15 5] and rules adopted pursuant to [sections 1 through 5].
- 16 (b) The department shall administer [sections 1 through 5] using existing resources and money in the  
17 account pursuant to subsection (1).
- 18 (4) The department shall maintain and hold bonds or other surety received by the department as  
19 authorized in [section 2] for use in accordance with [sections 1 through 5].

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21 **NEW SECTION. Section 4. Release of bond -- use of bond by department.** (1) The department shall  
22 release the bond if it is satisfied that an owner has properly decommissioned a wind generation facility.

23 (2) If the owner of a wind generation facility fails to properly decommission a wind generation facility and  
24 has not commenced action to rectify deficiencies within 30 days after notification by the department, the  
25 department shall cause the bond to be forfeited. The department, with staff, equipment, and material under its  
26 control or by contract with others, may take any necessary actions to decommission the wind generation facility.

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28 **NEW SECTION. Section 5. Rulemaking.** On or before January 1, 2018, the department shall adopt  
29 rules prescribing:

- 30 (1) standards and procedures for the submission of reasonable bonds with good and sufficient surety

- 1 by the owners of wind generation facilities;
- 2 (2) the collection of penalties in accordance with [section 2(5)];
- 3 (3) criteria and the process for releasing a bond in accordance with [section 4];
- 4 (4) the department's use of a bond in the event that the owner of a wind generation facility fails to
- 5 decommission a wind generation facility;
- 6 (5) information required by the department to determine bond requirements in accordance with [section
- 7 2]; and
- 8 (6) any additional requirements to ensure compliance with [sections 1 through 5].

9

10 **Section 6.** Section 17-7-502, MCA, is amended to read:

11 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory

12 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the

13 need for a biennial legislative appropriation or budget amendment.

14 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both

15 of the following provisions:

16 (a) The law containing the statutory authority must be listed in subsection (3).

17 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory

18 appropriation is made as provided in this section.

19 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;

20 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;

21 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101;

22 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215;

23 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;

24 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617;

25 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301;

26 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;

27 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;

28 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; [section 3]; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222;

29 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603;

30 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

1           (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
 2 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
 3 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
 4 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
 5 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
 6 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
 7 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded  
 8 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and  
 9 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.  
 10 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under  
 11 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion  
 12 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004  
 13 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,  
 14 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;  
 15 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;  
 16 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.  
 17 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.  
 18 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,  
 19 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of  
 20 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of  
 21 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117  
 22 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates  
 23 September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December  
 24 31, 2023.)"

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 26           NEW SECTION. **Section 7. Notification to tribal governments.** The secretary of state shall send a  
 27 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
 28 Chippewa tribe.

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 30           NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified

1 as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 5].

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3 NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured,  
4 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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6 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

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