

## HOUSE BILL NO. 216

INTRODUCED BY J. KEANE, T. RICHMOND

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3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE OWNERS OF WIND GENERATION FACILITIES  
5 TO SUBMIT A DECOMMISSIONING PLAN AND BOND TO THE DEPARTMENT OF ENVIRONMENTAL  
6 QUALITY; REQUIRING THE DEPARTMENT TO ADMINISTER THE ~~BOND~~ PROGRAM USING EXISTING  
7 RESOURCES; ESTABLISHING PLAN AND BOND REQUIREMENTS AND TIMELINES; PROVIDING  
8 EXCEPTIONS TO BOND REQUIREMENTS; ESTABLISHING CRITERIA FOR BOND RELEASE; PROVIDING  
9 A PENALTY FOR FAILURE TO SUBMIT A BOND; CREATING A STATE SPECIAL REVENUE ACCOUNT;  
10 ALLOWING THE DEPARTMENT TO PROPERLY DECOMMISSION A FACILITY IN CERTAIN CASES;  
11 GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING A STATUTORY APPROPRIATION;  
12 AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

15  
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 (2) "DECOMMISSION" OR "DECOMMISSIONING" MEANS:

25 (A) THE REMOVAL OF AN ABOVEGROUND WIND TURBINE TOWER AFTER THE END OF A WIND GENERATION  
26 FACILITY'S USEFUL LIFE OR ABANDONMENT;

27 (B) EXCEPT AS PROVIDED IN [SECTION 2(2)], THE REMOVAL OF BUILDINGS, CABLING, ELECTRICAL COMPONENTS,  
28 ROADS, OR ANY OTHER ASSOCIATED FACILITIES; AND

29 (C) EXCEPT AS PROVIDED IN [SECTION 2(2)], RECLAMATION OF SURFACE LANDS TO THE PREVIOUS GRADE AND  
30 TO COMPARABLE PRODUCTIVITY IN ORDER TO PREVENT ADVERSE HYDROLOGIC EFFECTS.

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

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

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

5 (6) "REPURPOSED" MEANS HAVING MADE A SIGNIFICANT INVESTMENT IN AN EXISTING WIND GENERATION FACILITY  
6 TO EXTEND THE USEFUL LIFE OF THE FACILITY BY MORE THAN 5 YEARS.

7 ~~(6)(7)~~ "Wind generation facility" means any combination of a physically connected wind turbine or  
8 turbines, associated prime movers, and other associated property, including appurtenant land and improvements  
9 and personal property, that are normally operated together to produce electric power from wind that have a  
10 nameplate capacity greater than or equal to ~~50~~ 25 megawatts.

11  
12 ~~NEW SECTION. Section 2. Bond -- penalty for failure to submit.~~ (1) On or before July 1, 2017, the  
13 owner of a wind generation facility operating in Montana shall:

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

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

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

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

23 ~~—— (b) If a wind generation facility commenced commercial operation after January 1, 2017, the operator~~  
24 ~~shall submit the decommissioning bond to the department prior to the conclusion of the 5th year of operation of~~  
25 ~~the wind generation facility.~~

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

28 ~~—— (5) (a) If the owner of a wind generation facility fails to submit a decommissioning bond acceptable to~~  
29 ~~the department within the timeframe required by this section, the department may assess an administrative~~  
30 ~~penalty of not more than \$1,500 and an additional administrative penalty of not more than \$1,500 for each day~~

1 ~~the failure to submit the decommissioning bond continues.~~

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

6 ~~———(6) If the owner of a wind generation facility transfers ownership of the facility to a successor owner, the~~  
 7 ~~first owner remains responsible for decommissioning the wind generation facility, and the department may not~~  
 8 ~~release the bond submitted by the first owner until the successor owner submits a bond acceptable to the~~  
 9 ~~department:~~

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

12 ~~———(a) areas subject to local zoning adopted under Title 76, chapter 2;~~

13 ~~———(b) military affected areas under Title 10, chapter 1, part 15; or~~

14 ~~———(c) airport affected areas under Title 67, chapter 7.~~

15

16 NEW SECTION. SECTION 2. BOND -- PENALTY FOR FAILURE TO SUBMIT. (1) ON OR BEFORE JULY 1, 2018,  
 17 THE OWNER OF A WIND GENERATION FACILITY OPERATING IN MONTANA SHALL:

18 (A) NOTIFY THE DEPARTMENT IN WRITING OF THE DATE THAT THE FACILITY BEGAN COMMERCIAL OPERATION;

19 (B) SUBJECT TO SUBSECTION (2), SUBMIT A PLAN FOR DECOMMISSIONING THE FACILITY TO THE DEPARTMENT,  
 20 INCLUDING THE SCOPE OF WORK TO BE COMPLETED AND COST ESTIMATES FOR COMPLETION; AND

21 (C) PROVIDE THE DEPARTMENT WITH ANY OTHER NECESSARY INFORMATION IN ACCORDANCE WITH [SECTIONS  
 22 1 THROUGH 5] AND RULES ADOPTED PURSUANT TO [SECTIONS 1 THROUGH 5] IN ORDER FOR THE DEPARTMENT TO  
 23 DETERMINE BOND REQUIREMENTS IN ACCORDANCE WITH THIS SECTION.

24 (2) IF A PROPERTY OWNER AND THE OWNER OF A WIND GENERATION FACILITY REACH AN AGREEMENT  
 25 CONCERNING ALTERNATIVE RESTORATION OF BUILDINGS, CABLING, ELECTRICAL COMPONENTS, ROADS, OR ANY OTHER  
 26 ASSOCIATED FACILITIES, INSTEAD OF REMOVAL; ALTERNATIVE PLANS FOR RECLAMATION OF SURFACE LANDS; OR BOTH  
 27 ALTERNATIVE RESTORATION AND ALTERNATIVE PLANS FOR RECLAMATION, DECOMMISSIONING DOES NOT INCLUDE  
 28 REMOVAL, PLANS FOR RECLAMATION, OR BOTH, AS LONG AS A COPY OF THE AGREEMENT IS PROVIDED TO THE  
 29 DEPARTMENT.

30 (3) IF NECESSARY, THE DEPARTMENT MAY MODIFY A PLAN FOR DECOMMISSIONING TO DETERMINE BOND

1 REQUIREMENTS IN ACCORDANCE WITH SUBSECTIONS (4) THROUGH (8).

2 (4) IN DETERMINING THE AMOUNT OF A BOND REQUIRED IN ACCORDANCE WITH SUBSECTION (6), THE  
3 DEPARTMENT SHALL CONSIDER:

4 (A) THE CHARACTER AND NATURE OF THE SITE WHERE THE WIND GENERATION FACILITY IS LOCATED; AND

5 (B) THE CURRENT MARKET SALVAGE VALUE OF THE WIND GENERATION FACILITY, AS DETERMINED BY AN  
6 INDEPENDENT EVALUATOR.

7 (5) EXCEPT AS PROVIDED IN SUBSECTIONS (7) AND (8) AND IN ACCORDANCE WITH SUBSECTION (6), THE OWNER  
8 OF A WIND GENERATION FACILITY SHALL SUBMIT TO THE DEPARTMENT A BOND PAYABLE TO THE STATE OF MONTANA IN  
9 A FORM ACCEPTABLE BY THE DEPARTMENT AND IN THE SUM DETERMINED BY THE DEPARTMENT, CONDITIONED ON THE  
10 FAITHFUL DECOMMISSIONING OF THE WIND GENERATION FACILITY.

11 (6) (A) EXCEPT AS PROVIDED IN SUBSECTIONS (7) AND (8), IF A WIND GENERATION FACILITY COMMENCED  
12 COMMERCIAL OPERATION ON OR BEFORE JANUARY 1, 2007, THE OPERATOR SHALL SUBMIT THE DECOMMISSIONING BOND  
13 TO THE DEPARTMENT PRIOR TO THE CONCLUSION OF THE 16TH YEAR OF OPERATION OF THE WIND GENERATION FACILITY.

14 (B) EXCEPT AS PROVIDED IN SUBSECTIONS (7) AND (8), IF A WIND GENERATION FACILITY COMMENCED  
15 COMMERCIAL OPERATION AFTER JANUARY 1, 2007, THE OPERATOR SHALL SUBMIT THE DECOMMISSIONING BOND TO THE  
16 DEPARTMENT PRIOR TO THE CONCLUSION OF THE 15TH YEAR OF OPERATION OF THE WIND GENERATION FACILITY.

17 (7) IF A WIND GENERATION FACILITY IS REPURPOSED, AS DETERMINED BY THE DEPARTMENT IN CONSULTATION  
18 WITH THE OWNER, THE OWNER IS NOT REQUIRED TO PROVIDE A BOND, AND ANY EXISTING BOND MUST BE RELEASED UNTIL  
19 THE REPURPOSED FACILITY REACHES ITS 5TH YEAR OF OPERATION.

20 (8) AN OWNER OF A WIND GENERATION FACILITY IS EXEMPT FROM THE REQUIREMENTS OF SUBSECTION (6) IF:

21 (A) THE OWNER POSTS A BOND WITH A FEDERAL AGENCY, WITH THE DEPARTMENT OF NATURAL RESOURCES AND  
22 CONSERVATION FOR THE LEASE OF STATE LAND, OR WITH A TRIBAL, COUNTY, OR LOCAL GOVERNMENT;

23 (B) THE PRIVATE LANDOWNER ON WHOSE LAND THE WIND GENERATION FACILITY IS LOCATED OWNS A 10% OR  
24 GREATER SHARE OF THE WIND GENERATION FACILITY, AS DETERMINED BY THE DEPARTMENT; OR

25 (C) THE WIND GENERATION FACILITY COMMENCED COMMERCIAL OPERATION ON OR BEFORE JANUARY 1, 2018,  
26 AND HAS LESS THAN 25 MEGAWATTS IN NAMEPLATE CAPACITY.

27 (9) (A) IF THE OWNER OF THE WIND GENERATION FACILITY FAILS TO SUBMIT A DECOMMISSIONING BOND  
28 ACCEPTABLE TO THE DEPARTMENT WITHIN THE TIMEFRAME REQUIRED BY THIS SECTION, THE DEPARTMENT MAY ASSESS  
29 AN ADMINISTRATIVE PENALTY OF NOT MORE THAN \$1,500, AND AN ADDITIONAL ADMINISTRATIVE PENALTY OF NOT MORE  
30 THAN \$1,500 FOR EACH DAY THE FAILURE TO SUBMIT THE DECOMMISSIONING BOND CONTINUES.

1 (B) THE OWNER OF THE WIND GENERATION FACILITY MAY APPEAL THE DEPARTMENT'S PENALTY ASSESSMENT TO  
 2 THE BOARD WITHIN 20 DAYS AFTER RECEIPT OF WRITTEN NOTICE OF THE PENALTY. THE CONTESTED CASE PROVISIONS  
 3 OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT, TITLE 2, CHAPTER 4, PART 6, APPLY TO A HEARING BEFORE THE  
 4 BOARD UNDER THIS SUBSECTION (9).

5 (10) IF THE OWNER OF A WIND GENERATION FACILITY TRANSFERS OWNERSHIP OF THE FACILITY TO A SUCCESSOR  
 6 OWNER, THE FIRST OWNER'S BOND MUST BE RELEASED AFTER 90 DAYS. THE NEW OWNER SHALL SUBMIT ANY NECESSARY  
 7 BOND WITHIN 90 DAYS AFTER TRANSFER OF OWNERSHIP OR BE SUBJECT TO PENALTIES IN ACCORDANCE WITH THIS  
 8 SECTION.

9 (11) ONCE EVERY 5 YEARS, THE OWNER OF A WIND GENERATION FACILITY MAY APPLY TO THE DEPARTMENT FOR  
 10 A REDUCTION IN THE AMOUNT OF THE DECOMMISSIONING BOND APPLICABLE TO THE WIND ENERGY FACILITY. THE OWNER'S  
 11 APPLICATION TO THE DEPARTMENT MUST INCLUDE A DETAILED DESCRIPTION OF ANY MATERIAL CHANGES TO INFORMATION  
 12 CONSIDERED BY THE DEPARTMENT IN SETTING THE INITIAL AMOUNT OF THE BOND.

13 (12) SUBMITTING A BOND IN ACCORDANCE WITH THIS SECTION DOES NOT ABSOLVE THE OWNER OF A WIND  
 14 GENERATION FACILITY FROM COMPLYING WITH APPLICABLE REGULATIONS AND REQUIREMENTS FOR:

15 (A) AREAS SUBJECT TO LOCAL ZONING ADOPTED UNDER TITLE 76, CHAPTER 2;

16 (B) MILITARY AFFECTED AREAS UNDER TITLE 10, CHAPTER 1, PART 15; OR

17 (C) AIRPORT AFFECTED AREAS UNDER TITLE 67, CHAPTER 7.

18

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

22 (a) penalties collected in accordance with ~~[section 2(5)]~~ [SECTION 2(9)]; and

23 (b) interest income earned on the account.

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

26 (3) (a) Money in the account may only be used by the department in implementing [sections 1 through  
 27 5] and rules adopted pursuant to [sections 1 through 5].

28 (b) The department shall administer [sections 1 through 5] using existing resources and money in the  
 29 account pursuant to subsection (1).

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

1 authorized in [section 2] for use in accordance with [sections 1 through 5].

2

3 NEW SECTION. Section 4. Release of bond -- use of bond by department. (1) ~~The (A)~~ SUBJECT TO  
4 SUBSECTION (1)(B), THE department shall release the bond if it is satisfied that an owner has properly  
5 decommissioned a wind generation facility.

6 (B) AT ANY TIME, AN OWNER OF A WIND GENERATION FACILITY MAY PETITION THE DEPARTMENT FOR RELEASE  
7 OF THE BOND, AND THE DEPARTMENT SHALL REPLY WITH A DETERMINATION WITHIN 90 DAYS.

8 (2) If the owner of a wind generation facility fails to properly decommission a wind generation facility and  
9 has not commenced action to rectify deficiencies within ~~30~~ 90 days after notification by the department, the  
10 department shall cause the bond to be forfeited. The department, with staff, equipment, and material under its  
11 control or by contract with others, may take any necessary actions to decommission the wind generation facility.

12

13 NEW SECTION. Section 5. Rulemaking. On or before January 1, 2018, the department shall adopt  
14 rules 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;

17 (2) the collection of penalties in accordance with ~~[section 2(5)]~~ [SECTION 2(9)];

18 (3) criteria and the process for releasing a bond in accordance with [section 4];

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

21 (5) information required by the department to determine bond requirements in accordance with [section  
22 2]; and

23 (6) any additional requirements to ensure compliance with [sections 1 through 5].

24

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

26 "**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
27 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the  
28 need for a biennial legislative appropriation or budget amendment.

29 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both  
30 of the following provisions:

- 1 (a) The law containing the statutory authority must be listed in subsection (3).
- 2 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
3 appropriation is made as provided in this section.
- 4 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;  
5 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;  
6 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;  
7 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;  
8 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;  
9 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;  
10 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;  
11 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;  
12 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;  
13 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;  
14 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;  
15 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.
- 16 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
17 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
18 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
19 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
20 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
21 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion  
22 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded  
23 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  
24 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.  
25 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under  
26 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion  
27 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004  
28 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,  
29 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;  
30 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;

1 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.  
2 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.  
3 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,  
4 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of  
5 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of  
6 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  
7 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates  
8 September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December  
9 31, 2023.)"

10  
11 NEW SECTION. Section 7. Notification to tribal governments. The secretary of state shall send a  
12 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
13 Chippewa tribe.

14  
15 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 5] are intended to be codified  
16 as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 5].

17  
18 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured,  
19 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

20  
21 NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

22 - END -