

HOUSE BILL NO. 363

INTRODUCED BY D. LENZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA RENEWABLE ENERGY  
5 PERMITTING, DECOMMISSIONING, AND RECLAMATION ACT; REQUIRING THE OWNERS OF RENEWABLE  
6 ENERGY GENERATION FACILITIES TO ACQUIRE A PERMIT PRIOR TO CONSTRUCTION; REQUIRING A  
7 SURETY BOND; REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADMINISTER A  
8 PERMIT PROGRAM FOR RENEWABLE ENERGY GENERATION FACILITIES; GRANTING THE  
9 DEPARTMENT THE AUTHORITY TO APPROVE, DENY, OR MODIFY PERMITS; ESTABLISHING PERMIT  
10 CRITERIA; ALLOWING PERMIT DENIALS OR MODIFICATIONS TO BE REVIEWED BY THE BOARD OF  
11 ENVIRONMENTAL REVIEW; ALLOWING FOR PERMIT FEES; GRANTING RULEMAKING AUTHORITY TO  
12 THE DEPARTMENT; ALLOWING THE DEPARTMENT TO USE BONDS IN SOME INSTANCES; PROVIDING  
13 A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE  
14 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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18 NEW SECTION. **Section 1. Short title.** [Sections 1 through 11] may be cited as the "Montana  
19 Renewable Energy Permitting, Decommissioning, and Reclamation Act".

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21 NEW SECTION. **Section 2. Policy and legislative findings.** (1) The legislature, mindful of its  
22 constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the  
23 Montana Renewable Energy Permitting, Decommissioning, and Reclamation Act. It is the legislature's intent that  
24 the requirements of [sections 1 through 11] provide adequate remedies for the protection of the environmental  
25 life support system from degradation.

26 (2) The legislature finds that the construction of wind and solar energy generation facilities may be  
27 necessary to meet the increasing need for electricity. Therefore, it is necessary to ensure that the reclamation  
28 and bonding of wind and solar generation facilities complies with [sections 1 through 11].

29 (3) The legislature also finds that it is the purpose of [sections 1 through 11] to:

30 (a) ensure protection of the state's environmental resources; and



1 (b) provide citizens with the opportunity to participate in siting decisions.

2

3 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 11], unless the context requires  
4 otherwise, the following definitions apply:

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

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

7 (3) "Owner" means a person who owns a renewable energy generation facility used for the generation  
8 of electricity.

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

11 (5) "Renewable energy generation facility" means a facility that generates electricity with a nameplate  
12 capacity greater than or equal to 35 megawatts that includes:

13 (a) any combination of physically connected wind turbines, associated prime movers, and other  
14 associated property, including appurtenant land and improvements and personal property; or

15 (b) an installation or combination of solar panels or plates, including a canopy or array, that captures and  
16 converts solar radiation to produce electricity, and includes flat plate, focusing solar collectors, or photovoltaic  
17 solar cells.

18

19 **NEW SECTION. Section 4. Notice requirements.** (1) If a person plans to construct a renewable energy  
20 generation facility, the person must provide public notice to property owners residing in the area where the  
21 renewable energy generation facility may be located and to the department no less than 60 days prior to the  
22 commencement of acquisition of right-of-way.

23 (2) Notice must include publication of a summary describing the renewable energy generation facility  
24 and the proposed location of the facility in newspapers that will substantially inform property owners of the  
25 construction and by mailing a summary to the department.

26 (3) The notice must inform the property owners of their rights under [sections 1 through 11] concerning  
27 the location of the facility and that more information concerning their rights may be obtained from the department.

28

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

- 1 (1) standards, procedures, and requirements for the submission of permit applications and reasonable  
 2 bonds with good and sufficient surety by the owners of renewable energy generation facilities;
- 3 (2) criteria for the process of reviewing, modifying, approving, and denying permit applications;
- 4 (3) criteria and the process for releasing a bond in accordance with [section 10];
- 5 (4) criteria and the process for causing forfeiture and using a bond in the event that the owner of a  
 6 renewable energy generation facility fails to properly decommission a renewable energy generation facility as  
 7 required by [sections 1 through 11], rules adopted by the department in accordance with [sections 1 through 11],  
 8 or the permit;
- 9 (5) permit application fees;
- 10 (6) procedures for the transfer of a permit; and
- 11 (7) any additional requirements necessary to ensure the administration of and compliance with [sections  
 12 1 through 11].

13

14 **NEW SECTION. Section 6. Renewable energy permitting, decommissioning, and reclamation**  
 15 **account.** (1) There is a renewable energy permitting, decommissioning, and reclamation account within the state  
 16 special revenue fund established in 17-2-102. There must be paid into the account:

- 17 (a) money deposited into the account from fees collected pursuant to [section 7(7)];
- 18 (b) interest income earned on the account; and
- 19 (c) any other funds received by the department for the purposes of administering [sections 1 through 11].

20 (2) Funds in the renewable energy permitting, decommissioning, and reclamation account are statutorily  
 21 appropriated, as provided in 17-7-502, to the department and may be used for state costs related to  
 22 implementation of [sections 1 through 11].

23 (3) The department shall maintain and hold bonds or other surety received by the department as  
 24 authorized in [section 9] for use in accordance with [sections 1 through 11].

25

26 **NEW SECTION. Section 7. Renewable energy permit required.** (1) A person may not construct a  
 27 renewable energy generation facility without a permit from the department.

28 (2) Not later than 180 days before construction of a renewable energy generation facility in Montana, the  
 29 owner of a renewable energy generation facility shall file with the department a permit application containing the  
 30 following:

- 1 (a) a description of the proposed renewable energy generation facility, including the total nameplate  
2 capacity of the facility;
- 3 (b) for wind facilities, the proposed number, representative types, and height or range of heights of wind  
4 turbines to be constructed, including their generating capacity, dimensions, and respective manufacturers, and  
5 a description of ancillary facilities;
- 6 (c) for solar facilities, the proposed number and representative types of solar panels or plates, including  
7 their generating capacity, dimensions, and respective manufacturers, and a description of ancillary facilities;
- 8 (d) identification and location of the properties on which the proposed renewable energy generation  
9 facility will be located;
- 10 (e) a site plan and construction drawings, showing the planned location of all turbines or panels or plates,  
11 property lines, setback lines, access roads, and other site features;
- 12 (f) a statement of compliance with applicable local, state, and federal regulations;
- 13 (g) decommissioning and reclamation plans that describe the anticipated life of the renewable energy  
14 generation facility, the estimated decommissioning and reclamation costs, and the anticipated manner in which  
15 the renewable energy generation facility will be decommissioned and the site reclaimed in accordance with  
16 [section 10];
- 17 (h) signed interconnection agreements with utilities, if the applicant intends to interconnect with those  
18 utilities, or statements outlining efforts to secure interconnection agreements;
- 19 (i) proof of liability insurance;
- 20 (j) a bond or other surety in accordance with [section 9];
- 21 (k) for wind facilities, proof of a wind option agreement, wind energy agreement, or both developed in  
22 accordance with Title 70, chapter 17, part 4;
- 23 (l) other information that the applicant considers relevant or that the department by rule may require; and
- 24 (m) proof that notice was provided in accordance with [section 4].
- 25 (3) If an application for a permit requires the preparation of an environmental impact statement under  
26 the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the  
27 applicant in writing of the approval, denial, or modification of the application within 270 days after the department's  
28 receipt of an application.
- 29 (4) If an application does not require the preparation of an environmental impact statement, the  
30 department shall notify the applicant in writing within 120 days after its receipt of an application of its approval,

1 denial, or modification of the application.

2 (5) A permit may be transferred to a person who agrees to comply with the terms, conditions, and  
3 modifications contained in a permit.

4 (6) The permit program administered by the department pursuant to this section must include  
5 requirements and procedures for permit amendments, including procedures for the addition of turbines, panels,  
6 or plates to a renewable energy generation facility that has secured a permit from the department.

7 (7) (a) The owner of the renewable energy generation facility shall pay a fee established by the  
8 department to cover the department's costs associated with processing the application.

9 (b) The department shall determine the amount of the fee based on the complexity of processing an  
10 application.

11 (c) If the department decides to hire a third-party contractor to prepare an environmental assessment  
12 or an environmental impact statement on the application, the department shall prepare a list of no fewer than four  
13 contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant  
14 shall provide the department with a list of at least 50% of the contractors from the department's list. The  
15 department shall select its contractor from the list provided by the applicant.

16 (d) The applicant shall reimburse the department for the reasonable costs of the third-party contractor.

17 (8) Upon receipt of evidence that construction of a renewable energy generation facility commenced  
18 without a permit in accordance with [sections 1 through 11], the department may commence legal proceedings  
19 to immediately restrain or enjoin any person who has contributed to or who is constructing the renewable energy  
20 generation facility.

21  
22 **NEW SECTION. Section 8. Denial or modification of a permit.** (1) An applicant for a permit may  
23 request a hearing before the board on a denial of the application or the issuance of a permit with modifications  
24 not agreed to by the applicant by submitting a written request for a hearing within 30 days of receipt of written  
25 notice of the denial or permit issuance with modifications. The request must state the reason that the hearing is  
26 requested.

27 (2) Hearings under this section must be conducted by the board in accordance with the Montana  
28 Administrative Procedure Act. Any party whose interests may be adversely affected as a result of an action taken  
29 pursuant to [sections 1 through 11] may become a party to any proceeding held under [sections 1 through 11].

30 (3) If the owner does not request a hearing before the board, modification of a permit is effective 30 days

1 after receipt of notice by the owner unless the department specifies a later date.

2

3 **NEW SECTION. Section 9. Bond and surety requirements.** (1) The applicant for a permit shall file  
4 with the department a bond payable to the state of Montana in a form acceptable to the department and in the  
5 sum determined by the department, conditioned upon the faithful performance of the requirements of [sections  
6 1 through 11], the rules adopted by the department under [sections 1 through 11], and the permit.

7 (2) In determining the amount of the bond, the department shall take into consideration the character  
8 and nature of the site where the renewable energy generation facility is proposed. The bond may not be less than  
9 the total estimated cost to the state to ensure compliance with [sections 1 through 11], rules adopted in  
10 accordance with [sections 1 through 11], and the permit.

11

12 **NEW SECTION. Section 10. Release of bond -- use of bond by department.** (1)(a) After energy is  
13 not generated at a renewable energy generation facility for a continuous period of 1 year, the owner of a  
14 renewable energy generation facility has 1 year to complete decommissioning of the renewable energy  
15 generation facility absent an order by the department providing a longer period.

16 (b) Decommissioning must include removal of wind turbines, solar panels or plates, buildings, cabling,  
17 electrical components, roads, and any other associated facilities. Surface land must be reclaimed in accordance  
18 with subsection(1)(c), unless a property owner and the owner of a renewable energy generation facility have  
19 reached an agreement concerning alternative remediation of the land surface area, and a copy of the agreement  
20 is provided to the department.

21 (c) Surface land must be reclaimed to previous grade, to comparable productivity, and to prevent adverse  
22 hydrologic effects.

23 (2) If the owner of a renewable energy generation facility fails to decommission a renewable energy  
24 generation facility as required by [sections 1 through 11], the rules adopted under [sections 1 through 11], and  
25 the permit, and has not commenced action to rectify deficiencies within 30 days after notification by the  
26 department, the department shall cause the bond to be forfeited. The department, with staff, equipment, and  
27 material under its control or by contract with others, may take any necessary actions for decommissioning the  
28 renewable energy generation facility in accordance with [sections 1 through 11], the rules adopted pursuant to  
29 [sections 1 through 11], and the permit.

30 (3) A bond filed in accordance with [section 9] may not be released by the department until the provisions

1 of [sections 1 through 11], the rules adopted pursuant to [sections 1 through 11], and the permit have been  
 2 fulfilled in decommissioning the renewable energy generation facility.

3  
 4 **NEW SECTION. Section 11. Local regulations.** A permit acquired in accordance with the provisions  
 5 of [sections 1 through 11] does not absolve the owner of a renewable energy generation facility from complying  
 6 with applicable regulations and requirements for:

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

10  
 11 **Section 12.** Section 17-7-502, MCA, is amended to read:

12 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
 13 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the  
 14 need for a biennial legislative appropriation or budget amendment.

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

- 17 (a) The law containing the statutory authority must be listed in subsection (3).  
 18 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
 19 appropriation is made as provided in this section.

20 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;  
 21 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;  
 22 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;  
 23 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;  
 24 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;  
 25 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;  
 26 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;  
 27 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;  
 28 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;  
 29 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; [section 6]; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222;  
 30 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;

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

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

26  
 27 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 11] are intended to be  
 28 codified as an integral part of Title 75, and the provisions of Title 75 apply to [sections 1 through 11].

29  
 30 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.



