

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 492

BY SENATORS SMITH AND PHILLIPS

[Introduced March 1, 2021; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §22-32-1, §22-32-2, §22-32-3, §22-32-4, §22-32-5, §22-32-6, and §22-32-7,
3 all relating generally to establishing and implementing a program to decommission and
4 reclaim wind and solar electrical generation facilities upon closure; making legislative
5 findings; stating legislative purpose; providing a short title; defining terms; requiring the
6 owners of wind generation facilities and solar generation facilities to notify and provide
7 certain information to the Department of Environmental Protection (DEP), including dates
8 when operations began and plans with cost estimates for decommissioning facilities;
9 requiring DEP to determine and assess a reclamation bond based on a facility's total
10 disturbed acreage; establishing a minimum bond value of \$150,000; requiring the owners
11 of said facilities to submit bonds payable to the state in a form and in a sum determined
12 by the DEP, conditioned on the satisfactory decommissioning; providing that owners of
13 said facilities may enter into alternative reclamation agreements after approval by the
14 DEP; providing that the DEP may modify said plans after proper notification and appeals;
15 providing exemptions from bond requirements for facilities with nameplate capacities of
16 less than 0.5 megawatts; providing for administrative penalties for failure to submit
17 decommissioning bonds of not more than \$10,000 for the first day and not more than \$500
18 for each additional day; providing appellate rights to the Environmental Quality Board;
19 providing transfer of ownership provisions; providing for amended plans for allowing
20 reductions in bond amounts; providing that bond submission does not absolve owners
21 from complying with other applicable regulations and requirements; establishing a Wind
22 and Solar Decommissioning Account within the Office of the West Virginia Treasurer in to
23 which assessed penalties and accrued interest must be paid and held; providing that the
24 account may only be used by the DEP to implement this article and adopted rules;
25 providing that DEP shall administer this act using existing resources and the account;
26 requiring the DEP to maintain and hold bonds or other surety received; providing for the

27 release of bonds after the DEP is satisfied property has been properly decommissioned
28 in accordance with the plan; providing for bond forfeiture when a facility is not properly
29 decommissioned, if the deficiencies are not rectified; providing that the Office of
30 Environmental Remediation or a private entity by contract may decommission facilities;
31 providing that DEP may file suit to enforce permit and plan conditions and to recoup costs
32 of reclamation; authorizing rulemaking; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 32. THE WEST VIRGINIA WIND AND SOLAR ENERGY FACILITY
RECLAMATION ACT.**

§22-32-1. Legislative findings and purpose.

1 (a) The Legislature finds that the State of West Virginia has an interest in assuring that
2 wind generation facilities and solar generation facilities are properly decommissioned and
3 reclaimed once the facility has been permanently closed.

4 (b) The Legislature further finds that the most efficient manner by which to protect the
5 citizens of the State of West Virginia is to require that wind generation facilities and solar
6 generation facilities secure bonding sufficient to pay for all decommissioning and reclamation
7 costs of the property on which wind generation facilities and solar generation facilities are
8 operated.

9 (c) Therefore, in view of the findings relating to the decommissioning and reclamation of
10 wind generation facilities and solar generation facilities, the Legislature declares it to be the public
11 policy of the State of West Virginia to eliminate the present danger resulting from abandoned wind
12 generation facilities and solar generation facilities and that in order to provide for the public health,
13 safety and welfare, it is necessary to enact legislation to those ends by requiring companies that
14 construct and operate wind generation facilities and solar generation facilities to post bonds
15 sufficient to cover the costs of decommissioning and reclamation in the event they are abandoned

16 after closure.

§22-32-2 Short title.

1 This article shall be known and cited as “The West Virginia Wind and Solar Energy Facility
2 Reclamation Act.”

§22-32-3. Definitions.

1 As used in this article, unless the context requires otherwise, the following definitions
2 apply:

3 (a) “Board” means the Environmental Quality Board provided for in West Virginia Code
4 §22B-1-7.

5 (b) “Decommission” or “decommissioning” means:

6 (1) The removal and proper disposal of the solar generation facility and its foundation after
7 the end of the facility's useful life or abandonment; or

8 (2) The removal and proper disposal of an aboveground wind turbine tower and its
9 foundation after the end of a wind generation facility's useful life or abandonment; and

10 (3) Except as provided in West Virginia Code §22-32-4(d), the removal and proper
11 disposal of buildings, equipment, cabling, electrical components, roads, or any other facilities
12 associated with a wind generation or solar generation facility; and

13 (4) Except as provided in West Virginia Code §22-32-4(d), the reclamation of the surface
14 lands upon which buildings, equipment, and equipment foundations using backfill and compacting
15 of soil in order to return the surface to beneficial use and to prevent adverse hydrologic effects.

16 (c) “Department,” “agency,” and “DEP” mean the West Virginia Department of
17 Environmental Protection.

18 (d) “Owner” means a person who owns a wind generation or solar generation facility
19 operated in West Virginia for the generation of electricity.

20 (e) “Person” means any individual, firm, partnership, company, association, corporation,
21 city, town, or local governmental entity or any other state, federal, or private entity, whether

22 organized for profit or not.

23 (f) "Solar generation facility" means an installation or combination of solar panels or plates,
24 including a canopy or array, and other associated property, including appurtenant land,
25 improvements, and personal property, that are normally operated together to capture and convert
26 solar radiation to produce electricity, including flat plate, focusing solar collectors, or photovoltaic
27 solar cells, and that has a nameplate capacity greater than or equal to 0.5 megawatts.

28 (g) "Wind generation facility" means any combination of a physically connected wind
29 turbine or turbines, associated prime movers, and other associated property, including
30 appurtenant land, improvements, and personal property, that are normally operated together to
31 produce electric power from wind and that have a nameplate capacity greater than or equal to 0.5
32 megawatts.

§22-32-4. Bonding required.

1 (a) Within 12 months of a wind generation facility or solar generation facility commencing
2 commercial operation, except as provided in subsection (b) of this section, the owner of a wind
3 generation facility or solar generation facility operating in West Virginia shall:

4 (1) Notify the Department of Environmental Protection in writing of the date that the facility
5 began commercial operation;

6 (2) Submit a plan for decommissioning the facility to the DEP, including the scope of work
7 to be completed and cost estimates for completion; and

8 (3) Provide the DEP with any other necessary information in accordance with this article
9 and rules adopted pursuant to this article in order for the department to determine bond
10 requirements in accordance with this section.

11 (b) If a wind generation facility or solar generation facility commenced commercial
12 operation before July 1, 2021, the owner of the facility shall submit to the department the
13 information required in subsection (a) of this section on or before July 1, 2022.

14 (c) If a wind generation facility or solar generation facility commenced commercial

15 operation before July 1, 2021, and the owner of the facility submitted information required by
16 subsection (a) of this section on or before July 1, 2021, the owner is not required to resubmit the
17 information.

18 (d) If a property owner and the owner of a wind generation facility or solar generation
19 facility reach an agreement concerning (1) Alternative restoration of buildings, equipment, other
20 associated property (including appurtenant land, improvements, and personal property), cabling,
21 electrical components, roads, or any other associated facilities (instead of removal) or (2)
22 alternative plans for reclamation of surface lands, or (3) both, the agreement must be provided to
23 the DEP for review and approval by the Cabinet Secretary or his assigns. The DEP must approve
24 or deny the alternative plan submission within 90 days of receipt.

25 (e)(1) Upon application by the wind generation facility or solar generation facility, the DEP
26 may modify a plan for decommissioning and adjust bond requirements in accordance with this
27 article.

28 (2) The DEP shall notify the owner of the facility of any modification. The owner of the wind
29 generation facility or solar generation facility may appeal a modification by the DEP of a plan for
30 decommissioning to the Environmental Quality Board within 30 days of receiving notice of the
31 modification to the plan.

32 (f) To determine the amount of a bond required in accordance with this act, the DEP shall
33 assess a minimum bond of \$150,000, based upon the total disturbed acreage upon which the
34 wind generation or solar generation facility is operated.

35 (g) Except as provided in subsection (i) of this section, the owner of a wind generation
36 facility or solar generation facility shall submit to the DEP a bond payable to the State of West
37 Virginia in a form acceptable by the DEP and in the sum determined by the DEP, conditioned on
38 the faithful decommissioning of the wind generation facility or solar generation facility.

39 (h)(1) Except as provided in subsection (i) of this section, if a wind generation facility or
40 solar generation facility commenced commercial operation on or before July 1, 2021, the operator

41 shall submit the decommissioning bond to the DEP on or before July 1, 2022.

42 (2) Except as provided in subsection (i) of this section, if a wind generation facility or solar
43 generation facility commenced commercial operation after July 1, 2021, the operator shall submit
44 the decommissioning bond to the DEP within one year of the date on which the wind generation
45 facility or solar generation facility first produces electricity for consumer or industrial use.

46 (i) An owner of a wind generation facility or solar generation facility is exempt from the
47 requirements of subsection (f) of this section if the facility:

48 (1) Commenced commercial operation on or before July 1, 2021, is a wind generation
49 facility, and has less than 0.5 megawatts in nameplate capacity; or

50 (2) Commenced commercial operation on or before July 1, 2021, is a solar generation
51 facility, and has less than 0.5 megawatts in nameplate capacity.

52 (j)(1) If the owner of the wind generation facility or solar generation facility fails to submit
53 a decommissioning bond acceptable to the DEP within the timeframe required by this section, the
54 DEP shall provide notice to the facility owner. If, after 30 days, the owner of a wind generation
55 facility or solar generation facility has not submitted a decommissioning bond, the DEP may
56 assess an administrative penalty of not more than \$10,000 for the first day of violation and may
57 assess an additional administrative penalty of not more than \$500 for each day the failure to
58 submit the decommissioning bond continues.

59 (2) The owner of the wind generation facility or solar generation facility may appeal a
60 penalty assessment to the Environmental Quality Board within 30 days after receipt of written
61 notice of the penalty. The provisions of West Virginia Code § 22B-1-1, et seq. of this code shall
62 apply to such appeals.

63 (k) If the owner of a wind generation facility or solar generation facility transfers ownership
64 of the facility to a successor owner, the first owner's bond must be released after 90 days. The
65 new owner shall submit any necessary bond within 90 days after transfer of ownership or be
66 subject to penalties in accordance with this section.

67 (l) Once every 5 years, the owner of a wind generation facility or solar generation facility
 68 may submit an amended plan for the DEP’s approval. As part of the submission, the owner of a
 69 wind generation facility or solar generation facility may also apply to the DEP for a reduction in
 70 the amount of the decommissioning bond applicable to the wind energy facility or solar generation
 71 facility. The owner’s application to the DEP must include written evidence of a reduction in the
 72 total disturbed acreage upon which the facility is sited.

73 (m) Submitting a bond in accordance with this section does not absolve the owner of a
 74 wind generation facility or solar generation facility from complying with all other applicable
 75 regulations and requirements applicable to a wind generation facility or solar generation facility.

76 (n) This bonding requirement shall apply regardless of any agreement or plan approved
 77 by the Public Service Commission of West Virginia during the siting certificate process.

22-32-5. Wind and solar decommissioning account, bonds to be held.

1 (a) This article establishes a “Wind and Solar Decommissioning Account” within the Office
 2 of the West Virginia Treasurer. There must be paid into the account:

3 (1) Penalties collected in accordance with the article; and

4 (2) Interest income earned on the account.

5 (b)(1) Money in the account may only be used by the DEP in implementing this article and
 6 rules adopted pursuant to this article.

7 (2) The DEP shall administer this using existing resources and money in the account.

8 (c) The DEP shall maintain and hold bonds or other surety received by the DEP as
 9 authorized by this article for use in accordance with this article.

§22-32-6. Bond release.

1 (a)(1) Subject to subdivision (2) of this section, the DEP shall release the bond if it is
 2 satisfied that an owner has properly decommissioned a wind generation facility or solar generation
 3 facility in accordance with the plan required by this article.

4 (2) At any time, an owner of a wind generation facility or solar generation facility may

5 petition the DEP for release of the bond, and the DEP shall reply with a determination within 90
6 days.

7 (b) If the owner of a wind generation facility or solar generation facility fails to properly
8 decommission a wind generation facility or solar generation facility and has not commenced
9 action to rectify deficiencies within 90 days after notification by the DEP, the DEP shall cause the
10 bond to be forfeited. The DEP, through its Office of Environmental Remediation or by contract
11 with a private entity, may take any necessary actions to decommission the wind generation facility
12 or solar generation facility. Upon completion, the DEP may file suit to enforce the permit
13 conditions, plans, and agreements to recoup the cost of decommissioning and reclamation in the
14 Circuit Court of Kanawha County or in the circuit court of the county in which the wind generation
15 facility or solar generation facility is located.

§22-32-7. Rulemaking.

1 The DEP may promulgate such emergency, interpretive, legislative, and procedural rules
2 as the secretary deems to be useful or necessary to carry out the purpose of this article and to
3 implement the intent of the Legislature in accordance with the provisions of §29A-3-1 et seq. of
4 this code, prescribing:

5 (a) Standards and procedures for the submission of reasonable bonds with good and
6 sufficient surety by the owners of wind generation facilities and solar generation facilities;

7 (b) The collection of penalties in accordance with this article;

8 (c) Criteria and the process for releasing a bond in accordance with this article;

9 (d) The DEP's use of a bond in the event that the owner of a wind generation facility or
10 solar generation facility fails to decommission a wind generation facility or solar generation facility;

11 (e) Information required by the department to determine bond requirements in accordance
12 with this article; and

13 (f) Any additional requirements to ensure compliance with this article.

NOTE: The purpose of this bill is to establish and implement a program to required bonding sufficient to reclaim abandoned wind generation facilities and solar generation facilities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.