

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 492

BY SENATORS SMITH AND PHILLIPS

[Originating in the Committee on Energy, Industry,
and Mining; reported on March 25, 2021]

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 establishing fees for new and modified applications; requiring DEP to determine and
10 assess a reclamation bond based on a facility's total disturbed acreage; establishing a
11 minimum bond value; requiring the owners of said facilities to submit bonds payable to the
12 state in a form and in a sum determined by the DEP, conditioned on the satisfactory
13 decommissioning; providing that owners of said facilities may enter into alternative
14 reclamation agreements after approval by the DEP; providing that the DEP may modify
15 said plans after proper notification and appeals; providing exemptions from bond
16 requirements for facilities with nameplate capacities of less than 0.5 megawatts and
17 facilities operated by regulated public utilities who can successfully demonstrate to the
18 Public Service Commission and DEP financial integrity and long-term stability; providing
19 for administrative penalties for failure to submit decommissioning bonds; providing
20 appellate rights to the Environmental Quality Board; providing transfer of ownership
21 provisions; providing for amended plans for allowing reductions in bond amounts;
22 providing that bond submission does not absolve owners from complying with other
23 applicable regulations and requirements; establishing a Wind and Solar Decommissioning
24 Account within the Office of the West Virginia Treasurer in to which assessed penalties
25 and accrued interest must be paid and held; providing that the account may only be used
26 by the DEP to implement this article and adopted rules; providing that DEP shall administer

27 this act using existing resources and the account; requiring the DEP to maintain and hold
28 bonds or other surety received; providing for the release of bonds after the DEP is satisfied
29 property has been properly decommissioned in accordance with the plan; providing for
30 bond forfeiture when a facility is not properly decommissioned, if the deficiencies are not
31 rectified; providing that the Office of Environmental Remediation or a private entity by
32 contract may decommission facilities; providing that DEP may file suit to enforce permit
33 and plan conditions and to recoup costs of reclamation; authorizing rulemaking; and
34 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 §22B-1-7 of this code.

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

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

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

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

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

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

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

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

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

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

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; and

11 (4) Submit a fee for a new application of \$100 per megawatt of nameplate generation
12 capacity or a fee for any modification of \$50 per megawatt of nameplate generation capacity to

13 be deposited into the Wind and Solar Decommissioning Account and utilized for implementing
14 this article and its rules.

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

18 (c) If a wind generation facility or solar generation facility commenced commercial
19 operation before July 1, 2021, and the owner of the facility submitted information required by
20 subsection (a) of this section on or before July 1, 2021, the owner is not required to resubmit the
21 information.

22 (d) If a property owner and the owner of a wind generation facility or solar generation
23 facility and to the extent necessary any local governing body reach an agreement concerning: (1)
24 Alternative restoration of buildings, equipment, other associated property (including appurtenant
25 land, improvements, and personal property), cabling, electrical components, roads, or any other
26 associated facilities (instead of removal); or (2) alternative plans for reclamation of surface lands;
27 or (3) both, the agreement must be provided to the DEP for review and approval by the Cabinet
28 Secretary or his assigns. The DEP must approve or deny the alternative plan submission within
29 90 days of receipt.

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

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

37 (f) To determine the amount of a bond required in accordance with this act, the DEP shall
38 assess a bond value based upon the total disturbed acreage of land upon which the wind

39 generation or solar generation facility is operated: *Provided*, That no bond shall be less than
40 \$150,000.

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

45 (h)(1) Except as provided in subsection (i) of this section, if a wind generation facility or
46 solar generation facility commenced commercial operation on or before July 1, 2021, the operator
47 shall submit the decommissioning bond to the DEP on or before July 1, 2022.

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

52 (i) An owner of a wind generation facility or solar generation facility is exempt from the
53 requirements of subsection (f) of this section if the facility has less than 0.5 megawatts in
54 nameplate capacity or is a regulated public utility who can successfully demonstrate to the Public
55 Service Commission and the DEP an acceptable showing of financial integrity and long-term
56 viability.

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

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

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

72 (l) Once every five years, the owner of a wind generation facility or solar generation facility
73 may submit an amended plan for the DEP's approval. As part of the submission, the owner of a
74 wind generation facility or solar generation facility may also apply to the DEP for a reduction in
75 the amount of the decommissioning bond applicable to the wind energy facility or solar generation
76 facility. The owner's application to the DEP must include written evidence of a reduction in the
77 total disturbed acreage upon which the facility is sited and a modification fee of \$50 per megawatt
78 of nameplate generation capacity.

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

82 (n) This bonding requirement shall apply regardless of any agreement or plan approved
83 by the Public Service Commission of West Virginia during the siting certificate process. If
84 approved by the DEP at their sole discretion, any existing decommissioning plans, agreements,
85 bonds, or escrow accounts, negotiated between developers, landowners, and governing bodies
86 which were established to decommission facilities, are to remain valid and enforceable to the
87 extent reasonably possible. Existing decommissioning plans, agreements, bonds, or escrow
88 accounts determined to be insufficient by the DEP are to be replaced, revised, or supplemented
89 as needed.

§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 department of Environmental
6 Protection (DEP) in implementing this article and rules adopted pursuant to this article.

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

9 (c) The DEP shall maintain and hold bonds or other surety received by the DEP as
10 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 subsection, the Department of Environmental
2 (DEP) shall release the bond if it is satisfied that an owner has properly decommissioned a wind
3 generation facility or solar generation 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 Department of Environmental Protection (DEP) may promulgate such emergency,
2 interpretive, legislative, and procedural rules as the secretary deems to be useful or necessary to
3 carry out the purpose of this article and to implement the intent of the Legislature in accordance
4 with the provisions of §29A-3-1 et seq. of 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.