

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 117

FISCAL
NOTE

BY SENATORS SMITH AND PHILLIPS

[Introduced January 12, 2022; referred
to the Committee on Natural Resources; 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 section,
2 designated §20-2-5k, relating to the assessment of a wildlife impact fee by the Director of
3 the Division of Natural Resources on operators of wind power projects that injure or kill a
4 protected species of animal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5k. Assessment of Wildlife Impact Fee on operators of wind power projects that injure or kill a protected species of animal.

1 (a) It is the public policy of the State of West Virginia that the wildlife resources of this state
2 shall be protected for the use and enjoyment of all the citizens of this state, pursuant to §20-2-1
3 of this code. Specific protected wildlife resources include bald eagles, also known as American
4 eagles, and golden eagles, under §20-2-5c of this code, and other protected species, including
5 ravens, hawks, owls, woodcocks, bald eagles, golden eagles, under §20-2-5a of this code.

6 (b) Wind power projects utilize the use of wind turbines and towers, the components of
7 which pose a significant collision risk to certain protected species. Any operator of a wind power
8 project found by the director to have injured or killed a protected species of animal through the
9 operation of a wind turbine and tower shall be assessed and forfeit a Wildlife Impact Fee. For
10 each protected species of animal injured or killed, a Wildlife Impact Fee shall be assessed
11 pursuant to the wildlife replacement provisions in §20-2-5a of this code. In each instance, the
12 operator of a wind power project found to have injured or killed a protected species of animal shall
13 forfeit the animal's replacement cost to the Division of Natural Resources to be deposited into the
14 License Fund-Wildlife Resources and used only for the replacement, habitat management or
15 enforcement programs for injured or killed game or protected species of an animal.

16 (c) As used in this section, "wind turbine and tower" includes: All structures of a wind power
17 project that create a collision risk for protected species including, but not limited to, the rotor,
18 consisting of the blades and the supporting hub; the drive train, which includes the remaining

19 rotating parts such as the shafts, gearbox, coupling, a mechanical brake and the generator; the
20 nacelle and main frame, including the wind turbine housing, bedplate and the yaw system; the
21 turbine transformer; the machine controls; the tower; the tower foundation; and all associated
22 structures including electricity cables and meteorological masts: *Provided, That, notwithstanding*
23 any provision of this code to the contrary, no protected species of animal injured or killed by the
24 operator of a wind power project or the operation of a wind turbine and tower shall be considered
25 a “pollution kill” or lawful taking: *Provided, however, That nothing in this section may be construed*
26 to prohibit the taking, possession, or transportation of bald or golden eagles legally under the
27 current federal Eagle Protection Act, 16 U.S.C. §668a, and the current federal regulations, 50
28 CFR 22.1 *et seq.*

NOTE: The purpose of this bill is to allow the Director of the Division of Natural Resources to assess a Wildlife Impact Fee on any operator of a wind power project that injures or kills a protected species of animal.

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