

HOUSE BILL NO. 584

INTRODUCED BY A. NOONAN

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A VOLUNTARY WIND GENERATION CERTIFICATION PROGRAM COMMITTEE; REQUIRING THE COMMITTEE TO PROVIDE RECOMMENDATIONS TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR A VOLUNTARY WIND GENERATION CERTIFICATION PROGRAM; REQUIRING THE DEPARTMENT TO PROVIDE A REPORT TO THE LEGISLATURE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Legislative intent.** It is the intent of the legislature that:

- (1) Montana's world-class wildlife, intact ecosystems, and rich cultural and historic heritage deserve protection;
- (2) Montana's outstanding wind resources need to be developed to ensure that Montana leads the nation in producing the clean, renewable energy that wind power can provide;
- (3) improperly sited wind generation facilities can impact wildlife, fragment wildlife habitat, and degrade or destroy historical and cultural sites;
- (4) Montana has an interest in ensuring that new wind generation facilities do not have unintended impacts to wildlife, wildlife habitat, and historical and cultural sites that could be avoided;
- (5) the key to successful wind power development will be siting wind generation facilities in areas capable of sustaining those facilities, while not unnecessarily impacting Montana's treasured natural and cultural heritage;
- (6) wind generators willing to protect Montana's wildlife, wildlife habitat, and historical and cultural sites should be recognized for their efforts through a certification program; and
- (7) wind generators and developers should have the opportunity to participate in a process developed by stakeholders to minimize impacts to wildlife, wildlife habitat, and historical and cultural sites.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:



1 (1) "Applicant" means the owner of a proposed wind generation facility with a nameplate capacity greater  
2 than 5 megawatts.

3 (2) "Certification" means a voluntary permit certifying that an applicant's wind generation facility will have  
4 minimal impacts on wildlife, wildlife habitat, and cultural and historic sites.

5 (3) "Crucial wildlife habitat" means:

6 (a) bodies of water or wetland complexes that attract large numbers of birds and wildlife;

7 (b) areas where species of special concern are concentrated;

8 (c) areas where large numbers of raptors nest or roost;

9 (d) areas where greater sage grouse (*Centrocercus urophasianus*) leks are concentrated;

10 (e) areas identified by the department as significant for game animals; and

11 (f) areas known to be critical migration corridors or stopover locations for migratory birds, bats, or large  
12 mammals.

13 (4) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

14 (5) "Sensitive areas" means government-designated areas that have been recognized for their  
15 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national  
16 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and  
17 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national  
18 parks, monuments, or historic sites.

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20 **NEW SECTION. Section 3. Voluntary wind generation certification program -- criteria.** (1) Using  
21 recommendations provided pursuant to [section 5], the department shall provide a report on a voluntary wind  
22 generation certification program to the 62nd legislature pursuant to 5-11-210.

23 (2) The report must include an overview of the proposed program and recommendations for:

24 (a) applicant requirements and criteria necessary for certification;

25 (b) fees necessary to implement the program;

26 (c) requirements for public notice and opportunity for comment or public hearing when certification is  
27 requested;

28 (d) inspection, monitoring, recordkeeping, and reporting necessary to administer the program;

29 (e) incentives for the program;

30 (f) criteria for the suspension or revocation of certification;

1 (g) requirements for certification processes for wind generating facilities that plan to expand existing  
2 facilities; and

3 (h) proposed changes in existing law to implement a voluntary wind generation certification program.

4 (3) If the voluntary wind generation certification committee is unable to reach a consensus on a  
5 recommendation, the department may develop a recommendation to fulfill the requirements pursuant to  
6 subsection (2).

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8 **NEW SECTION. Section 4. Voluntary wind generation certification committee -- composition.** (1)

9 There is a voluntary wind generation certification committee established in the department with members  
10 appointed by the department director.

11 (2) The committee is composed of at least 12 members including a minimum of:

- 12 (a) four representatives of wind generating facilities working or operating in Montana;
- 13 (b) two representatives of organizations focused on wildlife conservation;
- 14 (c) two representatives from the historic preservation office;
- 15 (d) two representatives of organizations focused on protecting cultural sites or historic sites, or both; and
- 16 (e) two individuals representing the department.

17 (3) Additional members may be appointed by the director.

18 (4) The director shall make the appointments prior to September 1, 2009, and shall consult with the state  
19 historical society provided for in 22-3-101 in determining appointments pursuant to subsections (2)(c) and (2)(d)  
20 of this section.

21 (5) The committee shall meet as needed.

22 (6) Members are not entitled to compensation for their service as committee members and are not  
23 entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

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25 **NEW SECTION. Section 5. Voluntary wind generation certification committee -- duties.** (1) Before

26 July 1, 2010, the committee shall provide recommendations to the department for developing a voluntary wind  
27 generation certification program, including:

- 28 (a) pursuant to subsection (2), criteria and methods for determining how to establish whether an
- 29 applicant intends to implement measures in project siting, construction, and operation that will minimize impacts
- 30 to wildlife, wildlife habitat, and cultural and historic sites;

1 (b) preconstruction and postconstruction studies that an applicant should be required to conduct to  
2 ensure that wildlife, wildlife habitat, and cultural and historic sites are not negatively impacted by a wind  
3 generation facility or expansion;

4 (c) measures necessary to mitigate impacts if postconstruction studies show impacts are greater than  
5 anticipated;

6 (d) consequences for failure to implement mitigation measures pursuant to subsection (1)(c);

7 (e) incentives necessary to encourage wind generation facilities to pursue certification;

8 (f) application fees, if necessary, to pay the costs of the program;

9 (g) timeframes for:

10 (i) the submittal of applications for certification by applicants prior to construction; and

11 (ii) the review of and action on certification applications by the department; and

12 (h) any other matters the committee feels are necessary to implement a voluntary wind generation  
13 certification program.

14 (2) Criteria for the program must include recommendations to minimize impacts to:

15 (a) crucial wildlife habitat;

16 (b) large tracts of wildlife habitat where roads and transmission lines are generally absent;

17 (c) historic sites, trails, and traditional cultural areas; and

18 (d) sensitive areas.

19 (3) Whenever possible, the committee shall use a consensus process to develop recommendations to  
20 be submitted to the department. Recommendations that are not based upon consensus must be so noted by the  
21 committee.

22 (4) Upon consideration of the committee's recommendations, the department shall prepare the report  
23 and recommendations pursuant to [section 3].

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25 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2009.

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27 NEW SECTION. **Section 7. Termination.** [This act] terminates January 1, 2011.

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