

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 644**

BY SENATORS SMITH, CLINE, AND SYPOLT

[Introduced January 29, 2020; referred  
to the Committee on Natural Resources; and then to  
the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §20-2-5j, 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.**

### **§20-2-5j. 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  
2 state shall be protected for the use and enjoyment of all the citizens of this state, pursuant to §20-  
3 2-1 of this code. Specific protected wildlife resources include bald eagles, also known as  
4 American eagles, and golden eagles, under §20-2-5c of this code, and other protected species,  
5 including ravens, hawks, owls, woodcocks, bald eagles, golden eagles, under §20-2-5a of this  
6 code.

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

17 (c) As used in this section, "wind turbine and tower" includes: All structures of a wind  
18 power project that create a collision risk for protected species including, but not limited to, the

19 rotor, consisting of the blades and the supporting hub; the drive train, which includes the remaining  
20 rotating parts such as the shafts, gearbox, coupling, a mechanical brake and the generator; the  
21 nacelle and main frame, including the wind turbine housing, bedplate and the yaw system; the  
22 turbine transformer; the machine controls; the tower; the tower foundation; and all associated  
23 structures including electricity cables and meteorological masts: *Provided, That, notwithstanding*  
24 any provision of this code to the contrary, no protected species of animal injured or killed by the  
25 operator of a wind power project or the operation of a wind turbine and tower shall be considered  
26 a “pollution kill” or lawful taking: *Provided, however, That nothing in this section may be construed*  
27 to prohibit the taking, possession or transportation of bald or golden eagles legally under the  
28 current federal Eagle Protection Act, 16 U.S.C. §668a, and the current federal regulations, 50  
29 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.