

HB 1964 - H AMD 913

By Representative Fitzgibbon

ADOPTED 02/11/2022

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Alternative energy facility" means the development or
7 construction of a facility that utilizes solar energy or wind energy
8 to produce or distribute alternative energy.

9 (2) "Alternative energy facility agreement" means a lease
10 agreement between a grantee and a surface property owner that
11 authorizes the grantee to operate an alternative energy facility on
12 leased property.

13 (3) "Commencement of construction" means the moment when a
14 grantee issues a full notice to proceed order to the construction
15 contractor.

16 (4) "Decommissioning plan" means a document detailing the steps
17 that will be taken to decommission an alternative energy facility and
18 the amount, form, and timing of financial assurance that will be
19 provided by a grantee.

20 (5) "Department" means the department of ecology.

21 (6) "Grantee" means the owner of an alternative energy facility
22 on leased property.

23 (7) "Nameplate capacity" means the maximum rated output of a
24 generator, prime mover, or other electric power production equipment
25 under the specific conditions designated by the manufacturer.

26 (8) "Professional engineer" means a person who, by reason of his
27 or her special knowledge of the mathematical and physical sciences
28 and the principles and methods of engineering analysis and design,
29 acquired by professional education and practical experience, is
30 qualified to practice engineering as defined in RCW 18.43.020, as
31 attested by his or her legal registration as a professional engineer.

1 (9) "Salvage value" means the fair market value, as determined by
2 an independent third-party professional engineer, of equipment owned
3 by a grantee and permanently installed at an alternative energy
4 facility. Salvage value does not apply to vehicles or other equipment
5 that has not been permanently installed at an alternative energy
6 facility, nor does it apply to equipment that is rented or leased by
7 a grantee.

8 NEW SECTION. **Sec. 2.** (1) Except as provided under subsection
9 (2) of this section, an alternative energy facility agreement
10 executed on or after the effective date of this section must provide
11 that a grantee is responsible for decommissioning the grantee's
12 alternative energy facility on the surface property owner's property
13 in accordance with this chapter no later than 18 months after the
14 facility has ceased producing electricity.

15 (2) Subsection (1) of this section does not apply to a grantee
16 who is actively working to recommence production of electricity,
17 including an instance following the occurrence of a force majeure or
18 similar event.

19 NEW SECTION. **Sec. 3.** (1)(a) A grantee who executes an
20 alternative energy facility agreement on or after the effective date
21 of this section must provide a decommissioning plan and submit proof
22 to the applicable county auditor and applicable county planning
23 department of financial assurance from either:

- 24 (i) A financial institution, as defined in RCW 31.12.005;
- 25 (ii) A trust institution, as authorized in RCW 30B.04.030; or
- 26 (iii) A surety company listed as an acceptable surety in circular
27 570, published by the United States department of the treasury, as of
28 the date of the surety document.

29 (b) The financial assurance must conform to the requirements
30 under this chapter to secure the performance of the grantee's
31 obligation to decommission the grantee's alternative energy facility.

32 (2) The amount of financial assurance guaranteed must be at least
33 equal to the cost of decommissioning the alternative energy facility
34 in accordance with section 4 of this act and must be calculated and
35 updated every five years by an independent third-party professional
36 engineer retained by the grantee from a list of professional
37 engineers compiled by the department and published on the
38 department's publicly accessible internet website. The cost of

1 decommissioning must be based on the costs to the grantee of hiring a
2 third party to close the alternative energy facility. The amount of
3 financial assurance may not be calculated to be less than \$10,000 per
4 megawatt as measured in nominal alternating current nameplate
5 capacity for an alternative energy facility. The amount of financial
6 assurance must include a contingency factor of not less than 20
7 percent of the cost of decommissioning the alternative energy
8 facility.

9 (3) A grantee must deliver a decommissioning plan and proof of
10 financial assurance to the county auditor and county planning
11 department in accordance with the following:

12 (a) No later than 30 days before the commencement of construction
13 of the alternative energy facility, the grantee must provide the
14 decommissioning plan and proof of financial assurance to the county
15 auditor and county planning department in an amount equal to 20
16 percent of the cost of decommissioning as determined by a third-party
17 professional engineer, less an offset equal to 80 percent of the
18 applicable salvage value.

19 (b) On or before the fifth anniversary of the commencement of
20 construction of the alternative energy facility, the grantee must
21 provide an updated decommissioning plan and proof of financial
22 assurance to the county auditor and county planning department in an
23 amount equal to 40 percent of the cost of decommissioning as
24 determined by an independent third-party professional engineer, less
25 an offset equal to 60 percent of the applicable salvage value.

26 (c) On or before the 10th anniversary of the commencement of
27 construction of the alternative energy facility, the grantee must
28 provide an updated decommissioning plan and proof of financial
29 assurance to the county auditor and county planning department in an
30 amount equal to 60 percent of the cost of decommissioning as
31 determined by an independent third-party professional engineer, less
32 an offset equal to 40 percent of the applicable salvage value.

33 (d) On or before the 15th anniversary of the commencement of
34 construction of the alternative energy facility, the grantee must
35 provide an updated decommissioning plan and proof of financial
36 assurance to the county auditor and county planning department in an
37 amount equal to 80 percent of the cost of decommissioning as
38 determined by an independent third-party professional engineer, less
39 an offset equal to 20 percent of the applicable salvage value.

1 (e) On or before the 20th anniversary of the commencement of
2 construction of the alternative energy facility, the grantee must
3 provide an updated decommissioning plan and proof of financial
4 assurance to the county auditor and county planning department in an
5 amount equal to 100 percent of the cost of decommissioning as
6 determined by an independent third-party professional engineer.

7 (4) Acceptable methods of financial assurance include a bond or a
8 trust account, a letter of credit, and any other form of financial
9 assurance as developed in the course of rule making pursuant to
10 section 4 of this act.

11 NEW SECTION. **Sec. 4.** (1)(a) Within 180 days of the effective
12 date of this section, the department must, in consultation with the
13 alternative energy facility industry, develop guidance that contains
14 provisions for:

15 (i) A provisional standard form for a decommissioning plan, which
16 must include each of the elements set forth in subsection (2) of this
17 section; and

18 (ii) Acceptable forms of financial assurance documents to be
19 filed with the county auditor and county planning department in
20 accordance with this chapter.

21 (b) After the development of the guidance under (a) of this
22 subsection, the department must, by rule and in consultation with the
23 alternative energy facility industry, develop a final standard form
24 for a decommissioning plan and financial assurance to be filed with
25 the county auditor and county planning department in accordance with
26 this chapter.

27 (2) The provisional standard form and final standard form under
28 subsection (1) of this section must include all of the following
29 provisions:

30 (a) Unless the surface property owner and grantee mutually agree
31 in writing on an alternative condition for restoring the property,
32 the grantee's decommissioning plan must provide for all of the
33 following:

34 (i) The removal of nonutility-owned equipment, conduits,
35 structures, fencing, and foundations to a depth of no less than three
36 feet below grade. The grantee is not required to remove equipment and
37 materials that the public utility requires to remain on-site;

1 (ii) The removal of graveled areas and access roads unless the
2 surface property owner requests in writing for graveled areas and
3 access roads to stay in place;

4 (iii) The restoration of the property to a condition reasonably
5 similar to the property's condition before the commencement of
6 construction, including the replacement of topsoil removed or eroded
7 on previously productive agricultural land;

8 (iv) The reseeded of a cleared area, unless requested in writing
9 by the surface property owner to not reseed due to plans for
10 agricultural planting;

11 (v) Requirements for the use of native vegetation in property
12 restoration; and

13 (vi) Testing of soil and water sources on the property for
14 contamination relating to or resulting from a grantee's activities.
15 The plan must also include a description of how contamination will be
16 addressed if it is discovered;

17 (b) In accordance with section 5 of this act, on or before the
18 20th anniversary of the commencement of construction of the
19 alternative energy facility, the updated decommissioning plan must
20 include an estimate of the materials to be removed that will be
21 salvaged, recycled, refurbished, or disposed of in a landfill. No
22 more than 20 percent of the total combined mass of an alternative
23 energy facility may enter into a landfill as part of the grantee's
24 decommissioning plan. For the purpose of determining the total
25 combined mass under this subsection, the total combined mass includes
26 wind turbines, solar photovoltaic modules, wind turbine blades,
27 meteorological towers, guy wires, auxiliary equipment, and steel
28 support structures. Cement support structures may not be considered
29 when determining the total combined mass under this subsection; and

30 (c) The financial assurance specified under section 3 of this
31 act.

32 NEW SECTION. **Sec. 5.** The regulation of the decommissioning of
33 alternative energy facilities is a matter of general statewide
34 interest that requires uniform statewide regulation. This chapter and
35 the rules adopted under this chapter constitute a comprehensive plan
36 with respect to all aspects of alternative energy facility
37 agreements, financial assurance, and decommissioning plans associated
38 with alternative energy facilities within this state. Any county,
39 municipal, or other local government ordinance or regulation that

1 materially impedes the purposes of this chapter, including any
2 ordinance or regulation that requires a grantee to provide proof of
3 financial assurance in an amount greater than the amounts set forth
4 in section 3 of this act, is preempted and is without force and
5 effect.

6 NEW SECTION. **Sec. 6.** This chapter does not apply to any of the
7 following:

8 (1) A nonutility owner or operator of a net metered distributed
9 generation system with a nameplate capacity of not greater than 3,000
10 kilowatts; and

11 (2) An owner or operator of a farm who owns and operates an
12 alternative energy facility on the farm premises, regardless of the
13 location or consumption of the energy generated.

14 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act
15 constitute a new chapter in Title 64 RCW."

16 Correct the title.

EFFECT: Adds a definition for "salvage value."

Requires that a decommissioning plan and proof of financial assurance for an alternative energy facility be provided both to the applicable county auditor and to the applicable county planning department.

Requires that the calculation of the cost of decommissioning an alternative energy facility must include an offset to reflect the salvage value of equipment permanently installed at the facility.

Adds trust institutions and surety companies to the list of financial institutions eligible to provide proof of financial assurance for the decommissioning of an alternative energy facility.

Requires that the cost of decommissioning an alternative energy facility be based on the costs to the grantee of hiring a third party to close the facility.

Requires the amount of financial assurance for the cost of decommissioning an alternative energy facility to include a contingency factor of not less than 20 percent of the cost of decommissioning the facility.

Expands the scope of acceptable forms of financial assurance to include a letter of credit and any other form of financial assurance as developed in the course of rule making by the Department of Ecology.

Requires the Department of Ecology to adopt guidance, rather than emergency rules, related to a provisional standard form for a decommissioning plan and acceptable forms of financial assurance documents.

Requires the standard form for a decommissioning plan of an alternative energy facility to include provisions related to requirements for the use of native vegetation in property restoration

and testing of soil and water sources on the property for contamination.

Provides that local ordinances or regulations that require a grantee to provide proof of financial assurance in an amount greater than the amounts set forth in the bill are preempted.

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