Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Environment & Energy Committee

HB 1964

Brief Description: Concerning the decommissioning of alternative energy facilities.

Sponsors: Representative Corry.

Brief Summary of Bill

- Requires alternative energy facility agreements between an alternative energy facility operator and a surface property owner to provide that the facility operator is responsible for decommissioning the facility after the facility has ceased producing electricity.
- Requires an alternative energy facility operator, as part of an alternative energy facility agreement, to deliver a decommissioning plan and proof of financial assurance to the county auditor.

Hearing Date: 1/27/22

Staff: Robert Hatfield (786-7117) and Phillip Craig (786-7291).

Background:

Financial Assurance.
The concept of financial assurance refers to a financial instrument or mechanism that guarantees sufficient funds are available for the cost of cleaning, decommissioning, and closing certain types of facilities at the end of their useful life. A financial assurance may be a provision voluntarily agreed to by contracting parties, or, in some instances, it may be required as a matter of law.

For example, under Washington law related to financial assurance requirements for solid waste recycling facilities, a facility operator must provide the Department of Ecology with a financial

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assurance in the form of a surety bond or some other financial instrument to cover all closure and postclosure costs associated with the facility.

Operators of energy facilities, including solar and wind facilities, who choose to obtain permitting for their facility through the Energy Facility Site Evaluation Council (EFSEC) must provide proof of financial assurance sufficient to restore or preserve the facility site as part of the mandatory site restoration plan.

Certain counties have also adopted ordinances that require operators of solar and wind facilities to provide proof of financial assurance, such as a surety bond or escrow account, to cover the cost of removing the facility.

Summary of Bill:

With certain specified exceptions, an alternative energy facility agreement must provide that the alternative energy facility operator (grantee) is responsible for decommissioning the alternative energy facility on the surface owner's property no later than 18 months after the facility has ceased producing electricity. An alternative energy facility agreement is defined as a lease agreement between a grantee and a surface property owner that authorizes the grantee to operate a facility that uses wind or solar energy to produce or distribute alternative energy on the leased property.

Financial Assurance.
A grantee who enters into an alternative energy facility agreement must submit proof of financial assurance from a financial institution to the county auditor. The financial assurance can be a bond or an escrow account, and acceptable financial institutions include commercial banks, savings banks, and credit unions, among others.

The amount of financial assurance must be calculated by a third-party engineer.

To begin construction, the grantee must provide proof of financial assurance for 20 percent of the total decommissioning cost at least 30 days before the start of construction. The amount of financial assurance that the grantee is required to provide increases by 20 percent every five years, so that by the 20th anniversary of the facility, the grantee is required to provide proof of financial assurance for 100 percent of the total decommissioning cost.

Decommissioning Plan.
A grantee who executes an alternative energy facility agreement must also provide a decommissioning plan to the county auditor. Like proofs of financial assurance, a decommissioning plan must be updated every five years. Unless the parties to the agreement mutually agree to an alternative method for restoring the property, the decommission plan must provide for the following:

- removal of equipment, conduits, structures, fencing, and foundations not owned by a public utility;

- removal of graveled areas and access roads;
- restoration of the property to a condition reasonably similar to the condition of the property before the start of construction, including the replacement of topsoil; and
- reseeding of the cleared area.

Before the 20th anniversary of the start of construction of the alternative energy facility, the decommissioning plan must be updated to include an estimate of the materials that will be salvaged, recycled, refurbished, or disposed of in a landfill. No more than 20 percent of the of the combined mass of the facility—including all parts, equipment, and steel structures, but not concrete support structures—can be disposed of in a landfill as part of the decommissioning plan.

The Department of Ecology, in consultation with the alternative energy facility industry, must develop a provisional standard form for a decommissioning plan and financial assurance, and must then finalize a final standard form thereafter.

Exceptions.
The requirement that a grantee decommission the alternative energy facility on the surface owner's property no later than 18 months after the facility has ceased producing electricity does not apply to a grantee who is actively working to resume electricity production.

In addition, the decommissioning plan and financial assurance requirements do not apply to:
- a nonutility owner or operator whose energy system has a maximum rated output of 3,000 kilowatts or less; or
- an owner or operator of a farm who owns or operates an alternative energy facility on the farm premises, regardless of the location or consumption of energy generated.

Appropriation: None.

Fiscal Note: Requested on January 17, 2022.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.