HOUSE BILL REPORT
HB 1964

As Reported by House Committee On:
Environment & Energy

Title: An act relating to the decommissioning of alternative energy facilities.

Brief Description: Concerning the decommissioning of alternative energy facilities.

Sponsors: Representative Corry.

Brief History:
Committee Activity:
Environment & Energy: 1/27/22, 2/3/22 [DP].

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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 10 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke, Fey, Goehner, Shewmake and Slatter.

Minority Report: Without recommendation. Signed by 3 members: Representatives Berry, Harris-Talley and Ramel.

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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 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: Available.

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

Staff Summary of Public Testimony:

(In support) Solar alternative energy facilities have a footprint many times greater than wind facilities, but many county ordinances only reference wind decommissioning. Decommission planning is insufficient and leaves room for facility developers to abuse the system. Retired turbine blades and solar panels are stacking up in central Washington landfills, and recently permitted projects will cause significant soil disturbance that will need to be cleaned up.

Recent solar farm sales show that facility developers do not retain projects for long, so lease agreements are not enough to ensure that facility developers return land to its pre-construction condition. With large batteries permitted on site, citizens need assurance that sites will be properly cleaned up. House Bill 1964 places clear fiscal responsibility on solar and wind facility developers at the outset of the project, which provides protections for citizens and the environment, and ensures that developers are held responsible for returning the land to its original condition.

(Opposed) None.

(Other) Decommissioning plans are necessary, but some changes to this bill are recommended. First, the minimum financial assurance should be increased 10 to 15 percent over the initial estimate to provide cushion for unforeseen circumstances. Second, the financial guarantee for the full cost of decommissioning should be in place when construction begins to protect against bankruptcy and abandonment. Third, the standard forms should include provisions that require testing and clean-up of contaminated soil, and planting of native vegetation for areas that need to be reseeded.

Additionally, there are concerns about the timeline for rulemaking. Six months for provisional rulemaking may not be enough time, so rather than having two rulemaking deadlines, it would be advantageous to do a single rulemaking in 12 to 18 months. The Department of Ecology can provide forms and guidance to facility developers before rules are adopted.

The approach to decommissioning in the bill makes it easy for energy companies to comply and easy for counties to process, but in instances of bankruptcy or site abandonment, the burden on landowners would likely be significant. If members want to balance the burdens differently, rulemaking would be a good place to make those changes.

There is a fiscal impact that is not part of the Governor's budget.

Persons Testifying: (In support) Representative Chris Corry, prime sponsor; and Dave

Barta, Yakima Farm Bureau.

(Other) Paul Jewell, Washington State Association of Counties; and Kimberly Goetz, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.