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**ENGROSSED HOUSE BILL 1964**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Representative Corry

Read first time 01/13/22. Referred to Committee on Environment & Energy.

1 AN ACT Relating to the decommissioning of alternative energy  
2 facilities; and adding a new chapter to Title 64 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

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

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

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

12 (9) "Salvage value" means the fair market value, as determined by  
13 an independent third-party professional engineer, of equipment owned  
14 by a grantee and permanently installed at an alternative energy  
15 facility. Salvage value does not apply to vehicles or other equipment  
16 that has not been permanently installed at an alternative energy  
17 facility, nor does it apply to equipment that is rented or leased by  
18 a grantee.

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

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

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

35 (i) A financial institution, as defined in RCW 31.12.005;

36 (ii) A trust institution, as authorized in RCW 30B.04.030; or

1 (iii) A surety company listed as an acceptable surety in circular  
2 570, published by the United States department of the treasury, as of  
3 the date of the surety document.

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

7 (2) The amount of financial assurance guaranteed must be at least  
8 equal to the cost of decommissioning the alternative energy facility  
9 in accordance with section 4 of this act and must be calculated and  
10 updated every five years by an independent third-party professional  
11 engineer retained by the grantee from a list of professional  
12 engineers compiled by the department and published on the  
13 department's publicly accessible internet website. The cost of  
14 decommissioning must be based on the costs to the grantee of hiring a  
15 third party to close the alternative energy facility. The amount of  
16 financial assurance may not be calculated to be less than \$10,000 per  
17 megawatt as measured in nominal alternating current nameplate  
18 capacity for an alternative energy facility. The amount of financial  
19 assurance must include a contingency factor of not less than 20  
20 percent of the cost of decommissioning the alternative energy  
21 facility.

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

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

32 (b) On or before the fifth anniversary of the commencement of  
33 construction of the alternative energy facility, the grantee must  
34 provide an updated decommissioning plan and proof of financial  
35 assurance to the county auditor and county planning department in an  
36 amount equal to 40 percent of the cost of decommissioning as  
37 determined by an independent third-party professional engineer, less  
38 an offset equal to 60 percent of the applicable salvage value.

39 (c) On or before the 10th anniversary of the commencement of  
40 construction of the alternative energy facility, the grantee must

1 provide an updated decommissioning plan and proof of financial  
2 assurance to the county auditor and county planning department in an  
3 amount equal to 60 percent of the cost of decommissioning as  
4 determined by an independent third-party professional engineer, less  
5 an offset equal to 40 percent of the applicable salvage value.

6 (d) On or before the 15th anniversary of the commencement of  
7 construction of the alternative energy facility, the grantee must  
8 provide an updated decommissioning plan and proof of financial  
9 assurance to the county auditor and county planning department in an  
10 amount equal to 80 percent of the cost of decommissioning as  
11 determined by an independent third-party professional engineer, less  
12 an offset equal to 20 percent of the applicable salvage value.

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

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

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

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

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

33 (b) After the development of the guidance under (a) of this  
34 subsection, the department must, by rule and in consultation with the  
35 alternative energy facility industry, develop a final standard form  
36 for a decommissioning plan and financial assurance to be filed with  
37 the county auditor and county planning department in accordance with  
38 this chapter.

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

4 (a) Unless the surface property owner and grantee mutually agree  
5 in writing on an alternative condition for restoring the property,  
6 the grantee's decommissioning plan must provide for all of the  
7 following:

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

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

15 (iii) The restoration of the property to a condition reasonably  
16 similar to the property's condition before the commencement of  
17 construction, including the replacement of topsoil removed or eroded  
18 on previously productive agricultural land;

19 (iv) The reseeding of a cleared area, unless requested in writing  
20 by the surface property owner to not reseed due to plans for  
21 agricultural planting;

22 (v) Requirements for the use of native vegetation in property  
23 restoration; and

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

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

1 (c) The financial assurance specified under section 3 of this  
2 act.

3 NEW SECTION. **Sec. 5.** The regulation of the decommissioning of  
4 alternative energy facilities is a matter of general statewide  
5 interest that requires uniform statewide regulation. This chapter and  
6 the rules adopted under this chapter constitute a comprehensive plan  
7 with respect to all aspects of alternative energy facility  
8 agreements, financial assurance, and decommissioning plans associated  
9 with alternative energy facilities within this state. Any county,  
10 municipal, or other local government ordinance or regulation that  
11 materially impedes the purposes of this chapter, including any  
12 ordinance or regulation that requires a grantee to provide proof of  
13 financial assurance in an amount greater than the amounts set forth  
14 in section 3 of this act, is preempted and is without force and  
15 effect.

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

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

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

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

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