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**HOUSE BILL 1964**

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**State of Washington****67th Legislature****2022 Regular Session****By** Representative Corry

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

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

23       NEW SECTION. **Sec. 3.** (1) A grantee who executes an alternative  
24 energy facility agreement on or after the effective date of this  
25 section must provide a decommissioning plan and submit proof of  
26 financial assurance from a financial institution, as defined in RCW  
27 31.12.005, to the county auditor. The financial assurance must  
28 conform to the requirements under this chapter to secure the  
29 performance of the grantee's obligation to decommission the grantee's  
30 alternative energy facility.

31       (2) The amount of financial assurance must be equal to the cost  
32 of decommissioning the alternative energy facility in accordance with  
33 section 4 of this act and must be calculated and updated every five  
34 years by a third-party professional engineer retained by the grantee  
35 from a list of professional engineers compiled by the department and  
36 published on the department's publicly accessible internet website.  
37 The amount of financial assurance may not be calculated to be less

1 than \$10,000 per megawatt as measured in nominal alternating current  
2 nameplate capacity for an alternative energy facility.

3 (3) A grantee must deliver a decommissioning plan and proof of  
4 financial assurance to the county auditor in accordance with the  
5 following:

6 (a) No later than 30 days before the commencement of construction  
7 of the alternative energy facility, the grantee must provide the  
8 decommissioning plan and proof of financial assurance to the county  
9 auditor in an amount equal to 20 percent of the cost of  
10 decommissioning as determined by a third-party professional engineer.

11 (b) On or before the fifth anniversary of the commencement of  
12 construction of the alternative energy facility, the grantee must  
13 provide an updated decommissioning plan and proof of financial  
14 assurance to the county auditor in an amount equal to 40 percent of  
15 the cost of decommissioning as determined by a third-party  
16 professional engineer.

17 (c) On or before the 10th anniversary of the commencement of  
18 construction of the alternative energy facility, the grantee must  
19 provide an updated decommissioning plan and proof of financial  
20 assurance to the county auditor in an amount equal to 60 percent of  
21 the cost of decommissioning as determined by a third-party  
22 professional engineer.

23 (d) On or before the 15th anniversary of the commencement of  
24 construction of the alternative energy facility, the grantee must  
25 provide an updated decommissioning plan and proof of financial  
26 assurance to the county auditor in an amount of 80 percent of the  
27 cost of decommissioning as determined by a third-party professional  
28 engineer.

29 (e) On or before the 20th anniversary of the commencement of  
30 construction of the alternative energy facility, the grantee must  
31 provide an updated decommissioning plan and proof of financial  
32 assurance to the county auditor in an amount equal to 100 percent of  
33 the cost of decommissioning as determined by a third-party  
34 professional engineer.

35 (4) Acceptable methods of financial assurance include a bond or  
36 an escrow account.

37 NEW SECTION. **Sec. 4.** (1)(a) Within 180 days of the effective  
38 date of this section, the department must, by rule and in  
39 consultation with the alternative energy facility industry, develop a

1 provisional standard form for a decommissioning plan and financial  
2 assurance to be filed with the county auditor in accordance with this  
3 chapter. In order to facilitate the prompt implementation of this  
4 chapter, rules adopted to develop a provisional standard form under  
5 this subsection are deemed temporary rules.

6 (b) After the adoption of the temporary rules under (a) of this  
7 subsection, the department must, by rule and in consultation with the  
8 alternative energy facility industry, develop a final standard form  
9 for a decommissioning plan and financial assurance to be filed with  
10 the county auditor in accordance with this chapter. The temporary  
11 rules under (a) of this subsection expire upon the adoption of the  
12 final rules under this subsection, or two years after the effective  
13 date of this section, whichever is later.

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

17 (a) Unless the surface property owner and grantee mutually agree  
18 in writing on an alternative condition for restoring the property,  
19 the grantee's decommissioning plan must provide for all of the  
20 following:

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

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

28 (iii) The restoration of the property to a condition reasonably  
29 similar to the property's condition before the commencement of  
30 construction, including the replacement of topsoil removed or eroded  
31 on previously productive agricultural land; and

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

35 (b) In accordance with section 5 of this act, on or before the  
36 20th anniversary of the commencement of construction of the  
37 alternative energy facility, the updated decommissioning plan must  
38 include an estimate of the materials to be removed that will be  
39 salvaged, recycled, refurbished, or disposed of in a landfill. No  
40 more than 20 percent of the total combined mass of an alternative

1 energy facility may enter into a landfill as part of the grantee's  
2 decommissioning plan. For the purpose of determining the total  
3 combined mass under this subsection, the total combined mass includes  
4 wind turbines, solar photovoltaic modules, wind turbine blades,  
5 meteorological towers, guy wires, auxiliary equipment, and steel  
6 support structures. Cement support structures may not be considered  
7 when determining the total combined mass under this subsection; and  
8 (c) The financial assurance specified under section 3 of this  
9 act.

10 NEW SECTION. **Sec. 5.** The regulation of the decommissioning of  
11 alternative energy facilities is a matter of general statewide  
12 interest that requires uniform statewide regulation. This chapter and  
13 the rules adopted under this chapter constitute a comprehensive plan  
14 with respect to all aspects of alternative energy facility  
15 agreements, financial assurance, and decommissioning plans associated  
16 with alternative energy facilities within this state. Any county,  
17 municipal, or other local government ordinance or regulation that  
18 materially impedes the purposes of this chapter is preempted and is  
19 without force and effect.

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

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

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

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

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