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**ENGROSSED HOUSE BILL 1964**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representative Corry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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