H-2104.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1964**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**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.

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 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 of financial assurance from a financial institution, as defined in RCW 31.12.005, to the county auditor. 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 must be 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 a 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 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.

(3) A grantee must deliver a decommissioning plan and proof of financial assurance to the county auditor 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 in an amount equal to 20 percent of the cost of decommissioning as determined by a third-party professional engineer.

(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 in an amount equal to 40 percent of the cost of decommissioning as determined by a third-party professional engineer.

(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 in an amount equal to 60 percent of the cost of decommissioning as determined by a third-party professional engineer.

(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 in an amount of 80 percent of the cost of decommissioning as determined by a third-party professional engineer.

(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 in an amount equal to 100 percent of the cost of decommissioning as determined by a third-party professional engineer.

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

NEW SECTION. **Sec.**  (1)(a) Within 180 days of the effective date of this section, the department must, by rule and in consultation with the alternative energy facility industry, develop a provisional standard form for a decommissioning plan and financial assurance to be filed with the county auditor in accordance with this chapter. In order to facilitate the prompt implementation of this chapter, rules adopted to develop a provisional standard form under this subsection are deemed temporary rules.

(b) After the adoption of the temporary rules 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 in accordance with this chapter. The temporary rules under (a) of this subsection expire upon the adoption of the final rules under this subsection, or two years after the effective date of this section, whichever is later.

(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; and

(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;

(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 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.

**--- END ---**