

AMENDMENTS TO HOUSE BILL NO. 1032

Sponsor: REPRESENTATIVE KEPHART

Printer's No. 1041

1 Amend Bill, page 1, lines 1 through 3, by striking out all of
2 said lines and inserting

3 Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated
4 Statutes, providing for decommissioning of solar energy
5 facilities; establishing the Solar for Schools Grant Program;
6 and providing for powers and duties of the Department of
7 Community and Economic Development.

8 Amend Bill, page 1, lines 6 through 16; pages 2 through 6,
9 lines 1 through 30; page 7, lines 1 through 9; by striking out
10 all of said lines on said pages and inserting

11 Section 1. Title 58 of the Pennsylvania Consolidated
12 Statutes is amended by adding chapters to read:

13 CHAPTER 43

14 DECOMMISSIONING OF SOLAR ENERGY FACILITIES

15 Sec.

16 4301. Definitions.

17 4302. Requirements for solar energy facility agreements.

18 4303. Financial assurance requirements.

19 4304. Financial assurance forms and decommissioning plans.

20 4305. Preemption of local ordinances and regulations.

21 4306. Applicability of chapter.

22 § 4301. Definitions.

23 The following words and phrases when used in this chapter
24 shall have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Banking institution." As defined in 7 Pa.C.S. § 6102
27 (relating to definitions).

28 "Commencement of construction." The moment when a grantee
29 issues a full notice to proceed order to the construction
30 contractor.

31 "Decommissioning plan." A document detailing the steps that
32 will be taken to decommission a solar energy facility and the
33 amount, form and timing of financial assurance that will be
34 provided by a grantee.

35 "Department." The Department of Environmental Protection of

1 the Commonwealth.
2 "Grantee." The owner of a solar energy facility on leased
3 property.
4 "Letter of credit." As defined in 13 Pa.C.S. § 5102
5 (relating to definitions).
6 "Nameplate capacity." The maximum rated output of a
7 generator, prime mover or other electric power production
8 equipment under the specific conditions designated by the
9 manufacturer.
10 "Normal agricultural operation." As defined in section 2 of
11 the act of June 10, 1982 (P.L.454, No.133), referred to as the
12 Right-to-Farm Law.
13 "Professional engineer." As defined in section 2 of the act
14 of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land
15 Surveyor and Geologist Registration Law.
16 "Solar energy facility." The development or construction of
17 a facility that utilizes solar energy to produce or distribute
18 energy.
19 "Solar energy facility agreement." A lease agreement between
20 a grantee and a surface property owner that authorizes the
21 grantee to operate a solar energy facility on leased property.
22 "USDA-NRCS." The United States Department of Agriculture-
23 Natural Resources Conservation Service.
24 § 4302. Requirements for solar energy facility agreements.
25 (a) Requirements and prohibitions.--
26 (1) Except as provided under subsection (b), a solar
27 energy facility agreement executed on or after the effective
28 date of this paragraph shall provide that a grantee is
29 responsible for decommissioning the grantee's solar energy
30 facility on the surface property owner's property in
31 accordance with this chapter no later than 18 months after
32 the facility has ceased producing electricity.
33 (2) The decommissioning plan and associated financial
34 assurance may not be separated from the solar energy facility
35 through a change in grantee ownership to a new grantee. The
36 new grantee shall submit proof of financial assurance in
37 accordance with section 4303 (relating to financial assurance
38 requirements). The prior grantee may not release or revoke
39 the prior grantee's financial assurance until:
40 (i) the new grantee's proof of financial assurance
41 is filed with the county recorder of deeds; and
42 (ii) notice is provided to the surface property
43 owner party to the solar energy facility agreement.
44 (b) Exception.--Subsection (a) shall not apply to a grantee
45 who is actively working to recommence production of electricity,
46 including an instance following the occurrence of a force
47 majeure or similar event.
48 § 4303. Financial assurance requirements.
49 (a) Plan, proof and notice.--A grantee who executes a solar
50 energy facility agreement on or after the effective date of this
51 subsection shall provide a decommissioning plan, submit proof of

1 financial assurance from a banking institution or a Federal
2 credit union as defined in 17 Pa.C.S. § 103 (relating to
3 definitions) to the county recorder of deeds and provide notice
4 to the surface property owner party to the solar energy facility
5 agreement. The financial assurance shall conform to the
6 requirements under this chapter to secure the performance of the
7 grantee's obligation to decommission the grantee's solar energy
8 facility. If the grantee does not fulfill its obligation to
9 decommission the solar energy facility, the financial assurance
10 shall be made payable to the surface property owner.

11 (b) Amount.--The amount of financial assurance shall be
12 equal to the cost of decommissioning the solar energy facility
13 in accordance with section 4304(b) (relating to financial
14 assurance forms and decommissioning plans) and shall be
15 calculated and updated every five years by a third-party
16 professional engineer retained by the grantee from a list of
17 professional engineers compiled by the department and published
18 on the department's publicly accessible Internet website.

19 (c) Delivery.--A grantee shall deliver a decommissioning
20 plan and proof of financial assurance to the county recorder of
21 deeds in accordance with the following:

22 (1) No later than 30 days before the commencement of
23 construction of the solar energy facility, the grantee shall
24 provide the decommissioning plan and proof of financial
25 assurance to the county recorder of deeds in an amount equal
26 to 100% of the total cost of decommissioning as determined by
27 a third-party professional engineer.

28 (2) Upon an assignment of lease rights and obligations
29 to a new grantee.

30 (d) Financial assurance methods.--Acceptable methods of
31 financial assurance shall include a bond, an escrow account or
32 an irrevocable letter of credit from a banking institution in
33 accordance with subsection (a). The irrevocable letter of credit
34 may be terminated at the end of a solar energy facility
35 agreement only upon 90 days' prior written notice by the banking
36 institution to the grantee and surface property owner.

37 § 4304. Financial assurance forms and decommissioning plans.

38 (a) Forms.--

39 (1) Within 180 days of the effective date of this
40 paragraph, the department shall, by regulation and in
41 consultation with the solar energy facility industry, develop
42 a provisional standard form for a decommissioning plan and
43 financial assurance to be filed with the county recorder of
44 deeds in accordance with this chapter. In order to facilitate
45 the prompt implementation of this chapter, regulations
46 promulgated to develop a provisional standard form under this
47 paragraph shall be deemed temporary regulations. Temporary
48 regulations promulgated under this paragraph shall not be
49 subject to any of the following:

50 (i) Section 612 of the act of April 9, 1929
51 (P.L.177, No.175), known as The Administrative Code of

1 1929.

2 (ii) Sections 201, 202, 203, 204 and 205 of the act
3 of July 31, 1968 (P.L.769, No.240), referred to as the
4 Commonwealth Documents Law.

5 (iii) Sections 204(b) and 301(10) of the act of
6 October 15, 1980 (P.L.950, No.164), known as the
7 Commonwealth Attorneys Act.

8 (iv) The act of June 25, 1982 (P.L.633, No.181),
9 known as the Regulatory Review Act.

10 (2) After the promulgation of the temporary regulations
11 under paragraph (1), the department shall, by regulation and
12 in consultation with the solar energy facility industry,
13 develop a final standard form for a decommissioning plan and
14 financial assurance to be filed with the county recorder of
15 deeds in accordance with this chapter. The temporary
16 regulations under paragraph (1) shall expire upon the
17 promulgation of the final regulations under this paragraph or
18 two years after the effective date of this paragraph,
19 whichever is later.

20 (b) Contents.--The provisional standard form and final
21 standard form under subsection (a) shall include all of the
22 following provisions:

23 (1) Unless the surface property owner and grantee
24 mutually agree in writing on a solar condition for restoring
25 the property, the grantee's decommissioning plan shall
26 provide for all of the following:

27 (i) The removal of non-utility-owned equipment,
28 conduits, structures, fencing and foundations to a depth
29 of no less than three feet below grade. The grantee shall
30 not be required to remove equipment and materials that
31 the public utility requires to remain onsite.

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

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

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

43 (2) The financial assurance specified under section
44 4303(c) (relating to financial assurance requirements).

45 (3) An attestation confirming the solar energy facility
46 does not unduly impact public resources, including, but not
47 limited to, the following:

48 (i) Publicly owned parks, forests, game lands and
49 wildlife areas.

50 (ii) National or State scenic rivers.

51 (iii) National natural landmarks.

1 (iv) Habitats of rare and endangered flora and fauna
2 and other critical communities.

3 (v) Historical and archaeological sites listed on
4 the Federal or State list of historic places.

5 (vi) Sources used for public drinking supplies.
6 § 4305. Preemption of local ordinances and regulations.

7 The regulation of the decommissioning of solar energy
8 facilities is a matter of general Statewide interest that
9 requires uniform Statewide regulation. This chapter and the
10 regulations promulgated under this chapter constitute a
11 comprehensive plan with respect to all aspects of solar energy
12 facility agreements, financial assurance and decommissioning
13 plans associated with solar energy facilities within this
14 Commonwealth. Any county, municipal or other local government
15 ordinance or regulation that materially impedes the purposes of
16 this chapter shall be preempted and shall be without force and
17 effect.

18 § 4306. Applicability of chapter.

19 (a) Applicability.--This chapter shall apply to any of the
20 following:

21 (1) A grantee with a solar energy facility agreement to
22 utilize any of the following:

23 (i) Land with soil that meets the USDA-NRCS land
24 capability class I, II, III or IV, except for the land
25 capability class IV(e).

26 (ii) Land that meets the USDA-NRCS class of unique
27 farmland.

28 (iii) Land with soil that does not meet the USDA-
29 NRCS land capability class I, II, III or IV, but is
30 currently in active farm use and is being maintained in
31 accordance with the soil erosion and sedimentation plan
32 applicable to the land.

33 (2) A grantee with a solar energy facility agreement
34 utilizing more than 10 acres of land.

35 (b) Nonapplicability.--This chapter shall not apply to any
36 of the following:

37 (1) A solar energy facility with a nameplate capacity of
38 no more than two megawatts AC.

39 (2) A customer-generator as defined in section 2 of the
40 act of November 30, 2004 (P.L.1672, No.213), known as the
41 Alternative Energy Portfolio Standards Act.

42 (3) An owner or operator of a normal agricultural
43 operation who owns and operates a solar energy facility on
44 the normal agricultural operation premises, regardless of the
45 location or consumption of the energy generated.

46 CHAPTER 45

47 SOLAR FOR SCHOOLS ACT

48 Sec.

49 4501. Purpose.

50 4502. Definitions.

51 4503. Solar for Schools Grant Program.

1 § 4501. Purpose.

2 The purpose of this chapter is to expand the use of solar
3 energy at school facilities in this Commonwealth to achieve the
4 following benefits:

5 (1) To help schools reduce their present and future
6 energy costs.

7 (2) To increase the resiliency of school energy systems.

8 (3) To help schools reduce their emissions of carbon
9 dioxide and other pollutants.

10 (4) To grow employment through good-paying jobs in the
11 solar industry.

12 (5) To maximize the Inflation Reduction Act's solar
13 energy investment tax credit for Pennsylvania.

14 § 4502. Definitions.

15 The following words and phrases when used in this chapter
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Department." The Department of Community and Economic
19 Development of the Commonwealth.

20 "Eligible applicant." Any of the following:

21 (1) A school district.

22 (2) An intermediate unit.

23 (3) An area career and technical school.

24 (4) A chartered school for the education of the deaf or
25 the blind.

26 (5) A community college.

27 (6) The Thaddeus Stevens College of Technology.

28 (7) The Pennsylvania College of Technology.

29 "Eligible project costs." The term includes costs related to
30 the purchase and installation of equipment, including prepayment
31 in whole or in part of a solar lease or power purchase
32 agreement, permit fees, energy storage, utility interconnection
33 and any other costs approved by the department.

34 "Inflation Reduction Act." The Inflation Reduction Act of
35 2022 (Public Law 117-169, 136 Stat. 1818).

36 "Program." The Solar for Schools Grant Program established
37 under section 4503 (relating to Solar for Schools Grant
38 Program).

39 "School facility." An educational building and surrounding
40 premises owned by an eligible applicant.

41 "Solar energy project." A project at a school facility
42 related to photovoltaic or solar thermal devices that convert,
43 transfer or store solar energy in or into usable forms of
44 thermal or electric energy.

45 § 4503. Solar for Schools Grant Program.

46 (a) Establishment.--The Solar for Schools Grant Program is
47 established in the department to award grants to eligible
48 applicants on a competitive basis to the extent that money is
49 appropriated for this purpose.

50 (b) Use of grants.--A grant awarded under this section shall
51 be used by the eligible applicant for eligible project costs

1 related to a solar energy project.

2 (c) Duties of department.--The department shall have the
3 following powers and duties:

4 (1) To establish guidelines necessary to implement this
5 chapter.

6 (2) To establish the process through which eligible
7 applicants may apply for grant money.

8 (3) To develop the minimum information to be included in
9 a solar feasibility assessment.

10 (4) To provide technical assistance to schools as
11 appropriate, including, but not limited to, conducting solar
12 assessments.

13 (5) To develop educational materials about using,
14 purchasing, financing and maintaining solar energy projects.

15 (6) To provide information related to funding
16 opportunities through the Inflation Reduction Act.

17 (7) To enter into agreements with third-party entities,
18 including the Department of Environmental Protection, to
19 carry out the provisions of this chapter, including reviewing
20 applications and providing technical assistance.

21 (d) Application.--An eligible applicant shall submit an
22 application on a form and in a manner as determined by the
23 department. The following apply:

24 (1) The application shall include the result of a solar
25 feasibility assessment conducted by a qualified solar
26 installer.

27 (2) Prior to the time period established by the
28 department to submit an application, the department shall
29 solicit and fulfill requests for technical assistance from
30 eligible applicants.

31 (e) Prevailing wage requirement.--

32 (1) An employer or contractor contracted to complete a
33 solar energy project under the program shall pay the
34 prevailing minimum wage and benefit rates for all crafts or
35 classifications performing construction, reconstruction,
36 demolition, alteration and repair work, other than
37 maintenance work, on the solar energy project as determined
38 by the Department of Labor and Industry under the act of
39 August 15, 1961 (P.L.987, No.442), known as the Pennsylvania
40 Prevailing Wage Act, and as bid under the act of May 1, 1913
41 (P.L.155, No.104), referred to as the Separations Act.

42 (2) If the department or the Department of Labor and
43 Industry determines that an eligible applicant that received
44 a grant under the program failed to comply with the
45 Pennsylvania Prevailing Wage Act or the Separations Act, the
46 eligible applicant must refund to the department the total
47 amount of grants awarded for the solar energy project.

48 (f) Grant limits.--An eligible applicant may receive a grant
49 of up to 50% of the eligible project costs for the solar energy
50 project.

51 (g) Grant awards.--

1 (1) The department, in its discretion, may award in
2 whole or in part a request made by an eligible applicant in
3 its grant application based upon the merit of a specific
4 component requested.

5 (2) The department shall give preference in award
6 decisions to eligible applicants seeking funding under the
7 Inflation Reduction Act.

8 (3) The department may give preference in award
9 decisions to applications demonstrating the greatest amount
10 of solar energy projected to be produced relative to the
11 existing energy usage at the school facility proposed for the
12 solar energy project.

13 (4) The department may give preference in award
14 decisions to school entities that qualify for the Low-Income
15 Communities Bonus Credit Program established under the
16 Inflation Reduction Act.

17 (5) The department shall ensure that money for the
18 program is geographically dispersed throughout this
19 Commonwealth based on the applications received.

20 (6) A grant award received by a school entity under this
21 section shall not be included when calculating the amount to
22 be paid to a charter school under section 1725-A of the act
23 of March 10, 1949 (P.L.30, No.14), known as the Public School
24 Code of 1949.

25 (7) A grant award received under this section shall not
26 be contingent upon the applicant committing to transfer
27 ownership of any solar renewable energy credits generated by
28 a solar energy project.

29 (8) A grant award received under this section shall be
30 contingent upon the eligible applicant retaining ownership of
31 the equipment, including photovoltaic or solar thermal
32 devices, related to the solar energy project at the onset of
33 the purchase and installation of the equipment or at the
34 conclusion of a power purchase agreement or lease agreement
35 with a third party.

36 (h) Best practices.--An eligible applicant that receives a
37 grant under the program may:

38 (1) Use the energy cost savings from the solar energy
39 project to supplement, not supplant, existing spending on
40 school facility projects, including environmental and health
41 hazard remediation, indoor air quality improvements, heating,
42 ventilation and air conditioning upgrades, roof, window and
43 plumbing repairs or replacements, and emergency repairs.

44 (2) Integrate the solar energy project into the school's
45 educational curriculum, as appropriate.

46 (i) Reimbursement.--In the event that a school facility that
47 benefited from a grant under the program is leased or sold, the
48 eligible applicant that received the grant shall notify the
49 department, and the new owner of the school facility shall
50 reimburse the department the amount of the grant related to the
51 solar energy project at the school facility.

1 (j) Guidelines.--Within 90 days of the effective date of
2 this section, the department shall publish the guidelines
3 required by subsection (c)(1) on the department's publicly
4 accessible Internet website.

5 (k) Audits.--The department may randomly audit and monitor
6 grant recipients to ensure the appropriate use of grant money
7 and compliance with the provisions of this section and
8 department guidelines established under subsection (c).

9 (l) Administrative fee.--The department may use money
10 appropriated for the program to pay for the direct costs
11 associated with the administration of the program, including
12 providing technical assistance.

13 Section 2. This act shall take effect as follows:

14 (1) The following shall take effect immediately:

15 (i) The addition of 58 Pa.C.S. § 4304.

16 (ii) This section.

17 (2) The addition of 58 Pa.C.S. Ch. 45 shall take effect
18 July 1, 2023, or immediately, whichever is later.

19 (3) The remainder of this act shall take effect in 180
20 days.