

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2104 Session of
2021

INTRODUCED BY RAPP, METCALFE, ARMANINI, COOK, KAIL, SCHEMEL,
LEWIS DELROSSO, RYAN, PICKETT, SMITH, COX, GLEIM, ZIMMERMAN,
ROWE AND MARSHALL, NOVEMBER 23, 2021

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 20, 2022

AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania
2 Consolidated Statutes, providing for decommissioning of
3 alternative energy facilities.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 27 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 43

9 DECOMMISSIONING OF ALTERNATIVE ENERGY FACILITIES

10 Sec.

11 4301. Definitions.

12 4302. Requirements for alternative energy facility agreements.

13 4303. Financial assurance requirements.

14 4304. Financial assurance forms and decommissioning plans.

15 4305. Preemption of local ordinances and regulations.

16 4306. Applicability of chapter.

17 § 4301. Definitions.

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

"Alternative energy facility." The development or construction of a facility that utilizes solar energy or wind energy to produce or distribute alternative energy.

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

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

"Battery energy storage systems." Any electrochemical devices capable of:

(1) receiving energy from an external power source; and

(2) storing the energy for subsequent discharge to provide electricity or other grid services.

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

"Decommissioning plan." 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.

"Department." The Department of Environmental Protection of the Commonwealth.

"Grantee." The owner of an alternative energy facility on leased property.

"Letter of credit." As defined in 13 Pa.C.S. § 5102 (relating to definitions).

1 "Nameplate capacity." The maximum rated output of a
2 generator, prime mover or other electric power production
3 equipment under the specific conditions designated by the
4 manufacturer.

5 "Normal agricultural operation." As defined in section 2 of
6 the act of June 10, 1982 (P.L.454, No.133), referred to as the
7 Right-to-Farm Law.

8 "Professional engineer." As defined in section 2 of the act
9 of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land
10 Surveyor and Geologist Registration Law.

11 "USDA-NRCS." The United States Department of Agriculture-
12 Natural Resources Conservation Service.

13 § 4302. Requirements for alternative energy facility
14 agreements.

15 (a) Requirements and prohibitions.--The following apply:

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

23 (2) The decommissioning plan and associated financial
24 assurance may not be separated from the alternative energy
25 facility through a change in grantee ownership to a new
26 grantee. The new grantee shall submit proof of financial
27 assurance in accordance with section 4303 (relating to
28 financial assurance requirements). The prior grantee may not
29 release or revoke the prior grantee's financial assurance
30 until:

1 (i) the new grantee's proof of financial assurance
2 is filed with the county recorder of deeds; and
3 (ii) notice is provided to the surface property
4 owner party to the alternative energy facility agreement.

5 (b) Exception.--Subsection (a) shall not apply to a grantee
6 who is actively working to recommence production of electricity,
7 including an instance following the occurrence of a force
8 majeure or similar event.

9 § 4303. Financial assurance requirements.

10 (a) Plan, proof and notice.--A grantee who executes an
11 alternative energy facility agreement on or after the effective
12 date of this section shall provide a decommissioning plan,
13 submit proof of financial assurance from a banking institution
14 or a Federal credit union as defined in 17 Pa.C.S. § 103
15 (relating to definitions) to the county recorder of deeds and
16 provide notice to the surface property owner party to the
17 alternative energy facility agreement. The financial assurance
18 shall conform to the requirements under this chapter to secure
19 the performance of the grantee's obligation to decommission the
20 grantee's alternative energy facility. If the grantee does not
21 fulfill its obligation to decommission the alternative energy
22 facility, the financial assurance shall be made payable to the
23 surface property owner.

24 (b) Amount.--The amount of financial assurance shall be
25 equal to the cost of decommissioning the alternative energy
26 facility in accordance with section 4304(b) (relating to
27 financial assurance forms and decommissioning plans) and shall
28 be calculated and updated every five years by a third-party
29 professional engineer retained by the grantee from a list of
30 professional engineers compiled by the department and published

1 on the department's publicly accessible Internet website.

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

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

11 (2) On or before the fifth anniversary of the
12 commencement of construction of the alternative energy
13 facility, the grantee shall provide an updated
14 decommissioning plan and proof of financial assurance to the
15 county recorder of deeds in an amount equal to 10% of the
16 total cost of decommissioning as determined by a third-party
17 professional engineer.

18 (3) On or before the tenth anniversary of the
19 commencement of construction of the alternative energy
20 facility, the grantee shall provide an updated
21 decommissioning plan and proof of financial assurance to the
22 county recorder of deeds in an amount equal to 25% of the
23 total cost of decommissioning as determined by a third-party
24 professional engineer.

25 (4) On or before the fifteenth anniversary of the
26 commencement of construction of the alternative energy
27 facility, the grantee shall provide an updated
28 decommissioning plan and proof of financial assurance to the
29 county recorder of deeds in an amount of 40% of the total
30 cost of decommissioning as determined by a third-party

1 professional engineer.

2 (5) On or before the twentieth anniversary of the
3 commencement of construction of the alternative energy
4 facility, the grantee shall provide an updated
5 decommissioning plan and proof of financial assurance to the
6 county recorder of deeds in an amount equal to 60% of the
7 total cost of decommissioning as determined by a third-party
8 professional engineer.

9 (6) On or before the twenty-fifth anniversary of the
10 commencement of construction of the alternative energy
11 facility, the grantee shall provide an updated
12 decommissioning plan and proof of financial assurance to the
13 recorder of deeds in an amount equal to 70% of the total cost
14 of decommissioning as determined by a third-party
15 professional engineer.

16 (7) Upon an assignment of lease rights and obligations
17 to a new grantee.

18 (d) Financial assurance methods.--Acceptable methods of
19 financial assurance shall include a bond, an escrow account or
20 an irrevocable letter of credit from a banking institution in
21 accordance with subsection (a). The irrevocable letter of credit
22 may be terminated at the end of an alternative energy facility
23 agreement only upon 90 days' prior written notice by the banking
24 institution to the grantee and surface property owner.

25 § 4304. Financial assurance forms and decommissioning plans.

26 (a) Forms.--

27 (1) Within 180 days of the effective date of this
28 section, the department shall, by regulation and in
29 consultation with the alternative energy facility industry,
30 develop a provisional standard form for a decommissioning

1 plan and financial assurance to be filed with the county
2 recorder of deeds in accordance with this chapter. In order
3 to facilitate the prompt implementation of this chapter,
4 regulations promulgated to develop a provisional standard
5 form under this paragraph shall be deemed temporary
6 regulations. Temporary regulations promulgated under this
7 paragraph shall not be subject to any of the following:

8 (i) Section 612 of the act of April 9, 1929
9 (P.L.177, No.175), known as The Administrative Code of
10 1929.

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

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

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

19 (2) After the promulgation of the temporary regulations
20 under paragraph (1), the department shall, by regulation and
21 in consultation with the alternative energy facility
22 industry, develop a final standard form for a decommissioning
23 plan and financial assurance to be filed with the county
24 recorder of deeds in accordance with this chapter. The
25 temporary regulations under paragraph (1) shall expire upon
26 the promulgation of the final regulations under this
27 paragraph, or two years after the effective date of this
28 section, whichever is later.

29 (b) Contents.--The provisional standard form and final
30 standard form under subsection (a) shall include all of the

1 following provisions:

2 (1) Unless the surface property owner and grantee
3 mutually agree in writing on an alternative condition for
4 restoring the property, the grantee's decommissioning plan
5 shall provide for all of the following:

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

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

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

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

22 ~~(2) In accordance with section 4303(c)(5) (relating to~~ <--
23 ~~financial assurance requirements), on or before the twenty~~
24 ~~fifth anniversary of the commencement of construction of the~~
25 ~~alternative energy facility, the updated decommissioning plan~~
26 ~~shall include an estimate of the materials to be removed that~~
27 ~~will be salvaged, recycled, refurbished or disposed of in a~~
28 ~~landfill. No more than 20% of the total combined mass of an~~
29 ~~alternative energy facility may enter into a landfill as part~~
30 ~~of the grantee's decommissioning plan. For the purpose of~~

~~determining the total combined mass under this paragraph, the total combined mass shall include wind turbines, solar photovoltaic modules, wind turbine blades, meteorological towers, guy wires, battery energy storage systems, auxiliary equipment and steel support structures. Cement support structures shall not be considered when determining the total combined mass under this paragraph.~~

~~(3) The materials prescribed by Federal or State law to be disposed of within a landfill or in another specific manner shall be noted in the decommissioning plan and may not be considered when determining the total combined mass under paragraph (2).~~

~~(4)~~ (2) The financial assurance specified under section 4303(c) (RELATING TO FINANCIAL ASSURANCE REQUIREMENTS).
§ 4305. Preemption of local ordinances and regulations.

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 regulations promulgated 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 Commonwealth. Any county, municipal or other local government ordinance or regulation that materially impedes the purposes of this chapter shall be preempted and shall be without force and effect.

§ 4306. Applicability of chapter.

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

(1) A grantee with an alternative energy facility

1 agreement to utilize any of the following:

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

5 (ii) Land that meets the USDA-NRCS class of unique
6 farm land.

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

12 (2) A grantee with an alternative energy facility
13 agreement utilizing more than 10 acres of land.

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

16 (1) An alternative energy facility with a nameplate
17 capacity of no more than two megawatts AC.

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

21 (3) An owner or operator of a normal agricultural
22 operation who owns and operates an alternative energy
23 facility on the normal agricultural operation premises,
24 regardless of the location or consumption of the energy
25 generated.

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

27 (1) The following shall take effect immediately:

28 (i) The addition of 27 Pa.C.S. § 4304.

29 (ii) This section.

30 (2) The remainder of this act shall take effect in 180

1 days.