

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 211 Session of
2023

INTRODUCED BY YAW, DUSH, BROOKS, STEFANO, MARTIN, HUTCHINSON AND
J. WARD, JANUARY 31, 2023

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 31, 2023

AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania
2 Consolidated Statutes, in environmental protection, providing
3 for decommissioning of solar 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 SOLAR ENERGY FACILITIES

10 Sec.

11 4301. Definitions.

12 4302. Decommissioning requirements in solar energy facility
13 agreements.

14 4303. Financial assurance requirements in solar energy facility
15 agreements.

16 4304. Form and content of decommissioning plans.

17 4305. Prevention of forced labor.

18 4306. Preemption of local ordinances and regulations.

1 4307. Applicability.

2 § 4301. Definitions.

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

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

9 "Decommissioning plan." A document on file with the county
10 recorder of deeds detailing the steps that will be taken to
11 decommission a solar energy facility and the amount, form and
12 timing of financial assurance.

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

15 "Grantee." The owner of a solar energy facility on leased
16 property.

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

20 "Solar energy facility." The development or construction of
21 a facility that utilizes solar energy to produce or distribute
22 energy.

23 "Solar energy facility agreement." A lease agreement between
24 a grantee and a surface property owner that authorizes the
25 grantee to operate a solar energy facility on leased property.

26 § 4302. Decommissioning requirements in solar energy facility
27 agreements.

28 A solar energy facility agreement executed after the
29 effective date of this section shall provide that the grantee is
30 responsible for decommissioning the grantee's solar 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, except for an instance when the grantee is actively working to recommence production of electricity, including an instance after the occurrence of a force majeure or similar event.

§ 4303. Financial assurance requirements in solar energy facility agreements.

(a) Proof of financial assurance.--A grantee who executes a solar energy facility agreement on or after the effective date of this subsection shall provide a decommissioning plan, submit proof of financial assurance to the county recorder of deeds and provide notice to the surface property owner party to the solar energy facility agreement. The financial assurance shall conform to the requirements of this chapter to secure the performance of the grantee's obligation to decommission the grantee's solar energy facility. If the grantee does not fulfill the grantee's obligation to decommission the solar energy facility, the financial assurance shall be made payable to the surface property owner.

(b) Amount of financial assurance.--The amount of financial assurance shall be equal to the estimated cost to decommission the solar energy facility. The amount of financial assurance shall 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.

(c) Delivery.--A grantee shall deliver a decommissioning plan and proof of financial assurance to the county recorder of

1 deeds in accordance with the following:

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

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

15 (3) On or before the 10th anniversary of the
16 commencement of construction of the solar energy facility,
17 the grantee shall provide an updated decommissioning plan and
18 proof of financial assurance to the county recorder of deeds
19 in an amount equal to 40% of the estimated cost of
20 decommissioning, less the facility's salvage value, except
21 that the required proof of financial assurance shall not be
22 less than 25% of the total estimated cost of decommissioning
23 as determined by a third-party professional engineer.

24 (4) On or before the 15th anniversary of the
25 commencement of construction of the solar energy facility,
26 the grantee shall provide an updated decommissioning plan and
27 proof of financial assurance to the county recorder of deeds
28 in an amount equal to 60% of the estimated cost of
29 decommissioning, less the facility's salvage value, except
30 that the required proof of financial assurance shall not be

1 less than 40% of the total estimated cost of decommissioning,
2 as determined by a third-party professional engineer.

3 (5) On or before the 20th anniversary of the
4 commencement of construction of the solar energy facility,
5 the grantee shall provide an updated decommissioning plan and
6 proof of financial assurance to the county recorder of deeds
7 in an amount equal to 80% of the estimated cost of
8 decommissioning, less the facility's salvage value, except
9 that the required proof of financial assurance shall not be
10 less than 60% of the total estimated cost of decommissioning,
11 as determined by a third-party professional engineer.

12 (6) On or before the 25th anniversary of the
13 commencement of construction of the solar energy facility,
14 the grantee shall provide an updated decommissioning plan and
15 proof of financial assurance to the county recorder of deeds
16 in an amount equal to 100% of the estimated cost of
17 decommissioning, less the facility's salvage value, except
18 that the required proof of financial assurance shall not be
19 less than 70% of the total estimated cost of decommissioning,
20 as determined by a third-party professional engineer.

21 (7) The calculation of the salvage value of a solar
22 energy facility by a third-party professional engineer shall
23 be limited to salvageable steel, aluminum and copper.

24 (d) Forms of financial assurance.--Any of the following
25 shall be an acceptable form of financial assurance:

26 (1) An escrow account.

27 (2) A certificate of deposit or an automatically
28 renewable, irrevocable letter of credit from a financial
29 institution chartered or authorized to do business in this
30 Commonwealth and regulated and examined by a Federal agency

1 or the Commonwealth.

2 (3) A bond executed between the grantee and a corporate
3 surety licensed to do business in this Commonwealth.

4 (4) A negotiable bond of the Federal Government, the
5 Commonwealth or a municipality within this Commonwealth.

6 (e) Transferability.--A decommissioning plan, the associated
7 financial assurance and the salvage value of a solar energy
8 facility to reduce the financial assurance may not be separated
9 from the solar energy facility through a change in grantee
10 ownership. The new grantee shall submit proof of financial
11 assurance in accordance with subsection (a). The prior grantee
12 may not release or revoke the prior grantee's financial
13 assurance until the new grantee's proof of financial assurance
14 is filed with the county recorder of deeds and notice is
15 provided to the surface property owner party to the solar energy
16 facility agreement.

17 § 4304. Form and content of decommissioning plans.

18 (a) Development of form.--

19 (1) Within 180 days of the effective date of this
20 paragraph, the department shall, by regulation and in
21 consultation with the solar energy industry, develop a
22 provisional standard form for a decommissioning plan and
23 financial assurance to be filed with the county recorder of
24 deeds in accordance with this chapter. In order to facilitate
25 the prompt implementation of this chapter, regulations
26 promulgated to develop a provisional standard form under this
27 paragraph shall be deemed temporary regulations. Temporary
28 regulations promulgated under this paragraph shall not be
29 subject to any of the following:

30 (i) Section 612 of the act of April 9, 1929

1 (P.L.177, No.175), known as The Administrative Code of
2 1929.

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

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

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

11 (2) After the promulgation of the temporary regulations
12 under paragraph (1), the department shall, by regulation and
13 in consultation with the solar energy industry, develop a
14 final standard form for a decommissioning plan and financial
15 assurance to be filed with the county recorder of deeds in
16 accordance with this chapter. The temporary regulations under
17 paragraph (1) shall expire upon the promulgation of the final
18 regulations under this paragraph, or two years after the
19 effective date of this paragraph, 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 an alternative condition for
25 restoring the property, the grantee's decommissioning plan
26 shall include all of the following:

27 (i) The removal of all non-utility-owned equipment,
28 conduits, structures, fencing and foundations to a depth
29 of at least three feet below grade. The grantee shall not
30 be required to remove equipment and materials that the

1 public utility requires to remain on site.

2 (ii) The removal of graveled areas and access roads,
3 unless the surface property owner requests in writing for
4 graveled areas and access roads to stay in place.

5 (iii) The restoration of the property to a condition
6 reasonably similar to the property's condition before the
7 commencement of construction, including the replacement
8 of top soil removed or eroded on previously productive
9 agricultural land.

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

13 (2) The required financial assurance under section 4303
14 (relating to financial assurance requirements in solar energy
15 facility agreements).

16 (3) The grantee's attestation required under section
17 4305 (relating to prevention of forced labor).

18 § 4305. Prevention of forced labor.

19 The grantee of a solar energy facility commenced on or after
20 the effective date of this section shall attest to the grantee's
21 compliance with the Uyghur Forced Labor Prevention Act (Public
22 Law 117-78, 135 Stat. 1525) or any other Federal law, rule or
23 regulation that restricts the import or use of goods, wares,
24 articles or merchandise mined, produced or manufactured wholly
25 or in part with forced labor.

26 § 4306. Preemption of local ordinances and regulations.

27 The regulation of the decommissioning of solar energy
28 facilities is a matter of general Statewide interest that
29 requires uniform Statewide regulation. This chapter and the
30 regulations promulgated under this chapter constitute a

comprehensive plan with respect to all aspects of solar energy facility agreements, financial assurance and decommissioning plans associated with solar 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.

§ 4307. Applicability.

The requirements under this chapter shall not apply to any of the following:

(1) A solar energy facility with a nameplate capacity of two megawatts AC or less.

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

(3) An owner or operator of a normal agricultural operation as defined in section 2 of the act of June 10, 1982 (P.L.454, No.133), referred to as the Right-to-Farm Law, who owns and operates a solar energy facility on the normal agricultural operation premises, regardless of the location or consumption of the energy generated.

Section 2. This act shall take effect as follows:

(1) The following shall take effect immediately:

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

(ii) This section.

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