
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 AND GLEIM,
NOVEMBER 23, 2021

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
NOVEMBER 23, 2021

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.

17 § 4301. Definitions.

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

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

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

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

14 "Decommissioning plan." A document detailing the steps that
15 will be taken to decommission an alternative energy facility and
16 the amount, form and timing of financial assurance that will be
17 provided by a grantee.

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

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

22 "Nameplate capacity." The maximum rated output of a
23 generator, prime mover or other electric power production
24 equipment under the specific conditions designated by the
25 manufacturer.

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

29 § 4302. Requirements for alternative energy facility
30 agreements.

1 (a) Requirements.--Except as provided under subsection (b),
2 an alternative energy facility agreement executed on or after
3 the effective date of this section shall provide that a grantee
4 is responsible for decommissioning the grantee's alternative
5 energy facility on the surface property owner's property in
6 accordance with this chapter no later than 18 months after the
7 facility has ceased producing electricity.

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

12 § 4303. Financial assurance requirements.

13 (a) Proof.--A grantee who executes an alternative energy
14 facility agreement on or after the effective date of this
15 section shall provide a decommissioning plan and submit proof of
16 financial assurance from a banking institution as defined in 7
17 Pa.C.S. § 6102 (relating to definitions) or a Federal credit
18 union as defined in 17 Pa.C.S. § 103 (relating to definitions)
19 to the county recorder of deeds. The financial assurance shall
20 conform to the requirements under this chapter to secure the
21 performance of the grantee's obligation to decommission the
22 grantee's alternative energy facility.

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

1 amount of financial assurance shall not be calculated to be less
2 than \$10,000 per megawatt as measured in nominal AC nameplate
3 capacity for an alternative energy facility.

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

7 (1) No later than 30 days before the commencement of
8 construction of the alternative energy facility, the grantee
9 shall provide the decommissioning plan and proof of financial
10 assurance to the county recorder of deeds in an amount equal
11 to 20% of the cost of decommissioning as determined by a
12 third-party professional engineer.

13 (2) On or before the fifth anniversary of the
14 commencement of construction of the alternative energy
15 facility, the grantee shall provide an updated
16 decommissioning plan and proof of financial assurance to the
17 county recorder of deeds in an amount equal to 40% of the
18 cost of decommissioning as determined by a third-party
19 professional engineer.

20 (3) On or before the tenth anniversary of the
21 commencement of construction of the alternative energy
22 facility, the grantee shall provide an updated
23 decommissioning plan and proof of financial assurance to the
24 county recorder of deeds in an amount equal to 60% of the
25 cost of decommissioning as determined by a third-party
26 professional engineer.

27 (4) On or before the fifteenth anniversary of the
28 commencement of construction of the alternative energy
29 facility, the grantee shall provide an updated
30 decommissioning plan and proof of financial assurance to the

1 county recorder of deeds in an amount of 80% of the cost of
2 decommissioning as determined by a third-party professional
3 engineer.

4 (5) On or before the twentieth anniversary of the
5 commencement of construction of the alternative energy
6 facility, the grantee shall provide an updated
7 decommissioning plan and proof of financial assurance to the
8 county recorder of deeds in an amount equal to 100% of the
9 cost of decommissioning as determined by a third-party
10 professional engineer.

11 (d) Financial assurance methods.--Acceptable methods of
12 financial assurance shall include a bond or an escrow account.

13 § 4304. Financial assurance forms and decommissioning plans.

14 (a) Forms.--

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

26 (i) Section 612 of the act of April 9, 1929
27 (P.L.177, No.175), known as The Administrative Code of
28 1929.

29 (ii) Sections 201, 202, 203, 204 and 205 of the act
30 of July 31, 1968 (P.L.769, No.240), referred to as the

1 Commonwealth Documents Law.

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

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

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

17 (b) Contents.--The provisional standard form and final
18 standard form under subsection (a) shall include all of the
19 following provisions:

20 (1) Unless the surface property owner and grantee
21 mutually agree in writing on an alternative condition for
22 restoring the property, the grantee's decommissioning plan
23 shall provide for all of the following:

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

29 (ii) The removal of graveled areas and access roads
30 unless the surface property owner requests in writing for

1 graveled areas and access roads to stay in place.

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

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

10 (2) In accordance with section 4303(c) (5) (relating
11 financial assurance requirements), on or before the twentieth
12 anniversary of the commencement of construction of the
13 alternative energy facility, the updated decommissioning plan
14 shall include an estimate of the materials to be removed that
15 will be salvaged, recycled, refurbished or disposed of in a
16 landfill. No more than 20% of the total combined mass of an
17 alternative energy facility may enter into a landfill as part
18 of the grantee's decommissioning plan. For the purpose of
19 determining the total combined mass under this paragraph, the
20 total combined mass shall include wind turbines, solar
21 photovoltaic modules, wind turbine blades, meteorological
22 towers, guy wires, auxiliary equipment and steel support
23 structures. Cement support structures shall not be considered
24 when determining the total combined mass under this
25 paragraph.

26 (3) The financial assurance specified under section
27 4303(c).

28 § 4305. Preemption of local ordinances and regulations.

29 The regulation of the decommissioning of alternative energy
30 facilities is a matter of general Statewide interest that

1 requires uniform Statewide regulation. This chapter and the
2 regulations promulgated under this chapter constitute a
3 comprehensive plan with respect to all aspects of alternative
4 energy facility agreements, financial assurance and
5 decommissioning plans associated with alternative energy
6 facilities within this Commonwealth. Any county, municipal or
7 other local government ordinance or regulation that materially
8 impedes the purposes of this chapter shall be preempted and
9 shall be without force and effect.

10 § 4306. Applicability.

11 This chapter shall not apply to any of the following:

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

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

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

20 (1) The following shall take effect immediately:

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

22 (ii) This section.

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