

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 AND ROWE, NOVEMBER 23, 2021

AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 26, 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.

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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 "BANKING INSTITUTION." AS DEFINED IN 7 PA.C.S. § 6102
12 (RELATING TO DEFINITIONS).

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13 "BATTERY ENERGY STORAGE SYSTEMS." ANY ELECTROCHEMICAL
14 DEVICES CAPABLE OF:

15 (1) RECEIVING ENERGY FROM AN EXTERNAL POWER SOURCE; AND

16 (2) STORING THE ENERGY FOR SUBSEQUENT DISCHARGE TO
17 PROVIDE ELECTRICITY OR OTHER GRID SERVICES.

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

21 "Decommissioning plan." A document detailing the steps that
22 will be taken to decommission an alternative energy facility and
23 the amount, form and timing of financial assurance that will be
24 provided by a grantee.

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

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

29 "LETTER OF CREDIT." AS DEFINED IN 13 PA.C.S. § 5102
30 (RELATING TO DEFINITIONS).

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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. Except as provided under subsection (b),~~ <--

16 (A) REQUIREMENTS AND PROHIBITIONS.--THE FOLLOWING APPLY: <--

17 (1) EXCEPT AS PROVIDED UNDER SUBSECTION (B), an
18 alternative energy facility agreement executed on or after
19 the effective date of this section shall provide that a
20 grantee is responsible for decommissioning the grantee's
21 alternative energy facility on the surface property owner's
22 property in accordance with this chapter no later than 18
23 months after the facility has ceased producing electricity.

24 (2) THE DECOMMISSIONING PLAN AND ASSOCIATED FINANCIAL <--
25 ASSURANCE MAY NOT BE SEPARATED FROM THE ALTERNATIVE ENERGY
26 FACILITY THROUGH A CHANGE IN GRANTEE OWNERSHIP TO A NEW
27 GRANTEE. THE NEW GRANTEE SHALL SUBMIT PROOF OF FINANCIAL
28 ASSURANCE IN ACCORDANCE WITH SECTION 4303 (RELATING TO
29 FINANCIAL ASSURANCE REQUIREMENTS). THE PRIOR GRANTEE MAY NOT
30 RELEASE OR REVOKE THE PRIOR GRANTEE'S FINANCIAL ASSURANCE

1 UNTIL:

2 (I) THE NEW GRANTEE'S PROOF OF FINANCIAL ASSURANCE
3 IS FILED WITH THE COUNTY RECORDER OF DEEDS; AND

4 (II) NOTICE IS PROVIDED TO THE SURFACE PROPERTY
5 OWNER PARTY TO THE ALTERNATIVE ENERGY FACILITY AGREEMENT.

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

10 § 4303. Financial assurance requirements.

11 (a) Proof PLAN, PROOF AND NOTICE.--A grantee who executes an <--
12 alternative energy facility agreement on or after the effective
13 date of this section shall provide a decommissioning plan and, <--
14 submit proof of financial assurance from a banking institution
15 as defined in 7 Pa.C.S. § 6102 (relating to definitions) or a <--
16 Federal credit union as defined in 17 Pa.C.S. § 103 (relating to
17 definitions) to the county recorder of deeds AND PROVIDE NOTICE <--
18 TO THE SURFACE PROPERTY OWNER PARTY TO THE ALTERNATIVE ENERGY
19 FACILITY AGREEMENT. The financial assurance shall conform to the
20 requirements under this chapter to secure the performance of the
21 grantee's obligation to decommission the grantee's alternative
22 energy facility. IF THE GRANTEE DOES NOT FULFILL ITS OBLIGATION <--
23 TO DECOMMISSION THE ALTERNATIVE ENERGY FACILITY, THE FINANCIAL
24 ASSURANCE SHALL BE MADE PAYABLE TO THE SURFACE PROPERTY OWNER.

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

1 professional engineers compiled by the department and published
2 on the department's publicly accessible Internet website. The <--
3 amount of financial assurance shall not be calculated to be less
4 than \$10,000 per megawatt as measured in nominal AC nameplate
5 capacity for an alternative energy facility.

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

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

15 (2) On or before the fifth anniversary of the
16 commencement of construction of the alternative energy
17 facility, the grantee shall provide an updated
18 decommissioning plan and proof of financial assurance to the
19 county recorder of deeds in an amount equal to ~~40%~~ 10% of the <--
20 TOTAL cost of decommissioning as determined by a third-party <--
21 professional engineer.

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

29 (4) On or before the fifteenth anniversary of the
30 commencement of construction of the alternative energy

1 facility, the grantee shall provide an updated
2 decommissioning plan and proof of financial assurance to the
3 county recorder of deeds in an amount of ~~80%~~ 40% of the TOTAL <--
4 cost of decommissioning as determined by a third-party
5 professional engineer.

6 (5) On or before the twentieth anniversary of the
7 commencement of construction of the alternative energy
8 facility, the grantee shall provide an updated
9 decommissioning plan and proof of financial assurance to the
10 county recorder of deeds in an amount equal to ~~100%~~ 60% of <--
11 the TOTAL cost of decommissioning as determined by a third- <--
12 party professional engineer.

13 (6) ON OR BEFORE THE TWENTY-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 RECORDER OF DEEDS IN AN AMOUNT EQUAL TO 70% OF THE TOTAL COST
18 OF DECOMMISSIONING AS DETERMINED BY A THIRD-PARTY
19 PROFESSIONAL ENGINEER.

20 (7) UPON AN ASSIGNMENT OF LEASE RIGHTS AND OBLIGATIONS
21 TO A NEW GRANTEE.

22 (d) Financial assurance methods.--Acceptable methods of
23 financial assurance shall include a bond ~~or~~, an escrow account. <--
24 OR AN IRREVOCABLE LETTER OF CREDIT FROM A BANKING INSTITUTION IN <--
25 ACCORDANCE WITH SUBSECTION (A). THE IRREVOCABLE LETTER OF CREDIT
26 MAY BE TERMINATED AT THE END OF AN ALTERNATIVE ENERGY FACILITY
27 AGREEMENT ONLY UPON 90 DAYS' PRIOR WRITTEN NOTICE BY THE BANKING
28 INSTITUTION TO THE GRANTEE AND SURFACE PROPERTY OWNER.

29 § 4304. Financial assurance forms and decommissioning plans.

30 (a) Forms.--

1 (1) Within 180 days of the effective date of this
2 section, the department shall, by regulation and in
3 consultation with the alternative energy facility industry,
4 develop a provisional standard form for a decommissioning
5 plan and financial assurance to be filed with the county
6 recorder of deeds in accordance with this chapter. In order
7 to facilitate the prompt implementation of this chapter,
8 regulations promulgated to develop a provisional standard
9 form under this paragraph shall be deemed temporary
10 regulations. Temporary regulations promulgated under this
11 paragraph shall not be subject to any of the following:

12 (i) Section 612 of the act of April 9, 1929
13 (P.L.177, No.175), known as The Administrative Code of
14 1929.

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

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

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

23 (2) After the promulgation of the temporary regulations
24 under paragraph (1), the department shall, by regulation and
25 in consultation with the alternative energy facility
26 industry, develop a final standard form for a decommissioning
27 plan and financial assurance to be filed with the county
28 recorder of deeds in accordance with this chapter. The
29 temporary regulations under paragraph (1) shall expire upon
30 the promulgation of the final regulations under this

1 paragraph, or two years after the effective date of this
2 section, whichever is later.

3 (b) Contents.--The provisional standard form and final
4 standard form under subsection (a) shall include all of the
5 following provisions:

6 (1) Unless the surface property owner and grantee
7 mutually agree in writing on an alternative condition for
8 restoring the property, the grantee's decommissioning plan
9 shall provide for all of the following:

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

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

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

23 (iv) The reseeded of a cleared area, unless
24 requested in writing by the surface property owner to not
25 reseed due to plans for agricultural planting.

26 (2) In accordance with section 4303(c) (5) (relating TO <--
27 financial assurance requirements), on or before the ~~twentieth~~<--
28 TWENTY-FIFTH anniversary of the commencement of construction <--
29 of the alternative energy facility, the updated
30 decommissioning plan shall include an estimate of the

1 materials to be removed that will be salvaged, recycled,
2 refurbished or disposed of in a landfill. No more than 20% of
3 the total combined mass of an alternative energy facility may
4 enter into a landfill as part of the grantee's
5 decommissioning plan. For the purpose of determining the
6 total combined mass under this paragraph, the total combined
7 mass shall include wind turbines, solar photovoltaic modules,
8 wind turbine blades, meteorological towers, guy wires, <--
9 BATTERY ENERGY STORAGE SYSTEMS, auxiliary equipment and steel
10 support structures. Cement support structures shall not be
11 considered when determining the total combined mass under
12 this paragraph.

13 (3) THE MATERIALS PRESCRIBED BY FEDERAL OR STATE LAW TO <--
14 BE DISPOSED OF WITHIN A LANDFILL OR IN ANOTHER SPECIFIC
15 MANNER SHALL BE NOTED IN THE DECOMMISSIONING PLAN AND MAY NOT
16 BE CONSIDERED WHEN DETERMINING THE TOTAL COMBINED MASS UNDER
17 PARAGRAPH (2).

18 ~~(3)~~ (4) The financial assurance specified under section <--
19 4303(c).

20 § 4305. Preemption of local ordinances and regulations.

21 The regulation of the decommissioning of alternative energy
22 facilities is a matter of general Statewide interest that
23 requires uniform Statewide regulation. This chapter and the
24 regulations promulgated under this chapter constitute a
25 comprehensive plan with respect to all aspects of alternative
26 energy facility agreements, financial assurance and
27 decommissioning plans associated with alternative energy
28 facilities within this Commonwealth. Any county, municipal or
29 other local government ordinance or regulation that materially
30 impedes the purposes of this chapter shall be preempted and

1 shall be without force and effect.

2 § 4306. Applicability OF CHAPTER. <--

3 ~~This chapter shall not apply to any of the following:~~ <--

4 ~~(1) A nonutility owner or operator of a net metered~~
5 ~~distributed generation system with a nameplate capacity of~~
6 ~~not greater than 3,000 kilowatts.~~

7 ~~(2) An owner or operator of a farm who owns and operates~~
8 ~~an alternative energy facility on the farm premises,~~
9 ~~regardless of the location or consumption of the energy~~
10 ~~generated.~~

11 (A) APPLICABILITY.--THIS CHAPTER SHALL APPLY TO ANY OF THE <--
12 FOLLOWING:

13 (1) A GRANTEE WITH AN ALTERNATIVE ENERGY FACILITY
14 AGREEMENT TO UTILIZE ANY OF THE FOLLOWING:

15 (I) LAND WITH SOIL THAT MEETS THE USDA-NRCS LAND
16 CAPABILITY CLASS I, II, III OR IV, EXCEPT FOR THE LAND
17 CAPABILITY CLASS IV(E).

18 (II) LAND THAT MEETS THE USDA-NRCS CLASS OF UNIQUE
19 FARM LAND.

20 (III) LAND WITH SOIL THAT DOES NOT MEET THE USDA-
21 NRCS LAND CAPABILITY CLASS I, II, III OR IV, BUT IS
22 CURRENTLY IN ACTIVE FARM USE AND IS BEING MAINTAINED IN
23 ACCORDANCE WITH THE SOIL EROSION AND SEDIMENTATION PLAN
24 APPLICABLE TO THE LAND.

25 (2) A GRANTEE WITH AN ALTERNATIVE ENERGY FACILITY
26 AGREEMENT UTILIZING MORE THAN 10 ACRES OF LAND.

27 (B) NONAPPLICABILITY.--THIS CHAPTER SHALL NOT APPLY TO ANY
28 OF THE FOLLOWING:

29 (1) AN ALTERNATIVE ENERGY FACILITY WITH A NAMEPLATE
30 CAPACITY OF NO MORE THAN TWO MEGAWATTS AC.

1 (2) A CUSTOMER-GENERATOR AS DEFINED IN SECTION 2 OF THE
2 ACT OF NOVEMBER 30, 2004 (P.L.1672, NO.213), KNOWN AS THE
3 ALTERNATIVE ENERGY PORTFOLIO STANDARDS ACT.

4 (3) AN OWNER OR OPERATOR OF A NORMAL AGRICULTURAL
5 OPERATION WHO OWNS AND OPERATES AN ALTERNATIVE ENERGY
6 FACILITY ON THE NORMAL AGRICULTURAL OPERATION PREMISES,
7 REGARDLESS OF THE LOCATION OR CONSUMPTION OF THE ENERGY
8 GENERATED.

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

10 (1) The following shall take effect immediately:

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

12 (ii) This section.

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