



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

**GOV. MSG. NO. 1365**

July 3, 2013

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 3, 2013, the following bill was signed into law:

HB1149 HD3 SD2 CD1

RELATING TO WIND ENERGY FACILITIES  
**ACT 262 (13)**

*Aloha*  
*Neil Abercrombie*

NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor  
on JUL 3 2013

**ACT 262**

HOUSE OF REPRESENTATIVES  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

**H.B. NO.** 1149  
H.D. 3  
S.D. 2  
C.D. 1

---

---

## A BILL FOR AN ACT

RELATING TO WIND ENERGY FACILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that production of wind  
2 energy on a commercial scale frequently requires significant  
3 land disturbance and large installations consisting of wind  
4 turbines, electrical substations, electrical lines, and other  
5 supporting systems. Wind energy facilities, if abandoned or not  
6 properly maintained, could pose a hazard to public health,  
7 safety, and welfare through mechanical failures, electrical  
8 hazards, or the release of hazardous substances. Abandoned or  
9 neglected wind energy facilities may also be a blight on the  
10 State's natural beauty.

11           The legislature further finds that other states with large-  
12 scale wind energy facilities have developed robust  
13 decommissioning regulations for windmills that are abandoned or  
14 left in disrepair. Decommissioning regulations help to ensure  
15 the health and safety of the public, especially those persons  
16 residing near the wind energy facility.

17           The purpose of this Act is to protect the public against  
18 health and safety hazards and to preserve the natural beauty of

HB1149 CD1 HMS 2013-3541



1 Hawaii. This Act establishes standards and assurances of  
2 adequate financial resources for the safe and proper  
3 decommissioning of wind energy facilities at the end of their  
4 useful lives.

5 SECTION 2. Chapter 201N, Hawaii Revised Statutes, is  
6 amended by adding a new part to be appropriately designated and  
7 to read as follows:

8 **"PART . DECOMMISSIONING OF WIND ENERGY FACILITIES**

9 **§201N-A Definitions.** As used in this part, unless the  
10 context otherwise requires:

11 "Abandonment" means the failure to generate electricity  
12 from a commercial wind energy facility for a period of twenty-  
13 four consecutive months for reasons other than curtailment,  
14 repowering, a valid judicial order, or other governmental  
15 regulatory action, with no pending negotiations for purchase or  
16 a power purchase agreement. A commercial wind energy facility  
17 shall not be considered abandoned if the owner or operator has  
18 elected not to run the facility, but it has been maintained in  
19 proper working order and is capable of generating electricity;  
20 provided that, if, after thirty-six months, the facility has not  
21 generated power in commercial quantities, the facility shall be  
22 deemed abandoned.



1 "Commencement of construction":

2 (1) Means beginning excavation of wind turbine foundations  
3 or other actions relating to the eventual erection and  
4 installation of commercial wind energy equipment; but

5 (2) Shall not include erection of meteorological data  
6 towers, environmental assessments, environmental  
7 impact statements, surveys, preliminary engineering,  
8 or other activities associated with an assessment of  
9 the development of the wind resources on a given  
10 parcel of property.

11 "Commercial generation date" means the date on which a wind  
12 turbine first generates electrical energy in commercial  
13 quantities.

14 "Commercial quantities" means an amount of electrical  
15 energy sufficient for sale or use off-site from a wind turbine  
16 or wind energy facility, and shall not include amounts of  
17 electrical energy used only for the maintenance or testing of  
18 the wind turbine or wind energy facility itself.

19 "Commercial wind energy equipment" means a wind tower and  
20 turbine with five hundred kilowatts or greater of total  
21 nameplate generating capacity.

1 "Owner" means an entity having a controlling interest in  
2 the commercial wind energy facility and equipment, including the  
3 entity's respective successors and assigns.

4 "Useful life" means the time during which a wind turbine or  
5 wind energy facility is generating electricity in commercial  
6 quantities.

7 "Wind energy facility":

8 (1) Means an electrical generation facility consisting of  
9 one or more wind turbines under common ownership or  
10 operating control, and includes substations,  
11 meteorological data towers, aboveground and  
12 underground electrical transmission lines,  
13 transformers, control systems, and other buildings or  
14 facilities used to support the operation of the  
15 facility, and whose primary purpose is to supply  
16 electricity to an off-site customer; but

17 (2) Shall not include a wind energy facility located  
18 entirely on property held in fee simple estate by the  
19 owner of the wind energy facility if the energy  
20 produced is consumed on-site solely by the owner.

21 "Wind turbine" means a wind energy conversion system that  
22 converts wind energy into electricity through the use of a wind



1 turbine generator, and includes the turbine, blade, tower, base,  
2 and pad transformer, if any.

3 **§201N-B Decommissioning of wind energy facilities.** (a)

4 Any owner of a commercial wind energy facility utilizing the  
5 renewable energy facility siting process shall be responsible,  
6 at the owner's expense, for the decommissioning of the wind  
7 energy facility upon abandonment or the end of the useful life  
8 of the commercial wind energy equipment in the wind energy  
9 facility. Nothing in this section shall prevent county  
10 permitting agencies from including decommissioning requirements  
11 as a condition for a building permit.

12 (b) Decommissioning of a wind energy facility shall  
13 include:

14 (1) Removal of wind turbines, towers, buildings, cabling,  
15 electrical components, foundations, and any other  
16 associated facilities, to a depth of thirty inches  
17 below grade; and

18 (2) Restoring disturbed earth to substantially the same  
19 physical condition as existed prior to the  
20 commencement of the wind energy facility by the owner,  
21 including grading and reseeded.



1 (c) The decommissioning of a wind energy facility or  
2 individual pieces of commercial wind energy equipment shall be  
3 completed as follows:

4 (1) By the owner of the wind energy facility within twelve  
5 months after abandonment or the end of the useful life  
6 of the commercial wind energy equipment in the wind  
7 energy facility; or

8 (2) If the owner of the wind energy facility fails to  
9 complete the decommissioning within the period  
10 prescribed in paragraph (1), the owner of the land on  
11 which the wind energy facility is located shall take  
12 necessary measures to complete decommissioning of the  
13 wind energy facility. The owner of the land shall  
14 have access to the financial security as described in  
15 section 201N-C for the purpose of decommissioning the  
16 wind energy facility.

17 (d) This part shall not apply to wind energy facilities  
18 existing in the State on the effective date of this Act,  
19 provided that:

20 (1) An existing lease or other agreement between the wind  
21 energy facility owner and the owner of the land on  
22 which the facility is located, or a power purchase

1 agreement under which the wind energy facility owner  
2 is operating, provides for the decommissioning of the  
3 wind energy facility after abandonment or the end of  
4 the useful life of the commercial wind energy  
5 equipment in the wind energy facility; or

6 (2) The wind energy facility was constructed on fee simple  
7 land owned by the wind energy facility owner.

8 **§201N-C Evidence of financial security.** (a) Prior to the  
9 commercial generation date, the owner shall file with the  
10 coordinator evidence of financial security to cover the  
11 anticipated costs of decommissioning the wind energy facility.  
12 Evidence of financial security may be in the form of a surety  
13 bond, performance bond, collateral bond, parent guaranty, or  
14 letter of credit. Any such financial security shall be in a  
15 form that allows the land owner to draw on it in any instance  
16 described in section 201N-B(c)(2).

17 (b) The evidence of financial security shall be  
18 accompanied by an estimate of the total cost of decommissioning,  
19 minus the salvage value of the equipment, prepared by a  
20 professional engineer licensed in the State. The amount of the  
21 evidence of financial security shall be either:





1           (1) The estimate of the total cost of decommissioning,  
2           minus the salvage value of the equipment, which shall  
3           be filed with the coordinator prior to final approval  
4           permitting energy generation in commercial quantities  
5           and every five years thereafter for the useful life of  
6           the wind energy facility; or

7           (2) One hundred per cent of the estimate of the total cost  
8           of decommissioning, as determined by a licensed  
9           engineer, which shall be filed with the coordinator  
10          prior to final approval permitting energy generation  
11          in commercial quantities. The funds shall be placed  
12          in an interest-bearing account and any accrued  
13          interest that is not applied toward decommissioning  
14          shall be returned to the wind energy facility owner.

15          (c) If the owner of a wind energy facility fails to file  
16          the information required under this section with the  
17          coordinator, the owner of the wind energy facility shall be  
18          subject to an administrative penalty not to exceed \$1,500 per  
19          day.

20          (d) If a transfer of ownership of a wind energy facility  
21          occurs, the evidence of financial security posted by the  
22          transferor shall remain in place and shall not be released until

1 such time as evidence of financial security meeting the  
2 requirements of this section is posted by the new owner of the  
3 wind energy facility.

4 (e) This section shall apply to:

5 (1) Any construction of a commercial wind energy facility  
6 or portion thereof; and

7 (2) Any wind energy facility entering into or renewing a  
8 power purchase agreement for the energy generated by  
9 the wind energy facility."

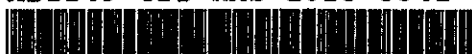
10 SECTION 3. Chapter 201N, Hawaii Revised Statutes, is  
11 amended by designating sections 201N-1 to 201N-14 as part I,  
12 entitled:

13 "PART I. GENERAL PROVISIONS"

14 SECTION 4. In codifying the new sections added by section  
15 2 of this Act, the revisor of statutes shall substitute  
16 appropriate section numbers for the letters used in designating  
17 the new sections in this Act.

18 SECTION 5. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.



H.B. NO. 1149  
H.D. 3  
S.D. 2  
C.D. 1

---

APPROVED this 3 day of JUL , 2013

*Neil Abernethy*

GOVERNOR OF THE STATE OF HAWAII