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## 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 act as 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 have been  
14 abandoned or left in disrepair. Decommissioning regulations  
15 help to ensure the health and safety of the public, especially  
16 those persons 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



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 life.

5 SECTION 2. Chapter 201N, Hawaii Revised Statutes, is  
6 amended by designating sections 201N-1 to 201N-14 as part I,  
7 entitled "General Provisions".

8 SECTION 3. Chapter 201N, Hawaii Revised Statutes, is  
9 amended by adding a new part to be appropriately designated and  
10 to read as follows:

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

12 **§201N-A Definitions.** As used in this part, unless the  
13 context otherwise requires:

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



1 if, after thirty-six months, the facility has not generated  
2 power in commercial quantities, the facility shall be deemed  
3 abandoned.

4 "Commencement of construction":

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

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

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

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



1 "Commercial wind energy equipment" means a wind tower and  
2 turbine with five hundred kilowatts or greater of total  
3 nameplate generating capacity.

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

7 "Useful life" means the time during which a wind turbine or  
8 wind energy facility is generating electricity in commercial  
9 quantities.

10 "Wind energy facility":

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

20 (2) Shall not include a wind energy facility located  
21 entirely on property held in fee simple estate by the



1 owner of the wind energy facility if the energy  
2 produced is consumed on site solely by owner.

3 "Wind turbine" means a wind energy conversion system that  
4 converts wind energy into electricity through the use of a wind  
5 turbine generator, and includes the turbine, blade, tower, base,  
6 and pad transformer, if any.

7 **§201N-B Decommissioning of wind energy facilities. (a)**

8 Any owner of a wind energy facility shall be responsible, at the  
9 owner's expense, for the proper decommissioning of the facility  
10 upon abandonment or the end of the useful life of the commercial  
11 wind energy equipment in the wind energy facility.

12 (b) Proper 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) Disturbed earth being graded and reseeded, or  
19 otherwise restored, to substantially the same physical  
20 condition as existed prior to the construction of the  
21 wind energy facility by the owner.



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; and

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 coordinator shall  
11 take necessary measures to complete the  
12 decommissioning.

13 (d) A lease or other agreement between a landowner and an  
14 owner of a wind energy facility may contain provisions for  
15 decommissioning that are more restrictive than provided for in  
16 this section.

17 **§201N-C Evidence of financial security.** (a) Prior to the  
18 initial commercial generation date, the owner shall file with  
19 the coordinator evidence of financial security to cover the  
20 anticipated costs of decommissioning the wind energy facility.  
21 Evidence of financial security may be in the form of a surety



1 bond, performance bond, collateral bond, parent guaranty, or  
2 letter of credit.

3 (b) The evidence of financial security shall be  
4 accompanied by an estimate of the total cost of decommissioning,  
5 minus the salvage value of the equipment, prepared by a  
6 professional engineer licensed in the State. The amount of the  
7 evidence of financial security shall be either:

- 8 (1) The estimate of the total cost of decommissioning,  
9 minus the salvage value of the equipment, which shall  
10 be filed with the coordinator prior to final approval  
11 permitting energy generation in commercial quantities  
12 and every five years thereafter for the life of the  
13 wind energy facility; or
- 14 (2) One hundred per cent of the estimate of the total cost  
15 of decommissioning, as determined by a licensed  
16 engineer, which shall be filed with the coordinator  
17 prior to final approval permitting energy generation  
18 in commercial quantities. The funds shall be placed  
19 in an interest-bearing account and any accrued  
20 interest that is not applied toward decommissioning  
21 shall be returned to the wind energy facility owner.



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

5 (d) If a transfer of ownership of a wind energy facility  
6 occurs, the evidence of financial security posted by the  
7 transferor shall remain in place and shall not be released until  
8 such time as evidence of financial security meeting the  
9 requirements of this section is posted by the new owner of the  
10 wind energy facility and deemed acceptable by the coordinator.

11 (e) This section shall apply to:

12 (1) Any construction of a wind energy facility or portion  
13 thereof; and

14 (2) Any wind energy facility entering into or renewing a  
15 power purchase agreement for the energy generated by  
16 the wind energy facility."

17 SECTION 4. In codifying the new sections added by section  
18 3 of this Act, the revisor of statutes shall substitute  
19 appropriate section numbers for the letters used in designating  
20 the new sections in this Act.





1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

*[Signature]*  
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JAN 23 2013



# H.B. NO. 1149

**Report Title:**

Wind Energy Facilities; Decommissioning

**Description:**

Requires the owner of a wind energy facility to be responsible for decommissioning of the facility and to provide evidence of financial security. Outlines the elements of proper decommissioning.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

