
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



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.



Report Title:

Wind Energy Facilities; Decommissioning

Description:

Requires a wind energy facility owner to be responsible for facility decommissioning and to provide evidence of financial security unless the owner has an existing lease or other agreement that provides for decommissioning. Effective upon approval. (HB1149 CD1)

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

