
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 lives.

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

8 **"PART I. GENERAL PROVISIONS"**

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

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

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

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



1 proper working order and is capable of generating electricity;
2 provided that, if, after thirty-six months, the facility has not
3 generated power in commercial quantities, the facility shall be
4 deemed abandoned.

5 "Commencement of construction":

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

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

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

18 "Commercial quantities" means an amount of electrical
19 energy sufficient for sale or use off-site from a wind turbine
20 or wind energy facility, and shall not include amounts of
21 electrical energy used only for the maintenance or testing of
22 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- Decommissioning of wind energy facilities. (a)**

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

13 (b) Proper decommissioning of a wind energy facility shall
14 include:

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

19 (2) Disturbed earth being graded and reseeded, or
20 otherwise restored, to substantially the same physical
21 condition as existed prior to the commencement of the
22 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- Evidence of financial security.** (a) Prior to
18 the initial commercial generation date, the owner shall file
19 with 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 useful life of
13 the 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 commercial wind energy facility
13 or portion 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. This Act shall take effect upon its approval.



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. (HB1149 HD1)

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