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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 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- 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 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- Decommissioning of wind energy facilities.** (a)

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

9       (b) Proper decommissioning of a wind energy facility shall  
10 include:

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

15       (2) Disturbed earth being graded and reseeded, or  
16       otherwise restored, to substantially the same physical  
17       condition as existed prior to the commencement of the  
18       wind energy facility by the owner.

19       (c) The decommissioning of a wind energy facility or  
20 individual pieces of commercial wind energy equipment shall be  
21 completed as follows:



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

5 (2) If the owner of the wind energy facility fails to  
6 complete the decommissioning within the period  
7 prescribed in paragraph (1), the coordinator shall  
8 take necessary measures to complete the  
9 decommissioning.

10 (d) This part shall not apply to wind energy facilities  
11 existing in the State on the effective date of Act , Session  
12 Laws of Hawaii 2013, provided that:

13 (1) An existing lease or other agreement between the wind  
14 energy facility owner and the landowner on which the  
15 facility is located or a power purchase agreement  
16 under which the wind energy facility owner is  
17 operating, provides for the decommissioning of the  
18 wind energy facility after abandonment or the end of  
19 the useful life of the commercial wind energy  
20 equipment in the wind energy facility; or

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



1           **§201N- Evidence of financial security.** (a) Prior to  
2 the initial commercial generation date, the owner shall file  
3 with the coordinator evidence of financial security to cover the  
4 anticipated costs of decommissioning the wind energy facility.  
5 Evidence of financial security may be in the form of a surety  
6 bond, performance bond, collateral bond, parent guaranty, or  
7 letter of credit.

8           (b) The evidence of financial security shall be  
9 accompanied by an estimate of the total cost of decommissioning,  
10 minus the salvage value of the equipment, prepared by a  
11 professional engineer licensed in the State. The amount of the  
12 evidence of financial security shall be either:

13           (1) The estimate of the total cost of decommissioning,  
14 minus the salvage value of the equipment, which shall  
15 be filed with the coordinator prior to final approval  
16 permitting energy generation in commercial quantities  
17 and every five years thereafter for the useful life of  
18 the wind energy facility; or

19           (2) One hundred per cent of the estimate of the total cost  
20 of decommissioning, as determined by a licensed  
21 engineer, which shall be filed with the coordinator  
22 prior to final approval permitting energy generation



1 in commercial quantities. The funds shall be placed  
2 in an interest-bearing account and any accrued  
3 interest that is not applied toward decommissioning  
4 shall be returned to the wind energy facility owner.

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

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

15 (e) This section shall apply to:

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

18 (2) Any wind energy facility entering into or renewing a  
19 power purchase agreement for the energy generated by  
20 the wind energy facility."





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

4 "PART I. GENERAL PROVISIONS"

5 SECTION 4. New statutory material is underscored.

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



**Report Title:**

Wind Energy Facilities; Decommissioning

**Description:**

Requires 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. Outlines the elements of proper decommissioning. (HB1149 HD2)

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