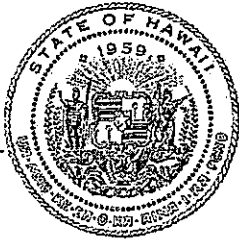


HB 1149, HD3

RELATING TO WIND ENERGY FACILITIES.

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. Effective July 1, 2030.
(HB1149 HD3)



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
Richard C. Lim
Director

Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEES ON ENERGY AND ENVIRONMENT
and COMMERCE AND CONSUMER PROTECTION**

Thursday, March 14, 2013
3:45 p.m.

State Capitol, Conference Room 225

in consideration of
HB 1149, HD3 RELATING TO WIND ENERGY FACILITIES.

Chairs Gabbard and Baker, Vice Chairs Ruderman and Galuteria, and Members of the
Committees,

The Department of Business, Economic Development, and Tourism (DBEDT) supports
with amendments HB 1149, HD3, which requires the owner of a wind energy facility to be
responsible for decommissioning of the facility and to provide evidence of financial security.
This bill further mandates that the State's Energy Resources Coordinator "take necessary
measures to complete the decommissioning" if the owner fails to do so.

DBEDT supports addressing concerns regarding future wind facility abandonment.
However, we have concerns with this bill as it stands. Namely:

- DBEDT may not have the legal authority to enforce this policy outside of the Hawaii Revised Statutes (HRS) chapter 201N siting process. By mandating the decommissioning of wind energy facilities, there may be a constitutional takings issue which warrants additional research and consideration.

- By requiring the State to decommission a wind energy facility in the event that the owner of the facility fails to do so, an unintended financial liability (in that the financial security may be insufficient) could be placed on the State, potentially creating a significant, unfunded State liability.
- DBEDT is not an infrastructure asset management agency, and lacks the necessary human and financial resources to carry out the decommissioning of an abandoned wind farm.

DBEDT proposes changes (refer to the attached amended bill) which would address the above concerns and more appropriately place the wind facility decommissioning duty on the wind facility and land owners to ensure that the facility is properly decommissioned. The amendments would:

- Limit the applicability of this bill to projects utilizing the HRS chapter 201N process.
- Require projects utilizing the HRS 201N Renewable Energy Siting Process to demonstrate financial security for wind facility decommissioning and make those funds ultimately available to the owner of the land in the event that the wind facility owner does not decommission the wind facility per the bill's requirements.

Thank you for the opportunity to offer these comments and suggested amendments to HB 1149, HD3.

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

1 The purpose of this Act is to protect the public against
2 health and safety hazards and to preserve the natural beauty of
3 Hawaii. This Act establishes standards and assurances of
4 adequate financial resources for the safe and proper
5 decommissioning of wind energy facilities at the end of their
6 useful lives.

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

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

11 **§201N- Definitions.** As used in this part, unless the
12 context otherwise requires:

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

1 generated power in commercial quantities, the facility shall be
2 deemed abandoned.

3 "Commencement of construction":

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

7 (2) Shall not include erection of meteorological data
8 towers, environmental assessments, environmental impact
9 statements, surveys, preliminary engineering, or other
10 activities associated with an assessment of the
11 development of the wind resources on a given parcel of
12 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 energy
17 sufficient for sale or use off-site from a wind turbine or wind
18 energy facility, and shall not include amounts of electrical
19 energy used only for the maintenance or testing of the wind
20 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 nameplate
3 generating capacity.

4 "Owner" means an entity having a controlling interest in the
5 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 underground
15 electrical transmission lines, transformers, control
16 systems, and other buildings or facilities used to
17 support the operation of the facility, and whose
18 primary purpose is to supply electricity to an off-site
19 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 the 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) Any
8 owner of a commercial wind energy facility utilizing the Renewable
9 Energy Facility Siting process shall be responsible, at the owner's
10 expense, for the decommissioning of the wind energy facility upon
11 abandonment or the end of the useful life of the commercial wind
12 energy equipment in the wind energy facility.

13 (b) 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) Restoring disturbed earth to substantially the same
20 physical condition as existed prior to the commencement
21 of the wind energy facility by the owner, including
22 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 have
14 access to the financial security as described in §201N-
15 Evidence of financial security for the purpose of
16 decommissioning the wind energy facility.

17 (d) This part shall not apply to wind energy facilities
18 existing in the State on the effective date of Act , Session
19 Laws of Hawaii 2013, 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 is
2 operating, provides for the decommissioning of the wind
3 energy facility after abandonment or the end of the
4 useful life of the commercial wind energy equipment in
5 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- 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 chosen shall be in
15 a form allowing the land owner to draw on it in any instance
16 described in §201N- Decommissioning of wind energy facilities
17 (2) (c) above.

18 (b) The evidence of financial security shall be accompanied
19 by an estimate of the total cost of decommissioning, minus the
20 salvage value of the equipment, prepared by a professional
21 engineer licensed in the State. The amount of the evidence of
22 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 in
11 commercial quantities. The funds shall be placed in an
12 interest-bearing account and any accrued interest that
13 is not applied toward decommissioning shall be returned
14 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 coordinator,
17 the owner of the wind energy facility shall be subject to an
18 administrative penalty not to exceed \$1,500 per day.

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

1 requirements of this section is posted by the new owner of the
2 wind energy facility ~~and deemed acceptable by the coordinator.~~

3 (e) This section shall apply to:

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

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

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

12 "PART I. GENERAL PROVISIONS"

13 SECTION 4. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2030.

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. Effective July 1, 2030. (HB1149 HD3, SD1)

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



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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KEALI'I S. LOPEZ
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JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES
ON ENERGY AND ENVIRONMENT
AND COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

THURSDAY, MARCH 14, 2013
3:45 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE MIKE GABBARD,
AND THE HONORABLE ROSALYN H. BAKER, CHAIRS,
AND MEMBERS OF THE COMMITTEES

HOUSE BILL NO. 1149, H.D. 3 - RELATING TO WIND ENERGY FACILITIES

DESCRIPTION:

This measure proposes to require the owner of a wind energy facility to be responsible for decommissioning of the facility and to provide evidence of financial security and outlines the elements of proper decommissioning.

POSITION:

The Division of Consumer Advocacy (Consumer Advocate) supports H.B. No. 1149, H.D. 3.

House Bill No. 1149, H.D. 3
Senate Committee on Energy and Environment
Senate Committee on Commerce and Consumer Protection
Thursday, March 14, 2013, 3:45 p.m.
Page 2

COMMENTS:

The Consumer Advocate has expressed the concerns that this bill addresses in a number of Public Utility Commission dockets for the application of approval of power purchase agreements (PPA) between the electric utility and wind energy developers. It has been, and will continue to be, the position of the Consumer Advocate that PPAs for wind energy must contain safeguards against wind turbines being abandoned in the field after they have run their useful life. H.B. No. 1149, H.D. 3 is consistent with this position; therefore, the Consumer Advocate supports H.B. No. 1149, H.D. 3.

Thank you for this opportunity to testify.

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Kaye	Individual	Support	No

Comments: This is a good, supportive measure that is important for our rush to renewables. Please pass it and make it effective immediately.

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Lorry Cornish	Individual	Support	No

Comments:

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Galloway, PhD	Individual	Support	No

Comments:

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Uilani Stokes	Individual	Support	No

Comments:

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
sharon willeford	Individual	Support	No

Comments: Support - Big Island.

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments:

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Support	No

Comments: strongly support, and you would too if you've ever visited South Point

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
sherri mora	Individual	Support	No

Comments:

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Pierce Myers	Individual	Support	No

Comments: Generally, the bill addresses critical need. I do ask that the bill be changed to include language specifying that a commercial wind energy developer must show evidence of financial security and comply with related potential decommissioning requirements at the Commencement of Construction instead of on the Commercial Generation Date. Assuring that the developer has the financial capacity to successfully decommission needs to happen prior to construction, not after.

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Osako	Individual	Support	No

Comments: This is an excellent bill, one that will help to keep our vistas and eco system intact for generations to come. So much profit is built into the tax incentives for the industrial wind turbines that objections to this bill are not justified.

HB1149

Submitted on: 3/11/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Penny Levin	Individual	Support	No

Comments: I strongly support this bill. Hawaii can not afford to be a casual dumping ground for failed, out of date, or decommissioned technology. Keep the aina, along with our energy, clean. Mahalo for supporting this good bill.

HB1149

Submitted on: 3/12/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
beverly zigmond	Individual	Support	No

Comments: This is a vital consideration - the developer **MUST** be responsible for cleaning up his mess, and must prove to be fiscally sound before initiating any project such as a wind farm. To do otherwise is not pono - to the land or to the people.

Please Support House Bill 1149 and require that thoughtful and reasonable plans for wind farm decommissioning are put in place and enforced at the state level. These wind farms are an unfortunate disfigurement to the land when they are new and presumably functioning and they are a permanent blight when they are rusting away, long after the billionaires have taken all of the Hawaiian Electric ratepayers' money back to California. Please support this legislation, it is not an impediment to business, you will still have quite a long line of people from California knocking at the door, trying to exploit the neighbor islands of Hawaii.

Aloha,

Lance Anderson
Lānaʻi City, HI

HB1149

Submitted on: 3/12/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
momi suzuki	Individual	Oppose	No

Comments: smart bill to pass!

HB1149

Submitted on: 3/12/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Shaw	Individual	Support	No

Comments:

HB1149

Submitted on: 3/12/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
James Macey	Individual	Support	No

Comments: Strongly support! These disgusting old windmills need to be cleaned up and not by the taxpayers!

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Sally Kaye	Individual	Support	No

Comments: There is currently no mechanism in place to require removal, this is why they were left to rot and rust on the Big Island for so many years.

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan R Cole	Individual	Support	No

Comments: To see why this is necessary, go look at Kamaoa wind farm scrap littering the landscape on South Point Road on the Big Island.

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Preza	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan Preza	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Soon Yai Amaral	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Malia Preza	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Shelly Preza	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Graham Ellis		Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Stacie Koanui	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
janice palma-glenie	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Julian Jiman	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Kirbin	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Geiselle Meek	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
lien ng	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
lieu nguyen	Individual	Support	No

Comments:

HB1149

Submitted on: 3/13/2013

Testimony for ENE/CPN on Mar 14, 2013 15:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
April Lee	Individual	Support	No

Comments: