

ACT 262

H.B. NO. 1149

A Bill for an Act Relating to Wind Energy Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that production of wind energy on a commercial scale frequently requires significant land disturbance and large installations consisting of wind turbines, electrical substations, electrical lines, and other supporting systems. Wind energy facilities, if abandoned or not properly maintained, could pose a hazard to public health, safety, and welfare through mechanical failures, electrical hazards, or the release of hazardous substances. Abandoned or neglected wind energy facilities may also be a blight on the State's natural beauty.

The legislature further finds that other states with large-scale wind energy facilities have developed robust decommissioning regulations for windmills that are abandoned or left in disrepair. Decommissioning regulations help to ensure the health and safety of the public, especially those persons residing near the wind energy facility.

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

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

“PART . DECOMMISSIONING OF WIND ENERGY FACILITIES

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

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

electricity; provided that, if, after thirty-six months, the facility has not generated power in commercial quantities, the facility shall be deemed abandoned.

“Commencement of construction”:

- (1) Means beginning excavation of wind turbine foundations or other actions relating to the eventual erection and installation of commercial wind energy equipment; but
- (2) Shall not include erection of meteorological data towers, environmental assessments, environmental impact statements, surveys, preliminary engineering, or other activities associated with an assessment of the development of the wind resources on a given parcel of property.

“Commercial generation date” means the date on which a wind turbine first generates electrical energy in commercial quantities.

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

“Commercial wind energy equipment” means a wind tower and turbine with five hundred kilowatts or greater of total nameplate generating capacity.

“Owner” means an entity having a controlling interest in the commercial wind energy facility and equipment, including the entity’s respective successors and assigns.

“Useful life” means the time during which a wind turbine or wind energy facility is generating electricity in commercial quantities.

“Wind energy facility”:

- (1) Means an electrical generation facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, meteorological data towers, aboveground and underground electrical transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility, and whose primary purpose is to supply electricity to an off-site customer; but
- (2) Shall not include a wind energy facility located entirely on property held in fee simple estate by the owner of the wind energy facility if the energy produced is consumed on-site solely by the owner.

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

§201N-B Decommissioning of wind energy facilities. (a) Any owner of a commercial wind energy facility utilizing the renewable energy facility siting process shall be responsible, at the owner’s expense, for the decommissioning of the wind energy facility upon abandonment or the end of the useful life of the commercial wind energy equipment in the wind energy facility. Nothing in this section shall prevent county permitting agencies from including decommissioning requirements as a condition for a building permit.

- (b) Decommissioning of a wind energy facility shall include:
 - (1) Removal of wind turbines, towers, buildings, cabling, electrical components, foundations, and any other associated facilities, to a depth of thirty inches below grade; and
 - (2) Restoring disturbed earth to substantially the same physical condition as existed prior to the commencement of the wind energy facility by the owner, including grading and reseeded.

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

- (1) By the owner of the wind energy facility within twelve months after abandonment or the end of the useful life of the commercial wind energy equipment in the wind energy facility; or
- (2) If the owner of the wind energy facility fails to complete the decommissioning within the period prescribed in paragraph (1), the owner of the land on which the wind energy facility is located shall take necessary measures to complete decommissioning of the wind energy facility. The owner of the land shall have access to the financial security as described in section 201N-C for the purpose of decommissioning the wind energy facility.

(d) This part shall not apply to wind energy facilities existing in the State on the effective date of this Act, provided that:

- (1) An existing lease or other agreement between the wind energy facility owner and the owner of the land on which the facility is located, or a power purchase agreement under which the wind energy facility owner is operating, provides for the decommissioning of the wind energy facility after abandonment or the end of the useful life of the commercial wind energy equipment in the wind energy facility; or
- (2) The wind energy facility was constructed on fee simple land owned by the wind energy facility owner.

§201N-C Evidence of financial security. (a) Prior to the commercial generation date, the owner shall file with the coordinator evidence of financial security to cover the anticipated costs of decommissioning the wind energy facility. Evidence of financial security may be in the form of a surety bond, performance bond, collateral bond, parent guaranty, or letter of credit. Any such financial security shall be in a form that allows the land owner to draw on it in any instance described in section 201N-B(c)(2).

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

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

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

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

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- (e) This section shall apply to:
- (1) Any construction of a commercial wind energy facility or portion thereof; and
- (2) Any wind energy facility entering into or renewing a power purchase agreement for the energy generated by the wind energy facility.”

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

“PART I. GENERAL PROVISIONS”

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. New statutory material is underscored.

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

(Approved July 3, 2013.)