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

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

16 The purpose of this Act is to protect the public against
17 health and safety hazards and to preserve the natural beauty of



1 Hawaii by ensuring the safe, proper, and prompt decommissioning
2 of wind energy facilities at the end of their useful lives.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 WIND ENERGY FACILITY DECOMMISSIONING

8 § -1 Definitions. As used in this chapter, unless the
9 context otherwise requires:

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



1 "Commencement of construction" means beginning excavation
2 of wind turbine foundations or other actions relating to the
3 eventual erection and installation of commercial wind energy
4 equipment, but shall not include erection of meteorological data
5 towers, environmental assessments, environmental impact
6 statements, surveys, preliminary engineering, or other
7 activities associated with an assessment of the development of
8 the wind resources on a given parcel of property.

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

14 "Commercial wind energy equipment" means a wind tower and
15 turbine with five hundred kilowatts or greater of total
16 nameplate generating capacity.

17 "Offshore wind energy facility" means an electrical
18 generation facility consisting of one or more wind turbines
19 under common ownership or operating control located offshore in
20 a designated wind energy area for which an initial federal lease
21 was issued on a competitive basis.



1 "Wind energy facility" means an electrical generation
2 facility consisting of one or more wind turbines under common
3 ownership or operating control, and includes substations,
4 meteorological data towers, aboveground and underground
5 electrical transmission lines, transformers, control systems,
6 and other buildings or facilities used to support the operation
7 of the facility, and whose primary purpose is to supply
8 electricity to an off-site customer, but shall not include a
9 wind energy facility located entirely on property held in fee
10 simple estate by the owner of the wind energy facility if the
11 energy produced is consumed on-site solely by the owner.

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

16 **§ -2 Decommissioning of wind energy facilities. (a)**

17 Any owner of a commercial wind energy facility shall be
18 responsible, at the owner's expense, for the decommissioning of
19 the wind energy facility upon abandonment or the end of the
20 useful life of the commercial wind energy equipment in the wind
21 energy facility. Nothing in this section shall prevent county



1 permitting agencies from including decommissioning requirements
2 as a condition for a building permit.

3 (b) Decommissioning of a wind energy facility shall
4 include:

5 (1) Removal of wind turbines, towers, buildings, cabling,
6 electrical components, foundations, and any other
7 associated facilities, to a depth of thirty inches
8 below grade; and

9 (2) Restoring disturbed earth to substantially the same
10 physical condition as existed prior to the
11 commencement of construction of the wind energy
12 facility by the owner, including grading and
13 reseeding.

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

17 (1) By the owner of the wind energy facility within twelve
18 months after abandonment or the end of the useful life
19 of the commercial wind energy equipment in the wind
20 energy facility; or



1 (2) If the owner of the wind energy facility fails to
2 complete the decommissioning within the period
3 prescribed in paragraph (1), by the owner of the land
4 on which the wind energy facility is located within
5 twenty-four months after abandonment or the end of the
6 useful life of the commercial wind energy equipment in
7 the wind energy facility. The owner of the land shall
8 be entitled to recover all reasonable costs incurred
9 from the owner of the wind energy facility; or

10 (3) If the owner of the land fails to complete the
11 decommissioning within the period specified in
12 paragraph (2), by the department of land and natural
13 resources, which may institute condemnation
14 proceedings to acquire the land for this purpose. The
15 department of land and natural resources shall be
16 entitled to recover all reasonable costs incurred from
17 the owner of the wind energy facility and the owner of
18 the land jointly and severally.

19 (d) This section shall not apply to wind energy facilities
20 existing in the State on the effective date of this Act,
21 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."

SECTION 3. This Act shall take effect on July 1, 2018.

INTRODUCED BY:

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JAN 19 2018



H.B. NO. 2120

Report Title:

Wind Energy Facilities; Decommissioning

Description:

Requires a wind energy facility owner, the owner of the land, or the department of land and natural resources to be responsible for facility decommissioning and provides for recovery of costs.

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