
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 be 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 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 repowering, a valid judicial order, or other governmental
2 regulatory action, with no pending negotiations for purchase or
3 a power purchase agreement. A commercial wind energy facility
4 shall not be considered abandoned if the owner or operator has
5 elected not to run the facility, but it has been maintained in
6 proper working order and is capable of generating electricity;
7 provided that, if, after thirty-six months, the facility has not
8 generated power in commercial quantities, the facility shall be
9 deemed abandoned.

10 "Commencement of construction" means beginning excavation
11 of wind turbine foundations or other actions relating to the
12 eventual erection and installation of commercial wind energy
13 equipment, but shall not include erection of meteorological data
14 towers, environmental assessments, environmental impact
15 statements, surveys, preliminary engineering, or other
16 activities associated with an assessment of the development of
17 the wind resources on a given parcel of property.

18 "Commercial generation date" means the date on which a wind
19 turbine first generates electrical energy in commercial
20 quantities.



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

6 "Commercial wind energy equipment" means a wind tower and
7 turbine with five hundred kilowatts or greater of total
8 nameplate generating capacity.

9 "Offshore wind energy facility" means an electrical
10 generation facility consisting of one or more wind turbines
11 under common ownership or operating control located offshore in
12 a designated wind energy area for which an initial federal lease
13 was issued on a competitive basis.

14 "Setback" means the minimum distance a wind turbine may be
15 located from a designated location. Unless otherwise specified,
16 setbacks refer to the minimum distance a wind turbine may be
17 located from a residence. The term setback is also used to
18 describe minimum distances from all buildings, property lines,
19 or historically or environmentally important areas. Setbacks may
20 be a set distance or based on turbine features including turbine
21 height, hub height, rotor diameter, or blade length. Setbacks



1 may also be referred to as a setback distance or separation
2 distance.

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

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

18 § -2 **Decommissioning of wind energy facilities.** (a)
19 Any owner of a commercial wind energy facility utilizing the
20 renewable energy facility siting process shall be responsible,
21 at the owner's expense, for the decommissioning of the wind



1 energy facility upon abandonment or the end of the useful life
2 of the commercial wind energy equipment in the wind energy
3 facility. Nothing in this section shall prevent county
4 permitting agencies from including decommissioning requirements
5 as a condition for a building permit.

6 (b) Decommissioning of a wind energy facility shall
7 include:

- 8 (1) Removal of wind turbines, towers, buildings, cabling,
9 electrical components, foundations, and any other
10 associated facilities, to a depth of thirty inches
11 below grade; and
12 (2) Restoring disturbed earth to substantially the same
13 physical condition as existed prior to the
14 commencement of the wind energy facility by the owner,
15 including grading and reseeded.

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

- 19 (1) By the owner of the wind energy facility within twelve
20 months after abandonment or the end of the useful life



1 of the commercial wind energy equipment in the wind
2 energy facility; or

3 (2) If the owner of the wind energy facility fails to
4 complete the decommissioning within the period
5 prescribed in paragraph (1), the owner of the land on
6 which the wind energy facility is located shall take
7 necessary measures to complete decommissioning of the
8 wind energy facility. The owner of the land shall
9 have access to the financial security as described in
10 section -3. for the purpose of decommissioning the
11 wind energy facility.

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

15 (1) An existing lease or other agreement between the wind
16 energy facility owner and the owner of the land on
17 which the facility is located, or a power purchase
18 agreement under which the wind energy facility owner
19 is operating, provides for the decommissioning of the
20 wind energy facility after abandonment or the end of



1 the useful life of the commercial wind energy
2 equipment in the wind energy facility; or

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

5 § -3 **Evidence of financial security.** (a) Prior to the
6 commercial generation date, the owner shall file with the
7 coordinator evidence of financial security to cover the
8 anticipated costs of decommissioning the wind energy facility.
9 Evidence of financial security may be in the form of a surety
10 bond, performance bond, collateral bond, parent guaranty, or
11 letter of credit. Any such financial security shall be in a
12 form that allows the land owner to draw on it in any instance
13 described in section -2(c)(2).

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

19 (1) The estimate of the total cost of decommissioning,
20 minus the salvage value of the equipment, which shall
21 be filed with the coordinator prior to final approval



1 permitting energy generation in commercial quantities
2 and every five years thereafter for the useful life of
3 the wind energy facility; or

4 (2) One hundred per cent of the estimate of the total cost
5 of decommissioning, as determined by a licensed
6 engineer, which shall be filed with the coordinator
7 prior to final approval permitting energy generation
8 in commercial quantities. The funds shall be placed
9 in an interest-bearing account and any accrued
10 interest that is not applied toward decommissioning
11 shall be returned to the wind energy facility owner.

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

17 (d) If a transfer of ownership of a wind energy facility
18 occurs, the evidence of financial security posted by the
19 transferor shall remain in place and shall not be released until
20 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.

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 § -4 **Wind turbines; land use commission review.** (a) In
10 addition to any other permit, review, or prerequisite required
11 under this chapter prior to the approval of a permit plan
12 application for a wind turbine, the land use commission, as
13 established by section 205-1, shall conduct an additional review
14 of each permit plan application for a wind turbine that will:

15 (1) Generate greater than one hundred kilowatts of energy;
16 and

17 (2) Be located within three-quarters of a mile of any
18 residential, school, hospital, or business property
19 line.



1 (b) This section shall not apply to permit plan
2 applications for wind turbines that were approved before July 1,
3 2017.

4 § -5 **Wind turbines; special review.** (a) The land use
5 commission, in coordination with the energy resources
6 coordinator, shall review the permit plan application for any
7 wind turbine subject to section -4. In its review, the land
8 use commission, in coordination with the energy resources
9 coordinator, shall consider:

10 (1) The potential impacts on the community in which the
11 wind turbine is proposed to be located; and

12 (2) How the permitted use or establishment of the wind
13 turbine conforms to existing State and county land use
14 policies.

15 § -6 **Offshore Wind turbines; special review.** (a)
16 Regulations and standards for offshore wind energy facilities
17 shall be developed in accordance with the objectives and
18 policies of the coastal zone management program, as defined in
19 section 205A-2.

20 (b) Offshore wind energy facilities shall be set back a
21 minimum of 10 miles of any inhabited area."



1 SECTION 3. This Act shall take effect on July 1, 2017.
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INTRODUCED BY:

Jan M. Mc
Sean C
Cindy Evans
Christy Bay
Beth

JAN 23 2017



H.B. NO. 1167

Report Title:

Wind Energy Facilities; Decommissioning; Setbacks

Description:

Required a 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. Establishes setback standards for wind energy facilities.

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