



# SENATE BILL 568: Recycling and Restoration/Renewable Energy.

2019-2020 General Assembly

<b>Committee:</b>	Senate Agriculture/Environment/Natural Resources. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	June 12, 2019
<b>Introduced by:</b>	Sens. Newton, Rabon, Hise	<b>Prepared by:</b>	Jennifer McGinnis Staff Attorney
<b>Analysis of:</b>	PCS to First Edition S568-CSRIf-14		

**OVERVIEW:** *The Proposed Committee Substitute (PCS) for Senate Bill 568 would:*

- *Require owners or operators of utility-scale solar projects and wind energy facilities to responsibly decommission the projects and facilities upon cessation of activities, to establish financial assurance to cover the decommissioning, and to reuse or recycle all end-of-life equipment capable of being recycled.*
- *Require manufacturers of non-utility-scale photovoltaic modules and energy storage system batteries sold in or into the State to implement programs to recycle their end-of-life products.*
- *Prohibit the disposal of all end-of-life photovoltaic modules and energy storage system batteries in landfills.*

**BILL ANALYSIS/CURRENT LAW:**

**DECOMMISSIONING OF UTILITY-SCALE SOLAR PROJECTS AND WIND ENERGY FACILITIES UPON CESSATION OF ACTIVITIES**

**SECTION 1.(a)** would require the owner or operator of a utility-scale solar project to decommission the project upon cessation of activities, and return the property to its condition prior to commencement of activities on the site, no later than two years following completion of the operations. At a minimum, an owner or operator would be required to take all of the following steps in decommissioning a project:

- Disconnect the solar project from the power grid.
- Remove all equipment from the solar project, and collect and ship equipment to another project for reuse, or recycle all of the components thereof capable of being recycled, including solar panels and energy storage system batteries. Components that will not be shipped to another project for reuse, and are incapable of being recycled, must be properly disposed of in a manner prescribed by the Department of Environmental Quality (DEQ). Recycling must be conducted in compliance with environmentally sound management practices to transport and recycle such items.
- Clear, clean, and remove the foundation, and any subsurface cable or other equipment, from the ground to a depth of a least three feet below the surface grade of the land on which the

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foundation was installed. The PCS would require DEQ to waive this requirement, however, for property on which soil contamination is present for which the utility-scale solar project is not responsible.

The PCS would also require the owner or operator to:

- Establish financial assurance in an amount acceptable to DEQ, and maintain it throughout the facility's operation, to ensure that sufficient funds are available for decommissioning of the project and reclamation of the property to its condition prior to commencement of activities on the site, even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. DEQ would be authorized to take the salvage value of the equipment into account in establishing required financial assurance for a project.
- Pay a fee of \$3,500 to DEQ at the time the owner or operator establishes financial assurance.

**SECTION 1.(b)** would require the permit holder of a wind energy facility to decommission the project upon cessation of activities, and return the property to its condition prior to commencement of activities on the site, no later than two years following completion of the operations. At a minimum, an owner or operator would be required to take all of the following steps in decommissioning a project:

- Disconnect the facility from the power grid.
- Remove all equipment from the facility, and collect and ship all equipment to another project for reuse, or recycle all of the components thereof capable of being recycled, including turbines and energy storage system batteries. For components that will not be shipped to another project for reuse, and are incapable of being recycled, those components must be properly disposed of in a manner prescribed by the Department of Environmental Quality (DEQ). Recycling must be conducted in compliance with environmentally sound management practices to transport and recycle such items.
- Clear, clean, and remove the foundation, and any subsurface cable or other equipment, from the ground to a depth of at least three feet below the surface grade of the land on which the foundation was installed. The PCS would require DEQ to waive this requirement, however, for property on which soil contamination is present for which the utility-scale wind energy facility is not responsible.

The PCS would also require the owner or operator to:

- Establish financial assurance in an amount acceptable to DEQ, and maintain it throughout the facility's operation, to ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the owner or operator becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. DEQ would be authorized to take the salvage value of the equipment into account in establishing required financial assurance for a facility.

Under current law, wind facilities must:

- Submit a plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan must include all of the following: an estimate of the cost to decommission and remove the wind energy facility; information on the anticipated life of the project; a description of the manner in which the facility will be decommissioned; and a description of the expected condition of the site once the wind energy facility has been decommissioned and removed.

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Although a decommissioning plan must be submitted at the time of permit application, there is no explicit requirement in existing law that a wind facility be decommissioned in accordance with the plan.

- Establish financial assurance.

The PCS for S568 adds additional detail to the financial assurance requirements originally established in 2013.

## **REQUIRE RECYCLING OF ALL END-OF-LIFE PHOTOVOLTAIC MODULES AND ENERGY STORAGE SYSTEM BATTERIES**

**SECTION 2.** would require manufacturers of photovoltaic modules (PV modules) to register and prepare and submit a stewardship plan to DEQ to takeback and recycle or reuse all end-of-life PV modules they manufacture that are sold in or into the State, with a mechanism that ensures that PV modules can be delivered to takeback locations without cost to the last owner or holder. The plan must be submitted by the later of December 1, 2021, or within 30 days of a manufacturer's first sale of a PV module in or into the State. No later than six months after receipt of a stewardship plan, DEQ must approve, approve with modifications, or deny a plan in accordance with specific criteria set forth in the bill. Once approved, the manufacturer must implement the approved plan. Beginning July 1, 2022, no manufacturer may sell or offer for sale a PV module in or into the State unless the manufacturer has a stewardship plan approved by DEQ.

Under this section, the definition of "PV module" excludes: (i) a photovoltaic cell that is part of a consumer electronic device for which it provides electricity needed to make the consumer electronic device function (such as a watch, calculator, or mobile phone); or (ii) a photovoltaic cell that is part of a utility-scale solar project.

The PCS would authorize DEQ to establish an initial registration and an annual renewal registration fee, each not to exceed \$10,000, for PV manufacturers. The proceeds would be deposited to the Photovoltaic Module Management Fund to be used by the Department to implement the provisions of this section.

**SECTION 3.** would require manufacturers of energy storage system batteries (batteries) to register and prepare and submit a stewardship plan to DEQ to takeback and recycle or reuse all end-of-life batteries they manufacture that are sold in or into the State, with a mechanism that ensures that such batteries can be delivered to takeback locations without cost to the last owner or holder. The plan must be submitted by the later of December 1, 2021, or within 30 days of a manufacturer's first sale of a battery in or into the State. No later than six months after receipt of a stewardship plan, DEQ must approve, approve with modifications, or deny a plan in accordance with specific criteria set forth in the bill. Once approved, the manufacturer must implement the approved plan. Beginning July 1, 2022, no manufacturer may sell or offer for sale a battery in or into the State unless the manufacturer has a stewardship plan approved by DEQ.

Under the section, the definition of "energy storage system battery" excludes batteries: (i) used in utility-scale solar projects wind facilities; (ii) that are part of a consumer electronic device for which it provides electricity needed to make the consumer electronic device function (such as a watch, calculator, or mobile phone); or (iii) that are part of a plug-in electric vehicle or an alternative fuel vehicle.

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The PCS would authorize DEQ to establish an initial registration and an annual renewal registration fee, each not to exceed \$10,000, for battery manufacturers. The proceeds would be deposited to the Energy Storage System Battery Management Fund to be used by DEQ to implement the provisions of this section.

## **PROHIBIT DISPOSAL OF PHOTOVOLTAIC MODULES AND ENERGY STORAGE SYSTEM BATTERIES IN LANDFILLS**

**SECTION 4.** would prohibit the disposal of photovoltaic modules and energy storage system batteries in landfills or by incineration.

## **DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES AND REPORT**

**SECTION 5.** would require DEQ to adopt permanent rules implementing the requirements of this act no later than July 1, 2021.

**SECTION 6.** would require DEQ to submit quarterly reports, beginning December 1, 2019, to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on the status of the rule making required by the bill.

## **APPLICABILITY TO EXISTING CONTRACTS**

**SECTION 7.** would provide that nothing in Sections 1(a) or 1(b), pertaining to decommissioning of utility-scale solar projects and wind energy facilities, would be construed to abrogate or impair a contractual provision executed on or before the effective date of the bill that expressly requires decommissioning and/or reclamation activities in direct conflict with the requirements of those sections, such as a contractual provision granting a landowner the right to retain project equipment after cessation of activities.

## **SEVERABILITY CLAUSE**

**SECTION 8.** would provide that if any section or provision of the bill is declared unconstitutional or invalid by the courts, it does not affect the validity of the remaining provisions.

## **EFFECTIVE DATE**

**SECTION 9.** Sections 1(a) or 1(b), pertaining to decommissioning of utility-scale solar projects and wind energy facilities, would become effective September 1, 2019, except that the associated financial assurance requirements would become effective August 1, 2021. Section 1(b) pertaining to decommissioning of utility-scale solar projects and wind energy facilities applies to applications for permits for wind energy facilities and wind energy facility expansions pending or submitted on or after the effective date of the bill. The remainder of the bill would become effective when it becomes law.