



HOUSE BILL 130: Energy Choice/Solar Decommissioning Rqmts.

2023-2024 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: June 7, 2023
Introduced by: Reps. Arp, Saine, Wray, Miller	Prepared by: Jennifer McGinnis
Analysis of: Fourth Edition	Staff Attorney

OVERVIEW: *House Bill 130 would do the following:*

- *Prohibit local governments from adopting any ordinance that prohibits connection, reconnection, modification, or expansion of an energy service based on the type or source of energy to be delivered to the end-user of the energy service.*
- *Require owners of utility-scale solar projects to responsibly decommission the projects upon cessation of operations, and to establish financial assurance to cover the decommissioning.¹*

BILL ANALYSIS:

PART I. PRESERVING CHOICES FOR CONSUMERS

Section 1.(a) of the bill would prohibit a city from adopting an ordinance that prohibits connection, reconnection, modification, or expansion of an energy service based on the type or source of energy to be delivered to the end-user of the energy service. **Section 1.(b)** would apply the same prohibitions to counties.

The term "energy service" would mean the energy source that a consumer may choose to use to illuminate, heat, or cool buildings; produce hot water; operate equipment; operate appliances; or any other similar activities, where the energy source is derived from one or more of a variety of sources such as natural gas, renewable gas, hydrogen, liquefied petroleum gas, renewable liquefied petroleum gas, or other liquid petroleum products, or electricity. The terms "renewable gas" and "renewable liquefied petroleum gas" would mean gas derived from a renewable energy resource.

Sections 1.(a) and 1.(b) of the bill would not be construed to:

- Limit the ability of a local government to choose the energy service for property owned by the local government.
- Prohibit a local government from recovering reasonable costs associated with reviewing and issuing a permit.
- Affect the authority of a local government to manage or operate a utility owned by the local government, including the local government's authority to require persons residing within their jurisdictions to obtain energy service from a utility owned by local government or a joint municipal power agency of which a city is a member.

¹ This Part of the bill is substantially similar to the contents of Senate Bill 669, which received a favorable report in the Senate Agriculture, Energy, and Environment Committee on April 19, 2023.

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- Impair any contract executed by a city prior to the effective date of this act for the supply of electric service.

PART II. DECOMMISSIONING OF UTILITY-SCALE SOLAR PROJECTS UPON CESSATION OF OPERATIONS

Section 2(a) would require the owner of a utility-scale solar project to:

- Decommission the project upon cessation of operations,² no later than one year following cessation of operations. At a minimum, an owner 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 capable of being recycled. Components that will not be shipped to another project for reuse, are incapable of being recycled, and not determined to be hazardous waste must be properly disposed of in (i) an industrial landfill, or (ii) a municipal solid waste landfill. PV modules that meet the definition of a hazardous waste must comply with hazardous waste requirements for recycling and disposal as applicable.
 - Restore the property (i) as nearly as practicable to its condition before the utility-scale solar project was sited or (ii) to an alternative condition agreed upon in a written contract or lease agreement between the landowner and the project owner. A copy of the agreement signed by both parties must be provided to the DEQ prior to decommissioning. The condition of the property must otherwise comply with any applicable statutory requirements and rules, as well as requirements in local ordinance. Land that was cleared of trees for the solar project may be revegetated or reforested with seedlings.
- Submit a decommissioning plan to DEQ for approval, which must be prepared, signed, and sealed by a professional engineer licensed in the State. Among other things, the plan must contain:
 - A narrative description of how the decommissioning will be conducted.
 - Information on equipment proposed to be salvaged, including estimated salvage value of the equipment for the purpose of determining financial assurance.
 - A cost estimate for decommissioning the project and restoration of the property in accordance with the bill's requirements.
 - The proposed mechanism to satisfy the financial assurance requirements established under the bill.
- Establish financial assurance in an amount acceptable to the Department, and maintain it throughout the facility's operation, to ensure that sufficient funds are available for decommissioning of the project and restoration of the property, even if the owner becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State.
- Register with DEQ, and update the registration every five years.

Section 2(a) would also:

- Require:

² "Cessation of operations" means a utility-scale solar project has not produced power for a period of 12 months. This 12-month period would not, however, include a period in which the project fails to produce power due to an event of force majeure, or a period in which the owner has retained legal control of the project's footprint and has commenced rebuilding the facility.

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- The Utilities Commission to develop and maintain a list of all utility-scale solar projects operating within the State and to provide DEQ with an updated list annually on or before July 1 of each year.
- DEQ to report annually to the General Assembly on implementation of the requirements under the bill.
- DEQ to adopt rules to implement the requirements of the bill, including:
- Criteria to set the amount of financial assurance required.
 - Requirements for decommissioning plans.
 - Fees to be assessed upon registration.
- The Department of Commerce, in consultation with DEQ, to identify existing incentives and grant programs that may be used to encourage research and development on recycling and reuse of PV modules and to facilitate growth of the State's PV module recycling and reuse industry.
- Authorize:
 - Local governments to establish and implement requirements that are more stringent than those set forth in bill for decommissioning and financial assurance for utility-scale solar projects located within their jurisdictions.
 - Landowners to enter into an agreement with an owner to lease property on which a utility-scale solar project will be sited that expressly establishes requirements that are more stringent than those set forth in the bill for decommissioning and financial assurance for utility-scale solar projects to be located on the landowner's property.
 - DEQ to collect fees from the owner of a utility-scale solar project at the time of registration and periodic updates.
- Establish the Utility-Scale Solar Management Fund, which would consist of revenue credited to the Fund from the proceeds of the fee imposed on owners of utility-scale solar projects under the bill. The moneys in the Fund must be used by DEQ to implement the provisions of the bill governing proper decommissioning of utility-scale solar projects.

Sections 2(b) through 2(f) would:

- Require DEQ to: (i) adopt permanent rules implementing the requirements of Section 2(a) no later than August 1, 2025; and (ii) submit quarterly reports to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on implementation of the requirements, including program development and the status of the rulemaking, beginning December 1, 2023, through December 1, 2025.
- Provide that nothing in Section 2(a) of the bill, pertaining to decommissioning of utility-scale solar projects, 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 that section, such as a contractual provision granting a landowner the right to retain project equipment after cessation of operations.
- Require the Public Staff of the Utilities Commission, in an effort to ensure proper decommissioning of all utility-scale solar projects, to:
 - Identify existing laws, which do not require ratepayer contribution or governmental appropriations, that would enable recovery of the costs of decommissioning for utility-scale solar facilities that are not subject to a financial assurance requirement pursuant to (i) the provisions of this bill, (ii) a requirement of a local government with jurisdiction over the property on which the facility is sited, or (iii) a lease or other binding contract with the landowner of the property on which the facility is sited.

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- Compile a list, in consultation with DEQ, of all utility-scale solar projects operating within the State as of the effective date of this bill.

The Public Staff would be required to report this information to the General Assembly no later than January 1, 2025.

PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE

Section 3 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.

Section 4 would provide that the bill would become effective as follows:

- The requirements for decommissioning and registration established under Section 2(a) would become effective November 1, 2025, and apply to utility-scale solar projects constructed prior to or after that date.
- The requirements for submittal of a decommissioning plan and financial assurance established under Section 2(a) would become effective November 1, 2025, and would apply to:
 - Utility-scale solar projects for which applications for certificates of public convenience and necessity are pending or submitted on or after the effective date of the bill.
 - Utility-scale solar projects in operation on the date the bill becomes effective, only if the project is rebuilt or expanded after the effective date of the bill.
- The remainder of the bill would be effective when it becomes law.

Chris Saunders, Staff Attorney in the Legislative Analysis Division, substantially contributed to this summary.