



# HOUSE BILL 130: Energy Choice/Solar Decommissioning Requirements.

2023-2024 General Assembly

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<b>Committee:</b>		<b>Date:</b>	December 5, 2023
<b>Introduced by:</b>		<b>Prepared by:</b>	Jennifer McGinnis Staff Attorney
<b>Analysis of:</b>	S.L. 2023-58		

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**OVERVIEW:** *S.L. 2023-58 does both of the following:*

- *Prohibits 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.*
- *Requires owners of utility-scale solar projects to responsibly decommission the projects upon cessation of operations, and to establish financial assurance to cover the decommissioning.<sup>1</sup>*

*This act became effective as follows:*

- *The requirements for decommissioning and registration established under Section 2(a) becomes 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) become effective November 1, 2025, and 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 act.*
  - *Utility scale solar projects in operation on the date the act became effective, only if the project is rebuilt or expanded after the effective date of the act.*
- *The remainder of the act became effective June 26, 2023.*

## **BILL ANALYSIS:**

### **PART I. PRESERVING CHOICES FOR CONSUMERS**

**Section 1.(a)** of the act prohibits 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)** applies the same prohibitions to counties.

The term "energy service" means the energy source that a consumer can 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" means gas derived from a renewable energy resource.

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Sections 1.(a) and 1.(b) of the act must 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.
- 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)** requires the owner of a utility-scale solar project to:

- Decommission the project upon cessation of operations,<sup>2</sup> no later than one year following cessation of operations. At a minimum, an owner is 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 Department of Environmental Quality (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 can 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 act's requirements.

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<sup>2</sup> "Cessation of operations" means a utility-scale solar project has not produced power for a period of 12 months. This 12-month period does 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 proposed mechanism to satisfy the financial assurance requirements established under the act.
- 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 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) also:

- Requires:
  - 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 act.
  - DEQ to adopt rules to implement the requirements of the act, 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 can 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.
- Authorizes:
  - Local governments to establish and implement requirements that are more stringent than those set forth in act 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 act 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.
- Establishes the Utility-Scale Solar Management Fund, to consist of revenue credited to the Fund from the proceeds of the fee imposed on owners of utility-scale solar projects under the act. The moneys in the Fund must be used by DEQ to implement the provisions of the act governing proper decommissioning of utility-scale solar projects.

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

- 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) pertaining to decommissioning of utility-scale solar projects, can be construed to abrogate or impair a contractual provision executed on or before the effective date of the act that expressly requires decommissioning and/or reclamation activities in direct conflict with

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

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

## **PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**Section 3** provides that if any section or provision of the act is declared unconstitutional or invalid by the courts, it does not affect the validity of the remaining provisions.

**Section 4** provides that the act is effective as follows:

- The requirements for decommissioning and registration established under Section 2(a) 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) become effective November 1, 2025, and 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 act.
  - Utility-scale solar projects in operation on the date the act became effective, only if the project is rebuilt or expanded after the effective date of the act.
- The remainder of the act became effective June 26, 2023.

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