
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 925 Session of
2023

INTRODUCED BY RAPP, KAUFFMAN, HAMM, ROSSI, JAMES, JOZWIAK, ROAE,
IRVIN, B. MILLER, ZIMMERMAN, ROWE, MOUL, SCIALABBA, KEPHART
AND LEADBETER, APRIL 17, 2023

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND
UTILITIES, APRIL 17, 2023

AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania
2 Consolidated Statutes, providing for decommissioning of solar
3 energy facilities.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 27 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 43

9 DECOMMISSIONING OF SOLAR ENERGY FACILITIES

10 Sec.

11 4301. Definitions.

12 4302. Requirements for solar energy facility agreements.

13 4303. Financial assurance requirements.

14 4304. Financial assurance forms and decommissioning plans.

15 4305. Preemption of local ordinances and regulations.

16 4306. Applicability of chapter.

17 § 4301. Definitions.

1 The following words and phrases when used in this chapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Banking institution." As defined in 7 Pa.C.S. § 6102
5 (relating to definitions).

6 "Commencement of construction." The moment when a grantee
7 issues a full notice to proceed order to the construction
8 contractor.

9 "Decommissioning plan." A document detailing the steps that
10 will be taken to decommission a solar energy facility and the
11 amount, form and timing of financial assurance that will be
12 provided by a grantee.

13 "Department." The Department of Environmental Protection of
14 the Commonwealth.

15 "Grantee." The owner of a solar energy facility on leased
16 property.

17 "Letter of credit." As defined in 13 Pa.C.S. § 5102
18 (relating to definitions).

19 "Nameplate capacity." The maximum rated output of a
20 generator, prime mover or other electric power production
21 equipment under the specific conditions designated by the
22 manufacturer.

23 "Normal agricultural operation." As defined in section 2 of
24 the act of June 10, 1982 (P.L.454, No.133), referred to as the
25 Right-to-Farm Law.

26 "Professional engineer." As defined in section 2 of the act
27 of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land
28 Surveyor and Geologist Registration Law.

29 "Solar energy facility." The development or construction of
30 a facility that utilizes solar energy to produce or distribute

1 energy.

2 "Solar energy facility agreement." A lease agreement between
3 a grantee and a surface property owner that authorizes the
4 grantee to operate a solar energy facility on leased property.

5 "USDA-NRCS." The United States Department of Agriculture-
6 Natural Resources Conservation Service.

7 § 4302. Requirements for solar energy facility agreements.

8 (a) Requirements and prohibitions.--

9 (1) Except as provided under subsection (b), a solar
10 energy facility agreement executed on or after the effective
11 date of this paragraph shall provide that a grantee is
12 responsible for decommissioning the grantee's solar energy
13 facility on the surface property owner's property in
14 accordance with this chapter no later than 18 months after
15 the facility has ceased producing electricity.

16 (2) The decommissioning plan and associated financial
17 assurance may not be separated from the solar energy facility
18 through a change in grantee ownership to a new grantee. The
19 new grantee shall submit proof of financial assurance in
20 accordance with section 4303 (relating to financial assurance
21 requirements). The prior grantee may not release or revoke
22 the prior grantee's financial assurance until:

23 (i) the new grantee's proof of financial assurance
24 is filed with the county recorder of deeds; and

25 (ii) notice is provided to the surface property
26 owner party to the solar energy facility agreement.

27 (b) Exception.--Subsection (a) shall not apply to a grantee
28 who is actively working to recommence production of electricity,
29 including an instance following the occurrence of a force
30 majeure or similar event.

1 § 4303. Financial assurance requirements.

2 (a) Plan, proof and notice.--A grantee who executes a solar
3 energy facility agreement on or after the effective date of this
4 subsection shall provide a decommissioning plan, submit proof of
5 financial assurance from a banking institution or a Federal
6 credit union as defined in 17 Pa.C.S. § 103 (relating to
7 definitions) to the county recorder of deeds and provide notice
8 to the surface property owner party to the solar energy facility
9 agreement. The financial assurance shall conform to the
10 requirements under this chapter to secure the performance of the
11 grantee's obligation to decommission the grantee's solar energy
12 facility. If the grantee does not fulfill its obligation to
13 decommission the solar energy facility, the financial assurance
14 shall be made payable to the surface property owner.

15 (b) Amount.--The amount of financial assurance shall be
16 equal to the cost of decommissioning the solar energy facility
17 in accordance with section 4304(b) (relating to financial
18 assurance forms and decommissioning plans) and shall be
19 calculated and updated every five years by a third-party
20 professional engineer retained by the grantee from a list of
21 professional engineers compiled by the department and published
22 on the department's publicly accessible Internet website.

23 (c) Delivery.--A grantee shall deliver a decommissioning
24 plan and proof of financial assurance to the county recorder of
25 deeds in accordance with the following:

26 (1) No later than 30 days before the commencement of
27 construction of the solar energy facility, the grantee shall
28 provide the decommissioning plan and proof of financial
29 assurance to the county recorder of deeds in an amount equal
30 to 10% of the total cost of decommissioning as determined by

1 a third-party professional engineer.

2 (2) On or before the fifth anniversary of the
3 commencement of construction of the solar energy facility,
4 the grantee shall provide an updated decommissioning plan and
5 proof of financial assurance to the county recorder of deeds
6 in an amount equal to 10% of the total cost of
7 decommissioning as determined by a third-party professional
8 engineer.

9 (3) On or before the 10th anniversary of the
10 commencement of construction of the solar energy facility,
11 the grantee shall provide an updated decommissioning plan and
12 proof of financial assurance to the county recorder of deeds
13 in an amount equal to 25% of the total cost of
14 decommissioning as determined by a third-party professional
15 engineer.

16 (4) On or before the 15th anniversary of the
17 commencement of construction of the solar energy facility,
18 the grantee shall provide an updated decommissioning plan and
19 proof of financial assurance to the county recorder of deeds
20 in an amount of 40% of the total cost of decommissioning as
21 determined by a third-party professional engineer.

22 (5) On or before the 20th anniversary of the
23 commencement of construction of the solar energy facility,
24 the grantee shall provide an updated decommissioning plan and
25 proof of financial assurance to the county recorder of deeds
26 in an amount equal to 60% of the total cost of
27 decommissioning as determined by a third-party professional
28 engineer.

29 (6) On or before the 25th anniversary of the
30 commencement of construction of the solar energy facility,

1 the grantee shall provide an updated decommissioning plan and
2 proof of financial assurance to the recorder of deeds in an
3 amount equal to 70% of the total cost of decommissioning as
4 determined by a third-party professional engineer.

5 (7) Upon an assignment of lease rights and obligations
6 to a new grantee.

7 (d) Financial assurance methods.--Acceptable methods of
8 financial assurance shall include a bond, an escrow account or
9 an irrevocable letter of credit from a banking institution in
10 accordance with subsection (a). The irrevocable letter of credit
11 may be terminated at the end of a solar energy facility
12 agreement only upon 90 days' prior written notice by the banking
13 institution to the grantee and surface property owner.

14 § 4304. Financial assurance forms and decommissioning plans.

15 (a) Forms.--

16 (1) Within 180 days of the effective date of this
17 paragraph, the department shall, by regulation and in
18 consultation with the solar energy facility industry, develop
19 a provisional standard form for a decommissioning plan and
20 financial assurance to be filed with the county recorder of
21 deeds in accordance with this chapter. In order to facilitate
22 the prompt implementation of this chapter, regulations
23 promulgated to develop a provisional standard form under this
24 paragraph shall be deemed temporary regulations. Temporary
25 regulations promulgated under this paragraph shall not be
26 subject to any of the following:

27 (i) Section 612 of the act of April 9, 1929
28 (P.L.177, No.175), known as The Administrative Code of
29 1929.

30 (ii) Sections 201, 202, 203, 204 and 205 of the act

1 of July 31, 1968 (P.L.769, No.240), referred to as the
2 Commonwealth Documents Law.

3 (iii) Sections 204(b) and 301(10) of the act of
4 October 15, 1980 (P.L.950, No.164), known as the
5 Commonwealth Attorneys Act.

6 (iv) The act of June 25, 1982 (P.L.633, No.181),
7 known as the Regulatory Review Act.

8 (2) After the promulgation of the temporary regulations
9 under paragraph (1), the department shall, by regulation and
10 in consultation with the solar energy facility industry,
11 develop a final standard form for a decommissioning plan and
12 financial assurance to be filed with the county recorder of
13 deeds in accordance with this chapter. The temporary
14 regulations under paragraph (1) shall expire upon the
15 promulgation of the final regulations under this paragraph or
16 two years after the effective date of this paragraph,
17 whichever is later.

18 (b) Contents.--The provisional standard form and final
19 standard form under subsection (a) shall include all of the
20 following provisions:

21 (1) Unless the surface property owner and grantee
22 mutually agree in writing on a solar condition for restoring
23 the property, the grantee's decommissioning plan shall
24 provide for all of the following:

25 (i) The removal of non-utility-owned equipment,
26 conduits, structures, fencing and foundations to a depth
27 of no less than three feet below grade. The grantee shall
28 not be required to remove equipment and materials that
29 the public utility requires to remain onsite.

30 (ii) The removal of graveled areas and access roads

1 unless the surface property owner requests in writing for
2 graveled areas and access roads to stay in place.

3 (iii) The restoration of the property to a condition
4 reasonably similar to the property's condition before the
5 commencement of construction, including the replacement
6 of topsoil removed or eroded on previously productive
7 agricultural land.

8 (iv) The reseeding of a cleared area, unless
9 requested in writing by the surface property owner to not
10 reseed due to plans for agricultural planting.

11 (2) The financial assurance specified under section
12 4303(c) (relating to financial assurance requirements).

13 (3) An attestation confirming the solar energy facility
14 does not unduly impact public resources, including, but not
15 limited to, the following:

16 (i) Publicly owned parks, forests, game lands and
17 wildlife areas.

18 (ii) National or State scenic rivers.

19 (iii) National natural landmarks.

20 (iv) Habitats of rare and endangered flora and fauna
21 and other critical communities.

22 (v) Historical and archaeological sites listed on
23 the Federal or State list of historic places.

24 (vi) Sources used for public drinking supplies.

25 § 4305. Preemption of local ordinances and regulations.

26 The regulation of the decommissioning of solar energy
27 facilities is a matter of general Statewide interest that
28 requires uniform Statewide regulation. This chapter and the
29 regulations promulgated under this chapter constitute a
30 comprehensive plan with respect to all aspects of solar energy

1 facility agreements, financial assurance and decommissioning
2 plans associated with solar energy facilities within this
3 Commonwealth. Any county, municipal or other local government
4 ordinance or regulation that materially impedes the purposes of
5 this chapter shall be preempted and shall be without force and
6 effect.

7 § 4306. Applicability of chapter.

8 (a) Applicability.--This chapter shall apply to any of the
9 following:

10 (1) A grantee with a solar energy facility agreement to
11 utilize any of the following:

12 (i) Land with soil that meets the USDA-NRCS land
13 capability class I, II, III or IV, except for the land
14 capability class IV(e).

15 (ii) Land that meets the USDA-NRCS class of unique
16 farmland.

17 (iii) Land with soil that does not meet the USDA-
18 NRCS land capability class I, II, III or IV, but is
19 currently in active farm use and is being maintained in
20 accordance with the soil erosion and sedimentation plan
21 applicable to the land.

22 (2) A grantee with a solar energy facility agreement
23 utilizing more than 10 acres of land.

24 (b) Nonapplicability.--This chapter shall not apply to any
25 of the following:

26 (1) A solar energy facility with a nameplate capacity of
27 no more than two megawatts AC.

28 (2) A customer-generator as defined in section 2 of the
29 act of November 30, 2004 (P.L.1672, No.213), known as the
30 Alternative Energy Portfolio Standards Act.

1 (3) An owner or operator of a normal agricultural
2 operation who owns and operates a solar energy facility on
3 the normal agricultural operation premises, regardless of the
4 location or consumption of the energy generated.

5 Section 2. This act shall take effect as follows:

6 (1) The following shall take effect immediately:

7 (i) The addition of 27 Pa.C.S. § 4304.

8 (ii) This section.

9 (2) The remainder of this act shall take effect in 180
10 days.