

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

H

D

HOUSE BILL 130  
Second Edition Engrossed 3/15/23  
PROPOSED SENATE COMMITTEE SUBSTITUTE H130-PCS30382-RIF-18

Short Title: Energy Choice/Solar Decommissioning Rqmts.

(Public)

Sponsors:

Referred to:

February 16, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT TO (I) LIMIT CITIES AND COUNTIES FROM PROHIBITING CONSUMER  
3 CHOICE OF ENERGY SERVICE BASED UPON THE TYPE OR SOURCE OF ENERGY  
4 TO BE DELIVERED AND (II) REQUIRE RESPONSIBLE DECOMMISSIONING OF  
5 NEWLY SITED UTILITY-SCALE SOLAR PROJECTS UPON CESSATION OF  
6 OPERATIONS.

7 The General Assembly of North Carolina enacts:

8  
9 **PART I. PRESERVING CHOICES FOR CONSUMERS**

10 **SECTION 1.(a)** Article 8 of Chapter 160A of the General Statutes is amended by  
11 adding a new section to read:

12 **"§ 160A-203.3. Limitations on regulation of energy choice.**

13 (a) A city shall not adopt an ordinance that prohibits, or has the effect of prohibiting,  
14 either of the following:

- 15 (1) The connection, reconnection, modification, or expansion of an energy service  
16 based upon the type or source of energy to be delivered to an individual or any  
17 other person as the end-user of the energy service.  
18 (2) The sale, purchase, or installation of an appliance utilized for cooking, space  
19 heating, water heating, or any other appliance included under the definition of  
20 "white goods" pursuant to G.S. 130A-290(a).

21 (b) As used in this section, "energy service" means the energy source that a consumer  
22 may choose to use to illuminate, heat, or cool buildings; produce hot water; operate equipment;  
23 operate appliances; or any other similar activities, where the energy source is derived from one  
24 or more of a variety of sources such as natural gas, renewable gas, hydrogen, liquified petroleum  
25 gas, renewable liquified petroleum gas, or other liquid petroleum products and that is delivered  
26 to the consumer by an entity legally authorized to provide such service or electricity that is  
27 derived from one or more sources of electric generation and is delivered to the consumer by an  
28 entity legally authorized to provide such service and the distribution of the electricity occurs  
29 according to the territorial rights established by G.S. 62-110.2, 160A-331.2, or 160A-332. For  
30 purposes of this section, the terms "renewable gas" and "renewable liquified petroleum gas" shall  
31 mean gas derived from a renewable energy resource, as that term is defined by  
32 G.S. 62-133.8(a)(8).

33 (c) Nothing in this section shall be construed to (i) limit the ability of a city to choose the  
34 energy service for property owned by the city, (ii) prohibit a city from recovering reasonable  
35 costs associated with reviewing and issuing a permit, (iii) affect the authority of a city to manage



\* H 1 3 0 - P C S 3 0 3 8 2 - R I F - 1 8 \*

1 or operate a city-owned utility, including a city's authority to require persons residing within their  
2 jurisdictions to obtain energy service from a city-owned utility or a joint municipal power agency  
3 of which they are a member, or (iv) impair a contract executed pursuant to G.S. 160A-322 prior  
4 to the effective date of this section for the supply of electric service.

5 (d) Notwithstanding any authority granted to municipalities to adopt local ordinances,  
6 any local ordinance that prohibits or has the effect of prohibiting the activities described in  
7 subsection (a) of this section shall be invalid."

8 **SECTION 1.(b)** Article 6 of Chapter 153A of the General Statutes is amended by  
9 adding a new section to read:

10 **"§ 153A-145.11. Limitations on regulation of energy choice.**

11 (a) A county shall not adopt an ordinance that prohibits, or has the effect of prohibiting,  
12 either of the following:

13 (1) The connection, reconnection, modification, or expansion of an energy service  
14 based upon the type or source of energy to be delivered to an individual or any  
15 other person as the end-user of the energy service.

16 (2) The sale, purchase, or installation of an appliance utilized for cooking, space  
17 heating, water heating, or any other appliance included under the definition of  
18 "white goods" pursuant to G.S. 130A-290(a).

19 (b) As used in this section, "energy service" means the energy source that a consumer  
20 may choose to use to illuminate, heat, or cool buildings; produce hot water; operate equipment;  
21 operate appliances; or any other similar activities, where the energy source is derived from one  
22 or more of a variety of sources such as natural gas, renewable gas, hydrogen, liquified petroleum  
23 gas, renewable liquified petroleum gas, or other liquid petroleum products and that is delivered  
24 to the consumer by an entity legally authorized to provide such service or electricity that is  
25 derived from one or more sources of electric generation and is delivered to the consumer by an  
26 entity legally authorized to provide such service and the distribution of the electricity occurs  
27 according to the territorial rights established by G.S. 62-110.2, 160A-331.2, or 160A-332. For  
28 purposes of this section, the terms "renewable gas" and "renewable liquified petroleum gas" shall  
29 mean gas derived from a renewable energy resource, as that term is defined by  
30 G.S. 62-133.8(a)(8).

31 (c) Nothing in this section shall be construed to (i) limit the ability of a county to choose  
32 the energy service for property owned by the county, (ii) prohibit a county from recovering  
33 reasonable costs associated with reviewing and issuing a permit, or (iii) affect the authority of a  
34 county to manage or operate a county-owned utility, including a county's authority to require  
35 persons residing within their jurisdictions to obtain energy service from a county-owned utility.

36 (d) Notwithstanding any authority granted to counties to adopt local ordinances, any local  
37 ordinance that prohibits or has the effect of prohibiting the activities described in subsection (a)  
38 of this section shall be invalid."

39  
40 **PART II. DECOMMISSIONING OF UTILITY-SCALE SOLAR PROJECTS UPON**  
41 **CESSATION OF OPERATIONS**

42 **SECTION 2.(a)** Article 9 of Chapter 130A of the General Statutes is amended by  
43 adding a new Part to read:

44 "Part 2J. Management of Solar Energy Equipment.

45 **"§ 130A-309.240. Decommissioning and restoration requirements for utility-scale solar**  
46 **projects; recycling of project components required; financial assurance**  
47 **requirements.**

48 (a) Definitions. – For purposes of this Part, the following definitions apply:

49 (1) "Cessation of operations" means a utility-scale solar project has not produced  
50 power for a period of 12 months. This 12-month period shall not, however,  
51 include a period in which the (i) project fails to produce power due to an event

1 of force majeure or (ii) owner has retained legal control of the project's  
2 footprint and has commenced rebuilding the facility.

3 (2) "Expansion" or "expanded," when used in reference to a utility-scale solar  
4 project, means adding 2 megawatts AC (MW AC) or more of directly  
5 connected solar energy generating capacity to the local or regional electrical  
6 grid with the ability to deliver power to the electrical grid, or increasing the  
7 ability of the project to deliver power to the electrical grid by thirty-five  
8 percent (35%), whichever is larger.

9 (3) "Photovoltaic module" or "PV module" means the smallest nondivisible,  
10 environmentally protected assembly of photovoltaic cells or other  
11 photovoltaic collector technology and ancillary parts intended to generate  
12 electrical power under sunlight, which is part of a utility-scale solar project.

13 (4) "Rebuild" or "rebuilt" when used in reference to a utility-scale solar project  
14 means a utility-scale solar project for which more than fifty percent (50%) of  
15 the original photovoltaic modules have been replaced with a different type of  
16 photovoltaic module or other fuel source and the project is deemed to be new  
17 for income tax purposes.

18 (5) "Recycle" means the processing, including disassembling, dismantling, and  
19 shredding of PV modules or other equipment from utility-scale solar projects,  
20 or their components, to recover a usable product. Recycle does not include  
21 any process that results in the incineration of such equipment. PV modules  
22 determined to be hazardous shall comply with applicable hazardous waste  
23 requirements even when recycled, until such time as rules are adopted that  
24 classify solar panels as universal waste.

25 (6) "Utility-scale solar project" means a ground-mounted PV, concentrating PV  
26 (CPV), or concentrating solar power (CSP or solar thermal) project capable of  
27 generating 2 megawatts AC (MW AC) or more directly connected to the local  
28 or regional electrical grid with the ability to deliver power to the electrical  
29 grid. The term includes the solar arrays, accessory buildings, battery storage  
30 facilities, transmission facilities, and any other infrastructure necessary for the  
31 operation of the project. For purposes of this section, a utility-scale solar  
32 project does not include renewable energy facilities owned or leased by a retail  
33 electric customer intended primarily for the customer's own use or to offset  
34 the customer's own retail electrical energy consumption at the premises or for  
35 net metering.

36 (b) Decommissioning Requirement. – The owner of a utility-scale solar project shall be  
37 responsible for proper decommissioning of the project upon cessation of operations and  
38 restoration of the property in compliance with subdivision (3) of this subsection, including all  
39 costs associated therewith, no later than one year following cessation of operations. The owner  
40 shall notify the Department within 30 days of cessation of operations, which notice shall include  
41 a detailed description of the steps to be taken to properly decommission the project and for  
42 restoration of the site. At a minimum, an owner shall take all of the following steps in  
43 decommissioning a project:

44 (1) Disconnect the solar project from the power grid.

45 (2) Remove all equipment from the solar project, and collect and ship equipment  
46 for reuse, or recycle all of the components thereof practicably capable of being  
47 recycled, including the PV modules; the entire solar module racking system;  
48 aboveground electrical interconnection and distribution cables that are no  
49 longer deemed necessary; subsurface cable no longer deemed necessary; any  
50 metal fencing; electrical and electronic devices, including transformers and  
51 inverters; and energy storage system batteries, as that term is defined under

1 subsection (a) of this section. Components that will not be shipped for reuse,  
2 and are incapable of being recycled, shall be properly disposed of in (i) an  
3 industrial landfill or (ii) a municipal solid waste landfill. PV modules that meet  
4 the definition of a hazardous waste shall comply with hazardous waste  
5 requirements for recycling and disposal as applicable.

6 (3) Restore the property (i) as nearly as practicable to its condition before the  
7 utility-scale solar project was sited or (ii) to an alternative condition agreed  
8 upon in a written contract or lease agreement between the landowner and the  
9 project owner. A copy of the agreement signed by both parties shall be  
10 provided to the Department prior to decommissioning. The condition of the  
11 property shall otherwise comply with any applicable statutory requirements,  
12 rules adopted by the Department of Environmental Quality, and requirements  
13 in local ordinance. Land that was cleared of trees for the solar project may be  
14 revegetated or reforested with seedlings.

15 (c) Decommissioning Plan. – The owner of a utility-scale solar project shall submit a  
16 decommissioning plan to the Department for approval, which shall be prepared, signed, and  
17 sealed by a professional engineer licensed in the State and shall contain all of the following  
18 information:

19 (1) The name, address, and contact information for the owner of the project, and  
20 name, address, and contact information for the landowner of the property on  
21 which the project is sited, if different than the owner.

22 (2) A narrative description of how the decommissioning will be conducted,  
23 including the decommissioning sequencing; the disposition of materials to be  
24 used upon decommissioning, such as landfilling, reuse, or recycling of project  
25 equipment, which shall specifically delineate methods to be used for solid and  
26 hazardous waste; and a schedule for completion of the decommissioning  
27 activities.

28 (3) Information on equipment proposed to be salvaged, including estimated  
29 salvage value of the equipment for the purpose of determining financial  
30 assurance.

31 (4) Information on steps to be taken to restore the property in compliance with  
32 subdivision (3) of subsection (b) of this section.

33 (5) A cost estimate for decommissioning the project and restoration of the  
34 property in compliance with subdivision (3) of subsection (b) of this section.

35 (6) The proposed mechanism to satisfy the financial assurance requirements  
36 established under subsection (d) of this section, including information on  
37 which legal entity will establish the mechanism, when it will be established in  
38 accordance with the requirements of this section, and how the Department will  
39 access the funds from the mechanism if needed.

40 (d) Financial Assurance Requirement. –

41 (1) The owner of a utility-scale solar project shall establish financial assurance in  
42 an amount acceptable to the Department that will ensure that sufficient funds  
43 are available for decommissioning of the project and restoration of the  
44 property in compliance with subdivision (3) of subsection (b) of this section,  
45 even if the owner becomes insolvent or ceases to reside in, be incorporated,  
46 do business, or maintain assets in the State. To establish sufficient availability  
47 of funds under this section, the owner of a utility-scale solar project may use  
48 insurance, financial tests, third-party guarantees by persons who can pass the  
49 financial test, guarantees by corporate parents who can pass the financial test,  
50 irrevocable letters of credit, trusts, surety bonds, or any other financial device,  
51 or any combination of the foregoing, shown to provide protection equivalent

1 to the financial protection that would be provided by insurance if insurance  
2 were the only mechanism used.

3 (2) Financial assurance shall be established by an owner of a utility-scale solar  
4 project and maintained until such time as the project is decommissioned and  
5 restoration of the property has been completed in compliance with this section.  
6 Documentation of financial assurance established shall be submitted to the  
7 Department at the time of registration and at the time of required update every  
8 five years, as required by subsection (e) of this section.

9 (e) Registration. – Each owner of a utility-scale solar project shall register with the  
10 Department and update such registration every five years. At the time of registration, or periodic  
11 required update, the owner shall provide all of the following information:

12 (1) Identification of the owner and any other legal entity that will be responsible  
13 for (i) decommissioning the project and (ii) establishment of financial  
14 assurance, if applicable.

15 (2) Summary of project equipment that will be subject to decommissioning  
16 requirements under this section, including the location, size, number, and type  
17 of PV modules, as well as identification of any per- and poly-fluoroalkyl  
18 substances (PFAS) associated with the project, and a determination as to  
19 whether the PV modules are likely to be characterized as hazardous waste  
20 upon decommissioning. The hazardous waste determination must be made in  
21 compliance with rules adopted by the Department of Environmental Quality.

22 (3) Summary of project time line, including actual or anticipated initiation and  
23 completion of construction, initiation of operations, and expected service life  
24 of the project.

25 (4) Estimates of costs to decommission the project and restore the property.

26 (5) Proposed financial assurance mechanism to be used to meet the requirements  
27 of this section, if applicable.

28 (6) Copies of any decommissioning plan executed, or documentation of financial  
29 assurance established, pursuant to local government ordinance or agreement  
30 with a landowner, prior to registration under this subsection.

31 (7) Any other information the Department may require.

32 (f) Annual List. – The Utilities Commission shall develop and maintain a list of all  
33 utility-scale solar projects operating within the State and shall provide the Department with an  
34 updated list annually on or before July 1 of each year.

35 (g) Landowner and Local Authority Not Preempted for Adoption of More Stringent  
36 Requirements. – Nothing in this section shall be construed as limiting the authority of any:

37 (1) Local government to establish and implement requirements that are more  
38 stringent than those set forth in this section for decommissioning and financial  
39 assurance for utility-scale solar projects located within its jurisdiction.

40 (2) Landowner to enter into an agreement with an owner to lease property on  
41 which a utility-scale solar project will be sited that expressly establishes  
42 requirements that are more stringent than those set forth in this section for  
43 decommissioning and financial assurance for utility-scale solar projects to be  
44 located on the landowner's property.

45 (h) Fees. – The Department shall collect fees from the owner of a utility-scale solar  
46 project subject to the requirements of this section at the time of registration and periodic update,  
47 as required by subsection (e) of this section. Fees collected under this subsection shall be applied  
48 to the Department's cost of administering the program.

49 (i) Department Report. – Information regarding implementation of the requirements of  
50 this section shall be included in the annual report required under G.S. 130A-309.06(c).

1       (j) Rules Required. – The Department of Environmental Quality shall adopt rules  
2 establishing criteria to set the amount of financial assurance required for utility-scale solar  
3 projects as set forth in subsection (d) of this section. These rules shall consider, at a minimum,  
4 the solar technology to be employed, i.e., PV, CPV, CSP, or other technology; the approximate  
5 number and size of PV modules included in the solar arrays to be constructed; any ancillary  
6 facilities to be constructed in association with the project; the condition of the property prior to  
7 construction of a utility-scale solar project; the amount of acreage that would be impacted by the  
8 proposed project; and any other factors designed to enable establishment of adequate financial  
9 assurance for decommissioning and restoration on a site-by-site basis. In establishing  
10 requirements for financial assurance for a utility-scale solar project, the Department shall  
11 consider the salvage value of the project's equipment. The rules shall require periodic updates to  
12 be provided by owners with respect to financial assurance maintained. In addition, the  
13 Department shall adopt rules as necessary to implement other requirements of this section,  
14 including rules to address the following matters:

15           (1) Requirements for decommissioning plans, including required information,  
16 and processes for submittal and review of plans.

17           (2) Fees to be assessed upon registration.

18           (3) Any other matter the Department deems necessary.

19 **"§ 130A-309.241. Grants and incentives for recycling of solar panels.**

20       The Department of Commerce, in consultation with the Department of Environmental  
21 Quality, shall identify existing incentives and grant programs that may be used to encourage  
22 research and development on recycling and reuse of PV modules and to facilitate growth of the  
23 State's PV module recycling and reuse industry.

24 **"§ 130A-309.242. Utility-Scale Solar Management Fund.**

25       (a) Creation. – The Utility-Scale Solar Management Fund is created as a special fund  
26 within the Department. The Fund consists of revenue credited to the Fund from the proceeds of  
27 the fee imposed on owners of utility-scale solar projects under G.S. 130A-309.240.

28       (b) Use and Distribution. – Moneys in the Fund shall be used by the Department to  
29 implement the provisions of this Part concerning proper decommissioning of utility-scale solar  
30 projects.

31 **"§ 130A-309.243. Enforcement and appeals.**

32       (a) This Part may be enforced as provided by Part 2 of Article 1 of this Chapter.

33       (b) Appeals concerning the enforcement of rules, the imposition of administrative  
34 penalties, or any other action taken by the Department under authority of this Part shall be  
35 governed by the provisions for appeals set forth in Part 2 of Article 1 of this Chapter."

36       **SECTION 2.(b)** G.S. 130A-309.06(c) reads as rewritten:

37 **"§ 130A-309.06. Additional powers and duties of the Department.**

38       ...

39       (c) The Department shall report to the Environmental Review Commission and the Fiscal  
40 Research Division on or before April 15 of each year on the status of solid waste management  
41 efforts in the State. The report shall include all of the following:

42       ...

43       (21) A report on the management of solar energy equipment pursuant to Part 2J of  
44 this Article."

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

46 **SECTION 2.(c)** The Department of Environmental Quality shall adopt permanent  
47 rules implementing the requirements of this section no later than August 1, 2025.

48 **SECTION 2.(d)** Beginning December 1, 2023, through December 1, 2025, the  
49 Department of Environmental Quality shall submit quarterly reports to the Environmental  
50 Review Commission and the Joint Legislative Commission on Energy Policy on implementation  
51

1 of the requirements of this section, including program development and the status of the  
2 rulemaking.

#### 3 4 **APPLICABILITY TO EXISTING CONTRACTS**

5 **SECTION 2.(e)** Nothing in Section 2(a) of this act shall be construed to abrogate or  
6 impair a contractual provision executed on or before the effective date of this act that is binding  
7 on an owner, or their successors in interests, that expressly requires decommissioning and/or  
8 restoration activities in direct conflict with the requirements of those sections, such as a  
9 contractual provision granting a landowner the right to retain project equipment after cessation  
10 of operations, as that term is defined under G.S. 130A-309.240, as enacted by Section 2(a) of this  
11 act. In such case, compliance with the provisions of Section 2(a) of this act shall be required to  
12 the maximum extent that decommissioning and/or restoration activities are not in direct conflict  
13 with the terms of such a contractual provision.

#### 14 15 **PUBLIC STAFF OF THE UTILITIES COMMISSION TO PROVIDE INFORMATION** 16 **CONCERNING DECOMMISSIONING COSTS FOR EXISTING UTILITY-SCALE** 17 **SOLAR PROJECTS NOT SUBJECT TO FINANCIAL ASSURANCE REQUIREMENTS**

18 **SECTION 2.(f)** The Public Staff of the Utilities Commission shall, in an effort to  
19 ensure proper decommissioning of all utility-scale solar projects:

- 20 (1) Identify existing laws, which do not require ratepayer contribution or  
21 governmental appropriations, that would enable recovery of the costs of  
22 decommissioning for utility-scale solar projects that are not subject to a  
23 financial assurance requirement pursuant to (i) Section 2(a) of this act, (ii) a  
24 requirement of a local government with jurisdiction over the property on  
25 which the project is sited, or (iii) a lease or other binding contract with the  
26 landowner of the property on which the project is sited.
- 27 (2) In consultation with the Department of Environmental Quality as needed,  
28 compile a list of all utility-scale solar projects operating within the State as of  
29 the effective date of this act.

30 The Public Staff shall report the information required by this section to the General  
31 Assembly no later than January 1, 2025.

### 32 33 **PART III. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

#### 34 35 **SEVERABILITY CLAUSE**

36 **SECTION 3.** If any section or provision of this act is declared unconstitutional or  
37 invalid by the courts, it does not affect the validity of this act as a whole or any part other than  
38 the part declared to be unconstitutional or invalid.

#### 39 40 **EFFECTIVE DATE**

41 **SECTION 4.** This act becomes effective as follows:

- 42 (1) Section 2(a) of this act is effective when it becomes law, except as follows:  
43 a. The requirements for decommissioning and registration established  
44 under G.S. 130A-309.240(b) and (e), respectively, as enacted by  
45 Section 2(a) of this act, become effective November 1, 2025, and apply  
46 to utility-scale solar projects constructed prior to or after that date. The  
47 owner of a utility-scale solar project shall register with the Department  
48 as follows: (i) by November 1, 2025, or at least 90 days prior to the  
49 commencement of construction of the project if the project is  
50 constructed after November 1, 2025; and (ii) at least 90 days prior to  
51 commencement of rebuild or expansion of a utility-scale solar project.

- 1                   b.     The requirements for submittal of a decommissioning plan and  
2                   financial assurance established under G.S. 130A-309.240(c) and (d),  
3                   respectively, as enacted by Section 2(a) of this act, become effective  
4                   November 1, 2025, and shall only apply to (i) utility-scale solar  
5                   projects for which applications for certificates of public convenience  
6                   and necessity are pending or submitted on or after the effective date of  
7                   this act and (ii) utility-scale solar projects that are generating solar  
8                   energy or are interconnected to a transmission facility on the date this  
9                   act becomes effective, only if the project is rebuilt or expanded, as  
10                  those terms are defined by G.S. 130A-309.240(a)(2) and (a)(4), after  
11                  the effective date of this act, in which case the project shall be subject  
12                  to the requirements of G.S. 130A-309.240(c) and (d). The owner of a  
13                  utility-scale solar project shall submit a decommissioning plan and  
14                  establish financial assurance (i) by November 1, 2025, or prior to  
15                  commencement of construction of the project if the project is  
16                  constructed after November 1, 2025, and (ii) prior to commencement  
17                  of rebuild or expansion of a utility-scale solar project.  
18                  (2)     The remainder of this act is effective when it becomes law.