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SENATE BILL DRS15256-RIf-9

Short Title:	Utility-Scale Battery Storage Rqmts.	(Public)
Sponsors:	Senator Jarvis (Primary Sponsor).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A PERMIT FOR UTILITY-SCALE BATTERY ENERGY STORAGE SYSTEMS, AND TO REQUIRE SUCH SYSTEMS TO RESPONSIBLY DECOMMISSION UPON CESSATION OF ACTIVITIES, MAINTAIN FINANCIAL RESPONSIBILITY FOR THAT PURPOSE, AND TO FILE EMERGENCY RESPONSE AND DECOMMISSIONING PLANS WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2J of Article 9 of Chapter 130A reads as rewritten:

"Part 2J. Management of ~~Solar~~ Clean Energy Equipment.

"Subpart 1. Solar Energy Equipment.

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

…

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

…. "

SECTION 2. Part 2J of Article 9 of Chapter 130A of the General Statutes is amended by adding a new Subpart:

"Subpart 2. Utility-Scale Battery Energy Storage.

"**§ 130A-309.250 Permitting, emergency response planning, decommissioning and restoration, and financial assurance requirements for utility-scale battery energy storage systems.**

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

(1) Energy storage. – Any technology that is capable of absorbing electricity, storing the electricity for a period of time, and redelivering the electricity.

(2) Battery energy storage system. – Electrochemical devices that charge, or collect, energy from the grid or a generation facility, store that energy, and then discharge that energy at a later time to provide electricity or other grid services.

(3) Utility-scale battery energy storage system. – Battery energy storage systems with a rated nameplate capacity of equal to or greater than 1,000 kilowatts (1 megawatt).

(b) Permit Required. – No person may install or operate utility-scale battery energy storage system in the State without first having obtained a permit from the Department of Environmental Quality pursuant to this section. The Department shall hold at least one public

meeting on a permit application in the county in which the battery energy storage system is proposed to be located. In order to obtain a permit pursuant to this section, the owner of a proposed system shall submit all of the following to the Commission:

(1) A description of the location of the proposed system.

(2) A description of the type of battery energy storage equipment to be used at the proposed system.

(3) A statement identifying the fire department and law enforcement entities that may reasonably be expected to be the primary first responders to a fire at the location of the battery energy storage system.

(4) An Emergency Response Plan as required by subsection (c) of this section.

(5) A Decommissioning Plan as required by subsection (d) of this section.

(6) Documentation of financial assurance as required by subsection (e) of this section.

(c) Emergency Response Plan. – The owner of a utility-scale battery energy storage system located in the State shall develop and maintain an emergency response and evacuation plan that covers the premises of the system, which shall be submitted to the Department of Environmental Quality. In developing the plan, the owner of a battery energy storage system shall coordinate with local emergency management officials. The emergency response and evacuation plan shall do all of the following:

(1) Establish response procedures for an equipment malfunction or failure.

(2) Include procedures that provide for the safety of surrounding residents, neighboring properties, emergency responders, and the environment.

(3) Establish notification, communication, and coordination procedures between the battery energy storage system and local emergency management officials.

(4) Consider actions to be taken to address potential offsite impacts, including poor air quality, and threats to municipal water supplies and surface and groundwater sources.

(5) Include procedures for establishing shelter-in-place orders and road closure notifications when appropriate.

(d) Decommissioning Requirement, Plan, and Financial Assurance. –

(1) The owner of a utility-scale battery energy storage system shall be responsible for proper decommissioning of the system upon cessation of operations and restoration of the property in compliance with subdivision (3) of this subsection, including all costs associated therewith, no later than one year following cessation of operations. The owner shall notify the Department within 30 days of cessation of operations, which notice shall include a detailed description of the steps to be taken to properly decommission the system and for restoration of the site. At a minimum, an owner shall take all of the following steps in decommissioning a system:

a. Disconnect the utility scale battery energy storage system from the power grid.

b. Remove all equipment from the battery energy storage system, and collect and ship equipment for reuse, or recycle all of the components thereof practicably capable of being recycled, including energy storage system batteries; aboveground electrical interconnection and distribution cables that are no longer deemed necessary; subsurface cable no longer deemed necessary; any metal fencing; and electrical and electronic devices, including transformers and inverters. Components that will not be shipped for reuse, are incapable of being recycled, and do not meet the definition of hazardous waste shall be properly disposed of in (i) an industrial landfill or (ii) a municipal solid

waste landfill. Energy storage system batteries that meet the definition of a hazardous waste shall comply with hazardous waste requirements for recycling and disposal as applicable.

c. Restore the property (i) as nearly as practicable to its condition before the battery energy storage system was sited or (ii) to an alternative condition agreed upon in a written contract or lease agreement between the landowner and the system owner. A copy of the agreement signed by both parties shall be provided to the Department prior to decommissioning. The condition of the property shall otherwise comply with any applicable statutory requirements, rules adopted thereunder, and requirements in local ordinance. Land that was cleared of trees for the battery energy storage system may be revegetated or reforested with seedlings.

(2) The owner of a utility-scale battery energy storage system shall submit a decommissioning plan to the Department for approval, which shall be prepared, signed, and sealed by a professional engineer licensed in the State and shall contain all of the following information:

a. The name, address, and contact information for the owner of the system, and name, address, and contact information for the landowner of the property on which the system is to be located sited, if different than the owner.

b. A narrative description of how the decommissioning will be conducted, including the decommissioning sequencing; the disposition of materials to be used upon decommissioning, such as landfilling, reuse, or recycling of system equipment, which shall specifically delineate methods to be used for solid and hazardous waste; and a schedule for completion of the decommissioning activities.

c. Information on equipment proposed to be salvaged, including estimated salvage value of the equipment for the purpose of determining financial assurance.

d. Information on steps to be taken to restore the property in compliance with subdivision (1) of this subsection.

e. A cost estimate for decommissioning the system and restoration of the property in compliance with subdivision (1) of this subsection.

f. The proposed mechanism to satisfy the financial assurance requirements established under subdivision (3) of this subsection, including information on which legal entity will establish the mechanism, when it will be established in accordance with the requirements of this section, and how the Department will access the funds from the mechanism if needed.

(3) The owner of a utility-scale battery energy storage system shall establish financial assurance in an amount acceptable to the Department that will ensure that sufficient funds are available for decommissioning of the system and restoration of the property in compliance with subdivision (1) of this subsection, even if the owner becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the owner of a battery energy storage system may use insurance, financial tests, third party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or

any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. Financial assurance shall be established by an owner of a battery energy storage system and maintained until such time as the system is decommissioned and restoration of the property has been completed in compliance with this section. Documentation of financial assurance established shall be submitted to the Department at the time a permit application is submitted pursuant to subsection (b) of this section.

(h) Fees. – The Department shall collect fees from the owner of a utility-scale battery energy storage system subject to the requirements of this section at the time a permit application is submitted pursuant to subsection (b) of this section. Fees collected under this subsection shall be applied to the Department's cost of administering the program.

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

(j) Rules Required. – The Department of Environmental Quality shall adopt rules establishing criteria for all of the following:

(1) Siting requirements for utility-scale battery energy storage systems to reasonably ensure that: (i) a proposed system is sited at sufficient distance from other battery energy storage systems in order to mitigate the risk of fire at a system, or the spread of a fire between systems; (ii) in the event of a fire at the system, the fire will not block the only access point to a residential area.

(2) Set the amount of financial assurance required for utility-scale battery energy storage systems as set forth in subsection (d) of this section. These rules shall consider, at a minimum, the battery storage technology to be employed; the approximate number and size of batteries to be located at the system; any ancillary facilities to constructed in association with the system; the condition of the property prior to construction of a battery energy storage system; the amount of acreage that would be impacted by the proposed system; and any other factors designed to enable establishment of adequate financial assurance for decommissioning and restoration on a site-by-site basis. In establishing requirements for financial assurance for a battery energy storage system, the Department shall consider the salvage value of the system's equipment. The rules shall require periodic updates to be provided by owners with respect to financial assurance maintained. In addition, the Department shall adopt rules as necessary to implement other requirements of this section, including rules to address the following matters:

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

(4) Permit fees to be assessed.

(5) Any other matter the Department deems necessary.

"**§ 130A-309.251. Utility-Scale Battery Energy Storage Management Fund.**

(a) Creation. – The Utility-Scale Battery Energy Management Fund is created as a special fund within the Department. The Fund consists of revenue credited to the Fund from the proceeds of the fee imposed on owners of utility-scale battery energy storage systems under G.S. 130A-309.250.

(b) Use and Distribution. – Moneys in the Fund shall be used by the Department to implement the provisions of this Subpart concerning proper decommissioning of utility-scale battery energy storage facilities.

"**§ 130A-309.252. Enforcement and appeals.**

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

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

SECTION 3. This act is effective when it becomes law, and applies to utility-scale battery energy storage systems for which construction is commenced on or after that date.