

MAINE STATE LEGISLATURE

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Date. 6/2/23

(Filing No H-288)

ENERGY, UTILITIES AND TECHNOLOGY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "^A" to H.P. 313, L.D. 496, "An Act to Address Solar Energy Development Decommissioning"

Amend the bill by striking out the title and substituting the following

'An Act to Address Battery Storage System Decommissioning and Clarify Solar Energy Development Decommissioning'

Amend the bill by striking out everything after the enacting clause and inserting the following.

'Sec. 1. 35-A MRSA §3496, first ¶, as enacted by PL 2021, c. 151, §1, is amended to read:

The Department of Environmental Protection shall administer and enforce this chapter with respect to the decommissioning of solar energy developments for which it is the environmental permitting entity, subject to the same powers and authorities granted to it pursuant to Title 38, chapter 2, ~~including which may include,~~ but are not limited to, the adoption of rules and the establishment of reasonable fees. The Maine Land Use Planning Commission shall administer and enforce this chapter with respect to the decommissioning of solar energy developments for which it is the environmental permitting entity, subject to the same powers and authorities granted to it pursuant to Title 12, chapter 206-A, ~~including which may include,~~ but are not limited to, the adoption of rules and the establishment of reasonable fees.

Sec. 2. 35-A MRSA §3497 is enacted to read

§3497. Applicability

This chapter applies to a solar energy development with ground-mounted solar panels occupying 3 or more acres on which construction begins on or after October 1, 2021 and to any other solar energy development with ground-mounted solar panels occupying 3 or more acres that undergoes a transfer of ownership on or after October 1, 2021.

Sec. 3. 35-A MRSA c. 34-E is enacted to read

COMMITTEE AMENDMENT

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CHAPTER 34-E

BATTERY STORAGE SYSTEM DECOMMISSIONING

§3498. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Decommissioning. "Decommissioning" means the physical removal of all components of a battery storage system development, including but not limited to battery storage modules and associated anchoring systems and foundations to a depth of at least 24 inches or to the depth of bedrock, whichever is less, and other structures, buildings, roads, fences, cables, electrical components or associated facilities and foundations to a depth of at least 24 inches or to the depth of bedrock, whichever is less, to the extent the components of the development are not otherwise in or proposed to be placed in productive use or otherwise authorized to remain in place by the environmental permitting entity.

For any portion of a battery storage system development located on land classified as farmland any time within 5 years preceding the start of construction of the development, "decommissioning" means the physical removal of all such components of the development to a depth of at least 48 inches or to the depth of bedrock, whichever is less, to the extent such components are not otherwise in or proposed to be placed in productive use or otherwise authorized to remain in place by the environmental permitting entity.

"Decommissioning" includes the grading to postconstruction grade and revegetation of all earth disturbed during construction and decommissioning, except for areas already restored.

2. Battery storage system. "Battery storage system" means a commercially available technology that uses chemical processes for absorbing energy and storing it for a period of time for use at a later time, including but not limited to lithium-ion batteries.

3. Environmental permitting entity. "Environmental permitting entity" means:

A. The Department of Environmental Protection in the case of a battery storage system development:

- (1) Located wholly or partly outside of the unorganized and deorganized areas, or
- (2) Subject to the department's jurisdiction pursuant to Title 38, chapter 3, subchapter 1, article 6, or

B. The Maine Land Use Planning Commission in the case of a battery storage system development located wholly in the unorganized and deorganized areas and not subject to the jurisdiction of the Department of Environmental Protection pursuant to Title 38, chapter 3, subchapter 1, article 6.

4. Farmland. "Farmland" has the same meaning as in Title 36, section 1102, subsection 4.

5. Transfer of ownership. "Transfer of ownership" means a change in the legal entity that owns or operates a battery storage system development. A sale or exchange of stock

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1 or membership interests or a merger is not a transfer of ownership as long as the legal entity
2 that owns or operates the battery storage system development remains the same.

3 6. Unorganized and deorganized areas. "Unorganized and deorganized areas" has
4 the same meaning as in Title 12, section 682, subsection 1.

5 **§3499. Decommissioning plan required**

6 1. Prohibition. A person may not construct, cause to be constructed or operate a
7 battery storage system development with a capacity of 2 megawatts or more without first
8 obtaining approval of a decommissioning plan from the environmental permitting entity
9 under this section.

10 2. Plan requirements. A decommissioning plan must provide for the
11 decommissioning of a battery storage system development and include demonstration of
12 current and future financial capacity, which must be unaffected by the owner's or operator's
13 future financial condition, to fully fund decommissioning in accordance with an approved
14 decommissioning plan under this section.

15 3. Standards. An environmental permitting entity shall approve a decommissioning
16 plan whenever it finds the following:

17 A. The plan, if implemented, will result in successful decommissioning of the battery
18 storage system development, including the restoration of farmland sufficient to support
19 resumption of farming or agricultural activities.

20 B. The plan provides for the recycling of the waste components of the battery storage
21 system that are recyclable and disposing of the components that are not recyclable at
22 facilities authorized to accept such components;

23 C. The person identified in the plan as responsible for decommissioning demonstrates
24 financial assurance, in the form of a performance bond, surety bond, irrevocable letter
25 of credit or other form of financial assurance acceptable to the environmental
26 permitting entity, for the total cost of decommissioning, including the cost of recycling
27 the waste components of the battery storage system that are recyclable and disposing
28 of the components that are not recyclable at facilities authorized to accept such
29 components; and

30 D. The plan requires the financial assurance be updated 15 years after approval of the
31 plan and no less frequently than every 5 years thereafter. Updates to financial assurance
32 required under this paragraph must be submitted to the environmental permitting entity
33 on or before December 31st of the year in which such updates are required.

34 4. Applicability. This section applies to a battery storage system development on
35 which construction begins on or after January 1, 2024. This section does not apply to a
36 battery storage system development on which construction begins prior to January 1, 2024
37 unless the battery storage system development undergoes a transfer of ownership on or
38 after January 1, 2024 in which case a person may not operate the battery storage system
39 after the transfer of ownership without a decommissioning plan approved by the
40 environmental permitting entity under this section.

41 Upon a transfer of ownership of a battery storage system development subject to a
42 decommissioning plan approved under this section, a person that transfers ownership of the
43 development remains jointly and severally liable for implementation of the plan until the

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1 environmental permitting entity approves transfer of the decommissioning plan to the new
2 owner or operator.

3 5. Administration and enforcement; rulemaking. The Department of
4 Environmental Protection shall administer and enforce this chapter with respect to the
5 decommissioning of battery storage system developments for which it is the environmental
6 permitting entity, subject to the same powers and authorities granted to it pursuant to Title
7 38, chapter 2, which may include, but are not limited to, the adoption of rules and the
8 establishment of reasonable fees. The Maine Land Use Planning Commission shall
9 administer and enforce this chapter with respect to the decommissioning of battery storage
10 system developments for which it is the environmental permitting entity, subject to the
11 same powers and authorities granted to it pursuant to Title 12, chapter 206-A, which may
12 include, but are not limited to, the adoption of rules and the establishment of reasonable
13 fees.

14 Notwithstanding Title 5, section 8071, subsection 3, rules adopted by the Department
15 of Environmental Protection or by the Maine Land Use Planning Commission pursuant to
16 this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

17 **Sec. 4. PL 2021, c. 151, §2 is repealed.**

18 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
19 number to read consecutively

20 **SUMMARY**

21 This amendment replaces the bill, which is a concept draft, and changes the title. It
22 prohibits a person from constructing, causing to be constructed or operating a battery
23 storage system development with a capacity of 2 megawatts or more without first obtaining
24 approval of a decommissioning plan from an environmental permitting entity. It
25 establishes the requirements for a decommissioning plan, including the removal of the
26 battery storage system development components, the recycling of the waste components
27 that are recyclable and regarding and revegetation of all earth disturbed during construction
28 and decommissioning. The plan must include demonstration of current and future financial
29 capacity to fully fund decommissioning under the plan.

30 The amendment clarifies in the Maine Revised Statutes, Title 35-A, chapter 34-D,
31 related to solar energy development decommissioning, that the Department of
32 Environmental Protection and the Maine Land Use Planning Commission are authorized,
33 but not required, to adopt rules to implement the requirements of the chapter. It adds
34 allocated language to clarify the applicability of the chapter and repeals Public Law 2021,
35 chapter 151, section 2, which is similar but unallocated law related to the applicability of
36 that chapter.

37 **FISCAL NOTE REQUIRED**

38 (See attached)



131st MAINE LEGISLATURE

LD 496

LR 1674(02)

An Act to Address Solar Energy Development Decommissioning

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-288)
Committee: Energy, Utilities and Technology
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds
Minor revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Department of Environmental Protection (DEP) or the Maine Land Use Planning Commission (PC) within the Department of Agriculture, Conservation and Forestry to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources. Provisions allowing the DEP and the PC to establish fees related to the approval process of decommissioning plans will result in additional Other Special Revenue Funds revenue