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In Senate, March 5, 2021

An Act To Ensure Decommissioning of Solar Energy Developments

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BLACK of Franklin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 35-A MRSA c. 34-D** is enacted to read:

3 **CHAPTER 34-D**

4 **SOLAR ENERGY DEVELOPMENT DECOMMISSIONING**

5 **§3491. Definitions**

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

8 **1. Decommissioning.** "Decommissioning" means the physical removal of all
9 components of a solar energy development, including but not limited to solar panels and
10 associated anchoring systems and foundations to a depth of at least 24 inches and other
11 structures, buildings, roads, cables, electrical components or associated facilities and
12 foundations to a depth of at least 24 inches, to the extent the components of the
13 development are not otherwise in or proposed to be placed in productive use.
14 "Decommissioning" includes the grading and revegetation of all earth disturbed during
15 construction and decommissioning, except for areas already restored.

16 **2. Environmental permitting entity.** "Environmental permitting entity" means:

17 A. The Department of Environmental Protection in the case of a solar energy
18 development:

19 (1) Located wholly or partly outside of the unorganized and deorganized areas; or

20 (2) Subject to the department's jurisdiction pursuant to Title 38, chapter 3,
21 subchapter 1, article 6; or

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

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

28 **4. Transfer of ownership.** "Transfer of ownership" means a change in the legal entity
29 that owns or operates a solar energy development. A sale or exchange of stock or
30 membership interests or a merger is not a transfer of ownership as long as the legal entity
31 that owns or operates the solar energy development remains the same.

32 **5. Unorganized and deorganized areas.** "Unorganized and deorganized areas" has
33 the same meaning as in Title 12, section 682, subsection 1.

34 **§3492. Prohibition**

35 A person may not construct, cause to be constructed or operate a solar energy
36 development with ground-mounted solar panels occupying 3 or more acres without first
37 obtaining approval of a decommissioning plan from the environmental permitting entity
38 under section 3495.

1 **§3493. Transfer of ownership**

2 Upon a transfer of ownership of a solar energy development subject to a
3 decommissioning plan approved under section 3495, a person that transfers ownership of
4 the development remains jointly and severally liable for implementation of the plan until
5 the environmental permitting entity approves transfer of the decommissioning plan to the
6 new owner or operator.

7 **§3494. Decommissioning plan**

8 A decommissioning plan must:

9 **1. Decommissioning.** Provide for the decommissioning of a solar energy development
10 to a depth of at least 24 inches;

11 **2. Farmland.** For any portion of a solar energy development located on land classified
12 as farmland any time within 5 years preceding the start of construction of the development,
13 provide for the decommissioning of that portion of the solar energy development to a depth
14 of at least 48 inches and for the restoration of the farmland sufficient to support resumption
15 of farming or agricultural activities;

16 **3. Grading and revegetation of earth.** Provide for the grading and revegetation of
17 all earth disturbed during construction and decommissioning, except for areas already
18 restored; and

19 **4. Financial capacity.** Include demonstration of current and future financial capacity,
20 which must be unaffected by the owner's or operator's future financial condition, to fully
21 fund decommissioning in accordance with an approved decommissioning plan under this
22 chapter.

23 **§3495. Standards**

24 An environmental permitting entity shall approve a decommissioning plan whenever it
25 finds the following:

26 **1. Successful decommissioning.** The plan, if implemented, will result in successful
27 decommissioning of the solar energy development, including the restoration of farmland
28 sufficient to support resumption of farming or agricultural activities;

29 **2. Financial assurance.** The person identified in the plan as responsible for
30 decommissioning demonstrates financial assurance, in the form of a performance bond,
31 surety bond, irrevocable letter of credit or other form of financial assurance acceptable to
32 the environmental permitting entity, for the total cost of decommissioning; and

33 **3. Update.** The plan requires the financial assurance be updated no less frequently
34 than every 5 years.

35 **Sec. 2. Application.** This Act applies to a solar energy development on which
36 construction begins on or after October 1, 2021 and to any other solar energy development
37 that undergoes a transfer of ownership on or after October 1, 2021.

38 **SUMMARY**

39 This bill requires a person to obtain approval of a decommissioning plan from the
40 Department of Environmental Protection or from the Maine Land Use Planning
41 Commission in the case of a solar energy development located in the unorganized and

- 1 deorganized areas before constructing or operating a solar energy development with
- 2 ground-mounted solar panels occupying 3 or more acres.