AN ACT

To amend and reenact R.S. 30:136.3(D) and 1154(A)(introductory paragraph), (B), (C), and (D) and to enact R.S. 30:136.3(B)(5) and 1154(A)(9), (E), and (F), relative to solar energy; to provide for the powers and duties of the secretary of the Department of Natural Resources; to require a permit to construct or operate a solar power generation facility; to provide for fees; to provide for financial security; to provide for the Mineral and Energy Operation Fund; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:136.3(D) and 1154(A)(introductory paragraph), (B), (C), and (D) are hereby amended and reenacted and R.S. 30:136.3(B)(5) and 1154(A)(9), (E), and (F) are hereby enacted to read as follows:

§136.3. Mineral and Energy Operation Fund

* * *

B. Out of the funds remaining in the Bond Security and Redemption Fund, after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within any fiscal year as required by Article VII, Section 9(B) of the Constitution of Louisiana, the
treasurer in each fiscal year shall pay into the fund revenues and amounts from the
following sources:

* * *

(5) All revenue received from fees collected pursuant to R.S. 30:1154.

* * *

D. The monies in the fund shall be appropriated by the legislature to the
Department of Natural Resources to be used solely for the administration and
regulation of minerals, ground water, and related energy activities. Additionally,
monies deposited into the fund pursuant to Paragraph (B)(5) of this Section shall be
used solely for the administration and regulation of solar power generation facilities.

* * *

§1154. Regulations governing solar devices power generation facilities; solar leases

A. The secretary shall develop and adopt, in cooperation with affected
utility, agricultural, and solar industries, landowners, and consumer representatives
and after one or more public hearings, regulations governing solar devices power
generation facilities and property leases for the exploration, development, and
production of solar energy. The regulations shall be designed to encourage the
development and use of solar energy and to provide maximum information to the
public concerning solar devices and solar power generation facilities. The
regulations may include all of the following:

* * *

(9)(a) Requirements for a permit to construct or operate a solar power
generation facility shall include a bond or other acceptable financial security in an
amount determined by the secretary to ensure proper site closure. Any bond shall
be executed by the permittee and a corporate surety licensed to do business in the
state. The bond or other instrument shall be payable to the Department of Natural
Resources and shall ensure the following:

(i) Substantial compliance with this Section and any rule or regulation
promulgated pursuant to this Section.

CODING: Words in struck through type are deletions from existing law; words underscored
are additions.
(ii) Compliance with any permit issued or enforced pursuant to this Section.

(iii) Compliance, as determined by a court of competent jurisdiction, with provisions of the property lease for the exploration, development, and production of solar energy on which the facility is located and that the violation would require closure of the facility. The department shall notify the lessor of any enforcement action against a permittee or upon a claim against the bond or other instrument.

(b) In determining the adequacy of the amount or other specific requirements of the bond or other financial security, the secretary shall consider the following:

(i) The assets, debts, and compliance history of the applicant or permittee.

(ii) The condition and capacity of the facilities to be covered by such security.

(iii) The estimated cost of site closure and remediation that includes the estimated cost of removing the solar power generation facility and associated infrastructure from the property and restoring the property to as near as reasonably possible to the condition of the property prior to the commencement of construction of the facility. The secretary shall adjust the estimated cost based upon any updated decommissioning plan submitted pursuant to Paragraph (D)(2) of this Section. Any increase in the amount of financial security required shall be secured by the permit holder within thirty days of notification of the increase.

(c) Subparagraphs (a) and (b) of this Paragraph may not apply to solar power generation facilities that provide power to an electric utility provider regulated by the Public Service Commission or the council of the city of New Orleans and meet all of the following circumstances:

(i) The facility holds a corporate guarantee from the regulated electric utility provider in a form acceptable to the secretary and sufficient to pay the cost of the decommissioning plan provided for in Subparagraph (D)(2) of this Section.

(ii) A sale or transfer of the facility does not terminate the provision of power to the regulated electric facility.
(iii) The contract between the facility and the regulated utility provides for
site decommissioning at the end of the facility's life or at the conclusion, termination,
or default of the contract with the regulated utility, whichever occurs first.

(iv) The Public Service Commission promulgates rules and regulations
providing for decommissioning requirements for solar power generation facilities.

(d) If a solar power generation facility is sold or otherwise transferred, the
secretary shall not release the bond or other financial security of the seller or
transferor until the buyer or transferee provides a bond or other acceptable financial
security in accordance with the provisions of this Section.

B. The secretary shall give due consideration to the effects of the regulations
on the cost of purchasing, installing, operating, and maintaining solar devices in a
solar power generation facility, and shall reassess and amend the regulations as often
as deemed necessary considering their effect upon the benefits and disadvantages to
the widespread adoption of solar energy systems and the need to encourage creativity
and innovative adaptations of solar energy.

C. Under no circumstances may the secretary preclude any person from
developing, installing, or operating a solar device on his own property for residential
use or collect any fee for such use.

D.(1) No person shall construct or operate a solar power generation facility
that has a footprint of ten or more acres without holding a permit issued pursuant to
the rules and regulations provided for in this Section. In addition to other
requirements for the issuance of a permit, the department shall collect the following
fees:

(a) An application fee not to exceed fifteen dollars per acre of the solar
power generation facility footprint.

(b) An application processing fee not to exceed five hundred dollars for the
entire project.
(c) An annual monitoring and maintenance fee beginning the year after
issuance of the permit and every year thereafter not to exceed fifteen dollars per acre
of the facility footprint.

(d) Notwithstanding the provisions of this Paragraph, no applicant or permit
holder shall be charged a fee that exceeds the department's budgeted costs of
implementing and administering the provisions of this Section for the fiscal year in
which the fee is charged.

(2) Any application for a permit shall include a decommissioning plan for
the facility that plans for closure at the end of life of the facility as well as closure
in the event of a disaster making operation of the power generation facility
impossible. The decommissioning plan shall be updated every five years after the
initial submission. All submitted plans shall be reviewed for sufficiency by the
department and approved by the secretary.

(3) Any power generation facility in construction or operating before August
1, 2022, shall register with the department and pay the annual monitoring and
maintenance fee provided for in this Subsection. Beginning January 1, 2024, such
facilities shall be in compliance with this Section and any rules and regulations
promulgated pursuant to this Section, including obtaining financial security and
submitting a decommissioning plan. However, the requirement to obtain financial
security shall not apply to facilities exempt from obtaining a bond or other
acceptable financial security pursuant to Subparagraph (A)(9)(c) of this Section and
in construction or operation on or before August 1, 2022.

(4) All the monies collected from the fees provided for in this Subsection
shall be deposited in the Mineral and Energy Operation Fund.

E. For purposes of this Section, the following terms shall have the meanings
ascribed to them in this Subsection, unless the context or use clearly indicates
otherwise:

(1) "Solar power generation facility" means one or more solar devices and
any facility or equipment used to support the operation of the solar devices, including
any underground or above ground electrical transmission or communications line,
an electric transformer, a battery storage facility, an energy storage facility,
telecommunications equipment, a road, a meteorological tower, or a maintenance
yard.

(2) "Solar device" means a solar energy collector or solar energy system that
provides for the collection of solar energy or the subsequent use of that energy as
thermal, mechanical, or electrical energy.

F. Any violation of any regulation adopted by the secretary pursuant to this
Section may be enjoined in the manner prescribed by law.

Section 2. The Department of Natural Resources shall reimburse the state general
fund by June 30, 2026, for any appropriation to the department for the administration and
regulation of solar power generating facilities for Fiscal Years 2022-2023 or 2023-2024 from
any revenues received from fees collected pursuant to the Act.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part
of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute
part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 655 Reengrossed 2022 Regular Session Coussan

Abstract: Establishes a regulatory framework for the management of solar resources.

Present law provides for the sources of payments into the Bond Security and Redemption
Fund. Proposed law adds solar power and limits the use of any monies deposited into the
account to the administration and regulation of solar power generation facilities.

Present law provides for the regulation of solar devices. Proposed law provides for the
regulation of solar power generating facilities.

Proposed law requires a permit to construct and operate a solar power generation facility.
Further provides that the permit be bonded or secured in an amount to be determined by the
secretary of the Dept. of Natural Resources to ensure proper site closure.

Proposed law further requires the instrument be payable to the Dept. of Natural Resources
and ensure all of the following:

(1) Substantial compliance with this Section and any rule or regulation promulgated
pursuant to this Section.

(2) Compliance with any permit issued or enforced pursuant to this Section.

(3) Compliance, as determined by a court of competent jurisdiction, with provisions of
the property lease for the exploration, development, and production of solar energy
on which the facility is located and that the violation would require closure of the facility. Also requires the department notify the lessor of any enforcement action against a permittee or upon a claim against the bond or other instrument.

Proposed law further specifies that in determining the adequacy of the amount or other specific requirements of the bond or other financial security, the secretary must consider the following:

1) The assets, debts, and compliance history of the applicant or permittee.

2) The condition and capacity of the facilities to be covered by such security.

3) The estimated cost of site closure and remediation including the removal of the facility and associated infrastructure with the goal of restoring the property to its pre-construction condition. Specifies that an increase in the amount of financial security required must be secured by the permit holder within 30 days of application of the increase by the secretary.

Present law prohibits the secretary from preventing any person from developing, installing, or operating a solar device on his own property for residential use. Proposed law retains present law and adds a prohibition on the collection of any fee associated with such use.

Proposed law prohibits the construction or operation of any solar power generation facility that has a footprint of 10 or more acres without holding a permit issued pursuant to the rules and regulations provided for in proposed law.

Proposed law mandates the collection of the following fees:

1) An application fee not to exceed $15 per acre of the solar power generation facility footprint.

2) An application processing fee not to exceed $500.

3) An annual monitoring and maintenance fee the initial year after issuance of the permit and not to exceed $15 per acre of the facility footprint thereafter. Specifies that the fee charged by the dept. cannot exceed its budgeted implementation and administration costs for the year the fee is charged.

Proposed law requires a decommissioning plan for the facility that plans for closure at the end of life of the facility as well as closure in the event of a disaster making operation of the power generation facility impossible. Further requires that the plan be updated every five years and reviewed for sufficiency by the department and approved by the secretary.

Proposed law requires power generation facilities who are otherwise exempt from obtaining a bond or other acceptable financial security under proposed law or that are in construction prior to Aug. 1, 2022 to register with the department and pay an annual monitoring and maintenance fee. Further specifies that beginning Jan. 1, 2024 facilities must be in compliance with proposed law and dept. rules and regulations, including financial security and submission of a decommissioning plan.

Proposed law provides for the disposition of all moneys collected from fees provided for in proposed law into the Mineral and Energy Operation Fund.

Proposed law defines the terms "solar power generation facility" and "solar device".

Proposed law requires the Dept. of Natural Resources to reimburse the state general fund within five years for any appropriation received within the first two years.

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Proposed law exempts certain facilities that provide power to Public Service Commission regulated utilities or the council of the city of New Orleans from the bonding requirement when all of the following are met:

(1) The facility holds a corporate guarantee from the regulated electric utility provider in a form acceptable to the secretary and sufficient to pay the cost of the decommissioning plan provided for in proposed law.

(2) A sale or transfer of the facility does not terminate the provision of power to the regulated electric facility.

(3) The contract between the facility and the regulated utility provides for site decommissioning at the end of the facility's life or at the conclusion, termination, or default of the contract with the regulated utility, whichever occurs first.

(4) The Public Service Commission promulgates rules and regulations providing for decommissioning requirements for solar power generation facilities.

Proposed law provides that if a solar power generation facility is sold or otherwise transferred, the secretary cannot release the bond or other financial security of the seller or transferor until the buyer or transferee provides a bond or other acceptable financial security in accordance with the provisions of proposed law.

Proposed law requires the Dept. of Natural Resources to reimburse the state general fund by June 30, 2026, for any appropriation to the department for the administration and regulation of solar power generating facilities for Fiscal Years 2022-2023 or 2023-2024 from any revenues received from fees collected pursuant to this Act.

(Amends R.S. 30:136.3(D) and 1154(A)(intro. para.), (B), (C), and (D); Adds R.S. 30:136.3(B)(5) and 1154(A)(9), (E), and (F))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Natural Resources and Environment to the original bill:

1. Make technical changes.

2. Narrow the requirements for calculating the estimated cost of site closures and remediation for purposes of determining the adequacy of the bond or other financial security.

3. Cap the amount the department can charge in fees to an applicant or permit holder in a given fiscal year at an amount not to exceed the department's budgeted cost of implementing and administering the program.

4. Change the review process for decommissioning plans from only requiring plans to be reviewed for sufficiency by the department to requiring plans be updated every five years after the initial plan submission and be reviewed for sufficiency by the department.

5. Require power generation facilities in construction prior to Aug. 1, 2022, to register with the department and pay an annual monitoring and maintenance fee.

6. Specify that beginning Jan. 1, 2024, facilities must be in compliance with proposed law and department rules and regulations, including financial security and submission of a decommissioning plan.

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The House Floor Amendments to the engrossed bill:

1. Remove the prohibition of the installation of solar devices that do not meet certain standards.

2. Clarify that the revenue from the fees are to be used to regulate solar power generation facilities.

3. Exempt certain facilities that provide power to Public Service Commission regulated utilities or the council of the city of New Orleans from the bonding requirement and establish additional criteria which must be met in order to be exempted.

4. Prohibit the secretary from releasing the bond or other financial security if the solar power generation facility is sold or transferred until the buyer or transferee provides a bond or other acceptable financial security.

5. Change the per acre application fee and the annual monitoring and maintenance fee from $50 to $15.

6. Clarify that the application handling fee is for the entire project.

7. Exempt facilities that are exempt from obtaining a bond or other acceptable financial security under proposed law and are in construction or operation on or before Aug. 1, 2022, from the requirement to obtain financial security.

8. Require the Dept. of Natural Resources to reimburse the state general fund within five years for any appropriation received within the first two years.

9. Make technical changes.