

2022 Regular Session

HOUSE BILL NO. 655

BY REPRESENTATIVE COUSSAN AND SENATOR ALLAIN

ENERGY/ALTERNATE: Provides relative to the management of solar resources

1 AN ACT

2 To amend and reenact R.S. 30:136.3(D) and 1154(A)(introductory paragraph), (B), (C), and

3 (D) and to enact R.S. 30:136.3(B)(5) and 1154(A)(9), (E), and (F), relative to solar

4 energy; to provide for the powers and duties of the secretary of the Department of

5 Natural Resources; to require a permit to construct or operate a solar power

6 generation facility; to provide for fees; to provide for financial security; to provide

7 for the Mineral and Energy Operation Fund; to provide for definitions; and to

8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 30:136.3(D) and 1154(A)(introductory paragraph), (B), (C), and (D)

11 are hereby amended and reenacted and R.S. 30:136.3(B)(5) and 1154(A)(9), (E), and (F) are

12 hereby enacted to read as follows:

13 §136.3. Mineral and Energy Operation Fund

14 \* \* \*

15 B. Out of the funds remaining in the Bond Security and Redemption Fund,

16 after a sufficient amount is allocated from that fund to pay all obligations secured by

17 the full faith and credit of the state which become due and payable within any fiscal

18 year as required by Article VII, Section 9(B) of the Constitution of Louisiana, the

1 treasurer in each fiscal year shall pay into the fund revenues and amounts from the  
2 following sources:

3 \* \* \*

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

5 \* \* \*

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

11 \* \* \*

12 §1154. Regulations governing solar ~~devices~~ power generation facilities; solar leases

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

21 \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26           (b) An application processing fee not to exceed five hundred dollars for the  
27           entire project.

1           (c) An annual monitoring and maintenance fee beginning the year after  
2           issuance of the permit and every year thereafter not to exceed fifteen dollars per acre  
3           of the facility footprint.

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

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

14          (3) Any power generation facility in construction or operating before August  
15          1, 2022, shall register with the department and pay the annual monitoring and  
16          maintenance fee provided for in this Subsection. Beginning January 1, 2024, such  
17          facilities shall be in compliance with this Section and any rules and regulations  
18          promulgated pursuant to this Section, including obtaining financial security and  
19          submitting a decommissioning plan. However, the requirement to obtain financial  
20          security shall not apply to facilities exempt from obtaining a bond or other  
21          acceptable financial security pursuant to Subparagraph (A)(9)(c) of this Section and  
22          in construction or operation on or before August 1, 2022.

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

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

28          (1) "Solar power generation facility" means one or more solar devices and  
29          any facility or equipment used to support the operation of the solar devices, including

1        any underground or above ground electrical transmission or communications line,  
2        an electric transformer, a battery storage facility, an energy storage facility,  
3        telecommunications equipment, a road, a meteorological tower, or a maintenance  
4        yard.

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

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

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

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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)]

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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.

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.



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.