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2022 Regular Session

ACT No. 555

HOUSE BILL NO. 655

BY REPRESENTATIVE COUSSAN AND SENATORS ALLAIN, CATHEY, FESI,
HEWITT, MILLIGAN, FRED MILLS, MIZELL, MORRIS, REESE, STINE, AND
WOMACK

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 terms, conditions, and exceptions; to provide for the Mineral and Energy
8 Operation Fund; to provide for definitions; and to 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

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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 except the secretary may accept any financial security provided to the
 28 landowner or lessor for facilities exempted from permit fees pursuant to Paragraph
 29 (D)(3) of this Section. Any bond or other instrument shall ensure the following:

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

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

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

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

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

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

14 (iii) The estimated cost of site closure and remediation that includes the
15 estimated cost of removing the solar power generation facility and associated
16 infrastructure from the property and restoring the property to as near as reasonably
17 possible to the condition of the property prior to the commencement of construction
18 of the facility. The secretary may consider only the salvage value of the facility and
19 associated infrastructure in determining the estimated cost of site closure and
20 remediation if the materials are available in decommissioning during a bankruptcy
21 of the facility owner or operator. The secretary shall adjust the estimated cost based
22 upon any updated decommissioning plan submitted pursuant to Paragraph (D)(2) of
23 this Section. Any increase in the amount of financial security required shall be
24 secured by the permit holder within thirty days of notification of the increase.

25 (c) Subparagraphs (a) and (b) of this Paragraph shall not apply to the
26 following solar power generation facilities that are owned by an electric utility
27 provider regulated by the Public Service Commission or the council of the city of
28 New Orleans:

29 (i) Facilities located on land owned by the electric utility provider and the
30 provider is capable of demonstrating a decommissioning plan to the regulator.

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1 (ii) Facilities located on land leased by the electric utility provider and that
2 meet both of the following conditions:

3 (aa) The regulated electric utility provider guarantees to the landowner or
4 lessor that the regulated electric utility provider will pay the cost of the
5 decommissioning plan provided for in Paragraph (D)(2) of this Section and the
6 guarantee is acceptable to the secretary.

7 (bb) The lease between the landowner or lessor and the regulated electric
8 utility provider provides for site decommissioning at the end of the facility's life, at
9 the termination of the lease, as determined by a court of competent jurisdiction, and
10 upon other circumstance that requires closure of the facility.

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

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

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

24 D.(1) No person shall construct or operate a solar power generation facility
25 that has a footprint of ten or more acres without holding a permit issued pursuant to
26 the rules and regulations provided for in this Section. A permit issued pursuant to
27 this Subsection shall only pertain to the implementation of the decommissioning plan
28 as provided in Paragraph (2) of this Subsection, and financial security required
29 pursuant to Paragraph (A)(9) of this Section. In addition to other requirements for
30 the issuance of a permit, the department shall collect the following fees:

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

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

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

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

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

18 (3) Any solar power generation facility that is certified by the Public Service
19 Commission or the council of the city of New Orleans on or before August 2,
20 2022, shall be exempt from the fees provided for in this Section, shall register with
21 the department by January 1, 2023, and comply with the requirements of this Section
22 and any rule and regulations promulgated pursuant to this Section by June 30, 2024.

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
30 any underground or above ground electrical transmission or communications line

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1 located within the footprint of the facility, an electric transformer, a battery storage
2 facility, an energy storage facility, telecommunications equipment, a road, a
3 meteorological tower, or a maintenance yard.

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

7 (3) "Salvage value" means the actual or estimated scrap value of the raw
8 materials once removed from the facility and ready for sale.

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

11 Section 2. The Department of Natural Resources shall reimburse the state general
12 fund by June 30, 2026, for any appropriation to the department for the administration and
13 regulation of solar power generating facilities for Fiscal Years 2022-2023 or 2023-2024 from
14 any revenues received from fees collected pursuant to the Act. For Fiscal Years 2022-2023
15 through Fiscal Years 2025-2026, the reimbursement of the state general fund shall be
16 considered costs for the purposes of R.S. 30:1154(D)(1)(d) as enacted by this Act.

17 Section 3. This Act shall become effective on August 2, 2022; if vetoed by the
18 governor and subsequently approved by the legislature, this Act shall become effective on
19 the day following such approval by the legislature or August 2, 2022, whichever is later.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____