



**ARIZONA STATE SENATE**  
*Fifty-Sixth Legislature, First Regular Session*

**VETOED**

**AMENDED**

FACT SHEET FOR H.B. 2618

decommissioning; solar and wind; standards

Purpose

Allows a city, town or county to adopt zoning standards, site specific conditions and permitting requirements or procedures for a solar or wind energy power plant (power plant) that is located in the city, town or county. Establishes decommissioning and site restoration standards for power plants.

Background

A county board of supervisors must adopt a long-term comprehensive plan for the development of an area within the jurisdiction that aims to: 1) conserve the natural resources of the county; 2) ensure efficient expenditure of public monies; and 3) promote the health, safety, convenience and general welfare of the public. For counties with a population of 125,000 persons or more, the comprehensive plan must include consideration of air quality and access to incident solar energy for all general categories of land use ([A.R.S. § 11-804](#)).

A *solar energy device* is a system or series of mechanisms designed primarily to provide: 1) heating; 2) cooling; 3) electrical power; 4) mechanical power; 5) solar daylighting; or 6) any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means ([A.R.S. § 44-1761](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

***Local Government Power Plant Regulations***

1. Allows a city, town or county to adopt zoning standards, site specific conditions and permitting requirements or procedures for a power plant that is located in the city, town or county.
2. Requires an owner or operator of a power plant to comply with the applicable standards, conditions, requirements and procedures for a power plant that are adopted by the city, town or county in which the power plant is to be located.

***Transfer or Sale of a Power Plant***

3. Prohibits the transfer of a power plant or special use permit or the sale of the entity owning the power plant to occur without written acceptance by the transferee of the transferor's obligations, including:
  - a) the obligation to maintain and implement a Decommissioning and Site Restoration Plan (Plan);
  - b) to maintain the prescribed financial assurance; and
  - c) to maintain the prescribed liability insurance.
4. Stipulates that a transfer or sale does not eliminate the liability or responsibility of a transferor or of any other party under liability or responsibility of an applicant or of any other party for acts or omissions of the transferor or other party occurring before the transfer or sale, except when the transferee and transferor provide for the transfer of liability or responsibility by agreement.
5. Allows the city, town or county, for a transfer of unit ownership, to reassess the amount of any financial assurance required.
6. Requires the power plant owner or operator to reimburse any reasonable costs incurred by the city, town or county to obtain the reassessment.
7. Allows a city, town or county to establish a procedure for:
  - a) receiving notice of a sale and transfer of obligations; and
  - b) approving a sale and transfer of obligations.
8. Requires the power plant owner, if a power plant owner sells a power plant to an outlined entity, to provide written notice of the sale to the city, town or county.
9. Requires the city, town or county, within 15 days after receiving the notice, to waive the outlined requirements and return or release to the power plant owner any financial assurance provided to the city, town or county unless otherwise provided by agreement.
10. Allows a city, town or county, before or in conjunction with approving a land use or zoning permit application for a power plant, to adopt a procedure for waiving the prescribed financial assurance if the owner or operator of the planned power plant submits the following documentation in conjunction with its application:
  - a) evidence that the power plant is being constructed pursuant to a build-transfer agreement with an outlined entity and the transfer of ownership will occur within a reasonable time period, as determined by the city, town or county, after the date of construction or operation; and
  - b) the prescribed documentation as applicable to the relevant entity.

***Maintenance of a Power Plant***

11. Requires the owner or operator of a power plant to:
  - a) maintain the plant in good condition and repair; and
  - b) except during periods of regular maintenance and planned curtailments, ensure that the plant remains functional and operational until decommissioning of the plant is initiated.

12. Allows a city, town or county to adopt reasonable timelines and requirements for the cure and repair of visible damage or defects to a visible component of a power plant and for the restoration and repair, replacement or removal of any component of a power plant that is nonfunctional or inoperable.

***Noncompliance and Abandonment of a Power Plant***

13. Allows a city, town or county to adopt and enforce reasonable penalties and procedures for the violation of or noncompliance with any timeline or requirements that is authorized, including initiating or completing decommissioning or site restoration at the owner's or operators' expense if the owner or operator fails to comply with the city's, town's or county's reasonable timelines or requirements.
14. Prohibits a power plant owner or operator from abandoning a power plant for any reason, including bankruptcy or financial insolvency.
15. Requires the power plant owner, if the owner files for bankruptcy or otherwise becomes insolvent, to immediately provide written notice of the bankruptcy or insolvency to the city, town or county where the power plant is located.
16. Allows a city, town or county to adopt:
  - a) reasonable procedures for determining when a power plant has been abandoned; and
  - b) reasonable timelines and procedures for initiating and completing the decommissioning and site restoration for a power plant that has been abandoned or whose owner has filed for bankruptcy or otherwise becomes insolvent.
17. Prohibits a city, town or county, notwithstanding any timeline or procedure that a city, town or county adopts, from initiating decommissioning or site restoration unless the city, town or county provides notice and an opportunity for a hearing to the following:
  - a) the landowner where the power plant is located; and
  - b) all applicable creditors and parties to the relevant bankruptcy proceeding.
18. Requires a power plant owner or operator to provide a city, town or county where the power plant is located with a Plan, before a city, town or county may approve a land use or zoning permit application for a power plant.
19. Allows a city, town or county to adopt procedures for reviewing and approving a Plan that a power plant owner or operator submits to the city, town or county.
20. Allows the Plan procedures to include requirements for receiving or reviewing public comments or conducting one or more public meetings or hearings.
21. Allows a city, town or county to establish the minimum components of a Plan, including:
  - a) a brief narrative that describes how the power plant will be decommissioned and how the site will be restored and that is consistent with the minimum decommissioning and site restoration standards and procedures;
  - b) how the power plant will be decommissioned;
  - c) how the site will be restored;

- d) an estimate of the cost of decommissioning the power plant and restoring the power plant site, calculated by a person whom the city, town or county deems qualified to estimate decommissioning and site restoration costs for the power plant, net of salvage value; and
- e) a description of the financial resources that the power plant owner or operator will use to accomplish decommissioning and restoration.

22. Requires a power plant owner or operator to decommission a power plant and restore a power plant site as described in the approved Plan, unless a city, town or county determines that the Plan is not necessary.

***Removal of Power Plant and Power Plant Site Restoration***

23. Allows a city, town or county to adopt and enforce minimum standards and procedures for the decommissioning of a power plant that is subject to an authorized land use or zoning permit.

24. Requires the minimum standards and procedures for the decommissioning of a solar energy power plant to cover:

- a) for solar energy power plants, the removal of all aboveground components, including solar arrays, transformers, battery energy storage systems, aboveground collection cables and poles;
- b) for wind energy power plants, the removal of all aboveground components, including turbines, blades nacelles, towers, transformers, battery energy storage systems, aboveground collection cables and poles;
- c) the removal of all foundations, buried project components and collection lines to a depth determined by the city, town or county, unless the city, town or county authorizes a lesser depth in writing or, if the power plant is located on private land, the landowner agrees to a lesser depth and the existence of the remaining foundations or buried project components are disclosed in writing and recorded with the county recorder in the county where the land is located; and
- d) the completion of all removal activities after decommissioning initiation within a time period that is designated by the city, town or county, unless the city, town or county authorizes a longer time period in writing.

25. Allows a city, town or county to adopt and enforce minimum standards and procedures for the restoration of a power plant site that is subject to a land use or zoning permit.

26. Requires the minimum standards and procedures to cover:

- a) the reasonable minimization or filling of any ground disturbances and restoration of the site's ground contours and grading to its original state, as determined by the city, town or county where the site is located;
- b) the reasonable restoration and reestablishment of disturbed on-site soils, vegetation and ground covers to a condition that is consistent with or supports the return of the site over time to its natural undeveloped condition, as determined by the city, town or county where the site is located, which may include planting one or more site-specific native plants or species of one or more sizes, varieties or maturities per square area;
- c) the adequate restoration, retention or removal of other improvements, including paved roads, access roads, fencing, drainage improvements, wells and other residual minor improvements, as determined by the city, town or county where the site is located;

- d) the removal and remediation of any hazardous materials and waste; and
  - e) the completion of all site restoration activities after decommissioning completion within a time period that is designated by the city, town or county unless the city, town or county authorizes in writing a longer time period.
27. States irrigation is not required within the minimum standards and procedures.
28. Allows a city, town or county, after providing reasonable notice to the landowner, to enter the site to initiate or complete decommissioning pursuant to the Plan, if a power plant owner or operator fails to complete decommissioning and site restoration within the time period prescribed by the city, town or county.
29. Requires a city, town or county to adopt a procedure for:
- a) certifying when decommissioning and site restoration activities have been completed;
  - b) receiving notification related to the completion; and
  - c) releasing a power plant owner's or operator's financial assurance.
30. Requires, if a power plant owner or operator completes all decommissioning and site restoration activities and notifies the city, town or county in writing that all decommissioning and site restoration activities have been completed, within 90 days after the date of the notice, the:
- a) owner or operator to be released from any obligation; and
  - b) city, town or county to return or release any remaining owner's or operator's financial assurance.
31. Requires the owner or operator of a power plant to provide, on request, a copy of the Plan to the Arizona Corporation Commission (ACC), Arizona State Land Department and the Arizona Department of Environmental Quality.

***Financial Assurance***

32. Requires a power plant owner or operator, beginning on a date determined by the city, town or county where a power plant is located, to continuously maintain financial assurance, in a form determined by the city, town or county which may include a bond in an amount that is not less than the total estimated cost to decommission the power plant and restore the power plant site, as determined by the city, town or county where the power plant is located.
33. Allows a city, town or county to require a power plant owner or operator to update the provided cost estimate or adopt procedures for the owner or operator of a power plant to submit updated cost estimates to the city, town or county based on a schedule or timeline that is established by the city, town or county.
34. Allows a city, town or county that adopts requirements or procedures to reassess the amount of any financial assurance required and, based on most recent cost estimate received by the city, town or county, to modify or adjust the amount required.
35. Allows a city, town or county to adopt procedures for an owner or operator of a power plant to submit the estimated salvage value of the power plant equipment at the time of decommissioning with the cost estimate or an updated cost estimate, and for the city town or county to consider during the calculation of the amount of financial assurance.

36. Allows the city, town or county, if the city, town or county adopts the procedures, to establish minimum requirements for determining how the salvage value should be estimated and who should be deemed qualified to make the estimates.
37. Allows a city, town or county that has adopted the procedures to allow a financial assurance to be not less than the total estimated cost of decommissioning the power plant and restoring the power plant site, net of the estimated salvage value at the time of decommissioning.
38. Allows a city, town or county that has adopted the authorized procedures to waive the financial assurance if the city, town or county determines, based on the most recent cost estimate submitted to and approved by the city, town or county, that the estimated salvage value of the power plant at the time of decommissioning is sufficient to cover the estimated cost of decommissioning the power plant and restoring the power plant site.
39. States a power plant owner or operator that submits an estimated salvage value to a city, town or county is not guaranteed a waiver of financial assurance.
40. Requires the city, town or county that has adopted the procedures to consider the estimated salvage value when determining the amount of financial assurance.
41. Allows a power plant owner or operator that is a city, town or county or other local governmental entity or political subdivision of Arizona, in lieu of maintaining the financial assurance, to demonstrate financial capability of meeting the costs of decommissioning the power plant and restoring the power plant site by submitting:
  - a) a letter that is signed by the chief financial officer of the city, town, county or other governmental entity or political subdivision stating it is financially capable of meeting the costs of decommissioning the power plant and restoring the site; and
  - b) a statement specifying the details of the financial arrangements that the city, town, county or other local governmental entity or political subdivision of Arizona will use to meet the estimated decommissioning and site restoration costs.
42. Allows a power plant owner or operator that is a public service corporation regulated by the ACC, in lieu of maintaining the required financial assurance, to demonstrate financial capability of meeting the costs of decommissioning the power plant and restoring the site by submitting:
  - a) an order issued by the ACC stating that the ACC has adopted a financial assurance requirement for the public service corporation that is substantially similar to the established requirement and approving a process or mechanism for covering the estimated cost of decommissioning the power plant and restoring the site; and
  - b) a statement specifying the details of the financial arrangements or mechanism that the ACC has approved to ensure that the public service corporation meets the estimated decommissioning and site restoration costs.
43. Allows a city, town or county to use the financial assurance required to cover the cost of initiating or completing decommissioning or site restoration as described in the Plan, or if the power plant owner or operator fails to complete decommissioning and site restoration.

***Commercial General Liability Insurance for a Power Plant***

44. Requires a power plant owner or operator to maintain a commercial general liability insurance policy that results in coverage of any reasonable liability to the construction, maintenance, decommissioning and operation of the power plant or the restoration of the power plant site.
45. Requires a power plant owner or operator to immediately provide written notice of any cancellation of the insurance policy to the city, town or county where the power plant is located.
46. Allows the city, town or county where the power plant is located, to the extent that a contractual relationship exists between a power plant owner or operator and the city, town or county where the power plant is located, to require the power plant owner or operator to maintain, when required by the contract, commercial general liability insurance coverage with respect to the power plant that names the city, town or county as an additional insured.
47. Requires a power plant owner or operator, when a city, town or county is named as an additional insured, to provide a certificate of insurance demonstrating coverage on written request from the city, town or county.
48. States a city, town or county that approves a permit, standard, condition, requirement or Plan for a power plant is not liable or responsible for any damages, any real or personal injuries or any acts or omissions related to or resulting from the construction, operation, maintenance or decommissioning of the power plant or the restoration of the power plant site based solely on the fact that the city, town or county where the power plant is located issued the approval.
49. Prohibits the city, town or county from being named as an additional party or defendant in any cause of action that is based solely on any approval.

***Applicability of Power Plant Regulations***

50. States the power plant regulations apply to any power plant that is the subject of an initial land use or zoning permit application if the application is submitted:
  - a) to a city, town or county where the power plant is located; and
  - b) for the first time for the power plant on or after the effective date.
51. States the power plant regulations do not apply to a power plant that is the subject of an initial land use or zoning permit application if the application is submitted:
  - a) to a city, town or county where the power plant is located; and
  - b) for the first time for the power plant on or after the effective date.
52. States the solar energy power plant regulations apply only to a ground-monitored solar energy system that is 51 kilowatts or more and that is located or proposed to be located on vacant or agricultural land.
53. States the solar energy power plant regulations do not apply to a solar energy system that is mounted on a residential, commercial or industrial roof or structure that has a primary purpose to provide shade or shelter over lands that have been dedicated, improved or zoned for a purpose other than to generate solar electric energy.

***Miscellaneous***

54. Becomes effective on the general effective date.

Amendment Adopted by Committee

1. Requires the owner or operator of a power plant to maintain the plant in good condition and repair and to ensure that the plant remains functional and in continuous operation until decommissioning of the plant is initiated.
2. Stipulates that the prescribed decommissioning and site restoration requirements supersede any city, town or county standard, rule, requirement or ordinance that is related to the decommissioning or restoration of a power plant unless otherwise specified.
3. Modifies the requirements for site restoration.
4. Specifies the site must be restored within 18 months of the completion of decommissioning.
5. Applies the prescribed regulations to a solar energy power plant that is the subject of a permit application that is submitted to a city, town or county on the effective date.
6. Stipulates that the regulations do not apply to small scale solar energy power plants that are mounted on residential, commercial or industrial structures and that are used primarily for on-site power.
7. Makes technical and conforming changes.

Amendments Adopted by the Committee of the Whole

1. Outlines abilities of a city, town or county relating to power plants including:
  - a) establishing a procedure for the sale and transfer of a power plant;
  - b) adopting a procedure for waiving the financial assurance of a power plant if the owner or operator of the power plant submits outlined documentation;
  - c) adopting and enforcing reasonable penalties and procedures for the violation of or noncompliance of any timeline or requirement for the decommissioning of a power plant;
  - d) adopting reasonable procedures for determining when a power plant has been abandoned and for initiating and completing the Plan;
  - e) adopting procedures for reviewing and approving a Plan;
  - f) enforcing minimum standards and procedures for the decommissioning and restoration of a power plant site; and
  - g) requiring the power plant owner or operator to contractually maintain commercial general liability insurance coverage.
2. States a city, town or county is not liable or responsible for any damages, injuries, or acts of omissions related to or resulting from the construction, operation, maintenance or decommissioning of a power plant.
3. Outlines requirements of a power plant owner for the:
  - a) sale or transfer of a power plant; and
  - b) maintenance of a power plant.
4. Prohibits a power plant owner or operator from abandoning a power plant for any reason, including bankruptcy or financial insolvency.



5. Updates the financial assurance and the commercial general liability insurance requirements for power plants.
6. Outlines applicability of the power plant requirements.
7. Makes technical and conforming changes.

Governor's Veto Message

The Governor indicates in her [veto message](#) that H.B. 2618 encourages an inconsistent statewide patchwork of regulations for renewable energy projects and would have a deep chilling effect on renewable energy deployment in Arizona.

House Action

NREW	2/14/23	DP	6-2-1-1
3 <sup>rd</sup> Read	3/1/23		31-28-1
Final Read	6/13/23		31-27-2

Senate Action

NREW	3/30/23	DPA	4-3-0
3 <sup>rd</sup> Read	6/12/23		16-13-1

Vetoed by the Governor 6/19/23

Prepared by Senate Research

June 20, 2023

RA/slp