



Sen. Michael W. Frerichs

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1 AMENDMENT TO SENATE BILL 3271

2 AMENDMENT NO. _____. Amend Senate Bill 3271 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Wind
5 Energy Facilities Construction and Deconstruction Act.

6 Section 5. Purpose. The primary purpose of this Act is to
7 promote the State's welfare by protecting landowners during the
8 construction and deconstruction of commercial wind energy
9 facilities.

10 Section 10. Definitions. As used in this Act:

11 "Commercial wind energy facility" means a wind energy
12 conversion facility of equal or greater than 500 kilowatts in
13 total nameplate generating capacity.

14 "Commercial wind energy operator" means a private
15 commercial enterprise that owns or operates a wind energy

1 facility of equal to or greater than 500 kilowatts in total
2 nameplate capacity.

3 "Commission" means the Illinois Commerce Commission.

4 "Deconstruction" means the removal of a commercial wind
5 energy facility from the property of a landowner and the
6 restoration of that property to the condition in which it
7 existed immediately before the construction of the commercial
8 wind energy facility, including, but not limited to, the
9 restoration of the topography of the property to its condition
10 before construction; provided, however, that foundations,
11 pads, electrical lines, and any other underground facility must
12 be removed to a depth of 5 feet below the surface of the
13 ground.

14 "Department" means the Illinois Department of Agriculture.

15 "Landowner" means any person with an ownership interest in
16 property (i) that is used for agricultural purposes and (ii)
17 that is party to an underlying agreement.

18 "Underlying agreement" means a written or verbal agreement
19 with a landowner, including, but not limited to, an easement,
20 option, lease, or license, under the terms of which another
21 person has constructed, constructs, or intends to construct a
22 commercial wind energy facility on the property of the
23 landowner.

24 "Wind turbine" means a wind turbine of equal to or greater
25 than 500 kilowatts in total nameplate generating capacity.

26 "Wind turbine tower height" means the distance from the

1 wind turbine rotor blade at its highest point to the top
2 surface of the wind turbine foundation.

3 Section 15. Construction activities.

4 (a) Every commercial wind energy operator that is the owner
5 of a commercial wind energy facility located on land owned by
6 another person or entity shall enter into an agricultural
7 impact mitigation agreement with the Department outlining
8 construction standards and policies designed to preserve the
9 integrity of any agricultural land that is impacted by the
10 construction of a commercial wind energy facility. The
11 agricultural impact mitigation agreement shall be entered into
12 prior to the construction of the commercial wind energy
13 facility. The agricultural impact mitigation agreement is
14 binding on any subsequent commercial wind energy operator that
15 takes ownership of the commercial wind energy facility that is
16 the subject of the agreement. The agricultural impact
17 mitigation agreement is not required for commercial wind energy
18 facilities already constructed or properly permitted or sited
19 by decision of a county or municipality made prior to the
20 effective date of this Act.

21 (b) The Department shall adopt rules that are necessary and
22 appropriate for the implementation and administration of
23 agricultural impact mitigation agreements as required under
24 this Act.

1 Section 20. Deconstruction activities.

2 (a) The commercial wind energy operator is responsible for
3 deconstruction of the commercial wind energy facility and for
4 all costs associated with deconstruction of that facility and
5 associated facilities.

6 (b) A commercial wind energy facility is presumed to be at
7 the end of its useful life if (i) the commercial wind energy
8 operator fails, for a period of 12 consecutive months, to
9 operate a commercial wind energy facility or wind turbine for
10 the purpose of which it was designed and installed and (ii) the
11 commercial wind energy operator fails, for a period of 6
12 consecutive months, to pay the landowner moneys owed to him or
13 her in accordance with the underlying agreement.

14 (c) The commercial wind energy operator shall begin
15 deconstruction of the commercial wind energy facility within 8
16 months after the time the facility or turbine reaches the end
17 of its useful life. Deconstruction must be completed within 18
18 months after the commercial wind energy facility reaches the
19 end of its useful life.

20 (d) Commercial wind energy operators of commercial wind
21 energy facilities not properly sited or permitted by decision
22 of a county or municipality prior to the effective date of this
23 Act shall file with the Commission a plan detailing the
24 estimated deconstruction cost per turbine, in current dollars
25 at the time of filing, for the proposed commercial wind energy
26 facility. The plan must also include a comprehensive detailed

1 description describing how the commercial wind energy operator
2 plans to pay for the deconstruction of the commercial wind
3 energy facility. The Commission may at any time after the
4 construction of the commercial wind energy facility require the
5 commercial wind energy operator to file a report with the
6 Commission describing how the operator is fulfilling its
7 obligations under this Section.

8 (e) The Commission shall require the commercial wind energy
9 operator to secure a performance bond, surety bond, letter of
10 credit, corporate guarantee, or other form of financial
11 assurance that is acceptable to the Commission to cover the
12 anticipated costs of deconstruction of the commercial wind
13 energy facility or wind turbine. In determining the anticipated
14 costs of deconstruction, the Commission shall take into
15 account, among other things, the information provided under
16 subsection (d), the number of wind turbines and related
17 commercial wind energy facilities involved, the original
18 construction costs of the commercial wind energy facilities,
19 the size and capacity of the wind turbines, and the
20 construction method and techniques for the wind turbines and
21 other commercial wind energy facilities. The Commission may
22 reevaluate the anticipated costs of deconstruction every 5
23 years after its initial assessment or if there is a change in
24 commercial wind energy operator for a particular commercial
25 wind energy facility and, based on that reevaluation, require
26 changes in the level of financial assurance required from the

1 commercial wind energy operator.

2 (f) Commercial wind energy operators of sited or permitted
3 commercial wind energy facilities existing on the effective
4 date of this Act shall file with the Commission information
5 required in subsection (d) or any existing agreement with a
6 county or municipality addressing deconstruction issues within
7 one year after the effective date of this Act. The Commission
8 shall evaluate such information and existing agreement and make
9 advisory recommendations to the commercial wind energy
10 operator and county or municipality regarding changes in the
11 level of financial assurance required from the commercial wind
12 energy operator. The Commission may reevaluate the anticipated
13 costs of deconstruction every 5 years after its initial
14 assessment or if there is a change in commercial wind energy
15 operator for a particular commercial wind energy facility and,
16 based on that reevaluation, make advisory recommendations
17 regarding changes in the level of financial assurance required
18 from the commercial wind energy facility.

19 (g) If the commercial wind energy operator does not
20 complete deconstruction, the Commission shall take such action
21 as necessary to complete deconstruction, including drawing
22 upon the financial assurance required in subsection (e). The
23 entry into an underlying agreement shall constitute agreement
24 and consent of the parties to the agreement and their
25 respective heirs, successors, and assigns that the Commission
26 may take such action as may be necessary for the deconstruction

1 of the commercial wind energy facility or wind turbine,
2 including the exercise by the Commission, Commission staff, and
3 their contractors of the right of ingress and egress for the
4 purpose of deconstruction of the commercial wind energy
5 facility.

6 (h) If there is a change in ownership of the commercial
7 wind energy facility, the commercial wind energy operator
8 assuming ownership of the facility is required to provide
9 notice to the Commission of such change and the existing
10 financial assurance requirements for the facility as required
11 in subsection (e) shall apply to the new operator.

12 (i) The Commission shall adopt rules that are necessary and
13 appropriate for the implementation and administration of
14 deconstruction activities as required under this Act.

15 Section 99. Effective date. This Act takes effect January
16 1, 2013."