

104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

HB3563

Introduced 2/18/2025, by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020
505 ILCS 147/10
505 ILCS 147/15

Amends the Counties Code. Provides that a commercial wind energy facility or commercial solar energy facility proposed to be located on property in an unincorporated area of the county within the zoning jurisdiction of a municipality and located adjacent to the corporate boundary of a municipality shall either be annexed to the municipality or be subject to the municipality's zoning regulations. Provides factors for determining if a request for siting approval or a special use permit for a commercial wind energy facility or a commercial solar energy facility, or modification of an approved siting or special use permit, is in compliance with the standards and conditions imposed in the Code, the zoning ordinance adopted consistent with the Code, and the conditions imposed under State and federal statutes and regulations. Provides that a county may not approve a request for siting approval or a special use permit for a commercial wind energy facility or a commercial solar energy facility or modification of an approved siting or special use permit, if the proposal shall disturb more than one acre of land, unless the facility owner has obtained a National Pollution Discharge Elimination System ("NPDES") permit from the Illinois Environmental Protection Agency. Requires a facility owner to provide the county in which a commercial solar energy facility or commercial wind energy facility to be located, a deconstruction plan that has been prepared by a professional engineer who has been selected by the facility owner. Provides that, based on an initial evaluation or reevaluation during the county approval process, the county may require changes in the level of financial assurance used to calculate the financial assurance level from the facility owner. Amends the Renewable Energy Facilities Agricultural Impact Mitigation Act. Provides that the standard agricultural impact mitigation agreements shall be amended as needed to conform with the financial assurance procedures and requirements under specified provisions of the Counties Code. Makes other changes.

LRB104 09862 RTM 19930 b

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing
5 Section 5-12020 as follows:

6 (55 ILCS 5/5-12020)

7 Sec. 5-12020. Commercial wind energy facilities and
8 commercial solar energy facilities.

9 (a) As used in this Section:

10 "Commercial operation date" means the calendar date the
11 facility owner notifies the landowner, county, and Illinois
12 Department of Agriculture in writing that commercial operation
13 of a commercial solar energy facility or commercial wind
14 energy facility has commenced.

15 "Commercial solar energy facility" means a "commercial
16 solar energy system" as defined in Section 10-720 of the
17 Property Tax Code. "Commercial solar energy facility" does not
18 mean a utility-scale solar energy facility being constructed
19 at a site that was eligible to participate in a procurement
20 event conducted by the Illinois Power Agency pursuant to
21 subsection (c-5) of Section 1-75 of the Illinois Power Agency
22 Act.

23 "Commercial wind energy facility" means a wind energy

1 conversion facility of equal or greater than 500 kilowatts in
2 total nameplate generating capacity. "Commercial wind energy
3 facility" includes a wind energy conversion facility seeking
4 an extension of a permit to construct granted by a county or
5 municipality before January 27, 2023 (the effective date of
6 Public Act 102-1123).

7 "Facility owner" means (i) a person with a direct
8 ownership interest in a commercial wind energy facility or a
9 commercial solar energy facility, or both, regardless of
10 whether the person is involved in acquiring the necessary
11 rights, permits, and approvals or otherwise planning for the
12 construction and operation of the facility, and (ii) at the
13 time the facility is being developed, a person who is acting as
14 a developer of the facility by acquiring the necessary rights,
15 permits, and approvals or by planning for the construction and
16 operation of the facility, regardless of whether the person
17 will own or operate the facility.

18 "Nonparticipating property" means real property that is
19 not a participating property.

20 "Nonparticipating residence" means a residence that is
21 located on nonparticipating property and that is existing and
22 occupied on the date that an application for a permit to
23 develop the commercial wind energy facility or the commercial
24 solar energy facility is filed with the county.

25 "Occupied community building" means any one or more of the
26 following buildings that is existing and occupied on the date

1 that the application for a permit to develop the commercial
2 wind energy facility or the commercial solar energy facility
3 is filed with the county: a school, place of worship, day care
4 facility, public library, or community center.

5 "Participating property" means real property that is the
6 subject of a written agreement between a facility owner and
7 the owner of the real property that provides the facility
8 owner an easement, option, lease, or license to use the real
9 property for the purpose of constructing a commercial wind
10 energy facility, a commercial solar energy facility, or
11 supporting facilities. "Participating property" also includes
12 real property that is owned by a facility owner for the purpose
13 of constructing a commercial wind energy facility, a
14 commercial solar energy facility, or supporting facilities.

15 "Participating residence" means a residence that is
16 located on participating property and that is existing and
17 occupied on the date that an application for a permit to
18 develop the commercial wind energy facility or the commercial
19 solar energy facility is filed with the county.

20 "Protected lands" means real property that is:

21 (1) subject to a permanent conservation right
22 consistent with the Real Property Conservation Rights Act;
23 or

24 (2) registered or designated as a nature preserve,
25 buffer, or land and water reserve under the Illinois
26 Natural Areas Preservation Act.

1 "Supporting facilities" means the transmission lines,
2 substations, access roads, meteorological towers, storage
3 containers, and equipment associated with the generation and
4 storage of electricity by the commercial wind energy facility
5 or commercial solar energy facility.

6 "Wind tower" includes the wind turbine tower, nacelle, and
7 blades.

8 (b) Notwithstanding any other provision of law or whether
9 the county has formed a zoning commission and adopted formal
10 zoning under Section 5-12007, a county may establish standards
11 for commercial wind energy facilities, commercial solar energy
12 facilities, or both. The standards may include all of the
13 requirements specified in this Section but may not include
14 requirements for commercial wind energy facilities or
15 commercial solar energy facilities that are more restrictive
16 than specified in this Section. A county may also regulate the
17 siting of commercial wind energy facilities with standards
18 that are not more restrictive than the requirements specified
19 in this Section in unincorporated areas of the county that are
20 outside the zoning jurisdiction of a municipality and that are
21 outside the 1.5-mile radius surrounding the zoning
22 jurisdiction of a municipality.

23 (c) If a county has elected to establish standards under
24 subsection (b), before the county grants siting approval or a
25 special use permit for a commercial wind energy facility or a
26 commercial solar energy facility, or modification of an

1 approved siting or special use permit, the county board of the
2 county in which the facility is to be sited or the zoning board
3 of appeals for the county shall hold at least one public
4 hearing. The public hearing shall be conducted in accordance
5 with the Open Meetings Act and shall be held not more than 60
6 days after the filing of the application for the facility. The
7 county shall allow interested parties to a special use permit
8 an opportunity to present evidence and to cross-examine
9 witnesses at the hearing, but the county may impose reasonable
10 restrictions on the public hearing, including reasonable time
11 limitations on the presentation of evidence and the
12 cross-examination of witnesses. The county shall also allow
13 public comment at the public hearing in accordance with the
14 Open Meetings Act. The county shall make its siting and
15 permitting decisions not more than 60 ~~30~~ days after the
16 conclusion of the public hearing. Notice of the hearing shall
17 be published in a newspaper of general circulation in the
18 county. A facility owner must enter into an agricultural
19 impact mitigation agreement with the Department of Agriculture
20 prior to the date of the required public hearing. A commercial
21 wind energy facility owner seeking an extension of a permit
22 granted by a county prior to July 24, 2015 (the effective date
23 of Public Act 99-132) must enter into an agricultural impact
24 mitigation agreement with the Department of Agriculture prior
25 to a decision by the county to grant the permit extension.
26 Counties may allow test wind towers or test solar energy

1 systems to be sited without formal approval by the county
2 board.

3 (c-5) A commercial wind energy facility or commercial
4 solar energy facility proposed to be located on property in an
5 unincorporated area of the county within the zoning
6 jurisdiction of a municipality and located adjacent to the
7 corporate boundary of a municipality shall either be annexed
8 to the municipality subject to the requirements under Section
9 7-1-1 of the Illinois Municipal Code or be subject to the
10 municipality's zoning regulations.

11 (d) A county with an existing zoning ordinance in conflict
12 with this Section shall amend that zoning ordinance to be in
13 compliance with this Section within 120 days after January 27,
14 2023 (the effective date of Public Act 102-1123).

15 (e) A county may require:

16 (1) a wind tower of a commercial wind energy facility
17 to be sited as follows, with setback distances measured
18 from the center of the base of the wind tower:

19 Setback Description	Setback Distance
20 Occupied Community	2.1 times the maximum blade tip
21 Buildings	height of the wind tower to the
22	nearest point on the outside
23	wall of the structure

1	Participating Residences	1.1 times the maximum blade tip
2		height of the wind tower to the
3		nearest point on the outside
4		wall of the structure
5	Nonparticipating Residences	2.1 times the maximum blade tip
6		height of the wind tower to the
7		nearest point on the outside
8		wall of the structure
9	Boundary Lines of	None
10	Participating Property	
11	Boundary Lines of	1.1 times the maximum blade tip
12	Nonparticipating Property	height of the wind tower to the
13		nearest point on the property
14		line of the nonparticipating
15		property
16	Public Road Rights-of-Way	1.1 times the maximum blade tip
17		height of the wind tower
18		to the center point of the
19		public road right-of-way
20	Overhead Communication and	1.1 times the maximum blade tip
21	Electric Transmission	height of the wind tower to the

1 and Distribution Facilities nearest edge of the property
2 (Not Including Overhead line, easement, or
3 Utility Service Lines to right-of-way
4 Individual Houses or containing the overhead line
5 Outbuildings)

6 Overhead Utility Service None
7 Lines to Individual
8 Houses or Outbuildings

9 Fish and Wildlife Areas 2.1 times the maximum blade
10 and Illinois Nature tip height of the wind tower
11 Preserve Commission to the nearest point on the
12 Protected Lands property line of the fish and
13 wildlife area or protected
14 land

15 This Section does not exempt or excuse compliance with
16 electric facility clearances approved or required by the
17 National Electrical Code, the ~~The~~ National Electrical
18 Safety Code, the Illinois Commerce Commission, and the
19 Federal Energy Regulatory Commission~~7~~ and their designees
20 or successors~~;~~;

21 (2) a wind tower of a commercial wind energy facility
22 to be sited so that industry standard computer modeling
23 indicates that any occupied community building or
24 nonparticipating residence will not experience more than

30 hours per year of shadow flicker under planned
operating conditions;

(3) a commercial solar energy facility to be sited as
follows, with setback distances measured from the nearest
edge of any component of the facility:

Setback Description	Setback Distance
Occupied Community Buildings and Dwellings on Nonparticipating Properties	150 feet from the nearest point on the outside wall of the structure
Boundary Lines of Participating Property	None
Public Road Rights-of-Way	50 feet from the nearest edge
Boundary Lines of Nonparticipating Property	50 feet to the nearest point on the property line of the nonparticipating property

(4) a commercial solar energy facility to be sited so
that the facility's perimeter is enclosed by fencing
having a height of at least 6 feet and no more than 25

1 feet; and

2 (5) a commercial solar energy facility to be sited so
3 that no component of a solar panel has a height of more
4 than 20 feet above ground when the solar energy facility's
5 arrays are at full tilt.

6 The requirements set forth in this subsection (e) may be
7 waived subject to the written consent of the owner of each
8 affected nonparticipating property.

9 (e-5) Commercial solar energy facilities or commercial
10 wind energy facilities shall be placed in zoning districts
11 primarily intended for agricultural or manufacturing uses.

12 (f) A county may not set a sound limitation for wind towers
13 in commercial wind energy facilities or any components in
14 commercial solar energy facilities that is more restrictive
15 than the sound limitations established by the Illinois
16 Pollution Control Board under 35 Ill. Adm. Code Parts 900,
17 901, and 910.

18 (f-5) A county may designate commercial wind energy
19 facilities and commercial solar energy facilities as permitted
20 uses for certain zoning districts.

21 (g) A county may not place any restriction on the
22 installation or use of a commercial wind energy facility or a
23 commercial solar energy facility unless it adopts an ordinance
24 that complies with this Section. A county may not establish
25 siting standards for supporting facilities that preclude
26 development of commercial wind energy facilities or commercial

1 solar energy facilities, unless the development is determined
2 by the county, based evidence presented at a public hearing,
3 to be detrimental to the public health, safety, or welfare of
4 county residents or the development site or adjacent property
5 consistent with the legal standard set forth in the Illinois
6 Supreme Court case, La Salle National Bank of Chicago v. Cook
7 County, 12 Ill. 2d 40 (1957).

8 A request for siting approval or a special use permit for a
9 commercial wind energy facility or a commercial solar energy
10 facility, or modification of an approved siting or special use
11 permit, shall be approved if the request is in compliance with
12 the standards and conditions imposed in this Act, the zoning
13 ordinance adopted consistent with this Code, and the
14 conditions imposed under State and federal statutes and
15 regulations, and if the approval would not be invalid
16 considering the following factors: -

17 (1) The uniformity with the existing uses and zoning
18 of nearby property.

19 (2) The extent to which property values are diminished
20 by the particular zoning restrictions.

21 (3) The extent to which the destruction of property
22 values promotes the health, safety, morals, or general
23 welfare of the public.

24 (4) The relative gain to the public as compared to the
25 hardship imposed on the individual property owner.

26 (5) The suitability of the property for the zoned

1 purpose.

2 (6) The length of time the property has been vacant as
3 zoned considered in the context of land development in the
4 area.

5 (7) The care with which a community has planned its
6 land use development.

7 (8) The community need for the proposed use.

8 (g-5) A county may not approve a request for siting
9 approval or a special use permit for a commercial wind energy
10 facility or a commercial solar energy facility or modification
11 of an approved siting or special use permit, if the proposal
12 shall disturb more than one acre of land, unless the facility
13 owner has obtained a National Pollution Discharge Elimination
14 System ("NPDES") permit from the Illinois Environmental
15 Protection Agency.

16 (h) A county may not adopt zoning regulations that
17 disallow, permanently or temporarily, commercial wind energy
18 facilities or commercial solar energy facilities from being
19 developed or operated in any district zoned to allow
20 agricultural or industrial uses.

21 (h-5) A county may deny a request for a special use permit
22 for a commercial solar energy facility or commercial wind
23 energy facility in areas planned for residential development
24 by either a county comprehensive plan or a municipal
25 comprehensive plan.

26 (i) A county may not require permit application fees for a

1 commercial wind energy facility or commercial solar energy
2 facility that are unreasonable. All application fees imposed
3 by the county shall be consistent with fees for projects in the
4 county with similar capital value and cost.

5 (j) A county may set forth standards for construction,
6 repair, decommissioning, or deconstruction of a commercial
7 wind energy facility or commercial solar energy facility
8 within its boundaries. Any ~~Except as otherwise provided in~~
9 ~~this Section, a county shall not require~~ standards for
10 construction, repair, decommissioning, or deconstruction of a
11 commercial wind energy facility or commercial solar energy
12 facility imposed by a county must satisfy the minimum
13 standards set forth ~~or related financial assurances that are~~
14 ~~more restrictive than those included~~ in the Department of
15 Agriculture's standard wind farm agricultural impact
16 mitigation agreement, template 81818, or standard solar
17 agricultural impact mitigation agreement, version 8.19.19, as
18 applicable and in effect on December 31, 2022, or the most
19 recent version of the mitigation agreements if any subsequent
20 version has been adopted after December 31, 2022. The amount
21 of any decommissioning payment shall be in accordance with the
22 financial assurance required by this Section ~~those~~
23 ~~agricultural impact mitigation agreements.~~

24 (j-5) Each ~~A~~ commercial wind energy facility or a
25 commercial solar energy facility shall require ~~file~~ a farmland
26 drainage plan approved by ~~with~~ the county and impacted

1 drainage districts that outlines ~~outlining~~ how surface and
2 subsurface drainage of farmland will be restored during and
3 following construction or deconstruction of the facility. The
4 plan is to be created by an independent consultant, selected
5 by the county, and paid for ~~independently~~ by the facility
6 developer and shall include the location of any potentially
7 impacted drainage district facilities to the extent this
8 information is publicly available from the county or the
9 drainage district, plans to repair any subsurface drainage
10 affected during construction or deconstruction using
11 procedures outlined in the agricultural impact mitigation
12 agreement entered into by the commercial wind energy facility
13 owner or commercial solar energy facility owner, and
14 procedures for the repair and restoration of surface drainage
15 affected during construction or deconstruction. All surface
16 and subsurface damage shall be repaired as soon as reasonably
17 practicable. The county and impacted drainage districts shall
18 complete review of the farmland drainage plan within 60 days
19 after submission of the plan to the county. Upon completion of
20 review, the county and impacted drainage districts shall issue
21 a written determination to the facility developer either
22 approving the plan or specifically identifying the reason for
23 denial of the plan.

24 (j-10) In accordance with the Renewable Energy Facilities
25 Agricultural Impact Mitigation Act, a facility owner shall
26 provide the county in which a commercial solar energy facility

1 or commercial wind energy facility to be located, a
2 deconstruction plan that has been prepared by a professional
3 engineer, as defined in Section 10 of the Renewable Energy
4 Facilities Agricultural Impact Mitigation Act, who has been
5 selected by the facility owner. The deconstruction plan shall
6 contain information that satisfies each of the components of
7 deconstruction as set forth in the definition of
8 "deconstruction" and "deconstruction plan" and in the
9 construction and deconstruction standards and policies of the
10 Department of Agriculture's standard wind farm agricultural
11 impact mitigation agreement, template 81818, or standard solar
12 agricultural impact mitigation agreement, version 8.19.19, as
13 applicable and in effect on December 31, 2022, or the most
14 recent version of the mitigation agreements if any subsequent
15 version has been adopted after December 31, 2022. The county
16 shall have its own professional engineer review the
17 deconstruction plan and either approve or reject the
18 deconstruction plan within 60 days after a complete submittal.
19 If the deconstruction plan is rejected, the county shall
20 provide a written statement of the specific reasons for
21 rejection. The facility owner may file a revised
22 deconstruction plan that addresses the specific reasons that
23 led to the rejection of the deconstruction plan. The county
24 shall review and act on any revised deconstruction plan within
25 30 days after it is resubmitted. The facility owner shall
26 reevaluate the estimated costs of deconstruction of any

1 facility after the fifth anniversary, and every 5 years
2 thereafter, of the commercial operation date. The facility
3 owner shall file with the county on or before the end of the
4 fifth year of commercial operation, and then every fifth year
5 thereafter, for approval by the county, an updated
6 deconstruction plan prepared by a professional engineer who
7 has been selected by the county. Based on an initial
8 evaluation or reevaluation during the county approval process,
9 the county may require changes in the level of financial
10 assurance used to calculate the financial assurance level
11 described in this Section required from the facility owner. If
12 the county is unable to perform, to its satisfaction, the
13 investigations of the content of the deconstruction plan
14 necessary to approve the deconstruction plan filed by the
15 facility owner, then the county and facility may mutually
16 agree on the selection of a professional engineer independent
17 of the facility owner to conduct any necessary investigations
18 of the content of the deconstruction plan necessary to approve
19 the deconstruction plan. The facility owner shall be
20 responsible for the cost of the preparation of the
21 deconstruction plan by its professional engineer or any
22 independent professional engineer and the cost of any plan
23 reviews by the professional engineer selected by the county. A
24 commercial solar energy facility owner or commercial wind
25 energy facility owner shall provide the county with an
26 appropriate financial assurance mechanism consistent with the

1 financial requirements of this subsection, which shall be set
2 forth in the Department of Agriculture's standard wind farm
3 agricultural impact mitigation agreement, template 81818, or
4 standard solar agricultural impact mitigation agreement,
5 version 8.19.19, as applicable and in effect on December 31,
6 2022, or the most recent version of the mitigation agreements
7 if any subsequent version has been adopted after December 31,
8 2022. The financial assurance shall be sufficient to cover the
9 estimated costs of public safety or emergency repairs to the
10 facility if damage to the facility caused by natural disaster
11 or by operational malfunction, and the estimated costs of
12 repairs the deconstruction of the facility in the event of
13 abandonment of a commercial wind energy facility or
14 abandonment of a commercial solar energy facility, as defined
15 in Section 10 of the Renewable Energy Facilities Agricultural
16 Impact Mitigation Act. The facility owner shall provide the
17 county with the initial financial assurance to cover 100% of
18 the estimated deconstruction costs prior to the commercial
19 operation date. A county may use the financial assurance
20 provided by the facility owner to cover public safety or
21 emergency repairs that are not timely addressed by the
22 facility owner, as determined by the county's designated
23 representative. In the event that a county must use a portion
24 of the financial assurance to address any public safety or
25 emergency repairs or to deconstruct a portion of the facility,
26 the facility owner shall replenish the financial assurance for

1 the amount used within 60 days after the expenditure of the
2 financial assurance consistent with the Department's standard
3 agricultural impact mitigation agreement. The purpose of the
4 financial assurance shall be for and to assure deconstruction
5 in the event of an abandonment of a commercial solar energy
6 facility or commercial wind energy facility or to cover the
7 estimated costs of public safety or emergency repairs to the
8 facility in the event of damage to the facility caused by
9 natural disaster or operational malfunction.

10 (k) A county may not condition approval of a commercial
11 wind energy facility or commercial solar energy facility on a
12 property value guarantee and may not require a facility owner
13 to pay into a neighboring property devaluation escrow account.

14 (l) A county may require certain vegetative screening
15 surrounding a commercial wind energy facility or commercial
16 solar energy facility but may not require earthen berms or
17 similar structures, except that a county may require earth
18 berms for ground-based commercial solar energy projects and
19 may adopt regulations governing the construction and
20 maintenance of such earth berms.

21 (m) A county may set blade tip height limitations for wind
22 towers in commercial wind energy facilities but may not set a
23 blade tip height limitation that is more restrictive than the
24 height allowed under a Determination of No Hazard to Air
25 Navigation by the Federal Aviation Administration under 14 CFR
26 Part 77.

1 (n) A county may require that a commercial wind energy
2 facility owner or commercial solar energy facility owner
3 provide:

4 (1) the results and recommendations from consultation
5 with the Illinois Department of Natural Resources that are
6 obtained through the Ecological Compliance Assessment Tool
7 (EcoCAT) or a comparable successor tool; and

8 (2) the results of the United States Fish and Wildlife
9 Service's Information for Planning and Consulting
10 environmental review or a comparable successor tool that
11 is consistent with (i) the "U.S. Fish and Wildlife
12 Service's Land-Based Wind Energy Guidelines" and (ii) any
13 applicable United States Fish and Wildlife Service solar
14 wildlife guidelines that have been subject to public
15 review.

16 (o) A county may require a commercial wind energy facility
17 or commercial solar energy facility to adhere to the
18 recommendations provided by the Illinois Department of Natural
19 Resources in an EcoCAT natural resource review report under 17
20 Ill. Adm. Code Part 1075.

21 (p) A county may require a facility owner to:

22 (1) demonstrate avoidance of protected lands as
23 identified by the Illinois Department of Natural Resources
24 and the Illinois Nature Preserve Commission; or

25 (2) consider the recommendations of the Illinois
26 Department of Natural Resources for setbacks from

1 protected lands, including areas identified by the
2 Illinois Nature Preserve Commission.

3 (q) A county may require that a facility owner provide
4 evidence of consultation with the Illinois State Historic
5 Preservation Office to assess potential impacts on
6 State-registered historic sites under the Illinois State
7 Agency Historic Resources Preservation Act.

8 (r) To maximize community benefits, including, but not
9 limited to, reduced stormwater runoff, flooding, and erosion
10 at the ground mounted solar energy system, improved soil
11 health, and increased foraging habitat for game birds,
12 songbirds, and pollinators, a county may (1) require a
13 commercial solar energy facility owner to plant, establish,
14 and maintain for the life of the facility vegetative ground
15 cover, consistent with the goals of the Pollinator-Friendly
16 Solar Site Act and (2) require the submittal of a vegetation
17 management plan that is in compliance with the agricultural
18 impact mitigation agreement in the application to construct
19 and operate a commercial solar energy facility in the county
20 if the vegetative ground cover and vegetation management plan
21 comply with the requirements of the underlying agreement with
22 the landowner or landowners where the facility will be
23 constructed.

24 No later than 90 days after January 27, 2023 (the
25 effective date of Public Act 102-1123), the Illinois
26 Department of Natural Resources shall develop guidelines for

1 vegetation management plans that may be required under this
2 subsection for commercial solar energy facilities. The
3 guidelines must include guidance for short-term and long-term
4 property management practices that provide and maintain native
5 and non-invasive naturalized perennial vegetation to protect
6 the health and well-being of pollinators.

7 (s) If a facility owner enters into a road use agreement
8 with the Illinois Department of Transportation, a road
9 district, or other unit of local government relating to a
10 commercial wind energy facility or a commercial solar energy
11 facility, the road use agreement shall require the facility
12 owner to be responsible for (i) the reasonable cost of
13 improving roads used by the facility owner to construct the
14 commercial wind energy facility or the commercial solar energy
15 facility and (ii) the reasonable cost of repairing roads used
16 by the facility owner during construction of the commercial
17 wind energy facility or the commercial solar energy facility
18 so that those roads are in a condition that is safe for the
19 driving public after the completion of the facility's
20 construction. Roadways improved in preparation for and during
21 the construction of the commercial wind energy facility or
22 commercial solar energy facility shall be repaired and
23 restored to the improved condition at the reasonable cost of
24 the developer if the roadways have degraded or were damaged as
25 a result of construction-related activities.

26 The road use agreement shall not require the facility

1 owner to pay costs, fees, or charges for road work that is not
2 specifically and uniquely attributable to the construction of
3 the commercial wind energy facility or the commercial solar
4 energy facility. Road-related fees, permit fees, or other
5 charges imposed by the Illinois Department of Transportation,
6 a road district, or other unit of local government under a road
7 use agreement with the facility owner shall be reasonably
8 related to the cost of administration of the road use
9 agreement.

10 (s-5) The facility owner shall also compensate landowners
11 for crop losses or other agricultural damages resulting from
12 damage to the drainage system caused by the construction of
13 the commercial wind energy facility or the commercial solar
14 energy facility. The commercial wind energy facility owner or
15 commercial solar energy facility owner shall repair or pay for
16 the repair of all damage to the subsurface drainage system
17 caused by the construction of the commercial wind energy
18 facility or the commercial solar energy facility in accordance
19 with the agriculture impact mitigation agreement requirements
20 for repair of drainage. The commercial wind energy facility
21 owner or commercial solar energy facility owner shall repair
22 or pay for the repair and restoration of surface drainage
23 caused by the construction or deconstruction of the commercial
24 wind energy facility or the commercial solar energy facility
25 as soon as reasonably practicable.

26 (t) Notwithstanding any other provision of law, a facility

1 owner with siting approval from a county to construct a
2 commercial wind energy facility or a commercial solar energy
3 facility is authorized to cross or impact a drainage system,
4 including, but not limited to, drainage tiles, open drainage
5 ditches, culverts, and water gathering vaults, owned or under
6 the control of a drainage district under the Illinois Drainage
7 Code, if the facility owner has obtained prior approval of a
8 farmland drainage plan approved by a county, the impacted
9 drainage districts, or both the county and the impacted
10 drainage district ~~without obtaining prior agreement or~~
11 ~~approval from the drainage district~~ in accordance with the
12 farmland drainage plan required by subsection (j-5).

13 (u) The amendments to this Section adopted in Public Act
14 102-1123 do not apply to: (1) an application for siting
15 approval or for a special use permit for a commercial wind
16 energy facility or commercial solar energy facility if the
17 application was submitted to a unit of local government before
18 January 27, 2023 (the effective date of Public Act 102-1123);
19 (2) a commercial wind energy facility or a commercial solar
20 energy facility if the facility owner has submitted an
21 agricultural impact mitigation agreement to the Department of
22 Agriculture before January 27, 2023 (the effective date of
23 Public Act 102-1123); or (3) a commercial wind energy or
24 commercial solar energy development on property that is
25 located within an enterprise zone certified under the Illinois
26 Enterprise Zone Act, that was classified as industrial by the

1 appropriate zoning authority on or before January 27, 2023,
2 and that is located within 4 miles of the intersection of
3 Interstate 88 and Interstate 39.

4 (Source: P.A. 102-1123, eff. 1-27-23; 103-81, eff. 6-9-23;
5 103-580, eff. 12-8-23; revised 7-29-24.)

6 Section 15. The Renewable Energy Facilities Agricultural
7 Impact Mitigation Act is amended by changing Sections 10 and
8 15 as follows:

9 (505 ILCS 147/10)

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

11 "Abandonment of a commercial wind energy facility" means
12 when deconstruction has not been completed within 18 months
13 after the commercial wind energy facility reaches the end of
14 its useful life. For purposes of this definition, a commercial
15 wind energy facility will be presumed to have reached the end
16 of its useful life if (1) no electricity is generated for a
17 continuous period of 12 months and (2) the commercial wind
18 energy facility owner fails, for a period of 6 consecutive
19 months, to pay the landowner amounts owed in accordance with
20 the underlying agreement.

21 "Abandonment of a commercial solar energy facility" means
22 when deconstruction has not been completed within 12 months
23 after the commercial solar energy facility reaches the end of
24 its useful life. For purposes of this definition, a commercial

1 solar energy facility shall be presumed to have reached the
2 end of its useful life if the commercial solar energy facility
3 owner fails, for a period of 6 consecutive months, to pay the
4 landowner amounts owed in accordance with the underlying
5 agreement.

6 "Agricultural impact mitigation agreement" means an
7 agreement between the commercial wind energy facility owner or
8 the commercial solar energy facility owner and the Department
9 of Agriculture described in Section 15 of this Act.

10 "Commercial renewable energy facility" means a commercial
11 wind energy facility or commercial solar energy facility as
12 defined in this Act.

13 "Commercial solar energy facility" means a solar energy
14 conversion facility equal to or greater than 500 kilowatts in
15 total nameplate capacity, including a solar energy conversion
16 facility seeking an extension of a permit to construct granted
17 by a county or municipality before the effective date of this
18 amendatory Act of the 100th General Assembly. "Commercial
19 solar energy facility" does not include a solar energy
20 conversion facility: (1) for which a permit to construct has
21 been issued before the effective date of this amendatory Act
22 of the 100th General Assembly; (2) that is located on land
23 owned by the commercial solar energy facility owner; (3) that
24 was constructed before the effective date of this amendatory
25 Act of the 100th General Assembly; or (4) that is located on
26 the customer side of the customer's electric meter and is

1 primarily used to offset that customer's electricity load and
2 is limited in nameplate capacity to less than or equal to 2,000
3 kilowatts.

4 "Commercial solar energy facility owner" means a private
5 commercial enterprise that owns a commercial solar energy
6 facility. A commercial solar energy facility owner is not nor
7 shall it be deemed to be a public utility as defined in the
8 Public Utilities Act.

9 "Commercial wind energy facility" means a wind energy
10 conversion facility of equal or greater than 500 kilowatts in
11 total nameplate generating capacity. "Commercial wind energy
12 facility" includes a wind energy conversion facility seeking
13 an extension of a permit to construct granted by a county or
14 municipality before the effective date of this Act.
15 "Commercial wind energy facility" does not include a wind
16 energy conversion facility: (1) that has submitted a complete
17 permit application to a county or municipality and for which
18 the hearing on the completed application has commenced on the
19 date provided in the public hearing notice, which must be
20 before the effective date of this Act; (2) for which a permit
21 to construct has been issued before the effective date of this
22 Act; or (3) that was constructed before the effective date of
23 this Act.

24 "Commercial wind energy facility owner" means a private
25 commercial enterprise that owns or operates a commercial wind
26 energy facility. A commercial wind energy facility owner is

1 not nor shall it be deemed to be a public utility as defined in
2 the Public Utilities Act.

3 "Construction" means the installation, preparation for
4 installation, or repair of a commercial renewable energy
5 facility.

6 "County" means the county where the commercial renewable
7 energy facility is located.

8 "Deconstruction" means the removal of a commercial
9 renewable energy facility from the property of a landowner and
10 the restoration of that property as provided in the
11 agricultural impact mitigation agreement.

12 "Department" means the Department of Agriculture.

13 "Financial assurance" means a reclamation or surety bond,
14 including both performance bond obligations and payment bond
15 obligations or an irrevocable letter of credit or other
16 commercially available financial assurance that is acceptable
17 to the county, with the county or landowner as beneficiary.

18 "Landowner" means any person (1) with an ownership
19 interest in property that is used for agricultural purposes
20 and (2) that is a party to an underlying agreement.

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

(Source: P.A. 99-132, eff. 7-24-15; 100-598, eff. 6-29-18.)

(505 ILCS 147/15)

Sec. 15. Agricultural impact mitigation agreement.

(a) A commercial renewable energy facility owner of a commercial wind energy facility or a commercial solar energy facility that is located on landowner property shall enter into an agricultural impact mitigation agreement with the Department outlining construction and deconstruction standards and policies designed to preserve the integrity of any agricultural land that is impacted by commercial renewable energy facility construction and deconstruction. The construction and deconstruction of any commercial solar energy facility shall be in conformance with the Department's standard agricultural impact mitigation agreement referenced in subsection (f) of this Section and any additional standards set forth by the county in which the facility is to be located in accordance with subsection (j) of Section 5-12020 of the Counties Code. Except as provided in subsection (a-5) of this Section, the terms and conditions of the Department's standard agricultural impact mitigation agreement are subject to and may be modified by an underlying agreement between the landowner and the commercial solar energy facility owner.

(a-5) Prior to the commencement of construction, a commercial renewable energy facility owner of a commercial wind energy facility or a commercial solar energy facility

1 owner shall submit to the county in which the commercial solar
2 facility is to be located a deconstruction plan that has been
3 prepared by a professional engineer, as defined in Section 10
4 of the Renewable Energy Facilities Agricultural Impact
5 Mitigation Act, who has been selected by the facility owner.
6 The deconstruction plan shall contain information that
7 satisfies each of the components of deconstruction as set
8 forth in the definition of "deconstruction" and
9 "deconstruction plan" and in the construction and
10 deconstruction standards and policies of the Department of
11 Agriculture's standard wind farm agricultural impact
12 mitigation agreement, template 81818, or standard solar
13 agricultural impact mitigation agreement, version 8.19.19, as
14 applicable and in effect on December 31, 2022, or the most
15 recent version of the mitigation agreements if any subsequent
16 version has been adopted after December 31, 2022. The county
17 shall have its own professional engineer review the
18 deconstruction plan and either approve or reject the
19 deconstruction plan within 60 days after a complete submittal.
20 If the deconstruction plan is rejected, the county shall
21 provide a written statement of the specific reasons for
22 rejection. The facility owner may file a revised
23 deconstruction plan that addresses the specific reasons that
24 led to the rejection of the deconstruction plan. The county
25 shall review and act on any revised deconstruction plan within
26 30 days after it is resubmitted. The facility owner shall

1 reevaluate the estimated costs of deconstruction of any
2 facility after the fifth anniversary, and every 5 years
3 thereafter, of the commercial operation date. The facility
4 owner shall file with the county on or before the end of the
5 fifth year of commercial operation, and then every fifth year
6 thereafter, for approval by the county an updated
7 deconstruction plan prepared by a professional engineer who
8 has been selected by the county. Based on any initial
9 evaluation or reevaluation during the county approval process,
10 the county may require changes in the level of financial
11 assurance used to calculate the financial assurance level
12 described in this Section required from the facility owner. If
13 the county is unable to perform, to its satisfaction, the
14 investigations of the content of the deconstruction plan
15 necessary to approve the deconstruction plan filed by the
16 facility owner, then the county and facility may mutually
17 agree on the selection of a professional engineer independent
18 of the facility owner to conduct any necessary investigations
19 of the content of the deconstruction plan necessary to approve
20 the deconstruction plan. The facility owner shall be
21 responsible for the cost of the preparation of the
22 deconstruction plan by its professional engineer or any
23 independent professional engineer and the cost of any plan
24 reviews by the professional engineer selected by the county. A
25 commercial solar energy facility owner shall provide the
26 county with an appropriate financial assurance mechanism

1 consistent with the financial requirements set forth in this
2 subsection, which shall be set forth in the Department of
3 Agriculture's ~~Department's~~ standard wind farm agricultural
4 impact mitigation agreement, template 81818, or standard solar
5 agricultural impact mitigation agreement, version 8.19.19
6 applicable and in effect on December 31, 2022, or the most
7 recent version of the mitigation agreements if any subsequent
8 version have been adopted after December 31, 2022. The
9 financial assurance shall be sufficient to cover the estimated
10 costs of public safety or emergency repairs to the facility in
11 the event of damage to the facility caused by natural disaster
12 or by operational malfunction and the estimated costs of
13 repairs the deconstruction of the facility in the event of
14 abandonment of the facility, as defined in Section 10 of the
15 Renewable Energy Facilities Agricultural Impact Mitigation
16 Act. The facility owner shall provide the county with the
17 initial financial assurance to cover 100% of the estimated
18 deconstruction costs prior to the commercial operation date. A
19 county may use the financial assurance provided by the
20 facility owner to cover public safety or emergency repairs
21 that are not timely addressed by the facility owner, as
22 determined by the county's designated representative. In the
23 event that a county must use a portion of the financial
24 assurance to address any public safety or emergency repairs or
25 to deconstruct a portion of the facility. The facility owner
26 shall replenish the financial assurance for the amount used

1 within 60 days after the expenditure of the financial
2 assurance. The purpose of the financial assurance shall be for
3 and to assure deconstruction in the event of an abandonment of
4 a commercial solar energy facility or commercial wind energy
5 facility or to cover the estimated costs of public safety or
6 emergency repairs to the facility in the event of damage to the
7 facility caused by natural disaster or by operational
8 malfunction.

9 (b) The agricultural impact mitigation agreement for a
10 commercial wind energy facility shall include, but is not
11 limited to, such items as restoration of agricultural land
12 affected by construction, deconstruction (including upon
13 abandonment of a commercial wind energy facility), public
14 safety or emergency repairs to the facility in the event of
15 damage to the facility caused by natural disaster or by
16 operational malfunction, construction staging, and storage
17 areas; support structures; aboveground facilities; guy wires
18 and anchors; underground cabling depth; topsoil replacement;
19 protection and repair of agricultural drainage tiles; rock
20 removal; repair of compaction and rutting; land leveling;
21 prevention of soil erosion; repair of damaged soil
22 conservation practices; compensation for damages to private
23 property; clearing of trees and brush; interference with
24 irrigation systems; access roads; weed control; pumping of
25 water from open excavations; advance notice of access to
26 private property; indemnification of landowners; and

1 deconstruction plans and financial assurance for
2 deconstruction (including upon abandonment of a commercial
3 wind energy facility) and for public safety or emergency
4 repairs to the facility in the event of damage to the facility
5 caused by natural disaster or by operational malfunction.

6 (b-5) The agricultural impact mitigation agreement for a
7 commercial solar energy facility shall include, but is not
8 limited to, such items as restoration of agricultural land
9 affected by construction, deconstruction (including upon
10 abandonment of a commercial solar energy facility); to cover
11 the estimated costs of public safety or emergency repairs to
12 the facility in the event of damage to the facility caused by
13 natural disaster or by operational malfunction; support
14 structures; aboveground facilities; guy wires and anchors;
15 underground cabling depth; topsoil removal and replacement;
16 rerouting and permanent repair of agricultural drainage tiles;
17 rock removal; repair of compaction and rutting; construction
18 during wet weather; land leveling; prevention of soil erosion;
19 repair of damaged soil conservation practices; compensation
20 for damages to private property; clearing of trees and brush;
21 access roads; weed control; advance notice of access to
22 private property; indemnification of landowners; and
23 deconstruction plans and financial assurance for
24 deconstruction (including upon abandonment of a commercial
25 solar energy facility) and for public safety or emergency
26 repairs to the facility in the event of damage to the facility

1 caused by natural disaster or by operational malfunction. The
2 commercial solar energy facility owner shall enter into one
3 agricultural impact mitigation agreement for each commercial
4 solar energy facility.

5 (c) For commercial wind energy facility owners seeking a
6 permit from a county or municipality for the construction of a
7 commercial wind energy facility, the agricultural impact
8 mitigation agreement shall be entered into prior to the public
9 hearing required prior to a siting decision of a county or
10 municipality regarding the commercial wind energy facility.
11 The agricultural impact mitigation agreement is binding on any
12 subsequent commercial wind energy facility owner that takes
13 ownership of the commercial wind energy facility that is the
14 subject of the agreement.

15 (c-5) A commercial solar energy facility owner shall, not
16 less than 45 days prior to commencement of actual
17 construction, submit to the Department a standard agricultural
18 impact mitigation agreement as referenced in subsection (f) of
19 this Section signed by the commercial solar energy facility
20 owner and including all information required by the
21 Department. The commercial solar energy facility owner shall
22 provide either a copy of that submitted agreement or a copy of
23 the fully executed project-specific agricultural impact
24 mitigation agreement to the landowner not less than 30 days
25 prior to the commencement of construction. The agricultural
26 impact mitigation agreement is binding on any subsequent

1 commercial solar energy facility owner that takes ownership of
2 the commercial solar energy facility that is the subject of
3 the agreement.

4 (d) If a commercial renewable energy facility owner seeks
5 an extension of a permit granted by a county or municipality
6 for the construction of a commercial wind energy facility
7 prior to the effective date of this Act, the agricultural
8 impact mitigation agreement shall be entered into prior to a
9 decision by the county or municipality to grant the permit
10 extension.

11 (e) The Department may adopt rules that are necessary and
12 appropriate for the implementation and administration of
13 agricultural impact mitigation agreements as required under
14 this Act.

15 (f) The Department shall make available on its website a
16 standard agricultural impact mitigation agreement applicable
17 to all commercial solar energy facilities within 60 days after
18 the effective date of this amendatory Act of the 100th General
19 Assembly. The standard agricultural impact mitigation
20 agreements shall be amended as needed to conform with the
21 financial assurance procedures and requirements under
22 subsection (j-10) of Section 5-12020 of the Counties Code.

23 (g) Nothing in this amendatory Act of the 100th General
24 Assembly and nothing in an agricultural impact mitigation
25 agreement shall be construed to apply to or otherwise impair
26 an underlying agreement for a commercial solar energy facility

1 entered into prior to the effective date of this amendatory
2 Act of the 100th General Assembly.

3 (Source: P.A. 99-132, eff. 7-24-15; 100-598, eff. 6-29-18.)