



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB3409

Introduced 2/4/2026, by Sen. Christopher Belt

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12024
505 ILCS 147/10
505 ILCS 147/15

Amends the Counties Code. In provisions concerning energy storage systems, provides that the farmland drainage plan that a facility owner must file with a county shall include, among other things, plans to repair any subsurface drainage affected during construction or deconstruction using procedures outlined in the agricultural impact mitigation agreement (rather than outlined in the decommissioning plan) and procedures for the repair and restoration of surface drainage affected during construction or deconstruction. Provides that a county shall (rather than may) require a facility owner to provide a decommissioning plan to the county. Makes changes to the requirements of a decommissioning plan. Provides that a county shall (rather than may) require the facility owner to submit to the county (i) a commercial operation a commissioning report meeting specified requirements of specified publications of the National Fire Protection Association; (ii) a hazard mitigation analysis meeting specified requirements of specified publications of the National Fire Protection Association; (iii) an emergency operations plan meeting specified requirements of specified publications of the National Fire Protection Association; and (iv) a warning that complies with specified publications of the National Fire Protection Association. Provides that the energy storage system owner shall enter into one agricultural impact mitigation agreement for each energy storage system. Requires the agricultural impact mitigation agreement for an energy storage system to include specified plans. Requires a commercial renewable energy facility owner to make available a copy of the signed agricultural impact mitigation agreement at the site of the commercial renewable energy facility during any construction or deconstruction activities. Makes other changes.

LRB104 20578 RTM 34066 b

1 AN ACT concerning agriculture.

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 5-12024 as follows:

6 (55 ILCS 5/5-12024)

7 (This Section may contain text from a Public Act with a
8 delayed effective date)

9 Sec. 5-12024. Energy storage systems.

10 (a) As used in this Section:

11 "Energy storage system" means a facility with an aggregate
12 energy capacity that is greater than 500 ~~1,000~~ kilowatts and
13 that is capable of absorbing energy and storing it for use at a
14 later time, including, but not limited to, electrochemical and
15 electromechanical technologies. "Energy storage system" does
16 not include technologies that require combustion. "Energy
17 storage system" also does not include energy storage systems
18 associated with commercial solar energy facilities or
19 commercial wind energy facilities as defined in Section
20 5-12020.

21 "Excused service interruption" means any period during
22 which an energy storage system does not store or discharge
23 electricity and that is planned or reasonably foreseeable for

1 standard commercial operation, including any unavailability
2 caused by a buyer; storage capacity tests; system emergencies;
3 curtailments, including curtailment orders; transmission
4 system outages; compliance with any operating restriction;
5 serial defects; and planned outages.

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

16 "Force majeure" means any event or circumstance that
17 delays or prevents an energy storage system from timely
18 performing all or a portion of its commercial operations if
19 the act or event, despite the exercise of commercially
20 reasonable efforts, cannot be avoided by and is beyond the
21 reasonable control, whether direct or indirect, of, and
22 without the fault or negligence of, a facility owner or
23 operator or any of its assignees. "Force majeure" includes,
24 but is not limited to:

25 (1) fire, flood, tornado, or other natural disasters
26 or acts of God;

1 (2) war, civil strife, terrorist attack, or other
2 similar acts of violence;

3 (3) unavailability of materials, equipment, services,
4 or labor, including unavailability due to global supply
5 chain shortages;

6 (4) utility or energy shortages or acts or omissions
7 of public utility providers;

8 (5) any delay resulting from a pandemic, epidemic, or
9 other public health emergency or related restrictions; and

10 (6) litigation or a regulatory proceeding regarding a
11 facility.

12 "NFPA" means the National Fire Protection Association.

13 "Nonparticipating property" means real property that is
14 not a participating property.

15 "Nonparticipating residence" means a residence that is
16 located on nonparticipating property and that exists and is
17 occupied on the date that the application for a permit to
18 develop an energy storage system is filed with the county.

19 "Occupied community building" means a school, place of
20 worship, day care facility, public library, or community
21 center that is occupied on the date that the application for a
22 permit to develop an energy storage system is filed with the
23 county in which the building is located.

24 "Participating property" means real property that is the
25 subject of a written agreement between a facility owner and
26 the owner of the real property and that provides the facility

1 owner an easement, option, lease, or license to use the real
2 property for the purpose of constructing an energy storage
3 system or supporting facilities.

4 "Protected lands" means real property that is: (i) subject
5 to a permanent conservation right consistent with the Real
6 Property Conservation Rights Act; or (ii) registered or
7 designated as a nature preserve, buffer, or land and water
8 reserve under the Illinois Natural Areas Preservation Act.

9 "Supporting facilities" means the transmission lines,
10 substations, switchyard, access roads, meteorological towers,
11 storage containers, and equipment associated with the
12 generation, storage, and dispatch of electricity by an energy
13 storage system.

14 (b) Notwithstanding any other provision of law or whether
15 ~~, if~~ a county has formed a zoning commission and adopted formal
16 zoning under Section 5-12007, ~~then~~ a county may establish
17 standards for energy storage systems in areas of the county
18 that are not within the zoning jurisdiction of a municipality.
19 The standards may include all of the requirements specified in
20 this Section but may not include requirements for energy
21 storage systems that are more restrictive than specified in
22 this Section or requirements that are not specified in this
23 Section.

24 (c) A county shall ~~may~~ require the energy storage facility
25 to comply with the version of NFPA 855 "Standard for the
26 Installation of Stationary Energy Storage Systems" in effect

1 on the effective date of this amendatory Act or any successor
2 standard issued by the NFPA in effect on the date of siting or
3 special use permit approval. A county may not include
4 requirements for energy storage systems that are more
5 restrictive than NFPA 855 "Standard for the Installation of
6 Stationary Energy Storage Systems" unless required by this
7 Section.

8 (d) If a county has elected to establish standards under
9 subsection (b), then the ~~zoning board of appeals for the~~
10 county shall hold at least one public hearing before the
11 county grants (i) siting approval or a special use permit for
12 an energy storage system or (ii) modification of an approved
13 siting or special use permit. The public hearing shall be
14 conducted in accordance with the Open Meetings Act and shall
15 conclude not more than 60 days after the filing of the
16 application for the facility. The county shall allow
17 interested parties to a special use permit an opportunity to
18 present evidence and to cross-examine witnesses at the
19 hearing, but the county may impose reasonable restrictions on
20 the public hearing, including reasonable time limitations on
21 the presentation of evidence and the cross-examination of
22 witnesses. The county shall also allow public comment at the
23 public hearing in accordance with the Open Meetings Act. The
24 county shall make its siting and permitting decisions not more
25 than 30 days after the conclusion of the public hearing.
26 Notice of the hearing shall be published in a newspaper of

1 general circulation in the county.

2 (e) A county with an existing zoning ordinance in conflict
 3 with this Section shall amend that zoning ordinance to comply
 4 with this Section within 120 days after the effective date of
 5 this amendatory Act of the 104th General Assembly.

6 (f) A county shall require an energy storage system to be
 7 sited as follows, with setback distances measured from the
 8 nearest edge of the nearest battery or other electrochemical
 9 or electromechanical enclosure:

10 Setback Description	Setback Distance
11 Occupied Community 12 Buildings and 13 Nonparticipating Residences 14	150 feet from the nearest point of the outside wall of the occupied community building or nonparticipating residence
15 Boundary Lines of 16 Occupied Community 17 Buildings and 18 Nonparticipating Residences	50 feet to the nearest point on the property line of the occupied community building or nonparticipating property
19 Public Road Rights-of-Way 20	50 feet from the nearest edge of the right-of-way

21 (2) A county shall also require an energy storage
 22 system to be sited so that the facility's perimeter is

1 enclosed by fencing having a height of at least 7 feet and
2 no more than 25 feet.

3 This Section does not exempt or excuse compliance with
4 electric facility clearances approved or required by the
5 National Electrical Code, the National Electrical Safety Code,
6 the Illinois Commerce Commission, the Federal Energy
7 Regulatory Commission, and their designees or successors.

8 (g) A county may not set a sound limitation for energy
9 storage systems that is more restrictive than the sound
10 limitations established by the Illinois Pollution Control
11 Board under 35 Ill. Adm. Code Parts 900, 901, and 910. After
12 commercial operation, a county may require the facility owner
13 to provide, not more than once, octave band sound pressure
14 level measurements from a reasonable number of sampled
15 locations at the perimeter of the energy storage system to
16 demonstrate compliance with this Section.

17 (h) The provisions set forth in subsection (f) may be
18 waived subject to the written consent of the owner of each
19 affected nonparticipating property or nonparticipating
20 residence.

21 (i) A county may not place any restriction on the
22 installation or use of an energy storage system unless it ~~has~~
23 ~~formed a zoning commission and adopted formal zoning under~~
24 ~~Section 5-12007 and~~ adopts an ordinance that complies with
25 this Section. A county may not establish siting standards for
26 supporting facilities that preclude development of an energy

1 storage system.

2 (j) A request for siting approval or a special use permit
3 for an energy storage system, or modification of an approved
4 siting approval or special use permit, shall be approved if
5 the request complies with the standards and conditions imposed
6 in this Code, the zoning ordinance adopted consistent with
7 this Section, and other State and federal statutes and
8 regulations. The siting approval or special use permit
9 approved by the county shall grant the facility owner a period
10 of at least 3 years after county approval to obtain a building
11 permit or commence construction of the energy storage system,
12 before the siting approval or special use permit may become
13 subject to revocation by the county. Facility owners may be
14 granted an extension on obtaining building permits or
15 commencing constructing upon a showing of good cause. A
16 facility owner's request for an extension may not be
17 unreasonably withheld, conditioned, or denied.

18 (k) A county may not adopt zoning regulations that
19 disallow, permanently or temporarily, an energy storage system
20 from being developed or operated in any district zones to
21 allow agricultural or industrial uses.

22 (l) A facility owner shall file a farmland drainage plan
23 with the county and impacted drainage districts that outlines
24 how surface and subsurface drainage of farmland will be
25 restored during and following the construction or
26 deconstruction of the energy storage system. The plan shall be

1 created independently by the facility owner and shall include
2 the location of any potentially impacted drainage district
3 facilities to the extent the information is publicly available
4 from the county or the drainage district, plans to repair any
5 subsurface drainage affected during construction or
6 deconstruction using procedures outlined in the agricultural
7 impact mitigation agreement entered into by the facility
8 owner, and procedures for the repair and restoration of
9 surface drainage affected during construction or
10 deconstruction and ~~plans to repair any subsurface drainage~~
11 ~~affected during construction or deconstruction using~~
12 ~~procedures outlined in the decommissioning plan.~~ All surface
13 and subsurface damage shall be repaired as soon as reasonably
14 practicable.

15 (m) A facility owner shall compensate landowners for crop
16 losses or other agricultural damages resulting from damage to
17 a drainage system caused by the construction or deconstruction
18 of an energy storage system. The facility owner shall repair
19 or pay for the repair of all damage to the subsurface drainage
20 system caused by the construction of the energy storage
21 system. The facility owner shall repair or pay for the repair
22 and restoration of surface drainage caused by the construction
23 or deconstruction of the energy storage facility as soon as
24 reasonably practicable.

25 (n) County siting approval or special use permit
26 application fees for an energy storage system shall not exceed

1 the lesser of (i) \$5,000 per each megawatt of nameplate
2 capacity of the energy storage system or (ii) \$50,000.

3 (o) The county shall ~~may~~ require a facility owner to
4 provide a decommissioning plan to the county that complies
5 with the Department of Agriculture's standard energy storage
6 system agricultural impact mitigation agreement. The
7 decommissioning plan may include all requirements for
8 decommissioning plans in NFPA 855 and may also require the
9 facility owner to:

10 (1) state how the energy storage system will be
11 decommissioned, including removal to a depth of 5 ~~3~~ feet
12 of all structures that have no ongoing purpose and all
13 debris and restoration of the soil and any vegetation to a
14 condition as close as reasonably practicable to the soil's
15 and vegetation's preconstruction condition within 12 ~~18~~
16 months of the end of project life or facility abandonment;

17 (2) include provisions related to commercially
18 reasonable efforts to reuse or recycle of equipment and
19 components associated with the commercial offsite energy
20 storage system;

21 (3) include financial assurance in the form of a
22 reclamation or surety bond or other commercially available
23 financial assurance that is acceptable to the county in an
24 amount that shall be in accordance with the financial
25 assurance required by the Department of Agriculture's
26 standard energy storage system agricultural impact

1 ~~mitigation agreement; , with the county or participating~~
2 ~~property owner as beneficiary. The amount of the financial~~
3 ~~assurance shall not be more than the estimated cost of~~
4 ~~decommissioning the energy facility, after deducting~~
5 ~~salvage value, as calculated by a professional engineer~~
6 ~~licensed to practice engineering in this State with~~
7 ~~expertise in preparing decommissioning estimates, retained~~
8 ~~by the applicant. The financial assurance shall be~~
9 ~~provided to the county incrementally as follows:~~

10 ~~(A) 25% before the start of full commercial~~
11 ~~operation;~~

12 ~~(B) 50% before the start of the 5th year of~~
13 ~~commercial operation; and~~

14 ~~(C) 100% by the start of the tenth year of~~
15 ~~commercial operation;~~

16 (4) update the amount of the financial assurance not
17 more than every 5 years for the duration of commercial
18 operations. The amount shall be calculated by a
19 professional engineer licensed to practice engineering in
20 this State with expertise in decommissioning, hired by the
21 facility owner; and

22 (5) decommission the energy storage system, in
23 accordance with an approved decommissioning plan, within
24 18 months after abandonment. An energy storage system that
25 has not stored electrical energy for 12 consecutive months
26 or that fails, for a period of 6 consecutive months, to pay

1 a property owner who is party to a written agreement,
2 including, but not limited to, an easement, option, lease,
3 or license under the terms of which an energy storage
4 system is constructed on the property, amounts owed in
5 accordance with the written agreement shall be considered
6 abandoned, ~~except when the inability to store energy is~~
7 ~~the result of an event of force majeure or excused service~~
8 ~~interruption.~~

9 (p) A county may not condition approval of an energy
10 storage system on a property value guarantee and may not
11 require a facility owner to pay into a neighboring property
12 devaluation escrow account.

13 (q) A county may require that a facility owner provide the
14 results and recommendations from consultation with the
15 Department of Natural Resources that are obtained through the
16 Ecological Compliance Assessment Tool (EcoCAT) or a comparable
17 successor tool.

18 (r) A county may require an energy storage system to
19 adhere to the recommendations provided by the Department of
20 Natural Resources in an Agency Action Report under 17 Ill.
21 Adm. Code 1075.

22 (s) A county may require a facility owner to:

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

26 (2) consider the recommendations of the Department of

1 Natural Resources for setbacks from protected lands,
2 including areas identified by the Illinois Nature
3 Preserves Commission.

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

9 (u) A county may require that an application for siting
10 approval or special use permit include the following
11 information on a site plan:

12 (1) a description of the property lines and physical
13 features, including roads, for the facility site;

14 (2) a description of the proposed changes to the
15 landscape of the facility site, including vegetation
16 clearing and planting, exterior lighting, and screening or
17 structures; and

18 (3) a description of the zoning district designation
19 for the parcel of land comprising the facility site.

20 (v) A county may not prohibit an energy storage system
21 from undertaking periodic augmentation to maintain the
22 approximate original capacity of the energy storage system. A
23 county may not require renewed or additional siting approval
24 or special use permit approval of periodic augmentation to
25 maintain the approximate original capacity of the energy
26 storage system.

1 (w) A county that issues a building permit for energy
2 storage systems shall review and process building permit
3 applications within 60 days after receipt of the building
4 permit application. If a county does not grant or deny the
5 building permit application within 60 days, the building
6 permit shall be deemed granted. If a county denies a building
7 permit application, it shall specify the reason for the denial
8 in writing as part of its denial.

9 (x) A county may require a single building permit and a
10 reasonable permit fee for the facility which includes all
11 supporting facilities. A county building permit fee for an
12 energy storage system that does not exceed the lesser of (i)
13 \$5,000 per each megawatt of nameplate capacity of the energy
14 storage system or (ii) \$50,000 shall be considered
15 presumptively reasonable. A county may require that the
16 application for building permit contain:

17 (1) an electrical diagram detailing the battery energy
18 storage system layout, associated components, and
19 electrical interconnection methods, with all National
20 Electrical Code compliant disconnects and overcurrent
21 devices; and

22 (2) an equipment specification sheet.

23 (y) A county shall ~~may~~ require the facility owner to
24 submit to the county prior to the facility's commercial
25 operation a commissioning report meeting the requirements of
26 NFPA 855 Sections 4.2.4, 6.1.3, and 6.1.5.5, as published in

1 2023, or the applicable Sections in the most recent version of
2 NFPA 855.

3 (z) A county shall ~~may~~ require the facility owner to
4 submit to the county prior to the facility's commercial
5 operation a hazard mitigation analysis meeting the
6 requirements of NFPA 855 Section 4.4 or the applicable
7 Sections in the most recent version of NFPA 855.

8 (aa) A county shall ~~may~~ require the facility owner to
9 submit to the county an emergency operations plan meeting the
10 requirements of NFPA 855 Section 4.3.2.1.4, published in 2023,
11 or applicable Sections in the most recent version of NFPA 855,
12 prior to commercial operation.

13 (bb) A county shall ~~may~~ require a warning that complies
14 with requirements in NFPA 855 Section 4.7.4, published in
15 2023, or applicable sections in the most recent version of
16 NFPA 855.

17 (cc) A county may require the energy storage system to
18 adhere to the principles for responsible outdoor lighting
19 provided by the International Dark-Sky Association and shall
20 limit outdoor lighting to that which is minimally required for
21 safety and operational purposes. Any outdoor lighting shall be
22 reasonably shielded and downcast from all residences and
23 adjacent properties.

24 (dd) This Section does not exempt compliance with fire and
25 safety standards and guidance established for the installation
26 of lithium-ion battery energy storage systems set by the NFPA.

1 (ee) Prior to commencement of commercial operation, the
2 facility owner shall offer to provide training for local fire
3 departments and emergency responders in accordance with the
4 facility emergency operations plan. A copy of the emergency
5 operations plan shall be given to the facility owner, the
6 local fire department, and emergency responders. All batteries
7 integrated within an energy storage system shall be listed
8 under the UL 1973 Standard. All batteries integrated within an
9 energy storage system shall be listed in accordance with UL
10 9540 Standard, either from the manufacturer or by a field
11 evaluation.

12 (ff) If a facility owner enters into a road use agreement
13 with the Department of Transportation, a road district, or
14 other unit of local government relating to an energy storage
15 system, then the road use agreement shall require the facility
16 owner to be responsible for (i) the reasonable cost of
17 improving, if necessary, roads used by the facility owner to
18 construct the energy storage system and (ii) the reasonable
19 cost of repairing roads used by the facility owner during
20 construction of the energy storage system so that those roads
21 are in a condition that is safe for the driving public after
22 the completion of the facility's construction. A roadway
23 improved in preparation for and during the construction of the
24 energy storage system shall be repaired and restored to the
25 improved condition at the reasonable cost of the developer if
26 the roadways have degraded or were damaged as a result of

1 construction-related activities.

2 The road use agreement shall not require the facility
3 owner to pay costs, fees, or charges for road work that is not
4 specifically and uniquely attributable to the construction of
5 the energy storage system. No road district or other unit of
6 local government may request or require a fine, permit fee, or
7 other payment obligation as a requirement for a road use
8 agreement with a facility owner unless the amount of the fine,
9 permit fee, or other payment obligation is equivalent to the
10 amount of actual expenses incurred by the road district or
11 other unit of local government for negotiating, executing,
12 constructing, or implementing the road use agreement. The road
13 use agreement shall not require the facility owner to perform
14 or pay for any road work that is unrelated to the road
15 improvements required for the construction of the commercial
16 wind energy facility or the commercial solar energy facility
17 or the restoration of the roads used by the facility owner
18 during construction-related activities.

19 (gg) The provisions of this amendatory Act of the 104th
20 General Assembly do not apply to an application for siting
21 approval or special use permit for an energy storage system if
22 the application was submitted to a county before the effective
23 date of this amendatory Act of the 104th General Assembly.

24 (Source: P.A. 104-458, eff. 6-1-26.)

25 Section 10. The Renewable Energy Facilities Agricultural

1 Impact Mitigation Act is amended by changing Sections 10 and
2 15 as follows:

3 (505 ILCS 147/10)

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

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

15 "Abandonment of a commercial solar energy facility" means
16 when deconstruction has not been completed within 12 months
17 after the commercial solar energy facility reaches the end of
18 its useful life. For purposes of this definition, a commercial
19 solar energy facility shall be presumed to have reached the
20 end of its useful life if the commercial solar energy facility
21 owner fails, for a period of 6 consecutive months, to pay the
22 landowner amounts owed in accordance with the underlying
23 agreement.

24 "Abandonment of an energy storage system" means when
25 deconstruction has not been completed within 12 months after

1 the energy storage system reaches the end of its useful life.
2 For purposes of this definition, an energy storage system
3 shall be presumed to have reached the end of its useful life if
4 (1) the energy storage system has not stored electrical energy
5 for a continuous period of 12 months or (2) the energy storage
6 system owner fails, for a period of 6 consecutive months, to
7 pay the landowner amounts owed in accordance with the
8 underlying agreement.

9 "Agricultural impact mitigation agreement" means an
10 agreement between the commercial wind energy facility owner,
11 ~~or~~ the commercial solar energy facility owner, or the energy
12 storage system owner and the Department of Agriculture
13 described in Section 15 of this Act.

14 "Commercial renewable energy facility " means a commercial
15 wind energy facility, ~~or~~ commercial solar energy facility, or
16 energy storage system as defined in this Act.

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

1 owned by the commercial solar energy facility owner; (3) that
2 was constructed before the effective date of this amendatory
3 Act of the 100th General Assembly; or (4) that is located on
4 the customer side of the customer's electric meter and is
5 primarily used to offset that customer's electricity load and
6 is limited in nameplate capacity to less than or equal to 2,000
7 kilowatts.

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

13 "Commercial wind energy facility" means a wind energy
14 conversion facility of equal or greater than 500 kilowatts in
15 total nameplate generating capacity. "Commercial wind energy
16 facility" includes a wind energy conversion facility seeking
17 an extension of a permit to construct granted by a county or
18 municipality before the effective date of this Act.

19 "Commercial wind energy facility" does not include a wind
20 energy conversion facility: (1) that has submitted a complete
21 permit application to a county or municipality and for which
22 the hearing on the completed application has commenced on the
23 date provided in the public hearing notice, which must be
24 before the effective date of this Act; (2) for which a permit
25 to construct has been issued before the effective date of this
26 Act; or (3) that was constructed before the effective date of

1 this Act.

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

7 "Construction" means the installation, preparation for
8 installation, or repair of a commercial renewable energy
9 facility.

10 "County" means the county where the commercial renewable
11 energy facility is located.

12 "Deconstruction" means the removal of a commercial
13 renewable energy facility from the property of a landowner and
14 the restoration of that property as provided in the
15 agricultural impact mitigation agreement.

16 "Department" means the Department of Agriculture.

17 "Energy storage system" means a facility with an aggregate
18 energy capacity that is greater than 500 kilowatts and that is
19 capable of absorbing energy and storing it for use at a later
20 time, including, but not limited to, electrochemical and
21 electromechanical technologies. "Energy storage system" does
22 not include technologies that require combustion.

23 "Energy storage system owner" means a private commercial
24 enterprise that owns an energy storage system. An energy
25 storage system owner is not nor shall it be deemed to be a
26 public utility as defined in the Public Utilities Act.

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

4 "Underlying agreement" means the written agreement with a
5 landowner, including, but not limited to, an easement, option,
6 lease, or license, under the terms of which another person has
7 constructed, constructs, or intends to construct a commercial
8 wind energy facility, ~~or~~ commercial solar energy facility, or
9 energy storage system on the property of the landowner.

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

11 (505 ILCS 147/15)

12 Sec. 15. Agricultural impact mitigation agreement.

13 (a) A commercial renewable energy facility owner of a
14 commercial wind energy facility, ~~or~~ a commercial solar energy
15 facility, or an energy storage system that is located on
16 landowner property shall enter into an agricultural impact
17 mitigation agreement with the Department outlining
18 construction and deconstruction standards and policies
19 designed to preserve the integrity of any agricultural land
20 that is impacted by commercial renewable energy facility
21 construction and deconstruction. The construction and
22 deconstruction of any commercial solar energy facility or
23 energy storage system shall be in conformance with the
24 Department's standard agricultural impact mitigation agreement
25 referenced in subsection (f) of this Section. Except as

1 provided in subsection (a-5) of this Section, the terms and
2 conditions of the Department's standard agricultural impact
3 mitigation agreement are subject to and may be modified by an
4 underlying agreement between the landowner and the commercial
5 solar energy facility owner.

6 (a-5) Prior to the commencement of construction, a
7 commercial solar energy facility owner or energy storage
8 system owner shall submit to the county in which the
9 commercial solar facility or energy storage system is to be
10 located a deconstruction plan. A commercial solar energy
11 facility owner or energy storage system owner shall provide
12 the county with an appropriate financial assurance mechanism
13 consistent with the Department's standard agricultural impact
14 mitigation agreement for and to assure deconstruction in the
15 event of an abandonment of a commercial solar energy facility
16 or energy storage system.

17 (b) The agricultural impact mitigation agreement for a
18 commercial wind energy facility shall include, but is not
19 limited to, such items as restoration of agricultural land
20 affected by construction, deconstruction (including upon
21 abandonment of a commercial wind energy facility),
22 construction staging, and storage areas; support structures;
23 aboveground facilities; guy wires and anchors; underground
24 cabling depth; topsoil replacement; protection and repair of
25 agricultural drainage tiles; rock removal; repair of
26 compaction and rutting; land leveling; prevention of soil

1 erosion; repair of damaged soil conservation practices;
2 compensation for damages to private property; clearing of
3 trees and brush; interference with irrigation systems; access
4 roads; weed control; pumping of water from open excavations;
5 advance notice of access to private property; indemnification
6 of landowners; and deconstruction plans and financial
7 assurance for deconstruction (including upon abandonment of a
8 commercial wind energy facility).

9 (b-5) The agricultural impact mitigation agreement for a
10 commercial solar 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 solar energy facility); 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). The commercial solar energy facility
26 owner shall enter into one agricultural impact mitigation

1 agreement for each commercial solar energy facility.

2 (b-10) The agricultural impact mitigation agreement for an
3 energy storage system shall include, but shall not be limited
4 to, plans for the restoration of agricultural land affected by
5 construction, deconstruction, including upon abandonment of an
6 energy storage system; plans for support structures; plans for
7 aboveground facilities; plans for guy wires and anchors; plans
8 for underground cabling depth; plans for topsoil removal and
9 replacement; plans for rerouting and permanent repair of
10 agricultural drainage tiles; plans for rock removal; plans for
11 repairing of compaction and rutting; plans for construction
12 during wet weather; plans for land leveling; plans for the
13 prevention of soil erosion; plans for repairing damaged soil
14 conservation practices; plans for compensation for any damages
15 to private property; plans for the clearing of trees and
16 brush; plans for access roads; plans for weed control; plans
17 for providing advance notice of access to private property;
18 plans for indemnification of landowners; and the
19 deconstruction plans and financial assurance for
20 deconstruction, including upon abandonment of an energy
21 storage system. The energy storage system owner shall enter
22 into one agricultural impact mitigation agreement for each
23 energy storage system.

24 (c) For commercial wind energy facility owners or energy
25 storage system owners seeking seeking a permit from a county
26 or municipality for the construction of a commercial wind

1 energy facility or energy storage system, the agricultural
2 impact mitigation agreement shall be entered into prior to the
3 public hearing required prior to a siting decision of a county
4 or municipality regarding the commercial wind energy facility
5 or energy storage system. The agricultural impact mitigation
6 agreement is binding on any subsequent commercial wind energy
7 facility owner or energy storage system owner that takes
8 ownership of the commercial wind energy facility or energy
9 storage system that is the subject of the agreement.

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

25 (c-10) A commercial renewable energy facility owner shall
26 make available a copy of the signed agricultural impact

1 mitigation agreement at the site of the commercial renewable
2 energy facility during any construction or deconstruction
3 activities. All contractors or subcontractors shall be trained
4 on the requirements included in the signed agricultural impact
5 mitigation agreement.

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

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

17 (f) The Department shall make available on its website a
18 standard agricultural impact mitigation agreement applicable
19 to all commercial solar energy facilities within 60 days after
20 the effective date of this amendatory Act of the 100th General
21 Assembly.

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

1 Act of the 100th General Assembly.

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