



Rep. Donald L. Moffitt

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1 AMENDMENT TO HOUSE BILL 2955

2 AMENDMENT NO. _____. Amend House Bill 2955 as follows:

3 immediately before the enacting clause, by inserting the
4 following:

5 "WHEREAS, A wind energy Act that provides for a renewable
6 portfolio standard, a restoration indemnity fund, and
7 mechanic's lien clarification will provide a favorable
8 environmental and economic climate for development of wind
9 energy; and

10 WHEREAS, It is desirable to develop both renewable and
11 alternative energy resources to obtain environmental quality
12 and public health benefit; and

13 WHEREAS, The benefits of electricity from renewable and
14 alternative energy resources accrue to the public at large,
15 thus consumers and electric utilities and alternative retail
16 electric suppliers share an interest in developing and using a
17 significant level of these environmentally preferable

1 resources in the State's electricity supply portfolio and
2 stability of taxes for extended periods of time; and

3 WHEREAS, Encouraging energy efficiency will improve the
4 environmental quality and public health in the State of
5 Illinois; and

6 WHEREAS, Wind energy is one alternative energy source that
7 can be used to provide electricity to utility consumers; and

8 WHEREAS, Some regions in the State are ideal locations for
9 wind energy system development; and

10 WHEREAS, As the facilities are typically constructed on
11 property owned by others, it is desirable to create an
12 indemnity fund to pay for deconstruction in the event that the
13 wind energy company fails to do so in a timely manner; and

14 WHEREAS, It is appropriate to protect the owners of the
15 underlying lands from mechanics liens imposed on those lands in
16 the event must the entities constructing the wind energy
17 facilities fail to pay suppliers of labor and materials;
18 therefore, be it"; and

19 by replacing everything after the enacting clause with the
20 following:

21 "Section 1. Short title. This Act may be cited as the Wind
22 Energy Indemnity Fund Act.

23 Section 5. Definitions. As used in this Act:

1 "Abandonment" means (a) in the case of a landowner: (i) failure
2 by the wind energy company to operate a wind turbine or wind
3 turbines for the purpose for which they were designed and
4 installed, for a period of 12 consecutive months, and (ii)
5 failure to pay the landowner moneys owed to him or her in
6 accordance with the underlying agreement, for a period of 6
7 consecutive months; (b) in the case of a county board: (i)
8 failure by the wind energy company to operate a wind turbine or
9 wind turbines for the purposes for which they were designed and
10 installed, for a period of 12 consecutive months, and (ii)
11 failure to adhere to any or all of the restrictions and
12 conditions that were part of the approval process of the
13 appropriate county authority for the granting of the special
14 use permit, conditional use permit, zoning change, or zoning or
15 permitting ordinance of any kind given in order to allow the
16 installation and operation of the wind turbine or wind
17 turbines.

18 "Board" means the governing body of the Wind Energy
19 Indemnity Fund Corporation.

20 "Claimant" means either a landowner or a county board
21 seeking to have a deconstruction paid for from the Fund and
22 carried out by the Department.

23 "Corporation" means the Wind Energy Indemnity Fund
24 Corporation, as established in this Act.

25 "County board" has the meaning set forth in Section 1.07 of
26 the Statute on Statutes.

1 "Deconstruction" means removal of all property comprising
2 a wind energy generation facility from the property of a
3 landowner and restoration of the property to the condition in
4 which it existed immediately prior to the construction of the
5 facility, including, but not limited to, soil type and
6 topography; provided, however, that foundations, pads,
7 electrical lines, and any other underground facilities must be
8 removed to a depth of 4 feet below the surface of the ground.

9 "Department" means the Department of Agriculture.

10 "Director", unless otherwise provided, means the Director
11 of Agriculture, or the Director's designee.

12 "Fund" means the Wind Energy Indemnity Fund.

13 "Landowner" means any person with an ownership interest in
14 property subject to an underlying agreement.

15 "Person" means any individual or entity, including, but not
16 limited to, a sole proprietorship, a partnership, a
17 corporation, a cooperative, an association, a limited
18 liability company, an estate, a trust, or a governmental
19 agency.

20 "Underlying agreement" means a written arrangement with a
21 landowner, including, but not limited to, an easement, under
22 the terms of which a person constructs or intends to construct
23 a wind energy generation facility on the property of the
24 landowner.

25 "Wind energy generation facility" means all property of any
26 nature whatsoever comprising an operation designed to harness

1 wind energy and create electricity therefrom, including, but
2 not limited to, turbines, towers, roadways, concrete
3 foundations, transmission lines, and poles, all situated on,
4 under, or over the property of a landowner.

5 "Wind energy indemnity trust account" means a trust account
6 established by the Director that is used for the receipt and
7 disbursement of moneys paid from the Fund.

8 "Wind turbine" means each tower, blade, and propeller
9 housing designed for wind energy generation.

10 Section 10. Powers and duties of the Director. The Director
11 has all powers necessary and proper to fully and effectively
12 execute the provisions of this Act and has the general duty to
13 implement this Act. The Director's powers and duties include,
14 but are not limited to, the following:

15 1. The Director shall personally serve as president of
16 the Corporation.

17 2. The Director may take any action that may be
18 reasonable or appropriate to enforce this Act and its
19 rules.

20 Section 15. Administrative procedure. The Illinois
21 Administrative Procedure Act applies to this Act.

22 Section 20. Administrative review and venue. Final
23 administrative decisions of the Department are subject to

1 judicial review under Article III of the Code of Civil
2 Procedure and its rules. The term "administrative decision" is
3 defined as in Section 3-101 of the Code of Civil Procedure. An
4 action to review a final administrative decision under this Act
5 may be commenced in the circuit court of any county in which
6 any part of the transaction occurred that gave rise to the
7 claim that was the subject of the proceedings before the
8 Department.

9 Section 25. Rules. The Department may promulgate rules that
10 are necessary for the implementation and administration of this
11 Act.

12 Section 30. Fund assessments. There is an assessment of
13 \$10,000 for each wind turbine constructed or under construction
14 as of the effective date of this Act and for each turbine
15 constructed thereafter, under the provisions of an underlying
16 agreement. The assessment is an obligation of the owner of each
17 wind turbine and is payable in one initial payment of \$5,000
18 and \$5,000 in equal annual installments of \$250 over a period
19 of 20 years; provided, however, that the subsequent annual
20 installments must be adjusted based on inflation, as reflected
21 in the Consumer Price Index, on an annual basis. The initial
22 payment is payable within 90 days after the effective date of
23 this Act for wind turbines already constructed or under
24 construction, and, in all other cases, prior to the

1 commencement of construction.

2 All installments under this Section must be sent to the
3 Department and made payable to the Corporation.

4 It is the responsibility of all parties to an underlying
5 agreement to report the existence and specific provisions of
6 the underlying agreement to the Department.

7 The Department shall mail all assessment notices to owners
8 of wind energy generation facilities at least 30 days before
9 the assessment installment is due.

10 All wind turbines already constructed, under construction,
11 or issued a building permit before the effective date of this
12 Act are to provide proof to the county of payment to the Fund
13 within 95 days of the effective date of this Act. If such proof
14 of payment is not provided, then the county must order the wind
15 energy company to stop all operation and construction
16 activities until the county receives proof of payment to the
17 Fund. For all other wind turbines, no county may issue a
18 building permit without being provided proof that the above
19 assessment has been paid to the Fund.

20 Section 35. Abandonment. Upon an administrative finding in
21 a hearing held by the Department that a deconstruction has been
22 validly determined and ordered by either a court of competent
23 jurisdiction or an arbitrator in binding arbitration, and
24 deconstruction, after a period of at least 8 months, has not
25 been completed satisfactorily, the Director has all the powers

1 for the benefit of claimants as established under this Act,
2 including, but not limited to, the power to do the following:

3 1. request the transfer of moneys from the Fund to the
4 Trust Account for the purpose of paying the cost of
5 deconstruction in accordance with this Act;

6 2. disburse the funds in the Trust Account for the
7 deconstruction in accordance with this Act;

8 3. cause the sale of the deconstructed assets;

9 4. retain from the sale of the deconstructed assets
10 moneys adequate to cover the costs to the Department of the
11 deconstruction, and pay those amounts to the Fund;

12 5. return all moneys over and above the costs to the
13 Department for the deconstruction to the owner or owners of
14 the deconstructed assets, or to the holders of valid liens
15 on those assets.

16 Section 40. Statutory lien. The Department has a lien prior
17 and paramount to all other liens of any sort on the assets of
18 the wind energy system to the extent of the costs incurred by
19 the Department to accomplish the deconstruction of the
20 abandoned wind energy system, which arises and attach upon
21 construction of said wind energy system; provided, however,
22 that the lien herein granted to the Department is not prior and
23 paramount to the statutory lien in favor of real property
24 taxes.

1 Section 45. Claims.

2 (a) A claimant shall file a complaint, on forms supplied by
3 the Department, that contains at least the following:

4 (1) the name and address of the claimant;

5 (2) the name and address of the owner of the wind
6 energy generation facility in question;

7 (3) the location of the wind energy generation facility
8 in question;

9 (4) a copy of either a court decision, or the finding
10 of an arbitrator in a binding arbitration proceeding, that
11 indicates a finding of abandonment of the wind energy
12 generation facility in question; a determination that the
13 underlying agreement is null, void, and of no further force
14 and effect; and an order for deconstruction of same. The
15 court order or arbitration decision must have been rendered
16 at least 8 months previously, and the time for all appeals
17 and related proceedings must have lapsed.

18 (5) evidence showing that the deconstruction ordered
19 by a court, or by an arbitrator in a proceeding for binding
20 arbitration, has not been carried to a satisfactory
21 conclusion, as defined in this Act; and

22 (6) a request that the funds necessary to perform the
23 deconstruction be paid to the Department from the Fund and
24 that the Department carry out the deconstruction in
25 accordance with the order of the court or the arbitrator
26 and in accordance with the definition of deconstruction as

1 contained in this Act.

2 (b) A hearing shall be held by the Department and a
3 decision rendered as to the validity of the claimant's
4 complaint. In the event of a finding that the complaint is
5 valid, then, within 90 days after the date, the Department
6 shall obtain at least 2 bids from contractors to carry out the
7 specific deconstruction. One bidder must be chosen by the
8 Department within the following 60 days, and the Department,
9 within 60 days thereafter, shall enter into a written agreement
10 with the successful bidder for the deconstruction, which must
11 be accomplished with 6 months thereafter.

12 (c) It is the responsibility of the Department to monitor
13 the progress of the deconstruction and provide the necessary
14 supervisory oversight to ensure that it is accomplished in
15 accordance with the deconstruction agreement and the
16 provisions of this Act.

17 Section 50. Illinois Wind Energy Indemnity Fund
18 Corporation; creation; powers.

19 (a) There is hereby created the Illinois Wind Energy
20 Indemnity Fund Corporation, a political subdivision, body
21 politic, and public corporation. The governing powers of the
22 Corporation are vested in the Board of Directors composed of
23 the Director, who shall personally serve as President; the
24 Attorney General or his or her designee, who shall serve as
25 Secretary; the State Treasurer or his or her designee, who

1 shall serve as Treasurer; and the Chairman of the Illinois
2 Commerce Commission, or his or her designee. Three members of
3 the Board constitute a quorum at any meeting of the Board, and
4 the affirmative vote of 3 members is necessary for any action
5 taken by the Board at a meeting, except that a lesser number
6 may adjourn a meeting from time to time. A vacancy in the
7 membership of the Board does not impair the right of a quorum
8 to exercise all the rights and perform all the duties of the
9 Board and Corporation.

10 (b) The Corporation has the following powers, together with
11 all powers incidental or necessary to the discharge of those
12 powers in corporate form:

13 (1) To have perpetual succession by its corporate name
14 as a corporate body.

15 (2) To adopt, alter, and repeal by-laws, not
16 inconsistent with the provisions of this Act, for the
17 regulation and conduct of its affairs and business.

18 (3) To adopt and make use of a corporate seal and to
19 alter the seal at pleasure.

20 (4) To avail itself of the use of information,
21 services, facilities, and employees of the State of
22 Illinois in carrying out the provisions of this Act.

23 (5) To receive funds assessed by the Department under
24 this Act.

25 (6) To administer the Fund by investing funds of the
26 Corporation that the Board may determine are not presently

1 needed for its corporate purposes.

2 (7) Upon the request of the Director, to make payment
3 from the Fund to the Trust Account when payment is
4 necessary to pay costs of deconstruction in accordance with
5 the provisions of this Act.

6 (8) To authorize, receive, and disburse funds by
7 electronic means.

8 (9) To have those powers that are necessary or
9 appropriate for the exercise of the powers specifically
10 conferred upon the Corporation and all incidental powers
11 that are customary in corporations.

12 (c) All assessments by the Department must be held by the
13 Corporation in the Fund.

14 (d) Subject to applicable law, the assets of the Fund may
15 be invested and reinvested at the discretion of the
16 Corporation, and the income from these investments must be
17 deposited into the Fund and must be available for the same
18 purposes as all other assets of the Fund.

19 (e) The assets of the Fund may not be available for any
20 purposes other than the payment of deconstruction costs under
21 this Act and the payment of refunds of amounts that the Board
22 determines have been inappropriately paid into the Fund, and
23 may not be transferred to any other fund, other than the Trust
24 Account when necessary to pay deconstruction costs under this
25 Act or to pay refunds authorized by the Board.

1 Section 55. No waiver. The provisions of this Act,
2 including the definitions, may not be altered, varied, or
3 revised by agreement.

4 Section 900. The Public Utilities Act is amended by adding
5 Section 9-220.3 as follows:

6 (220 ILCS 5/9-220.3 new)

7 Sec. 9-220.3. Renewable energy portfolio standards.

8 (a) "Renewable energy resources" has the meaning set forth
9 in subsection (f) of Section 6-3 of The Renewable Energy,
10 Energy Efficiency, and Coal Resources Development Law of 1997.
11 However, for the limited purposes of this Section, energy
12 produced by methane recovered from landfills in Illinois may be
13 counted as a renewable energy resource for up to, but no more
14 than, 25% of the amount of renewable energy resources provided
15 by the electric utility or alternative retail electric supplier
16 in meeting the standards set forth in subsection (c).

17 (b) The objective of this Section is to ensure the
18 development and use of renewable energy resources to advance
19 the goals stated in Section 5 of the Illinois Resource
20 Development and Energy Security Act.

21 (c) Each electric utility or alternative retail electric
22 supplier shall provide sufficient renewable energy resources
23 to comprise:

24 (1) at least 2% of the total electricity

1 (megawatthours) that it supplies to its Illinois customers
2 as of December 31, 2007;

3 (2) at least 3% of the total electricity
4 (megawatthours) that it supplies to its Illinois customers
5 as of December 31, 2008;

6 (3) at least 4% of the total electricity
7 (megawatthours) that it supplies to its Illinois customers
8 as of December 31, 2009;

9 (4) at least 5% of the total electricity
10 (megawatthours) that it supplies to its Illinois customers
11 as of December 31, 2010;

12 (5) at least 6% of the total electricity
13 (megawattshours) that it supplies to its Illinois
14 customers as of December 31, 2011;

15 (6) at least 7% of the total electricity
16 (megawattshours) that it supplies to its Illinois
17 customers as of December 31, 2012;

18 (7) at least 8% of the total electricity
19 (megawattshours) that it supplies to its Illinois
20 customers as of December 31, 2013;

21 (8) at least 9% of the total electricity
22 (megawattshours) that it supplies to its Illinois
23 customers as of December 31, 2014;

24 (9) and at least 10% of the total electricity
25 (megawattshours) that it supplies to its Illinois
26 customers as of December 31, 2015.

1 The electric utilities or alternative retail electric
2 suppliers shall report to the Commission on their compliance
3 with these standards by April 1, 2008 and by April 1st of each
4 succeeding year.

5 (d) In order to help achieve improved air quality, public
6 health, and environmental quality for Illinois, renewable
7 energy resources may be counted for purposes of meeting the
8 renewable energy portfolio standards set forth in subsection
9 (c) only if they are generated from facilities located in this
10 State or in a directly adjacent serious or severe ozone
11 non-attainment area as designated by the United States
12 Environmental Protection Agency. However, the renewable energy
13 resources may be counted for purposes of the renewable energy
14 portfolio standards after January 1, 2007 if generated from a
15 facility in an adjacent state that has entered into an
16 agreement with Illinois as provided in subsection (e) and the
17 renewable energy resource provided meets the definition set
18 forth in subsection (f) of Section 6-3 of the Renewable Energy,
19 Energy Efficiency, and Coal Resources Development Law of 1997.

20 (e) Illinois officials may work with public officials in
21 adjacent states to develop a regional agreement in which
22 Illinois electric utilities and alternative retail electricity
23 suppliers will be allowed, after January 1, 2007, to count for
24 purposes of meeting the designated renewable energy portfolio
25 standards set forth in subsection (c) some renewable energy
26 resources generated in an adjacent state if that other state

1 has enacted statutory renewable energy portfolio standards
2 that are similar to the standards set forth in subsection (c)
3 and that other state also allows renewable energy resources
4 generated in Illinois to be counted toward meeting its
5 statutory renewable energy portfolio standards on a similar
6 basis. For the purposes of such an agreement, only those
7 renewable energy resources meeting the definition set forth in
8 subsection (f) of Section 6-3 of the Renewable Energy, Energy
9 Efficiency, and Coal Resources Development Law of 1997 may be
10 included.

11 (f) Costs of obtaining renewable energy resources to meet
12 the renewable energy portfolio standards, after January 1,
13 2007, pursuant to subsection (c), shall be recoverable by a
14 utility from its ratepayers to the same extent as other fuel or
15 purchase power costs as allowed by law after January 1, 2007.

16 (g) If an electric utility or alternative retail electric
17 supplier does not purchase and supply all of the amounts of
18 renewable energy specified by the standards in subsection (c),
19 then the electric utility or alternative retail electric
20 supplier shall pay a penalty of \$25 per megawatthour each year
21 for any shortfall in supply. That payment shall be deposited
22 into the Renewable Energy Resources Trust Fund to be used by
23 the Department of Commerce and Economic Opportunity for the
24 purposes of supporting the actual development, construction,
25 and utilization of renewable energy projects in Illinois.
26 However, if the electric utility or alternative retail electric

1 supplier compellingly demonstrates that renewable energy
2 resources are not available in sufficient quantities to meet
3 the renewable energy portfolio standards set forth in
4 subsection (c), and makes such a force majeure showing as to
5 the shortfall and any obstacles to availability, and if the
6 Illinois Commerce Commission finds that the electric utility or
7 alternative retail electric supplier, after notice and a
8 hearing with an opportunity for the public to be heard, has, in
9 fact, made such a compelling demonstration, then the electric
10 utility or alternative retail electric supplier may avoid
11 paying the penalty. The penalty payments shall be set aside in
12 a separate escrow fund pending the hearing. In any case where
13 the Commission finds that such a compelling demonstration has
14 been made, the electric utility or alternative retail electric
15 supplier must provide a mutually acceptable alternative means
16 of developing and utilizing renewable energy resources in the
17 State, subject to the review and approval of the Illinois
18 Commerce Commission and the Department of Commerce and Economic
19 Opportunity.

20 (h) This amendatory Act of the 95th General Assembly
21 exempts any public utility with fewer than 200,000 electric
22 customers in Illinois on January 1, 2007.

23 Section 905. The Mechanics Lien Act is amended by adding
24 Section 1.01 as follows:

1 (770 ILCS 60/1.01 new)

2 Sec. 1.01. Definitions; platting requirements for wind
3 energy systems; extent of lien on wind energy parcel.

4 (a) Definitions.

5 "Wind energy conversion device" means any device
6 including, but not limited to, a wind charger, windmill, or
7 wind turbine that converts wind energy to a form of usable
8 energy.

9 "Wind energy conversion parcel" means all property rights
10 obtained by the wind energy system owner to a platted parcel
11 including the wind energy conversion devices, associated
12 equipment, easements, contracts, and leases.

13 (b) Upon the completion of construction, the owner of a
14 wind energy conversion system, at his or her own expense, shall
15 cause the wind turbine facilities to be platted by an Illinois
16 registered land surveyor. The plat must include access routes,
17 together with a metes and bounds description of the area
18 surrounding each wind turbine. The system owner must record the
19 plat and deliver a copy of it to the property owner and to the
20 chief county assessment officer within 60 days after the
21 completion of the construction. Upon receiving a copy of the
22 plat, the chief county assessment officer must issue a separate
23 parcel identification number, or numbers, for the wind energy
24 conversion system to apportion the value to each taxing
25 district in which the system is physically located.

26 (c) A lien for work or materials on wind energy conversion

1 parcels is limited to the platted parcel, including all
2 property rights obtained by the wind energy system owner to the
3 platted parcel including the wind energy conversion devices,
4 associated equipment, easements, contracts, and leases.

5 Section 999. Effective date. This Act takes effect upon
6 becoming law.".