



Sen. Mike Jacobs

Filed: 3/21/2007

09500SB1400sam002

LRB095 11080 BDD 34270 a

1 AMENDMENT TO SENATE BILL 1400

2 AMENDMENT NO. _____. Amend Senate Bill 1400, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

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

8 "Abandonment" means (a) in the case of a landowner: (i) failure
9 by the wind energy company to operate a wind turbine or wind
10 turbines for the purpose for which they were designed and
11 installed, for a period of 12 consecutive months, and (ii)
12 failure to pay the landowner moneys owed to him or her in
13 accordance with the underlying agreement, for a period of 6
14 consecutive months; (b) in the case of a county board: (i)
15 failure by the wind energy company to operate a wind turbine or
16 wind turbines for the purposes for which they were designed and

1 installed, for a period of 12 consecutive months, and (ii)
2 failure to adhere to any or all of the restrictions and
3 conditions that were part of the approval process of the
4 appropriate county authority for the granting of the special
5 use permit, conditional use permit, zoning change, or zoning or
6 permitting ordinance of any kind given in order to allow the
7 installation and operation of the wind turbine or wind
8 turbines.

9 "Board" means the governing body of the Wind Energy
10 Indemnity Fund Corporation.

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

14 "Corporation" means the Wind Energy Indemnity Fund
15 Corporation, as established in this Act.

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

18 "Deconstruction" means removal of all property comprising
19 a wind energy generation facility from the property of a
20 landowner and restoration of the property to the condition in
21 which it existed immediately prior to the construction of the
22 facility, including, but not limited to, soil type and
23 topography; provided, however, that foundations, pads,
24 electrical lines, and any other underground facilities must be
25 removed to a depth of 4 feet below the surface of the ground.

26 "Department" means the Department of Agriculture.

1 "Director", unless otherwise provided, means the Director
2 of Agriculture, or the Director's designee.

3 "Fund" means the Wind Energy Indemnity Fund.

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

6 "Person" means any individual or entity, including, but not
7 limited to, a sole proprietorship, a partnership, a
8 corporation, a cooperative, an association, a limited
9 liability company, an estate, a trust, or a governmental
10 agency.

11 "Underlying agreement" means a written arrangement with a
12 landowner, including, but not limited to, an easement, under
13 the terms of which a person constructs or intends to construct
14 a wind energy generation facility on the property of the
15 landowner.

16 "Wind energy generation facility" means all property of any
17 nature whatsoever comprising an operation designed to harness
18 wind energy and create electricity therefrom, including, but
19 not limited to, turbines, towers, roadways, concrete
20 foundations, transmission lines, and poles, all situated on,
21 under, or over the property of a landowner.

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

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

1 Section 10. Powers and duties of the Director. The Director
2 has all powers necessary and proper to fully and effectively
3 execute the provisions of this Act and has the general duty to
4 implement this Act. The Director's powers and duties include,
5 but are not limited to, the following:

6 1. The Director shall personally serve as president of
7 the Corporation.

8 2. The Director may take any action that may be
9 reasonable or appropriate to enforce this Act and its
10 rules.

11 Section 15. Administrative procedure. The Illinois
12 Administrative Procedure Act applies to this Act.

13 Section 20. Administrative review and venue. Final
14 administrative decisions of the Department are subject to
15 judicial review under Article III of the Code of Civil
16 Procedure and its rules. The term "administrative decision" is
17 defined as in Section 3-101 of the Code of Civil Procedure. An
18 action to review a final administrative decision under this Act
19 may be commenced in the circuit court of any county in which
20 any part of the transaction occurred that gave rise to the
21 claim that was the subject of the proceedings before the
22 Department.

1 Section 25. Rules. The Department may promulgate rules that
2 are necessary for the implementation and administration of this
3 Act.

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

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

20 It is the responsibility of all parties to an underlying
21 agreement to report the existence and specific provisions of
22 the underlying agreement to the Department.

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

1 All wind turbines already constructed, under construction,
2 or issued a building permit before the effective date of this
3 Act are to provide proof to the county of payment to the Fund
4 within 95 days of the effective date of this Act. If such proof
5 of payment is not provided, then the county must order the wind
6 energy company to stop all operation and construction
7 activities until the county receives proof of payment to the
8 Fund. For all other wind turbines, no county may issue a
9 building permit without being provided proof that the above
10 assessment has been paid to the Fund.

11 Section 35. Abandonment. Upon an administrative finding in
12 a hearing held by the Department that a deconstruction has been
13 validly determined and ordered by either a court of competent
14 jurisdiction or an arbitrator in binding arbitration, and
15 deconstruction, after a period of at least 8 months, has not
16 been completed satisfactorily, the Director has all the powers
17 for the benefit of claimants as established under this Act,
18 including, but not limited to, the power to do the following:

19 1. request the transfer of moneys from the Fund to the
20 Trust Account for the purpose of paying the cost of
21 deconstruction in accordance with this Act;

22 2. disburse the funds in the Trust Account for the
23 deconstruction in accordance with this Act;

24 3. cause the sale of the deconstructed assets;

25 4. retain from the sale of the deconstructed assets

1 moneys adequate to cover the costs to the Department of the
2 deconstruction, and pay those amounts to the Fund;

3 5. return all moneys over and above the costs to the
4 Department for the deconstruction to the owner or owners of
5 the deconstructed assets, or to the holders of valid liens
6 on those assets.

7 Section 40. Statutory lien. The Department has a lien prior
8 and paramount to all other liens of any sort on the assets of
9 the wind energy system to the extent of the costs incurred by
10 the Department to accomplish the deconstruction of the
11 abandoned wind energy system, which arises and attach upon
12 construction of said wind energy system; provided, however,
13 that the lien herein granted to the Department is not prior and
14 paramount to the statutory lien in favor of real property
15 taxes.

16 Section 45. Claims.

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

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

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

22 (3) the location of the wind energy generation facility
23 in question;

24 (4) a copy of either a court decision, or the finding

1 of an arbitrator in a binding arbitration proceeding, that
2 indicates a finding of abandonment of the wind energy
3 generation facility in question; a determination that the
4 underlying agreement is null, void, and of no further force
5 and effect; and an order for deconstruction of same. The
6 court order or arbitration decision must have been rendered
7 at least 8 months previously, and the time for all appeals
8 and related proceedings must have lapsed.

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

13 (6) a request that the funds necessary to perform the
14 deconstruction be paid to the Department from the Fund and
15 that the Department carry out the deconstruction in
16 accordance with the order of the court or the arbitrator
17 and in accordance with the definition of deconstruction as
18 contained in this Act.

19 (b) A hearing shall be held by the Department and a
20 decision rendered as to the validity of the claimant's
21 complaint. In the event of a finding that the complaint is
22 valid, then, within 90 days after the date, the Department
23 shall obtain at least 2 bids from contractors to carry out the
24 specific deconstruction. One bidder must be chosen by the
25 Department within the following 60 days, and the Department,
26 within 60 days thereafter, shall enter into a written agreement

1 with the successful bidder for the deconstruction, which must
2 be accomplished within 6 months thereafter.

3 (c) It is the responsibility of the Department to monitor
4 the progress of the deconstruction and provide the necessary
5 supervisory oversight to ensure that it is accomplished in
6 accordance with the deconstruction agreement and the
7 provisions of this Act.

8 Section 50. Illinois Wind Energy Indemnity Fund
9 Corporation; creation; powers.

10 (a) There is hereby created the Illinois Wind Energy
11 Indemnity Fund Corporation, a political subdivision, body
12 politic, and public corporation. The governing powers of the
13 Corporation are vested in the Board of Directors composed of
14 the Director, who shall personally serve as President; the
15 Attorney General or his or her designee, who shall serve as
16 Secretary; the State Treasurer or his or her designee, who
17 shall serve as Treasurer; and the Chairman of the Illinois
18 Commerce Commission, or his or her designee. Three members of
19 the Board constitute a quorum at any meeting of the Board, and
20 the affirmative vote of 3 members is necessary for any action
21 taken by the Board at a meeting, except that a lesser number
22 may adjourn a meeting from time to time. A vacancy in the
23 membership of the Board does not impair the right of a quorum
24 to exercise all the rights and perform all the duties of the
25 Board and Corporation.

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

4 (1) To have perpetual succession by its corporate name
5 as a corporate body.

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

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

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

14 (5) To receive funds assessed by the Department under
15 this Act.

16 (6) To administer the Fund by investing funds of the
17 Corporation that the Board may determine are not presently
18 needed for its corporate purposes.

19 (7) Upon the request of the Director, to make payment
20 from the Fund to the Trust Account when payment is
21 necessary to pay costs of deconstruction in accordance with
22 the provisions of this Act.

23 (8) To authorize, receive, and disburse funds by
24 electronic means.

25 (9) To have those powers that are necessary or
26 appropriate for the exercise of the powers specifically

1 conferred upon the Corporation and all incidental powers
2 that are customary in corporations.

3 (c) All assessments by the Department must be held by the
4 Corporation in the Fund.

5 (d) Subject to applicable law, the assets of the Fund may
6 be invested and reinvested at the discretion of the
7 Corporation, and the income from these investments must be
8 deposited into the Fund and must be available for the same
9 purposes as all other assets of the Fund.

10 (e) The assets of the Fund may not be available for any
11 purposes other than the payment of deconstruction costs under
12 this Act and the payment of refunds of amounts that the Board
13 determines have been inappropriately paid into the Fund, and
14 may not be transferred to any other fund, other than the Trust
15 Account when necessary to pay deconstruction costs under this
16 Act or to pay refunds authorized by the Board.

17 Section 55. No waiver. The provisions of this Act,
18 including the definitions, may not be altered, varied, or
19 revised by agreement.

20 Section 900. The Illinois Resource Development and Energy
21 Security Act is amended by adding Section 21 as follows:

22 (20 ILCS 688/21 new)

23 Sec. 21. Legislative findings. The General Assembly finds

1 and declares that:

2 (1) a wind energy Act that provides for a renewable
3 portfolio standard, a consistent property valuation
4 method, a restoration indemnity fund, and mechanic's lien
5 clarification will provide a favorable environmental and
6 economic climate for development of wind energy;

7 (2) it is desirable to develop both renewable and
8 alternative energy resources to obtain environmental
9 quality and public health benefit;

10 (3) the benefits of electricity from renewable and
11 alternative energy resources accrue to the public at large,
12 thus consumers and electric utilities and alternative
13 retail electric suppliers share an interest in developing
14 and using a significant level of these environmentally
15 preferable resources in the State's electricity supply
16 portfolio and stability of taxes for extended periods of
17 time;

18 (4) encouraging energy efficiency will improve the
19 environmental quality and public health in the State of
20 Illinois;

21 (5) wind energy is one alternative energy source that
22 can be used to provide electricity to utility consumers;

23 (6) some regions in the State are ideal locations for
24 wind energy system development;

25 (7) as the facilities are typically constructed on
26 property owned by others, and deconstruction of the

1 facilities is costly, it is desirable to create an
2 indemnity fund to pay for deconstruction in the event that
3 the wind energy company fails to do so in a timely manner;
4 and

5 (8) it is appropriate to protect the owners of the
6 underlying lands from mechanics liens imposed on those
7 lands in the event that the entities constructing the wind
8 energy facilities fail to pay suppliers of labor and
9 materials.

10 Section 905. The Public Utilities Act is amended by adding
11 Section 9-220.3 as follows:

12 (220 ILCS 5/9-220.3 new)

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

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

23 (b) The objective of this Section is to ensure the
24 development and use of renewable energy resources to advance

1 the goals stated in Section 5 of the Illinois Resource
2 Development and Energy Security Act.

3 (c) Each electric utility or alternative retail electric
4 supplier shall provide sufficient renewable energy resources
5 to comprise:

6 (1) at least 2% of the total electricity
7 (megawatthours) that it supplies to its Illinois customers
8 as of December 31, 2007;

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

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

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

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

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

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

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

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

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

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

26 (e) Illinois officials may work with public officials in

1 adjacent states to develop a regional agreement in which
2 Illinois electric utilities and alternative retail electricity
3 suppliers will be allowed, after January 1, 2007, to count for
4 purposes of meeting the designated renewable energy portfolio
5 standards set forth in subsection (c) some renewable energy
6 resources generated in an adjacent state if that other state
7 has enacted statutory renewable energy portfolio standards
8 that are similar to the standards set forth in subsection (c)
9 and that other state also allows renewable energy resources
10 generated in Illinois to be counted toward meeting its
11 statutory renewable energy portfolio standards on a similar
12 basis. For the purposes of such an agreement, only those
13 renewable energy resources meeting the definition set forth in
14 subsection (f) of Section 6-3 of the Renewable Energy, Energy
15 Efficiency, and Coal Resources Development Law of 1997 may be
16 included.

17 (f) Costs of obtaining renewable energy resources to meet
18 the renewable energy portfolio standards, after January 1,
19 2007, pursuant to subsection (c), shall be recoverable by a
20 utility from its ratepayers to the same extent as other fuel or
21 purchase power costs as allowed by law after January 1, 2007.

22 (g) If an electric utility or alternative retail electric
23 supplier does not purchase and supply all of the amounts of
24 renewable energy specified by the standards in subsection (c),
25 then the electric utility or alternative retail electric
26 supplier shall pay a penalty of \$25 per megawatthour each year

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

26 (h) This Act exempts any public utility with fewer than

1 200,000 electric customers in Illinois on January 1, 2007.

2 Section 910. The Mechanics Lien Act is amended by adding
3 Section 1.01 as follows:

4 (770 ILCS 60/1.01 new)

5 Sec. 1.01. Definitions. Person entitled to lien; extent of
6 lien on wind energy parcel.

7 (a) Definitions.

8 "Wind energy conversion device" means any device
9 including, but not limited to, a wind charger, windmill, or
10 wind turbine that coverts wind energy to a form of usable
11 energy.

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

16 (b) A lien for work or materials on wind energy conversion
17 parcels is limited to the platted parcel, including all
18 property rights obtained by the wind energy system owner to the
19 platted parcel including the wind energy conversion devices,
20 associated equipment, easements, contracts, and leases.

21 Section 999. Effective date. This Act takes effect upon
22 becoming law.".