



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3271

Introduced 2/7/2012, by Sen. Michael W. Frerichs

SYNOPSIS AS INTRODUCED:

New Act

Creates the Wind Energy Facilities Construction, Deconstruction, and Siting Act. Provides that every commercial wind energy operator that is the owner of a commercial wind energy facility located on land owned by another person or entity shall enter into an agricultural impact mitigation agreement with the Illinois Department of Agriculture to preserve the integrity of any agricultural land that is impacted by commercial wind energy facility construction. Provides that the commercial wind energy operator is responsible for deconstruction of the commercial wind energy facility and for all costs associated with deconstruction of that facility and associated facilities. Provides that a county or municipality shall or approve or disapprove the request for siting approval of a commercial wind energy facility within the specified areas of a county or municipality. Provides that the Department shall adopt rules that are necessary and appropriate for the implementation and administration of the Act. Provides that a county or municipality may require setback standards that are not to exceed certain specifications. Effective July 1, 2012.

LRB097 18594 CEL 63826 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

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

7 Section 5. Purposes. The primary purposes of this Act are
8 to promote the State's welfare by protecting landowners during
9 the construction and deconstruction of commercial wind energy
10 facilities, provide adequate protection for the public health
11 safety and welfare during the operation of wind energy
12 facilities, and allow for reasonable development of commercial
13 wind energy facilities.

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

15 "Commercial wind energy facility" means a wind energy
16 conversion facility of equal or greater than 500 kilowatts in
17 total nameplate generating capacity.

18 "Commission" means the Illinois Commerce Commission.

19 "Commercial wind energy operator" means a private
20 commercial enterprise that owns or operates a wind energy
21 facility of equal to or greater than 500 kilowatts in total
22 nameplate capacity.

1 "Department" means the Illinois Department of Agriculture.

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

11 "Landowner" means any person with an ownership interest in
12 property (i) that is used for agricultural purposes and (ii)
13 that is a party to an underlying agreement.

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

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

22 "Wind turbine tower height" means the distance from the
23 wind turbine rotor blade at its highest point to the top
24 surface of the wind turbine foundation.

25 Section 15. Construction activities.

1 (a) Every commercial wind energy operator that is the owner
2 of a commercial wind energy facility located on land owned by
3 another person or entity shall enter into an agricultural
4 impact mitigation agreement with the Illinois Department of
5 Agriculture outlining construction standards and policies
6 designed to preserve the integrity of any agricultural land
7 that is impacted by commercial wind energy facility
8 construction. The agricultural impact mitigation agreement
9 shall be entered into prior to the construction of the
10 commercial wind energy facility and is binding on any
11 subsequent wind energy operator that takes ownership of the
12 commercial wind energy facility that is the subject of the
13 agreement.

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

18 Section 20. Deconstruction activities.

19 (a) The commercial wind energy operator is responsible for
20 deconstruction of the commercial wind energy facility and for
21 all costs associated with deconstruction of that facility and
22 associated facilities.

23 (b) A commercial wind energy facility is presumed to be at
24 the end of its useful life if (i) the commercial wind energy
25 operator fails, for a period of 12 consecutive months, to

1 operate a commercial wind facility or wind turbine for the
2 purpose of which it was designed and installed and (ii) the
3 commercial wind energy operator fails, for a period of 6
4 consecutive months, to pay the landowner moneys owed to him or
5 her in accordance with the underlying agreement.

6 (c) The commercial wind energy operator shall begin
7 deconstruction of the commercial wind energy facility within 8
8 months after the time the facility or turbine reaches the end
9 of its useful life. Deconstruction must be completed within 18
10 months after the commercial wind energy facility reaches the
11 end of its useful life.

12 (d) Prior to the commencement of the operation of a
13 commercial wind energy facility, the commercial wind energy
14 operator shall file with the Commission a plan detailing the
15 estimated deconstruction cost per turbine, in current dollars
16 at the time of filing, for the proposed commercial wind energy
17 conversion facility. The plan must also include a comprehensive
18 detailed description describing how the commercial wind energy
19 operator plans to pay for the deconstruction of the commercial
20 wind energy facility. The Commission may at any time after the
21 construction of the commercial wind energy facility require the
22 commercial wind energy operator to file a report with the
23 Commission describing how the operator is fulfilling its
24 obligations under this Section.

25 (e) Commercial wind energy operators of existing
26 commercial wind energy facilities shall file with the

1 Commission information required in subsection (d) within one
2 year after the effective date of this Act.

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

24 (g) If the commercial wind energy operator does not
25 complete deconstruction, the Commission may take such action as
26 necessary to complete deconstruction, including drawing upon

1 the financial assurance required in subsection (d). The entry
2 into an underlying agreement shall constitute agreement and
3 consent of the parties to the agreement, their respective
4 heirs, successors, assigns, that the Commission may take such
5 action as may be necessary for the deconstruction of the
6 commercial wind energy facility or wind wind turbine, including
7 the exercise by the Commission, Commission staff, and their
8 contractors of the right of ingress and egress for the purpose
9 of deconstruction of the commercial wind energy facility.

10 (h) If there is a change in ownership of the wind energy
11 facility, the commercial wind energy operator assuming
12 ownership of the facility is required to provide notice to the
13 Commission of such change and the existing financial assurance
14 requirements for the facility as required in subsection (f)
15 shall apply to the new operator.

16 (i) The Commission shall adopt rules that are necessary and
17 appropriate for the implementation and administration of
18 agricultural impact mitigation agreements as required under
19 this Act.

20 Section 25. Local siting review.

21 (a) A county shall approve or disapprove the request for
22 siting approval of a commercial wind energy facility within the
23 county, unincorporated areas of the county outside of zoning
24 jurisdiction of a municipality, and the 1.5 mile radius
25 surrounding the zoning jurisdiction of a municipality. A

1 municipality may approve or disapprove the request for siting
2 approval of a commercial wind energy facility within its zoning
3 jurisdiction. A commercial wind energy operator applying for
4 siting approval shall submit sufficient details describing the
5 proposed commercial wind energy facility to demonstrate
6 compliance with this Act, and siting approval may be granted if
7 the proposed commercial wind energy facility meets the
8 following criteria:

9 (1) the commercial wind energy facility complies with
10 the requirement of Section 15 of this Act;

11 (2) the commercial wind energy facility complies with
12 the requirements of Section 20 of this Act; and

13 (3) the commercial wind energy facility complies with
14 Illinois Pollution Control Board noise standards.

15 (b) A county or municipality may establish standards for
16 commercial wind energy facilities as follows:

17 (1) A county or municipality may require setback
18 standards for wind turbines that are not to exceed the
19 following distances:

20 (A) 1,400 feet from any residence, storage shed,
21 unattached garage, barn, commercial building,
22 hospital, or day care facility;

23 (B) 1.1 times the wind turbine tower height, from
24 public roads, third party transmission lines, or
25 communication towers; and

26 (C) 1.1 times the wind turbine tower height from

1 adjacent property lines.

2 (2) A county or municipality may require the commercial
3 wind energy operator to minimize shadow flicker at a
4 residence or occupied building to the extent reasonably
5 practicable.

6 (3) A county or municipality may require the commercial
7 wind energy operator to minimize and mitigate signal
8 interference for personal and commercial communications. A
9 county or municipality may require the commercial wind
10 energy operator to use reasonable and commercial available
11 technology to mitigate interference with commercial and
12 personal communications that were not in use when the wind
13 energy facility began commercial operation.

14 (4) A county or municipality may require the commercial
15 wind energy facility to be designed, located, and proposed
16 to be operated so that the public health, safety, and
17 welfare shall be protected.

18 (c) There shall be at least one public hearing not more
19 than 30 days prior to a siting decision by the county or
20 municipality.

21 (d) Notice of the hearing shall be published in a newspaper
22 of general circulation in the county.

23 (e) Counties and municipalities may allow test towers to be
24 sited without formal approval by their respective boards.

25 Section 99. Effective date. This Act takes effect July 1,
26 2012.