



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### SB3263

Introduced 2/14/2014, by Sen. John M. Sullivan

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.855 new  
55 ILCS 5/5-12020

Creates the Wind Energy Facilities Construction and Deconstruction Act. Requires a commercial wind energy operator of a commercial wind energy facility located on land owned by another to enter into an agricultural impact mitigation agreement with the Department of Agriculture. Provides that the commercial wind energy operator is responsible for deconstruction of a commercial wind energy facility. Requires the filing of a deconstruction plan detailing the cost of deconstruction per turbine. Provides that the plan must be prepared by an independent third party. Requires the Department of Agriculture to require reclamation bonds for deconstruction. Contains provisions concerning public informational meetings, final determinations related to approval of siting, and deconstruction activities. Amends the State Finance Act to create the Wind Energy Administration Fund as a special fund in the State treasure. Amends the Counties Code. Deletes language allowing a county to establish standards for wind farms and electric-generating wind devices. Effective immediately.

LRB098 19413 RPS 54573 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 and Deconstruction Act.

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

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

14 "Agricultural impact mitigation agreement" means an  
15 agreement between the commercial wind energy operator and the  
16 Illinois Department of Agriculture.

17 "Commercial wind energy facility" means a wind energy  
18 conversion facility of equal or greater than 500 kilowatts in  
19 total nameplate generating capacity that has not already been  
20 constructed prior to the effective date of this Act.

21 "Commercial wind energy operator" means a private  
22 commercial enterprise that owns or operates a commercial wind

1 energy facility of equal to or greater than 500 kilowatts in  
2 total nameplate capacity.

3 "Deconstruction" means the removal of a wind energy  
4 generation facility from the property of a landowner and the  
5 restoration of that property as provided in the agricultural  
6 impact mitigation agreement.

7 "Department" means the Illinois Department of Agriculture.

8 "Landowner" means any person (i) with an ownership interest  
9 in property that is used for agricultural purposes and (ii)  
10 that is party to an underlying agreement.

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

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

19 Section 15. Agricultural impact mitigation agreement.

20 (a) A commercial wind energy operator of a commercial wind  
21 energy facility located on landowner property shall enter into  
22 an agricultural impact mitigation agreement with the  
23 Department outlining construction and deconstruction standards  
24 and policies designed to preserve the integrity of any  
25 agricultural land that is impacted by commercial wind energy

1 facility construction and deconstruction. This requirement  
2 does not apply to commercial wind energy facilities already  
3 constructed prior to the effective date of this Act.

4 (b) The agricultural impact mitigation agreement shall  
5 address such items as access roads, construction staging and  
6 storage areas, excavation and backfill, protection of  
7 agricultural drainage tiles, wind turbine foundations, wind  
8 turbine erection, restoration of agricultural land affected by  
9 all construction and deconstruction, indemnification of  
10 landowners, monitoring, and remediation.

11 (c) The agricultural impact mitigation agreement shall be  
12 entered into no less than 180 days prior to construction. The  
13 agricultural impact mitigation agreement is binding on any  
14 subsequent commercial wind energy operator that takes  
15 ownership of the commercial wind energy facility that is the  
16 subject of the agreement.

17 Section 20. Filing notice of intent to construct.

18 (a) The Department shall regulate the siting of commercial  
19 wind energy facilities in unincorporated areas of a county  
20 outside of the zoning jurisdiction of a municipality and the  
21 1.5 mile radius surrounding the zoning jurisdiction of a  
22 municipality.

23 (b) A commercial wind energy operator shall file a notice  
24 of intent to construct for a commercial wind energy facility  
25 with the Department no less than 180 days prior to

1 construction.

2 (c) A commercial wind energy operator applying for siting  
3 approval shall submit a construction plan at the same time as  
4 its notice of intent to construct to the Department with  
5 sufficient details describing how the proposed commercial wind  
6 energy facility complies with this Act. The Department may  
7 grant a final determination of siting approval if the proposed  
8 commercial wind energy facility meets the 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 35 of this Act;

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

15 (4) the location of each wind turbine in the commercial  
16 wind energy facility will, to the extent reasonably  
17 practicable, minimize shadow flicker at a residence or  
18 occupied building;

19 (5) the commercial wind energy facility will be  
20 constructed in such a way to minimize and mitigate signal  
21 interference for personal and commercial communications;

22 (6) the commercial wind energy facility is designed,  
23 located, and proposed to be operated so that the public  
24 health, safety, and welfare shall be protected.

25 (d) Any commercial wind energy operator who fails to file a  
26 notice of intent to construct form or construction plans with

1 the Department prior to commencing construction, upon being  
2 discovered by the Department, shall be subject to an  
3 administrative hearing by the Department. The administrative  
4 law judge, upon determination of a failure to file the  
5 appropriate form, shall impose a civil administrative penalty  
6 in an amount no more than \$10,000 and shall enter an  
7 administrative order directing that the commercial wind energy  
8 operator file the appropriate form within 10 business days  
9 after receiving notice from the Department. If, after receiving  
10 the administrative law judge's order to file, the commercial  
11 wind energy operator fails to file the appropriate form with  
12 the Department, the Department shall impose a civil  
13 administrative penalty in an amount no less than \$10,000 and no  
14 more than \$25,000 and shall enter an administrative order  
15 prohibiting the operation of the facility until the commercial  
16 wind energy operator is in compliance with this Act. Penalties  
17 under this subsection (d) not paid within 60 days after notice  
18 from the Department shall be submitted to the Attorney  
19 General's office or an approved private collection agency.

20 Section 25. Public informational meeting.

21 (a) Within 30 days after receiving a form giving notice of  
22 intent to construct a commercial wind energy facility, the  
23 Department shall send a copy of the notice form to the county  
24 board of the county in which the commercial wind energy  
25 facility is to be located and shall publish a public notice in

1 a newspaper of general circulation within the county. After  
2 receiving a copy of the notice form from the Department, the  
3 county board may, at its discretion and within 30 days after  
4 receipt of the notice, request that the Department conduct an  
5 informational meeting concerning the proposed construction  
6 that is subject to this Section. In addition, during the  
7 county's 30-day review period, county residents may petition  
8 the county board of the county where the proposed new  
9 commercial wind energy facility will be located to request that  
10 the Department conduct an informational meeting. When  
11 petitioned by 75 or more of the county's residents who are  
12 registered voters, the county board shall request that the  
13 Department conduct an informational meeting. If the county  
14 board requests that the Department conduct the informational  
15 meeting, the Department shall conduct the informational  
16 meeting within 30 days after the county board's request. If the  
17 Department conducts such a meeting, it shall cause notice of  
18 the meeting to be published in a newspaper of general  
19 circulation in the county and in the State newspaper and shall  
20 send a copy of the notice to the county board. Upon receipt of  
21 the notice, the county board shall post the notice on the  
22 public informational board at the county courthouse at least 10  
23 days before the meeting. The commercial wind energy operator  
24 who submitted the notice of intent to construct to the  
25 Department shall appear at the meeting. At the meeting, the  
26 Department shall afford members of the public an opportunity to

1 ask questions and present oral or written comments concerning  
2 the proposed construction of the commercial wind energy  
3 facility.

4 (b) At the informational meeting or within 30 days  
5 following the meeting, the county board shall submit an  
6 advisory, non-binding recommendation to the Department about  
7 the proposed new facility's construction in accordance with the  
8 applicable requirements of this Act. The advisory, non-binding  
9 recommendation shall contain at a minimum:

10 (1) a statement of whether the proposed facility  
11 achieves or fails to achieve each of the siting criteria as  
12 outlined in subsection (c) of Section 20; and

13 (2) a statement of the information and criteria used by  
14 the county board in determining that the proposed  
15 commercial wind energy facility met or failed to meet any  
16 of the criteria described in subsection (c) of Section 20.

17 (c) When the county board requests an informational  
18 meeting, construction of the commercial wind energy facility  
19 shall not begin until after the informational meeting has been  
20 held, the Department has reviewed the county board's  
21 recommendation and replied to the recommendation indicating if  
22 the proposed new commercial wind energy facility is or will be  
23 in compliance with the requirements of the Act, and the  
24 commercial wind energy operator has received the Department's  
25 notice that all applicable requirements of this Act have been  
26 met.

1 (d) At the informational meeting for the proposed  
2 commercial wind energy facility, the Department shall receive  
3 evidence by testimony or otherwise on the following subjects:

4 (1) whether the commercial wind energy facility  
5 complies with the requirement of Section 15 of this Act;

6 (2) whether the commercial wind energy facility  
7 complies with the requirements of Section 35 of this Act;

8 (3) whether the commercial wind energy facility  
9 complies with Illinois Pollution Control Board noise  
10 standards;

11 (4) whether the location of each wind turbine in the  
12 commercial wind energy facility will, to the extent  
13 reasonably practicable, minimize shadow flicker at a  
14 residence or occupied building;

15 (5) whether the commercial wind energy facility will be  
16 constructed in such a way to minimize and mitigate signal  
17 interference for personal and commercial communications;

18 (6) whether the commercial wind energy facility is  
19 designed, located, and proposed to be operated so that the  
20 public health, safety, and welfare shall be protected.

21 Section 30. Final determination.

22 (a) Within 60 calendar days after the close of the comment  
23 period under subsection (b) of Section 25, the Department shall  
24 determine if the provisions of the Act have been met and shall  
25 send notice to the commercial wind energy operator and the

1 county board indicating that the siting of the commercial wind  
2 energy facility is approved and construction may proceed. If  
3 the Department finds that the provisions of the Act have not  
4 been met the Department shall send notice to the applicant that  
5 construction of the commercial wind energy facility is  
6 prohibited.

7 (b) If the Department finds that additional information or  
8 that specific changes are needed in order to assist the  
9 Department in making the determination under subsection (a) of  
10 this Section, the Department may request such information or  
11 changes from the commercial wind energy operator.

12 (c) If no informational meeting is held, the Department  
13 shall, within 60 calendar days following the end of the period  
14 for the county board to request an informational meeting,  
15 notify the owner or operator that construction may begin or  
16 that clarification is needed.

17 (d) If the commercial wind energy operator amends the  
18 commercial wind energy facility plans during the Department's  
19 review, the Department shall notify the county board, which may  
20 exercise its option of a public informational meeting pursuant  
21 to Section 25 of this Act.

22 Section 35. Deconstruction activities.

23 (a) The commercial wind energy operator is responsible for  
24 deconstruction of the commercial wind energy facility and for  
25 all costs associated with deconstruction of that facility and

1 associated facilities.

2 (b) A commercial wind energy facility is presumed to be at  
3 the end of its useful life if (i) the commercial wind energy  
4 operator fails, for a period of 18 consecutive months, to  
5 operate a commercial wind energy facility for the purpose of  
6 which it was designed and installed and (ii) the commercial  
7 wind energy operator fails, for a period of 6 consecutive  
8 months, to pay the landowner moneys owed to him or her in  
9 accordance with the underlying agreement.

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

16 (d) No less than 180 days prior to the beginning of  
17 construction, commercial wind energy operators shall file with  
18 the Department a plan that includes:

19 (1) a copy of the agricultural impact mitigation  
20 agreement entered into by the owner or operator and the  
21 Department;

22 (2) the estimated deconstruction cost per turbine, in  
23 current dollars at the time of filing, for the proposed  
24 commercial wind energy facility; and

25 (3) a comprehensive detailed description describing  
26 how the commercial wind energy operator plans to pay for

1 the deconstruction of the commercial wind energy facility.

2 The plan shall be prepared by an independent third party at  
3 the commercial wind energy operator's expense. If the facility  
4 is to be constructed in phases commencing at periods of more  
5 than one year following each other, then the plan that involves  
6 each phase in which the commercial wind energy facility is to  
7 be constructed may be filed in separate portions, but each  
8 portion must be filed no less than 180 days prior to  
9 construction of each phase. The Department shall enter an order  
10 approving, modifying, or disapproving a plan submitted under  
11 this subsection (d).

12 (e) No less than 180 days prior to the beginning of  
13 construction of any commercial wind energy facility, the  
14 commercial wind energy operator shall file with the Department  
15 a reclamation bond that is acceptable to the Department to  
16 cover the anticipated costs of deconstruction of the commercial  
17 wind energy facility or any wind turbine thereon. The  
18 reclamation bond shall not release the surety from liability  
19 until the bond is replaced. In determining the anticipated  
20 costs of deconstruction, the Department shall take into  
21 account, among other things, the information provided under  
22 subsection (d), the number of wind turbines and related  
23 commercial wind energy facilities involved, the original  
24 construction costs of the commercial wind energy facilities,  
25 the size and capacity of the wind turbines, the salvage value  
26 of the commercial wind energy facilities, and the construction

1 method and techniques for the wind turbines and other  
2 commercial wind energy facilities. The Department shall  
3 examine the reclamation bond and enter an order approving,  
4 modifying, or rejecting the reclamation bond. The Department  
5 shall reevaluate the anticipated costs of deconstruction of any  
6 commercial wind energy facility every 5 years after its initial  
7 assessment or if there is a change in the commercial wind  
8 energy facility's owner, operator, or reclamation bond, and  
9 based on that reevaluation may require changes in the level of  
10 reclamation bond required from the commercial wind energy  
11 operator. If the Department is unable to its satisfaction to  
12 perform any investigations necessary to enter an order  
13 approving any deconstruction plan filed by a commercial wind  
14 energy operator, then the Department may select persons  
15 independent of the commercial wind energy operator to conduct  
16 any necessary investigations and the commercial wind energy  
17 operator shall bear the cost of those investigations.

18 (f) If the commercial wind energy operator does not  
19 complete deconstruction, the Department may take such action as  
20 necessary to complete deconstruction, including drawing upon  
21 the financial assurance required in subsection (e).

22 (g) If there is a change in ownership of the wind energy  
23 facility, the commercial wind energy operator assuming  
24 ownership of the facility shall provide notice to the  
25 Department within 30 days of the change and the existing  
26 financial assurance requirements for the facility as required

1 in subsection (e) shall apply to the new operator.

2 (h) The Department has no authority or responsibility for  
3 commercial wind facilities that have already been constructed  
4 prior to the effective date of this Act.

5 (i) The Department shall adopt rules that are necessary and  
6 appropriate for the implementation and administration of  
7 deconstruction activities as required under this Act.

8 (j) In addition to any authority granted to the Department  
9 under this Act, the Department is also authorized to impose  
10 reasonable filing fees and penalties. Fees and penalties  
11 collected under this Act shall be deposited into the Wind  
12 Energy Administration Fund, a special fund created in the State  
13 Treasury, to be used by the Department to fund the Department's  
14 compliance with the obligations imposed by this Section.

15 Section 40. Rules; fees and penalties.

16 (a) The Department has no authority or responsibility for  
17 commercial wind facilities that have already been constructed  
18 prior to the effective date of this Act.

19 (b) The Department shall adopt rules that are necessary and  
20 appropriate for the implementation and administration of  
21 activities as required under this Act.

22 (c) In addition to any authority granted to the Department  
23 under this Act, the Department is also authorized to impose  
24 reasonable filing fees and penalties. Fees and penalties  
25 collected under this Act shall be deposited into the Wind

1 Energy Administration Fund, a special fund created in the State  
2 Treasury, to be used by the Department to fund the Department's  
3 compliance with the obligations imposed by this Act.

4 Section 90. The State Finance Act is amended by adding  
5 Section 5.855 as follows:

6 (30 ILCS 105/5.855 new)

7 Sec. 5.855. The Wind Energy Administration Fund.

8 Section 95. The Counties Code is amended by changing  
9 Section 5-12020 as follows:

10 (55 ILCS 5/5-12020)

11 Sec. 5-12020. Wind farms. ~~A county may establish standards~~  
12 ~~for wind farms and electric generating wind devices. The~~  
13 ~~standards may include, without limitation, the height of the~~  
14 ~~devices and the number of devices that may be located within a~~  
15 ~~geographic area. A county may also regulate the siting of wind~~  
16 ~~farms and electric generating wind devices in unincorporated~~  
17 ~~areas of the county outside of the zoning jurisdiction of a~~  
18 ~~municipality and the 1.5 mile radius surrounding the zoning~~  
19 ~~jurisdiction of a municipality. There shall be at least one~~  
20 ~~public hearing not more than 30 days prior to a siting decision~~  
21 ~~by the county board. Notice of the hearing shall be published~~  
22 ~~in a newspaper of general circulation in the county. Counties~~

1 ~~may allow test wind towers to be sited without formal approval~~  
2 ~~by the county board. Any provision of a county zoning ordinance~~  
3 ~~pertaining to wind farms that is in effect before the effective~~  
4 ~~date of this amendatory Act of the 95th General Assembly may~~  
5 ~~continue in effect notwithstanding any requirements of this~~  
6 ~~Section.~~

7 A county may not require a wind tower or other renewable  
8 energy system that is used exclusively by an end user to be  
9 setback more than 1.1 times the height of the renewable energy  
10 system from the end user's property line.

11 (Source: P.A. 95-203, eff. 8-16-07; 96-306, eff. 1-1-10;  
12 96-566, eff. 8-18-09; 96-1000, eff. 7-2-10.)

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.