



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3523

by Rep. Adam Brown

SYNOPSIS AS INTRODUCED:

New Act
55 ILCS 5/5-12020
65 ILCS 5/11-13-26

Creates the Wind Energy Facilities Construction and Deconstruction Act. Requires that commercial wind energy operators of commercial wind energy facilities located on private property enter into an agricultural impact mitigation agreement with the Department of Agriculture outlining construction and deconstruction standards and policies designed to preserve the integrity of any agricultural land that is impacted by commercial wind energy facility construction and deconstruction. Provides that the requirement does not apply to commercial wind energy facilities already constructed or permitted by a decision of a county or municipality prior to the effective date of the Act, but does apply to any commercial wind energy facility seeking an extension or renewal of an initial permit from a county or municipality. Provides that the agricultural impact mitigation agreement shall be entered into prior to any public hearing required prior to a siting decision of a county or municipality regarding the commercial wind energy facility. Provides that the agricultural impact mitigation agreement is binding on any subsequent wind energy operator that takes ownership of the commercial wind energy facility that is the subject of the agreement. Requires that the Department of Agriculture adopt rules that are necessary and appropriate for the implementation and administration of agricultural impact mitigation agreements as required under the Act. Effective immediately. Makes conforming changes to the Counties Code and Municipal Code.

LRB099 09392 MLM 29599 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. Legislative purpose. The primary purpose of this
7 Act is to promote the State's welfare by protecting landowners
8 during the construction and deconstruction of commercial wind
9 energy facilities.

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

11 "Commercial wind energy facility" means a wind energy
12 conversion facility of equal to or greater than 500 kilowatts
13 in total nameplate generating capacity that has not already
14 been constructed or permitted by a decision of a county or
15 municipality prior to the effective date of this Act.

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

20 "Deconstruction" means the removal of a wind energy
21 generation facility from the property of a landowner and the
22 restoration of that property as provided in the agricultural

1 impact mitigation agreement.

2 "Department" means the Department of Agriculture.

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

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

12 Section 15. Agricultural impact mitigation agreement.

13 (a) A commercial wind energy operator of a commercial wind
14 energy facility located on landowner property shall enter into
15 an agricultural impact mitigation agreement with the
16 Department outlining construction and deconstruction standards
17 and policies designed to preserve the integrity of any
18 agricultural land that is impacted by commercial wind energy
19 facility construction and deconstruction. This requirement
20 does not apply to commercial wind energy facilities already
21 constructed or permitted by a decision of a county or
22 municipality prior to the effective date of this Act, but does
23 apply to any commercial wind energy facility seeking an
24 extension or renewal of an initial permit from a county or
25 municipality.

1 (b) The agricultural impact mitigation agreement shall
2 include, but is not limited to, such items as restoration of
3 agricultural land affected by construction, deconstruction,
4 construction staging, and storage areas; support structures;
5 aboveground facilities; guy wires and anchors; underground
6 cabling depth; topsoil replacement; protection and repair of
7 agricultural drainage tiles; rock removal; repair of
8 compaction and rutting; land leveling; prevention of soil
9 erosion; repair of damaged soil conservation practices;
10 compensation for damages to private property; clearing of trees
11 and brush; interference with irrigation systems; access roads;
12 weed control; pumping of water from open excavations; advance
13 notice of access to private property; indemnification of
14 landowners; and deconstruction plans and financial assurance
15 for deconstruction.

16 (c) The agricultural impact mitigation agreement shall be
17 entered into prior to any public hearing required prior to a
18 siting decision of a county or municipality regarding the
19 commercial wind energy facility. The agricultural impact
20 mitigation agreement is binding on any subsequent wind energy
21 operator that takes ownership of the commercial wind energy
22 facility that is the subject of the agreement.

23 (d) The Department shall adopt rules that are necessary and
24 appropriate for the implementation and administration of
25 agricultural impact mitigation agreements as required under
26 this Act.

1 Section 20. The Counties Code is amended by changing
2 Section 5-12020 as follows:

3 (55 ILCS 5/5-12020)

4 Sec. 5-12020. Wind farms. A county may establish standards
5 for wind farms and electric-generating wind devices. The
6 standards may include, without limitation, the height of the
7 devices and the number of devices that may be located within a
8 geographic area. A county may also regulate the siting of wind
9 farms and electric-generating wind devices in unincorporated
10 areas of the county outside of the zoning jurisdiction of a
11 municipality and the 1.5 mile radius surrounding the zoning
12 jurisdiction of a municipality. There shall be at least one
13 public hearing not more than 30 days prior to a siting decision
14 by the county board. Notice of the hearing shall be published
15 in a newspaper of general circulation in the county. A
16 commercial wind energy operator as defined in the Wind Energy
17 Facilities Construction and Deconstruction Act must enter an
18 agricultural impact mitigation agreement with the Department
19 of Agriculture prior to the date of the public hearing.
20 Counties may allow test wind towers to be sited without formal
21 approval by the county board. Any provision of a county zoning
22 ordinance pertaining to wind farms that is in effect before the
23 effective date of this amendatory Act of the 95th General
24 Assembly may continue in effect notwithstanding any

1 requirements of this Section.

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

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

8 Section 25. The Illinois Municipal Code is amended by
9 changing Section 11-13-26 as follows:

10 (65 ILCS 5/11-13-26)

11 Sec. 11-13-26. Wind farms.

12 (a) A municipality may regulate wind farms and
13 electric-generating wind devices within its zoning
14 jurisdiction and within the 1.5 mile radius surrounding its
15 zoning jurisdiction. There shall be at least one public hearing
16 not more than 30 days prior to a siting decision by the
17 corporate authorities of a municipality. Notice of the hearing
18 shall be published in a newspaper of general circulation in the
19 municipality. A commercial wind energy operator as defined in
20 the Wind Energy Facilities Construction and Deconstruction Act
21 must enter an agricultural impact mitigation agreement with the
22 Department of Agriculture prior to the date of the public
23 hearing. A municipality may allow test wind towers to be sited
24 without formal approval by the corporate authorities of the

1 municipality. Test wind towers must be dismantled within 3
2 years of installation. For the purposes of this Section, "test
3 wind towers" are wind towers that are designed solely to
4 collect wind generation data.

5 (b) A municipality may not require a wind tower or other
6 renewable energy system that is used exclusively by an end user
7 to be setback more than 1.1 times the height of the renewable
8 energy system from the end user's property line. A setback
9 requirement imposed by a municipality on a renewable energy
10 system may not be more restrictive than as provided under this
11 subsection. This subsection is a limitation of home rule powers
12 and functions under subsection (i) of Section 6 of Article VII
13 of the Illinois Constitution on the concurrent exercise by home
14 rule units of powers and functions exercised by the State.

15 (Source: P.A. 95-203, eff. 8-16-07; 96-306, eff. 1-1-10.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.