

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 Agricultural Impact Mitigation Act.

6 Section 5. Purpose. The primary purpose of this Act is to
7 promote the State's welfare by protecting landowners during the
8 construction and deconstruction of commercial wind energy
9 facilities.

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

11 "Abandonment" means when deconstruction has not been
12 completed within 18 months after the commercial wind energy
13 facility reaches the end of its useful life. For purposes of
14 this definition, a commercial wind energy facility will be
15 presumed to have reached the end of its useful life if (1) no
16 electricity is generated for a continuous period of 12 months
17 and (2) the commercial wind energy facility owner fails, for a
18 period of 6 consecutive months, to pay the landowner amounts
19 owed in accordance with the underlying agreement.

20 "Agricultural impact mitigation agreement" means an
21 agreement between the commercial wind energy facility owner and
22 the Department of Agriculture described in Section 15 of this

1 Act.

2 "Commercial wind energy facility" means a wind energy
3 conversion facility of equal or greater than 500 kilowatts in
4 total nameplate generating capacity. "Commercial wind energy
5 facility" includes a wind energy conversion facility seeking an
6 extension of a permit to construct granted by a county or
7 municipality before the effective date of this Act. "Commercial
8 wind energy facility" does not include a wind energy conversion
9 facility: (1) that has submitted a complete permit application
10 to a county or municipality and for which the hearing on the
11 completed application has commenced on the date provided in the
12 public hearing notice, which must be before the effective date
13 of this Act; (2) for which a permit to construct has been
14 issued before the effective date of this Act; or (3) that was
15 constructed before the effective date of this Act.

16 "Commercial wind energy facility owner" means a private
17 commercial enterprise that owns or operates a commercial wind
18 energy facility.

19 "Construction" means the installation, preparation for
20 installation, or repair of a commercial wind energy facility.

21 "County" means the county where the commercial wind energy
22 facility is located.

23 "Deconstruction" means the removal of a commercial wind
24 energy facility from the property of a landowner and the
25 restoration of that property as provided in the agricultural
26 impact mitigation agreement.

1 "Department" means the Department of Agriculture.

2 "Landowner" means any person (1) with an ownership interest
3 in property that is used for agricultural purposes and (2) that
4 is a party to an underlying agreement.

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

10 Section 15. Agricultural impact mitigation agreement.

11 (a) A commercial wind energy facility owner of a commercial
12 wind energy facility located on landowner property shall enter
13 into an agricultural impact mitigation agreement with the
14 Department outlining construction and deconstruction standards
15 and policies designed to preserve the integrity of any
16 agricultural land that is impacted by commercial wind energy
17 facility construction and deconstruction.

18 (b) The agricultural impact mitigation agreement shall
19 include, but is not limited to, such items as restoration of
20 agricultural land affected by construction, deconstruction
21 (including upon abandonment), construction staging, and
22 storage areas; support structures; aboveground facilities; guy
23 wires and anchors; underground cabling depth; topsoil
24 replacement; protection and repair of agricultural drainage
25 tiles; rock removal; repair of compaction and rutting; land

1 leveling; prevention of soil erosion; repair of damaged soil
2 conservation practices; compensation for damages to private
3 property; clearing of trees and brush; interference with
4 irrigation systems; access roads; weed control; pumping of
5 water from open excavations; advance notice of access to
6 private property; indemnification of landowners; and
7 deconstruction plans and financial assurance for
8 deconstruction (including upon abandonment).

9 (c) For commercial wind energy facility owners seeking a
10 permit from a county or municipality for the construction of a
11 commercial wind energy facility, the agricultural impact
12 mitigation agreement shall be entered into prior to the public
13 hearing required prior to a siting decision of a county or
14 municipality regarding the commercial wind energy facility.
15 The agricultural impact mitigation agreement is binding on any
16 subsequent commercial wind energy facility owner that takes
17 ownership of the commercial wind energy facility that is the
18 subject of the agreement.

19 (d) If a commercial wind energy facility owner seeks an
20 extension of a permit granted by a county or municipality for
21 the construction of a commercial wind energy facility prior to
22 the effective date of this Act, the agricultural impact
23 mitigation agreement shall be entered into prior to a decision
24 by the county or municipality to grant the permit extension.

25 (e) The Department shall adopt rules that are necessary and
26 appropriate for the implementation and administration of

1 agricultural impact mitigation agreements as required under
2 this Act.

3 Section 90. The Counties Code is amended by changing
4 Section 5-12020 as follows:

5 (55 ILCS 5/5-12020)

6 Sec. 5-12020. Wind farms. A county may establish standards
7 for wind farms and electric-generating wind devices. The
8 standards may include, without limitation, the height of the
9 devices and the number of devices that may be located within a
10 geographic area. A county may also regulate the siting of wind
11 farms and electric-generating wind devices in unincorporated
12 areas of the county outside of the zoning jurisdiction of a
13 municipality and the 1.5 mile radius surrounding the zoning
14 jurisdiction of a municipality. There shall be at least one
15 public hearing not more than 30 days prior to a siting decision
16 by the county board. Notice of the hearing shall be published
17 in a newspaper of general circulation in the county. A
18 commercial wind energy facility owner, as defined in the Wind
19 Energy Facilities Agricultural Impact Mitigation Act, must
20 enter into an agricultural impact mitigation agreement with the
21 Department of Agriculture prior to the date of the required
22 public hearing. A commercial wind energy facility owner seeking
23 an extension of a permit granted by a county prior to the
24 effective date of this amendatory Act of the 99th General

1 Assembly must enter into an agricultural impact mitigation
2 agreement with the Department of Agriculture prior to a
3 decision by the county to grant the permit extension. Counties
4 may allow test wind towers to be sited without formal approval
5 by the county board. Any provision of a county zoning ordinance
6 pertaining to wind farms that is in effect before the effective
7 date of this amendatory Act of the 95th General Assembly may
8 continue in effect notwithstanding any requirements of this
9 Section.

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

14 (Source: P.A. 95-203, eff. 8-16-07; 96-306, eff. 1-1-10;
15 96-566, eff. 8-18-09; 96-1000, eff. 7-2-10.)

16 Section 95. The Illinois Municipal Code is amended by
17 changing Section 11-13-26 as follows:

18 (65 ILCS 5/11-13-26)

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

20 (a) A municipality may regulate wind farms and
21 electric-generating wind devices within its zoning
22 jurisdiction and within the 1.5 mile radius surrounding its
23 zoning jurisdiction. There shall be at least one public hearing
24 not more than 30 days prior to a siting decision by the

1 corporate authorities of a municipality. Notice of the hearing
2 shall be published in a newspaper of general circulation in the
3 municipality. A commercial wind energy facility owner, as
4 defined in the Wind Energy Facilities Agricultural Impact
5 Mitigation Act, must enter into an agricultural impact
6 mitigation agreement with the Department of Agriculture prior
7 to the date of the required public hearing. A commercial wind
8 energy facility owner seeking an extension of a permit granted
9 by a municipality prior to the effective date of this
10 amendatory Act of the 99th General Assembly must enter into an
11 agricultural impact mitigation agreement with the Department
12 of Agriculture prior to a decision by the municipality to grant
13 the permit extension. A municipality may allow test wind towers
14 to be sited without formal approval by the corporate
15 authorities of the municipality. Test wind towers must be
16 dismantled within 3 years of installation. For the purposes of
17 this Section, "test wind towers" are wind towers that are
18 designed solely to collect wind generation data.

19 (b) A municipality may not require a wind tower or other
20 renewable energy system that is used exclusively by an end user
21 to be setback more than 1.1 times the height of the renewable
22 energy system from the end user's property line. A setback
23 requirement imposed by a municipality on a renewable energy
24 system may not be more restrictive than as provided under this
25 subsection. This subsection is a limitation of home rule powers
26 and functions under subsection (i) of Section 6 of Article VII

1 of the Illinois Constitution on the concurrent exercise by home
2 rule units of powers and functions exercised by the State.

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

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.