



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3920

Introduced 4/9/2024, by Sen. Dan McConchie

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020

Amends the Counties Code. Provides that a commercial wind energy facility owner or a commercial solar energy facility owner who has submitted an application for a permit to develop a commercial wind energy facility or a commercial solar energy facility must provide notice to all municipalities and townships that are within 1.5 miles of the proposed facility and all property owners whose properties are on the boundary line of the proposed facility. Includes requirements of the notice. Provides that a county may require that a commercial solar energy facility be sited at least 500 feet to the nearest point on the property line of occupied community buildings and dwellings on nonparticipating properties. Requires a commercial wind energy facility or a commercial solar energy facility to be sited only on property zoned for agricultural use or on a brownfields site, and provides that the facilities may not be sited on property zoned exclusively for residential use or zoned exclusively for estate use. Excludes counties with a population of more than 500,000 from the changes made by Public Act 102-1123. Effective immediately.

LRB103 40071 AWJ 71566 b

1 AN ACT concerning local government.

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

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

6 (55 ILCS 5/5-12020)

7 Sec. 5-12020. Commercial wind energy facilities and
8 commercial solar energy facilities.

9 (a) As used in this Section:

10 "Commercial solar energy facility" means a "commercial
11 solar energy system" as defined in Section 10-720 of the
12 Property Tax Code. "Commercial solar energy facility" does not
13 mean a utility-scale solar energy facility being constructed
14 at a site that was eligible to participate in a procurement
15 event conducted by the Illinois Power Agency pursuant to
16 subsection (c-5) of Section 1-75 of the Illinois Power Agency
17 Act.

18 "Commercial wind energy facility" means a wind energy
19 conversion facility of equal or greater than 500 kilowatts in
20 total nameplate generating capacity. "Commercial wind energy
21 facility" includes a wind energy conversion facility seeking
22 an extension of a permit to construct granted by a county or
23 municipality before January 27, 2023 (the effective date of

1 Public Act 102-1123).

2 "Facility owner" means (i) a person with a direct
3 ownership interest in a commercial wind energy facility or a
4 commercial solar energy facility, or both, regardless of
5 whether the person is involved in acquiring the necessary
6 rights, permits, and approvals or otherwise planning for the
7 construction and operation of the facility, and (ii) at the
8 time the facility is being developed, a person who is acting as
9 a developer of the facility by acquiring the necessary rights,
10 permits, and approvals or by planning for the construction and
11 operation of the facility, regardless of whether the person
12 will own or operate the facility.

13 "Nonparticipating property" means real property that is
14 not a participating property.

15 "Nonparticipating residence" means a residence that is
16 located on nonparticipating property and that is existing and
17 occupied on the date that an application for a permit to
18 develop the commercial wind energy facility or the commercial
19 solar energy facility is filed with the county.

20 "Occupied community building" means any one or more of the
21 following buildings that is existing and occupied on the date
22 that the application for a permit to develop the commercial
23 wind energy facility or the commercial solar energy facility
24 is filed with the county: a school, place of worship, day care
25 facility, public library, or community center.

26 "Participating property" means real property that is the

1 subject of a written agreement between a facility owner and
2 the owner of the real property that provides the facility
3 owner an easement, option, lease, or license to use the real
4 property for the purpose of constructing a commercial wind
5 energy facility, a commercial solar energy facility, or
6 supporting facilities. "Participating property" also includes
7 real property that is owned by a facility owner for the purpose
8 of constructing a commercial wind energy facility, a
9 commercial solar energy facility, or supporting facilities.

10 "Participating residence" means a residence that is
11 located on participating property and that is existing and
12 occupied on the date that an application for a permit to
13 develop the commercial wind energy facility or the commercial
14 solar energy facility is filed with the county.

15 "Protected lands" means real property that is:

16 (1) subject to a permanent conservation right
17 consistent with the Real Property Conservation Rights Act;
18 or

19 (2) registered or designated as a nature preserve,
20 buffer, or land and water reserve under the Illinois
21 Natural Areas Preservation Act.

22 "Supporting facilities" means the transmission lines,
23 substations, access roads, meteorological towers, storage
24 containers, and equipment associated with the generation and
25 storage of electricity by the commercial wind energy facility
26 or commercial solar energy facility.

1 "Wind tower" includes the wind turbine tower, nacelle, and
2 blades.

3 (b) Notwithstanding any other provision of law or whether
4 the county has formed a zoning commission and adopted formal
5 zoning under Section 5-12007, a county may establish standards
6 for commercial wind energy facilities, commercial solar energy
7 facilities, or both. The standards may include all of the
8 requirements specified in this Section but may not include
9 requirements for commercial wind energy facilities or
10 commercial solar energy facilities that are more restrictive
11 than specified in this Section. A county may also regulate the
12 siting of commercial wind energy facilities with standards
13 that are not more restrictive than the requirements specified
14 in this Section in unincorporated areas of the county that are
15 outside the zoning jurisdiction of a municipality and that are
16 outside the 1.5-mile radius surrounding the zoning
17 jurisdiction of a municipality.

18 (c) If a county has elected to establish standards under
19 subsection (b), before the county grants siting approval or a
20 special use permit for a commercial wind energy facility or a
21 commercial solar energy facility, or modification of an
22 approved siting or special use permit, the county board of the
23 county in which the facility is to be sited or the zoning board
24 of appeals for the county shall hold at least one public
25 hearing. The public hearing shall be conducted in accordance
26 with the Open Meetings Act and shall be held not more than 60

1 days after the filing of the application for the facility. The
2 county shall allow interested parties to a special use permit
3 an opportunity to present evidence and to cross-examine
4 witnesses at the hearing, but the county may impose reasonable
5 restrictions on the public hearing, including reasonable time
6 limitations on the presentation of evidence and the
7 cross-examination of witnesses. The county shall also allow
8 public comment at the public hearing in accordance with the
9 Open Meetings Act. The county shall make its siting and
10 permitting decisions not more than 30 days after the
11 conclusion of the public hearing. Notice of the hearing shall
12 be published in a newspaper of general circulation in the
13 county. A facility owner must enter into an agricultural
14 impact mitigation agreement with the Department of Agriculture
15 prior to the date of the required public hearing. A commercial
16 wind energy facility owner seeking an extension of a permit
17 granted by a county prior to July 24, 2015 (the effective date
18 of Public Act 99-132) must enter into an agricultural impact
19 mitigation agreement with the Department of Agriculture prior
20 to a decision by the county to grant the permit extension.
21 Counties may allow test wind towers or test solar energy
22 systems to be sited without formal approval by the county
23 board.

24 In addition to the notice of hearing required under this
25 subsection, a commercial wind energy facility owner or a
26 commercial solar energy facility owner who has submitted an

1 application for a permit to develop a commercial wind energy
2 facility or a commercial solar energy facility must provide
3 notice to all municipalities and townships that are within 1.5
4 miles of the proposed commercial wind energy facility or
5 commercial solar energy facility and all property owners whose
6 properties are on the boundary line of the proposed commercial
7 wind energy facility or commercial solar energy facility. The
8 notice must be given no later than 30 days after the commercial
9 wind energy facility owner or commercial solar energy facility
10 owner submits the application. The notice shall be provided in
11 person, by overnight private courier, or by certified mail.
12 If, after a bona fide effort by the commercial wind energy
13 facility owner or the commercial solar energy facility owner
14 to determine the owner of property and the owner's address,
15 the owner of the property on whom the notice must be served
16 cannot be found at the owner's last known address or if the
17 mailed notice is returned because the owner cannot be found at
18 the last known address, then the notice requirement of this
19 paragraph is deemed satisfied.

20 (d) A county with an existing zoning ordinance in conflict
21 with this Section shall amend that zoning ordinance to be in
22 compliance with this Section within 120 days after January 27,
23 2023 (the effective date of Public Act 102-1123).

24 (e) A county may require:

25 (1) a wind tower of a commercial wind energy facility
26 to be sited as follows, with setback distances measured

1 from the center of the base of the wind tower:

2	Setback Description	Setback Distance
3	Occupied Community	2.1 times the maximum blade tip
4	Buildings	height of the wind tower to the
5		nearest point on the outside
6		wall of the structure
7	Participating Residences	1.1 times the maximum blade tip
8		height of the wind tower to the
9		nearest point on the outside
10		wall of the structure
11	Nonparticipating Residences	2.1 times the maximum blade tip
12		height of the wind tower to the
13		nearest point on the outside
14		wall of the structure
15	Boundary Lines of	None
16	Participating Property	
17	Boundary Lines of	1.1 times the maximum blade tip
18	Nonparticipating Property	height of the wind tower to the
19		nearest point on the property
20		line of the nonparticipating

1		property
2	Public Road Rights-of-Way	1.1 times the maximum blade tip
3		height of the wind tower
4		to the center point of the
5		public road right-of-way
6	Overhead Communication and	1.1 times the maximum blade tip
7	Electric Transmission	height of the wind tower to the
8	and Distribution Facilities	nearest edge of the property
9	(Not Including Overhead	line, easement, or
10	Utility Service Lines to	right-of-way
11	Individual Houses or	containing the overhead line
12	Outbuildings)	
13	Overhead Utility Service	None
14	Lines to Individual	
15	Houses or Outbuildings	
16	Fish and Wildlife Areas	2.1 times the maximum blade
17	and Illinois Nature	tip height of the wind tower
18	Preserve Commission	to the nearest point on the
19	Protected Lands	property line of the fish and
20		wildlife area or protected
21		land

22 This Section does not exempt or excuse compliance with

1 electric facility clearances approved or required by the
 2 National Electrical Code, the ~~The~~ National Electrical
 3 Safety Code, the Illinois Commerce Commission, and the
 4 Federal Energy Regulatory Commission, and their designees
 5 or successors.

6 (2) a wind tower of a commercial wind energy facility
 7 to be sited so that industry standard computer modeling
 8 indicates that any occupied community building or
 9 nonparticipating residence will not experience more than
 10 30 hours per year of shadow flicker under planned
 11 operating conditions;

12 (3) a commercial solar energy facility to be sited as
 13 follows, with setback distances measured from the nearest
 14 edge of any component of the facility:

15	Setback Description	Setback Distance
16	Occupied Community Buildings and Dwellings on Nonparticipating Properties	<u>500</u> 150 feet from the nearest point on the <u>property line</u> outside wall of the structure
20	Boundary Lines of Participating Property	None
22	Public Road Rights-of-Way	50 feet from the nearest

1 edge

2 Boundary Lines of 50 feet to the nearest

3 Nonparticipating Property point on the property

4 line of the nonparticipating

5 property

6 (4) a commercial solar energy facility to be sited so

7 that the facility's perimeter is enclosed by fencing

8 having a height of at least 6 feet and no more than 25

9 feet; and

10 (5) a commercial solar energy facility to be sited so

11 that no component of a solar panel has a height of more

12 than 20 feet above ground when the solar energy facility's

13 arrays are at full tilt.

14 The requirements set forth in this subsection (e) may be

15 waived subject to the written consent of the owner of each

16 affected nonparticipating property.

17 (f) A county may not set a sound limitation for wind towers

18 in commercial wind energy facilities or any components in

19 commercial solar energy facilities that is more restrictive

20 than the sound limitations established by the Illinois

21 Pollution Control Board under 35 Ill. Adm. Code Parts 900,

22 901, and 910.

23 (g) A county may not place any restriction on the

24 installation or use of a commercial wind energy facility or a

1 commercial solar energy facility unless it adopts an ordinance
2 that complies with this Section. A county may not establish
3 siting standards for supporting facilities that preclude
4 development of commercial wind energy facilities or commercial
5 solar energy facilities.

6 A request for siting approval or a special use permit for a
7 commercial wind energy facility or a commercial solar energy
8 facility, or modification of an approved siting or special use
9 permit, shall be approved if the request is in compliance with
10 the standards and conditions imposed in this Act, the zoning
11 ordinance adopted consistent with this Code, and the
12 conditions imposed under State and federal statutes and
13 regulations.

14 (h) A county may not adopt zoning regulations that allow
15 ~~disallow~~, permanently or temporarily, commercial wind energy
16 facilities or commercial solar energy facilities from being
17 developed or operated in any district other than a district
18 zoned for agricultural use or on a brownfields site and may not
19 allow such facilities to be sited on property zoned
20 exclusively for residential use or zoned exclusively for
21 estate use. As used in this subsection, "brownfields site"
22 site has the meaning given to that term in Section 58.2 of the
23 Environmental Protection Act ~~zoned to allow agricultural or~~
24 ~~industrial uses.~~

25 (i) A county may not require permit application fees for a
26 commercial wind energy facility or commercial solar energy

1 facility that are unreasonable. All application fees imposed
2 by the county shall be consistent with fees for projects in the
3 county with similar capital value and cost.

4 (j) Except as otherwise provided in this Section, a county
5 shall not require standards for construction, decommissioning,
6 or deconstruction of a commercial wind energy facility or
7 commercial solar energy facility or related financial
8 assurances that are more restrictive than those included in
9 the Department of Agriculture's standard wind farm
10 agricultural impact mitigation agreement, template 81818, or
11 standard solar agricultural impact mitigation agreement,
12 version 8.19.19, as applicable and in effect on December 31,
13 2022. The amount of any decommissioning payment shall be in
14 accordance with the financial assurance required by those
15 agricultural impact mitigation agreements.

16 (j-5) A commercial wind energy facility or a commercial
17 solar energy facility shall file a farmland drainage plan with
18 the county and impacted drainage districts outlining how
19 surface and subsurface drainage of farmland will be restored
20 during and following construction or deconstruction of the
21 facility. The plan is to be created independently by the
22 facility developer and shall include the location of any
23 potentially impacted drainage district facilities to the
24 extent this information is publicly available from the county
25 or the drainage district, plans to repair any subsurface
26 drainage affected during construction or deconstruction using

1 procedures outlined in the agricultural impact mitigation
2 agreement entered into by the commercial wind energy facility
3 owner or commercial solar energy facility owner, and
4 procedures for the repair and restoration of surface drainage
5 affected during construction or deconstruction. All surface
6 and subsurface damage shall be repaired as soon as reasonably
7 practicable.

8 (k) A county may not condition approval of a commercial
9 wind energy facility or commercial solar energy facility on a
10 property value guarantee and may not require a facility owner
11 to pay into a neighboring property devaluation escrow account.

12 (l) A county may require certain vegetative screening
13 surrounding a commercial wind energy facility or commercial
14 solar energy facility but may not require earthen berms or
15 similar structures.

16 (m) A county may set blade tip height limitations for wind
17 towers in commercial wind energy facilities but may not set a
18 blade tip height limitation that is more restrictive than the
19 height allowed under a Determination of No Hazard to Air
20 Navigation by the Federal Aviation Administration under 14 CFR
21 Part 77.

22 (n) A county may require that a commercial wind energy
23 facility owner or commercial solar energy facility owner
24 provide:

25 (1) the results and recommendations from consultation
26 with the Illinois Department of Natural Resources that are

1 obtained through the Ecological Compliance Assessment Tool
2 (EcoCAT) or a comparable successor tool; and

3 (2) the results of the United States Fish and Wildlife
4 Service's Information for Planning and Consulting
5 environmental review or a comparable successor tool that
6 is consistent with (i) the "U.S. Fish and Wildlife
7 Service's Land-Based Wind Energy Guidelines" and (ii) any
8 applicable United States Fish and Wildlife Service solar
9 wildlife guidelines that have been subject to public
10 review.

11 (o) A county may require a commercial wind energy facility
12 or commercial solar energy facility to adhere to the
13 recommendations provided by the Illinois Department of Natural
14 Resources in an EcoCAT natural resource review report under 17
15 Ill. Adm. Code Part 1075.

16 (p) A county may require a facility owner to:

17 (1) demonstrate avoidance of protected lands as
18 identified by the Illinois Department of Natural Resources
19 and the Illinois Nature Preserve Commission; or

20 (2) consider the recommendations of the Illinois
21 Department of Natural Resources for setbacks from
22 protected lands, including areas identified by the
23 Illinois Nature Preserve Commission.

24 (q) A county may require that a facility owner provide
25 evidence of consultation with the Illinois State Historic
26 Preservation Office to assess potential impacts on

1 State-registered historic sites under the Illinois State
2 Agency Historic Resources Preservation Act.

3 (r) To maximize community benefits, including, but not
4 limited to, reduced stormwater runoff, flooding, and erosion
5 at the ground mounted solar energy system, improved soil
6 health, and increased foraging habitat for game birds,
7 songbirds, and pollinators, a county may (1) require a
8 commercial solar energy facility owner to plant, establish,
9 and maintain for the life of the facility vegetative ground
10 cover, consistent with the goals of the Pollinator-Friendly
11 Solar Site Act and (2) require the submittal of a vegetation
12 management plan that is in compliance with the agricultural
13 impact mitigation agreement in the application to construct
14 and operate a commercial solar energy facility in the county
15 if the vegetative ground cover and vegetation management plan
16 comply with the requirements of the underlying agreement with
17 the landowner or landowners where the facility will be
18 constructed.

19 No later than 90 days after January 27, 2023 (the
20 effective date of Public Act 102-1123), the Illinois
21 Department of Natural Resources shall develop guidelines for
22 vegetation management plans that may be required under this
23 subsection for commercial solar energy facilities. The
24 guidelines must include guidance for short-term and long-term
25 property management practices that provide and maintain native
26 and non-invasive naturalized perennial vegetation to protect

1 the health and well-being of pollinators.

2 (s) If a facility owner enters into a road use agreement
3 with the Illinois Department of Transportation, a road
4 district, or other unit of local government relating to a
5 commercial wind energy facility or a commercial solar energy
6 facility, the road use agreement shall require the facility
7 owner to be responsible for (i) the reasonable cost of
8 improving roads used by the facility owner to construct the
9 commercial wind energy facility or the commercial solar energy
10 facility and (ii) the reasonable cost of repairing roads used
11 by the facility owner during construction of the commercial
12 wind energy facility or the commercial solar energy facility
13 so that those roads are in a condition that is safe for the
14 driving public after the completion of the facility's
15 construction. Roadways improved in preparation for and during
16 the construction of the commercial wind energy facility or
17 commercial solar energy facility shall be repaired and
18 restored to the improved condition at the reasonable cost of
19 the developer if the roadways have degraded or were damaged as
20 a result of construction-related activities.

21 The road use agreement shall not require the facility
22 owner to pay costs, fees, or charges for road work that is not
23 specifically and uniquely attributable to the construction of
24 the commercial wind energy facility or the commercial solar
25 energy facility. Road-related fees, permit fees, or other
26 charges imposed by the Illinois Department of Transportation,

1 a road district, or other unit of local government under a road
2 use agreement with the facility owner shall be reasonably
3 related to the cost of administration of the road use
4 agreement.

5 (s-5) The facility owner shall also compensate landowners
6 for crop losses or other agricultural damages resulting from
7 damage to the drainage system caused by the construction of
8 the commercial wind energy facility or the commercial solar
9 energy facility. The commercial wind energy facility owner or
10 commercial solar energy facility owner shall repair or pay for
11 the repair of all damage to the subsurface drainage system
12 caused by the construction of the commercial wind energy
13 facility or the commercial solar energy facility in accordance
14 with the agriculture impact mitigation agreement requirements
15 for repair of drainage. The commercial wind energy facility
16 owner or commercial solar energy facility owner shall repair
17 or pay for the repair and restoration of surface drainage
18 caused by the construction or deconstruction of the commercial
19 wind energy facility or the commercial solar energy facility
20 as soon as reasonably practicable.

21 (t) Notwithstanding any other provision of law, a facility
22 owner with siting approval from a county to construct a
23 commercial wind energy facility or a commercial solar energy
24 facility is authorized to cross or impact a drainage system,
25 including, but not limited to, drainage tiles, open drainage
26 ditches, culverts, and water gathering vaults, owned or under

1 the control of a drainage district under the Illinois Drainage
2 Code without obtaining prior agreement or approval from the
3 drainage district in accordance with the farmland drainage
4 plan required by subsection (j-5).

5 (u) The amendments to this Section adopted in Public Act
6 102-1123 do not apply to: (1) an application for siting
7 approval or for a special use permit for a commercial wind
8 energy facility or commercial solar energy facility if the
9 application was submitted to a unit of local government before
10 January 27, 2023 (the effective date of Public Act 102-1123);
11 (2) a commercial wind energy facility or a commercial solar
12 energy facility if the facility owner has submitted an
13 agricultural impact mitigation agreement to the Department of
14 Agriculture before January 27, 2023 (the effective date of
15 Public Act 102-1123); ~~or~~ (3) a commercial wind energy or
16 commercial solar energy development on property that is
17 located within an enterprise zone certified under the Illinois
18 Enterprise Zone Act, that was classified as industrial by the
19 appropriate zoning authority on or before January 27, 2023,
20 and that is located within 4 miles of the intersection of
21 Interstate 88 and Interstate 39; or (4) counties with a
22 population of more than 500,000.

23 (Source: P.A. 102-1123, eff. 1-27-23; 103-81, eff. 6-9-23;
24 103-580, eff. 12-8-23.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.