



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1469

Introduced 2/6/2013, by Sen. John M. Sullivan

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Wind Energy Facilities Construction and Deconstruction Act. Requires an operator of a commercial wind energy facility on land owned by another to enter into an agricultural impact mitigation agreement with the Department of Agriculture. Provides that the operator is responsible for deconstruction of a 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 Commerce Commission to require performance bonds for deconstruction. Authorizes rulemaking. Effective immediately.

LRB098 06744 JLS 36792 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning wind energy.

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.

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

11 "Commercial wind energy facility" means a wind energy  
12 conversion facility of equal or greater than 500 kilowatts in  
13 total nameplate generating capacity.

14 "Commission" means the Illinois Commerce Commission.

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

19 "Department" means the Illinois Department of Agriculture.

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 to the condition in which it

1 existed immediately before the construction of the wind energy  
2 facility including, but not limited to, the restoration of the  
3 topography of the property to its condition before construction  
4 provided, however, that foundations, pads, electrical lines,  
5 and any other underground facility must be removed to a depth  
6 of 5 feet below the surface of the ground.

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

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

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

18 "Wind turbine tower height" means the distance from the  
19 wind turbine rotor blade at its highest point to the top  
20 surface of the wind turbine foundation.

21 Section 15. Construction activities.

22 (a) A commercial wind energy operator that is the owner of  
23 a commercial wind energy facility located on land owned by  
24 another person or entity shall enter into an agricultural  
25 impact mitigation agreement with the Department outlining

1 construction standards and policies designed to preserve the  
2 integrity of any agricultural land that is impacted by  
3 commercial wind energy facility construction. The agricultural  
4 impact mitigation agreement shall address such items as access  
5 roads, construction staging and storage areas, excavation and  
6 backfill, protection of agricultural drainage tiles, wind  
7 turbine foundations, wind turbine erection, restoration of  
8 agricultural land affected by all construction,  
9 indemnification of landowners, monitoring, and remediation.

10 (b) The agricultural impact mitigation agreement shall be  
11 entered into prior to the construction of the commercial wind  
12 energy facility. The agricultural impact mitigation agreement  
13 is binding on any subsequent wind energy operator that takes  
14 ownership of the commercial wind energy facility that is the  
15 subject of the agreement. The agricultural impact mitigation  
16 agreement is not required for commercial wind energy facilities  
17 already constructed or properly permitted or sited by decision  
18 of a county or municipality made prior to the effective date of  
19 this Act.

20 (c) The Department shall adopt rules that are necessary and  
21 appropriate for the implementation and administration of  
22 agricultural impact mitigation agreements as required under  
23 this Act.

24 Section 20. Deconstruction activities.

25 (a) The commercial wind energy operator is responsible for

1 deconstruction of the commercial wind energy facility and for  
2 all costs associated with deconstruction of that facility and  
3 associated facilities.

4 (b) A commercial wind energy facility is presumed to be at  
5 the end of its useful life if (i) the commercial wind energy  
6 operator fails, for a period of 12 consecutive months, to  
7 operate a commercial wind facility or wind turbine for the  
8 purpose of which it was designed and installed and (ii) the  
9 commercial wind energy operator fails, for a period of 6  
10 consecutive months, to pay the landowner moneys owed to him or  
11 her in accordance with the underlying agreement.

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

18 (d) Commercial wind energy operators of commercial wind  
19 energy facilities not properly sited or permitted by decision  
20 of a county or municipality prior to the effective date of this  
21 Act shall file with the Commission a plan detailing the  
22 estimated deconstruction cost per turbine, in current dollars  
23 at the time of filing, for the proposed commercial wind energy  
24 conversion facility. The plan shall be prepared by an  
25 independent third party at the commercial wind energy  
26 operator's expense. The plan must also include a comprehensive

1 detailed description describing how the commercial wind energy  
2 operator plans to pay for the deconstruction of the commercial  
3 wind energy facility. The Commission may at any time after the  
4 construction of the commercial wind energy facility require the  
5 commercial wind energy operator to file a report to the  
6 Commission describing how the operator is fulfilling its  
7 obligations under this Section.

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

1 commercial wind energy operator.

2 (f) Commercial wind energy operators of sited or permitted  
3 commercial wind energy facilities existing as of the effective  
4 date of this Act shall file with the Commission information  
5 required in subsection (d) or any existing agreement with a  
6 county or municipality addressing deconstruction issues within  
7 one year after the effective date of this Act. The Commission  
8 may evaluate such information and existing agreement and make  
9 advisory recommendations to the commercial wind energy  
10 operator and county or municipality regarding changes in the  
11 level of financial assurance required from the commercial wind  
12 energy operator. The Commission shall reevaluate the  
13 anticipated costs of deconstruction every 5 years after its  
14 initial assessment or if there is a change in commercial wind  
15 energy operator for a particular commercial wind energy  
16 facility and, based upon that reevaluation, make advisory  
17 recommendations regarding changes in the level of financial  
18 assurance required from the commercial wind energy operator.

19 (g) If the commercial wind energy operator does not  
20 complete deconstruction, the Commission may take such action as  
21 necessary to complete deconstruction, including drawing upon  
22 the financial assurance required in subsection (d). The entry  
23 into an underlying agreement shall constitute agreement and  
24 consent of the parties to the agreement and their respective  
25 heirs, successors, and assigns that the Commission may take  
26 such action as may be necessary for the deconstruction of the

1 commercial wind energy facility or wind turbine, including the  
2 exercise by the Commission, Commission staff, and its  
3 contractors of the right of ingress and egress for the purpose  
4 of deconstruction of the commercial wind energy facility.

5 (h) If there is a change in ownership of the wind energy  
6 facility, the commercial wind energy operator assuming  
7 ownership of the facility shall provide notice to the  
8 Commission of such change and the existing financial assurance  
9 requirements for the facility as required in subsection (f)  
10 will apply to the new operator.

11 (i) The Commission shall adopt rules that are necessary and  
12 appropriate for the implementation and administration of  
13 deconstruction activities as required under this Act.

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