



Sen. John M. Sullivan

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1 AMENDMENT TO SENATE BILL 1469

2 AMENDMENT NO. _____. Amend Senate Bill 1469 by replacing
3 everything after the enacting clause with the following:

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

1 commercial enterprise that owns or operates a wind energy
2 facility of equal to or greater than 500 kilowatts in total
3 nameplate capacity.

4 "Department" means the Illinois Department of Agriculture.

5 "Deconstruction" means the removal of a wind energy
6 generation facility from the property of a landowner and the
7 restoration of that property to the condition in which it
8 existed immediately before the construction of the wind energy
9 facility including, but not limited to, the restoration of the
10 topography of the property to its condition before construction
11 provided, however, that foundations, pads, electrical lines,
12 and any other underground facility must be removed to a depth
13 of 5 feet below the surface of the ground.

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

17 "Underlying agreement" means the written or oral agreement
18 with a landowner including, but not limited to, an easement,
19 option, lease, or license, under the terms of which another
20 person has constructed, constructs, or intends to construct a
21 commercial wind energy facility on the property of the
22 landowner.

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

25 "Wind turbine tower height" means the distance from the
26 wind turbine rotor blade at its highest point to the top

1 surface of the wind turbine foundation.

2 Section 15. Construction activities.

3 (a) A commercial wind energy operator that is the owner of
4 a commercial wind energy facility located on land owned by
5 another person or entity shall enter into an agricultural
6 impact mitigation agreement with the Department outlining
7 construction standards and policies designed to preserve the
8 integrity of any agricultural land that is impacted by
9 commercial wind energy facility construction. The agricultural
10 impact mitigation agreement shall address such items as access
11 roads, construction staging and storage areas, excavation and
12 backfill, protection of agricultural drainage tiles, wind
13 turbine foundations, wind turbine erection, restoration of
14 agricultural land affected by all construction,
15 indemnification of landowners, monitoring, and remediation.

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

1 (c) The Department shall adopt rules that are necessary and
2 appropriate for the implementation and administration of
3 agricultural impact mitigation agreements as required under
4 this Act.

5 Section 20. Deconstruction activities.

6 (a) The commercial wind energy operator is responsible for
7 deconstruction of the commercial wind energy facility and for
8 all costs associated with deconstruction of that facility and
9 associated facilities.

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

18 (c) The commercial wind energy operator shall begin
19 deconstruction of the commercial wind energy facility within 8
20 months after the time the facility or turbine reaches the end
21 of its useful life. Deconstruction must be completed within 18
22 months after the commercial wind energy facility reaches the
23 end of its useful life.

24 (d) Commercial wind energy operators of commercial wind
25 energy facilities not properly sited or permitted by decision

1 of a county or municipality prior to the effective date of this
2 Act shall file with the Commission a plan detailing the
3 estimated deconstruction cost per turbine, in current dollars
4 at the time of filing, for the proposed commercial wind energy
5 conversion facility. The plan shall be prepared by an
6 independent third party at the commercial wind energy
7 operator's expense. The plan must also include a comprehensive
8 detailed description describing how the commercial wind energy
9 operator plans to pay for the deconstruction of the commercial
10 wind energy facility. The Commission may at any time after the
11 construction of the commercial wind energy facility require the
12 commercial wind energy operator to file a report to the
13 Commission describing how the operator is fulfilling its
14 obligations under this Section.

15 (e) The Commission shall require the commercial wind energy
16 operator to secure a performance bond, surety bond, letter of
17 credit, corporate guarantee, or other form of financial
18 assurance that is acceptable to the Commission to cover the
19 anticipated costs of deconstruction of the commercial wind
20 energy facility or turbine. In determining the anticipated
21 costs of deconstruction, the Commission shall take into
22 account, among other things, the information provided under
23 subsection (d), the number of wind turbines and related
24 commercial wind energy facilities involved, the original
25 construction costs of the commercial wind energy facilities,
26 the size and capacity of the wind turbines, and the

1 construction method and techniques for the turbines and other
2 commercial wind energy facilities. The Commission will
3 reevaluate the anticipated costs of deconstruction every 5
4 years after its initial assessment or if there is a change in
5 commercial wind energy operator for a particular commercial
6 wind energy facility, and based on that reevaluation require
7 changes in the level of financial assurance required from the
8 commercial wind energy operator.

9 (f) If the commercial wind energy operator does not
10 complete deconstruction, the Commission may take such action as
11 necessary to complete deconstruction, including drawing upon
12 the financial assurance required in subsection (d). The entry
13 into an underlying agreement shall constitute agreement and
14 consent of the parties to the agreement and their respective
15 heirs, successors, and assigns that the Commission may take
16 such action as may be necessary for the deconstruction of the
17 commercial wind energy facility or wind turbine, including the
18 exercise by the Commission, Commission staff, and its
19 contractors of the right of ingress and egress for the purpose
20 of deconstruction of the commercial wind energy facility.

21 (g) If there is a change in ownership of the wind energy
22 facility, the commercial wind energy operator assuming
23 ownership of the facility shall provide notice to the
24 Commission of such change and the existing financial assurance
25 requirements for the facility as required in subsection (e)
26 will apply to the new operator.

1 (h) The Commission shall adopt rules that are necessary and
2 appropriate for the implementation and administration of
3 deconstruction activities as required under this Act.

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