



Sen. John M. Sullivan

Filed: 4/15/2013

09800SB1469sam002

LRB098 06744 CEL 44543 a

1 AMENDMENT TO SENATE BILL 1469

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

5 "Section 1. Short title. This Act may be cited as the Wind
6 Energy Facilities Construction and Deconstruction Act.

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

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

12 "Commercial wind energy facility" means a wind energy
13 conversion facility of equal or greater than 500 kilowatts in
14 total nameplate generating capacity that has not already been
15 constructed or permitted by decision of a county or

1 municipality prior to the effective date of this Act.

2 "Commercial wind energy operator" means a private
3 commercial enterprise that owns or operates a wind energy
4 facility of equal to or greater than 500 kilowatts in total
5 nameplate capacity.

6 "Commission" means the Illinois Commerce Commission.

7 "Deconstruction" means the removal of a wind energy
8 generation facility from the property of a landowner and the
9 restoration of that property as provided in the agricultural
10 impact mitigation agreement.

11 "Department" means the Illinois Department of Agriculture.

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

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

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

23 Section 15. Agricultural impact mitigation agreement.

24 (a) An owner or operator of a commercial wind energy
25 facility located on landowner property shall enter into an

1 agricultural impact mitigation agreement with the Department
2 outlining construction and deconstruction standards and
3 policies designed to preserve the integrity of any agricultural
4 land that is impacted by commercial wind energy facility
5 construction and deconstruction. This requirement does not
6 apply to commercial wind energy facilities already constructed
7 or permitted by decision of a county or municipality prior to
8 the effective date of this Act.

9 (b) The agricultural impact mitigation agreement shall
10 address such items as access roads, construction staging and
11 storage areas, excavation and backfill, protection of
12 agricultural drainage tiles, wind turbine foundations, wind
13 turbine erection, restoration of agricultural land affected by
14 all construction and deconstruction, indemnification of
15 landowners, monitoring, and remediation.

16 (c) 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.

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

1 Section 20. Deconstruction activities.

2 (a) The commercial wind energy operator is responsible for
3 deconstruction of the commercial wind energy facility and for
4 all costs associated with deconstruction of that facility and
5 associated facilities.

6 (b) A commercial wind energy facility is presumed to be at
7 the end of its useful life if (i) the commercial wind energy
8 operator fails, for a period of 18 consecutive months, to
9 operate a commercial wind facility for the purpose of which it
10 was designed and installed and (ii) the commercial wind energy
11 operator fails, for a period of 6 consecutive months, to pay
12 the landowner moneys owed to him or her in accordance with the
13 underlying agreement.

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

20 (d) No less than 120 days prior to the beginning of
21 construction, owners or operators of commercial wind energy
22 facilities shall file with the Commission a plan that includes:

23 (1) a copy of the agricultural impact mitigation
24 agreement entered into by the owner or operator and the
25 Department;

26 (2) the estimated deconstruction cost per turbine, in

1 current dollars at the time of filing, for the proposed
2 commercial wind energy facility; and

3 (3) a comprehensive detailed description describing
4 how the commercial wind energy owner or operator plans to
5 pay for the deconstruction of the commercial wind energy
6 facility.

7 The plan shall be prepared by an independent third party at
8 the commercial wind energy operator's expense. The plan may be
9 filed in separate portions, each also no less than 120 days
10 prior to construction, involving each phase in which the
11 commercial wind energy facility is to be constructed, if the
12 facility is to be constructed in phases commencing at periods
13 of more than one year following each other. The Commission
14 shall enter an order approving, modifying, or disapproving that
15 plan.

16 (e) No less than 120 days prior to the beginning of
17 construction of any commercial wind energy facility, the
18 commercial wind energy owner or operator shall file with the
19 Commission a reclamation bond that is acceptable to the
20 Commission to cover the anticipated costs of deconstruction of
21 the commercial wind energy facility or any turbine thereon. The
22 reclamation bond shall not release the surety from liability
23 until the bond is replaced. In determining the anticipated
24 costs of deconstruction, the Commission shall take into
25 account, among other things, the information provided under
26 subsection (d), the number of wind turbines and related

1 commercial wind energy facilities involved, the original
2 construction costs of the commercial wind energy facilities,
3 the size and capacity of the wind turbines, the salvage value
4 of the commercial wind energy facilities, and the construction
5 method and techniques for the turbines and other commercial
6 wind energy facilities. The Commission shall examine the
7 reclamation bond and enter an order approving, modifying, or
8 rejecting the reclamation bond. The Commission shall
9 reevaluate the anticipated costs of deconstruction of any
10 commercial wind energy facility every 5 years after its initial
11 assessment or if there is a change in commercial wind energy
12 facility's owner, operator, or reclamation bond, and, based on
13 any reevaluation, require changes in the level of reclamation
14 bond required from the commercial wind energy facility owner or
15 operator. If the Commission is unable to its satisfaction to
16 perform any investigations necessary to enter an order
17 approving any deconstruction plan filed by a commercial wind
18 energy facility owner or operator, then the Commission may
19 select persons independent of the commercial wind energy
20 facility owner or operator to conduct any necessary
21 investigations and the commercial wind energy facility owner or
22 operator shall bear the cost of any such investigations.

23 (f) If the commercial wind energy operator does not
24 complete deconstruction, the Commission may take such action as
25 necessary to complete deconstruction, including drawing upon
26 the financial assurance required in subsection (e).

1 (g) If there is a change in ownership of the wind energy
2 facility, the commercial wind energy operator assuming
3 ownership of the facility shall provide notice within 30 days
4 to the Commission of such change and the existing financial
5 assurance requirements for the facility as required in
6 subsection (e) will apply to the new operator.

7 (h) The Commission has no authority or responsibility for
8 commercial wind facilities that have already been constructed
9 or permitted by decision of a county or municipality prior to
10 the effective date of this Act.

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 (j) In addition to any authority granted the Commission
15 under this Act, the Commission is also authorized to impose
16 reasonable filing fees and penalties. Fees and penalties
17 collected under this Act shall be deposited into the Public
18 Utility Fund and used to fund the Commission's compliance with
19 the obligations imposed by this Section.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.".