



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4037

Introduced 4/19/2023, by Rep. Chris Miller

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020

Amends the Counties Code. Provides that a commercial wind energy facility owner or solar energy facility owner must file a land reclamation plan and a recycling plan with the Department of Agriculture prior to the required public hearing on the siting of a facility. Provides that the land reclamation plan must outline how the property on which a facility has been constructed will be returned to the state the property existed prior to the construction of the facility upon removal of the facility. Provides that the recycling plan must outline how the material used to construct the facility will be recycled. Provides that a commercial solar energy facility may not be sited on property where the property's soil's crop productivity index is greater than 110. Effective immediately.

LRB103 31868 AWJ 60516 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) ~~this amendatory Act of the 102nd General~~
2 ~~Assembly.~~

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

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

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

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

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

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

16 "Protected lands" means real property that is:

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

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

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

1 or commercial solar energy facility.

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

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

19 (c) If a county has elected to establish standards under
20 subsection (b), before the county grants siting approval or a
21 special use permit for a commercial wind energy facility or a
22 commercial solar energy facility, or modification of an
23 approved siting or special use permit, the county board of the
24 county in which the facility is to be sited or the zoning board
25 of appeals for the county shall hold at least one public
26 hearing. The public hearing shall be conducted in accordance

1 with the Open Meetings Act and shall be held not more than 45
2 days after the filing of the application for the facility. The
3 county shall allow interested parties to a special use permit
4 an opportunity to present evidence and to cross-examine
5 witnesses at the hearing, but the county may impose reasonable
6 restrictions on the public hearing, including reasonable time
7 limitations on the presentation of evidence and the
8 cross-examination of witnesses. The county shall also allow
9 public comment at the public hearing in accordance with the
10 Open Meetings Act. The county shall make its siting and
11 permitting decisions not more than 30 days after the
12 conclusion of the public hearing. Notice of the hearing shall
13 be published in a newspaper of general circulation in the
14 county. A facility owner must enter into an agricultural
15 impact mitigation agreement and file a land reclamation plan
16 and a recycling plan with the Department of Agriculture prior
17 to the date of the required public hearing. The land
18 reclamation plan must outline how the property on which a
19 facility has been constructed will be returned to the state
20 the property existed prior to the construction of the facility
21 upon removal of the facility. The recycling plan must outline
22 how the material used to construct the facility will be
23 recycled. A commercial wind energy facility owner seeking an
24 extension of a permit granted by a county prior to July 24,
25 2015 (the effective date of Public Act 99-132) must enter into
26 an agricultural impact mitigation agreement with the

1 Department of Agriculture prior to a decision by the county to
 2 grant the permit extension. Counties may allow test wind
 3 towers or test solar energy systems to be sited without formal
 4 approval by the county board.

5 (d) A county with an existing zoning ordinance in conflict
 6 with this Section shall amend that zoning ordinance to be in
 7 compliance with this Section within 120 days after January 27,
 8 2023 (the effective date of Public Act 102-1123) ~~this~~
 9 ~~amendatory Act of the 102nd General Assembly.~~

10 (e) A county may require:

11 (1) a wind tower of a commercial wind energy facility
 12 to be sited as follows, with setback distances measured
 13 from the center of the base of the wind tower:

14 Setback Description	Setback Distance
15 Occupied Community 16 Buildings	2.1 times the maximum blade tip height of the wind tower to the 17 nearest point on the outside 18 wall of the structure
19 Participating Residences	1.1 times the maximum blade tip 20 height of the wind tower to the 21 nearest point on the outside 22 wall of the structure

1	Nonparticipating Residences	2.1 times the maximum blade tip
2		height of the wind tower to the
3		nearest point on the outside
4		wall of the structure
5	Boundary Lines of	None
6	Participating Property	
7	Boundary Lines of	1.1 times the maximum blade tip
8	Nonparticipating Property	height of the wind tower to the
9		nearest point on the property
10		line of the nonparticipating
11		property
12	Public Road Rights-of-Way	1.1 times the maximum blade tip
13		height of the wind tower
14		to the center point of the
15		public road right-of-way
16	Overhead Communication and	1.1 times the maximum blade tip
17	Electric Transmission	height of the wind tower to the
18	and Distribution Facilities	nearest edge of the property
19	(Not Including Overhead	line, easement, or
20	Utility Service Lines to	<u>right-of-way</u> right-of-way
21	Individual Houses or	containing the overhead line
22	Outbuildings)	

1	Overhead Utility Service	None
2	Lines to Individual	
3	Houses or Outbuildings	
4	Fish and Wildlife Areas	2.1 times the maximum blade
5	and Illinois Nature	tip height of the wind tower
6	Preserve Commission	to the nearest point on the
7	Protected Lands	property line of the fish and
8		wildlife area or protected
9		land

10 This Section does not exempt or excuse compliance with
11 electric facility clearances approved or required by the
12 National Electrical Code, The National Electrical Safety
13 Code, Illinois Commerce Commission, Federal Energy
14 Regulatory Commission, and their designees or successors.

15 (2) a wind tower of a commercial wind energy facility
16 to be sited so that industry standard computer modeling
17 indicates that any occupied community building or
18 nonparticipating residence will not experience more than
19 30 hours per year of shadow flicker under planned
20 operating conditions;

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

1	Setback Description	Setback Distance
2	Occupied Community	150 feet from the nearest
3	Buildings and Dwellings on	point on the outside wall
4	Nonparticipating Properties	of the structure
5	Boundary Lines of	None
6	Participating Property	
7	Public Road Rights-of-Way	50 feet from the nearest
8		edge
9	Boundary Lines of	50 feet to the nearest
10	Nonparticipating Property	point on the property
11		line of the nonparticipating
12		property

13 (4) a commercial solar energy facility to be sited so
14 that the facility's perimeter is enclosed by fencing
15 having a height of at least 6 feet and no more than 25
16 feet; and

17 (5) a commercial solar energy facility to be sited so
18 that no component of a solar panel has a height of more
19 than 20 feet above ground when the solar energy facility's
20 arrays are at full tilt.

1 The requirements set forth in this subsection (e) may be
2 waived subject to the written consent of the owner of each
3 affected nonparticipating property.

4 (e-5) A commercial solar energy facility may not be sited
5 on property where the property's soil's crop productivity
6 index is greater than 110, as "crop productivity index" is
7 used in the University of Illinois at Urbana-Champaign's
8 Optimum Crop Productivity Ratings for Illinois Soil or
9 subsequent publication.

10 (f) A county may not set a sound limitation for wind towers
11 in commercial wind energy facilities or any components in
12 commercial solar energy facilities ~~facility~~ that is more
13 restrictive than the sound limitations established by the
14 Illinois Pollution Control Board under 35 Ill. Adm. Code Parts
15 900, 901, and 910.

16 (g) A county may not place any restriction on the
17 installation or use of a commercial wind energy facility or a
18 commercial solar energy facility unless it adopts an ordinance
19 that complies with this Section. A county may not establish
20 siting standards for supporting facilities that preclude
21 development of commercial wind energy facilities or commercial
22 solar energy facilities.

23 A request for siting approval or a special use permit for a
24 commercial wind energy facility or a commercial solar energy
25 facility, or modification of an approved siting or special use
26 permit, shall be approved if the request is in compliance with

1 the standards and conditions imposed in this Act, the zoning
2 ordinance adopted consistent with this Code, and the
3 conditions imposed under State and federal statutes and
4 regulations.

5 (h) A county may not adopt zoning regulations that
6 disallow, permanently or temporarily, commercial wind energy
7 facilities or commercial solar energy facilities from being
8 developed or operated in any district zoned to allow
9 agricultural or industrial uses.

10 (i) A county may not require permit application fees for a
11 commercial wind energy facility or commercial solar energy
12 facility that are unreasonable. All application fees imposed
13 by the county shall be consistent with fees for projects in the
14 county with similar capital value and cost.

15 (j) Except as otherwise provided in this Section, a county
16 shall not require standards for construction, decommissioning,
17 or deconstruction of a commercial wind energy facility or
18 commercial solar energy facility or related financial
19 assurances that are more restrictive than those included in
20 the Department of Agriculture's standard wind farm
21 agricultural impact mitigation agreement, template 81818, or
22 standard solar agricultural impact mitigation agreement,
23 version 8.19.19, as applicable and in effect on December 31,
24 2022. The amount of any decommissioning payment shall be
25 limited to the cost identified in the decommissioning or
26 deconstruction plan, as required by those agricultural impact

1 mitigation agreements, minus the salvage value of the project.

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

6 (l) A county may require certain vegetative screening
7 surrounding a commercial wind energy facility or commercial
8 solar energy facility but may not require earthen berms or
9 similar structures.

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

16 (n) A county may require that a commercial wind energy
17 facility owner or commercial solar energy facility owner
18 provide:

19 (1) the results and recommendations from consultation
20 with the Illinois Department of Natural Resources that are
21 obtained through the Ecological Compliance Assessment Tool
22 (EcoCAT) or a comparable successor tool; and

23 (2) the results of the United States Fish and Wildlife
24 Service's Information for Planning and Consulting
25 environmental review or a comparable successor tool that
26 is consistent with (i) the "U.S. Fish and Wildlife

1 Service's Land-Based Wind Energy Guidelines" and (ii) any
2 applicable United States Fish and Wildlife Service solar
3 wildlife guidelines that have been subject to public
4 review.

5 (o) A county may require a commercial wind energy facility
6 or commercial solar energy facility to adhere to the
7 recommendations provided by the Illinois Department of Natural
8 Resources in an EcoCAT natural resource review report under 17
9 Ill. ~~Adm. Admin.~~ Code Part 1075.

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

11 (1) demonstrate avoidance of protected lands as
12 identified by the Illinois Department of Natural Resources
13 and the Illinois Nature Preserve Commission; or

14 (2) consider the recommendations of the Illinois
15 Department of Natural Resources for setbacks from
16 protected lands, including areas identified by the
17 Illinois Nature Preserve Commission.

18 (q) A county may require that a facility owner provide
19 evidence of consultation with the Illinois State Historic
20 Preservation Office to assess potential impacts on
21 State-registered historic sites under the Illinois State
22 Agency Historic Resources Preservation Act.

23 (r) To maximize community benefits, including, but not
24 limited to, reduced stormwater runoff, flooding, and erosion
25 at the ground mounted solar energy system, improved soil
26 health, and increased foraging habitat for game birds,

1 songbirds, and pollinators, a county may (1) require a
2 commercial solar energy facility owner to plant, establish,
3 and maintain for the life of the facility vegetative ground
4 cover, consistent with the goals of the Pollinator-Friendly
5 Solar Site Act and (2) require the submittal of a vegetation
6 management plan in the application to construct and operate a
7 commercial solar energy facility in the county.

8 No later than 90 days after January 27, 2023 (the
9 effective date of Public Act 102-1123) ~~this amendatory Act of~~
10 ~~the 102nd General Assembly~~, the Illinois Department of Natural
11 Resources shall develop guidelines for vegetation management
12 plans that may be required under this subsection for
13 commercial solar energy facilities. The guidelines must
14 include guidance for short-term and long-term property
15 management practices that provide and maintain native and
16 non-invasive naturalized perennial vegetation to protect the
17 health and well-being of pollinators.

18 (s) If a facility owner enters into a road use agreement
19 with the Illinois Department of Transportation, a road
20 district, or other unit of local government relating to a
21 commercial wind energy facility or a commercial solar energy
22 facility, the road use agreement shall require the facility
23 owner to be responsible for (i) the reasonable cost of
24 improving roads used by the facility owner to construct the
25 commercial wind energy facility or the commercial solar energy
26 facility and (ii) the reasonable cost of repairing roads used

1 by the facility owner during construction of the commercial
2 wind energy facility or the commercial solar energy facility
3 so that those roads are in a condition that is safe for the
4 driving public after the completion of the facility's
5 construction. Roadways improved in preparation for and during
6 the construction of the commercial wind energy facility or
7 commercial solar energy facility shall be repaired and
8 restored to the improved condition at the reasonable cost of
9 the developer if the roadways have degraded or were damaged as
10 a result of construction-related activities.

11 The road use agreement shall not require the facility
12 owner to pay costs, fees, or charges for road work that is not
13 specifically and uniquely attributable to the construction of
14 the commercial wind energy facility or the commercial solar
15 energy facility. Road-related fees, permit fees, or other
16 charges imposed by the Illinois Department of Transportation,
17 a road district, or other unit of local government under a road
18 use agreement with the facility owner shall be reasonably
19 related to the cost of administration of the road use
20 agreement.

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 districts, culverts, and water gathering vaults, owned or

1 under the control of a drainage district under the Illinois
2 Drainage Code without obtaining prior agreement or approval
3 from the drainage district, except that the facility owner
4 shall repair or pay for the repair of all damage to the
5 drainage system caused by the construction of the commercial
6 wind energy facility or the commercial solar energy facility
7 within a reasonable time after construction of the commercial
8 wind energy facility or the commercial solar energy facility
9 is complete.

10 (u) The amendments to this Section adopted in Public Act
11 102-1123 ~~this amendatory Act of the 102nd General Assembly~~ do
12 not apply to (1) an application for siting approval or for a
13 special use permit for a commercial wind energy facility or
14 commercial solar energy facility if the application was
15 submitted to a unit of local government before January 27,
16 2023 (the effective date of Public Act 102-1123) ~~this~~
17 ~~amendatory Act of the 102nd General Assembly~~ or (2) a
18 commercial wind energy facility or a commercial solar energy
19 facility if the facility owner has submitted an agricultural
20 impact mitigation agreement to the Department of Agriculture
21 before January 27, 2023 (the effective date of Public Act
22 102-1123) ~~this amendatory Act of the 102nd General Assembly~~.

23 (Source: P.A. 101-4, eff. 4-19-19; 102-1123, eff. 1-27-23;
24 revised 4-5-23.)

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