

SB2595



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2595

Introduced 10/18/2023, by Sen. Sue Rezin

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020

Amends the Counties Code. Provides that a commercial wind energy facility, a commercial solar energy facility, or both may not be approved by a county within an unincorporated area of the county that is within a 3-mile radius surrounding a municipality unless both the county board and the city council of the municipality approve the facility, regardless of whether or not the municipality has adopted zoning ordinances or is regulating wind farms and electric-generating wind devices. Effective immediately.

LRB103 32942 AWJ 62746 b

A BILL FOR

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. A commercial wind energy
19 facility, a commercial solar energy facility, or both may not
20 be approved by a county within an unincorporated area of the
21 county that is within a 3-mile radius surrounding a
22 municipality unless both the county board and the city council
23 of the municipality approve the facility, regardless of
24 whether or not the municipality has adopted zoning ordinances
25 under Division 13 of Article 11 of the Illinois Municipal Code
26 or is regulating wind farms and electric-generating wind

1 devices under Section 11-13-26 of the Illinois Municipal Code.

2 (c) If a county has elected to establish standards under
3 subsection (b), before the county grants siting approval or a
4 special use permit for a commercial wind energy facility or a
5 commercial solar energy facility, or modification of an
6 approved siting or special use permit, the county board of the
7 county in which the facility is to be sited or the zoning board
8 of appeals for the county shall hold at least one public
9 hearing. The public hearing shall be conducted in accordance
10 with the Open Meetings Act and shall be held not more than 45
11 days after the filing of the application for the facility. The
12 county shall allow interested parties to a special use permit
13 an opportunity to present evidence and to cross-examine
14 witnesses at the hearing, but the county may impose reasonable
15 restrictions on the public hearing, including reasonable time
16 limitations on the presentation of evidence and the
17 cross-examination of witnesses. The county shall also allow
18 public comment at the public hearing in accordance with the
19 Open Meetings Act. The county shall make its siting and
20 permitting decisions not more than 30 days after the
21 conclusion of the public hearing. Notice of the hearing shall
22 be published in a newspaper of general circulation in the
23 county. A facility owner must enter into an agricultural
24 impact mitigation agreement with the Department of Agriculture
25 prior to the date of the required public hearing. A commercial
26 wind energy facility owner seeking an extension of a permit

1 granted by a county prior to July 24, 2015 (the effective date
 2 of Public Act 99-132) must enter into an agricultural impact
 3 mitigation agreement with the Department of Agriculture prior
 4 to a decision by the county to grant the permit extension.
 5 Counties may allow test wind towers or test solar energy
 6 systems to be sited without formal approval by the county
 7 board.

8 (d) A county with an existing zoning ordinance in conflict
 9 with this Section shall amend that zoning ordinance to be in
 10 compliance with this Section within 120 days after January 27,
 11 2023 (the effective date of Public Act 102-1123) ~~this~~
 12 ~~amendatory Act of the 102nd General Assembly.~~

13 (e) A county may require:

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

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

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

1 Utility Service Lines to containing the overhead line
2 Individual Houses or
3 Outbuildings)

4 Overhead Utility Service None
5 Lines to Individual
6 Houses or Outbuildings

7 Fish and Wildlife Areas 2.1 times the maximum blade
8 and Illinois Nature tip height of the wind tower
9 Preserve Commission to the nearest point on the
10 Protected Lands property line of the fish and
11 wildlife area or protected
12 land

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

18 (2) a wind tower of a commercial wind energy facility
19 to be sited so that industry standard computer modeling
20 indicates that any occupied community building or
21 nonparticipating residence will not experience more than
22 30 hours per year of shadow flicker under planned
23 operating conditions;

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

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

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

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

1 that no component of a solar panel has a height of more
2 than 20 feet above ground when the solar energy facility's
3 arrays are at full tilt.

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

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

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

20 A request for siting approval or a special use permit for a
21 commercial wind energy facility or a commercial solar energy
22 facility, or modification of an approved siting or special use
23 permit, shall be approved if the request is in compliance with
24 the standards and conditions imposed in this Act, the zoning
25 ordinance adopted consistent with this Code, and the
26 conditions imposed under State and federal statutes and

1 regulations.

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

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

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

25 (k) A county may not condition approval of a commercial
26 wind energy facility or commercial solar energy facility on a

1 property value guarantee and may not require a facility owner
2 to pay into a neighboring property devaluation escrow account.

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

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

13 (n) A county may require that a commercial wind energy
14 facility owner or commercial solar energy facility owner
15 provide:

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

20 (2) the results of the United States Fish and Wildlife
21 Service's Information for Planning and Consulting
22 environmental review or a comparable successor tool that
23 is consistent with (i) the "U.S. Fish and Wildlife
24 Service's Land-Based Wind Energy Guidelines" and (ii) any
25 applicable United States Fish and Wildlife Service solar
26 wildlife guidelines that have been subject to public

1 review.

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

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

8 (1) demonstrate avoidance of protected lands as
9 identified by the Illinois Department of Natural Resources
10 and the Illinois Nature Preserve Commission; or

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

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

20 (r) To maximize community benefits, including, but not
21 limited to, reduced stormwater runoff, flooding, and erosion
22 at the ground mounted solar energy system, improved soil
23 health, and increased foraging habitat for game birds,
24 songbirds, and pollinators, a county may (1) require a
25 commercial solar energy facility owner to plant, establish,
26 and maintain for the life of the facility vegetative ground

1 cover, consistent with the goals of the Pollinator-Friendly
2 Solar Site Act and (2) require the submittal of a vegetation
3 management plan in the application to construct and operate a
4 commercial solar energy facility in the county.

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

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

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

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

18 (t) Notwithstanding any other provision of law, a facility
19 owner with siting approval from a county to construct a
20 commercial wind energy facility or a commercial solar energy
21 facility is authorized to cross or impact a drainage system,
22 including, but not limited to, drainage tiles, open drainage
23 districts, culverts, and water gathering vaults, owned or
24 under the control of a drainage district under the Illinois
25 Drainage Code without obtaining prior agreement or approval
26 from the drainage district, except that the facility owner

1 shall repair or pay for the repair of all damage to the
2 drainage system caused by the construction of the commercial
3 wind energy facility or the commercial solar energy facility
4 within a reasonable time after construction of the commercial
5 wind energy facility or the commercial solar energy facility
6 is complete.

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

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

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.