



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3704

Introduced 2/22/2021, by Rep. Lance Yednock

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020
65 ILCS 5/11-13-26
505 ILCS 147/1
505 ILCS 147/5
505 ILCS 147/10
505 ILCS 147/15

Amends the Renewable Energy Facilities Agricultural Impact Mitigation Act. Changes the short title to the Agricultural Impact Mitigation Act. Broadens the purpose of the Act to include construction and deconstruction of pipelines and electronic transmission lines. Includes pipeline owner and electrical transmission line owner in the definition of "agricultural impact mitigation agreement", "construction", "county", "deconstruction", and "underlying agreement". Defines "Agricultural Inspector", "pipeline owner", and "pipeline". Contains guidelines for pipeline and electronic transmission line owners to address environmental impact before starting construction. Amends the Counties Code and the Illinois Municipal Code to make conforming changes.

LRB102 16078 KMF 21451 b

1 AN ACT concerning Pipeline and Electronic Transmission
2 Line Environmental Impact.

3 **Be it enacted by the People of the State of Illinois,**
4 **represented in the General Assembly:**

5 Section 5. The Counties Code is amended by changing
6 Section 5-12020 as follows:

7 (55 ILCS 5/5-12020)

8 Sec. 5-12020. Wind farms, electric-generating wind
9 devices, and commercial wind energy facilities.
10 Notwithstanding any other provision of law or whether the
11 county has formed a zoning commission and adopted formal
12 zoning under Section 5-12007, a county may establish standards
13 for wind farms and electric-generating wind devices. The
14 standards may include, without limitation, the height of the
15 devices and the number of devices that may be located within a
16 geographic area. A county may also regulate the siting of wind
17 farms and electric-generating wind devices in unincorporated
18 areas of the county outside of the zoning jurisdiction of a
19 municipality and the 1.5 mile radius surrounding the zoning
20 jurisdiction of a municipality. There shall be at least one
21 public hearing not more than 30 days prior to a siting decision
22 by the county board. Notice of the hearing shall be published
23 in a newspaper of general circulation in the county. A

1 commercial wind energy facility owner, as defined in the
2 ~~Renewable Energy Facilities~~ Agricultural Impact Mitigation
3 Act, must enter into an agricultural impact mitigation
4 agreement with the Department of Agriculture prior to the date
5 of the required public hearing. A commercial wind energy
6 facility owner seeking an extension of a permit granted by a
7 county prior to July 24, 2015 (the effective date of Public Act
8 99-132) must enter into an agricultural impact mitigation
9 agreement with the Department of Agriculture prior to a
10 decision by the county to grant the permit extension. Counties
11 may allow test wind towers to be sited without formal approval
12 by the county board. Any provision of a county zoning
13 ordinance pertaining to wind farms that is in effect before
14 August 16, 2007 (the effective date of Public Act 95-203) may
15 continue in effect notwithstanding any requirements of this
16 Section.

17 A county may not require a wind tower or other renewable
18 energy system that is used exclusively by an end user to be
19 setback more than 1.1 times the height of the renewable energy
20 system from the end user's property line.

21 Only a county may establish standards for wind farms,
22 electric-generating wind devices, and commercial wind energy
23 facilities, as that term is defined in Section 10 of the
24 ~~Renewable Energy Facilities~~ Agricultural Impact Mitigation
25 Act, in unincorporated areas of the county outside of the
26 zoning jurisdiction of a municipality and outside the 1.5 mile

1 radius surrounding the zoning jurisdiction of a municipality.

2 (Source: P.A. 100-598, eff. 6-29-18; 101-4, eff. 4-19-19.)

3 Section 10. The Illinois Municipal Code is amended by
4 changing Section 11-13-26 as follows:

5 (65 ILCS 5/11-13-26)

6 Sec. 11-13-26. Wind farms. Notwithstanding any other
7 provision of law:

8 (a) A municipality may regulate wind farms and
9 electric-generating wind devices within its zoning
10 jurisdiction and within the 1.5 mile radius surrounding
11 its zoning jurisdiction. There shall be at least one
12 public hearing not more than 30 days prior to a siting
13 decision by the corporate authorities of a municipality.
14 Notice of the hearing shall be published in a newspaper of
15 general circulation in the municipality. A commercial wind
16 energy facility owner, as defined in the ~~Renewable Energy~~
17 ~~Facilities~~ Agricultural Impact Mitigation Act, must enter
18 into an agricultural impact mitigation agreement with the
19 Department of Agriculture prior to the date of the
20 required public hearing. A commercial wind energy facility
21 owner seeking an extension of a permit granted by a
22 municipality prior to July 24, 2015 (the effective date of
23 Public Act 99-132) must enter into an agricultural impact
24 mitigation agreement with the Department of Agriculture

1 prior to a decision by the municipality to grant the
2 permit extension. A municipality may allow test wind
3 towers to be sited without formal approval by the
4 corporate authorities of the municipality. Test wind
5 towers must be dismantled within 3 years of installation.
6 For the purposes of this Section, "test wind towers" are
7 wind towers that are designed solely to collect wind
8 generation data.

9 (b) A municipality may not require a wind tower or
10 other renewable energy system that is used exclusively by
11 an end user to be setback more than 1.1 times the height of
12 the renewable energy system from the end user's property
13 line. A setback requirement imposed by a municipality on a
14 renewable energy system may not be more restrictive than
15 as provided under this subsection. This subsection is a
16 limitation of home rule powers and functions under
17 subsection (i) of Section 6 of Article VII of the Illinois
18 Constitution on the concurrent exercise by home rule units
19 of powers and functions exercised by the State.

20 (Source: P.A. 99-123, eff. 1-1-16; 99-132, eff. 7-24-15;
21 99-642, eff. 7-28-16; 100-598, eff. 6-29-18.)

22 Section 15. The Renewable Energy Facilities Agricultural
23 Impact Mitigation Act is amended by changing Sections 1, 5,
24 10, 15, 90, 95, and 99 as follows:

1 (505 ILCS 147/1)

2 Sec. 1. Short title. This Act may be cited as the ~~Renewable~~
3 ~~Energy Facilities~~ Agricultural Impact Mitigation Act.

4 (Source: P.A. 99-132, eff. 7-24-15; 100-598, eff. 6-29-18.)

5 (505 ILCS 147/5)

6 Sec. 5. Purpose. The primary purpose of this Act is to
7 promote the State's welfare by protecting landowners during
8 the construction and deconstruction of commercial renewable
9 energy facilities, pipelines, and electric transmission lines
10 to ensure that land affected by these projects is restored to
11 its pre-construction condition..

12 (Source: P.A. 99-132, eff. 7-24-15; 100-598, eff. 6-29-18.)

13 (505 ILCS 147/10)

14 Sec. 10. Definitions. As used in this Act:

15 "Abandonment of a commercial wind energy facility" means
16 when deconstruction has not been completed within 18 months
17 after the commercial wind energy facility reaches the end of
18 its useful life. For purposes of this definition, a commercial
19 wind energy facility will be presumed to have reached the end
20 of its useful life if (1) no electricity is generated for a
21 continuous period of 12 months and (2) the commercial wind
22 energy facility owner fails, for a period of 6 consecutive
23 months, to pay the landowner amounts owed in accordance with
24 the underlying agreement.

1 "Abandonment of a commercial solar energy facility" means
2 when deconstruction has not been completed within 12 months
3 after the commercial solar energy facility reaches the end of
4 its useful life. For purposes of this definition, a commercial
5 solar energy facility shall be presumed to have reached the
6 end of its useful life if the commercial solar energy facility
7 owner fails, for a period of 6 consecutive months, to pay the
8 landowner amounts owed in accordance with the underlying
9 agreement.

10 "Agricultural impact mitigation agreement" means an
11 agreement between the pipeline owner, electrical transmission
12 line owner, commercial wind energy facility owner or the
13 commercial solar energy facility owner and the Department of
14 Agriculture described in Section 15 of this Act.

15 "Agricultural Inspector" means a person hired by a
16 pipeline, electric transmission line owner, or commercial
17 renewable energy facility and approved by the Department who
18 will work with the facility throughout the construction and
19 deconstruction phases to ensure compliance with the provisions
20 of the Agricultural Impact Mitigation Agreement.

21 "Commercial renewable energy facility " means a commercial
22 wind energy facility or commercial solar energy facility as
23 defined in this Act.

24 "Commercial solar energy facility" means a solar energy
25 conversion facility equal to or greater than 500 kilowatts in
26 total nameplate capacity, including a solar energy conversion

1 facility seeking an extension of a permit to construct granted
2 by a county or municipality before the effective date of this
3 amendatory Act of the 100th General Assembly. "Commercial
4 solar energy facility" does not include a solar energy
5 conversion facility: (1) for which a permit to construct has
6 been issued before the effective date of this amendatory Act
7 of the 100th General Assembly; (2) that is located on land
8 owned by the commercial solar energy facility owner; (3) that
9 was constructed before the effective date of this amendatory
10 Act of the 100th General Assembly; or (4) that is located on
11 the customer side of the customer's electric meter and is
12 primarily used to offset that customer's electricity load and
13 is limited in nameplate capacity to less than or equal to 2,000
14 kilowatts.

15 "Commercial solar energy facility owner" means a private
16 commercial enterprise that owns a commercial solar energy
17 facility. A commercial solar energy facility owner is not nor
18 shall it be deemed to be a public utility as defined in the
19 Public Utilities Act.

20 "Commercial wind energy facility" means a wind energy
21 conversion facility of equal or greater than 500 kilowatts in
22 total nameplate generating capacity. "Commercial wind energy
23 facility" includes a wind energy conversion facility seeking
24 an extension of a permit to construct granted by a county or
25 municipality before the effective date of this Act.
26 "Commercial wind energy facility" does not include a wind

1 energy conversion facility: (1) that has submitted a complete
2 permit application to a county or municipality and for which
3 the hearing on the completed application has commenced on the
4 date provided in the public hearing notice, which must be
5 before the effective date of this Act; (2) for which a permit
6 to construct has been issued before the effective date of this
7 Act; or (3) that was constructed before the effective date of
8 this Act.

9 "Commercial wind energy facility owner" means a private
10 commercial enterprise that owns or operates a commercial wind
11 energy facility. A commercial wind energy facility owner is
12 not nor shall it be deemed to be a public utility as defined in
13 the Public Utilities Act.

14 "Construction" means the installation, preparation for
15 installation, or repair of a pipeline, electric transmission
16 line, or commercial renewable energy facility.

17 "County" means the county where the pipeline, electric
18 transmission line, or commercial renewable energy facility is
19 located.

20 "Deconstruction" means the removal of a pipeline, electric
21 transmission line, or commercial renewable energy facility
22 from the property of a landowner and the restoration of that
23 property as provided in the agricultural impact mitigation
24 agreement.

25 "Department" means the Department of Agriculture.

26 "Landowner" means any person (1) with an ownership

1 interest in property that is used for agricultural purposes
2 and (2) that is a party to an underlying agreement.

3 "Pipeline" means all parts of those physical facilities
4 through which gas, carbon dioxide, oil, or other hazardous
5 liquid moves in transportation, that crosses or is located in:

6 (1) Illinois; and

7 (2) one or more other states.

8 "Pipeline Owner" means a private commercial enterprise
9 that owns a pipeline.

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

17 (Source: P.A. 99-132, eff. 7-24-15; 100-598, eff. 6-29-18.)

18 (505 ILCS 147/15)

19 Sec. 15. Agricultural impact mitigation agreement.

20 (a) A pipeline owner, electric transmission line owner, or
21 a commercial renewable energy facility owner of a commercial
22 wind energy facility or a commercial solar energy facility
23 that is located on landowner property shall enter into an
24 agricultural impact mitigation agreement with the Department
25 outlining construction and deconstruction standards and

1 policies designed to preserve the integrity of any
2 agricultural land that is impacted by pipeline, electric
3 transmission line, or commercial renewable energy facility
4 construction and deconstruction. The construction and
5 deconstruction of any pipeline, commercial wind energy
6 facility, electric transmission line, or commercial solar or
7 wind energy facility shall be in conformance with the
8 Department's standard agricultural impact mitigation agreement
9 referenced in subsection (f) of this Section. Except as
10 provided in subsection (a-5) of this Section, the terms and
11 conditions of the Department's standard agricultural impact
12 mitigation agreement are subject to and may be modified by an
13 underlying agreement between the landowner and the commercial
14 solar energy facility owner.

15 (a-5) Prior to the commencement of construction, a
16 commercial solar energy facility owner shall submit to the
17 county in which the commercial solar facility is to be located
18 a deconstruction plan. A commercial solar energy facility
19 owner shall provide the county with an appropriate financial
20 assurance mechanism consistent with the Department's standard
21 agricultural impact mitigation agreement for and to assure
22 deconstruction in the event of an abandonment of a commercial
23 solar energy facility.

24 (a-10) Prior to the commencement of construction, a
25 pipeline owner shall submit to the Federal Energy Regulatory
26 Commission (FERC) an executed agricultural impact mitigation

1 agreement. The executed agricultural impact mitigation
2 agreement shall be included as part of the pipeline's
3 submissions to FERC, and the pipeline shall request FERC
4 include a statement affirming the pipeline's adherence to the
5 construction standards and policies in any environmental
6 assessment or environmental impact statement, or both, that
7 may be prepared on the pipeline.

8 (b) The agricultural impact mitigation agreement for a
9 commercial wind energy facility shall include, but is not
10 limited to, such items as restoration of agricultural land
11 affected by construction, deconstruction (including upon
12 abandonment of a commercial wind energy facility),
13 construction staging, and storage areas; support structures;
14 aboveground facilities; guy wires and anchors; underground
15 cabling depth; topsoil replacement; protection and repair of
16 agricultural drainage tiles; rock removal; repair of
17 compaction and rutting; land leveling; prevention of soil
18 erosion; repair of damaged soil conservation practices;
19 compensation for damages to private property; clearing of
20 trees and brush; interference with irrigation systems; access
21 roads; weed control; pumping of water from open excavations;
22 advance notice of access to private property; indemnification
23 of landowners; and deconstruction plans and financial
24 assurance for deconstruction (including upon abandonment of a
25 commercial wind energy facility).

26 (b-5) The agricultural impact mitigation agreement for a

1 commercial solar energy facility shall include, but is not
2 limited to, such items as restoration of agricultural land
3 affected by construction, deconstruction (including upon
4 abandonment of a commercial solar energy facility); support
5 structures; aboveground facilities; guy wires and anchors;
6 underground cabling depth; topsoil removal and replacement;
7 rerouting and permanent repair of agricultural drainage tiles;
8 rock removal; repair of compaction and rutting; construction
9 during wet weather; land leveling; prevention of soil erosion;
10 repair of damaged soil conservation practices; compensation
11 for damages to private property; clearing of trees and brush;
12 access roads; weed control; advance notice of access to
13 private property; indemnification of landowners; and
14 deconstruction plans and financial assurance for
15 deconstruction (including upon abandonment of a commercial
16 solar energy facility). The commercial solar energy facility
17 owner shall enter into one agricultural impact mitigation
18 agreement for each commercial solar energy facility.

19 (b-10) The agricultural impact mitigation agreement for a
20 pipeline shall include, but is not limited to, such items as
21 restoration of agricultural land affected by construction and
22 deconstruction of the pipeline; support structures;
23 aboveground facilities; underground pipeline depth; topsoil
24 removal and replacement; rerouting and permanent repair of
25 agricultural drainage tiles; interference with irrigation
26 systems; weed control; rock removal; repair of compaction and

1 rutting; construction during wet weather; land leveling;
2 prevention of soil erosion; repair of damaged soil
3 conservation practices; compensation for damages to private
4 property; clearing of trees and brush; access roads; weed
5 control; advance notice of access to private property;
6 indemnification of landowners; deconstruction plans;
7 agricultural inspector requirements; and financial assurance
8 for deconstruction.

9 (c) For commercial wind energy facility owners seeking a
10 permit from a county or municipality for the construction of a
11 commercial wind energy facility, the agricultural impact
12 mitigation agreement shall be entered into prior to the public
13 hearing required prior to a siting decision of a county or
14 municipality regarding the commercial wind energy facility.
15 The agricultural impact mitigation agreement is binding on any
16 subsequent commercial wind energy facility owner that takes
17 ownership of the commercial wind energy facility that is the
18 subject of the agreement.

19 (c-5) A commercial solar energy facility owner shall, not
20 less than 45 days prior to commencement of actual
21 construction, submit to the Department a standard agricultural
22 impact mitigation agreement as referenced in subsection (f) of
23 this Section signed by the commercial solar energy facility
24 owner and including all information required by the
25 Department. The commercial solar energy facility owner shall
26 provide either a copy of that submitted agreement or a copy of

1 the fully executed project-specific agricultural impact
2 mitigation agreement to the landowner not less than 30 days
3 prior to the commencement of construction. The agricultural
4 impact mitigation agreement is binding on any subsequent
5 commercial solar energy facility owner that takes ownership of
6 the commercial solar energy facility that is the subject of
7 the agreement.

8 (d) If a commercial renewable energy facility owner seeks
9 an extension of a permit granted by a county or municipality
10 for the construction of a commercial wind energy facility
11 prior to the effective date of this Act, the agricultural
12 impact mitigation agreement shall be entered into prior to a
13 decision by the county or municipality to grant the permit
14 extension.

15 (d-10) Prior to the commencement of construction, a
16 pipeline owner, electric transmission line owner, or
17 commercial renewable energy facility owner shall select and
18 hire an Agricultural Inspector. An Agriculture Inspector shall
19 be authorized to temporarily halt construction,
20 deconstruction, and any other restoration activities when the
21 Agricultural Inspector determines that a facility is violating
22 any provision of the agricultural impact mitigation agreement.
23 Upon making the decision to temporarily halt activities, the
24 Agricultural Inspector must immediately contact the facility
25 representative, General Contractor of the project, the
26 Department's Bureau of Land and Water Resources, and any

1 impacted landowners, tenants and agents.

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

6 (f) The Department shall make available on its website a
7 standard agricultural impact mitigation agreement applicable
8 to all pipeline, electric transmission line, and commercial
9 solar and wind energy facilities within 60 days after the
10 effective date of this amendatory Act of the 100th General
11 Assembly.

12 (g) Nothing in this amendatory Act of the 100th General
13 Assembly and nothing in an agricultural impact mitigation
14 agreement shall be construed to apply to or otherwise impair
15 an underlying agreement for a pipeline, electric transmission
16 line, or commercial solar and wind energy facility entered
17 into prior to the effective date of this amendatory Act of the
18 100th General Assembly.

19 (Source: P.A. 99-132, eff. 7-24-15; 100-598, eff. 6-29-18.)