



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4135

by Rep. Anthony DeLuca

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020

Amends the Counties Code. Provides that a county may require a commercial solar energy facility to be sited 500 feet (rather than 50 feet) to the nearest point on the property line of a nonparticipating property and 500 feet (rather than 150 feet) from the nearest point on the outside wall of an occupied community building or dwelling on nonparticipating properties.

LRB103 34278 AWJ 64104 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 the effective date of this amendatory Act

1 of the 102nd General Assembly.

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

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

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

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

26 "Participating property" means real property that is the

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

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

15 "Protected lands" means real property that is:

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

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

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

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

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

18 (c) If a county has elected to establish standards under
19 subsection (b), before the county grants siting approval or a
20 special use permit for a commercial wind energy facility or a
21 commercial solar energy facility, or modification of an
22 approved siting or special use permit, the county board of the
23 county in which the facility is to be sited or the zoning board
24 of appeals for the county shall hold at least one public
25 hearing. The public hearing shall be conducted in accordance
26 with the Open Meetings Act and shall be held not more than 45

1 days after the filing of the application for the facility. The
2 county shall allow interested parties to a special use permit
3 an opportunity to present evidence and to cross-examine
4 witnesses at the hearing, but the county may impose reasonable
5 restrictions on the public hearing, including reasonable time
6 limitations on the presentation of evidence and the
7 cross-examination of witnesses. The county shall also allow
8 public comment at the public hearing in accordance with the
9 Open Meetings Act. The county shall make its siting and
10 permitting decisions not more than 30 days after the
11 conclusion of the public hearing. Notice of the hearing shall
12 be published in a newspaper of general circulation in the
13 county. A facility owner must enter into an agricultural
14 impact mitigation agreement with the Department of Agriculture
15 prior to the date of the required public hearing. A commercial
16 wind energy facility owner seeking an extension of a permit
17 granted by a county prior to July 24, 2015 (the effective date
18 of Public Act 99-132) must enter into an agricultural impact
19 mitigation agreement with the Department of Agriculture prior
20 to a decision by the county to grant the permit extension.
21 Counties may allow test wind towers or test solar energy
22 systems to be sited without formal approval by the county
23 board.

24 (d) A county with an existing zoning ordinance in conflict
25 with this Section shall amend that zoning ordinance to be in
26 compliance with this Section within 120 days after the

1 effective date of this amendatory Act of the 102nd General
2 Assembly.

3 (e) A county may require:

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

7 Setback Description	Setback Distance
8 Occupied Community 9 Buildings	2.1 times the maximum blade tip height of the wind tower to the 10 nearest point on the outside 11 wall of the structure
12 Participating Residences	1.1 times the maximum blade tip 13 height of the wind tower to the 14 nearest point on the outside 15 wall of the structure
16 Nonparticipating Residences	2.1 times the maximum blade tip 17 height of the wind tower to the 18 nearest point on the outside 19 wall of the structure
20 Boundary Lines of 21 Participating Property	None

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

1 Preserve Commission to the nearest point on the
 2 Protected Lands property line of the fish and
 3 wildlife area or protected
 4 land

5 This Section does not exempt or excuse compliance with
 6 electric facility clearances approved or required by the
 7 National Electrical Code, The National Electrical Safety
 8 Code, Illinois Commerce Commission, Federal Energy
 9 Regulatory Commission, and their designees or successors.

10 (2) a wind tower of a commercial wind energy facility
 11 to be sited so that industry standard computer modeling
 12 indicates that any occupied community building or
 13 nonparticipating residence will not experience more than
 14 30 hours per year of shadow flicker under planned
 15 operating conditions;

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

19 Setback Description	Setback Distance
20 Occupied Community 21 Buildings and Dwellings on 22 Nonparticipating Properties	<u>500</u> 150 feet from the nearest point on the outside wall of the structure

1	Boundary Lines of	None
2	Participating Property	
3	Public Road Rights-of-Way	50 feet from the nearest
4		edge
5	Boundary Lines of	<u>500</u> 50 feet to the nearest
6	Nonparticipating Property	point on the property
7		line of the nonparticipating
8		property

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

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

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

20 (f) A county may not set a sound limitation for wind towers
21 in commercial wind energy facilities or any components in
22 commercial solar energy facility that is more restrictive than
23 the sound limitations established by the Illinois Pollution

1 Control Board under 35 Ill. Adm. Code Parts 900, 901, and 910.

2 (g) A county may not place any restriction on the
3 installation or use of a commercial wind energy facility or a
4 commercial solar energy facility unless it adopts an ordinance
5 that complies with this Section. A county may not establish
6 siting standards for supporting facilities that preclude
7 development of commercial wind energy facilities or commercial
8 solar energy facilities.

9 A request for siting approval or a special use permit for a
10 commercial wind energy facility or a commercial solar energy
11 facility, or modification of an approved siting or special use
12 permit, shall be approved if the request is in compliance with
13 the standards and conditions imposed in this Act, the zoning
14 ordinance adopted consistent with this Code, and the
15 conditions imposed under State and federal statutes and
16 regulations.

17 (h) A county may not adopt zoning regulations that
18 disallow, permanently or temporarily, commercial wind energy
19 facilities or commercial solar energy facilities from being
20 developed or operated in any district zoned to allow
21 agricultural or industrial uses.

22 (i) A county may not require permit application fees for a
23 commercial wind energy facility or commercial solar energy
24 facility that are unreasonable. All application fees imposed
25 by the county shall be consistent with fees for projects in the
26 county with similar capital value and cost.

1 (j) Except as otherwise provided in this Section, a county
2 shall not require standards for construction, decommissioning,
3 or deconstruction of a commercial wind energy facility or
4 commercial solar energy facility or related financial
5 assurances that are more restrictive than those included in
6 the Department of Agriculture's standard wind farm
7 agricultural impact mitigation agreement, template 81818, or
8 standard solar agricultural impact mitigation agreement,
9 version 8.19.19, as applicable and in effect on December 31,
10 2022. The amount of any decommissioning payment shall be
11 limited to the cost identified in the decommissioning or
12 deconstruction plan, as required by those agricultural impact
13 mitigation agreements, minus the salvage value of the project.

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

18 (l) A county may require certain vegetative screening
19 surrounding a commercial wind energy facility or commercial
20 solar energy facility but may not require earthen berms or
21 similar structures.

22 (m) A county may set blade tip height limitations for wind
23 towers in commercial wind energy facilities but may not set a
24 blade tip height limitation that is more restrictive than the
25 height allowed under a Determination of No Hazard to Air
26 Navigation by the Federal Aviation Administration under 14 CFR

1 Part 77.

2 (n) A county may require that a commercial wind energy
3 facility owner or commercial solar energy facility owner
4 provide:

5 (1) the results and recommendations from consultation
6 with the Illinois Department of Natural Resources that are
7 obtained through the Ecological Compliance Assessment Tool
8 (EcoCAT) or a comparable successor tool; and

9 (2) the results of the United States Fish and Wildlife
10 Service's Information for Planning and Consulting
11 environmental review or a comparable successor tool that
12 is consistent with (i) the "U.S. Fish and Wildlife
13 Service's Land-Based Wind Energy Guidelines" and (ii) any
14 applicable United States Fish and Wildlife Service solar
15 wildlife guidelines that have been subject to public
16 review.

17 (o) A county may require a commercial wind energy facility
18 or commercial solar energy facility to adhere to the
19 recommendations provided by the Illinois Department of Natural
20 Resources in an EcoCAT natural resource review report under 17
21 Ill. Admin. Code Part 1075.

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

23 (1) demonstrate avoidance of protected lands as
24 identified by the Illinois Department of Natural Resources
25 and the Illinois Nature Preserve Commission; or

26 (2) consider the recommendations of the Illinois

1 Department of Natural Resources for setbacks from
2 protected lands, including areas identified by the
3 Illinois Nature Preserve Commission.

4 (q) A county may require that a facility owner provide
5 evidence of consultation with the Illinois State Historic
6 Preservation Office to assess potential impacts on
7 State-registered historic sites under the Illinois State
8 Agency Historic Resources Preservation Act.

9 (r) To maximize community benefits, including, but not
10 limited to, reduced stormwater runoff, flooding, and erosion
11 at the ground mounted solar energy system, improved soil
12 health, and increased foraging habitat for game birds,
13 songbirds, and pollinators, a county may (1) require a
14 commercial solar energy facility owner to plant, establish,
15 and maintain for the life of the facility vegetative ground
16 cover, consistent with the goals of the Pollinator-Friendly
17 Solar Site Act and (2) require the submittal of a vegetation
18 management plan in the application to construct and operate a
19 commercial solar energy facility in the county.

20 No later than 90 days after the effective date of this
21 amendatory Act of the 102nd General Assembly, the Illinois
22 Department of Natural Resources shall develop guidelines for
23 vegetation management plans that may be required under this
24 subsection for commercial solar energy facilities. The
25 guidelines must include guidance for short-term and long-term
26 property management practices that provide and maintain native

1 and non-invasive naturalized perennial vegetation to protect
2 the health and well-being of pollinators.

3 (s) If a facility owner enters into a road use agreement
4 with the Illinois Department of Transportation, a road
5 district, or other unit of local government relating to a
6 commercial wind energy facility or a commercial solar energy
7 facility, the road use agreement shall require the facility
8 owner to be responsible for (i) the reasonable cost of
9 improving roads used by the facility owner to construct the
10 commercial wind energy facility or the commercial solar energy
11 facility and (ii) the reasonable cost of repairing roads used
12 by the facility owner during construction of the commercial
13 wind energy facility or the commercial solar energy facility
14 so that those roads are in a condition that is safe for the
15 driving public after the completion of the facility's
16 construction. Roadways improved in preparation for and during
17 the construction of the commercial wind energy facility or
18 commercial solar energy facility shall be repaired and
19 restored to the improved condition at the reasonable cost of
20 the developer if the roadways have degraded or were damaged as
21 a result of construction-related activities.

22 The road use agreement shall not require the facility
23 owner to pay costs, fees, or charges for road work that is not
24 specifically and uniquely attributable to the construction of
25 the commercial wind energy facility or the commercial solar
26 energy facility. Road-related fees, permit fees, or other

1 charges imposed by the Illinois Department of Transportation,
2 a road district, or other unit of local government under a road
3 use agreement with the facility owner shall be reasonably
4 related to the cost of administration of the road use
5 agreement.

6 (t) Notwithstanding any other provision of law, a facility
7 owner with siting approval from a county to construct a
8 commercial wind energy facility or a commercial solar energy
9 facility is authorized to cross or impact a drainage system,
10 including, but not limited to, drainage tiles, open drainage
11 districts, culverts, and water gathering vaults, owned or
12 under the control of a drainage district under the Illinois
13 Drainage Code without obtaining prior agreement or approval
14 from the drainage district, except that the facility owner
15 shall repair or pay for the repair of all damage to the
16 drainage system caused by the construction of the commercial
17 wind energy facility or the commercial solar energy facility
18 within a reasonable time after construction of the commercial
19 wind energy facility or the commercial solar energy facility
20 is complete.

21 (u) The amendments to this Section adopted in Public Act
22 102-1123 do not apply to: (1) an application for siting
23 approval or for a special use permit for a commercial wind
24 energy facility or commercial solar energy facility if the
25 application was submitted to a unit of local government before
26 the effective date of this amendatory Act of the 102nd General

1 Assembly; (2) a commercial wind energy facility or a
2 commercial solar energy facility if the facility owner has
3 submitted an agricultural impact mitigation agreement to the
4 Department of Agriculture before the effective date of this
5 amendatory Act of the 102nd General Assembly; or (3) a
6 commercial wind energy or commercial solar energy development
7 on property that is located within an enterprise zone
8 certified under the Illinois Enterprise Zone Act, that was
9 classified as industrial by the appropriate zoning authority
10 on or before January 27, 2023, and that is located within 4
11 miles of the intersection of Interstate 88 and Interstate 39.
12 (Source: P.A. 102-1123, eff. 1-27-23; 103-81, eff. 6-9-23.)