



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4422

Introduced 1/16/2024, by Rep. Jason Bunting

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020

Amends the Counties Code. In provisions about commercial wind energy facilities and commercial solar energy facilities, removes changes made by Public Act 102-1123. Provides that any provision of a county zoning ordinance pertaining to wind farms, commercial wind energy facilities, or commercial solar energy facilities that was in effect before January 27, 2023 may continue in effect notwithstanding any changes made in Public Act 102-1123 and, if applicable, any provision of a county zoning ordinance pertaining to wind farms that was in effect before August 16, 2007 may continue in effect notwithstanding the changes made in Public Act 95-203.

LRB103 35394 AWJ 65459 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 farms, electric-generating
8 wind devices, and commercial wind energy facilities ~~and~~
9 ~~commercial solar energy facilities.~~

10 ~~(a) As used in this Section:~~

11 ~~"Commercial solar energy facility" means a "commercial~~
12 ~~solar energy system" as defined in Section 10-720 of the~~
13 ~~Property Tax Code. "Commercial solar energy facility" does not~~
14 ~~mean a utility scale solar energy facility being constructed~~
15 ~~at a site that was eligible to participate in a procurement~~
16 ~~event conducted by the Illinois Power Agency pursuant to~~
17 ~~subsection (c 5) of Section 1-75 of the Illinois Power Agency~~
18 ~~Act.~~

19 ~~"Commercial wind energy facility" means a wind energy~~
20 ~~conversion facility of equal or greater than 500 kilowatts in~~
21 ~~total nameplate generating capacity. "Commercial wind energy~~
22 ~~facility" includes a wind energy conversion facility seeking~~
23 ~~an extension of a permit to construct granted by a county or~~

1 ~~municipality before the effective date of this amendatory Act~~
2 ~~of the 102nd General 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~~ wind farms and electric-generating wind
9 devices. The standards may include, without limitation, the
10 height of the devices and the number of devices that may be
11 located within a geographic area ~~all of the requirements~~
12 ~~specified in this Section but may not include requirements for~~
13 ~~commercial wind energy facilities or commercial solar energy~~
14 ~~facilities that are more restrictive than specified in this~~
15 ~~Section~~. A county may also regulate the siting of wind farms
16 and electric-generating wind devices ~~commercial wind energy~~
17 ~~facilities with standards that are not more restrictive than~~
18 ~~the requirements specified in this Section~~ in unincorporated
19 areas of the county ~~that are~~ outside of the zoning
20 jurisdiction of a municipality and ~~that are outside~~ the
21 1.5-mile radius surrounding the zoning jurisdiction of a
22 municipality.

23 ~~(c) If a county has elected to establish standards under~~
24 ~~subsection (b), before the county grants siting approval or a~~
25 ~~special use permit for a commercial wind energy facility or a~~
26 ~~commercial solar energy facility, or modification of an~~

1 ~~approved siting or special use permit, the county board of the~~
2 ~~county in which the facility is to be sited or the zoning board~~
3 ~~of appeals for the county shall hold~~ There shall be at least
4 one public hearing. ~~The public hearing shall be conducted in~~
5 ~~accordance with the Open Meetings Act and shall be held not~~
6 ~~more than 45 days after the filing of the application for the~~
7 ~~facility. The county shall allow interested parties to a~~
8 ~~special use permit an opportunity to present evidence and to~~
9 ~~cross examine witnesses at the hearing, but the county may~~
10 ~~impose reasonable restrictions on the public hearing,~~
11 ~~including reasonable time limitations on the presentation of~~
12 ~~evidence and the cross examination of witnesses. The county~~
13 ~~shall also allow public comment at the public hearing in~~
14 ~~accordance with the Open Meetings Act. The county shall make~~
15 ~~its siting and permitting decisions~~ not more than 30 days
16 prior to a siting decision by the county board ~~after the~~
17 ~~conclusion of the public hearing.~~ Notice of the hearing shall
18 be published in a newspaper of general circulation in the
19 county. A commercial wind energy facility owner, as defined in
20 the Renewable Energy Facilities Agricultural Impact Mitigation
21 Act, must enter into an agricultural impact mitigation
22 agreement with the Department of Agriculture prior to the date
23 of the required public hearing. A commercial wind energy
24 facility owner seeking an extension of a permit granted by a
25 county prior to July 24, 2015 (the effective date of Public Act
26 99-132) must enter into an agricultural impact mitigation

1 agreement with the Department of Agriculture prior to a
2 decision by the county to grant the permit extension. Counties
3 may allow test wind towers ~~or test solar energy systems~~ to be
4 sited without formal approval by the county board. Any
5 provision of a county zoning ordinance pertaining to wind
6 farms, commercial wind energy facilities, or commercial solar
7 energy facilities that was in effect before January 27, 2023
8 may continue in effect notwithstanding any changes made in
9 Public Act 102-1123 and, if applicable, any provision of a
10 county zoning ordinance pertaining to wind farms that was in
11 effect before August 16, 2007 may continue in effect
12 notwithstanding the changes made in Public Act 95-203.

13 ~~(d) A county with an existing zoning ordinance in conflict~~
14 ~~with this Section shall amend that zoning ordinance to be in~~
15 ~~compliance with this Section within 120 days after the~~
16 ~~effective date of this amendatory Act of the 102nd General~~
17 ~~Assembly.~~

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

22 ~~(1) a wind tower of a commercial wind energy facility~~
23 ~~to be sited as follows, with setback distances measured~~
24 ~~from the center of the base of the wind tower:~~

25 ~~Setback Description~~

~~Setback Distance~~

1	Occupied Community	2.1 times the maximum blade tip
2	Buildings	height of the wind tower to the
3		nearest point on the outside
4		wall of the structure
5	Participating Residences	1.1 times the maximum blade tip
6		height of the wind tower to the
7		nearest point on the outside
8		wall of the structure
9	Nonparticipating Residences	2.1 times the maximum blade tip
10		height of the wind tower to the
11		nearest point on the outside
12		wall of the structure
13	Boundary Lines of	None
14	Participating Property	
15	Boundary Lines of	1.1 times the maximum blade tip
16	Nonparticipating Property	height of the wind tower to the
17		nearest point on the property
18		line of the nonparticipating
19		property
20	Public Road Rights of Way	1.1 times the maximum blade tip

1 ~~height of the wind tower~~
 2 ~~to the center point of the~~
 3 ~~public road right of way~~

4 ~~Overhead Communication and~~ ~~1.1 times the maximum blade tip~~
 5 ~~Electric Transmission~~ ~~height of the wind tower to the~~
 6 ~~and Distribution Facilities~~ ~~nearest edge of the property~~
 7 ~~(Not Including Overhead~~ ~~line, easement, or~~
 8 ~~Utility Service Lines to~~ ~~right of way~~
 9 ~~Individual Houses or~~ ~~containing the overhead line~~
 10 ~~Outbuildings)~~

11 ~~Overhead Utility Service~~ ~~None~~
 12 ~~Lines to Individual~~
 13 ~~Houses or Outbuildings~~

14 ~~Fish and Wildlife Areas~~ ~~2.1 times the maximum blade~~
 15 ~~and Illinois Nature~~ ~~tip height of the wind tower~~
 16 ~~Preserve Commission~~ ~~to the nearest point on the~~
 17 ~~Protected Lands~~ ~~property line of the fish and~~
 18 ~~wildlife area or protected~~
 19 ~~land~~

20 ~~This Section does not exempt or excuse compliance with~~
 21 ~~electric facility clearances approved or required by the~~
 22 ~~National Electrical Code, The National Electrical Safety~~
 23 ~~Code, Illinois Commerce Commission, Federal Energy~~

1 ~~Regulatory Commission, and their designees or successors.~~

2 ~~(2) a wind tower of a commercial wind energy facility~~
 3 ~~to be sited so that industry standard computer modeling~~
 4 ~~indicates that any occupied community building or~~
 5 ~~nonparticipating residence will not experience more than~~
 6 ~~30 hours per year of shadow flicker under planned~~
 7 ~~operating conditions;~~

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

11 Setback Description	Setback Distance
12 Occupied Community 13 Buildings and Dwellings on 14 Nonparticipating Properties	150 feet from the nearest point on the outside wall of the structure
15 Boundary Lines of 16 Participating Property	None
17 Public Road Rights of Way	50 feet from the nearest edge
19 Boundary Lines of 20 Nonparticipating Property	50 feet to the nearest point on the property

1 ~~line of the nonparticipating~~
2 ~~property~~

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

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

11 ~~The requirements set forth in this subsection (c) may be~~
12 ~~waived subject to the written consent of the owner of each~~
13 ~~affected nonparticipating property.~~

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

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

1 ~~A request for siting approval or a special use permit for a~~
2 ~~commercial wind energy facility or a commercial solar energy~~
3 ~~facility, or modification of an approved siting or special use~~
4 ~~permit, shall be approved if the request is in compliance with~~
5 ~~the standards and conditions imposed in this Act, the zoning~~
6 ~~ordinance adopted consistent with this Code, and the~~
7 ~~conditions imposed under State and federal statutes and~~
8 ~~regulations.~~

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

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

19 ~~(j) Except as otherwise provided in this Section, a county~~
20 ~~shall not require standards for construction, decommissioning,~~
21 ~~or deconstruction of a commercial wind energy facility or~~
22 ~~commercial solar energy facility or related financial~~
23 ~~assurances that are more restrictive than those included in~~
24 ~~the Department of Agriculture's standard wind farm~~
25 ~~agricultural impact mitigation agreement, template 81818, or~~
26 ~~standard solar agricultural impact mitigation agreement,~~

1 ~~version 8.19.19, as applicable and in effect on December 31,~~
2 ~~2022. The amount of any decommissioning payment shall be~~
3 ~~limited to the cost identified in the decommissioning or~~
4 ~~deconstruction plan, as required by those agricultural impact~~
5 ~~mitigation agreements, minus the salvage value of the project.~~

6 ~~(k) A county may not condition approval of a commercial~~
7 ~~wind energy facility or commercial solar energy facility on a~~
8 ~~property value guarantee and may not require a facility owner~~
9 ~~to pay into a neighboring property devaluation escrow account.~~

10 ~~(l) A county may require certain vegetative screening~~
11 ~~surrounding a commercial wind energy facility or commercial~~
12 ~~solar energy facility but may not require earthen berms or~~
13 ~~similar structures.~~

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

20 ~~(n) A county may require that a commercial wind energy~~
21 ~~facility owner or commercial solar energy facility owner~~
22 ~~provide:~~

23 ~~(1) the results and recommendations from consultation~~
24 ~~with the Illinois Department of Natural Resources that are~~
25 ~~obtained through the Ecological Compliance Assessment Tool~~
26 ~~(EcoCAT) or a comparable successor tool; and~~

1 ~~(2) the results of the United States Fish and Wildlife~~
2 ~~Service's Information for Planning and Consulting~~
3 ~~environmental review or a comparable successor tool that~~
4 ~~is consistent with (i) the "U.S. Fish and Wildlife~~
5 ~~Service's Land Based Wind Energy Guidelines" and (ii) any~~
6 ~~applicable United States Fish and Wildlife Service solar~~
7 ~~wildlife guidelines that have been subject to public~~
8 ~~review.~~

9 Only a county may establish standards for wind farms,
10 electric-generating wind devices, and commercial wind energy
11 facilities, as that term is defined in Section 10 of the
12 Renewable Energy Facilities Agricultural Impact Mitigation
13 Act, in unincorporated areas of the county outside of the
14 zoning jurisdiction of a municipality and outside the 1.5-mile
15 radius surrounding the zoning jurisdiction of a municipality.

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

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

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

25 ~~(2) consider the recommendations of the Illinois~~
26 ~~Department of Natural Resources for setbacks from~~

1 ~~protected lands, including areas identified by the~~
2 ~~Illinois Nature Preserve Commission.~~

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

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

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

1 ~~the health and well-being of pollinators.~~

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

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

1 ~~a road district, or other unit of local government under a road~~
2 ~~use agreement with the facility owner shall be reasonably~~
3 ~~related to the cost of administration of the road use~~
4 ~~agreement.~~

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

20 ~~(u) The amendments to this Section adopted in Public Act~~
21 ~~102-1123 do not apply to: (1) an application for siting~~
22 ~~approval or for a special use permit for a commercial wind~~
23 ~~energy facility or commercial solar energy facility if the~~
24 ~~application was submitted to a unit of local government before~~
25 ~~the effective date of this amendatory Act of the 102nd General~~
26 ~~Assembly; (2) a commercial wind energy facility or a~~

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

11 (Source: P.A. 102-1123, eff. 1-27-23; 103-81, eff. 6-9-23;
12 revised 9-25-23.)