

HB4551



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4551

Introduced 1/31/2024, by Rep. Lance Yednock

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020

Amends the Counties Code. Provides that a county may deny a permit for a commercial solar energy facility or commercial wind energy facility, including the modification or improvement to an existing facility, if the work requested to be performed under the permit is not being performed under a project labor agreement with building trades located in the area where construction, modification, or improvements are to be made.

LRB103 36943 AWJ 67057 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).

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 60

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 January 27,

1 2023 (the effective date of Public Act 102-1123).

2 (e) A county may require:

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

6	Setback Description	Setback Distance
7 8 9 10	Occupied Community Buildings	2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
11 12 13 14	Participating Residences	1.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
15 16 17 18	Nonparticipating Residences	2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
19 20	Boundary Lines of 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
14	Utility Service Lines to	right-of-way
15	Individual Houses or	containing the overhead line
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
22	Preserve Commission	to the nearest point on the

1 Protected Lands property line of the fish and
 2 wildlife area or protected
 3 land

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

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

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

18 Setback Description	Setback Distance
19 Occupied Community 20 Buildings and Dwellings on 21 Nonparticipating Properties	150 feet from the nearest point on the outside wall of the structure
22 Boundary Lines of	None

1 Participating Property

2 Public Road Rights-of-Way 50 feet from the nearest
3 edge

4 Boundary Lines of 50 feet to the nearest
5 Nonparticipating Property point on the property
6 line of the nonparticipating
7 property

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

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

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

19 (f) A county may not set a sound limitation for wind towers
20 in commercial wind energy facilities or any components in
21 commercial solar energy facilities that is more restrictive
22 than the sound limitations established by the Illinois
23 Pollution Control Board under 35 Ill. Adm. Code Parts 900,

1 901, 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 in
11 accordance with the financial assurance required by those
12 agricultural impact mitigation agreements.

13 (j-5) A commercial wind energy facility or a commercial
14 solar energy facility shall file a farmland drainage plan with
15 the county and impacted drainage districts outlining how
16 surface and subsurface drainage of farmland will be restored
17 during and following construction or deconstruction of the
18 facility. The plan is to be created independently by the
19 facility developer and shall include the location of any
20 potentially impacted drainage district facilities to the
21 extent this information is publicly available from the county
22 or the drainage district, plans to repair any subsurface
23 drainage affected during construction or deconstruction using
24 procedures outlined in the agricultural impact mitigation
25 agreement entered into by the commercial wind energy facility
26 owner or commercial solar energy facility owner, and

1 procedures for the repair and restoration of surface drainage
2 affected during construction or deconstruction. All surface
3 and subsurface damage shall be repaired as soon as reasonably
4 practicable.

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

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

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

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

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

26 (2) the results of the United States Fish and Wildlife

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

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

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

14 (1) demonstrate avoidance of protected lands as
15 identified by the Illinois Department of Natural Resources
16 and the Illinois Nature Preserve Commission; or

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

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

26 (r) To maximize community benefits, including, but not

1 limited to, reduced stormwater runoff, flooding, and erosion
2 at the ground mounted solar energy system, improved soil
3 health, and increased foraging habitat for game birds,
4 songbirds, and pollinators, a county may (1) require a
5 commercial solar energy facility owner to plant, establish,
6 and maintain for the life of the facility vegetative ground
7 cover, consistent with the goals of the Pollinator-Friendly
8 Solar Site Act and (2) require the submittal of a vegetation
9 management plan that is in compliance with the agricultural
10 impact mitigation agreement in the application to construct
11 and operate a commercial solar energy facility in the county
12 if the vegetative ground cover and vegetation management plan
13 comply with the requirements of the underlying agreement with
14 the landowner or landowners where the facility will be
15 constructed.

16 No later than 90 days after January 27, 2023 (the
17 effective date of Public Act 102-1123), the Illinois
18 Department of Natural Resources shall develop guidelines for
19 vegetation management plans that may be required under this
20 subsection for commercial solar energy facilities. The
21 guidelines must include guidance for short-term and long-term
22 property management practices that provide and maintain native
23 and non-invasive naturalized perennial vegetation to protect
24 the health and well-being of pollinators.

25 (r-5) A county may deny a permit for a commercial solar
26 energy facility or commercial wind energy facility, including

1 the modification or improvement to an existing facility, if
2 the work requested to be performed under the permit is not
3 being performed under a project labor agreement with building
4 trades located in the area where construction, modification,
5 or improvements are to be made.

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

25 The road use agreement shall not require the facility
26 owner to pay costs, fees, or charges for road work that is not

1 specifically and uniquely attributable to the construction of
2 the commercial wind energy facility or the commercial solar
3 energy facility. Road-related fees, permit fees, or other
4 charges imposed by the Illinois Department of Transportation,
5 a road district, or other unit of local government under a road
6 use agreement with the facility owner shall be reasonably
7 related to the cost of administration of the road use
8 agreement.

9 (s-5) The facility owner shall also compensate landowners
10 for crop losses or other agricultural damages resulting from
11 damage to the drainage system caused by the construction of
12 the commercial wind energy facility or the commercial solar
13 energy facility. The commercial wind energy facility owner or
14 commercial solar energy facility owner shall repair or pay for
15 the repair of all damage to the subsurface drainage system
16 caused by the construction of the commercial wind energy
17 facility or the commercial solar energy facility in accordance
18 with the agriculture impact mitigation agreement requirements
19 for repair of drainage. The commercial wind energy facility
20 owner or commercial solar energy facility owner shall repair
21 or pay for the repair and restoration of surface drainage
22 caused by the construction or deconstruction of the commercial
23 wind energy facility or the commercial solar energy facility
24 as soon as reasonably practicable.

25 (t) Notwithstanding any other provision of law, a facility
26 owner with siting approval from a county to construct a

1 commercial wind energy facility or a commercial solar energy
2 facility is authorized to cross or impact a drainage system,
3 including, but not limited to, drainage tiles, open drainage
4 ditches, culverts, and water gathering vaults, owned or under
5 the control of a drainage district under the Illinois Drainage
6 Code without obtaining prior agreement or approval from the
7 drainage district in accordance with the farmland drainage
8 plan required by subsection (j-5).

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

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

HB4551

- 18 -

LRB103 36943 AWJ 67057 b

1 103-580, eff. 12-8-23.)