



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4612

Introduced 1/31/2024, by Rep. Bradley Fritts

SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-12020

Amends the Counties Code. Provides that a county may set blade tip height limitations for wind towers in commercial wind energy facilities near a restricted landing area to ensure compliance with specified provisions of the Illinois Administrative Code.

LRB103 35784 AWJ 65866 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 January 27, 2023 (the effective date of

1 Public Act 102-1123) ~~this amendatory Act of the 102nd General~~
2 ~~Assembly.~~

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

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

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

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

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

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

16 "Protected lands" means real property that is:

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

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

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

1 or commercial solar energy facility.

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

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

19 (c) If a county has elected to establish standards under
20 subsection (b), before the county grants siting approval or a
21 special use permit for a commercial wind energy facility or a
22 commercial solar energy facility, or modification of an
23 approved siting or special use permit, the county board of the
24 county in which the facility is to be sited or the zoning board
25 of appeals for the county shall hold at least one public
26 hearing. The public hearing shall be conducted in accordance

1 with the Open Meetings Act and shall be held not more than 45
2 days after the filing of the application for the facility. The
3 county shall allow interested parties to a special use permit
4 an opportunity to present evidence and to cross-examine
5 witnesses at the hearing, but the county may impose reasonable
6 restrictions on the public hearing, including reasonable time
7 limitations on the presentation of evidence and the
8 cross-examination of witnesses. The county shall also allow
9 public comment at the public hearing in accordance with the
10 Open Meetings Act. The county shall make its siting and
11 permitting decisions not more than 30 days after the
12 conclusion of the public hearing. Notice of the hearing shall
13 be published in a newspaper of general circulation in the
14 county. A facility owner must enter into an agricultural
15 impact mitigation agreement with the Department of Agriculture
16 prior to the date of the required public hearing. A commercial
17 wind energy facility owner seeking an extension of a permit
18 granted by a county prior to July 24, 2015 (the effective date
19 of Public Act 99-132) must enter into an agricultural impact
20 mitigation agreement with the Department of Agriculture prior
21 to a decision by the county to grant the permit extension.
22 Counties may allow test wind towers or test solar energy
23 systems to be sited without formal approval by the county
24 board.

25 (d) A county with an existing zoning ordinance in conflict
26 with this Section shall amend that zoning ordinance to be in

1 compliance with this Section within 120 days after January 27,
 2 2023 (the effective date of Public Act 102-1123) ~~this~~
 3 ~~amendatory Act of the 102nd General Assembly.~~

4 (e) A county may require:

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

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

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

1 and Illinois Nature tip height of the wind tower
 2 Preserve Commission to the nearest point on the
 3 Protected Lands property line of the fish and
 4 wildlife area or protected
 5 land

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

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

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

20 Setback Description	Setback Distance
21 Occupied Community 22 Buildings and Dwellings on 23 Nonparticipating Properties	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	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 facilities ~~facility~~ that is more

1 restrictive than the sound limitations established by the
2 Illinois Pollution Control Board under 35 Ill. Adm. Code Parts
3 900, 901, and 910.

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

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

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

24 (i) A county may not require permit application fees for a
25 commercial wind energy facility or commercial solar energy
26 facility that are unreasonable. All application fees imposed

1 by the county shall be consistent with fees for projects in the
2 county with similar capital value and cost.

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

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

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

24 (m) A county may set blade tip height limitations for wind
25 towers in commercial wind energy facilities but may not set a
26 blade tip height limitation that is more restrictive than the

1 height allowed under a Determination of No Hazard to Air
2 Navigation by the Federal Aviation Administration under 14 CFR
3 Part 77.

4 (m-5) Notwithstanding subsection (m), a county may set
5 blade tip height limitations for wind towers in commercial
6 wind energy facilities near a restricted landing area, as that
7 term is defined in Section 8 of the Illinois Aeronautics Act,
8 to ensure compliance with 92 Ill. Adm. Code 14.730, including
9 those referenced illustrations and appendix.

10 (n) A county may require that a commercial wind energy
11 facility owner or commercial solar energy facility owner
12 provide:

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

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

25 (o) A county may require a commercial wind energy facility
26 or commercial solar energy facility to adhere to the

1 recommendations provided by the Illinois Department of Natural
2 Resources in an EcoCAT natural resource review report under 17
3 Ill. Adm. ~~Admin.~~ Code Part 1075.

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

5 (1) demonstrate avoidance of protected lands as
6 identified by the Illinois Department of Natural Resources
7 and the Illinois Nature Preserve Commission; or

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

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

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

1 commercial solar energy facility in the county.

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

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

1 commercial solar energy facility shall be repaired and
2 restored to the improved condition at the reasonable cost of
3 the developer if the roadways have degraded or were damaged as
4 a result of construction-related activities.

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

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

1 within a reasonable time after construction of the commercial
2 wind energy facility or the commercial solar energy facility
3 is complete.

4 (u) The amendments to this Section adopted in Public Act
5 102-1123 do not apply to: (1) an application for siting
6 approval or for a special use permit for a commercial wind
7 energy facility or commercial solar energy facility if the
8 application was submitted to a unit of local government before
9 January 27, 2023 (the effective date of Public Act 102-1123)
10 ~~this amendatory Act of the 102nd General Assembly~~; (2) a
11 commercial wind energy facility or a commercial solar energy
12 facility if the facility owner has submitted an agricultural
13 impact mitigation agreement to the Department of Agriculture
14 before January 27, 2023 (the effective date of Public Act
15 102-1123) ~~this amendatory Act of the 102nd General Assembly~~;
16 or (3) a commercial wind energy or commercial solar energy
17 development on property that is located within an enterprise
18 zone certified under the Illinois Enterprise Zone Act, that
19 was classified as industrial by the appropriate zoning
20 authority on or before January 27, 2023, and that is located
21 within 4 miles of the intersection of Interstate 88 and
22 Interstate 39.

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