



Sen. Mike Jacobs

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1 AMENDMENT TO SENATE BILL 1400

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1400, AS AMENDED,  
3 as follows:

4 immediately before the enacting clause, by inserting the  
5 following:

6 "WHEREAS, A wind energy Act that provides for a restoration  
7 indemnity fund, and mechanic's lien clarification will provide  
8 a favorable environmental and economic climate for development  
9 of wind energy; and

10 WHEREAS, It is desirable to develop both renewable and  
11 alternative energy resources to obtain environmental quality  
12 and public health benefit; and

13 WHEREAS, The benefits of electricity from renewable and  
14 alternative energy resources accrue to the public at large,  
15 thus consumers and electric utilities and alternative retail  
16 electric suppliers share an interest in developing and using a  
17 significant level of these environmentally preferable

1 resources in the State's electricity supply portfolio and  
2 stability of taxes for extended periods of time; and

3 WHEREAS, Encouraging energy efficiency will improve the  
4 environmental quality and public health in the State of  
5 Illinois; and

6 WHEREAS, Wind energy is one alternative energy source that  
7 can be used to provide electricity to utility consumers; and

8 WHEREAS, Some regions in the State are ideal locations for  
9 wind energy system development; and

10 WHEREAS, As the facilities are typically constructed on  
11 property owned by others, it is desirable to create an  
12 indemnity fund to pay for deconstruction in the event that the  
13 wind energy company fails to do so in a timely manner; and

14 WHEREAS, It is appropriate to protect the owners of the  
15 underlying lands from mechanics liens imposed on those lands in  
16 the event must the entities constructing the wind energy  
17 facilities fail to pay suppliers of labor and materials;  
18 therefore, be it"; and

19 by replacing everything after the enacting clause with the  
20 following:

21 "Section 1. Short title. This Act may be cited as the Wind  
22 Energy Indemnity Fund Act.

23 Section 5. Definitions. As used in this Act:

1 "Abandonment" means (a) in the case of a landowner: (i) failure  
2 by the wind energy company to operate a wind turbine or wind  
3 turbines for the purpose for which they were designed and  
4 installed, for a period of 12 consecutive months, and (ii)  
5 failure to pay the landowner moneys owed to him or her in  
6 accordance with the underlying agreement, for a period of 6  
7 consecutive months; (b) in the case of a county board: (i)  
8 failure by the wind energy company to operate a wind turbine or  
9 wind turbines for the purposes for which they were designed and  
10 installed, for a period of 12 consecutive months, and (ii)  
11 failure to adhere to any or all of the restrictions and  
12 conditions that were part of the approval process of the  
13 appropriate county authority for the granting of the special  
14 use permit, conditional use permit, zoning change, or zoning or  
15 permitting ordinance of any kind given in order to allow the  
16 installation and operation of the wind turbine or wind  
17 turbines.

18 "Board" means the governing body of the Wind Energy  
19 Indemnity Fund Corporation.

20 "Claimant" means either a landowner or a county board  
21 seeking to have a deconstruction paid for from the Fund and  
22 carried out by the Department.

23 "Corporation" means the Wind Energy Indemnity Fund  
24 Corporation, as established in this Act.

25 "County board" has the meaning set forth in Section 1.07 of  
26 the Statute on Statutes.

1 "Deconstruction" means removal of all property comprising  
2 a wind energy generation facility from the property of a  
3 landowner and restoration of the property to the condition in  
4 which it existed immediately prior to the construction of the  
5 facility, including, but not limited to, soil type and  
6 topography; provided, however, that foundations, pads,  
7 electrical lines, and any other underground facilities must be  
8 removed to a depth of 4 feet below the surface of the ground.

9 "Department" means the Department of Commerce and Economic  
10 Opportunity.

11 "Director", unless otherwise provided, means the Director  
12 of Commerce and Economic Opportunity, or the Director's  
13 designee.

14 "Fund" means the Wind Energy Indemnity Fund.

15 "Landowner" means any person with an ownership interest in  
16 property subject to an underlying agreement.

17 "Person" means any individual or entity, including, but not  
18 limited to, a sole proprietorship, a partnership, a  
19 corporation, a cooperative, an association, a limited  
20 liability company, an estate, a trust, or a governmental  
21 agency.

22 "Underlying agreement" means a written arrangement with a  
23 landowner, including, but not limited to, an easement, under  
24 the terms of which a person constructs or intends to construct  
25 a wind energy generation facility on the property of the  
26 landowner.

1 "Wind energy generation facility" means all property of any  
2 nature whatsoever comprising an operation designed to harness  
3 wind energy and create electricity therefrom, including, but  
4 not limited to, turbines, towers, roadways, concrete  
5 foundations, transmission lines, and poles, all situated on,  
6 under, or over the property of a landowner.

7 "Wind energy indemnity trust account" means a trust account  
8 established by the Director that is used for the receipt and  
9 disbursement of moneys paid from the Fund.

10 "Wind turbine" means each tower, blade, and propeller  
11 housing designed for wind energy generation.

12 Section 10. Powers and duties of the Director. The Director  
13 has all powers necessary and proper to fully and effectively  
14 execute the provisions of this Act and has the general duty to  
15 implement this Act. The Director's powers and duties include,  
16 but are not limited to, the following:

17 1. The Director shall personally serve as president of  
18 the Corporation.

19 2. The Director may take any action that may be  
20 reasonable or appropriate to enforce this Act and its  
21 rules.

22 Section 15. Administrative procedure. The Illinois  
23 Administrative Procedure Act applies to this Act.

1           Section 20. Administrative review and venue. Final  
2 administrative decisions of the Department are subject to  
3 judicial review under Article III of the Code of Civil  
4 Procedure and its rules. The term "administrative decision" is  
5 defined as in Section 3-101 of the Code of Civil Procedure. An  
6 action to review a final administrative decision under this Act  
7 may be commenced in the circuit court of any county in which  
8 any part of the transaction occurred that gave rise to the  
9 claim that was the subject of the proceedings before the  
10 Department.

11           Section 25. Rules. The Department may promulgate rules that  
12 are necessary for the implementation and administration of this  
13 Act.

14           Section 30. Fund assessments. There is an assessment of  
15 \$10,000 for each wind turbine constructed or under construction  
16 as of the effective date of this Act and for each turbine  
17 constructed thereafter, under the provisions of an underlying  
18 agreement. The assessment is an obligation of the owner of each  
19 wind turbine and is payable in equal annual installments of  
20 \$1,000 over a period of 10 years; provided, however, that the  
21 subsequent annual installments must be adjusted based on  
22 inflation, as reflected in the Consumer Price Index, on an  
23 annual basis. The initial payment is payable within 90 days  
24 after the effective date of this Act for wind turbines already

1 constructed or under construction, and, in all other cases,  
2 prior to the commencement of construction.

3 All installments under this Section must be sent to the  
4 Department and made payable to the Corporation.

5 It is the responsibility of all parties to an underlying  
6 agreement to report the existence and specific provisions of  
7 the underlying agreement to the Department.

8 The Department shall mail all assessment notices to owners  
9 of wind energy generation facilities at least 30 days before  
10 the assessment installment is due.

11 All wind turbines already constructed, under construction,  
12 or issued a building permit before the effective date of this  
13 Act are to provide proof to the county of payment to the Fund  
14 within 95 days of the effective date of this Act. If such proof  
15 of payment is not provided, then the county must order the wind  
16 energy company to stop all operation and construction  
17 activities until the county receives proof of payment to the  
18 Fund. For all other wind turbines, no county may issue a  
19 building permit without being provided proof that the above  
20 assessment has been paid to the Fund.

21 Section 35. Abandonment. Upon an administrative finding in  
22 a hearing held by the Department that a deconstruction has been  
23 validly determined and ordered by either a court of competent  
24 jurisdiction or an arbitrator in binding arbitration, and  
25 deconstruction, after a period of at least 8 months, has not

1 been completed satisfactorily, the Director has all the powers  
2 for the benefit of claimants as established under this Act,  
3 including, but not limited to, the power to do the following:

4 1. request the transfer of moneys from the Fund to the  
5 Trust Account for the purpose of paying the cost of  
6 deconstruction in accordance with this Act;

7 2. disburse the funds in the Trust Account for the  
8 deconstruction in accordance with this Act;

9 3. cause the sale of the deconstructed assets;

10 4. retain from the sale of the deconstructed assets  
11 moneys adequate to cover the costs to the Department of the  
12 deconstruction, and pay those amounts to the Fund;

13 5. return all moneys over and above the costs to the  
14 Department for the deconstruction to the owner or owners of  
15 the deconstructed assets, or to the holders of valid liens  
16 on those assets.

17 Section 40. Statutory lien. The Department has a lien prior  
18 and paramount to all other liens of any sort on the assets of  
19 the wind energy system to the extent of the costs incurred by  
20 the Department to accomplish the deconstruction of the  
21 abandoned wind energy system, which arises and attach upon  
22 construction of said wind energy system; provided, however,  
23 that the lien herein granted to the Department is not prior and  
24 paramount to the statutory lien in favor of real property  
25 taxes.



1 Section 45. Claims.

2 (a) A claimant shall file a complaint, on forms supplied by  
3 the Department, that contains at least the following:

4 (1) the name and address of the claimant;

5 (2) the name and address of the owner of the wind  
6 energy generation facility in question;

7 (3) the location of the wind energy generation facility  
8 in question;

9 (4) a copy of either a court decision, or the finding  
10 of an arbitrator in a binding arbitration proceeding, that  
11 indicates a finding of abandonment of the wind energy  
12 generation facility in question; a determination that the  
13 underlying agreement is null, void, and of no further force  
14 and effect; and an order for deconstruction of same. The  
15 court order or arbitration decision must have been rendered  
16 at least 8 months previously, and the time for all appeals  
17 and related proceedings must have lapsed.

18 (5) evidence showing that the deconstruction ordered  
19 by a court, or by an arbitrator in a proceeding for binding  
20 arbitration, has not been carried to a satisfactory  
21 conclusion, as defined in this Act; and

22 (6) a request that the funds necessary to perform the  
23 deconstruction be paid to the Department from the Fund and  
24 that the Department carry out the deconstruction in  
25 accordance with the order of the court or the arbitrator

1           and in accordance with the definition of deconstruction as  
2           contained in this Act.

3           (b) A hearing shall be held by the Department and a  
4           decision rendered as to the validity of the claimant's  
5           complaint. In the event of a finding that the complaint is  
6           valid, then, within 90 days after the date, the Department  
7           shall obtain at least 2 bids from contractors to carry out the  
8           specific deconstruction. One bidder must be chosen by the  
9           Department within the following 60 days, and the Department,  
10          within 60 days thereafter, shall enter into a written agreement  
11          with the successful bidder for the deconstruction, which must  
12          be accomplished with 6 months thereafter.

13          (c) It is the responsibility of the Department to monitor  
14          the progress of the deconstruction and provide the necessary  
15          supervisory oversight to ensure that it is accomplished in  
16          accordance with the deconstruction agreement and the  
17          provisions of this Act.

18          Section 50. Illinois Wind Energy Indemnity Fund  
19          Corporation; creation; powers.

20          (a) There is hereby created the Illinois Wind Energy  
21          Indemnity Fund Corporation, a political subdivision, body  
22          politic, and public corporation. The governing powers of the  
23          Corporation are vested in the Board of Directors composed of  
24          the Director, who shall personally serve as President; the  
25          Attorney General or his or her designee, who shall serve as

1 Secretary; the State Treasurer or his or her designee, who  
2 shall serve as Treasurer; and the Chairman of the Illinois  
3 Commerce Commission, or his or her designee. Three members of  
4 the Board constitute a quorum at any meeting of the Board, and  
5 the affirmative vote of 3 members is necessary for any action  
6 taken by the Board at a meeting, except that a lesser number  
7 may adjourn a meeting from time to time. A vacancy in the  
8 membership of the Board does not impair the right of a quorum  
9 to exercise all the rights and perform all the duties of the  
10 Board and Corporation.

11 (b) The Corporation has the following powers, together with  
12 all powers incidental or necessary to the discharge of those  
13 powers in corporate form:

14 (1) To have perpetual succession by its corporate name  
15 as a corporate body.

16 (2) To adopt, alter, and repeal by-laws, not  
17 inconsistent with the provisions of this Act, for the  
18 regulation and conduct of its affairs and business.

19 (3) To adopt and make use of a corporate seal and to  
20 alter the seal at pleasure.

21 (4) To avail itself of the use of information,  
22 services, facilities, and employees of the State of  
23 Illinois in carrying out the provisions of this Act.

24 (5) To receive funds assessed by the Department under  
25 this Act.

26 (6) To administer the Fund by investing funds of the

1 Corporation that the Board may determine are not presently  
2 needed for its corporate purposes.

3 (7) Upon the request of the Director, to make payment  
4 from the Fund to the Trust Account when payment is  
5 necessary to pay costs of deconstruction in accordance with  
6 the provisions of this Act.

7 (8) To authorize, receive, and disburse funds by  
8 electronic means.

9 (9) To have those powers that are necessary or  
10 appropriate for the exercise of the powers specifically  
11 conferred upon the Corporation and all incidental powers  
12 that are customary in corporations.

13 (c) All assessments by the Department must be held by the  
14 Corporation in the Fund.

15 (d) Subject to applicable law, the assets of the Fund may  
16 be invested and reinvested at the discretion of the  
17 Corporation, and the income from these investments must be  
18 deposited into the Fund and must be available for the same  
19 purposes as all other assets of the Fund.

20 (e) The assets of the Fund may not be available for any  
21 purposes other than the payment of deconstruction costs under  
22 this Act and the payment of refunds of amounts that the Board  
23 determines have been inappropriately paid into the Fund, and  
24 may not be transferred to any other fund, other than the Trust  
25 Account when necessary to pay deconstruction costs under this  
26 Act or to pay refunds authorized by the Board.

1 Section 55. No waiver. The provisions of this Act,  
2 including the definitions, may not be altered, varied, or  
3 revised by agreement.

4 Section 900. The Property Tax Code is amended by adding  
5 Division 5 to Article 11 as follows:

6 (35 ILCS 200/Art. 11 Div. 5 heading new)

7 DIVISION 5. WIND ENERGY PRODUCTION

8 (35 ILCS 200/11-185 new)

9 Sec. 11-185. Definitions. For purposes of this Division 5:

10 "Wind energy conversion device" means any device  
11 including, but not limited to, a wind charger, windmill, or  
12 wind turbine that converts wind energy to a form of usable  
13 energy.

14 "Wind Energy Conversion Parcel" means all property rights  
15 obtained by the Wind Energy System owner to the platted parcel  
16 including the wind energy conversion devices, associated  
17 equipment, easements, contracts, and leases.

18 "Wind energy conversion system" is all wind energy  
19 conversion devices owned by a person who has executed a lease,  
20 contract, or other written agreement or who has purchased or  
21 acquired property so that one or more wind energy conversion  
22 devices can be erected, built, or otherwise installed on that

1 property. These devices do not need to be on contiguous parcels  
2 of property to be considered a part of a total wind energy  
3 conversion system.

4 (35 ILCS 200/11-190 new)

5 Sec. 11-190. Applicability. The provisions of this  
6 Division 5 do not apply to wind energy conversion systems that  
7 are owned by a person strictly for personal use or to any  
8 person that is otherwise exempt from taxation under the  
9 Property Tax Code. For the purposes of this Section, "personal  
10 use" means the use of any wind energy conversion system with a  
11 nameplate capacity of less than 2 megawatts.

12 (35 ILCS 200/11-195 new)

13 Sec. 11-195. Platting requirements. Upon the completion of  
14 construction, the owner of a wind energy conversion system, at  
15 his or her own expense, shall cause the wind turbine facilities  
16 to be platted by an Illinois registered land surveyor. The plat  
17 must include access routes, together with a metes and bounds  
18 description of the area surrounding each wind turbine. The  
19 system owner must record the plat and deliver a copy of it to  
20 the property owner and to the chief county assessment officer  
21 within 60 days after the completion of the construction. Upon  
22 receiving a copy of the plat, the chief county assessment  
23 officer must issue a separate parcel identification number, or  
24 numbers for the wind energy conversion system to apportion the

1 value to each taxing district in which the system is physically  
2 located.

3 (35 ILCS 200/11-200 new)

4 Sec. 11-200. Limitation of liability for landowner. No  
5 landowner shall be liable for Wind Energy Conversion Parcel  
6 taxes except through ownership of the wind energy system.

7 (35 ILCS 200/11-203 new)

8 Sec. 11-203. Recourse against Wind Energy Conversion  
9 Parcels. If the Wind Energy Conversion Parcel real estate taxes  
10 are not paid, the county may proceed against the wind energy  
11 conversion parcels with collection as provided Article 20 of  
12 this Code.

13 (35 ILCS 200/11-205 new)

14 Sec. 11-205. Wind energy conversion system size and  
15 capacity. The Department must determine the total size of the  
16 device. Unless the systems are interconnected with different  
17 distribution systems, the nameplate capacity of one wind energy  
18 conversion device must be combined with the nameplate capacity  
19 of any other wind energy conversion device that is under common  
20 ownership. In case of a dispute, the Department must draw all  
21 reasonable inferences in favor of combining the devices into  
22 one system. In making a determination, the Department may  
23 decide that 2 wind energy conversion devices or systems are

1 under common ownership when the underlying ownership structure  
2 contains similar persons or entities, even if the ownership  
3 shares differ. Wind energy conversion devices or systems are  
4 not under common ownership solely because the same person or  
5 entity provided equity financing for the systems.

6 (35 ILCS 200/11-207 new)

7 Sec. 11-207. Method of valuation for wind energy conversion  
8 systems.

9 (a) It is the policy of this State that, beginning on and  
10 after January 1, 2007, a wind energy conversion system that is  
11 used as an electric power source must be valued on cost  
12 allocated on real property supplemented by the sales comparison  
13 approach to the extent relevant and sufficient data are  
14 available. If, however, a wind energy conversion system ceases  
15 to operate for any reason, the minimum assessed value of the  
16 system is 10% of the cost of replacing the system with a new  
17 wind energy conversion system.

18 (b) The 2007 base certified value per megawatt capacity  
19 shall be \$300,000.

20 (c) The Department shall develop regulations for  
21 depreciation factoring functional obsolescence.

22 (35 ILCS 200/11-210 new)

23 Sec. 11-210. Valuation during 5 year valuation period. In  
24 furtherance of the policy of encouraging renewable and



1 alternative energy resources to obtain environmental quality  
2 and public health benefit, the valuation shall not exceed the  
3 base year valuation for a period of 5 years.

4 (35 ILCS 200/11-215 new)

5 Sec. 11-215. Assessments of wind energy conversion  
6 systems.

7 (a) A wind energy conversion system must be assessed at 33  
8 1/3% of the valuation. The chief county assessment officer  
9 shall apportion the value to each wind energy conversion parcel  
10 in which the wind energy system is physically located.

11 (b) A wind energy conversion system is not subject to  
12 equalization by the Department, the county, or the board of  
13 review.

14 Section 905. The Mechanics Lien Act is amended by adding  
15 Section 1.01 as follows:

16 (770 ILCS 60/1.01 new)

17 Sec. 1.01. Definitions; platting requirements for wind  
18 energy systems; extent of lien on wind energy parcel.

19 (a) Definitions.

20 "Wind energy conversion device" means any device  
21 including, but not limited to, a wind charger, windmill, or  
22 wind turbine that converts wind energy to a form of usable  
23 energy.

1       "Wind energy conversion parcel" means all property rights  
2 obtained by the wind energy system owner to a platted parcel  
3 including the wind energy conversion devices, associated  
4 equipment, easements, contracts, and leases.

5       (b) Upon the completion of construction, the owner of a  
6 wind energy conversion system, at his or her own expense, shall  
7 cause the wind turbine facilities to be platted by an Illinois  
8 registered land surveyor. The plat must include access routes,  
9 together with a metes and bounds description of the area  
10 surrounding each wind turbine. The system owner must record the  
11 plat and deliver a copy of it to the property owner and to the  
12 chief county assessment officer within 60 days after the  
13 completion of the construction. Upon receiving a copy of the  
14 plat, the chief county assessment officer must issue a separate  
15 parcel identification number, or numbers, for the wind energy  
16 conversion system to apportion the value to each taxing  
17 district in which the system is physically located.

18       (c) A lien for work or materials on wind energy conversion  
19 parcels is limited to the platted parcel, including all  
20 property rights obtained by the wind energy system owner to the  
21 platted parcel including the wind energy conversion devices,  
22 associated equipment, easements, contracts, and leases.

23       Section 999. Effective date. This Act takes effect upon  
24 becoming law."