



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1868

by Rep. Frank J. Mautino

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.786 new

Creates the Wind Energy Facilities Deconstruction Act. Requires the owner of a wind energy generation facility to deposit, with the Department of Agriculture, an irrevocable letter of credit and to maintain that letter until the wind energy generation facility has been subjected to deconstruction. Requires each letter of credit to list the Director of Agriculture as the beneficiary. Provides that if a claimant is able to establish that an abandonment has occurred, but that a deconstruction has not occurred within a specified period of time, then the Department shall request payment from the issuer of the letter of credit, deposit the payment in the Wind Energy Deconstruction Fund Trust Account, enter into a deconstruction agreement, and spend moneys in the Account to have the deconstruction performed. Provides that a claimant desiring to make a claim on the Fund shall file with the Department a complaint containing certain elements. Requires the Department to levy an annual fee on commercial wind energy owners that are conducting wind energy generation activities in the State. Requires those fees to be deposited into the Commercial Wind Energy Operations Fund, for use by the Department to cover certain administrative expenses. Amends the State Finance Act to create the Commercial Wind Energy Operations Fund, as a special fund in the State treasury. Effective July 1, 2011.

LRB097 08479 ASK 48606 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning wind energy facilities.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Wind  
5 Energy Facilities Deconstruction Act.

6 Section 5. Purposes. The commercial wind energy facilities  
7 constructed throughout this State are usually placed, by use of  
8 options, licenses, easements, and leases, on land typically  
9 used for agricultural purposes and are owned by persons or  
10 entities other than the commercial wind energy developers that  
11 own the turbines and related facilities and equipment. Because  
12 deconstruction of these facilities would be costly for  
13 landowners who have granted one of these options, licenses, or  
14 easements or entered into one of these leases, it is deemed  
15 desirable to provide a means to pay for the deconstruction of  
16 these facilities in the event that the commercial wind energy  
17 company fails to do so in a timely manner.

18 Section 10. Definitions. As used in this Act:

19 "Abandonment" means (i) the failure, for a period of 12  
20 consecutive months, of the commercial wind energy company to  
21 operate a wind turbine or related facilities for the purpose  
22 for which it was designed and installed or (ii) the failure,

1 for a period of 6 consecutive months, of the commercial wind  
2 energy company to pay the landowner moneys owed him or her in  
3 accordance with an underlying agreement.

4 "Administrative decision" has the meaning ascribed to that  
5 term in Section 3-101 of the Code of Civil Procedure.

6 "Agricultural purposes" means the production, on a  
7 continuous basis for the preceding 10 years, of agricultural  
8 crops, livestock, or both, including, but not limited to,  
9 horticultural, viticultural, and aquacultural production.

10 "Claimant" means a landowner seeking to have a  
11 deconstruction of wind energy facilities paid for from the Wind  
12 Energy Deconstruction Fund Trust Account and carried out by the  
13 Department under a deconstruction agreement.

14 "Commercial Wind Energy Operations Fund" means a special  
15 fund in the State treasury, containing moneys paid to the  
16 Department by reason of the commercial wind energy operators'  
17 fees, which shall be used by the Department solely for the  
18 purpose of defraying and reimbursing administrative and other  
19 costs and expenses incurred by the Department in fulfilling its  
20 duties under this Act.

21 "Commercial wind energy operator" means a private  
22 commercial enterprise that owns or operates a wind energy  
23 conversion facility of equal to or greater than 500 kilowatts  
24 in total nameplate generating capacity.

25 "Commercial wind energy operators' fees" means those  
26 moneys paid to the Department by commercial wind energy

1 operators in accordance with this Act.

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

13 "Deconstruction agreement" means a written agreement  
14 between the Department and another party whereby the other  
15 party agrees to perform deconstruction of a wind energy  
16 facility in accordance with the provisions of this Act.

17 "Department" means the Illinois Department of Agriculture.

18 "Director" means the Director of Agriculture or his or her  
19 designee.

20 "Landowner" means any person with an ownership interest in  
21 property (i) that is used for agricultural purposes and (ii)  
22 that is the subject of an underlying agreement.

23 "Letter of credit" means a promise by an issuing bank or  
24 other financial institution to pay moneys to the Department in  
25 the event that the commercial wind energy company applicant for  
26 the letter of credit fails to act in accordance with the

1 requirements of this Act relative to the timely deconstruction  
2 of wind energy facilities.

3 "Person" means an individual or entity, including, but not  
4 limited to, a sole proprietorship, a partnership, a  
5 corporation, a cooperative, an association, a limited  
6 liability company, an estate, a trust, or a governmental  
7 agency.

8 "Underlying agreement" means the written or verbal  
9 arrangement with a landowner, including, but not limited to, an  
10 easement, option, lease, or license, under the terms of which  
11 another person has constructed, constructs, or intends to  
12 construct a commercial wind energy generation facility on the  
13 property of the landowner.

14 "Wind Energy Deconstruction Fund Trust Account" means a  
15 trust account established by the Director that is used for the  
16 receipt and disbursement of moneys paid in accordance with the  
17 provisions of this Act to the Department by the issuers of  
18 letters of credit.

19 "Wind energy generation facility" means all property of any  
20 nature whatsoever comprising an operation designed to harness  
21 wind energy and create electricity therefrom, including, but  
22 not limited to, turbines, towers, roadways, concrete  
23 foundations, transmission lines, and poles, all situated on,  
24 under, or over the property of a landowner.

25 "Wind turbine" means each foundation, tower, blade, and  
26 propeller housing, designed for wind energy generation.

1 Section 15. Department oversight.

2 (a) The Director has all of the powers necessary and proper  
3 to fully and effectively execute the provisions of this Act,  
4 has the general duty to implement this Act, and may take any  
5 action that may be reasonable or appropriate to enforce this  
6 Act and rules adopted under the authority of this Act.

7 (b) The Department shall adopt rules that are necessary and  
8 appropriate for the implementation and administration of this  
9 Act.

10 Section 20. Applicability of the Illinois Administrative  
11 Procedure Act; judicial review.

12 (a) The Illinois Administrative Procedure Act applies to  
13 this Act.

14 (b) Final administrative decisions of the Department are  
15 subject to judicial review under Article III of the Code of  
16 Civil Procedure and its rules. An action to review a final  
17 administrative decision under this Act may be commenced in the  
18 Circuit Court of any county in which any part of the  
19 transaction that gave rise to the claim and that was the  
20 subject of the proceedings before the Department occurred.

21 Section 25. Deposit of letters of credit.

22 (a) Every commercial wind energy operator that is the owner  
23 of a wind energy generation facility located on land owned in

1 whole or part by another person or entity shall deposit with  
2 the Department an irrevocable letter of credit in an amount to  
3 be determined by the Department, and shall keep such a letter  
4 of credit in full force and effect until all turbines and  
5 related wind energy generation facilities have been subjected  
6 to deconstruction, as defined in this Act.

7 (b) In determining the appropriate amount of a letter of  
8 credit, which amount must cover deconstruction costs, the  
9 Department shall take into account, among other things, the  
10 number of wind turbines and related wind energy generation  
11 facilities involved, the original construction cost of the wind  
12 energy generation facilities, the size and capacity of the wind  
13 turbines, the construction method and techniques for the  
14 turbines and other wind energy generation facilities, and the  
15 amount of salvage value, if any, that might be available to the  
16 Department upon deconstruction.

17 (c) For wind energy generation facilities already  
18 constructed or under construction on the effective date of this  
19 Act, the commercial wind energy owners of those facilities  
20 shall, within 60 days after the effective date of this Act,  
21 report to the Department any information reasonably required by  
22 the Department to establish the cost and value of those  
23 facilities, including, but not limited to, the number of wind  
24 turbines, the site plans of the wind energy generation  
25 facilities, the size and capacity of those facilities, and the  
26 original construction costs of those facilities. Within 90 days

1 after receipt by the Department of all required information,  
2 the Department must inform these owners of the required amount  
3 of the letter of credit, listing as the beneficiary "The  
4 Director of Agriculture, as Trustee", with those moneys being  
5 payable to the Department to cover deconstruction costs, all in  
6 accordance with this Act, and indicating that the owner must  
7 deposit the letter of credit with the Department. Within 15  
8 days after being informed, the owner must deposit the letter of  
9 credit with the Department.

10 (d) For wind energy generation facilities constructed  
11 after the effective date of this Act, the commercial wind  
12 energy owners shall, before beginning construction of those  
13 facilities, provide to the Department the types of information  
14 required under subdivision (c) of this Section, and the  
15 Department shall have 90 days after receipt of that information  
16 to inform the owner of the required amount of the letter of  
17 credit, listing as the beneficiary "The Director of  
18 Agriculture, as Trustee", with those moneys being payable to  
19 the Department for deconstruction, all in accordance with this  
20 Act. Within 15 days after being informed, the owner must  
21 deposit the letter of credit with the Department.

22 (e) Each letter of credit shall list as the beneficiary  
23 "The Director of Agriculture, as Trustee" and shall, either in  
24 the body of that document or in the attached and incorporated  
25 documentation, provide satisfactory evidence to the Department  
26 that the undertaking of the issuer of the letter of credit for



1 payment on the letter would be fully in accordance with the  
2 provisions of this Act.

3 All issuers of letters of credits shall be banks or other  
4 financial institutions deemed financially satisfactory and  
5 reputable by the Department.

6 (f) It shall be the responsibility of all parties to an  
7 underlying agreement to report the existence and specific  
8 provisions of such an underlying agreement to the Department as  
9 soon as reasonably possible after the date of the underlying  
10 agreement.

11 Section 30. Abandonment. Upon an administrative finding in  
12 a hearing held by the Department that the circumstances of an  
13 abandonment have been proven by a claimant and that a  
14 deconstruction of the wind energy generation facilities in  
15 question has not been completed satisfactorily after a period  
16 of at least 8 months after the date of abandonment, the  
17 Director shall do the following:

18 (1) request payments from the issuer or issuers of the  
19 letter of credit for the purpose of paying the costs of  
20 deconstruction;

21 (2) deposit payments received under item (1) of this  
22 Section in the Wind Energy Deconstruction Fund Trust  
23 Account, in accordance with this Act;

24 (3) enter into the appropriate deconstruction  
25 agreement; and

1           (4) disburse the moneys in the Wind Energy  
2 Deconstruction Fund Trust Account for the deconstruction,  
3 in accordance with this Act.

4           Section 35. Claims.

5           (a) A claimant desiring to make a claim on the Wind Energy  
6 Deconstruction Fund Trust Account shall file, on forms supplied  
7 by the Department, a complaint that shall contain at least the  
8 following:

9           (1) the name and address of the claimant as well as  
10 further information establishing the fact that the  
11 claimant is a landowner as defined in this Act;

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

14           (3) the location of the commercial wind energy  
15 generation facility in question;

16           (4) a detailed and comprehensive statement of the  
17 circumstances indicating the time and existence of the  
18 abandonment of the commercial wind energy generation  
19 facility in question;

20           (5) a reasonably verifiable showing that  
21 deconstruction of the facility has not been carried to a  
22 satisfactory conclusion with 8 months after the date of the  
23 abandonment;

24           (6) a request that the funds necessary to perform the  
25 deconstruction in a satisfactory manner be sought by the

1 Department from the issuer or issuers of the letters of  
2 credit in the Wind Energy Deconstruction Fund Trust Account  
3 attributable to the commercial wind energy generation  
4 company which has abandoned the facility or facilities;

5 (7) a request that the Department carry out the  
6 deconstruction, in accordance with the definition of that  
7 term in Section 10 of this Act;

8 (8) copies of the underlying agreement; and

9 (9) any other documentation reasonably required by the  
10 Department.

11 (b) The Department shall hold a hearing within 30 days  
12 after it receives a complaint that meets the requirements of  
13 subsection (a), and it shall render a decision as to the  
14 validity of the claimant's complaint within 30 days after the  
15 conclusion of that hearing. In the event of a finding that the  
16 complaint is valid, then, within 30 days, the Department shall  
17 obtain at least 2 bids from contractors to carry out the  
18 specific deconstruction. One bidder must be chosen by the  
19 Department within the 60 days after the finding is made, and  
20 the Department, within 60 days after the selection of the  
21 bidder, must enter into a deconstruction agreement with that  
22 bidder for the deconstruction, which must be accomplished  
23 within 6 months after the execution of the deconstruction  
24 agreement with the bidder.

25 (c) The Department shall monitor the progress of the  
26 deconstruction and provide the necessary supervisory oversight

1 to ensure that the deconstruction is accomplished in accordance  
2 with the deconstruction agreement and the provisions of this  
3 Act.

4 (d) The Department may draw upon only irrevocable letters  
5 of credit issued by the commercial wind energy generation  
6 company that has abandoned the wind energy facility that is the  
7 subject of the claim, complaint, and hearing. In addition, the  
8 Department may draw down the entire amount of the  
9 deconstruction cost from the issuer of the letter of credit at  
10 such time as the deconstruction agreement is signed by the  
11 Department.

12 (e) The proceeds from any letter of credit shall not be  
13 available for any purposes other than the payment of  
14 deconstruction costs under a deconstruction agreement.

15 Section 40. Commercial wind energy operators' fees;  
16 Commercial Wind Energy Operations Fund.

17 (a) The Department shall levy an annual fee on commercial  
18 wind energy owners that are conducting wind energy generation  
19 activities in this State. This fee shall be established by  
20 rule, but shall be adequate to reimburse the Department for  
21 costs and expenses of an administrative nature or otherwise  
22 that are incurred or borne by the Department in fulfillment of  
23 its obligations and duties under this Act.

24 (b) By January 15th of each calendar year, the Department  
25 shall mail a notice of the fee to each commercial wind energy

1 owner conducting wind energy operations in this State. The  
2 amounts due from each wind energy owner shall be due by the  
3 next February 15th.

4 (c) The Commercial Wind Energy Operations Fund is created  
5 as a special fund in the State treasury. The Department must  
6 deposit the commercial wind energy operators' fees that it  
7 collects into the Fund and may draw upon the Fund to pay for  
8 administrative costs and other expenses related to the  
9 enforcement of this Act as they are incurred.

10 The Commercial Wind Energy Operations Fund is not subject  
11 to sweeps, administrative charges or chargebacks, or any other  
12 fiscal or budgetary maneuver that would in any way transfer any  
13 amounts from the Fund into any other fund of the State.

14 Section 55. The State Finance Act is amended by adding  
15 Section 5.786 as follows:

16 (30 ILCS 105/5.786 new)

17 Sec. 5.786. The Commercial Wind Energy Operations Fund.

18 Section 99. Effective date. This Act takes effect July 1,  
19 2011.