



Rep. Adam Brown

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LRB099 09392 MLM 34050 a

1 AMENDMENT TO HOUSE BILL 3523

2 AMENDMENT NO. _____. Amend House Bill 3523, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 1. Short title. This Act may be cited as the Wind
6 Energy Facilities Agricultural Impact Mitigation Act.

7 Section 5. Purpose. The primary purpose of this Act is to
8 promote the State's welfare by protecting landowners during the
9 construction and deconstruction of commercial wind energy
10 facilities.

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

12 "Abandonment" means when deconstruction has not been
13 completed within 18 months after the commercial wind energy
14 facility reaches the end of its useful life. For purposes of
15 this definition, a commercial wind energy facility will be

1 presumed to have reached the end of its useful life if (1) no
2 electricity is generated for a continuous period of 12 months
3 and (2) the commercial wind energy facility owner fails, for a
4 period of 6 consecutive months, to pay the landowner amounts
5 owed in accordance with the underlying agreement.

6 "Agricultural impact mitigation agreement" means an
7 agreement between the commercial wind energy facility owner and
8 the Department of Agriculture described in Section 15 of this
9 Act.

10 "Commercial wind energy facility" means a wind energy
11 conversion facility of equal or greater than 500 kilowatts in
12 total nameplate generating capacity. "Commercial wind energy
13 facility" includes a wind energy conversion facility seeking an
14 extension of a permit to construct granted by a county or
15 municipality before the effective date of this Act. "Commercial
16 wind energy facility" does not include a wind energy conversion
17 facility: (1) that has submitted a complete permit application
18 to a county or municipality and for which the hearing on the
19 completed application has commenced on the date provided in the
20 public hearing notice, which must be before the effective date
21 of this Act; (2) for which a permit to construct has been
22 issued before the effective date of this Act; or (3) that was
23 constructed before the effective date of this Act.

24 "Commercial wind energy facility owner" means a private
25 commercial enterprise that owns or operates a commercial wind
26 energy facility.

1 "Construction" means the installation, preparation for
2 installation, or repair of a commercial wind energy facility.

3 "County" means the county where the commercial wind energy
4 facility is located.

5 "Deconstruction" means the removal of a commercial wind
6 energy facility from the property of a landowner and the
7 restoration of that property as provided in the agricultural
8 impact mitigation agreement.

9 "Department" means the Department of Agriculture.

10 "Landowner" means any person (1) with an ownership interest
11 in property that is used for agricultural purposes and (2) that
12 is a party to an underlying agreement.

13 "Underlying agreement" means the written agreement with a
14 landowner, including, but not limited to, an easement, option,
15 lease, or license, under the terms of which another person has
16 constructed, constructs, or intends to construct a commercial
17 wind energy facility on the property of the landowner.

18 Section 15. Agricultural impact mitigation agreement.

19 (a) A commercial wind energy facility owner of a commercial
20 wind energy facility located on landowner property shall enter
21 into an agricultural impact mitigation agreement with the
22 Department outlining construction and deconstruction standards
23 and policies designed to preserve the integrity of any
24 agricultural land that is impacted by commercial wind energy
25 facility construction and deconstruction.

1 (b) The agricultural impact mitigation agreement shall
2 include, but is not limited to, such items as restoration of
3 agricultural land affected by construction, deconstruction
4 (including upon abandonment), construction staging, and
5 storage areas; support structures; aboveground facilities; guy
6 wires and anchors; underground cabling depth; topsoil
7 replacement; protection and repair of agricultural drainage
8 tiles; rock removal; repair of compaction and rutting; land
9 leveling; prevention of soil erosion; repair of damaged soil
10 conservation practices; compensation for damages to private
11 property; clearing of trees and brush; interference with
12 irrigation systems; access roads; weed control; pumping of
13 water from open excavations; advance notice of access to
14 private property; indemnification of landowners; and
15 deconstruction plans and financial assurance for
16 deconstruction (including upon abandonment).

17 (c) For commercial wind energy facility owners seeking a
18 permit from a county or municipality for the construction of a
19 commercial wind energy facility, the agricultural impact
20 mitigation agreement shall be entered into prior to the public
21 hearing required prior to a siting decision of a county or
22 municipality regarding the commercial wind energy facility.
23 The agricultural impact mitigation agreement is binding on any
24 subsequent commercial wind energy facility owner that takes
25 ownership of the commercial wind energy facility that is the
26 subject of the agreement.

1 (d) If a commercial wind energy facility owner seeks an
2 extension of a permit granted by a county or municipality for
3 the construction of a commercial wind energy facility prior to
4 the effective date of this Act, the agricultural impact
5 mitigation agreement shall be entered into prior to a decision
6 by the county or municipality to grant the permit extension.

7 (e) The Department shall adopt rules that are necessary and
8 appropriate for the implementation and administration of
9 agricultural impact mitigation agreements as required under
10 this Act.

11 Section 90. The Counties Code is amended by changing
12 Section 5-12020 as follows:

13 (55 ILCS 5/5-12020)

14 Sec. 5-12020. Wind farms. A county may establish standards
15 for wind farms and electric-generating wind devices. The
16 standards may include, without limitation, the height of the
17 devices and the number of devices that may be located within a
18 geographic area. A county may also regulate the siting of wind
19 farms and electric-generating wind devices in unincorporated
20 areas of the county outside of the zoning jurisdiction of a
21 municipality and the 1.5 mile radius surrounding the zoning
22 jurisdiction of a municipality. There shall be at least one
23 public hearing not more than 30 days prior to a siting decision
24 by the county board. Notice of the hearing shall be published

1 in a newspaper of general circulation in the county. A
2 commercial wind energy facility owner, as defined in the Wind
3 Energy Facilities Agricultural Impact Mitigation Act, must
4 enter into an agricultural impact mitigation agreement with the
5 Department of Agriculture prior to the date of the required
6 public hearing. A commercial wind energy facility owner seeking
7 an extension of a permit granted by a county prior to the
8 effective date of this amendatory Act of the 99th General
9 Assembly must enter into an agricultural impact mitigation
10 agreement with the Department of Agriculture prior to a
11 decision by the county to grant the permit extension. Counties
12 may allow test wind towers to be sited without formal approval
13 by the county board. Any provision of a county zoning ordinance
14 pertaining to wind farms that is in effect before the effective
15 date of this amendatory Act of the 95th General Assembly may
16 continue in effect notwithstanding any requirements of this
17 Section.

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

22 (Source: P.A. 95-203, eff. 8-16-07; 96-306, eff. 1-1-10;
23 96-566, eff. 8-18-09; 96-1000, eff. 7-2-10.)

24 Section 95. The Illinois Municipal Code is amended by
25 changing Section 11-13-26 as follows:

1 (65 ILCS 5/11-13-26)

2 Sec. 11-13-26. Wind farms.

3 (a) A municipality may regulate wind farms and
4 electric-generating wind devices within its zoning
5 jurisdiction and within the 1.5 mile radius surrounding its
6 zoning jurisdiction. There shall be at least one public hearing
7 not more than 30 days prior to a siting decision by the
8 corporate authorities of a municipality. Notice of the hearing
9 shall be published in a newspaper of general circulation in the
10 municipality. A commercial wind energy facility owner, as
11 defined in the Wind Energy Facilities Agricultural Impact
12 Mitigation Act, must enter into an agricultural impact
13 mitigation agreement with the Department of Agriculture prior
14 to the date of the required public hearing. A commercial wind
15 energy facility owner seeking an extension of a permit granted
16 by a municipality prior to the effective date of this
17 amendatory Act of the 99th General Assembly must enter into an
18 agricultural impact mitigation agreement with the Department
19 of Agriculture prior to a decision by the municipality to grant
20 the permit extension. A municipality may allow test wind towers
21 to be sited without formal approval by the corporate
22 authorities of the municipality. Test wind towers must be
23 dismantled within 3 years of installation. For the purposes of
24 this Section, "test wind towers" are wind towers that are
25 designed solely to collect wind generation data.

1 (b) A municipality may not require a wind tower or other
2 renewable energy system that is used exclusively by an end user
3 to be setback more than 1.1 times the height of the renewable
4 energy system from the end user's property line. A setback
5 requirement imposed by a municipality on a renewable energy
6 system may not be more restrictive than as provided under this
7 subsection. This subsection is a limitation of home rule powers
8 and functions under subsection (i) of Section 6 of Article VII
9 of the Illinois Constitution on the concurrent exercise by home
10 rule units of powers and functions exercised by the State.

11 (Source: P.A. 95-203, eff. 8-16-07; 96-306, eff. 1-1-10.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law."