



Illinois State Association of Counties

ISSUE BRIEF

January 27, 2023

COUNTY WIND AND SOLAR ZONING RESTRICTIONS (P.A. 102-1123)

House Bill 4412 was approved by the General Assembly during the January “lame duck” session of the 102nd General Assembly. The vote in the House was 73-36 and the vote in the Senate was 33-17. Governor Pritzker signed the bill into law on January 27, 2023, as P.A. 102-1123. This is also the effective date for the new law.

The new law includes multiple provisions. Of interest to counties is the language within the Illinois Counties Code that restricts local zoning authority over the siting of wind and solar facilities.

This summary is intended as a resource to familiarize county officials and staff with the content within the law that amends the Illinois Counties Code. ISACO recommends that each county request that their State’s Attorney review the text of the law and advise about appropriate compliance.

Summary of Proposed Changes to County Zoning Authority

Definition of Commercial Wind and Solar Energy Facilities

- The law specifies that a “commercial energy facility” has the same definition as a “commercial energy system” within the Property Tax Code and excludes utility-scale solar energy facilities being constructed at a site eligible to participate in a procurement event conducted by the Illinois Power Agency.
- The law specifies that a “commercial wind energy facility” means a wind energy conversion facility of equal or greater than 500 kilowatts in total nameplate generating capacity. A “commercial wind energy facility” includes a wind energy conversion facility seeking an extension of a permit to construct granted by a county or municipality before the effective date of the law.

Prohibition of More Restrictive Siting Standards

- Counties are permitted to regulate the siting of commercial wind energy facilities with standards that are **not more restrictive** than the requirements specified within the law. This includes the unincorporated areas of the county that are outside of the zoning jurisdiction of a municipality and that are outside the 1.5-mile radius surrounding the zoning jurisdiction of the municipality.

Public Hearing Requirement

- The County Board or Zoning Board of Appeals for counties electing to establish standards for

the siting approval or a special use permit for a commercial wind energy facility or a commercial solar energy facility must hold a public hearing in accordance with the Open Meetings Act. The public meeting must be held not more than 45 days after the filing of the application for the facility.

Siting Decisions

- Counties must make siting and permitting decisions not more than 30 days after the conclusion of the public hearing. Under the law, counties are permitted to allow test wind towers or test solar energy systems to be sited without formal approval by the county board. The previous law already included wind towers and the new law adds solar energy systems to this provision concerning test systems.
- A request for siting approval or a special use permit for a commercial wind energy facility or a commercial solar energy facility, or modification of an approved siting or special use permit, shall be approved if the request follows the standards and conditions imposed within the law, the zoning ordinance adopted is consistent with the provisions within the law and the conditions imposed under state and federal statutes and regulations.
- The law removes a provision that exempted county zoning ordinances in effect before August 16, 2007, from the statute.

Requirement to Amend Existing Zoning Ordinances

- Counties with an existing zoning ordinance in conflict with the provisions of the law are mandated to amend their zoning ordinance to achieve compliance within 120 days after the effective date.

Statewide Siting Standards

Wind Tower Siting Standards with Setback Distances from Center of Wind Tower Base	
Setback Description	Setback Distance
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.
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
Non-participating Residences	2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
Boundary Lines of Participating Property	None

Boundary Lines of Non-Participating Property	1.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of the non-participating property
Public Road Rights-of-Way	1.1 times the maximum blade tip height of the wind tower to the center point of the public road right-of-way
Overhead Communication and Electric Transmission and Distribution Facilities (not including overhead way) Utility Service Lines to Individual Houses or Outbuildings	1.1 times the maximum blade tip height of the wind tower to the nearest edge of the property line easement or right-of-way containing the overhead line
Overhead Utility Service Lines to Individual Houses or Outbuildings	None
Fish and Wildlife Areas and Illinois Nature Preserve Commission Protected Lands	2.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of the Fish and Wildlife area or protected land

- The law provides that a wind tower of a commercial wind energy facility must be sited so that industry standard computer modeling indicates that any occupied community building or non-participating residents will not experience more than 30 hours per year of shadow flicker under planned operating conditions.

Solar Facility Siting Standards with Setback Distances from Nearest Edge of Any Component of Facility	
Setback Description	Setback Distance
Occupied Community Buildings and Dwellings on Non-participating Properties	150 feet from the nearest point on the outside wall of the structure
Boundary Lines of Participating Property	None
Boundary Lines of Non-Participating Property	50 feet to the nearest point on the property line of the non-participating property

- The law provides that a commercial solar energy facility must be sited so that the facility's perimeter is enclosed by fencing having a height of at least six feet and no more than 25 feet and for a commercial solar energy facility to be sited so that no component of a solar panel has a height of more than 20 feet above the ground when the solar energy facility's arrays are at full tilt.
- These setback requirements for wind and solar facilities may be waived subject to the written consent of the owner of each affected non-participating property.

Setting Sound Limitations

- Counties are prohibited from setting sound limitations for wind towers in commercial

wind energy facilities or any components in commercial solar energy facilities that are more restrictive than the sound limitations established by the Illinois Pollution Control Board under 35 Illinois Administrative Code parts 900, 901 and 910.

Authorities and Prohibitions for Counties

- Counties **may not** adopt zoning regulations that disallow, permanently or temporarily, commercial wind energy facilities or commercial solar energy facilities from being developed or operated in any district zone to allow agricultural or industrial uses.
- Counties **may not** require permit application fees for a commercial wind energy facility or commercial solar energy facility that are unreasonable. All application fees imposed by the county shall be consistent with fees for projects in the county with similar capital value and cost.
- Except as otherwise provided, a county **shall not** require standards for construction, decommissioning or deconstruction of a commercial wind energy facility or commercial solar energy facility or related financial assurances that are more restrictive than those included in the Illinois Department of Agriculture (IDOA) standard wind farm agricultural impact mitigation agreement or standard solar agricultural impact mitigation agreement as applicable and in effect on December 31, 2022. The amount of any decommissioning payment shall be limited to the cost identified in the decommissioning or deconstruction plan, as required by those agricultural impact mitigation agreements, minus the salvage value of the project.
- A county **may not** condition approval of a commercial wind energy facility or commercial solar energy facility on a property value guarantee and may not require a facility owner to pay into a neighboring property devaluation escrow account.
- Counties **may** require certain vegetative screening surrounding a commercial wind energy facility or commercial solar energy facility but **may not** require earthen berms or similar structures.
- Counties **may** set blade tip height limitations for wind towers in commercial wind energy facilities but **may not** set a blade tip height limitation that is more restrictive than the height allowed under a determination of no hazard to air navigation by the Federal Aviation Administration (FAA) under 14 CFR Part 77.
- Counties **may** require that a commercial wind energy facility owner or commercial solar energy facility owner provide the following: (1) the results and recommendations from consultation with the Illinois Department of Natural Resources (IDNR) that are obtained through the ecological compliance assessment tool or a comparable successor tool; (2) the results of the United States Fish and Wildlife Service’s Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with the “U.S. Fish and Wildlife Service’s Land-Based Wind Energy Guidelines” and any applicable United States Fish and Wildlife Service solar wildlife guidelines that have been subject to public review.
- The law removes a provision in the statute stating that only a county may establish standards for wind farms, electric generating wind devices and commercial wind energy

facilities in unincorporated areas of the county outside of the zoning jurisdiction of a municipality and outside the 1.5-mile radius surrounding the zoning jurisdiction of the municipality.

- Counties **may** require a commercial wind energy facility or commercial solar energy facility to adhere to the recommendations provided by the IDNR in an EcoCAT natural resource review report under 17 Illinois Administrative Code Part 1075.
- Counties **may** require facility owners to do the following: (1) demonstrate avoidance of protected lands as identified by IDNR and the Illinois Nature Preserve Commission (INPC); (2) or consider the recommendations of IDNR resources for setbacks from protected lands, including areas identified by the INPC.
- Counties **may** require that a facility owner provide evidence of consultation with the Illinois State Historic Preservation (ISHP) office to assess potential impacts on state registered historic sites under the Illinois State Agency Historic Resources Preservation Act.
- Counties **may** require a commercial solar energy facility owner to plant, establish and maintain for the life of the facility vegetative ground cover, consistent with the goals of the Pollinator- Friendly Solar Site Act and require the submittal of a vegetation management plan in the application to construct and operate a commercial solar energy facility in the county.

IDNR Vegetation Management Plan Guidelines

- No later than 90 days after the effective date of the law, IDNR shall develop guidelines for vegetation management plans that may be required for commercial solar energy facilities.

Road Use Agreements

- If a facility owner enters into a road use agreement with the Illinois Department of Transportation (IDOT), a road district, or other unit of local government relating to a commercial wind energy facility or a commercial solar energy facility, the road use agreement shall require the facility owner to be responsible for the reasonable cost of improving roads used by the facility owner to construct the commercial wind energy facility or the commercial solar energy facility and the reasonable cost of repairing roads used by the facility owner during construction of the commercial wind energy facility or the commercial solar energy facility so that those roads are in a condition that is safe for the driving public after the completion of the facility's construction. Road related fees, permit fees or other charges imposed by IDOT, a road district, or other unit of local government under a road use agreement with the facility owner shall be reasonably related to the cost of administration of the road use agreement.

Approval to Cross or Impact Drainage Systems

- A facility owner with siting approval from a county to construct a commercial wind energy facility or a commercial solar energy facility is authorized to cross or impact a drainage system, including, but not limited to, drainage tiles, open drainage districts,

culverts and water gathering vaults, owned or under the control of the drainage district under the Illinois drainage code without obtaining prior agreement or approval from the drainage district, except that the facility owner must repair or pay for the repair of all damage to the drainage system caused by the construction of the commercial wind energy facility or the commercial solar energy facility within a reasonable time after construction is complete.

Exemptions

- The provisions of the law do not apply to an application for siting approval or for special use permit for a commercial wind energy facility or commercial solar energy facility if the application was submitted to a unit of local government before the effective date of this legislation or a commercial wind energy facility or commercial solar energy facility if the facility owner has submitted an agricultural impact mitigation agreement to the Illinois IDOA before the effective date of this legislation.