



Memorandum

TO: Will County Legislative Committee

FROM: Joe McCoy, Executive Director
Illinois State Association of Counties

DATE: August 31, 2023

RE: Wind and Solar Preemption – Legislative History

This memorandum is intended to provide legislative background on the law restricting local authority over wind and solar siting (P.A. 102-1123).

The relevant provisions were amended onto HB 4412 (Rep. Robyn Gable, D-Evanston/Sen. Bill Cunningham, D-Chicago) on January 5, 2023, during the “lame duck” session on the 102nd General Assembly. The bill achieved final passage by both chambers on January 10, 2023, immediately preceding the January 11, 2023, inauguration of the 103rd General Assembly. Governor Pritzker signed the bill into law on January 27, 2023.

The legislation was an initiative of the Illinois Environmental Council (IEC) and was specifically intended to preempt county authority to enact local ordinances that prohibit wind and solar projects. A January 11, 2023, IEC press release announcing the passage of HB 4412 is included among the attachments to this memorandum (**Addendum A**).

The Illinois State Association of Counties (ISACo) formally opposed the legislation based upon the preemption of local zoning and siting authority and because the procedural timetables within the bill were impractical. In total, there were 289 opponents to the legislation. In addition to ISACo, the Illinois Farm Bureau (IFB) and several individual counties were included among the opponents. A list of the registered opponents is attached (**Addendum B**).

Despite significant opposition, the bill passed the Illinois House and Senate. The vote in the House was 73-36 (60 required for passage) and the vote in the Senate was 33-17 (30 required for passage). Both the House and Senate roll calls are attached (**Addendum C**).

Following passage, ISACo wrote a letter to Governor Pritzker requesting that he veto the legislation. The letter is attached (**Addendum D**).

The issue of preempting county authority over wind and solar siting had been debated for 2-3 years prior to enactment of HB 4412. At the outset, ISACo participated on a Governor's Office working group with various stakeholders, including the wind and solar industry. Throughout the debate over wind and solar siting, ISACo voiced opposition to proposed restrictions on local authority.

Until the passage and enactment into law of HB 4412, the siting restrictions had been introduced in other legislation beginning in 2021 (HB 4074/SB 2896 in 2021 and HB 4452 in 2022). ISACo objected to the provisions within SB 2896 that proposed preempting local control over wind and solar siting and zoning. These objections were included in the attached May 21, 2021, letter to the Senate sponsor of the bill (**Addendum E**).

ISACo also included information about the various wind and solar siting preemption bills in several of our *News and Views* e-newsletters from 2021-2023.

Following enactment of P.A. 102-1123, ISACo developed an *Issue Brief* to provide information about the content of the new law. This *Issue Brief* is included as the final attachment to this memorandum.

An Energy Omnibus bill approved by the General Assembly during the final days of the 2023 spring session (HB 3445) would have made a slight modification to the new wind and solar law. The Energy Omnibus bill includes a provision extending a public hearing requirement within P.A. 102-1123 to 60 days (rather than 45 days). ISACo advocated for the extra 15 days. Governor Pritzker chose to issue an Amendatory Veto for HB 3445 on August 16, 2023, due to a separate provision concerning the impact to consumers of providing incumbent utility companies with a monopoly over new electricity transmission lines.



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Addendum A
ISACo

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PRESS RELEASE

Bill Defending CEJA And Protecting Local Clean Energy Projects Passes During Lame Duck Session

January 11, 2023

SPRINGFIELD, IL – A bill protecting Illinois-based clean energy projects from a growing number of local bans passed today during the Illinois General Assembly’s lame duck legislative session. HB4412 was drafted to prevent counties from enacting preemptive local ordinances that outright ban local wind and solar projects, hindering the state’s new climate goals set forth in the Climate and Equitable Jobs Act (CEJA). The bill passed

by a vote of 33 to 17 in the Senate and 73 to 36 in the House.

“We’ve seen an uptick in radical misinformation campaigns taking root here in Illinois that aim to obstruct the progress we have made in CEJA by banning local wind and solar clean energy projects,” **said Jen Walling, executive director of the Illinois Environmental Council.** “Unaddressed, these out-of-state fear-mongers will compromise the state’s ability to meet our climate goals and realize the financial savings, job creation, economic development, and grid reliability secured in CEJA.”

With the passage of HB4412, the legislature successfully removed overburdensome local wind and solar siting regulations while prioritizing protections for endangered species and natural areas and encouraging conservation practices at utility-scale clean energy sites.

“I was proud to cast my vote for CEJA, and I’m proud to have brought forward legislative solutions like HB4412 to ensure that Illinois remains on track to meet our climate, jobs and justice goals secured in our nation-leading climate bill,” **said State Rep. Robyn Gabel.**

“The General Assembly was proactive in passing HB4412, taking necessary action to defend the economic, equity and climate benefits secured in CEJA by directly confronting counterproductive bans on clean energy,” **Walling continued.** “Now our state can continue plugging away at the implementation of CEJA without having to play whack-a-mole every time fossil fuel interests introduce an ordinance intended to delay our clean energy future.”

Over a dozen local bans have passed in Illinois counties to date. HB4412 would not only prevent future bans but would also take precedence over current bans, clearing the way for rapid clean energy development across the state, helping Illinois meet its climate goals, and helping communities address potential capacity shortfalls.

“Illinoisans expect the General Assembly to anticipate problems and generate policy solutions that ensure the best outcomes for our communities, and HB4412 is a prime example of that work,” **said Sen. Bill Cunningham.** “With this legislation, we’re bringing clean energy jobs and opportunities to people across Illinois.”

HB4412 heads next to Gov. JB Pritzker’s desk for his signature.

###

Tags: [Chicago](#), [Chicago City Council](#), [City Budget](#), [FY23 budget](#)

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Witness Slips For HB4412 102nd General Assembly

[HB4412](#)

[Senate Amendment 001](#)

[Senate Amendment 002](#)

[Senate Amendment 003](#)

[Senate Amendment 004](#)

[Bill Status](#)

Legislation: Senate Amendment 001

Proponents: 141

Opponents: 289

No Position: 1

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Name	Firm, Business Or Agency	Representing
Hearing Date and Time: Executive (H) 1/10/2023 11:00 AM		
Aaron Gingerich	Gingerich Farms	Preserving Illinois County Rights
Aaron Kammeyer	Agency	Myself and all local county residents
Aaron Sparling	Self	Self
Aaron vandenbergh	Self employed farmer	
Adam Brown	B&B Farms	
Adrian Adcock	self	Self
Aidan W Jackson	Self	Preserving Illinois County Rights
Aimee smith	NA	
Alexis Chambers	na	
Alice Henkel	Lee County Zoning Department	Lee County
Amanda Joy Dixon	self	self
Amy Seppelfrick	Self	Self
Andrea Rhoades	Citizen	
Andy Bernius	Lowe road district	Lowe township
Andy Bolsen	Moultrie County Farm Bureau	
Ann Ihrke	SFA1	
Anthony James Nudo	self	voters
Anthony Pritchard	Self	
Audrea Fuller	Self	Self
Becky Fehr	na	PICR
Benjamin P Youman	Ogle County Board	Citizens of Ogle County
Betsy Shifflet	Self	
Bill Mays	Na	
bill voyles	moultrie county board	
bill voyles	self	
Billie Michael	none	Self

Dan ihrke	Self	Self
Daniel Gingerich	Self	
Daniel Lee	self	self
DANIEL SLEEZER	Individual	
Darrah Sabo	Washington County IL	Washington County IL Zoning
Darrel Gingerich	Gingerich Inc	
Darrell Miller	Self	Self
David C Erickson	LANDcorp, Inc	farmer - farm land owner - farm manager
David Cockrell	not applicable	Self
David Slagel	Self	Self
Dean McWard	McWard Farms	
Dean Vandenberg	Self	Preserving Illinois County Rights
Dee Duffy	Lee County Zoning	Lee County
Dewain Wellen	Self	Self
Diane Fedorow	Land owner	
Don Boyd	Self	Self
Donald Cantrall	Blomeley Farms	Preserving Illinois County Rights
Donald Wagoner	Self	Self
Donna L McElroy	none	
Doug Reeder	Jonathan Creek Township	
Douglas Smedley	Self	Preserving Illinois County Rights
Dylan Gallagher	Gallagher Farms	Gallagher Farms
Edward Werres	Self	
Edwin Winkler	Self	Self
Elaine DeWerff	Self	Self
Eldon Morrison	personal citizen	
Elizabeth Burns	Self	
Elizabeth Hile	Self	Self
Emily Lattz	Lattz Family Farm	Self and family.
Eric Shifflet	Self	
EUGENE LAMCZYK	Washington County	Self, Washington County
Frank Picha	Individual	Individual
Gail Nunnery	Individual - lifelong resident of Illinois and taxpayer	
Gary Lutjens	Self	
Gina Velez	NA	Self
Greg Thorpe	Rock Island County	IACZO, ICCA, ILLOWA, Personal
Haven Mensing	none	self Preserving Illinois County

Heather Hampton Knodle	Knodle, Ltd.	Rights with Knodle, Ltd. family farm
Jack Erisman	Goldmine Farms	Preserving Illinois County Rights
Jacob Kremmel	Multiple	SELF
Jaime Holland	Self	
James Reed	Reed Farms	
James Rhoades	Citizen	
James Romack	Self	Self
James Schwerman	Self	
Janet Gingerich	Gingerich Inc	
Jared Goodman	On behalf of self	Self
Jared Holmes	NA	
Jared Sparling	Self	Self
Jean vandenbergh	Self employed farmer	
Jeanne Ives	Breakthrough Ideas	self
Jeff Castle	None	Self
Jeffrey Savoie	On behalf of self	On behalf of self
Jennifer Bertoldo	Self	Preserving Illinois County Rights
Jennifer Mensing	none	self
Jenny Miller	Self	Self
Jeremy Williams	Private Citizen	Myself
Jim jr Vandenberg	Self farmer	
Jodi Jannink	Self	Preserving Illinois County Rights
Joe Gleespen	Self	Preserving Illinois County Rights
Joe McCoy	Illinois State Association of Counties	Illinois State Association of Counties
John Lyon	self	
John Klein	self	preserving illinois county rights
John Miller	Taxpayer	
John Slagel	None	Self
Jonathan Simmons	Self	Preserving Illinois County Rights
Joseph M Witte	Self	
Joshua Caleb Whitney	On behalf of self	Self
Joshua David Jackson	Self	Preserving Illinois County Rights
Julie Caise	Self	Self
Julie Newhouse	Newhouse Farms	
Kallista Mensing	none	self
Karl Mensing	none	self
Karla Nash	self	on behalf of self

Katherine Andraski	Self	
Kathleen Klein	self	preserving Illinois county rights
Kathryn Cantrall	Self	Preserving Illinois County Rights
Kathy Anderson	Self	
Kathy Cavazos-Lee	self	self
Kathy Drea	Self	Self
Kathy Freeman	Seld	
Katie Davis	Self	Self
Kayla Berner	Self	Protecting Illinois county rights
Kayla Gallagher	Individual	
Kelly Hunt	Self	Self
Ken Duffy	Self	
Ken Seneca	Citizen	
Keri Nusbaum	Self	Self
Kevin Semlow	Illinois Farm Bureau	Illinois Farm Bureau
Kimberly Sparling	Self	Self
Kirk Allen	Edgar County Watchdogs	Edgar County Watchdogs
Kristi Hart	Moultrie County Planning & Zoning Director	
Kristina Thomas	Poplar Grove Airport	
Kristine Donarski	Bureau County Planning & Zoning	
Kyle Ogden	Self	
Laura death	Swank creek farm	
Laura Winans	Self	Preserving Illinois County Rights
Lauren Jackson	Self	Preserving Illinois County Rights
LC Woodard	Homeowner	Self
Leah Mensing	none	self
Lee Lisa	Self	
Leon Corzine	Self	Preserving Illinois County Rights
Leroy Tappe	Point Pleasant Township	
Lesley King	Ford County Board	
Leslie Mossman	self	self
Linda Ambrose	self	self
Linda Fuhr	Self	Self
Lisa Jording	Woodford County Zoning	
Lisa Miller	Self	
Lonni Curry	Self	Preserving Illinois County Rights
Lori Nelson	Self	Self

Lucy Gleespen	Self	Preserving Illinois County Rights
Luella Ellison	Self	Self
Mark Bennett	Shelby County Board	
Mark R Nunnery	Individual- Illinois resident and taxpayer	
Mark Turvey	Private Citizen	
Marshall Newhouse	Newhouse Farms	
Martha Ehmann	Self	
Marty Fannin	Livingston County Board	
Mary Anne Prost	self	self
Mary Czajkowski	Self	
Matt Berner	Self	Protecting Illinois county rights
Matthew Bierman	Washington County	Washington County Zoning
Matthew Prochaska	Kendall County	Kendall County
Megan Myers	ADM	
Melanie Monroe	Self	
Meredith C Jackson	Self	Preserving Illinois County Rights
Michae Pearson	none	Lee County
Michael Anglemire	Self	Self
Michael Nash	self	on behalf of self
Michael Yoder	YODER SOLUTIONS	Amish of Illinois
Michele Barnett	Self	
Michelle Caldwell	Self	Self
Mike Grady	Strategic Advocacy Group	Lake County, IL
Mike Myers	me	self
Nakia Whitney	on behalf of Self	Self
Nick Grooms	Farmer	
Nicole Kays	Self	
Nikki Hebert	Self	Self
Pam Kuchenmeister	Self	Self
Patricia Nordman	Ogle County	self
Patrick K Ryan	Barefoot Farm - Farmer City	
Patrick Simon	Calhoun County	
Patsy Hebert	self	Preserving Illinois county Rights
Patty Miller	Self	Self
Paul Ives	Citizen	Me
paul ives	Citizen	myself
PAULA G SMITH	None	
PHILIP WACHNIAK	SELF	SELF
Randy Corzine	Self	Preserving Illinois County Rights

rebecca hoffman	self	preserving illinois count rights
Rex Goble	Clark County Board	
Rhonda Henke	Retired nurse	Self
Rich Morony	self	self
Richard Lyerla	Taxpayer	
Richard Michael Beem	Piatt County Board	Piatt County Board
Richetta Melissa	Self	
Robert D Buzan	Self Employed	Preserving Illinois County Rights
Robert Simmons	NA	Preserving Illinois County Rights
Roger Frantz	None	
Ronald Parton	NA	Self
Ronald Scott Wright	Individual	Individual
Rosanne Pulido	Self	Self
Roxanne Green	Self	Preserving Illinois county rights
Roy Templeton	Self	
Ryan Kirkland	Self	Self
Ryan vandenbergh	Self	
Sandra Earp	None	Self
Sandy Lyon	self	
Sara Hawk	citizen	
Sarah Starke	Self	Self
Scott Blomeley	Gingerich Farms	Preserving Illinois County Rights
Sean Stevens	Sean Stevens Insurance Agency	Self
Seth Gingerich	Gingerich Inc	
Seth Welch	Livingston County Board	Myself
Shari Boyd	Self	Self
Sharon Lamb	Self	
sid moate	sid moate	Preserving Illinois County Rights
Skip Fountain	Self	Self
Stanley Asp	Ogle County Board	Ogle County Board Member
Stephanie Price	Cat	
Stephanie Rasner	Self	
Stephanie Wernz	Na	Self
Stephen R Thomas	Poplar Grove Airmotive, Inc.	
Steve Allen	Retired educator	
steve hoffman	self	preserving illinois county rights
Steve Jurgens	self	Lowe Special Drainage District
Steve Prost	self	

Steve Scherrer	NA	Self
Steven Schonert	Richland County, Illinois	Self
Sue Corzine	Self	Preserving Illinois County Rights
Sue MacRoy	NA	
Sue McGava	Self	Transparency
Susan Ejzak	self	
Susan Ryan	Farm	Local rural community
Susan Tappe	Pt Pleasant Farm	
Suzan Stickle	Whiteside County Building and Zoning	Whiteside County Building and Zoning
Tamara Wilcox	Macon County	Macon County Board & Planning and Zoning
Tammy Seneca	Private	Tammy Seneca
Taylor Anderson	Anderson Legislative Consulting	County of McLean
Taylor Anderson	Anderson Legislative Consulting	IL Assoc of County Board Members
Tere Lynn Svetlecich	self	self
Terry Husted	self	self
Thomas Hall	Na	Myself
Thomas Stechmiller	Self	Patriots
Tim Miller	Self	Self
Tonja Vandenberg	Self	Preserving Illinois County Rights
Travis Barnhart	Self	Self
VICKI McMAHON	Self	Self
Wade Fikan	Wade Fikan	Preserving Illinois county rights
Wayne sharp	Self	Self
Weston Adcock	Self	Preserving Illinois County Rights
William Whitney	Behalf of Self	Self
Zachary Horn	Self	Self
Hearing Date and Time: Executive (S) 1/5/2023 10:00 PM		
Betsy Shifflet	Self	Self
Cynthia Minott	PICR	Family Farm
Donald Waddell	Self	Self
Elizabeth Burns	Self	Self
Joe McCoy	Illinois State Association of Counties	Illinois State Association of Counties
JULIE A CURRY	Curry & Associates, LLC	Will County
Kathy	Nolan Farms	Nolan Farms
Kevin Semlow	Illinois Farm Bureau	Illinois Farm Bureau
Lori Nelson	self	self
Mike Grady	Strategic Advocacy Group	Lake County, IL

Sandra Earp	Retired	None
Taylor Anderson	Anderson Legislative Consulting	IL Assoc of County Board Members
Taylor Anderson	Anderson Legislative Consulting	McLean County
Terry Husted	self	self

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STATE OF ILLINOIS
ONE HUNDRED SECOND
GENERAL ASSEMBLY
HOUSE ROLL CALL
HOUSE BILL 4412
TELEHEALTH-ATHLETIC TRAINERS
CONCUR IN SENATE AMENDMENT #1
CONCURRED

Jan 10, 2023

73 YEAS	36 NAYS	0 PRESENT
Y Ammons	N Haas	Y Mussman
Y Andrade	N Halbrook	Y Ness
Y Avelar	Y Halpin	Y Nichols
N Batinick	E Hamilton	N Niemerg
N Bennett	N Hammond	Y Ortiz
E Blair-Sherlock	Y Harper	E Ozinga
E Bos	Y Harris	N Reick
N Bourne	N Hauter	Y Rita
N Brady	Y Hernandez, Barbara	Y Robinson
Y Buckner	Y Hernandez, Elizabeth	Y Scherer
Y Burke	Y Hirschauer	N Severin
Y Carroll	Y Hoffman	Y Slaughter
Y Cassidy	N Huffman	Y Smith
N Caulkins	Y Hurley	N Sosnowski
N Chesney	N Jacobs	N Spain
Y Collins	Y Jimenez	Y Stava-Murray
Y Costa Howard	Y Jones	Y Stephens
Y Crespo	N Keicher	Y Stoneback
Y Croke	Y Kelly	Y Stuart
N Davidsmeyer	Y Kifowit	N Swanson
Y Davis	Y LaPointe	E Tarver
Y Delgado	Y Lewis	N Ugaste
Y DeLuca	Y Lilly	Y Vella
N Demmer	E Luft	NV Walker
Y Didech	Y Mah	Y Walsh
Y Durkin	Y Manley	N Weber
N Elik	N Marron	E Welter
Y Evans	Y Mason	Y West
Y Flowers	Y Mayfield	N Wheeler
Y Ford	N Mazzochi	N Wilhour
N Frese	N McCombie	Y Williams, Ann
N Friess	N McLaughlin	Y Williams, Jawaharial
Y Gabel	N Meier	Y Willis
Y Gong-Gershowitz	Y Meyers-Martin	N Windhorst
Y Gonzalez	N Miller	Y Yang Rohr
Y Gordon-Booth	Y Moeller	Y Yednock
N Grant	Y Morgan	Y Yingling
Y Greenwood	E Morrison	Y Zalewski
Y Guerrero-Cuellar	Y Moylan	Y Mr. Speaker
Y Guzzardi		

E - Denotes Excused Absence

State of Illinois
102nd General Assembly
Senate Vote

House Bill No. 4412
THIRD READING

Jan 08, 2023

33 YEAS

17 NAYS

0 PRESENT

N	Anderson	Y	Fine	Y	Loughran	Cappel	NV	Stadelman
Y	Aquino	N	Fowler	Y	Martwick		NV	Stewart
N	Bailey	Y	Gillespie	Y	Mattson		N	Stoller
NV	Barickman	Y	Glowiak	Hilton	N	McClure	N	Syverson
Y	Belt	Y	Hall		N	McConchie	Y	Tharp
Y	Bennett	Y	Harris		Y	Morrison	NV	Tracy
N	Bryant	NV	Hastings		Y	Murphy	NV	Turner, D.
Y	Castro	NV	Holmes		Y	Pacione-Zayas	N	Turner, S.
Y	Cervantes	Y	Hunter		Y	Pappas	Y	Van Pelt
Y	Collins	NV	Johnson		Y	Peters	Y	Villa
Y	Cunningham	Y	Jones, E.		N	Plummer	Y	Villanueva
N	Curran	N	Joyce		N	Rezin	Y	Villivalam
N	DeWitte	Y	Koehler		N	Rose	N	Wilcox
Y	Ellman	N	Landek		Y	Simmons	Y	Mr. President
NV	Feigenholtz	Y	Lightford		Y	Sims		



Illinois State Association of Counties

January 17, 2023

The Honorable JB Pritzker
Governor
State of Illinois
207 State House
Springfield, IL 62706

Re: Request for Amendatory Veto of HB 4412

Dear Governor Pritzker:

The Illinois State Association of Counties (ISACo) respectfully requests that you issue an amendatory veto to remove the provisions within HB 4412 that restrict county zoning authority over the siting of wind and solar facilities.

Zoning authority is an essential and proper function of local government. Keeping these decisions local offers the best opportunity for locally elected public officials to discern the will of their residents when making critical decisions over land use that will impact the aesthetics and property values within a community.

As a matter of practicality, the timetables found within HB 4412 are unworkable for counties. The bill requires a public hearing that must be held within 45 days following the filing of a siting application. The rendering of a final siting decision is mandated to occur within 30 days following the public hearing. This is simply insufficient time for counties, particularly rural counties with fewer staff, to work through the complexities and details that can be involved with such significant siting decisions.

ISACo was heartened to hear you defend local control over zoning during an August 2022 interview when you stated you would not support legislation to create statewide controls over the siting of wind or solar projects. You further stated that there needs to be a continuous conversation between the state and local governments to decide such siting issues together. To my knowledge, counties were not invited to discuss HB 4412 prior to the sudden filing and rapid passage of the amendment in early January.

ISACo respectfully requests that you strike the provisions of the bill involving the Illinois Counties Code beginning on page 18, line 21 through page 34, line 18. This will preserve local control over siting decisions, which we believe is in the best interest of local communities. We do not have a position on the other provisions within the bill.

(Page 2)

Thank you for your consideration in this matter. Please feel welcome to contact me at (217) 679-3368 or at jmccoy@isacoil.org if your office would like to discuss this issue or if ISACo can be of service in any other matter.

Respectfully,

A handwritten signature in blue ink that reads "Joe McCoy". The signature is written in a cursive style with a large, stylized "J" and "M".

Joe McCoy
Executive Director

cc: Representative Robyn Gabel
Senator Bill Cunningham
ISACo Board of Directors



Illinois State Association of Counties

May 21, 2021

The Honorable Celina Villanueva
State Senator
Illinois State Senate
623 Capitol Building
Springfield, IL 62706

Dear Senator Villanueva:

This letter is to convey that the Illinois State Association of Counties (ISACo) respectfully opposes provisions within the "Consumers and Climate First Act" that would restrict local authority over wind and solar siting requirements.

Senate Bill 2896 includes provisions establishing state standards for the regulation and siting of commercial wind and solar energy facilities. These standards would prohibit counties from establishing standards that are more restrictive than those included within the Act. The legislation would also invalidate existing ordinances deemed inconsistent with the Act.

Furthermore, the wind and solar provisions include various timetables for public hearings and final approval by county boards that are, quite frankly, impractical and unworkable for most counties. These timetables do not acknowledge the amount of time necessary for counties to review and process project applications.

ISACo supports the policy of increasing the growth of clean energy in Illinois. We do not, however, support industry's desire to curtail the decision-making capabilities held by locally-elected officials. As you are aware, zoning and siting decisions directly impact local residents who are often passionate about how the siting of structures will affect their property. ISACo believes that imposing restrictions on local siting authority will ultimately diminish the voices and opinions of local residents.

ISACo stands ready to work with the General Assembly on ways to increase the use of clean energy in Illinois that do not involve restrictions on local decision-making.

Thank you for your consideration in this matter. Please feel welcome to contact me at 217/679-3368 or jmccoy@isacoil.org if we can be of assistance to you. Thanks.

Respectfully,

Joe McCoy
Executive Director



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 siding 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.