



## **Energy Omnibus Legislation SB 40**

*ISACO prepared this analysis of SB 40 to inform county officials and staff about the changes in Illinois proposed within the legislation. ISACO encourages county staff to carefully review the content of the legislation to ensure a complete understanding of any new requirements and responsibilities.*

### **Overview**

SB 40 is a comprehensive energy and infrastructure reform package that introduces new mandates and revises existing laws across multiple policy areas, with several implications for county governments. It establishes the *Municipal and Cooperative Electric Utility Transparent Planning Act*, requiring certain electric cooperatives and municipal utilities to prepare and publicly post integrated resource plans. It also creates the *Utility Data Access Act*, directing the Illinois Commerce Commission to implement new rules governing utility data retention and transmission. The bill adds a *Thermal Energy Network Revolving Loan Program* to the *Illinois Finance Authority Act* and significantly expands the *Illinois Power Agency Act*, including updates to agency responsibilities, the Solar for All Program, and reporting requirements.

Additional provisions include updates to the *Property Tax Code* concerning assessments on commercial energy storage systems; amendments to the *Counties Code* and *Illinois Municipal Code* establishing a regulatory and zoning framework for energy storage systems and a *Solar Bill of Rights*; and extensive changes to the *Public Utilities Act* affecting energy efficiency, utility responsibilities, distributed generation, interconnection procedures, rate design, and integrated planning. It also amends the *Environmental Protection Act* to include new greenhouse gas and permitting requirements, along with provisions for water and waste planning for large industrial users.

The bill is further expanded to include provisions related to transportation electrification and workforce development. It amends the *Electric Vehicle Act* and *Electric Vehicle Rebate Act* to revise beneficial electrification provisions, adjust user fee structures, and appropriate rebate funding. Changes to the *Energy Transition Act* and the *Illinois Works Jobs Program Act* support workforce pipelines by allowing contractors to earn bid credits for employing apprentices who completed specific pre-apprenticeship programs, including the Climate Works and Highway Construction Careers Training Programs. Lastly, the legislation updates the *Illinois Procurement Code* and removes outdated definitions in the *Public Utilities Act*. The measure takes effect immediately.

## **Commercial Energy Storage System Standards**

The bill establishes a comprehensive energy storage system portfolio standard for Illinois, recognizing energy storage as essential to integrating renewable energy, reducing carbon emissions, and maintaining a clean, reliable, and affordable power grid.

### ***What is An Energy Storage System?***

An energy storage system is a technology or set of devices designed to capture and store energy for use at a later time. These systems help balance energy supply and demand, improve grid reliability, and support renewable energy integration. There are several types of energy storage systems, but most work by converting energy into a storable form—such as chemical, thermal, or mechanical—and then converting it back into electricity when needed.

### ***Energy Storage Procurement Plan***

The Illinois Power Agency (IPA) is tasked with creating and implementing an energy storage procurement plan beginning in 2027, including competitive procurement programs for utilities serving over 300,000 customers. The plan will set storage targets based on the state’s integrated resource planning process, with initial procurements requiring 1,038 megawatts of stand-alone storage by 2029 and a cumulative target of 6,000 megawatts by 2034.

The IPA must design a bid process prioritizing cost-effectiveness, project viability, developer experience, and location-specific considerations, including emphasis on communities eligible for energy transition grants. Various financial contract models may be used, including indexed storage credits. The legislation calls for multiple procurement rounds in 2026 through 2029, allowing flexibility based on regional grid conditions (MISO Zone 4 and PJM ComEd Area). Projects must comply with prevailing wage and labor standards, including labor peace agreements.

Additional provisions ensure equitable access by applying diversity, equity, and inclusion standards to program design. Procurement will favor bidders not affiliated with regulated utilities recovering storage costs through state rates. To qualify, bidders must have experience developing 100 MW of storage projects and provide proof of interconnection agreements. Contracts will span 20 years, with price benchmarks to ensure cost-effectiveness. The IPA will assess fees on utilities and bidders to recover program costs and submit annual reports detailing performance, compliance, and impacts on the energy market and consumers.

## **Property Tax Assessments for Commercial Energy Storage Systems**

The Property Tax Code is amended to introduce Division 22, which establishes a standardized framework for assessing property taxes on commercial energy storage systems in Illinois from 2025 through 2040. These systems are defined as devices that store energy—either standalone or connected to a generation facility—for wholesale or retail sale, not for on-site consumption. The legislation sets out definitions for calculating assessment values, including cost basis, depreciation, and trending factors.

The assessed value of these systems is determined based on a set cost of \$65 per kilowatt-hour of rated capacity, adjusted annually using a “trending factor.” A depreciation allowance based on

the age of the system can reduce its assessed value, but only down to 30% of the trended real property cost basis. Additional reductions for functional or external obsolescence are allowed, but total depreciation cannot exceed 70%. Equalization factors used by assessment officials are explicitly excluded.

System owners must provide a metes and bounds survey of the project footprint, including access areas. This survey is used by county assessment officials to assign a separate parcel identification number for the taxed area. If the owner does not provide a survey, the assessor may define the parcel boundaries unilaterally. The system owner—not the landowner—is responsible for property tax payments, although landowners may pay on their behalf to prevent tax sale actions.

Land previously assessed as farmland can revert to such assessment in the year after a system is removed, even if it was not farmed in the two prior years—so long as it returns to agricultural use. Additionally, local taxing districts are authorized to abate property taxes on these systems by a majority vote of their governing body. Importantly, the entire Division does not apply to Cook County.

In sum, the new Division 22 creates clarity and uniformity in how commercial energy storage systems are taxed outside of Cook County, while offering tax abatement options, fair valuation safeguards, and a path to farmland reassessment after system removal.

## **County and Municipal Siting and Permitting of Energy Storage Systems**

A new section of the Counties Code establishes uniform siting and permitting standards for energy storage systems with a capacity over 1,000 kilowatts.

The legislation empowers counties that have adopted zoning under existing law to regulate such systems, while limiting their ability to impose restrictions more burdensome than those specified in the statute. Key terms are defined, including what constitutes participating and nonparticipating properties, supporting facilities, and protected lands.

Counties may adopt regulations that align with—but not exceed—the standards of NFPA 855 for battery energy storage systems. Siting procedures must include at least one public hearing with notice and opportunity for public comment, followed by a decision within 30 days. Minimum setback distances are mandated (e.g., 150 feet from residences and community buildings), and fencing is required around the facility. Counties may not impose stricter sound limits than those adopted by the Illinois Pollution Control Board, nor may they ban energy storage from agricultural or industrial zones.

### ***Agricultural Lands***

The law provides extensive protections for agricultural lands, requiring a farmland drainage plan, repair and compensation for crop or drainage damage, and restoration after decommissioning. Counties may require a decommissioning plan backed by financial assurance (e.g., bonds) and updated every five years. Counties cannot require property value guarantees or restrict facility upgrades intended to maintain system capacity.

Further county requirements may include ecological, historical, and site planning reviews, conformance with outdoor lighting standards, and local fire department training. Counties may

impose permit fees (capped at \$50,000 or \$5,000/MW), process building permits within 60 days, and require facility commissioning and emergency operations plans in line with national fire safety standards. Additionally, road use agreements must be cost-based and limited to actual construction impacts.

### ***Fees***

The legislative language sets limits on the fees that counties can charge for siting approvals and building permits for commercial wind and solar energy facilities. Siting approval or special use permit application fees are capped at \$5,000 per megawatt of nameplate capacity, with a maximum of \$125,000. However, counties may request reimbursement for additional reasonable costs incurred during the application review process. Approved siting or special use permits must be valid for at least five years, and counties must allow deadline extensions for reasonable cause. For building permits, counties may charge a single permit fee that also cannot exceed \$5,000 per megawatt, with a maximum of \$75,000. Again, counties can seek reimbursement for excess processing costs. Additionally, counties are permitted to require developers to obtain liability insurance at the start of construction, as long as the coverage aligns with industry standards for comparable energy projects.

The legislation allows counties to require vegetative screening around commercial energy facilities to buffer views from nonparticipating residences, but prohibits the use of earthen berms or similar structures. Any required vegetative screening must be commercially reasonable and limited in height so as not to interfere with the energy production of the solar facility. Initial screening cannot be required to exceed five feet in height at the time of installation or before the facility begins commercial operation. When determining screening requirements, counties must consider factors such as the facility's size and location, visibility from nearby residences, suitability of native plant species, cost and feasibility of installation and upkeep, and industry best practices for solar energy projects.

In sum, this provision preempts local bans or overly restrictive rules, creating consistent statewide standards for energy storage development while preserving local authority over siting—so long as it complies with the statute. Applications submitted before the law's effective date are exempt from its provisions.

The legislation restricts road districts and other local governments from imposing fees, fines, or other payments in connection with road use agreements for commercial wind or solar energy facilities unless those charges reflect actual expenses incurred for activities such as negotiating, executing, constructing, or implementing the agreement. Additionally, road use agreements cannot require facility owners to perform or fund road work unrelated to the construction or restoration of roads directly impacted by the facility's construction activities. This ensures that costs imposed on facility owners are limited to legitimate, project-related needs.

### **Solar Bill of Rights**

The proposed Division 5-46 of the Counties Code, titled the "Solar Bill of Rights," establishes statutory protections for property owners seeking to install solar energy systems and low-voltage solar-powered devices. The legislation defines low-voltage solar-powered devices as equipment such as doorbells, security systems, and lighting powered by a solar collector operating at less than 50 volts. These devices must be located entirely on the property owner's lot or within a common area without permanent attachment to shared property. The definition of a solar energy

system is broad and includes solar collectors, solar storage mechanisms, and any associated components used to generate electricity or heat or cool materials.

Under this new Division, counties are expressly prohibited from adopting ordinances or exercising powers that would prohibit or have the effect of prohibiting the installation of solar energy systems or low-voltage solar-powered devices. This provision creates a state-level preemption that limits local authority to regulate solar installations in ways that could impede their development. In any litigation arising under this Division, the prevailing party is entitled to recover reasonable attorney's fees and court costs, which may serve as a deterrent to local governments enacting unlawful restrictions.

The legislation addresses buildings with shared roofs, such as those in condominiums or governed by homeowners' associations. Generally, the Division does not apply to buildings over 60 feet tall or those with shared roofs governed by an association. However, exceptions are made when the solar energy system is installed entirely within a portion of the roof owned and maintained by the property owner, when all co-owners agree to the installation, or when the installation involves only low-voltage solar-powered devices.

The same provisions are mirrored in the Illinois Municipal Code, ensuring consistency across both county and municipal jurisdictions. As a result, counties will need to review and, where necessary, amend existing ordinances to comply with this state law. While counties retain authority over zoning and permitting, this Division restricts their ability to deny or restrict solar energy installations based on general policy preferences or aesthetic considerations. Overall, the legislation prioritizes access to solar technology and reflects a broader state-level effort to support clean energy development by limiting the ability of local governments to impose restrictive regulations on property owners.