



# Illinois State Association of Counties

## POSITION STATEMENT

JANUARY 1, 2025

### WIND AND SOLAR FACILITY LAW CHANGES

**SUPPORT**

On January 27, 2023, Governor JB Pritzker signed P.A. 102-1123 into law. The law preempts county authority to enact local ordinances that prohibit wind and solar projects. ISACO created a Wind and Solar Facility Task Force to focus on wind and solar siting and zoning issues. The intention of the Wind and Solar Facility Task Force is to discuss and propose policy recommendations to provide counties with more flexibility when complying with the law and ensure counties and their residents retain adequate protections from environmental and financial impacts.

#### Proposed Changes:

##### Farmland Drainage Plans

The proposed legislation authorizes counties or drainage districts to complete a farmland drainage plan review period within 120 days following submission of the plan to the county. Following approval, a wind/solar facility owner may cross or impact a drainage system.

##### Financial Assurance for Decommissioning

Counties and their taxpayers have a compelling interest to make sure that wind and solar facilities are decommissioned responsibly, ensure public safety and maintain agricultural integrity. The Illinois Renewable Energy Facilities Agricultural Mitigation Act mandates that commercial solar or wind energy facility owners provide a Deconstruction Plan to the county where the facility is located. The proposed legislation includes the following requirements to protect the interests of the county and public:

**Preparation and Submission:** The Deconstruction Plan must be prepared by a professional engineer chosen by the Facility Owner and comply with standards outlined in the Department of Agriculture's agricultural impact mitigation agreements.

**County Review:** The county must have its own professional engineer review and approve or reject the plan within 60 days of submission. Rejected plans must include specific reasons for rejection, and the Facility Owner may submit a revised plan, which must be reviewed and acted upon within 30 days.

**Periodic Updates:** The Facility Owner must re-evaluate and update the Deconstruction Plan every five years, starting from the fifth anniversary of the facility's commercial operation date. The updated plan must be reviewed and approved by the county.

**Financial Assurance:** Facility Owners must provide financial assurance sufficient to fully cover:

- Deconstruction costs in case of facility abandonment.
- Public safety or emergency repairs due to natural disasters or operational malfunctions.

The Facility Owner shall provide the County with the initial Financial Assurance to cover 100% of the estimated deconstruction costs prior to the Commercial Operation Date or Certification of Occupancy, whichever is earlier. Financial assurance must be established before operation begins and replenished if used for repairs or deconstruction.

**Cost Responsibility:** The Facility Owner is responsible for all costs related to preparing and reviewing the Deconstruction Plan and maintaining financial assurance.

### **Siting Decision Timetable**

The proposed legislation requires counties to make siting and permitting decisions not more than 60 days after the conclusion of the public hearing.

### **NPDES Permit Required**

The proposed legislation would protect waters from pollution by prohibiting the approval of siting or special use permits for commercial wind or solar energy facilities, or modifications to such permits, if the total proposed area of disturbance will exceed one acre of land, unless the Facility Owner obtains a National Pollution Discharge Elimination System (NPDES) permit from the Illinois Environmental Protection Agency (IEPA). Additionally, the Facility Owner must secure all required local stormwater and floodplain permits related to site development.

### **Berm Requirement for Solar Projects**

The proposed legislation authorizes counties to protect public aesthetics by requiring vegetative screening around commercial wind or solar energy facilities. Earth berms can be required for ground-based solar projects and counties can develop regulations governing the construction and maintenance of the permissible earth berms.

### **Application of LaSalle Zoning Standards**

The proposed legislation may establish siting standards for supporting facilities that preclude development of commercial wind energy facilities or commercial solar energy facilities if the county determines through evidence presented at a public hearing that the development is detrimental to the public health, safety or welfare of county residents or the development site or adjacent property consistent with the legal standard set forth in the Illinois Supreme Court case, La Salle National Bank of Chicago v. Cook County (1957).

### **Permitted User Option**

The proposed legislation authorizes counties to designate commercial wind energy facilities and commercial solar energy facilities as permitted uses for certain zoning districts.

### Residential Development Areas

The proposed legislation authorizes counties to deny a special use permit for a commercial solar or wind energy facility if the facility is within 1.5 miles of a municipality's planning boundary and either:

1. The facility conflicts with the municipality's adopted comprehensive plan; or
2. Significant infrastructure investments (e.g., roads, water, sewer, or utilities) have been made to support anticipated residential or commercial development in the area

### Commercial Solar Project Zoning Parity with Wind Projects

The proposed legislation requires that a commercial wind or solar energy facility proposed in an unincorporated area within a municipality's extra-territorial zoning jurisdiction must either be annexed to the municipality or comply with its zoning regulations. The municipality can waive this requirement by submitting a letter to the county.

**APPROVE SENSIBLE CHANGES TO THE WIND AND SOLAR FACILITY  
LAW TO ACHIEVE MORE FUNCTIONAL COMPLIANCE.**