The Wind and Solar Facility Resident Protection Act

The following content explains the provisions within ISACo's wind and solar facility legislation (HB 3563/SB 2416).

Authorize Counties and Drainage Districts to Review Drainage Plans

The legislation requires a commercial wind or solar energy facility to have a farmland drainage plan approved by the county and impacted drainage districts. The plan must be created by an independent consultant selected by the county and paid for by the facility developer. The county and impacted drainage districts have 60 days to review the plan before approval or rejection with recommendations for modification.

Why It's Necessary

Elected county officials have a responsibility to protect the land and environment on behalf of their constituents. An effective farmland drainage plan is critical because it enhances crop productivity, reduces soil erosion, manages stormwater runoff, and ensures compliance with environmental regulations. Current law does not allow county governments or drainage districts to approve the drainage plan or make recommendations for changes that would result in approval. The law allows the plan to be created by the facility developer. The only obligation is for the facility developer to file the plan with the county. This outsources a plan intended to protect against soil erosion and stormwater runoff to private entities. Without county government review and approval, who is looking out for the residents? The requested change in law would allow the county to select the consultant while requiring the facility owner to pay that cost.

Provide Counties with Sufficient Financial Assurance for Repairs and 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 legislation adds provisions from the Illinois Department of Agriculture's (IDOA) standard wind farm impact mitigation agreements, with changes, to the Illinois Counties Code.

Why It's Necessary

County governments represent the residents living in unincorporated areas. These residents should not be placed at risk from unaddressed safety issues or be expected to fund the cost of site mitigation if a facility is abandoned. The county has a compelling interest to have a professional engineer of its choice review the deconstruction plan and either approve or reject the plan with reasons why the plan was rejected so that the facility owner can address the issues identified. The private entity should not select the engineer to review its own plan.

The legislation requires financial assurance to cover 100% of the estimated deconstruction costs prior to the commercial operation date. This revenue can be used to cover public safety or emergency repairs not timely addressed by the facility owner and to pay for facility deconstruction if the facility is abandoned. County taxpayers should not fund these expenditures.

Allow Additional Time for Siting and Permitting Decisions

The legislation grants counties additional time (60 days instead of 30 days) after the conclusion of a public hearing to make a siting and permitting decision.

Why It's Necessary

Not every county has sufficient staff to conduct a thorough and proper review of a siting or special use permit. The additional time would accommodate these staffing differences. The proposal also removes a conflict between the existing solar/wind regulations and the existing regulations contained in 55 ILCS 5/5-12009 and 5/5-12014 (c) which grants certain townships and municipalities the right to file formal objections to map amendments and variances within specific timeframes.

Require NPDES Permit

The proposed legislation would prohibit 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.

Why It's Necessary

County lakes, rivers and streams must be protected from pollutants associated with the construction and maintenance of wind and solar energy facilities. Land clearing, grading and excavation can lead to erosion and sediment runoff into nearby waterways and pollutants (e.g., oils, chemicals and debris) entering water bodies. Additionally, stormwater runoff from access roads, substations and maintenance areas may contain pollutants like (e.g., oils, grease and metals). The proposal clarifies that counties can enforce their stormwater ordinances which they are

allowed to create under 55 ILCS 5/5-1062, 55 ILCS 5/5-1062.1, 55 ILCS 5/5-1062.2, 55 ILCS 5/5-1062.3, and applicable Federal law.

Keep Facilities Out of Residential Zoning Areas

The legislation proposes that commercial wind and solar energy facilities can only be located within zoning districts primarily intended for agricultural or manufacturing uses. It would also provide that a county may designate the facilities as permitted users for certain zoning districts. Furthermore, the legislation states that a county may deny a request for a special use permit for a facility in areas planned for residential development by either a county comprehensive plan or a municipal comprehensive plan.

Why It's Necessary

Locating wind and solar energy facilities in residential areas can create problems related to aesthetics, noise, property values, safety, land use conflicts and community dissatisfaction. County governments must have flexibility to avert these problems. The legislation clarifies that wind and solar facilities shall not be placed in areas intended to be residential and not agricultural, even though some agricultural activities might be allowed.

Application of LaSalle Zoning Standards

The proposed legislation makes facility siting approval by a county contingent on meeting the LaSalle Zoning Standards as determined through evidence presented at a public hearing. The legislation writes the LaSalle Standards into the Illinois Counties Code. The proposed legislation also clarifies that solar and wind special use permits shall be evaluated under the same criteria as other special use permits.

Why It's Necessary

The LaSalle Standards are a staple of Illinois zoning law and are applied on a case-by-case basis to determine the validity of zoning ordinances. The LaSalle factors serve as a framework to balance individual property rights with the community's interests in land use regulation. It is detrimental to county residents that this balancing framework does not exist in the current Illinois wind and solar energy facility siting law.

Berm Requirement for Solar Projects

The legislation authorizes counties to require vegetative screening around ground-based commercial solar energy facilities.

Why It's Necessary

Solar farms sometimes face opposition due to visual impact. Berms can be planted with vegetation to create natural buffers, reducing visibility and improving aesthetics. They also help absorb and deflect noise from inverters and other equipment, minimizing disturbances for nearby residents. They also help control runoff and manage drainage, preventing flooding around solar panel foundations and electrical components.

Establish Commercial Solar Project Zoning Parity with Wind Projects

The proposed legislation requires that a commercial wind or solar energy facility proposed for 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. The primary reason for the annexation requirement is to ensure the orderly development of municipalities, that wind and solar projects are effectively integrated into the municipality, and to avoid conflicts between wind and solar uses and uses planned by municipalities in their comprehensive plans.

Why It's Necessary

The current wind and solar facility siting law provides that wind energy facilities in an unincorporated area within a municipality's extra-territorial zoning jurisdiction must be annexed to the municipality or comply with its zoning regulations. The statute lacks similar language for solar energy facilities. This is being remedied within the proposed legislation. The primary reason for the annexation requirement is to ensure the orderly development of municipalities, that wind and solar projects are effectively integrated into the municipality, and to avoid conflicts between wind and solar uses and uses planned by municipalities in their comprehensive plans.