

Illinois Enacts New Law to Standardize Local Permitting for Renewable Energy Facilities

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On Friday, January 27, 2023, Illinois Governor JB Pritzker signed a new law, Public Act 102-1123, which refines county governments' ability to regulate new commercial wind and solar energy facilities. Specifically, PA 102-1123 prohibits counties from banning or establishing moratoriums on wind and solar development. The law also establishes siting and zoning standards, which county ordinances may not be more stringent than, and standardizes procedures for counties' review and approval of wind and solar siting or special use permits.

PA 102-1123 seeks to balance the interests of renewable developers, local residents hosting renewable projects, and the state's interest in transitioning from carbon-emitting power sources to renewable sources.

As we have noted in previous [posts](#), the Illinois Commerce Commission has identified local land use requirements as one of the major factors impacting the development of renewable energy facilities. By standardizing siting criteria, setting deadlines that counties must meet during the siting process, and preventing counties from adopting more restrictive requirements, PA 102-1123 aims to encourage and accelerate new renewable development throughout the state.

Applicability

PA 102-1123 applies, generally, to "commercial wind energy facilities" and "commercial solar energy facilities," which are defined, respectively, as wind energy systems with at least 500 kW nameplate generating capacity and ground installed solar energy systems intended primarily to create electricity for wholesale or retail sale. But, some projects will not be subject to the new law's provisions. Specifically, PA 102-1123 does not apply to applications for a wind or solar facility that were submitted to counties prior to the law's effective date or to facilities for which an Agricultural Impact Mitigation Agreement (AIMA) was submitted to the Illinois Department of Agriculture prior to the law's effective date.

Siting, Consultation, and Zoning Criteria

Pursuant to PA. 102-1123, counties may establish siting and construction requirements but, for the standards listed, a county may not make them more restrictive than those in the law. Counties must amend any existing ordinances that conflict with PA 102-1123 within 120 days (May 30, 2023).

The siting and construction criteria listed in the PA 102-1123 include the following:

Height limitations for wind: PA 102-1123 allows counties to establish a height limitation, measured at the blade tip, but this limitation can be no more restrictive than that allowed by a Federal Aviation Administration Determination of No Hazard.

Setback Distances and Measurement Locations Standardized:

	Wind	Solar
School, place of worship, daycare, library, community center	2.1 times the maximum blade tip height	150 feet
Nonparticipating residences	2.1 times the maximum blade tip height	150 feet
Boundary lines of nonparticipating property	1.1 times the maximum blade tip height	50 feet
Public rights of way	1.1 times the maximum blade tip height	50 feet

PA 102-1123 also sets forth the location from which all setbacks should be measured.

Shadow Flicker:

Counties may restrict shadow flicker from a turbine to no more than 30 hours per year at a nonparticipating residence, school, place of worship, daycare, library, or community center.

PA 102-1123 also includes provisions addressing decommissioning, road use agreements, sound limitations, fencing and screening, height restrictions for solar facilities, property value guarantees, vegetation management, and consultation with and approvals from other state and local agencies.

Siting Procedures

PA 102-1123 also aims to standardize the process for reviewing and approving applications for county siting approval.

Application Timing:

Facility owners must enter into an AIMA prior to the date of the required public hearing.

Public Hearing:

PA 102-1123 specifies that, if a county establishes siting or zoning standards for wind or solar facilities, it must hold a public meeting within 45 days of an application submission. This public meeting must follow the procedures of the Illinois Open Meetings Act.

Decision Timing:

Siting and permitting decisions must be made by a county within 30 days of the conclusion of the public hearing.

Approval Standards:

Counties must approve requests for siting or permitting of wind and solar facilities if they meet the requirements of PA 102-1123 and comply with state and federal law.

Fees:

PA 102-1123 prohibits counties from assessing unreasonable application fees for wind or solar facilities.

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National Law Review, Volumess XIII, Number 30

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