

Senate Study Bill 3169 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON BROWN)

A BILL FOR

1 An Act relating to the siting and operation of certain wind
2 energy conversion facilities.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 476.53A, Code 2024, is amended to read
2 as follows:

3 **476.53A Renewable electric power generation.**

4 1. It is the intent of the general assembly to encourage
5 the development of renewable electric power generation. It
6 is also the intent of the general assembly to encourage the
7 use of renewable power to meet local electric needs and the
8 development of transmission capacity to export wind power
9 generated in Iowa.

10 2. To implement the intent of the general assembly and
11 promote uniformity, the standards in this section shall
12 apply to the approval by local authorities of all wind energy
13 conversion facilities proposed after January 1, 2025.

14 3. For purposes of this section, unless the context
15 otherwise requires:

16 a. "Abutting dwelling" means an occupied building or
17 structure used primarily for human habitation that is located
18 on nonparticipating property.

19 b. "Community building" means any one or more of the
20 following buildings that is existing and occupied on the date
21 that the application for approval, rezoning, or a special or
22 conditional use permit is filed with the county: a school, a
23 place of worship, a day care facility, a public library, or a
24 community center.

25 c. "Local authority" means a city as defined in section
26 362.2 or a county as provided in chapter 331.

27 d. "Nonparticipating property" means any real property owned
28 by a person who has not granted written permission, consent,
29 an easement, or other similar agreement pertaining to a wind
30 energy conversion facility on such property.

31 e. "Public road right-of-way" means the same as defined in
32 section 306.3.

33 f. "Railroad right-of-way" means the same as defined in
34 section 476.27.

35 g. "Repowering" means the same as defined in section 476.53.

1 h. "Unoccupied structure" means a building or structure that
2 is not occupied or used primarily for human habitation at the
3 time of siting.

4 i. "Wind energy conversion facility" or "facility" means a
5 wind energy conversion facility, as defined in section 476C.1,
6 or a wind turbine that is part of a wind energy conversion
7 system, that has a nameplate generating capacity greater than
8 one hundred kilowatts.

9 4. a. A local authority may determine setback standards
10 for wind energy conversion facilities that, notwithstanding any
11 statute or regulation to the contrary, shall be no greater than
12 and shall not include any setback requirements beyond those in
13 this subsection:

14 (1) The facility shall be sited three times the total
15 height of a wind energy conversion facility to be constructed
16 on a proposed facility from any existing abutting dwelling or
17 community building.

18 (2) The facility shall be sited one and one-tenth times
19 the total height of a wind energy conversion facility to
20 be constructed on a proposed facility from any existing
21 nonparticipating property.

22 (3) The facility shall be sited one and one-tenth times
23 the total height of a wind energy conversion facility to be
24 constructed on a proposed facility from any existing overhead
25 utility line, electric substation, public road right-of-way,
26 railroad right-of-way, or unoccupied structure.

27 b. For purposes of this subsection, the facility site
28 distance shall be measured from the center of the wind energy
29 conversion facility foundation to the nearest point of the
30 abutting dwelling, community building, nonparticipating
31 property, overhead utility line, electric substation, public
32 road right-of-way, railroad right-of-way, or unoccupied
33 structure.

34 c. For purposes of this subsection, the total height of
35 a wind energy conversion facility shall be measured as the

1 distance from ground level to the tip of the wind energy
2 conversion facility's blade at its highest vertical point.

3 d. A local authority must provide a process for the owner of
4 any abutting dwelling, nonparticipating property, or community
5 building to waive the standards in this section or those
6 adopted by a local authority.

7 5. A local authority may only implement the following
8 additional standards and only to the extent specified in this
9 subsection:

10 a. A shadow flicker standard that is no more restrictive
11 than thirty hours per year under planned operating conditions
12 as indicated by industry standard computer modeling measured
13 from an abutting dwelling or community building.

14 b. A sound limitation that is no more restrictive than
15 a maximum forty-seven decibel sound from the wind energy
16 conversion facility as measured at an existing abutting
17 dwelling or community building. Decibel modeling shall use the
18 A-weighted scale as designed by the American national standards
19 institute.

20 c. A requirement that the applicant of a proposed wind
21 energy conversion facility shall agree to repair or replace any
22 damaged drainage infrastructure if directly attributable to the
23 construction or operation of the facility.

24 6. A local authority must use reasonable estimates of the
25 cost of approving an application for a facility, which shall
26 not exceed one thousand dollars per wind energy conversion
27 system or one hundred dollars per wind energy conversion
28 facility, whichever is greater.

29 7. A local authority shall not prohibit or regulate testing
30 activities undertaken by a wind energy conversion facility
31 owner for purposes of determining the suitability of the
32 placement of a wind energy conversion facility.

33 8. Ordinances, limitations, or other requirements imposed
34 after an application for approval, rezoning, or a special or
35 conditional use permit for a wind energy conversion facility

1 has been submitted or previously approved shall not be
2 construed to limit or impair the construction, operation, or
3 maintenance of the wind energy conversion facility.

4 9. A local authority shall not prohibit a landowner from
5 waiving any requirements under this section by the conveyance
6 of an easement or other property interest.

7 10. a. A local authority may require that the owner of
8 the proposed wind energy conversion facility file with the
9 county recorder of the county or counties in which the proposed
10 facility will be located a decommissioning plan outlining
11 measures that will be taken to return the land to a reasonably
12 similar state to the condition that existed before construction
13 of the wind energy conversion facility. If the proposed
14 facility will be located within two miles of the corporate
15 limits of a city, the owner of the proposed facility may also
16 be required to file the plan with the city clerk of the city. A
17 local authority shall not require a revision or amendment of
18 a decommissioning plan.

19 b. A local authority may require the owner to provide
20 in the decommissioning plan proof of financial assurance to
21 fund decommissioning efforts, which assurance is calculated
22 by an independent third party as the estimate costs of
23 decommissioning, inclusive of net salvage value, no earlier
24 than the following schedule:

25 (1) Five percent of determined decommissioning costs
26 committed by the initial commercial operation date.

27 (2) One hundred percent of determined decommissioning costs
28 committed by the fifteenth year of commercial operation.

29 c. After the fifteenth year of commercial operation, the
30 owner of the wind energy conversion facility may reestimate the
31 cost of decommissioning, inclusive of net salvage value, using
32 an independent third party for the purpose of redetermining the
33 amount required for financial assurance.

34 d. Evidence of financial security may be in the form of a
35 surety bond, collateral bond, parent guaranty, cash, cashier's

1 check, certificate of deposit, bank joint custody receipt, or
2 other approved negotiable instrument.

3 e. This subsection shall not apply to a wind energy
4 conversion facility owned or operated by a public utility
5 regulated by the Iowa utilities board.

6 11. A wind energy conversion facility shall be presumed
7 abandoned if the facility fails to operate for more than
8 twenty-four consecutive months without generating energy,
9 excluding repowering or required maintenance events or force
10 majeure events outside of the owner's control. The owner of
11 the abandoned facility shall be responsible for the removal of
12 the facility, including the removal of infrastructure four feet
13 below ground level and subject to any reasonable additional
14 conditions of a decommissioning plan filed with the local
15 authority.

16 12. a. This section shall not apply to a wind energy
17 conversion facility that has a nameplate capacity of
18 twenty-five or more megawatts on any single gathering line
19 and if the facility has applied for certification pursuant to
20 chapter 476A.

21 b. This section shall not apply to a wind energy conversion
22 facility that is operating or has submitted an application for
23 the issuance of permits on or before the effective date of this
24 Act.

25 c. This section shall not apply to the repowering of a wind
26 energy conversion facility existing on or before January 1,
27 2025.

28 13. a. A request for approval, rezoning, or a special or
29 conditional use permit for a wind energy conversion facility or
30 modification of an approved siting, rezoning, or conditional
31 or special use permit, shall be approved if the request is
32 in compliance with this section and regulations of local
33 authorities that are not inconsistent with this section.

34 b. A local authority must approve, approve with
35 modifications, or deny a request for approval, rezoning, or a

1 special or conditional use permit for a wind energy conversion
2 facility or modification of an approved rezoning or conditional
3 or special use permit within one hundred twenty days of the
4 submission of an application.

5 c. Denial of an application for approval, rezoning, or a
6 special or conditional use permit by a local authority must
7 be based on substantial evidence in the record of material
8 noncompliance with one or more specific provisions of this
9 section or regulations of local authorities that are not
10 inconsistent with this section. An appeal of such a denial by
11 an adversely affected party may be brought by certiorari as
12 provided in sections 335.18 and 335.19. The reviewing court
13 shall expedite the proceeding to the extent practicable.

14 14. a. A local authority shall not adopt regulations that
15 explicitly or implicitly disallow a wind energy conversion
16 facility from being developed or operated in any district zoned
17 to allow agricultural or industrial use.

18 b. A local authority may place a temporary moratorium on
19 the installation of a wind energy conversion facility for the
20 purpose of adopting new regulations that are consistent with
21 this section. A temporary moratorium may not be imposed for a
22 period longer than one hundred twenty days.

23 c. Nothing in this section requires a local authority
24 to adopt standards for approval of wind energy conversion
25 facilities.

26 15. If any local authority has a standard in effect on or
27 after the effective date of this Act that does not comply with
28 the provisions in this section, the local authority must amend
29 the standard to comply with this section by December 31, 2024.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with
32 the explanation's substance by the members of the general assembly.

33 This bill relates to siting and operation of certain wind
34 energy conversion facilities.

35 The bill creates standard-making ability for local

1 authorities approving a wind energy conversion facility
2 (facility) proposed after January 1, 2025.

3 The bill sets guidelines for a local authority to implement
4 a facility setback standard, which shall include a facility's
5 distance from specified existing buildings based on the
6 facility's height. The local authority must include a process
7 for an owner of an abutting dwelling, nonparticipating
8 property, or community building to waive the setback standards.

9 The bill includes additional standards a local authority
10 may implement including shadow flicker standards, sound
11 limitations, and a requirement that an applicant for a proposed
12 facility shall agree to repair any damages caused by the
13 facility.

14 The bill requires a local authority to utilize reasonable
15 estimates for application approval costs. A local authority
16 shall not prohibit or regulate a facility testing the
17 suitability of a facility placement. Any regulations enacted
18 after the application for a facility permit shall not limit the
19 construction, operation, or maintenance of that facility. A
20 local authority shall not prohibit a landowner from waiving
21 requirements by conveyance of an easement.

22 The bill provides that a local authority may require a
23 facility that is not owned or operated by a public utility
24 regulated by the Iowa utilities board to file a decommissioning
25 plan including certain measures. The local authority is
26 prohibited from requiring a facility to provide a revision or
27 amendment of a decommissioning plan.

28 The bill requires a facility to be presumed abandoned if
29 the facility has not been in operation for 24 months, with
30 some exceptions. The owner of the abandoned facility is
31 responsible for removing the facility and is subject to any
32 other reasonable conditions in the decommissioning plan if
33 applicable.

34 The bill shall not apply to a facility with a nameplate
35 capacity of 25 or more megawatts and that has applied for

1 certification under Code chapter 476A, a facility that is
2 currently operating or has applied for certification before the
3 enactment of the bill, or the repowering of a facility existing
4 on or before January 1, 2025.

5 The bill requires a local authority to approve a request
6 by a facility if the request is in compliance with the bill.
7 A local authority shall issue a decision on a request by a
8 facility within 120 days of the request submission. The denial
9 of a request shall be supported by substantial evidence of
10 noncompliance by the facility.

11 The bill prohibits a local authority from disallowing the
12 development of a facility in an agricultural or industrial
13 district. If a local authority has enacted a standard in
14 effect on or after the effective date of the bill that does
15 not comply with the bill, the local authority must amend the
16 standard to comply with the bill by December 31, 2024.