

Senate Study Bill 3178 - Introduced

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

A BILL FOR

1 An Act relating to wind energy conversion facilities, including
2 requirements for development, construction, and operation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **476.53B Wind energy conversion**
2 **facilities — requirements.**

3 1. As used in this section:

4 a. "Applicant" means any person, firm, corporation,
5 partnership, limited liability company, or governmental
6 subdivision seeking to develop, construct, or operate a wind
7 energy conversion facility, as defined in section 476C.1, in
8 Iowa.

9 b. "Karst topography" means terrain characterized by
10 sinkholes, voids, caverns, disappearing streams, or other
11 features produced by the dissolution of carbonate rocks.

12 c. "Licensed surveyor" means a professional land surveyor
13 licensed under chapter 542B with demonstrated experience in
14 subsurface and geological hazard evaluation.

15 d. "Material damage" means direct physical damage exceeding
16 one hundred dollars in repair costs or any event causing
17 collapse or functional failure of a well, septic system, lagoon,
18 slurry containment, or structural foundation, or contamination of
19 groundwater or a cave system.

20 e. "Watershed" means the hydrological area in which surface
21 water or groundwater drains toward a common outlet.

22 f. "Wind energy conversion facility" means the same as
23 defined in section 476C.1.

24 2. a. An applicant shall commission a subsurface and
25 environmental survey by a licensed surveyor that must be
26 submitted prior to issuance of any state or local construction
27 permit. The survey must address the likelihood of all the
28 following:

29 (1) Disturbance to karst topography or related subsurface
30 formations from construction or operation.

31 (2) That any well, septic system, waste lagoon, holding pond,
32 or liquid containment structure will be disturbed by vibrations
33 or subsurface pressures, and whether such disturbance may result
34 in material damage, including breach of fecal slurry lagoons
35 causing contaminant entry into aquifers.

1 (3) Contamination to any cave system, groundwater conduit, or
2 ecological area supporting endangered or threatened species.

3 (4) That foundations of existing buildings within one mile of
4 the proposed site will be disturbed or impaired.

5 b. The survey report shall be submitted to the county board
6 of supervisors, the department of natural resources, and the Iowa
7 utilities commission, and shall be made available to the public.

8 3. An applicant shall obtain and maintain third-party
9 insurance against any reasonably foreseeable loss identified
10 in the survey report required under subsection 2 throughout
11 construction and operation. The policy shall include all of the
12 following requirements:

13 a. Name all landowners within the affected watershed and the
14 state of Iowa as additional insureds and loss payees.

15 b. Minimum coverage limits sufficient to cover full
16 replacement value of any potential loss or contamination
17 identified in the survey, as established by rule by the insurance
18 division in the department of commerce.

19 4. Prior to approval of construction, the applicant shall
20 obtain an independent legal opinion from an attorney licensed
21 in Iowa and unaffiliated with the applicant that affirms the
22 proposed project does not constitute a nuisance under chapter
23 657 or other applicable law. The opinion must be filed with
24 the county board of supervisors and the department of natural
25 resources.

26 5. a. The board of supervisors shall not issue a
27 construction permit until the applicant makes a showing that,
28 more likely than not, considering all foreseeable benefits and
29 costs, the project will confer a net benefit to county residents.
30 In deciding whether to issue a permit, the board of supervisors
31 may consider expert testimony, economic studies, environmental
32 assessments, and the survey report required under subsection 2.

33 b. Before issuing a construction permit, the board of
34 supervisors shall hold not less than one public hearing to
35 discuss the application.

1 c. The board of supervisors's decision is subject to judicial
2 review under chapter 17.

3 6. Compliance with this section is required for any permit
4 or authorization under chapter 476A or 476C, or other applicable
5 provisions relating to wind energy conversion facilities.

6 7. a. A violation of this section or rules adopted pursuant
7 to this section constitutes a public nuisance.

8 b. A person in violation of this section is subject to a
9 civil penalty of not less than five thousand dollars per day
10 during which the violation occurs.

11 c. The attorney general or the county attorney for the county
12 in which the project is located may bring an action to enjoin
13 violations or recover damages.

14 8. a. Any person aggrieved by a violation of this section
15 may bring a civil action in district court against any person who
16 violates or participates in a violation of this section.

17 b. A civil action under this subsection may be brought
18 against any of the following:

19 (1) The applicant or developer.

20 (2) Any landowner who grants an easement, lease, or
21 other property interest for the construction, installation, or
22 operation of a wind energy conversion facility in violation of
23 this section.

24 (3) The manufacturer of any wind turbine or component thereof
25 installed in violation of this section.

26 (4) Any person who installs, erects, or assembles a wind
27 turbine or wind energy conversion facility in violation of this
28 section.

29 (5) Any construction company, contractor, or subcontractor
30 involved in the construction or installation of a wind energy
31 conversion facility in violation of this section.

32 (6) Any worker, employee, or agent who participates in
33 the construction, installation, or operation of a wind energy
34 conversion facility in violation of this section.

35 (7) Any other person who knowingly participates in,

1 facilitates, or aids in a violation of this section.

2 c. A prevailing plaintiff in an action under this subsection
3 may recover all of the following:

4 (1) Actual damages sustained.

5 (2) Damages of not less than ten thousand dollars per
6 violation.

7 (3) Injunctive relief, including an order to cease
8 construction or operation.

9 (4) Reasonable attorney fees and court costs.

10 d. All persons found liable under this subsection shall be
11 jointly and severally liable for all damages awarded.

12 e. An action under this subsection shall be commenced within
13 fifteen years of the date the plaintiff discovered or reasonably
14 should have discovered the violation or resulting injury,
15 whichever is later.

16 f. The remedies provided under this subsection are cumulative
17 and shall not be construed to limit any other remedy available at
18 law or in equity.

19 g. A contractual provision purporting to waive rights under
20 this section shall be void and unenforceable.

21 EXPLANATION

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

24 This bill relates to wind energy conversion facilities,
25 including requirements for development, construction, and
26 operation.

27 The bill requires an applicant for a wind energy conversion
28 facility to commission a subsurface and environmental survey
29 conducted by a licensed surveyor prior to the issuance of
30 any local or state construction permit. The survey must
31 evaluate the likelihood that construction or operation will
32 disturb karst topography or related subsurface formations; cause
33 vibration or subsurface pressure impacts to wells, septic
34 systems, waste lagoons, holding ponds, or liquid containment
35 structures; contaminate cave systems, groundwater, or ecological

1 areas supporting endangered or threatened species; or impair the
2 foundations of existing buildings within one mile of the proposed
3 site. The survey report must be submitted to the county board of
4 supervisors (board), the department of natural resources, and the
5 Iowa utilities commission and must be made publicly available.

6 The bill requires an applicant to obtain and maintain
7 third-party insurance covering reasonably foreseeable losses
8 identified in the survey report throughout construction and
9 operation and including certain provisions.

10 The bill requires an applicant to obtain an independent legal
11 opinion from an attorney licensed in Iowa and unaffiliated
12 with the applicant affirming that the proposed project does not
13 constitute a nuisance under current law.

14 The bill prohibits issuance of a construction permit unless
15 the applicant demonstrates before the board that, considering
16 foreseeable benefits and costs, the project is more likely than
17 not to confer a net benefit to county residents. The board
18 may consider expert testimony, economic studies, environmental
19 assessments, and the survey report. The bill requires the board
20 to hold at least one public hearing prior to issuing a permit.

21 Compliance with the bill is required for any permit or
22 authorization relating to wind energy conversion facilities under
23 applicable law.

24 A violation of the bill or rules adopted under it constitutes
25 a public nuisance and is punishable by civil penalties of not
26 less than \$5,000 per day for violations. The attorney general
27 or a county attorney may bring actions to enjoin violations or
28 recover damages.

29 The bill authorizes any person aggrieved by a violation to
30 bring a civil action in district court against certain parties.
31 The bill allows recovery of actual damages, statutory damages,
32 injunctive relief, attorney fees, and court costs, and provides
33 for joint and several liability. The bill establishes limitation
34 periods for bringing civil actions and provides that contractual
35 provisions purporting to waive rights are void and unenforceable.