

**House File 2446 - Introduced**

HOUSE FILE 2446

BY THOMSON

**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:

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,  
18 lagoon, slurry containment, or structural foundation, or  
19 contamination of 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  
32 pond, or liquid containment structure will be disturbed  
33 by vibrations or subsurface pressures, and whether such  
34 disturbance may result in material damage, including breach of  
35 fecal slurry lagoons causing contaminant entry into aquifers.

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

3 (4) That foundations of existing buildings within one mile  
4 of 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  
7 Iowa utilities commission, and shall be made available to the  
8 public.

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

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

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

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

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

35 *b.* Before issuing a construction permit, the board of

1 supervisors shall hold not less than one public hearing to  
2 discuss the application.

3 *c.* The board of supervisors's decision is subject to  
4 judicial review under chapter 17.

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

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

11 *b.* A person in violation of this section is subject to a  
12 civil penalty of not less than five thousand dollars per day  
13 during which the violation occurs.

14 *c.* The attorney general or the county attorney for the  
15 county in which the project is located may bring an action to  
16 enjoin violations or recover damages.

17 8. *a.* Any person aggrieved by a violation of this section  
18 may bring a civil action in district court against any person  
19 who violates or participates in a violation of this section.

20 *b.* A civil action under this subsection may be brought  
21 against any of the following:

22 (1) The applicant or developer.

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

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

29 (4) Any person who installs, erects, or assembles a wind  
30 turbine or wind energy conversion facility in violation of this  
31 section.

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

35 (6) Any worker, employee, or agent who participates in

1 the construction, installation, or operation of a wind energy  
2 conversion facility in violation of this section.

3 (7) Any other person who knowingly participates in,  
4 facilitates, or aids in a violation of this section.

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

7 (1) Actual damages sustained.

8 (2) Damages of not less than ten thousand dollars per  
9 violation.

10 (3) Injunctive relief, including an order to cease  
11 construction or operation.

12 (4) Reasonable attorney fees and court costs.

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

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

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

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

24 EXPLANATION

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

27 This bill relates to wind energy conversion facilities,  
28 including requirements for development, construction, and  
29 operation.

30 The bill requires an applicant for a wind energy conversion  
31 facility to commission a subsurface and environmental survey  
32 conducted by a licensed surveyor prior to the issuance of any  
33 local or state construction permit. The survey must evaluate  
34 the likelihood that construction or operation will disturb  
35 karst topography or related subsurface formations; cause

1 vibration or subsurface pressure impacts to wells, septic  
2 systems, waste lagoons, holding ponds, or liquid containment  
3 structures; contaminate cave systems, groundwater, or  
4 ecological areas supporting endangered or threatened species;  
5 or impair the foundations of existing buildings within one mile  
6 of the proposed site. The survey report must be submitted to  
7 the county board of supervisors (board), the department of  
8 natural resources, and the Iowa utilities commission and must  
9 be made publicly available.

10 The bill requires an applicant to obtain and maintain  
11 third-party insurance covering reasonably foreseeable losses  
12 identified in the survey report throughout construction and  
13 operation and including certain provisions.

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

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

26 Compliance with the bill is required for any permit or  
27 authorization relating to wind energy conversion facilities  
28 under applicable law.

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

34 The bill authorizes any person aggrieved by a violation  
35 to bring a civil action in district court against certain

1 parties. The bill allows recovery of actual damages, statutory  
2 damages, injunctive relief, attorney fees, and court costs, and  
3 provides for joint and several liability. The bill establishes  
4 limitation periods for bringing civil actions and provides that  
5 contractual provisions purporting to waive rights are void and  
6 unenforceable.