



State of Wisconsin  
2011 - 2012 LEGISLATURE

January 2011 Special Session



LRB-1017/1  
MDK:wlj:rs

## ASSEMBLY BILL 9

January 24, 2011 - Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Scott Walker and Representative Jacque. Referred to Committee on Energy and Utilities.

1     **AN ACT** *to renumber* 196.378 (4g) (a) 1.; *to amend* 196.378 (4g) (b) and 196.378  
2           (4g) (e); and *to create* 196.378 (4g) (a) 1g., 196.378 (4g) (a) 2g., 196.378 (4g) (a)  
3           2r., 196.378 (4g) (a) 5., 196.378 (4g) (am), 196.378 (4g) (br), 196.378 (4g) (c) 5.,  
4           196.378 (4g) (c) 6., 196.378 (4g) (c) 7. and 196.378 (4g) (dm) of the statutes;  
5           **relating to:** requirements for wind energy systems, providing an exemption  
6           from emergency rule procedures, and granting rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the Public Service Commission (PSC), with the advice of the wind siting council, must promulgate rules specifying the restrictions that a city, village, town, or county may impose on the installation or use of a “wind energy system,” which is defined as equipment and associated facilities that convert and then store or transfer wind energy into usable forms of energy. The restrictions must satisfy certain conditions, including preserving or protecting the public health or safety and not significantly increasing the cost of a wind energy system or significantly decreasing its efficiency. In addition, the subject matter of the rules must include setback requirements and decommissioning, and may include any of the following: visual appearance, lighting, electrical connections to the power grid, maximum audible sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, or television signals, or other matters. Current law prohibits a city, village, town, or county from placing a restriction on the

installation or use of a wind energy system that is more restrictive than the PSC's rules.

This bill imposes additional requirements on the PSC's rules. The bill requires that, if a PSC rule involves a person who is affected by a wind energy system, including a rule that requires written notice, the rule must ensure that such a person includes an "affected owner," which the bill defines as the owner of property located within one-half mile of property on which a wind energy system is installed or proposed to be installed. In addition, the rules must allow an affected owner who has entered into an agreement with an owner or operator of a wind energy system regarding the installation or use of the wind energy system to terminate the agreement upon giving written notice of the termination no later than 10 working days after entering into the agreement. Also, the rules must require any individual who negotiates an agreement with an affected owner on behalf of an owner or operator regarding an interest in real estate related to the installation or use of a wind energy system to make a written disclosure that the individual is licensed as a real estate broker or is exempt from such licensure. The rules must also require inclusion of the written disclosure as an addendum to such an agreement. Additionally, the rules must require an owner or operator to provide a copy of a brochure prepared by the PSC to an affected owner prior to entering into an agreement with the affected owner regarding the installation or use of the wind energy system. The brochure must describe wind energy systems, requirements under state law applicable to wind energy systems, including any provisions of the PSC's rules that allow for waiver of any such requirements, and the possible impacts of wind energy systems on property owners, including affected owners.

In addition, the bill eliminates the requirement for the PSC to promulgate rules regarding setback requirements, and requires instead that the owners of certain wind energy systems comply with setback requirements specified in the bill. The bill's setback requirements apply to the owner of a "large wind energy system," which the bill defines as a wind energy system that has a total installed nameplate capacity of more than 300 kilowatts and that consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. The bill defines the owner of a large wind energy system as any of the following: 1) a person with a direct ownership interest in such a system, regardless of whether the person was involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the system; or 2) a person acting as a developer of a large wind energy system by acquiring the necessary rights, permits, and approvals for or by planning for the construction and operation of the system, regardless of whether the person will own or operate the system. The foregoing definition is similar to a definition in rules promulgated by the PSC.

Under the bill, the owner of a large wind energy system must design and construct the system so that the setback distance is at least 1,800 feet. However, the bill allows for a setback distance of less than 1,800 feet if the owners of all of the following agree in writing: 1) properties adjoining the property on which the large wind energy system is located; and 2) properties separated only by a right-of-way from the property on which the large wind energy system is located. The bill also

specifies that setback distance must be measured as a straight line from the vertical center line of the wind turbine tower of the large wind energy system to the nearest point on the property line of the property on which the large wind energy system is located. This requirement is similar to a requirement in rules promulgated by the PSC.

Current law requires the wind siting council to submit a report to the legislature every five years that describes the following: 1) peer-reviewed scientific research regarding the health impacts of wind energy systems; and 2) state and national regulatory developments regarding the siting of wind energy systems. The report must also include any recommendations for legislation. The bill requires the wind siting council to study the impacts of wind energy systems on property values and to include the results of its study in the report.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 1           **SECTION 1.** 196.378 (4g) (a) 1. of the statutes is renumbered 196.378 (4g) (a) 1r.
- 2           **SECTION 2.** 196.378 (4g) (a) 1g. of the statutes is created to read:
- 3           196.378 **(4g)** (a) 1g. “Affected owner” means the owner of property located
- 4           within one-half mile of property on which a wind energy system is installed or
- 5           proposed to be installed.
- 6           **SECTION 3.** 196.378 (4g) (a) 2g. of the statutes is created to read:
- 7           196.378 **(4g)** (a) 2g. “Large wind energy system” means a wind energy system
- 8           that has a total installed nameplate capacity of more than 300 kilowatts and that
- 9           consists of individual wind turbines that have an installed nameplate capacity of
- 10          more than 100 kilowatts.
- 11          **SECTION 4.** 196.378 (4g) (a) 2r. of the statutes is created to read:
- 12          196.378 **(4g)** (a) 2r. “Large wind energy system owner” means any of the
- 13          following:
- 14           a. A person with a direct ownership interest in a large wind energy system,
- 15          regardless of whether the person was involved in acquiring the necessary rights,

1 permits, and approvals or otherwise planning for the construction and operation of  
2 a large wind energy system.

3 b. At the time a large wind energy system is being developed, a person who is  
4 acting as a large wind energy system developer by acquiring the necessary rights,  
5 permits, and approvals for or by planning for the construction and operation of a  
6 large wind energy system, regardless of whether the person will own or operate the  
7 large wind energy system.

8 **SECTION 5.** 196.378 (4g) (a) 5. of the statutes is created to read:

9 196.378 (4g) (a) 5. "Working day" means each day except Saturday, Sunday, or  
10 a legal holiday under s. 995.20.

11 **SECTION 6.** 196.378 (4g) (am) of the statutes is created to read:

12 196.378 (4g) (am) 1. A large wind energy system owner shall design and  
13 construct a large wind energy system so that the setback distance is at least 1,800  
14 feet, unless the owners of all of the following properties agree in writing to a setback  
15 distance of less than 1,800 feet:

16 a. Properties that adjoin the property on which the large wind energy system  
17 is located.

18 b. Properties separated only by a right-of-way from the property on which the  
19 large wind energy system is located.

20 2. For purposes of this paragraph, setback distance shall be measured as a  
21 straight line from the vertical center line of the wind turbine tower of the large wind  
22 energy system to the nearest point on the property line of the property on which the  
23 large wind energy system is located.

24 **SECTION 7.** 196.378 (4g) (b) of the statutes is amended to read:

1           196.378 (4g) (b) The commission shall, with the advice of the wind siting  
2 council, promulgate rules that specify the restrictions a political subdivision may  
3 impose on the installation or use of a wind energy system consistent with the  
4 conditions specified in s. 66.0401 (1m) (a) to (c). The subject matter of these rules  
5 shall include ~~setback requirements that provide reasonable protection from any~~  
6 ~~health effects, including health effects from noise and shadow flicker, associated with~~  
7 ~~wind energy systems.~~ The subject matter of these rules shall also include  
8 decommissioning and may include visual appearance, lighting, electrical  
9 connections to the power grid, ~~setback distances~~, maximum audible sound levels,  
10 shadow flicker, proper means of measuring noise, interference with radio, telephone,  
11 or television signals, or other matters. A political subdivision may not place a  
12 restriction on the installation or use of a wind energy system that is more restrictive  
13 than these rules.

14           **SECTION 8.** 196.378 (4g) (br) of the statutes is created to read:

15           196.378 (4g) (br) Any rules promulgated under par. (b) that involve a person  
16 who is affected by a wind energy system, including rules requiring written notice,  
17 shall ensure that such a person includes an affected owner.

18           **SECTION 9.** 196.378 (4g) (c) 5. of the statutes is created to read:

19           196.378 (4g) (c) 5. Allow an affected owner who has entered into an agreement  
20 with the owner or operator of a wind energy system regarding the installation or use  
21 of the wind energy system to terminate the agreement upon giving written notice of  
22 the termination no later than 10 working days after entering into the agreement.

23           **SECTION 10.** 196.378 (4g) (c) 6. of the statutes is created to read:

24           196.378 (4g) (c) 6. Require the owner or operator of a wind energy system to  
25 provide a copy of the brochure specified in par. (dm) to an affected owner prior to

1 entering into an agreement with the affected owner regarding the installation or use  
2 of the wind energy system.

3 **SECTION 11.** 196.378 (4g) (c) 7. of the statutes is created to read:

4 196.378 (4g) (c) 7. Require any individual who negotiates an agreement with  
5 an affected owner on behalf of the owner or operator of a wind energy system  
6 regarding an interest in real estate related to the installation or use of the wind  
7 energy system to make a written disclosure that the individual is licensed as a real  
8 estate broker under ch. 452 or is exempt from such licensure. The rules shall also  
9 require inclusion of the written disclosure as an addendum to the agreement.

10 **SECTION 12.** 196.378 (4g) (dm) of the statutes is created to read:

11 196.378 (4g) (dm) The commission shall prepare and make available to the  
12 public a brochure that describes wind energy systems, requirements under state law  
13 applicable to wind energy systems, including any provisions of the commission's  
14 rules that allow for waiver of any such requirements, and the possible impacts of  
15 wind energy systems on property owners, including affected owners.

16 **SECTION 13.** 196.378 (4g) (e) of the statutes is amended to read:

17 196.378 (4g) (e) The wind siting council shall survey the peer-reviewed  
18 scientific research regarding the health impacts of wind energy systems and study  
19 state and national regulatory developments regarding the siting of wind energy  
20 systems. The wind siting council shall also study the impacts of wind energy systems  
21 on property values. No later than October 1, 2014, and every 5 years thereafter, the  
22 wind siting council shall submit a report to the chief clerk of each house of the  
23 legislature, for distribution to the appropriate standing committees under s. 13.172  
24 (3), describing the research and, regulatory developments, and property value

1 impacts, and including any recommendations of the council for legislation that is  
2 based on the research ~~and~~, regulatory developments, and property value impacts.

3 **SECTION 14. Nonstatutory provisions.**

4 (1) The public service commission shall submit in proposed form the rules that  
5 are necessary to comply with section 196.378 (4g) (br) of the statutes, as created by  
6 this act, and that are required under section 196.378 (4g) (c) 5., 6., and 7. of the  
7 statutes, as created by this act, to the legislative council staff under section 227.15  
8 (1) of the statutes no later than the first day of the 4th month beginning after the  
9 effective date of this subsection.

10 (2) The public service commission shall comply with section 196.378 (4g) (br)  
11 of the statutes, as created by this act, by using the procedure under section 227.24  
12 of the statutes to promulgate rules under section 196.378 (4g) (b) of the statutes, for  
13 the period before the effective date of the rules submitted under subsection (1), but  
14 not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject  
15 to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24  
16 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not required  
17 to provide evidence that promulgating rules under this subsection as emergency  
18 rules is necessary for the preservation of the public peace, health, safety, or welfare  
19 and is not required to provide a finding of emergency for rules promulgated under  
20 this subsection.

21 (3) Using the procedure under section 227.24 of the statutes, the public service  
22 commission shall promulgate rules required under section 196.378 (4g) (c) 5., 6., and  
23 7. of the statutes, as created by this act, for the period before the effective date of the  
24 rules submitted under subsection (1), but not to exceed the period authorized under  
25 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of

1 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,  
2 the public service commission is not required to provide evidence that promulgating  
3 rules under this subsection as emergency rules is necessary for the preservation of  
4 the public peace, health, safety, or welfare and is not required to provide a finding  
5 of emergency for rules promulgated under this subsection.

6 **SECTION 15. Initial applicability.**

7 (1) The treatment of section 196.378 (4g) (am) of the statutes first applies to  
8 large wind energy systems for which design or construction commences on the  
9 effective date of this subsection.

10 **SECTION 16. Effective date.**

11 (1) This act takes effect on the first day of the 4th month beginning after  
12 publication.

13 (END)