



2011 SENATE BILL 392

January 20, 2012 - Introduced by Senator LASEE, cosponsored by Representatives MURTHA, JACQUE, PRIDEMORE, LEMAHIEU, BIES, VAN ROY and KESTELL. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT to amend** 66.0401 (1m) (intro.), 66.0401 (4) (f) 1., 66.0401 (4) (g), 66.0401
2 (5) (a), 66.0401 (5) (d), 196.378 (4g) (b), 196.378 (4g) (c) 1., 196.491 (3) (d) (intro.)
3 and 196.491 (3) (dg); and **to create** 196.491 (1) (x) of the statutes; **relating to:**
4 setback requirements for wind energy systems.

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 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 creates an exception from this prohibition for setback requirements, as the bill allows a city, village, town, or county to impose a setback requirement that is more restrictive than the PSC’s rules. The bill also prohibits the PSC, which has jurisdiction over a wind energy system with a capacity of 100 megawatts or more, from issuing a certificate of public convenience and necessity for such a wind energy

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system unless the system is consistent with any applicable setback requirement that is more restrictive than the PSC's rules.

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

1 **SECTION 1.** 66.0401 (1m) (intro.) of the statutes is amended to read:

2 66.0401 **(1m)** AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) No Except for
3 restrictions regarding setback requirements, no political subdivision may place any
4 restriction, either directly or in effect, on the installation or use of a wind energy
5 system that is more restrictive than the rules promulgated by the commission under
6 s. 196.378 (4g) (b). No political subdivision may place any restriction, either directly
7 or in effect, on the installation or use of a solar energy system, as defined in s. 13.48
8 (2) (h) 1. g., or a wind energy system, unless the restriction satisfies one of the
9 following conditions:

10 **SECTION 2.** 66.0401 (4) (f) 1. of the statutes is amended to read:

11 66.0401 **(4)** (f) 1. Except as provided in subd. 2., a political subdivision may not
12 deny or impose a restriction, except a restriction regarding setback requirements, on
13 an application for approval unless the political subdivision enacts an ordinance that
14 is no more restrictive than the rules the commission promulgates under s. 196.378
15 (4g) (b).

16 **SECTION 3.** 66.0401 (4) (g) of the statutes is amended to read:

17 66.0401 **(4)** (g) A political subdivision that chooses to regulate wind energy
18 systems shall enact an ordinance, subject to sub. (6) (b), that is no more restrictive
19 than the applicable standards established by the commission in rules promulgated
20 under s. 196.378 (4g). This paragraph does not apply to the regulation of setback
21 requirements for wind energy systems.

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1 **SECTION 4.** 66.0401 (5) (a) of the statutes is amended to read:

2 66.0401 (5) (a) A decision of a political subdivision to determine that an
3 application is incomplete under sub. (4) (a) 1., or to approve, disapprove, or impose
4 a restriction upon a wind energy system, or an action of a political subdivision to
5 enforce a restriction on a wind energy system, may be appealed only as provided in
6 this subsection. This paragraph does not apply to a restriction regarding setback
7 requirements.

8 **SECTION 5.** 66.0401 (5) (d) of the statutes is amended to read:

9 66.0401 (5) (d) The commission may confine its review to the records it receives
10 from the political subdivision or, if it finds that additional information would be
11 relevant to its decision, expand the records it reviews. The commission shall issue
12 a decision within 90 days after the date on which it receives all of the records it
13 requests under par. (c), unless for good cause the commission extends this time
14 period in writing. If the commission determines that the political subdivision's
15 decision or enforcement action does not comply with the rules it promulgates under
16 s. 196.378 (4g) that are applicable or is otherwise unreasonable, the political
17 subdivision's decision shall be superseded by the commission's decision and the
18 commission may order an appropriate remedy.

19 **SECTION 6.** 196.378 (4g) (b) of the statutes is amended to read:

20 196.378 (4g) (b) The commission shall, with the advice of the wind siting
21 council, promulgate rules that specify the restrictions a political subdivision may
22 impose on the installation or use of a wind energy system consistent with the
23 conditions specified in s. 66.0401 (1m) (a) to (c). The subject matter of these rules
24 shall include setback requirements that provide reasonable protection from any
25 health effects, including health effects from noise and shadow flicker, associated with

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1 wind energy systems. The subject matter of these rules shall also include
2 decommissioning and may include visual appearance, lighting, electrical
3 connections to the power grid, ~~setback distances~~, maximum audible sound levels,
4 shadow flicker, proper means of measuring noise, interference with radio, telephone,
5 or television signals, or other matters. ~~A~~ Except for a restriction regarding setback
6 requirements, a political subdivision may not place a restriction on the installation
7 or use of a wind energy system that is more restrictive than these rules.

8 **SECTION 7.** 196.378 (4g) (c) 1. of the statutes is amended to read:

9 196.378 (4g) (c) 1. Specify the information and documentation to be provided
10 in an application for approval to demonstrate that a proposed wind energy system
11 complies with rules promulgated under par. (b) or any applicable setback
12 requirement that is more restrictive than rules.

13 **SECTION 8.** 196.491 (1) (x) of the statutes is created to read:

14 196.491 (1) (x) "Wind energy system" has the meaning given in s. 66.0403 (1)
15 (m).

16 **SECTION 9.** 196.491 (3) (d) (intro.) of the statutes is amended to read:

17 196.491 (3) (d) (intro.) Except as provided under ~~par.~~ pars. (dg) and (e) and s.
18 196.493, the commission shall approve an application filed under par. (a) 1. for a
19 certificate of public convenience and necessity only if the commission determines all
20 of the following:

21 **SECTION 10.** 196.491 (3) (dg) of the statutes is amended to read:

22 196.491 (3) (dg) In making a determination under par. (d) that applies to a large
23 electric generating facility, if the large electric generating facility is a wind energy
24 system, ~~as defined in s. 66.0403 (1) (m),~~ the commission shall consider whether
25 installation or use of the facility is consistent with the standards specified in the

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1 rules promulgated by the commission under s. 196.378 (4g) (b) or any applicable
2 setback requirement that is more restrictive than the rules. The commission may
3 not approve an application filed under par. (a) 1. for a wind energy system unless the
4 system is consistent with any applicable setback requirement that is more restrictive
5 than the rules.

6 **SECTION 11. Initial applicability.**

7 (1) The treatment of sections 66.0401 (1m) (intro.) and (4) (f) 1., 196.378 (4g)
8 (b) and (c) 1., and 196.491 (1) (x) and (3) (d) (intro.) and (dg) of the statutes first
9 applies to restrictions that a city, village, town, or county places on a wind energy
10 system on the effective date of this subsection.

11 (END)