

# State of Wisconsin



2009 Senate Bill 185

Date of enactment: **September 30, 2009**

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## 2009 WISCONSIN ACT 40

AN ACT *to renumber and amend* 66.0401 (1); *to amend* 66.0401 (2) and 66.0403 (1) (m); *to repeal and recreate* 196.378 (4) (title); and *to create* 15.797, 23.39, 66.0401 (1e), 66.0401 (3), 66.0401 (4), 66.0401 (5), 66.0401 (6), 196.378 (4g) and 196.491 (3) (dg) of the statutes; **relating to:** regulation of wind energy systems and granting rule-making authority.

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

**SECTION 1.** 15.797 of the statutes is created to read:

**15.797 Same; council. (1) WIND SITING COUNCIL.**

(a) In this subsection, "wind energy system" has the meaning given in s. 66.0403 (1) (m).

(b) There is created in the public service commission a wind siting council that consists of the following members appointed by the public service commission for 3-year terms:

1. Two members representing wind energy system developers.
2. One member representing towns and one member representing counties.
3. Two members representing the energy industry.
4. Two members representing environmental groups.
5. Two members representing realtors.
6. Two members who are landowners living adjacent to or in the vicinity of a wind energy system and who have not received compensation by or on behalf of owners, operators, or developers of wind energy systems.
7. Two public members.
8. One member who is a University of Wisconsin System faculty member with expertise regarding the health impacts of wind energy systems.

**SECTION 2.** 23.39 of the statutes is created to read:

**23.39 Placement of wind turbines.** The department shall identify areas in this state where wind turbines, if placed in those areas, may have a significant adverse effect on bat and migratory bird populations. The department shall maintain an Internet Web site that provides this information to the public and that includes a map of the identified areas.

**SECTION 3.** 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and 66.0401 (1m) (intro.), as renumbered, is amended to read:

66.0401 (1m) **AUTHORITY TO RESTRICT SYSTEMS LIMITED.** (intro.) No county, city, town, or village political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission under s. 196.378 (4g) (b). No political subdivision may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), unless the restriction satisfies one of the following conditions:

**SECTION 4.** 66.0401 (1e) of the statutes is created to read:

66.0401 (1e) **DEFINITIONS.** In this section:

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(a) "Application for approval" means an application for approval of a wind energy system under rules promulgated by the commission under s. 196.378 (4g) (c) 1.

(b) "Commission" means the public service commission.

(c) "Political subdivision" means a city, village, town, or county.

(d) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

**SECTION 5.** 66.0401 (2) of the statutes is amended to read:

66.0401 (2) **AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION.** ~~A county, city, village, or town~~ Subject to sub. (6) (a), a political subdivision may ~~provide by enact an ordinance for relating to~~ the trimming of vegetation that blocks solar energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s. 700.41 (2) (b), or that blocks wind from a wind energy system, ~~as defined in s. 66.0403 (1) (m).~~ The ordinance may include, ~~but is not limited to,~~ a designation of responsibility for the costs of the trimming. The ordinance may not require the trimming of vegetation that was planted by the owner or occupant of the property on which the vegetation is located before the installation of the solar or wind energy system.

**SECTION 6.** 66.0401 (3) of the statutes is created to read:

66.0401 (3) **TESTING ACTIVITIES.** A political subdivision may not prohibit or restrict any person from conducting testing activities to determine the suitability of a site for the placement of a wind energy system. A political subdivision objecting to such testing may petition the commission to impose reasonable restrictions on the testing activity.

**SECTION 7.** 66.0401 (4) of the statutes is created to read:

66.0401 (4) **LOCAL PROCEDURE.** (a) 1. Subject to subd. 2., a political subdivision that receives an application for approval shall determine whether it is complete and, no later than 45 days after the application is filed, notify the applicant about the determination. As soon as possible after receiving the application for approval, the political subdivision shall publish a class 1 notice, under ch. 985, stating that an application for approval has been filed with the political subdivision. If the political subdivision determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the political subdivision has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application for approval. If the political subdivision fails to determine whether an application for approval is complete within 45 days after the application is filed, the application shall be considered to be complete.

2. If a political subdivision that receives an application for approval under subd. 1. does not have in effect an ordinance described under par. (g), the 45-day time period for determining whether an application is complete, as described in subd. 1., does not begin until the first day of the 4th month beginning after the political subdivision receives the application. A political subdivision may notify an applicant at any time, after receipt of the application and before the first day of the 4th month after its receipt, that it does not intend to enact an ordinance described under par. (g).

3. On the same day that an applicant makes an application for approval under subd. 1. for a wind energy system, the applicant shall mail or deliver written notice of the application to the owners of land adjoining the site of the wind energy system.

4. A political subdivision may not consider an applicant's minor modification to the application to constitute a new application for the purposes of this subsection.

(b) A political subdivision shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval. The political subdivision's record shall conform to the commission's rules promulgated under s. 196.378 (4g) (c) 2.

(c) A political subdivision shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record under par. (b).

(b) A political subdivision's procedure for reviewing the application for approval shall conform to the commission's rules promulgated under s. 196.378 (4g) (c) 3.

(d) Except as provided in par. (e), a political subdivision shall approve or disapprove an application for approval no later than 90 days after the day on which it notifies the applicant that the application for approval is complete. If a political subdivision fails to act within the 90 days, or within any extended time period established under par. (e), the application is considered approved.

(e) A political subdivision may extend the time period in par. (d) if, within that 90-day period, the political subdivision authorizes the extension in writing. Any combination of the following extensions may be granted, except that the total amount of time for all extensions granted under this paragraph may not exceed 90 days:

1. An extension of up to 45 days if the political subdivision needs additional information to determine whether to approve or deny the application for approval.

2. An extension of up to 90 days if the applicant makes a material modification to the application for approval.

3. An extension of up to 90 days for other good cause specified in writing by the political subdivision.

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

2. A political subdivision may deny an application for approval if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development, as shown in a map that is adopted, as part of a comprehensive plan, under s. 66.1001 (2) (b) and (f), before June 2, 2009, or as shown in such maps after December 31, 2015, as part of a comprehensive plan that is updated as required under s. 66.1001 (2) (i). This subdivision applies to a wind energy system that has a nominal capacity of at least one megawatt.

(g) A political subdivision that chooses to regulate wind energy systems shall enact an ordinance, subject to sub. (6) (b), that is no more restrictive than the applicable standards established by the commission in rules promulgated under s. 196.378 (4g).

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

66.0401 (5) **PUBLIC SERVICE COMMISSION REVIEW.** (a) A decision of a political subdivision to determine that an application is incomplete under sub. (4) (a) 1., or to approve, disapprove, or impose a restriction upon a wind energy system, or an action of a political subdivision to enforce a restriction on a wind energy system, may be appealed only as provided in this subsection.

(b) 1. Any aggrieved person seeking to appeal a decision or enforcement action specified in par. (a) may begin the political subdivision's administrative review process. If the person is still aggrieved after the administrative review is completed, the person may file an appeal with the commission. No appeal to the commission under this subdivision may be filed later than 30 days after the political subdivision has completed its administrative review process. For purposes of this subdivision, if a political subdivision fails to complete its administrative review process within 90 days after an aggrieved person begins the review process, the political subdivision is considered to have completed the process on the 90th day after the person began the process.

2. Rather than beginning an administrative review under subd. 1., an aggrieved person seeking to appeal a decision or enforcement action of a political subdivision specified in par. (a) may file an appeal directly with the commission. No appeal to the commission under this subdivision may be filed later than 30 days after the decision or initiation of the enforcement action.

3. An applicant whose application for approval is denied under sub. (4) (f) 2. may appeal the denial to the commission. The commission may grant the appeal notwithstanding the inconsistency of the application for approval with the political subdivision's planned resi-

dential or commercial development if the commission determines that granting the appeal is consistent with the public interest.

(c) Upon receiving an appeal under par. (b), the commission shall notify the political subdivision. The political subdivision shall provide a certified copy of the record upon which it based its decision or enforcement action within 30 days after receiving notice. The commission may request of the political subdivision any other relevant governmental records and, if requested, the political subdivision shall provide such records within 30 days after receiving the request.

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

(e) In conducting a review under par. (d), the commission may treat a political subdivision's determination that an application under sub. (4) (a) 1. is incomplete as a decision to disapprove the application if the commission determines that a political subdivision has unreasonably withheld its determination that an application is complete.

(f) Judicial review is not available until the commission issues its decision or order under par. (d). Judicial review shall be of the commission's decision or order, not of the political subdivision's decision or enforcement action. The commission's decision or order is subject to judicial review under ch. 227. Injunctive relief is available only as provided in s. 196.43.

**SECTION 9.** 66.0401 (6) of the statutes is created to read:

66.0401 (6) **APPLICABILITY OF A POLITICAL SUBDIVISION OR COUNTY ORDINANCE.** (a) 1. A county ordinance enacted under sub. (2) applies only to the towns in the county that have not enacted an ordinance under sub. (2).

2. If a town enacts an ordinance under sub. (2) after a county has enacted an ordinance under sub. (2), the county ordinance does not apply, and may not be enforced, in the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

(b) 1. Subject to subd. 2., a county ordinance enacted under sub. (4) applies only in the unincorporated parts of the county.

2. If a town enacts an ordinance under sub. (4), either before or after a county enacts an ordinance under sub.

(4), the more restrictive terms of the 2 ordinances apply to the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

(c) If a political subdivision enacts an ordinance under sub. (4) (g) after the commission's rules promulgated under s. 196.378 (4g) take effect, the political subdivision may not apply that ordinance to, or require approvals under that ordinance for, a wind energy system approved by the political subdivision under a previous ordinance or under a development agreement.

**SECTION 10.** 66.0403 (1) (m) of the statutes is amended to read:

66.0403 (1) (m) "Wind energy system" means equipment and associated facilities that ~~converts~~ convert and then ~~stores~~ store or ~~transfers~~ transfer energy from the wind into usable forms of energy.

**SECTION 11.** 196.378 (4) (title) of the statutes is repealed and recreated to read:

196.378 (4) (title) RENEWABLE RESOURCE RULES.

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

196.378 (4g) WIND ENERGY SYSTEMS. (a) In this subsection:

1. "Application for approval" has the meaning given in s. 66.0401 (1e) (a).

2. "Decommissioning" means removing wind turbines, buildings, cables, electrical components, roads, and any other facilities associated with a wind energy system that are located at the site of the wind energy system and restoring the site of the wind energy system.

3. "Political subdivision" means a city, village, town, or county.

4. "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

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

(c) In addition to the rules under par. (b), the commission shall, with the advice of the wind siting council, promulgate rules that do all of the following:

1. Specify the information and documentation to be provided in an application for approval to demonstrate that a proposed wind energy system complies with rules promulgated under par. (b)

2. Specify the information and documentation to be included in a political subdivision's record of decision under s. 66.0401 (4) (b).

3. Specify the procedure a political subdivision shall follow in reviewing an application for approval under s. 66.0401 (4).

4. Specify the requirements and procedures for a political subdivision to enforce the restrictions allowed under par. (b).

(d) The commission shall promulgate rules requiring the owner of a wind energy system with a nominal operating capacity of at least one megawatt to maintain proof of financial responsibility ensuring the availability of funds for decommissioning the wind energy system upon discontinuance of use of the wind energy system. The rules may require that the proof can be established by a bond, deposit, escrow account, irrevocable letter of credit, or other financial commitment specified by the commission.

(e) The wind siting council shall survey the peer-reviewed scientific research regarding the health impacts of wind energy systems and study state and national regulatory developments regarding the siting of wind energy systems. No later than the first day of the 60th month beginning after the effective date of this paragraph ... [LRB inserts date], and every 5 years thereafter, the wind siting council shall submit a report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), describing the research and regulatory developments and including any recommendations of the council for legislation that is based on the research and regulatory developments.

**SECTION 13.** 196.491 (3) (dg) of the statutes is created to read:

196.491 (3) (dg) In making a determination under par. (d) that applies to a large electric generating facility, if the large electric generating facility is a wind energy system, as defined in s. 66.0403 (1) (m), the commission shall consider whether installation or use of the facility is consistent with the standards specified in the rules promulgated by the commission under s. 196.378 (4g) (b).

**SECTION 14. Nonstatutory provisions.**

(1) PUBLIC HEARINGS. The public service commission shall hold at least 2 public hearings prior to promulgating the rules required under section 196.378 (4g) of the statutes, as created by this act. The public service commission shall hold at least one of the hearings in Monroe County and at least one of the hearings in an area outside of Dane County and Monroe County in which developers

have proposed wind energy systems, as defined in section 66.0403 (1) (m) of the statutes, as affected by this act.

(2) WIND SITING COUNCIL MEMBERS.

(a) Notwithstanding the length of terms specified for the members of the wind siting council specified in section 15.797 (1) (b) of the statutes, as created by this act, the initial members shall be appointed for the following terms:

1. One member specified under section 15.797 (1) (b) 1., 2., 3., 4., 5., 6., and 7. of the statutes, as created by this act, for terms expiring on July 1, 2012.

2. The member specified under section 15.797 (1) (b) 8. of the statutes, as created by this act, for a term expiring on July 1, 2013.

3. One member specified under section 15.797 (1) (b) 1., 2., 3., 4., 5., 6., and 7. of the statutes, as created by this act for terms that expire on July 1, 2014.

(b) Notwithstanding section 15.797 (1) (b) 2. of the statutes, as created by this act, the initial member of the wind siting council specified under section 15.797 (1) (b) 2. of the statutes that is appointed under paragraph (a) 3. shall represent a town or county that has in effect on the effective date of this paragraph an ordinance regulating wind energy systems, as defined in section 66.0403 (1) (m) of the statutes, as affected by this act.

(3) DEPARTMENT OF NATURAL RESOURCES STUDY. The department of natural resources shall conduct a study to determine whether the department's statutory authority is sufficient to adequately protect wildlife and the environment from any adverse effect from the siting, construction, or operation of wind energy systems. In conducting the study, the department shall consider the authority of

other state agencies and political subdivisions to regulate the environmental impact of wind energy systems, including the authority of the public service commission under section 196.491 (3) (d) 3. and 4. of the statutes and of political subdivisions under section 66.0401 (1m) and (4) (g) of the statutes, as affected by this act. On or before the first day of the 13th month beginning after the effective date of this subsection, the department shall submit a report containing the results of the study to the legislature in the manner provided under section 13.172 (2) of the statutes. If the department's study concludes that the department's statutory authority is not sufficient to adequately protect wildlife and the environment from any adverse effect from the siting, construction, or operation of wind energy systems, the report shall include recommendations to the legislature for a bill that provides the department with such authority.

**SECTION 15. Initial applicability.**

(1) The public service commission review process for a political subdivision's decision or enforcement action under section 66.0401 (5) of the statutes, as created by this act, first applies to a local decision or action that is issued or initiated after the public service commission's rules under section 196.378 (4g) of the statutes, as created by this act, take effect.

(2) The treatment of section 196.491 (3) (dg) of the statutes, as created by this act, first applies to applications for certificates of public convenience and necessity that are received after the public service commission's rules under section 196.378 (4g) of the statutes, as created by this act, take effect.