

1981 Assembly Bill 62

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## CHAPTER 354 , Laws of 1981

AN ACT to amend 59.97 (1), 62.23 (7) (c) and 236.45 (1); and to create 59.99 (7) (d), 66.031, 66.032, 66.033, 236.13 (2) (d), 700.35 and 700.40 of the statutes, relating to renewable energy resources.

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

**SECTION 1. Findings and purpose.** (1) The legislature finds that:

(a) Diminishing supplies of nonrenewable energy resources threaten the physical and economic well-being of the citizens of this state who presently rely on such resources to maintain their homes, industries, businesses and institutions.

(b) Solar energy systems hold great promise for the future energy needs of this state because they use a renewable energy resource; because they require less capital, land, water and other resources needed for central-station generation of electricity; and because they do not pollute the state's water and air.

(c) The unsettled state of the law regarding the right to use of sunlight discourages capital investment in solar energy systems and impedes production of economically accessible solar energy hardware.

(d) Unless the law on solar access rights is clarified, the use of solar energy systems will remain limited.

(2) The legislature intends to:

(a) Remove legal impediments which discourage use of solar energy while providing for the protection of individual property rights, thereby promoting the public health, safety and welfare.

(b) Promote the use of solar energy systems and other renewable energy resource systems by codifying the right of individuals to negotiate and establish renewable energy resource easements, by clarifying the authority of, and encouraging, local governments to employ existing land use powers for protecting access rights to the wind and sun, by creating a procedure for issuance of solar access permits to owners and builders of active and passive solar energy systems and by encouraging local governments to grant special exceptions and variances for renewable energy resource systems.

SECTION 2. 59.97 (1) of the statutes is amended to read:

59.97 (1) **PURPOSE.** It is the purpose of this section to promote the public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ~~insure~~ ensure adequate highway, utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of landscape and man-made developments; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds. To accomplish this purpose the county board of any county may plan for the physical development and zoning of territory within the county as set forth in this section and shall incorporate therein the master plan adopted ~~pursuant to~~ under s. 62.23 (2) or (3) and the official map ~~adopted pursuant to s. 62.23 (6)~~ of any city or village ~~therein~~ in the county adopted under s. 62.23 (6).

SECTION 3. 59.99 (7) (d) of the statutes is created to read:

59.99 (7) (d) To grant special exceptions and variances for renewable energy resource systems. If the board denies an application for a special exception or variance for a renewable energy resource system, the board shall provide a written statement of its reasons for denying the application. In this paragraph, "renewable energy resource system" means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource.

SECTION 4. 62.23 (7) (c) of the statutes is amended to read:

62.23 (7) (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

SECTION 4m. 66.031 of the statutes is created to read:

**66.031 Regulation of solar energy systems.** No county, city, town or village may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined under s. 101.57 (8) (b), unless the restriction satisfies one of the following conditions:

- (1) Serves to preserve or protect the public health or safety.
- (2) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (3) Allows for an alternative system of comparable cost and efficiency.

SECTION 5. 66.032 of the statutes is created to read:

**66.032 Solar access permits.** (1) **DEFINITIONS.** In this section:

(a) "Agency" means the governing body of a municipality which has provided for granting a permit or the agency which the governing body of a municipality creates or designates under sub. (2). "Agency" includes an officer or employe of the municipality.

(b) "Applicant" means an owner applying for a permit under this section.

(c) "Application" means an application for a permit under this section.

(d) "Collector surface" means any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. "Collector surface" does not include frames, supports and mounting hardware.

(e) "Collector use period" means 9 a.m. to 3 p.m. standard time daily.

(f) "Impermissible interference" means the blockage of solar energy from a collector surface or proposed collector surface for which a permit has been granted under this section during a collector use period if such blockage is by any structure or vegetation on property, an owner of which was notified under sub. (3) (b). "Impermissible interference" does not include:

1. Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially interfere with absorption of solar energy by a solar collector.

2. Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice is mailed or delivered under sub. (3) (b).

3. Blockage by any vegetation planted before the date the last notice is mailed or delivered under sub. (3) (b) unless a municipality by ordinance under sub. (2) defines impermissible interference to include such vegetation.

(g) "Municipality" means any county with a zoning ordinance under s. 59.97, any town with a zoning ordinance under s. 60.74, any city with a zoning ordinance under s. 62.23 (7), any 1st class city or any village with a zoning ordinance under s. 61.35.

(h) "Owner" means at least one owner, as defined under s. 66.021 (1) (a), of a property or the personal representative of at least one owner.

(i) "Permit" means a solar access permit issued under this section.

(j) "Solar collector" means a device, structure or a part of a device or structure a substantial purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.

(k) "Solar energy" means direct radiant energy received from the sun.

(L) "Standard time" means the solar time of the ninetieth meridian west of Greenwich.

(2) **PERMIT PROCEDURE.** The governing body of every municipality may provide for granting a permit. A permit may not affect any land except land which, at the time the permit is granted, is within the territorial limits of the municipality or is subject to an extraterritorial zoning ordinance adopted under s. 62.23 (7a), except that a permit issued by a city or village may not affect extraterritorial land subject to a zoning ordinance adopted by a county or a town. The governing body may appoint itself as the agency to process applications or may create or designate another agency to grant permits. The governing body may provide by ordinance that a fee be charged to cover the costs of processing applications. The governing body may adopt an ordinance with any provision it deems necessary for granting a permit under this section, including but not limited to:

(a) Specifying standards for agency determinations under sub. (5) (a).

(b) Defining an impermissible interference to include vegetation planted before the date the last notice is mailed or delivered under sub. (3) (b), provided that the permit holder shall be responsible for the cost of trimming such vegetation.

(3) PERMIT APPLICATIONS. (a) In a municipality which provides for granting a permit under this section, an owner who has installed or intends to install a solar collector may apply to an agency for a permit.

(b) An agency shall determine if an application is satisfactorily completed and shall notify the applicant of its determination. If an applicant receives notice that an application has been satisfactorily completed, the applicant shall deliver by certified mail or by hand a notice to the owner of any property which the applicant proposes to be restricted by the permit under sub. (7). The applicant shall submit to the agency a copy of a signed receipt for every notice delivered under this paragraph. The agency shall supply the notice form. The information on the form may include, without limitation because of enumeration:

1. The name and address of the applicant, and the address of the land upon which the solar collector is or will be located.
2. That an application has been filed by the applicant.
3. That the permit, if granted, may affect the rights of the notified owner to develop his or her property and to plant vegetation.
4. The telephone number, address and office hours of the agency.
5. That any person may request a hearing under sub. (4) within 30 days after receipt of the notice, and the address and procedure for filing the request.

(4) HEARING. Within 30 days after receipt of the notice under sub. (3) (b), any person who has received a notice may file a request for a hearing on the granting of a permit or the agency may determine that a hearing is necessary even if no such request is filed. If a request is filed or if the agency determines that a hearing is necessary, the agency shall conduct a hearing on the application within 90 days after the last notice is delivered. At least 30 days prior to the hearing date, the agency shall notify the applicant, all owners notified under sub. (3) (b) and any other person filing a request of the time and place of the hearing.

(5) PERMIT GRANT. (a) The agency shall grant a permit if the agency determines that:

1. The granting of a permit will not unreasonably interfere with the orderly land use and development plans of the municipality;
2. No person has demonstrated that she or he has present plans to build a structure that would create an impermissible interference by showing that she or he has applied for a building permit prior to receipt of a notice under sub. (3) (b), has expended at least \$500 on planning or designing such a structure or by submitting any other credible evidence that she or he has made substantial progress toward planning or constructing a structure that would create an impermissible interference; and
3. The benefits to the applicant and the public will exceed any burdens.

(b) An agency may grant a permit subject to any condition or exemption the agency deems necessary to minimize the possibility that the future development of nearby property will create an impermissible interference or to minimize any other burden on any person affected by granting the permit. Such conditions or exemptions may include but are not limited to restrictions on the location of the collector and requirements for the compensation of persons affected by the granting of the permit.

(6) RECORD OF PERMIT. If an agency grants a permit:

(a) The agency shall specify the property restricted by the permit under sub. (7) and shall prepare notice of the granting of the permit. The notice shall include the identification required under s. 706.05 (2) (c) for the owner and the property upon which the solar collector is or will be located and for any owner and property restricted by the permit under sub. (7), and shall indicate that the property may not be developed and vegetation may not be planted on the property so as to create an impermissible interference with the solar collector which is the subject of the permit unless the permit affecting the property is terminated under sub. (9) or unless an agreement affecting the property is filed under sub. (10).

(b) The applicant shall record with the register of deeds of the county in which the property is located the notice under par. (a) for each property specified under par. (a) and for the property upon which the solar collector is or will be located.

(7) REMEDIES FOR IMPERMISSIBLE INTERFERENCE. (a) Any person who uses property which he or she owns or permits any other person to use the property in a way which creates an impermissible interference under a permit which has been granted or which is the subject of an application shall be liable to the permit holder or applicant for damages, except as provided under par. (b), for any loss due to the impermissible interference, court costs and reasonable attorney fees unless:

1. The building permit was applied for prior to receipt of a notice under sub. (3) (b) or the agency determines not to grant a permit after a hearing under sub. (4).
2. A permit affecting the property is terminated under sub. (9).
3. An agreement affecting the property is filed under sub. (10).

(b) A permit holder is entitled to an injunction to require the trimming of any vegetation which creates or would create an impermissible interference as defined under sub. (1) (f). If the court finds on behalf of the permit holder, the permit holder shall be entitled to a permanent injunction, damages, court costs and reasonable attorney fees.

(8) APPEALS. Any person aggrieved by a determination by a municipality under this section may appeal the determination to the circuit court for a review.

(9) TERMINATION OF SOLAR ACCESS RIGHTS. (a) Any right protected by a permit under this section shall terminate if the agency determines that the solar collector which is the subject of the permit is:

1. Permanently removed or is not used for 2 consecutive years, excluding time spent on repairs or improvements.
2. Not installed and functioning within 2 years after the date of issuance of the permit.

(b) The agency shall give the permit holder written notice and an opportunity for a hearing on a proposed termination under par. (a).

(c) If the agency terminates a permit, the agency may charge the permit holder for the cost of recording and record a notice of termination with the register of deeds, who shall record the notice with the notice recorded under sub. (6) (b) or indicate on any notice recorded under sub. (6) (b) that the permit has been terminated.

(10) WAIVER. A permit holder by written agreement may waive all or part of any right protected by a permit. A copy of such agreement shall be recorded with the register of deeds, who shall record such copy with the notice recorded under sub. (6) (b).

(11) PRESERVATION OF RIGHTS. The transfer of title to any property shall not change the rights and duties under this section or under an ordinance adopted under sub. (2).

(12) CONSTRUCTION. (a) This section may not be construed to require that an owner obtain a permit prior to installing a solar collector.

(b) This section may not be construed to mean that acquisition of a renewable energy resource easement under s. 700.35 is in any way contingent upon the granting of a permit under this section.

SECTION 6. 66.033 of the statutes is created to read:

**66.033 Municipal control of vegetation blocking solar energy systems.** Any county, city, village or town may provide by ordinance for the trimming of vegetation which blocks solar energy, as defined under s. 66.032 (1) (k), from a collector surface, as defined under s. 700.40 (2) (b). The ordinance may include, but is not limited to, a designation of responsibility for the costs of the trimming.

SECTION 7. 236.13 (2) (d) of the statutes is created to read:

236.13 (2) (d) As a further condition of approval, any county, town, city or village may require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar energy across adjacent lots in the subdivision.

SECTION 8. 236.45 (1) of the statutes is amended to read:

236.45 (1) **DECLARATION OF LEGISLATIVE INTENT.** The purpose of this section is to promote the public health, safety and general welfare of the community and the regulations authorized to be made are designed to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations provided for by this section shall be made with reasonable consideration, among other things, of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land throughout the municipality, town or county.

SECTION 9. 700.35 of the statutes is created to read:

**700.35 Renewable energy resource easements.** In this section, "renewable energy resource easement" means an easement which limits the height or location, or both, of permissible development on the burdened land in terms of a structure or vegetation, or both, for the purpose of providing access for the benefited land to wind or sunlight passing over the burdened land. Every renewable energy resource easement shall be in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements. Renewable energy resource easements shall run with the land benefited and burdened unless otherwise expressly stated therein.

SECTION 10. 700.40 of the statutes is created to read:

**700.40 Solar access.** (1) **PURPOSE.** The purpose of this section is to promote the use of solar energy by allowing an owner of an active or passive solar energy system to receive compensation for an obstruction of solar energy by a structure outside a neighbor's building envelope as defined by zoning restrictions in effect at the time the solar collector was installed.

(2) **DEFINITIONS.** In this section:

(a) "Building envelope" means the 3-dimensional area on a lot on which building is permitted, as defined by the existing ground level and by any applicable height restriction, setback requirement, side yard requirement or rear yard requirement, notwithstanding any provisions for variances, special exceptions or special or conditional uses in effect in the city, town or village in which the lot is located.

(b) "Collector surface" means any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. "Collector surface" does not include frames, supports and mounting hardware.

(c) "Obstruction" means the portion of a building or other structure which blocks solar energy from a collector surface between the hours of 9 a.m. to 3 p.m. standard time if the portion of the building or structure is outside a building envelope in effect on the date of the installation of the solar collector. "Obstruction" does not include blockage by a pole, wire, television antenna or radio antenna.

(d) "Solar collector" means a device, structure or a part of a device or structure a primary purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.

(e) "Solar energy" has the meaning given under s. 66.032.

(f) "Solar energy system" has the meaning given under s. 101.57 (8) (b).

(g) "Standard time" has the meaning given under s. 66.032.

(3) **DAMAGES.** Except as provided under sub. (4), the owner of a solar energy system is entitled to receive damages, court costs and reasonable attorney fees from any person who uses property which he or she owns or who permits any other person to use the property in any way which would create an obstruction of the owner's solar collector surface. The owner of the solar energy system shall have the burden of showing by a preponderance of the evidence the amount of the damages.

(4) **APPLICABILITY.** This section does not apply to any obstruction:

(a) Existing on or before the effective date of this section (1981).

(b) For which a building permit was issued prior to installation of the solar collector, the solar energy to which is blocked by the obstruction.

(c) Existing on or before the date of installation of the solar collector, the solar energy to which is blocked by the obstruction.

**SECTION 13. Nonstatutory provisions; administration.**

(1) **MODEL SOLAR ACCESS ORDINANCE.** No later than 365 days after the effective date of this act, the department of administration shall:

(a) Draft at least one model solar access ordinance suitable for use by a municipality exercising its authority under section 66.032 of the statutes, as created by this act.

(b) Supply a copy of the ordinance drafted under paragraph (a) to any county, town, city or village upon request.

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