

2007 ASSEMBLY BILL 899

February 28, 2008 – Introduced by Representative MONTGOMERY, cosponsored by Senator PLALE. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to renumber and amend* 66.0401 (1); *to amend* 66.0401 (2); *to repeal*
2 *and recreate* 196.378 (4) (title); and *to create* 66.0401 (1e), 66.0401 (3),
3 66.0401 (4), 66.0401 (5), 66.0401 (6) and 196.378 (4g) of the statutes; **relating**
4 **to:** requiring that local regulation of a wind energy system be consistent with
5 Public Service Commission rules and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, town, or county (political subdivision) may not place any restrictions on the installation or use of an energy system (a solar energy system or a wind energy system) unless the restriction is for health or safety reasons, does not significantly increase the cost of the system or decrease its efficiency, or allows for an alternative comparable system.

This bill requires the Public Service Commission (PSC) to promulgate rules establishing common standards for political subdivisions to regulate the construction and operation of wind-powered generating projects. The rules must specify the restrictions a political subdivision may impose on the installation or use of such a project, and may include subjects such as visual appearance, setback distances, decommissioning, electrical connections to the power grid, and interference with radio, telephone, or television signals.

If a political subdivision chooses to regulate such projects, its ordinances may not be more restrictive than the PSC rules. The bill also specifies various standards, procedures for applicants, and approval timelines for political subdivisions that

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must be contained in a political subdivision's ordinance regulating wind-powered generating projects.

The bill prohibits a political subdivision from prohibiting or restricting any person from conducting tests to determine the suitability of a site for the possible placement of a wind energy system, although the political subdivision may petition the PSC to impose reasonable restrictions on the testing.

With regard to a proposed wind energy system that is one megawatt or larger, the bill provides that any person who is aggrieved by a political subdivision's decision may seek review by the PSC. If the PSC determines that the political subdivision's decision does not comply with the agency's rules or is unreasonable, it must issue a superseding decision and issue an appropriate remedy. The PSC's decision may be appealed to circuit court.

The bill specifies that if a county enacts an ordinance relating to the construction or operation of a wind energy system, as provided by the bill, the county ordinance applies only in the unincorporated parts of the county, except that if a town enacts a similar ordinance, the more restrictive terms of the two ordinances apply to the town.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and 66.0401
2 (1m) (intro.), as renumbered, is amended to read:

3 66.0401 **(1m)** AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) ~~No county, city,~~
4 ~~town, or village~~ political subdivision may place any restriction, either directly or in
5 effect, on the installation or use of a wind energy system that is more restrictive than
6 the rules promulgated by the commission under s. 196.378 (4g) (b). No political
7 subdivision may place any restriction, either directly or in effect, on the installation
8 or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy
9 system, ~~as defined in s. 66.0403 (1) (m)~~, unless the restriction satisfies one of the
10 following conditions:

11 **SECTION 2.** 66.0401 (1e) of the statutes is created to read:

12 66.0401 **(1e)** DEFINITIONS. In this section:

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1 (a) “Application for approval” means an application for approval of a wind
2 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)
3 1.

4 (b) “Commission” means the Public Service Commission.

5 (c) “Large wind energy system” means a wind energy system that has a nominal
6 capacity of at least one megawatt.

7 (d) “Municipality” means a city, village, or town.

8 (e) “Political subdivision” means a city, village, town, or county.

9 (f) “Wind energy system” has the meaning given in s. 66.0403 (1) (m).

10 **SECTION 3.** 66.0401 (2) of the statutes is amended to read:

11 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~
12 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may provide by
13 enact an ordinance for relating to the trimming of vegetation that blocks solar
14 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.
15 700.41 (2) (b), or that blocks wind from a wind energy system, as defined in s. 66.0403
16 (1) (m). The ordinance may include, ~~but is not limited to,~~ a designation of
17 responsibility for the costs of the trimming. The ordinance may not require the
18 trimming of vegetation that was planted by the owner or occupant of the property on
19 which the vegetation is located before the installation of the solar or wind energy
20 system.

21 **SECTION 4.** 66.0401 (3) of the statutes is created to read:

22 66.0401 (3) TESTING ACTIVITIES. A political subdivision may not prohibit or
23 restrict any person from conducting testing activities to determine the suitability of
24 a site for the placement of a wind energy system. A political subdivision objecting

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1 to such testing may petition the commission to impose reasonable restrictions on the
2 testing activity.

3 **SECTION 5.** 66.0401 (4) of the statutes is created to read:

4 66.0401 (4) LOCAL PROCEDURE. (a) A political subdivision that receives an
5 application for approval shall determine whether it is complete and, no later than 45
6 days after the application is filed, notify the applicant about the determination. If
7 the political subdivision determines that the application is incomplete, the notice
8 shall state the reason for the determination. An applicant may supplement and
9 refile an application that the political subdivision has determined to be incomplete.
10 There is no limit on the number of times that an applicant may refile an application
11 for approval. If the political subdivision fails to determine whether an application
12 for approval is complete within 45 days after the application is filed, the application
13 shall be considered to be complete.

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

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

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

24 (d) Except as provided in par. (e), a political subdivision shall approve or
25 disapprove an application for approval no later than 90 days after the day on which

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1 it notifies the applicant that the application for approval is complete. If a political
2 subdivision fails to act within the 90 days, or within any extended time period
3 established under par. (e), the application is considered approved.

4 (e) A political subdivision may extend the time period in par. (d) if, within that
5 90-day period, the political subdivision authorizes the extension in writing. Any
6 combination of the following extensions may be granted, except that the total amount
7 of time for all extensions granted under this paragraph may not exceed 90 days:

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

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

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

14 (f) A political subdivision may not deny or impose a restriction on an application
15 for approval unless the political subdivision enacts an ordinance that is no more
16 restrictive than the rules the commission promulgates under s. 196.378 (4g) (b).

17 (g) A political subdivision that chooses to regulate wind energy systems shall
18 enact an ordinance, subject to sub. (6) (b), that is consistent with the applicable
19 standards established by the commission in rules promulgated under s. 196.378 (4g).

20 **SECTION 6.** 66.0401 (5) of the statutes is created to read:

21 66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW. (a) The decision of a political
22 subdivision to approve, reject, or impose a restriction upon a large wind energy
23 system may be appealed only as provided in this subsection.

24 (b) 1. Any aggrieved person seeking to appeal a decision of a political
25 subdivision to approve, reject, or impose a restriction upon a large wind energy

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1 system may begin the political subdivision's administrative review process. If the
2 person is still aggrieved after the administrative review is completed, the person may
3 file an appeal with the commission. No appeal to the commission under this
4 subdivision may be filed later than 30 days after the political subdivision has
5 completed its administrative review process.

6 2. Rather than beginning an administrative review under subd. 1., an
7 aggrieved person seeking to appeal a decision of a political subdivision to approve,
8 reject, or impose a restriction upon a large wind energy system may file an appeal
9 directly with the commission. No appeal to the commission under this subdivision
10 may be filed later than 30 days after the decision of the political subdivision to
11 approve, reject, or impose a restriction upon the large wind energy system.

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

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

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1 (e) Judicial review is not available until the commission issues its decision
2 under par. (d). Judicial review shall be of the commission's decision, not of the
3 political subdivision's decision. The commission's decision is subject to judicial
4 review under ch. 227. Injunctive relief is available only as provided in s. 196.43.

5 **SECTION 7.** 66.0401 (6) of the statutes is created to read:

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

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

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

15 2. If a town enacts an ordinance under sub. (4), either before or after a county
16 enacts an ordinance under sub. (4), the more restrictive terms of the 2 ordinances
17 apply to the town, except that if the town later repeals its ordinance, the county
18 ordinance applies in that town.

19 **SECTION 8.** 196.378 (4) (title) of the statutes is repealed and recreated to read:

20 196.378 (4) (title) RENEWABLE RESOURCE RULES.

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

22 196.378 (4g) WIND SITING RULES. (a) In this subsection:

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

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

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

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1 (b) The commission shall promulgate rules that specify the restrictions a
2 political subdivision may impose on the installation or use of a wind energy system.
3 The subject matter of these rules may include visual appearance, lighting, electrical
4 connections to the power grid, setback distances, maximum audible sound levels,
5 proper means of measuring noise, interference with radio, telephone, or television
6 signals, decommissioning, or matters consistent with the conditions specified in s.
7 66.0401 (1m) (a) to (c). A political subdivision may not place a restriction on the
8 installation or use of a wind energy system that is more restrictive than these rules.

9 (c) In addition to the rules under par. (b), the commission shall promulgate
10 rules that do all of the following:

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

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

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

SECTION 10. Initial applicability.

18 (1) The public service commission review process for a political subdivision's
19 decision under section 66.0401 (5) of the statutes first applies to a local decision that
20 is issued after the public service commission's rules under section 196.378 (4g) of the
21 statutes take effect.
22

23 (END)