

**SENATE SUBSTITUTE AMENDMENT 3,
TO 2007 SENATE BILL 544**

March 12, 2008 – Offered by Senators VINEHOUT and COWLES.

1 **AN ACT** *to renumber and amend* 66.0401 (1); *to amend* 15.795 (title) and
2 66.0401 (2); and *to create* 15.795 (2), 66.0401 (1e), 66.0401 (3), 66.0401 (4),
3 66.0401 (5), 66.0401 (6), 66.0401 (7) and 165.25 (4) (aw) of the statutes;
4 **relating to:** local regulation of wind energy systems, creation of a wind energy
5 system siting review board, and granting rule-making authority.

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

6 **SECTION 1.** 15.795 (title) of the statutes is amended to read:

7 **15.795 (title) Same; attached office and board.**

8 **SECTION 2.** 15.795 (2) of the statutes is created to read:

9 15.795 **(2)** WIND ENERGY SYSTEM SITING REVIEW BOARD. (a) In this section, “wind
10 energy system” has the meaning given in s. 66.0403 (1) (m).

1 (b) There is created a wind energy system siting review board which is attached
2 to the public service commission under s. 15.03. The board consists of the following
3 members:

4 1. A member representing the interests of towns, selected from a list of names
5 submitted by the Wisconsin Towns Association.

6 2. A member representing the interests of counties, selected from a list of
7 names submitted by the Wisconsin Counties Association.

8 3. A member representing wind energy development interests, selected from
9 a list of names submitted by wind energy developers.

10 4. A member representing renewable energy or environmental interests,
11 selected from a list of names submitted by statewide renewable energy or
12 environmental organizations.

13 5. Three other members.

14 (c) The members under par. (b) shall be nominated by the governor, and with
15 the advice and consent of the senate appointed, for 5-year terms.

16 **SECTION 3.** 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and 66.0401
17 (1m) (intro.), as renumbered, is amended to read:

18 66.0401 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) No county, city,
19 ~~town, or village~~ political subdivision may place any restriction, either directly or in
20 effect, on the installation or use of a wind energy system that is more restrictive than
21 the rules promulgated by the board under sub. (7). No political subdivision may place
22 any restriction, either directly or in effect, on the installation or use of a solar energy
23 system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, ~~as defined in s.~~
24 ~~66.0403 (1) (m)~~, unless the restriction satisfies one of the following conditions:

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

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

2 (a) “Application for approval” means an application for approval of a wind
3 energy system under rules promulgated by the board under sub. (7) (b) 1.

4 (am) “Board” means the wind energy system siting review board under s.
5 15.795 (2).

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

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

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

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

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

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

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

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

24 **66.0401 (3) TESTING ACTIVITIES.** A political subdivision may not prohibit or
25 restrict any person from conducting testing activities to determine the suitability of

1 a site for the placement of a wind energy system. A political subdivision objecting
2 to such testing may petition the board to impose reasonable restrictions on the
3 testing activity.

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

5 66.0401 (4) POLITICAL SUBDIVISION PROCEDURE. (a) 1. Subject to subd. 2., no later
6 than 45 days after a political subdivision receives an application for approval, the
7 political subdivision shall notify the applicant whether the application for approval
8 is complete and, if it is not complete, what information is needed to complete the
9 application for approval. As soon as the applicant has provided all of the required
10 information, the political subdivision shall notify the applicant that the application
11 for approval is complete.

12 2. If a political subdivision that receives an application for approval under
13 subd. 1. does not have in effect an ordinance described under par. (g), the 45 day time
14 period for determining whether an application is complete, as described in subd. 1.,
15 does not begin until the first day of the 7th month beginning after the political
16 subdivision receives the application.

17 (b) A political subdivision shall make a record of its decision making on an
18 application for approval, including a recording of any public hearing, copies of
19 documents submitted at any public hearing, and copies of any other documents
20 provided to the political subdivision in connection with the application for approval.

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

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

1 it notifies the applicant that the application for approval is complete. If an applicant
2 complies with the rules promulgated under sub. (7) (b) 1. and the information and
3 documentation provided by the applicant is sufficient to establish, without
4 considering any other information or documentation, that the application complies
5 with applicable requirements for approval, the political subdivision shall approve
6 the application unless the political subdivision finds, based on other clear and
7 convincing information or documentation in the record, that the application does not
8 comply with applicable requirements.

9 (e) A political subdivision may extend the time limit in par. (d) if the political
10 subdivision needs additional information to determine whether to approve or deny
11 the application for approval, if the applicant makes a material modification to the
12 application for approval, or for other good cause specified in writing by the political
13 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 board promulgates under sub (7) (a).

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 board in rules promulgated under sub. (7) (a).

20 (h) A political subdivision may not place a restriction on the installation or use
21 of a wind energy system that is more restrictive than the rules the board promulgates
22 under sub (7) (a).

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

24 **66.0401 (5) REVIEW OF SITING DECISIONS.** (a) In this subsection “aggrieved
25 person” means a person who applied to a political subdivision for approval of a wind

1 energy system, a person who lives within 2 miles of a wind energy system that is
2 proposed to be sited, or a person who owns land within 2 miles of a wind energy
3 system that is proposed to be sited.

4 (b) An aggrieved person may challenge the decision of a political subdivision
5 on an application for approval on the grounds that the political subdivision
6 incorrectly applied the state standards under sub. (7) (a) that are applicable to the
7 wind energy system siting by requesting the board to review the decision. An
8 aggrieved person is not required to exhaust the political subdivision's administrative
9 remedies before requesting review by the board. An aggrieved person shall request
10 a review under this paragraph within 30 days after the political subdivision approves
11 or disapproves the application for approval or, if the aggrieved person chooses to
12 exhaust the political subdivision's administrative remedies, within 30 days after the
13 final decision in the political subdivision's administrative review process.

14 (bm) Upon receiving a request under par. (b), the board shall notify the political
15 subdivision of the request. The political subdivision shall provide a certified copy of
16 the record under sub. (4) to the board within 30 days after the day on which it receives
17 the notice.

18 (c) Upon receiving the certified copy of the record under par. (bm), the board
19 shall determine whether the challenge is valid. The board shall make its decision
20 without deference to the decision of the political subdivision and shall base its
21 decision only on the evidence in the record under sub. (4) (b). The board shall make
22 its decision within 60 days after the day on which it receives the certified copy of the
23 record under par. (bm), except that the board may extend this time limit for good
24 cause specified in writing by the board.

1 (d) If the board determines that a challenge is valid, the board shall reverse the
2 decision of the political subdivision. The decision of the board is binding on the
3 political subdivision, subject to par. (e). If a political subdivision fails to comply with
4 a decision of the board that has not been appealed under par. (e), an aggrieved person
5 may bring an action to enforce the decision.

6 (e) An aggrieved person or the political subdivision may appeal the decision of
7 the board to circuit court. The filing of an appeal does not in itself stay the effect of
8 a decision of the board.

9 (f) A circuit court to which a decision of the board is appealed under par. (e) shall
10 review the decision of the board based on the evidence in the record under sub. (4)
11 (b).

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

13 66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE. (a) 1. A county ordinance
14 enacted under sub. (2) applies only to the towns in the county that have not enacted
15 an ordinance under sub. (2).

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

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

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

1 **SECTION 10.** 66.0401 (7) of the statutes is created to read:

2 **66.0401 (7) WIND SITING RULES.** (a) The board shall promulgate rules that
3 specify the restrictions a political subdivision may impose on the installation or use
4 of a wind energy system. The subject matter of these rules may include visual
5 appearance, lighting, electrical connections to the power grid, setback distances,
6 maximum audible sound levels, proper means of measuring noise, interference with
7 radio, telephone, or television signals, decommissioning, or matters consistent with
8 the conditions specified in sub. (1m) (a) to (c). The rules under this paragraph shall
9 recognize the diversity of localities in this state and shall establish distinct
10 standards for the siting of wind energy systems under distinct conditions related to
11 factors such as topography, geography, geology, soils, meteorology, and biological
12 resources.

13 (b) In addition to the rules under par. (a), the board shall promulgate rules that
14 do all of the following:

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

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

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

22 (c) The commission shall provide technical assistance to the board relating to
23 its promulgation of the rules under pars. (a) and (b).

24 **SECTION 11.** 165.25 (4) (aw) of the statutes is created to read:

1 165.25 (4) (aw) The department of justice shall furnish legal services to the
2 wind energy system siting review board in defending appeals under s. 66.0401 (5) (e)
3 of decisions of the board.

4 **SECTION 12. Nonstatutory provisions.**

5 (1) TERMS OF INITIAL BOARD MEMBERS. Notwithstanding the length of the terms
6 specified for members of the wind energy system siting review board in section
7 15.795 (2) (b) of the statutes, as created by this act, the initial members shall be
8 appointed for the following terms:

9 (a) The member appointed under section 15.795 (2) (b) 1. of the statutes, as
10 created by this act, for a term expiring on May 1, 2011.

11 (b) The member appointed under section 15.795 (2) (b) 2. of the statutes, as
12 created by this act, and one member appointed under section 15.795 (2) (b) 5. of the
13 statutes, as created by this act, for terms expiring on May 1, 2012.

14 (c) The member appointed under section 15.795 (2) (b) 3. of the statutes, as
15 created by this act, and one member appointed under section 15.795 (2) (b) 5. of the
16 statutes, as created by this act, for terms expiring on May 1, 2013.

17 (d) The member appointed under section 15.795 (2) (b) 4. of the statutes, as
18 created by this act, and one member appointed under section 15.795 (2) (b) 5. of the
19 statutes, as created by this act, for terms expiring on May 1, 2014.

20 **SECTION 13. Initial applicability.**

21 (1) The wind energy system siting review board review process for a political
22 subdivision's decision under section 66.0401 (5) of the statutes first applies to a local
23 decision that is issued after the wind energy system siting review board's rules under
24 section 66.0401 (7) of the statutes take effect.

25 **(END)**