



2009 SENATE BILL 185

May 4, 2009 – Introduced by Senators PLALE, HOPPER, HANSEN, HOLPERIN, KREITLOW, TAYLOR, SULLIVAN, MILLER, RISSER, WIRCH and COGGS, cosponsored by Representatives SOLETSKI, MONTGOMERY, PARISI, BLACK, MASON, SPANBAUER, HILGENBERG, ROYS, TOWNSEND, RICHARDS, SUDER, HONADEL, POCAN, CLARK, WOOD, SMITH, PASCH, VRUWINK, MOLEPSKE JR. and STONE. Referred to Committee on Commerce, Utilities, Energy, and Rail.

1 **AN ACT** *to renumber and amend* 66.0401 (1); *to amend* 66.0401 (2) and
2 66.0403 (1) (m); *to repeal and recreate* 196.378 (4) (title); and *to create*
3 66.0401 (1e), 66.0401 (3), 66.0401 (4), 66.0401 (5), 66.0401 (6), 196.378 (4g) and
4 196.491 (3) (dg) of the statutes; **relating to:** regulation of wind energy systems
5 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. Current law defines “wind energy system” as equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

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 energy systems. The bill also revises the definition of “wind energy system” to include associated facilities of the equipment specified under current law. The PSC’s rules must specify the restrictions a political subdivision may impose on the installation or use of such a system, and may include subjects such as visual appearance, setback distances, decommissioning, shadow flicker, electrical connections to the power grid, and interference with radio,

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telephone, or television signals. The PSC must also promulgate rules specifying requirements and procedures for a political subdivision to enforce such restrictions.

If a political subdivision chooses to regulate such systems, 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 must be contained in a political subdivision's ordinance regulating the systems.

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 or enforcement action may seek review by the PSC. If the PSC determines that the political subdivision's decision or enforcement action does not comply with the agency's rules or is unreasonable, it must issue a superseding decision and order an appropriate remedy. The PSC's decision or order 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.

Finally, the bill does not affect a provision under current law that exempts certain electric generating facilities from local ordinances. Under current law, a person may not construct an electric generating facility with a nominal operating capacity of 100 megawatts or more unless the PSC grants a certificate of public convenience and necessity (CPCN) to the person. If the PSC has granted a CPCN to such a facility, and if installation or utilization of the facility is precluded or inhibited by a local ordinance, current law provides that the installation and utilization of the facility may nevertheless proceed. Because this bill does not affect that provision, the authority of a political subdivision to regulate a wind energy system under the bill is limited to those wind energy systems with a nominal operating capacity of less than 100 megawatts. However, the bill requires the PSC to consider the restrictions specified in the rules described above when the PSC determines whether to grant a CPCN to a wind energy system with a nominal operating capacity of 100 megawatts or more.

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:

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

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

10 66.0401 (1e) DEFINITIONS. In this section:

11 (a) “Application for approval” means an application for approval of a wind
12 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)
13 1.

14 (b) “Commission” means the public service commission.

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

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

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

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

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

21 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~
22 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may provide by
23 enact an ordinance for relating to the trimming of vegetation that blocks solar
24 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.
25 700.41 (2) (b), or that blocks wind from a wind energy system, ~~as defined in s. 66.0403~~

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1 ~~(1) (m).~~ The ordinance may include, ~~but is not limited to,~~ a designation of
2 responsibility for the costs of the trimming. The ordinance may not require the
3 trimming of vegetation that was planted by the owner or occupant of the property on
4 which the vegetation is located before the installation of the solar or wind energy
5 system.

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

7 66.0401 **(3)** TESTING ACTIVITIES. A political subdivision may not prohibit or
8 restrict any person from conducting testing activities to determine the suitability of
9 a site for the placement of a wind energy system. A political subdivision objecting
10 to such testing may petition the commission to impose reasonable restrictions on the
11 testing activity.

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

13 66.0401 **(4)** LOCAL PROCEDURE. (a) 1. Subject to subd. 2., a political subdivision
14 that receives an application for approval shall determine whether it is complete and,
15 no later than 45 days after the application is filed, notify the applicant about the
16 determination. If the political subdivision determines that the application is
17 incomplete, the notice shall state the reason for the determination. An applicant
18 may supplement and refile an application that the political subdivision has
19 determined to be incomplete. There is no limit on the number of times that an
20 applicant may refile an application for approval. If the political subdivision fails to
21 determine whether an application for approval is complete within 45 days after the
22 application is filed, the application shall be considered to be complete.

23 2. If a political subdivision that receives an application for approval under
24 subd. 1. does not have in effect an ordinance described under par. (g), the 45-day time
25 period for determining whether an application is complete, as described in subd. 1.,

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1 does not begin until the first day of the 4th month beginning after the political
2 subdivision receives the application. A political subdivision may notify an applicant
3 at any time, after receipt of the application and before the first day of the 4th month
4 after its receipt, that it does not intend to enact an ordinance described under par.
5 (g).

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

9 4. If an applicant's application is approved or considered to be approved under
10 subd. 1., or if the application is not subject to regulation because the political
11 subdivision does not enact an ordinance described under par. (g) within the time
12 specified in subd. 2., a political subdivision may not consider an applicant's minor
13 modification to the application to constitute a new application for the purposes of this
14 subsection.

15 5. If an applicant's application is considered to be approved under subd. 1., or
16 if the application is not subject to regulation as described in subd. 4., a political
17 subdivision may not regulate the wind energy system, to which the application
18 applies, under par. (g).

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

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

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

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

10 (e) A political subdivision may extend the time period in par. (d) if, within that
11 90-day period, the political subdivision authorizes the extension in writing. Any
12 combination of the following extensions may be granted, except that the total amount
13 of time for all extensions granted under this paragraph may not exceed 90 days:

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

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

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

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

23 (g) A political subdivision that chooses to regulate wind energy systems shall
24 enact an ordinance, subject to sub. (6) (b), that is no more restrictive than the

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1 applicable standards established by the commission in rules promulgated under s.
2 196.378 (4g).

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

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

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

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

24 (c) Upon receiving an appeal under par. (b), the commission shall notify the
25 political subdivision. The political subdivision shall provide a certified copy of the

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1 record upon which it based its decision or enforcement action within 30 days after
2 receiving notice. The commission may request of the political subdivision any other
3 relevant governmental records and, if requested, the political subdivision shall
4 provide such records within 30 days after receiving the request.

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

14 (e) In conducting a review under par. (d), the commission may treat a political
15 subdivision's determination that an application under sub. (4) (a) 1. is incomplete as
16 a decision to disapprove the application.

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

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

23 66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE. (a) 1. A county ordinance
24 enacted under sub. (2) applies only to the towns in the county that have not enacted
25 an ordinance under sub. (2).

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

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

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

11 **SECTION 8.** 66.0403 (1) (m) of the statutes is amended to read:

12 66.0403 (1) (m) “Wind energy system” means equipment and associated
13 facilities that ~~converts~~ convert and then stores store or transfers transfer energy
14 from the wind into usable forms of energy.

15 **SECTION 9.** 196.378 (4) (title) of the statutes is repealed and recreated to read:

16 196.378 (4) (title) RENEWABLE RESOURCE RULES.

17 **SECTION 10.** 196.378 (4g) of the statutes is created to read:

18 196.378 (4g) WIND SITING RULES. (a) In this subsection:

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

20 2. “Political subdivision” means a city, village, town, or county.

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

22 (b) The commission shall promulgate rules that specify the restrictions a
23 political subdivision may impose on the installation or use of a wind energy system
24 consistent with the conditions specified in s. 66.0401 (1m) (a) to (c). The subject
25 matter of these rules may include visual appearance, lighting, electrical connections

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1 to the power grid, setback distances, maximum audible sound levels, shadow flicker,
2 proper means of measuring noise, interference with radio, telephone, or television
3 signals, decommissioning, or other matters. A political subdivision may not place a
4 restriction on the installation or use of a wind energy system that is more restrictive
5 than these rules.

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

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

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

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

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

17 **SECTION 11.** 196.491 (3) (dg) of the statutes is created to read:

18 196.491 (3) (dg) In making a determination under par. (d) that applies to a large
19 electric generating facility, if the large electric generating facility is a wind energy
20 system, as defined in s. 66.0403 (1) (m), the commission shall consider whether
21 installation or use of the facility is consistent with the restrictions specified in the
22 rules promulgated by the commission under s. 196.378 (4g) (b).

23 **SECTION 12. Nonstatutory provisions.**

24 (1) ADVISORY COMMITTEE.

25 (a) In this subsection:

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1 1. “Political subdivision” means a city, village, town, or county.

2 2. “Wind energy system” has the meaning given in section 66.0403 (1) (m) of
3 the statutes, as affected by this act.

4 (b) Before the public service commission may promulgate the rules required
5 under section 196.378 (4g) of the statutes, as created by this act, the commission shall
6 establish an advisory committee under section 227.13 of the statutes, composed of
7 representatives of wind energy system developers, political subdivisions, energy
8 groups, environmental groups, realtors, landowners who live adjacent to or in the
9 vicinity of wind energy systems and who have not received compensation by or on
10 behalf of owners, operators, or developers of wind energy systems, and the public, to
11 advise the commission on the rules.

12 **SECTION 13. Initial applicability.**

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

18 (2) The treatment of section 196.491 (3) (dg) of the statutes, as created by this
19 act, first applies to applications for certificates of public convenience and necessity
20 that are received after the public service commission’s rules under section 196.378
21 (4g) of the statutes, as created by this act, take effect.

22 **(END)**