



**SENATE SUBSTITUTE AMENDMENT 3,
TO 2009 SENATE BILL 185**

September 15, 2009 – Offered by Senator SCHULTZ.

1 **AN ACT** *to renumber and amend* 66.0401 (1); *to amend* 66.0401 (2) and
2 66.0403 (1) (m); and *to create* 15.137 (6), 23.39, 66.0401 (1e), 66.0401 (3),
3 66.0401 (4), 66.0401 (5), 66.0401 (6), 100.59 and 196.491 (3) (dg) of the statutes;
4 **relating to:** regulation of wind energy systems and granting rule-making
5 authority.

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

6 **SECTION 1.** 15.137 (6) of the statutes is created to read:

7 15.137 **(6)** WIND SITING COUNCIL. (a) In this subsection, “wind energy system”
8 has the meaning given in s. 66.0403 (1) (m).

9 (b) There is created in the department of agriculture, trade and consumer
10 protection a wind siting council that consists of the following members appointed by
11 the department for 3-year terms:

1 1. Two members representing wind energy system developers.

2 2. One member representing towns and one member representing counties.

3 3. Two members representing the energy industry.

4 4. Two members representing environmental groups.

5 5. Two members representing realtors.

6 6. Two members who are landowners living adjacent to or in the vicinity of a
7 wind energy system and who have not received compensation by or on behalf of
8 owners, operators, or developers of wind energy systems.

9 7. Two public members.

10 8. One member who is a University of Wisconsin System faculty member with
11 expertise regarding the health impacts of wind energy systems.

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

13 **23.39 Placement of wind turbines.** The department shall identify areas in
14 this state where wind turbines, if placed in those areas, may have a significant
15 adverse effect on bat and migratory bird populations. The department shall
16 maintain an Internet Web site that provides this information to the public and that
17 includes a map of the identified areas.

18 **SECTION 3.** 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and 66.0401
19 (1m) (intro.), as renumbered, is amended to read:

20 66.0401 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) ~~No county, city,~~
21 ~~town, or village~~ political subdivision may place any restriction, either directly or in
22 effect, on the installation or use of a wind energy system that is more restrictive than
23 the rules promulgated by the department under s. 100.59 (2). ~~No political~~
24 ~~subdivision~~ subdivision may place any restriction, either directly or in effect, on the installation
25 or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy

1 system, ~~as defined in s. 66.0403 (1) (m)~~, unless the restriction satisfies one of the
2 following conditions:

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

4 66.0401 (1e) DEFINITIONS. In this section:

5 (a) “Application for approval” means an application for approval of a wind
6 energy system under rules promulgated by the department under s. 100.59 (3) (a).

7 (b) “Department” means the department of agriculture, trade and consumer
8 protection.

9 (c) “Political subdivision” means a city, village, town, or county.

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

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

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

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

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

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

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

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

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

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

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

6 (b) A political subdivision shall make a record of its decision making on an
7 application for approval, including a recording of any public hearing, copies of
8 documents submitted at any public hearing, and copies of any other documents
9 provided to the political subdivision in connection with the application for approval.
10 The political subdivision's record shall conform to the department's rules
11 promulgated under s. 100.59 (3) (b).

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

14 (b). A political subdivision's procedure for reviewing the application for approval
15 shall conform to the department's rules promulgated under s. 100.59 (3) (c).

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

21 (e) A political subdivision may extend the time period in par. (d) if, within that
22 90-day period, the political subdivision authorizes the extension in writing. Any
23 combination of the following extensions may be granted, except that the total amount
24 of time for all extensions granted under this paragraph may not exceed 90 days:

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

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

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

7 (f) 1. Except as provided in subd. 2., a political subdivision may not deny or
8 impose a restriction on an application for approval unless the political subdivision
9 enacts an ordinance that is no more restrictive than the rules the department
10 promulgates under s. 100.59 (2).

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

18 (g) A political subdivision that chooses to regulate wind energy systems shall
19 enact an ordinance, subject to sub. (6) (b), that is no more restrictive than the
20 applicable standards established by the department in rules promulgated under s.
21 100.59.

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

23 **66.0401 (5) REVIEW BY DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER**
24 **PROTECTION.** (a) A decision of a political subdivision to determine that an application
25 is incomplete under sub. (4) (a) 1., or to approve, disapprove, or impose a restriction

1 upon a wind energy system, or an action of a political subdivision to enforce a
2 restriction on a wind energy system, may be appealed only as provided in this
3 subsection.

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

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

19 3. An applicant whose application for approval is denied under sub. (4) (f) 2.
20 may appeal the denial to the department. The department may grant the appeal
21 notwithstanding the inconsistency of the application for approval with the political
22 subdivision's planned residential or commercial development if the department
23 determines that granting the appeal is consistent with the public interest.

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

1 record upon which it based its decision or enforcement action within 30 days after
2 receiving notice. The department 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 department 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 department 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 department extends this time period in writing.
10 If the department determines that the political subdivision's decision or enforcement
11 action does not comply with the rules it promulgates under s. 100.59 or is otherwise
12 unreasonable, the political subdivision's decision shall be superseded by the
13 department's decision and the department may order an appropriate remedy.

14 (e) In conducting a review under par. (d), the department 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 if the department determines that a political
17 subdivision has unreasonably withheld its determination that an application is
18 complete.

19 (f) Judicial review is not available until the department issues its decision or
20 order under par. (d). Judicial review shall be of the department's decision or order,
21 not of the political subdivision's decision or enforcement action. The department's
22 decision or order is subject to judicial review under ch. 227. Injunctive relief of the
23 department's decision or order is available only in the manner that injunctive relief
24 would have been available under s. 196.43 if the decision or order had been made by
25 the public service commission.

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

2 66.0401 **(6)** APPLICABILITY OF A POLITICAL SUBDIVISION OR COUNTY ORDINANCE. (a)

3 1. A county ordinance enacted under sub. (2) applies only to the towns in the county
4 that have not enacted an ordinance under sub. (2).

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

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

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

15 (c) If a political subdivision enacts an ordinance under sub. (4) (g) after the
16 department's rules promulgated under s. 100.59 take effect, the political subdivision
17 may not apply that ordinance to, or require approvals under that ordinance for, a
18 wind energy system approved by the political subdivision under a previous ordinance
19 or under a development agreement.

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

21 66.0403 **(1)** (m) "Wind energy system" means equipment and associated
22 facilities that ~~converts~~ convert and then stores store or transfers transfer energy
23 from the wind into usable forms of energy.

24 **SECTION 11.** 100.59 of the statutes is created to read:

25 **100.59 Wind energy systems. (1)** In this section:

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

2 (b) “Decommissioning” means removing wind turbines, buildings, cables,
3 electrical components, roads, and any other facilities associated with a wind energy
4 system that are located at the site of the wind energy system and restoring the site
5 of the wind energy system.

6 (c) “Political subdivision” means a city, village, town, or county.

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

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

20 **(3)** In addition to the rules under sub. (2), the department shall, with the advice
21 of the wind siting council, promulgate rules that do all of the following:

22 (a) Specify the information and documentation to be provided in an application
23 for approval to demonstrate that a proposed wind energy system complies with rules
24 promulgated under sub. (2).

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

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

5 (d) Specify the requirements and procedures for a political subdivision to
6 enforce the restrictions allowed under sub. (2).

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

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

23 **SECTION 12.** 196.491 (3) (dg) of the statutes is created to read:

24 196.491 **(3)** (dg) In making a determination under par. (d) that applies to a large
25 electric generating facility, if the large electric generating facility is a wind energy

1 system, as defined in s. 66.0403 (1) (m), the commission shall consider whether
2 installation or use of the facility is consistent with the standards specified in the
3 rules promulgated by the department of agriculture, trade and consumer protection
4 under s. 100.59 (2).

5 **SECTION 13. Nonstatutory provisions.**

6 (1) PUBLIC HEARINGS. The department of agriculture, trade and consumer
7 protection shall hold at least 2 public hearings prior to promulgating the rules
8 required under section 100.59 of the statutes, as created by this act. The department
9 shall hold at least one of the hearings in Monroe County and at least one of the
10 hearings in an area outside of Dane County and Monroe County in which developers
11 have proposed wind energy systems, as defined in section 66.0403 (1) (m) of the
12 statutes, as affected by this act.

13 (2) WIND SITING COUNCIL MEMBERS.

14 (a) Notwithstanding the length of terms specified for the members of the wind
15 siting council specified in section 15.137 (6) (b) of the statutes, as created by this act,
16 the initial members shall be appointed for the following terms:

17 1. One member specified under section 15.137 (6) (b) 1., 2., 3., 4., 5., 6., and 7.
18 of the statutes, as created by this act, for terms expiring on July 1, 2012.

19 2. The member specified under section 15.137 (6) (b) 8. of the statutes, as
20 created by this act, for a term expiring on July 1, 2013.

21 3. One member specified under section 15.137 (6) (b) 1., 2., 3., 4., 5., 6., and 7.
22 of the statutes, as created by this act for terms that expire on July 1, 2014.

23 (b) Notwithstanding section 15.137 (6) (b) 2. of the statutes, as created by this
24 act, the initial member of the wind siting council specified under section 15.137 (6)
25 (b) 2. of the statutes that is appointed under paragraph (a) 3. shall represent a town

1 or county that has in effect on the effective date of this paragraph an ordinance
2 regulating wind energy systems, as defined in section 66.0403 (1) (m) of the statutes,
3 as affected by this act.

4 (3) DEPARTMENT OF NATURAL RESOURCES STUDY. The department of natural
5 resources shall conduct a study to determine whether the department's statutory
6 authority is sufficient to adequately protect wildlife and the environment from any
7 adverse effect from the siting, construction, or operation of wind energy systems. In
8 conducting the study, the department shall consider the authority of other state
9 agencies and political subdivisions to regulate the environmental impact of wind
10 energy systems, including the authority of the public service commission under
11 section 196.491 (3) (d) 3. and 4. of the statutes and of political subdivisions under
12 section 66.0401 (1m) and (4) (g) of the statutes, as affected by this act. On or before
13 the first day of the 13th month beginning after the effective date of this subsection,
14 the department shall submit a report containing the results of the study to the
15 legislature in the manner provided under section 13.172 (2) of the statutes. If the
16 department's study concludes that the department's statutory authority is not
17 sufficient to adequately protect wildlife and the environment from any adverse effect
18 from the siting, construction, or operation of wind energy systems, the report shall
19 include recommendations to the legislature for a bill that provides the department
20 with such authority.

21 **SECTION 14. Initial applicability.**

22 (1) The department of agriculture, trade and consumer protection review
23 process for a political subdivision's decision or enforcement action under section
24 66.0401 (5) of the statutes, as created by this act, first applies to a local decision or

1 action that is issued or initiated after the department's rules under section 100.59
2 of the statutes, as created by this act, take effect.

3 (2) The treatment of section 196.491 (3) (dg) of the statutes, as created by this
4 act, first applies to applications for certificates of public convenience and necessity
5 that are received after the department of agriculture, trade and consumer
6 protection's rules under section 100.59 of the statutes, as created by this act, take
7 effect.

8 (END)