



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR LEAH VUKMIR AND REPRESENTATIVE JIM OTT

Ch PSC 128

Report to the Legislature Administrative Code PSC 128 The Joint Committee for Review of Administrative Rules

Produced pursuant to 227.26(2)(g), Stats.

Chapter PSC 128, promulgated by the Public Service Commission (PSC), creates rules for the siting of wind energy systems, including restrictions on sound levels, shadow flicker, and setback distance; and preempts regulations on wind energy systems created by local governments.

Description of Problem

At the request of Representative Al Ott and Senator Robert Cowles, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on ch. PSC 128 relating to wind energy systems on February 9, 2011. Chapter PSC 128 was created in response to Wisconsin 2009 Act 40 that required the PSC to create statewide siting standards for wind energy systems. Chapter PSC 128 was developed by the Wind Siting Council that was created by ACT 40. At the public hearing, concerns were raised over the proper set back distance for a wind turbine in relation to an adjacent home. In the January 2011 Special Session, Governor Walker proposed Senate Bill 9 and Assembly Bill 9 which would make that distance 1,800 feet from the property line; while this ch. PSC 128 sets it as being no further than 1,250 feet from an inhabited building on an adjacent property.

Arguments in Favor of Suspension

- *The Wind Siting Council was weighted heavily in favor of wind turbine manufacturing and did not adequately represent the concerns of local land owners. A process needs to be set up that treats the two opposing sides equally.*
- *Wind turbines have caused numerous health problems for residents of surrounding property. Health effects include but are not limited to insomnia, head aches, anxiety, depression and high blood pressure. Property owners are concerned that the setbacks provided in PSC Chapter 128 is not enough to dissipate the sound produced by the turbines.*
- *The construction of wind turbines can have a negative effect on the property value of adjacent property. Individuals testified that they have had their property up for sale for years but have not*

had many interested offers. Studies have shown that the effect on property value can range from a 12-40% reduction in value.

- *The construction of a wind turbine can greatly reduce the ability of an adjacent land owner to build on their property. An adjacent land owner is limited on what they can build within a certain distance of a turbine, even though it is on their property.*
- *Studies have shown that for every 3 green jobs created, it actually costs 7 non-green jobs.*

Arguments Against Suspension

- *Changing this rule will jeopardize \$1.8 billion in new investments in the wind industry as well as over 2 million construction job hours that could be realized over the next few years.*
- *The Clearinghouse Rule (10-057) had gone through the process and no standing committee had voted to object to the rule, even after holding a public hearing.*
- *With Wisconsin's budget deficit and current levels of unemployment, the legislature should look for ways to expand the wind industry, not restrict it.*
- *Property owners should have the right to place wind turbines on their property if they so please and should not need the approval of adjacent property owners.*

Action by Joint Committee for Review of Administrative Rules

On March 1, 2011, the Joint Committee for Review of Administrative Rules held an executive session on Ch. PSC 128. The committee passed the following motion on a 6-2-2 vote (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu, Meyer; NO: Hebl, Kessler; ABSENT: Risser, Taylor):

“That the Joint Committee for Review of Administrative Rules suspend Ch. PSC 128, pursuant to s. 227.26 (2) (d), Stats., effective March 1, 2011, on the basis of testimony received at its February 9, 2011 meeting, and on the grounds that the contents of Ch. PSC 128 create an emergency relating to public health, safety, or welfare; are arbitrary and capricious; and impose an undue hardship on landowners and residents adjacent to wind turbine sites as stated in s. 227.19 (4) (d) 2 and 6.”

The effect of the JCRAR suspension is that the siting of wind turbines will be temporarily governed by local units of government.

On March 29, 2011, the Joint Committee for Review of Administrative Rules voted 5-3 (YES: Vukmir, Ott, Leibham, Grothman, LeMahieu; NO: Hebl, Taylor, Hintz*; ABSENT:

Risser, Meyer) to introduce LRB 1483/1 and LRB 1756/1, which would permanently remove the current provisions of Ch. PSC 128 and require the PSC to submit a new clearinghouse rule regulating the siting of wind turbine within 6 months of the legislation becoming law.

Passage of one of the bills in support of the JCRAR suspension would retain governance of the siting of wind turbines by local units of government until such a time as the PSC has introduced and promulgated a new clearinghouse rule regulating the siting of wind turbines.

*Rep. Hintz was temporarily appointed as a fill-in for Kessler for the March 29, 2011 meeting.