



State of Wisconsin
2009 - 2010 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT SSA1,
TO SENATE BILL 185,
TO 2009 SENATE BILL 185**

August 5, 2009 – Offered by 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* 23.39,
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 substitute amendment 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 substitute

amendment 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, 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 substitute amendment 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 substitute amendment 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.

The substitute amendment 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 substitute amendment specifies that if a county enacts an ordinance relating to the construction or operation of a wind energy system, as provided by the substitute amendment, 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 substitute amendment 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 substitute amendment does not affect that provision, the authority of a political subdivision to regulate a wind energy system under the substitute amendment is limited to those wind energy systems with a nominal operating capacity of less than 100 megawatts. However, the substitute amendment 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.

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

1 **SECTION 1.** 23.39 of the statutes is created to read:

2 **23.39 Placement of wind turbines.** The department shall identify areas in
3 this state where wind turbines, if placed in those areas, may have a significant
4 adverse effect on bat and migratory bird populations. The department shall
5 maintain an Internet Web site that provides this information to the public and that
6 includes a map of the identified areas.

7 **SECTION 2.** 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and 66.0401
8 (1m) (intro.), as renumbered, is amended to read:

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

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

18 66.0401 (1e) **DEFINITIONS.** In this section:

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

21 1.

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

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

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

4 **SECTION 4.** 66.0401 (2) of the statutes is amended to read:

5 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~
6 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may provide by
7 enact an ordinance for relating to the trimming of vegetation that blocks solar
8 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.
9 700.41 (2) (b), or that blocks wind from a wind energy system, ~~as defined in s. 66.0403~~
10 ~~(1) (m)~~. The ordinance may include, ~~but is not limited to,~~ a designation of
11 responsibility for the costs of the trimming. The ordinance may not require the
12 trimming of vegetation that was planted by the owner or occupant of the property on
13 which the vegetation is located before the installation of the solar or wind energy
14 system.

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

16 66.0401 (3) TESTING ACTIVITIES. A political subdivision may not prohibit or
17 restrict any person from conducting testing activities to determine the suitability of
18 a site for the placement of a wind energy system. A political subdivision objecting
19 to such testing may petition the commission to impose reasonable restrictions on the
20 testing activity.

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

22 66.0401 (4) LOCAL PROCEDURE. (a) 1. Subject to subd. 2., a political subdivision
23 that receives an application for approval shall determine whether it is complete and,
24 no later than 45 days after the application is filed, notify the applicant about the
25 determination. As soon as possible after receiving the application for approval, the

1 political subdivision shall publish a class 1 notice, under ch. 985, stating that an
2 application for approval has been filed with the political subdivision. If the political
3 subdivision determines that the application is incomplete, the notice shall state the
4 reason for the determination. An applicant may supplement and refile an
5 application that the political subdivision has determined to be incomplete. There is
6 no limit on the number of times that an applicant may refile an application for
7 approval. If the political subdivision fails to determine whether an application for
8 approval is complete within 45 days after the application is filed, the application
9 shall be considered to be complete.

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

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

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

23 (b) A political subdivision shall make a record of its decision making on an
24 application for approval, including a recording of any public hearing, copies of
25 documents submitted at any public hearing, and copies of any other documents

1 provided to the political subdivision in connection with the application for approval.
2 The political subdivision's record shall conform to the commission's rules
3 promulgated under s. 196.378 (4g) (c) 2.

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

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

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

13 (e) A political subdivision may extend the time period in par. (d) if, within that
14 90-day period, the political subdivision authorizes the extension in writing. Any
15 combination of the following extensions may be granted, except that the total amount
16 of time for all extensions granted under this paragraph may not exceed 90 days:

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

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

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

23 (f) 1. Except as provided in subd. 2., a political subdivision may not deny or
24 impose a restriction on an application for approval unless the political subdivision

1 enacts an ordinance that is no more restrictive than the rules the commission
2 promulgates under s. 196.378 (4g) (b).

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

10 (g) A political subdivision that chooses to regulate wind energy systems shall
11 enact an ordinance, subject to sub. (6) (b), that is no more restrictive than the
12 applicable standards established by the commission in rules promulgated under s.
13 196.378 (4g).

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

15 66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW. (a) A decision of a political
16 subdivision to determine that an application is incomplete under sub. (4) (a) 1., or to
17 approve, disapprove, or impose a restriction upon a wind energy system, or an action
18 of a political subdivision to enforce a restriction on a wind energy system, may be
19 appealed only as provided in this subsection.

20 (b) 1. Any aggrieved person seeking to appeal a decision or enforcement action
21 specified in par. (a) may begin the political subdivision's administrative review
22 process. If the person is still aggrieved after the administrative review is completed,
23 the person may file an appeal with the commission. No appeal to the commission
24 under this subdivision may be filed later than 30 days after the political subdivision
25 has completed its administrative review process. For purposes of this subdivision,

1 if a political subdivision fails to complete its administrative review process within 90
2 days after an aggrieved person begins the review process, the political subdivision
3 is considered to have completed the process on the 90th day after the person began
4 the process.

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

10 3. An applicant whose application for approval is denied under sub. (4) (f) 2.
11 may appeal the denial to the commission. The commission may grant the appeal
12 notwithstanding the inconsistency of the application for approval with the political
13 subdivision's planned residential or commercial development if the commission
14 determines that granting the appeal is consistent with the public interest.

15 (c) Upon receiving an appeal under par. (b), the commission shall notify the
16 political subdivision. The political subdivision shall provide a certified copy of the
17 record upon which it based its decision or enforcement action within 30 days after
18 receiving notice. The commission may request of the political subdivision any other
19 relevant governmental records and, if requested, the political subdivision shall
20 provide such records within 30 days after receiving the request.

21 (d) The commission may confine its review to the records it receives from the
22 political subdivision or, if it finds that additional information would be relevant to
23 its decision, expand the records it reviews. The commission shall issue a decision
24 within 90 days after the date on which it receives all of the records it requests under
25 par. (c), unless for good cause the commission extends this time period in writing.

1 If the commission determines that the political subdivision's decision or enforcement
2 action does not comply with the rules it promulgates under s. 196.378 (4g) or is
3 otherwise unreasonable, the political subdivision's decision shall be superseded by
4 the commission's decision and the commission may order an appropriate remedy.

5 (e) In conducting a review under par. (d), the commission may treat a political
6 subdivision's determination that an application under sub. (4) (a) 1. is incomplete as
7 a decision to disapprove the application if the commission determines that a political
8 subdivision has unreasonably withheld its determination that an application is
9 incomplete.

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

15 **SECTION 8.** 66.0401 (6) of the statutes is created to read:

16 **66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE.** (a) 1. A county ordinance
17 enacted under sub. (2) applies only to the towns in the county that have not enacted
18 an ordinance under sub. (2).

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

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

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

5 **SECTION 9.** 66.0403 (1) (m) of the statutes is amended to read:

6 66.0403 (1) (m) “Wind energy system” means equipment and associated
7 facilities that ~~converts~~ convert and then ~~stores~~ store or ~~transfers~~ transfer energy
8 from the wind into usable forms of energy.

9 **SECTION 10.** 196.378 (4) (title) of the statutes is repealed and recreated to read:

10 196.378 (4) (title) RENEWABLE RESOURCE RULES.

11 **SECTION 11.** 196.378 (4g) of the statutes is created to read:

12 196.378 (4g) WIND SITING RULES. (a) In this subsection:

- 13 1. “Application for approval” has the meaning given in s. 66.0401 (1e) (a).
14 2. “Political subdivision” means a city, village, town, or county.
15 3. “Wind energy system” has the meaning given in s. 66.0403 (1) (m).

16 (b) The commission shall promulgate rules that specify the restrictions a
17 political subdivision may impose on the installation or use of a wind energy system
18 consistent with the conditions specified in s. 66.0401 (1m) (a) to (c). The subject
19 matter of these rules may include visual appearance, lighting, electrical connections
20 to the power grid, setback distances, maximum audible sound levels, shadow flicker,
21 proper means of measuring noise, interference with radio, telephone, or television
22 signals, decommissioning, or other matters. A political subdivision may not place a
23 restriction on the installation or use of a wind energy system that is more restrictive
24 than these rules.

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

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

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

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

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

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

13 196.491 (3) (dg) In making a determination under par. (d) that applies to a large
14 electric generating facility, if the large electric generating facility is a wind energy
15 system, as defined in s. 66.0403 (1) (m), the commission shall consider whether
16 installation or use of the facility is consistent with the standards specified in the
17 rules promulgated by the commission under s. 196.378 (4g) (b).

18 **SECTION 13. Nonstatutory provisions.**

19 (1) **ADVISORY COMMITTEE; PUBLIC HEARINGS.**

20 (a) In this subsection:

21 1. "Political subdivision" means a city, village, town, or county.

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

24 (b) Before the public service commission may promulgate the rules required
25 under section 196.378 (4g) of the statutes, as created by this act, the commission shall

1 establish an advisory committee under section 227.13 of the statutes, composed of
2 a member of the University of Wisconsin faculty who offers expertise in the issues
3 to be addressed by the advisory committee and representatives of wind energy
4 system developers, political subdivisions, energy groups, environmental groups,
5 realtors, landowners who live adjacent to or in the vicinity of wind energy systems
6 and who have not received compensation by or on behalf of owners of, operators of,
7 or developers of wind energy systems, and the public, to advise the commission on
8 the rules.

9 (c) The public service commission shall hold at least 2 public hearings prior to
10 promulgating the rules required under section 196.378 (4g) of the statutes, as
11 created by this act. The public service commission shall hold at least one of the
12 hearings in Monroe County and at least one of the hearings in an area outside of
13 Dane County and Monroe County in which developers have proposed wind energy
14 systems.

15 (2) DEPARTMENT OF NATURAL RESOURCES STUDY. The department of natural
16 resources shall conduct a study to determine whether the department's statutory
17 authority is sufficient to adequately protect wildlife and the environment from any
18 adverse effect from the siting, construction, or operation of wind energy systems. In
19 conducting the study, the department shall consider the authority of other state
20 agencies and political subdivisions to regulate the environmental impact of wind
21 energy systems, including the authority of the public service commission under
22 section 196.491 (3) (d) 3. and 4. of the statutes and of political subdivisions under
23 section 66.0401 (1m) and (4) (g) of the statutes, as affected by this act. On or before
24 the first day of the 13th month beginning after the effective date of this subsection,
25 the department shall submit a report containing the results of the study to the

1 legislature in the manner provided under section 13.172 (2) of the statutes. If the
2 department's study concludes that the department's statutory authority is not
3 sufficient to adequately protect wildlife and the environment from any adverse effect
4 from the siting, construction, or operation of wind energy systems, the report shall
5 include recommendations to the legislature for a bill that provides the department
6 with such authority.

7 **SECTION 14. Initial applicability.**

8 (1) The public service commission review process for a political subdivision's
9 decision or enforcement action under section 66.0401 (5) of the statutes, as created
10 by this act, first applies to a local decision or action that is issued or initiated after
11 the public service commission's rules under section 196.378 (4g) of the statutes, as
12 created by this act, take effect.

13 (2) The treatment of section 196.491 (3) (dg) of the statutes, as created by this
14 act, first applies to applications for certificates of public convenience and necessity
15 that are received after the public service commission's rules under section 196.378
16 (4g) of the statutes, as created by this act, take effect.

17 (END)