



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2700/1  
MDK:wlj:ph

## 2011 BILL

1 AN ACT *to amend* 66.0401 (1m) (intro.), 66.0401 (4) (f) 1., 66.0401 (4) (g), 66.0401  
2 (5) (a), 66.0401 (5) (d), 196.378 (4g) (b), 196.378 (4g) (c) 1. and 196.491 (3) (dg)  
3 of the statutes; **relating to:** setback requirements for wind energy systems.

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### *Analysis by the Legislative Reference Bureau*

Under current law, the Public Service Commission (PSC), with the advice of the Wind Siting Council, must promulgate rules specifying the restrictions that a city, village, town, or county may impose on the installation or use of a “wind energy system,” which is defined as equipment and associated facilities that convert and then store or transfer wind energy into usable forms of energy. The restrictions must satisfy certain conditions, including preserving or protecting the public health or safety and not significantly increasing the cost of a wind energy system or significantly decreasing its efficiency. In addition, the subject matter of the rules must include setback requirements and decommissioning, and may include other matters. Current law prohibits a city, village, town, or county from placing a restriction on the installation or use of a wind energy system that is more restrictive than the PSC’s rules. This bill creates an exception from this prohibition for setback requirements, as the bill allows a city, village, town, or county to impose a setback requirement that is more restrictive than the PSC’s rules.

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

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1           **SECTION 1.** 66.0401 (1m) (intro.) of the statutes is amended to read:

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

10           **SECTION 2.** 66.0401 (4) (f) 1. of the statutes is amended to read:

11           66.0401 **(4)** (f) 1. Except as provided in subd. 2., a political subdivision may not  
12 deny or impose a restriction, except a restriction regarding setback requirements, on  
13 an application for approval unless the political subdivision enacts an ordinance that  
14 is no more restrictive than the rules the commission promulgates under s. 196.378  
15 (4g) (b).

16           **SECTION 3.** 66.0401 (4) (g) of the statutes is amended to read:

17           66.0401 **(4)** (g) A political subdivision that chooses to regulate wind energy  
18 systems shall enact an ordinance, subject to sub. (6) (b), that is no more restrictive  
19 than the applicable standards established by the commission in rules promulgated  
20 under s. 196.378 (4g). This paragraph does not apply to the regulation of setback  
21 requirements for wind energy systems.

22           **SECTION 4.** 66.0401 (5) (a) of the statutes is amended to read:

23           66.0401 **(5)** (a) A decision of a political subdivision to determine that an  
24 application is incomplete under sub. (4) (a) 1., or to approve, disapprove, or impose  
25 a restriction upon a wind energy system, or an action of a political subdivision to

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1 enforce a restriction on a wind energy system, may be appealed only as provided in  
2 this subsection. This paragraph does not apply to a restriction regarding setback  
3 requirements.

4 **SECTION 5.** 66.0401 (5) (d) of the statutes is amended to read:

5 66.0401 (5) (d) The commission may confine its review to the records it receives  
6 from the political subdivision or, if it finds that additional information would be  
7 relevant to its decision, expand the records it reviews. The commission shall issue  
8 a decision within 90 days after the date on which it receives all of the records it  
9 requests under par. (c), unless for good cause the commission extends this time  
10 period in writing. If the commission determines that the political subdivision's  
11 decision or enforcement action does not comply with the rules it promulgates under  
12 s. 196.378 (4g) that are applicable or is otherwise unreasonable, the political  
13 subdivision's decision shall be superseded by the commission's decision and the  
14 commission may order an appropriate remedy.

15 **SECTION 6.** 196.378 (4g) (b) of the statutes is amended to read:

16 196.378 (4g) (b) The commission shall, with the advice of the wind siting  
17 council, promulgate rules that specify the restrictions a political subdivision may  
18 impose on the installation or use of a wind energy system consistent with the  
19 conditions specified in s. 66.0401 (1m) (a) to (c). The subject matter of these rules  
20 shall include setback requirements that provide reasonable protection from any  
21 health effects, including health effects from noise and shadow flicker, associated with  
22 wind energy systems. The subject matter of these rules shall also include  
23 decommissioning and may include visual appearance, lighting, electrical  
24 connections to the power grid, ~~setback distances,~~ maximum audible sound levels,  
25 shadow flicker, proper means of measuring noise, interference with radio, telephone,

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1 or television signals, or other matters. ~~A~~ Except for a restriction regarding setback  
2 requirements, a political subdivision may not place a restriction on the installation  
3 or use of a wind energy system that is more restrictive than these rules.

4 **SECTION 7.** 196.378 (4g) (c) 1. of the statutes is amended to read:

5 196.378 **(4g)** (c) 1. Specify the information and documentation to be provided  
6 in an application for approval to demonstrate that a proposed wind energy system  
7 complies with rules promulgated under par. (b) or any applicable setback  
8 requirement that is more restrictive than rules.

9 **SECTION 8.** 196.491 (3) (dg) of the statutes is amended to read:

10 196.491 **(3)** (dg) In making a determination under par. (d) that applies to a large  
11 electric generating facility, if the large electric generating facility is a wind energy  
12 system, as defined in s. 66.0403 (1) (m), the commission shall consider whether  
13 installation or use of the facility is consistent with the standards specified in the  
14 rules promulgated by the commission under s. 196.378 (4g) (b) or any applicable  
15 setback requirement that is more restrictive than rules.

16 **SECTION 9. Initial applicability.**

17 (1) The treatment of sections 66.0401 (1m) (intro.) and (4) (f) 1. and 196.378 (4g)  
18 (b) of the statutes first applies to restrictions that a city, village, town, or county  
19 places on a wind energy system on the effective date of this subsection.

20 **(END)**