



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2009 ASSEMBLY BILL 256**

September 15, 2009 – Offered by Representative SOLETSKI.

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 15.797, 23.39, 66.0401 (1e), 66.0401 (3), 66.0401 (4), 66.0401 (5), 66.0401 (6),
4 196.378 (4g) and 196.491 (3) (dg) of the statutes; **relating to:** regulation of wind
5 energy systems 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. The subject matter of the rules must include the following: 1) decommissioning, which is defined as removing wind turbines, buildings, cables, electrical components, roads, and other associated facilities that are located at the site of a wind energy system, as well as restoring the site; and 2) setback requirements that reasonably protect against health effects, including those from noise and shadow flicker, that are associated with wind energy systems. The bill also allows the rules to 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. In addition, the PSC must promulgate rules requiring an owner of a wind energy system with a nominal operating capacity of at least one megawatt to maintain proof of financial responsibility for decommissioning the wind energy system. 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.

The substitute amendment also creates a 15-member wind siting council consisting of two wind energy system representatives; one town representative; one county representative; two energy industry representatives; two environmental group representatives; two realtor representatives; two landowners living adjacent to or in the vicinity of a wind energy system; two public members; and one University of Wisconsin System faculty member with expertise regarding the health impacts of wind energy systems. The PSC appoints the members for three-year terms. The substitute amendment requires the PSC to obtain the advice of the council in promulgating rules under the substitute amendment. In addition, the council must survey peer-reviewed scientific research on the health impacts of wind energy

systems, as well as national and state regulatory developments regarding the siting of wind energy systems, and submit a report to the legislature every five years describing the research and developments and recommending legislation based on the research and developments.

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.** 15.797 of the statutes is created to read:

2 **15.797 Same; council. (1) WIND SITING COUNCIL.** (a) In this subsection, “wind
3 energy system” has the meaning given in s. 66.0403 (1) (m).

4 (b) There is created in the public service commission a wind siting council that
5 consists of the following members appointed by the public service commission for
6 3–year terms:

- 7 1. Two members representing wind energy system developers.
- 8 2. One member representing towns and one member representing counties.
- 9 3. Two members representing the energy industry.
- 10 4. Two members representing environmental groups.
- 11 5. Two members representing realtors.

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

4 7. Two public members.

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

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

8 **23.39 Placement of wind turbines.** The department shall identify areas in
9 this state where wind turbines, if placed in those areas, may have a significant
10 adverse effect on bat and migratory bird populations. The department shall
11 maintain an Internet Web site that provides this information to the public and that
12 includes a map of the identified areas.

13 **SECTION 3.** 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and 66.0401
14 (1m) (intro.), as renumbered, is amended to read:

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

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

24 66.0401 **(1e)** DEFINITIONS. In this section:

1 (a) “Application for approval” means an application for approval of a wind
2 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)
3 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (e) A political subdivision may extend the time period in par. (d) if, within that
19 90-day period, the political subdivision authorizes the extension in writing. Any
20 combination of the following extensions may be granted, except that the total amount
21 of time for all extensions granted under this paragraph may not exceed 90 days:

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

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

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

3 (f) 1. Except as provided in subd. 2., a political subdivision may not deny or
4 impose a restriction on an application for approval unless the political subdivision
5 enacts an ordinance that is no more restrictive than the rules the commission
6 promulgates under s. 196.378 (4g) (b).

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

14 (g) A political subdivision that chooses to regulate wind energy systems shall
15 enact an ordinance, subject to sub. (6) (b), that is no more restrictive than the
16 applicable standards established by the commission in rules promulgated under s.
17 196.378 (4g).

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

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

24 (b) 1. Any aggrieved person seeking to appeal a decision or enforcement action
25 specified in par. (a) may begin the political subdivision's administrative review

1 process. If the person is still aggrieved after the administrative review is completed,
2 the person may file an appeal with the commission. No appeal to the commission
3 under this subdivision may be filed later than 30 days after the political subdivision
4 has completed its administrative review process. For purposes of this subdivision,
5 if a political subdivision fails to complete its administrative review process within 90
6 days after an aggrieved person begins the review process, the political subdivision
7 is considered to have completed the process on the 90th day after the person began
8 the process.

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

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

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

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

10 (e) In conducting a review under par. (d), the commission may treat a political
11 subdivision's determination that an application under sub. (4) (a) 1. is incomplete as
12 a decision to disapprove the application if the commission determines that a political
13 subdivision has unreasonably withheld its determination that an application is
14 complete.

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

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

21 **66.0401 (6) APPLICABILITY OF A POLITICAL SUBDIVISION OR COUNTY ORDINANCE.** (a)

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

24 2. If a town enacts an ordinance under sub. (2) after a county has enacted an
25 ordinance under sub. (2), the county ordinance does not apply, and may not be

1 enforced, in the town, except that if the town later repeals its ordinance, the county
2 ordinance applies in that town.

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

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

9 (c) If a political subdivision enacts an ordinance under sub. (4) (g) after the
10 commission's rules promulgated under s. 196.378 (4g) take effect, the political
11 subdivision may not apply that ordinance to, or require approvals under that
12 ordinance for, a wind energy system approved by the political subdivision under a
13 previous ordinance or under a development agreement.

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

15 66.0403 (1) (m) "Wind energy system" means equipment and associated
16 facilities that ~~converts~~ convert and then ~~stores~~ store or ~~transfers~~ transfer energy
17 from the wind into usable forms of energy.

18 **SECTION 11.** 196.378 (4) (title) of the statutes is repealed and recreated to read:

19 196.378 (4) (title) RENEWABLE RESOURCE RULES.

20 **SECTION 12.** 196.378 (4g) of the statutes is created to read:

21 196.378 (4g) WIND ENERGY SYSTEMS. (a) In this subsection:

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

23 2. "Decommissioning" means removing wind turbines, buildings, cables,
24 electrical components, roads, and any other facilities associated with a wind energy

1 system that are located at the site of the wind energy system and restoring the site
2 of the wind energy system.

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

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

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

17 (c) In addition to the rules under par. (b), the commission shall, with the advice
18 of the wind siting council, promulgate rules that do all of the following:

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

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

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

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

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

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

19 **SECTION 13.** 196.491 (3) (dg) of the statutes is created to read:

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

25 **SECTION 14. Nonstatutory provisions.**

1 (1) PUBLIC HEARINGS. The public service commission shall hold at least 2 public
2 hearings prior to promulgating the rules required under section 196.378 (4g) of the
3 statutes, as created by this act. The public service commission shall hold at least one
4 of the hearings in Monroe County and at least one of the hearings in an area outside
5 of Dane County and Monroe County in which developers have proposed wind energy
6 systems, as defined in section 66.0403 (1) (m) of the statutes, as affected by this act.

7 (2) WIND SITING COUNCIL MEMBERS.

8 (a) Notwithstanding the length of terms specified for the members of the wind
9 siting council specified in section 15.797 (1) (b) of the statutes, as created by this act,
10 the initial members shall be appointed for the following terms:

11 1. One member specified under section 15.797 (1) (b) 1., 2., 3., 4., 5., 6., and 7.
12 of the statutes, as created by this act, for terms expiring on July 1, 2012.

13 2. The member specified under section 15.797 (1) (b) 8. of the statutes, as
14 created by this act, for a term expiring on July 1, 2013.

15 3. One member specified under section 15.797 (1) (b) 1., 2., 3., 4., 5., 6., and 7.
16 of the statutes, as created by this act for terms that expire on July 1, 2014.

17 (b) Notwithstanding section 15.797 (1) (b) 2. of the statutes, as created by this
18 act, the initial member of the wind siting council specified under section 15.797 (1)
19 (b) 2. of the statutes that is appointed under paragraph (a) 3. shall represent a town
20 or county that has in effect on the effective date of this paragraph an ordinance
21 regulating wind energy systems, as defined in section 66.0403 (1) (m) of the statutes,
22 as affected by this act.

23 (3) DEPARTMENT OF NATURAL RESOURCES STUDY. The department of natural
24 resources shall conduct a study to determine whether the department's statutory
25 authority is sufficient to adequately protect wildlife and the environment from any

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

15 **SECTION 15. Initial applicability.**

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

21 (2) The treatment of section 196.491 (3) (dg) of the statutes, as created by this
22 act, first applies to applications for certificates of public convenience and necessity
23 that are received after the public service commission's rules under section 196.378
24 (4g) of the statutes, as created by this act, take effect.

25

(END)