



2011 SENATE BILL 263

October 28, 2011 – Introduced by Senators LASEE and GROTHMAN, cosponsored by Representatives JACQUE, BIES, PRIDEMORE, VAN ROY, MURTHA and THIESFELDT. Referred to Committee on Energy, Biotechnology, and Consumer Protection.

1 **AN ACT to amend** 66.0401 (1m) (intro.), 66.0401 (4) (f) 1., 196.378 (4g) (b) and
2 196.491 (3) (dg); and **to create** 196.378 (4g) (f) of the statutes; **relating to:**
3 setback requirements for wind energy systems and granting rule-making
4 authority.

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 requires that the PSC promulgate rules specifying setback requirements that a city, village, town, or county may impose on a wind energy system, but not until after the PSC receives a report from the Department of Health Services (DHS) regarding an epidemiological study that evaluates the health impacts of wind energy systems on people and animals near such systems. DHS may

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encourage interested persons to submit such a study to DHS, or DHS may survey scientific literature for such a study. The bill provides that the study must be scientifically sound and peer-reviewed and must do the following: 1) include the health impacts of low frequency sound and infrasound resulting from wind energy systems; 2) evaluate the differences in health impacts, if any, on people and animals in different proximities to and directions from such systems; and 3) evaluate any differences associated with different wind speeds and directions. DHS must submit a report describing the study's findings to both the PSC and the legislature. In carrying out its duties regarding the report, DHS must consult with University of Wisconsin System personnel with the requisite expertise to evaluate such a study.

Upon receipt of DHS's report, the bill requires the PSC to promulgate rules specifying the setback requirements that a city, village, town, or county may impose on the installation and use of a wind energy system. The rules must be based on the findings of the study that is the subject of the report. As under current law, the bill prohibits a city, village, town, or county from imposing a setback requirement that is more restrictive than the PSC's rules.

The bill also prohibits a person from commencing construction of a large wind energy system prior to the effective date of the rules required under the bill. The bill defines "large wind energy system" as a wind energy system that: 1) has a total installed nameplate capacity of more than 300 kilowatts; and 2) consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. This prohibition applies notwithstanding the approval of a large wind energy system by a city, village, town, or county. The bill includes legislative findings in support of this prohibition.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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 political
3 subdivision may place any restriction, either directly or in effect, on the installation
4 or use of a wind energy system that is more restrictive than the rules promulgated
5 by the commission under s. 196.378 (4g) ~~(b)~~. No political subdivision may place any
6 restriction, either directly or in effect, on the installation or use of a solar energy
7 system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, unless the
8 restriction satisfies one of the following conditions:

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

2 66.0401 (4) (f) 1. Except as provided in subd. 2., a political subdivision may not
3 deny or impose a restriction on an application for approval unless the political
4 subdivision enacts an ordinance that is no more restrictive than the rules the
5 commission promulgates under s. 196.378 (4g) (b).

6 **SECTION 3.** 196.378 (4g) (b) of the statutes is amended to read:

7 196.378 (4g) (b) The commission shall, with the advice of the wind siting
8 council, promulgate rules that specify the restrictions a political subdivision may
9 impose on the installation or use of a wind energy system consistent with the
10 conditions specified in s. 66.0401 (1m) (a) to (c). ~~The subject matter of these rules~~
11 ~~shall include setback requirements that provide reasonable protection from any~~
12 ~~health effects, including health effects from noise and shadow flicker, associated with~~
13 ~~wind energy systems.~~ The subject matter of these rules shall also include
14 decommissioning and may include visual appearance, lighting, electrical
15 connections to the power grid, ~~setback distances, maximum audible sound pressure~~
16 ~~levels, shadow flicker, proper means of measuring noise, interference with radio,~~
17 ~~telephone, or television signals, or other matters.~~ A political subdivision may not
18 place a restriction on the installation or use of a wind energy system that is more
19 restrictive than these rules.

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

21 196.378 (4g) (f) 1. In this paragraph:

22 a. “Department” means the department of health services.

23 b. “Large wind energy system” means a wind energy system that has a total
24 installed nameplate capacity of more than 300 kilowatts and that consists of

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1 individual wind turbines that have an installed nameplate capacity of more than 100
2 kilowatts.

3 2. The legislature finds that protecting the health and ensuring the safety of
4 people and animals near wind energy systems is a significant and legitimate public
5 purpose and a matter of statewide concern, that evaluating the potential health
6 impacts of wind energy systems is necessary for determining setback requirements
7 that adequately protect and ensure such health and safety, and that the moratorium
8 on constructing new large wind energy systems under subd. 5. is reasonable and
9 necessary for the proper determination of such setback requirements.

10 3. The department shall prepare a report describing the findings of a
11 scientifically sound, peer-reviewed, epidemiological study that evaluates the health
12 impacts of wind energy systems on people and animals near such systems, including
13 the health impacts of low frequency sound and infrasound resulting from such
14 systems, and that evaluates the differences in health impacts, if any, on people and
15 animals in different proximities to and directions from such systems, as well as any
16 differences associated with different wind speeds and directions. The department
17 may encourage interested parties to submit such a study to the department or the
18 department may survey the scientific literature for such a report. The department
19 shall submit its report on the study to the appropriate standing committees of the
20 legislature under s. 13.172 (3) and the commission.

21 4. Upon receipt of the department's report under subd. 3., the commission shall,
22 based on the findings of the study described in the report, promulgate rules
23 specifying the setback requirements that a political subdivision may impose on the
24 installation and use of a wind energy system.

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1 5. No person may commence construction of a large wind energy system prior
2 to the effective date of the rules required under this subdivision. This subdivision
3 applies to a large wind energy system notwithstanding any approval of the large
4 wind energy system by a political subdivision.

5 6. In carrying out its duties under subd. 3., the department shall consult with
6 University of Wisconsin System personnel who, as determined by the department,
7 have the requisite expertise to evaluate a study described in subd. 3.

8 **SECTION 5.** 196.491 (3) (dg) of the statutes is amended to read:

9 196.491 **(3)** (dg) In making a determination under par. (d) that applies to a large
10 electric generating facility, if the large electric generating facility is a wind energy
11 system, as defined in s. 66.0403 (1) (m), the commission shall consider whether
12 installation or use of the facility is consistent with the standards specified in the
13 rules promulgated by the commission under s. 196.378 (4g) (~~b~~).

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(END)