



State of Wisconsin
2011 – 2012 LEGISLATURE



LRB-1507/1
MDK:wlj:md

2011 BILL

1 **AN ACT** *to renumber* 196.378 (4g) (a) 1.; *to amend* 196.378 (4g) (b) and 196.378
2 (4g) (e); and *to create* 196.378 (4g) (a) 1g., 196.378 (4g) (a) 2g., 196.378 (4g) (a)
3 2r., 196.378 (4g) (a) 5., 196.378 (4g) (am), 196.378 (4g) (br), 196.378 (4g) (c) 5.,
4 196.378 (4g) (c) 6., 196.378 (4g) (c) 7. and 196.378 (4g) (dm) of the statutes;
5 **relating to:** requirements for wind energy systems, providing an exemption
6 from emergency rule procedures, and granting rule-making 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 any of the following: visual appearance, lighting, electrical connections to the power grid, maximum audible sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, or television signals, or other matters. Current law prohibits a city, village, town, or county from placing a restriction on the

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installation or use of a wind energy system that is more restrictive than the PSC's rules.

This bill imposes additional requirements on the PSC's rules. The bill requires the restrictions under the rules to provide reasonable protection from any health effects associated with wind energy systems, including health effects from noise and shadow flicker. Under current law, the setback requirements under the rules must provide such protection. As noted below, the bill eliminates the setback requirements under the rules.

The bill requires that, if a PSC rule involves a person who is affected by a wind energy system, including a rule that requires written notice, the rule must ensure that such a person includes an "affected owner," which the bill defines as the owner of property located within one-half mile of property on which a wind energy system is installed or proposed to be installed. Additionally, the rules must require an owner or operator of a wind energy system to provide a copy of a brochure prepared by the PSC to an affected owner prior to entering into an agreement with the affected owner regarding the installation or use of the wind energy system. The brochure must describe wind energy systems, requirements under state law applicable to wind energy systems, including any provisions of the PSC's rules that allow for waiver of any such requirements, and the possible impacts of wind energy systems on property owners, including affected owners.

The bill requires that the rules must allow an affected owner who has entered into an agreement with an owner or operator of a wind energy system regarding the installation or use of the wind energy system to terminate the agreement upon giving written notice of the termination no later than 10 working days after entering into the agreement or receiving the brochure, whichever is later. Also, the rules must require any individual who negotiates an agreement with an affected owner on behalf of an owner or operator regarding an interest in real estate related to the installation or use of a wind energy system to make a written disclosure that the individual is licensed as a real estate broker or is exempt from such licensure. The rules must also require inclusion of the written disclosure as an addendum to such an agreement.

The bill eliminates the requirement for the PSC to promulgate rules regarding setback requirements, and requires instead that the owners of certain wind energy systems comply with distance requirements specified in the bill. The bill's requirements apply to the owner of a "large wind energy system," which the bill defines as a wind energy system that has a total installed nameplate capacity of more than 300 kilowatts and that consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. The bill defines the owner of a large wind energy system as any of the following: 1) a person with a direct ownership interest in such a system, regardless of whether the person was involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the system; or 2) a person acting as a developer of a large wind energy system by acquiring the necessary rights, permits, and approvals for or by planning for the construction and operation of the system,

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regardless of whether the person will own or operate the system. The foregoing definition is similar to a definition in rules promulgated by the PSC.

Under the bill, the owner of a large wind energy system must design and construct the system so that the straight line distance from the vertical center line of any wind turbine tower of the system to the nearest point on the property line of the property on which the wind turbine tower is located is at least one-half mile. However, the bill allows a lesser distance if there is a written agreement between the owner of the large wind energy system and the owners of all property within one-half mile of the property on which the system is located. The bill also requires that the straight line distance from the vertical center line of any wind turbine tower of the system to the nearest point on the permanent foundation of any building must be at least 1.1 times the maximum blade tip height of the wind turbine tower, unless the owners of the system and the building agree in writing to a lesser distance. If the same person owns the large wind energy system and the building, the foregoing requirement does not apply. In addition, the bill requires that the straight line distance from the vertical center line of any wind turbine tower of the system to the nearest point on any public road right-of-way or overhead communication or electric transmission or distribution line must be at least 1.1 times the maximum blade tip height of the wind turbine tower.

Current law requires the wind siting council to submit a report to the legislature every five years that describes the following: 1) peer-reviewed scientific research regarding the health impacts of wind energy systems; and 2) state and national regulatory developments regarding the siting of wind energy systems. The report must also include any recommendations for legislation. The bill requires the wind siting council to study the impacts of wind energy systems on property values and to include the results of its study in the report.

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

1 **SECTION 1.** 196.378 (4g) (a) 1. of the statutes is renumbered 196.378 (4g) (a) 1r.

2 **SECTION 2.** 196.378 (4g) (a) 1g. of the statutes is created to read:

3 196.378 **(4g)** (a) 1g. “Affected owner” means the owner of property located
4 within one-half mile of property on which a wind energy system is installed or
5 proposed to be installed.

6 **SECTION 3.** 196.378 (4g) (a) 2g. of the statutes is created to read:

7 196.378 **(4g)** (a) 2g. “Large wind energy system” means a wind energy system
8 that has a total installed nameplate capacity of more than 300 kilowatts and that

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

3 **SECTION 4.** 196.378 (4g) (a) 2r. of the statutes is created to read:

4 196.378 **(4g)** (a) 2r. “Large wind energy system owner” means any of the
5 following:

6 a. A person with a direct ownership interest in a large wind energy system,
7 regardless of whether the person was involved in acquiring the necessary rights,
8 permits, and approvals or otherwise planning for the construction and operation of
9 a large wind energy system.

10 b. At the time a large wind energy system is being developed, a person who is
11 acting as a large wind energy system developer by acquiring the necessary rights,
12 permits, and approvals for or by planning for the construction and operation of a
13 large wind energy system, regardless of whether the person will own or operate the
14 large wind energy system.

15 **SECTION 5.** 196.378 (4g) (a) 5. of the statutes is created to read:

16 196.378 **(4g)** (a) 5. “Working day” means each day except Saturday, Sunday, or
17 a legal holiday under s. 995.20.

18 **SECTION 6.** 196.378 (4g) (am) of the statutes is created to read:

19 196.378 **(4g)** (am) A large wind energy system owner shall design and construct
20 a large wind energy system so that all of the following are satisfied:

21 1. The straight line distance from the vertical center line of any wind turbine
22 tower of the system to the nearest point on the property line of the property on which
23 the wind turbine tower is located is at least one-half mile, unless the large wind
24 energy system owner agrees in writing with all affected owners to a distance that is
25 less than one-half mile.

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1 2. The straight line distance from the vertical center line of any wind turbine
2 tower of the system to the nearest point on the permanent foundation of any building
3 is at least 1.1 times the maximum blade tip height of the wind turbine tower, unless
4 the large wind energy system owner agrees in writing with the building owner to a
5 distance that is less than 1.1 times the maximum blade tip height of the wind turbine
6 tower. This subdivision does not apply if the large wind energy system and building
7 are owned by the same person.

8 3. The straight line distance from the vertical center line of any wind turbine
9 tower of the system to the nearest point on any public road right-of-way or overhead
10 communication or electric transmission or distribution line is at least 1.1 times the
11 maximum blade tip height of the wind turbine tower.

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

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

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1 **SECTION 8.** 196.378 (4g) (br) of the statutes is created to read:

2 196.378 **(4g)** (br) Any rules promulgated under par. (b) that involve a person
3 who is affected by a wind energy system, including rules requiring written notice,
4 shall ensure that such a person includes an affected owner.

5 **SECTION 9.** 196.378 (4g) (c) 5. of the statutes is created to read:

6 196.378 **(4g)** (c) 5. Allow an affected owner who has entered into an agreement
7 with the owner or operator of a wind energy system regarding the installation or use
8 of the wind energy system to terminate the agreement upon giving written notice of
9 the termination no later than 10 working days after entering into the agreement or
10 receiving the brochure specified in par. (dm), whichever is later.

11 **SECTION 10.** 196.378 (4g) (c) 6. of the statutes is created to read:

12 196.378 **(4g)** (c) 6. Require the owner or operator of a wind energy system to
13 provide a copy of the brochure specified in par. (dm) to an affected owner prior to
14 entering into an agreement with the affected owner regarding the installation or use
15 of the wind energy system.

16 **SECTION 11.** 196.378 (4g) (c) 7. of the statutes is created to read:

17 196.378 **(4g)** (c) 7. Require any individual who negotiates an agreement with
18 an affected owner on behalf of the owner or operator of a wind energy system
19 regarding an interest in real estate related to the installation or use of the wind
20 energy system to make a written disclosure that the individual is licensed as a real
21 estate broker under ch. 452 or is exempt from such licensure. The rules shall also
22 require inclusion of the written disclosure as an addendum to the agreement.

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

24 196.378 **(4g)** (dm) The commission shall prepare and make available to the
25 public a brochure that describes wind energy systems, requirements under state law

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1 applicable to wind energy systems, including any provisions of the commission's
2 rules that allow for waiver of any such requirements, and the possible impacts of
3 wind energy systems on property owners, including affected owners.

4 **SECTION 13.** 196.378 (4g) (e) of the statutes is amended to read:

5 196.378 (4g) (e) The wind siting council shall survey the peer-reviewed
6 scientific research regarding the health impacts of wind energy systems and study
7 state and national regulatory developments regarding the siting of wind energy
8 systems. The wind siting council shall also study the impacts of wind energy systems
9 on property values. No later than October 1, 2014, and every 5 years thereafter, the
10 wind siting council shall submit a report to the chief clerk of each house of the
11 legislature, for distribution to the appropriate standing committees under s. 13.172
12 (3), describing the research ~~and~~, regulatory developments, and property value
13 impacts, and including any recommendations of the council for legislation that is
14 based on the research ~~and~~, regulatory developments, and property value impacts.

15 **SECTION 14. Nonstatutory provisions.**

16 (1) The public service commission shall submit in proposed form the rules that
17 are necessary to comply with section 196.378 (4g) (br) of the statutes, as created by
18 this act, and that are required under section 196.378 (4g) (c) 5., 6., and 7. of the
19 statutes, as created by this act, to the legislative council staff under section 227.15
20 (1) of the statutes no later than the first day of the 4th month beginning after the
21 effective date of this subsection.

22 (2) The public service commission shall comply with section 196.378 (4g) (br)
23 of the statutes, as created by this act, by using the procedure under section 227.24
24 of the statutes to promulgate rules under section 196.378 (4g) (b) of the statutes, as
25 affected by this act, for the period before the effective date of the rules submitted

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1 under subsection (1), but not to exceed the period authorized under section 227.24
2 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.
3 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the public
4 service commission is not required to provide evidence that promulgating rules
5 under this subsection as emergency rules is necessary for the preservation of the
6 public peace, health, safety, or welfare and is not required to provide a finding of
7 emergency for rules promulgated under this subsection.

8 (3) Using the procedure under section 227.24 of the statutes, the public service
9 commission shall promulgate rules required under section 196.378 (4g) (c) 5., 6., and
10 7. of the statutes, as created by this act, for the period before the effective date of the
11 rules submitted under subsection (1), but not to exceed the period authorized under
12 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of
13 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
14 the public service commission is not required to provide evidence that promulgating
15 rules under this subsection as emergency rules is necessary for the preservation of
16 the public peace, health, safety, or welfare and is not required to provide a finding
17 of emergency for rules promulgated under this subsection.

SECTION 15. Initial applicability.

18
19 (1) The treatment of section 196.378 (4g) (am) of the statutes first applies to
20 large wind energy systems for which construction commences on the effective date
21 of this subsection.

SECTION 16. Effective date.

22
23 (1) This act takes effect on the first day of the 4th month beginning after
24 publication.

25 (END)