



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2009 Wisconsin Act 40**  
[2009 Senate Bill 185]

**Municipal Regulation of Wind  
Energy Systems**

2009 Wisconsin Act 40 relates to municipal regulation of wind energy systems.

In general, a municipality (county, city, town, or village) may not place any restriction, either directly or in effect, on the installation of a solar or wind energy system, unless the restriction satisfies one of the following conditions:

- The restriction serves to preserve or protect the public health or safety.
- The restriction does not significantly increase the cost of the system or significantly decrease its efficiency.
- The restriction allows for an alternative system of comparable cost and efficiency.

Act 40 does not modify the provision cited above, but creates a framework to allow limited and generally uniform local regulation of wind energy systems. Note that, while the prior law addresses both wind and solar energy systems, of any size, the framework created by the Act applies only to wind energy systems with operating capacity less than 100 megawatts.

### **Limitations on Municipal Regulation of Wind Energy Systems**

The Act directs the Public Service Commission (PSC) to promulgate rules that specify the maximum restrictions that a municipality may impose on the installation or use of a wind energy system. It specifies that a municipality may not do any of the following:

- Regulate wind energy systems unless it adopts an ordinance that is no more restrictive than the PSC rules.
- Impose any restriction on a wind energy system that is more restrictive than the PSC rules.

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- Require the developer of a wind energy system that the municipality has previously approved to comply with an ordinance that the municipality adopts under the Act and the PSC rules.
- Prohibit or restrict testing activities to determine whether a site is suitable for the placement of a wind energy system.

The Act specifies that a municipality *may* deny an application for approval to construct a wind energy system if the proposed site is in an area the municipality has designated as primarily for future residential or commercial development under the comprehensive planning (“smart growth”) law. However, it specifies that the PSC, on appeal, may reverse such a denial if it finds that approving the application is consistent with the public interest.

### **Municipal Procedures**

The Act specifies procedures that a municipality must follow in reviewing an application for a permit to install a wind energy system. It sets deadlines within which a municipality must determine whether an application is complete and take final action on a complete application. It specifies that, when reviewing an application for approval of a wind energy system, a municipality must create a record of its proceedings and must base its decision on written findings of fact supported by evidence in the record. The Act directs the PSC to promulgate rules further elaborating these and other procedural requirements and requires municipalities to conform their procedures to the PSC rules.

### **Review of Municipal Actions**

A party aggrieved by a municipality’s action on an application for approval to construct a wind energy system or a municipality’s enforcement action relative to a wind energy system may either appeal the decision or action in the municipality’s administrative review process, with the possibility of subsequent appeal to the PSC, or appeal directly to the PSC. Under either option, judicial review is not available until the PSC has completed a review of the case.

Upon appeal to the PSC, if the PSC determines that the municipality’s action did not comply with the PSC’s rules or is otherwise unreasonable, the PSC’s decision supersedes that of the municipality and the PSC may order an appropriate remedy. Upon appeal to circuit court, the Act directs the court to review the PSC’s decision, rather than that of the municipality.

### **Other Provisions**

In addition to the foregoing, the Act does all of the following:

- Directs the PSC to promulgate rules that require the owner of a wind energy system with an operating capacity of at least one megawatt to maintain proof of financial responsibility ensuring the availability of funds for decommissioning of the system upon discontinuance of its use.
- Creates a Wind Siting Council in the PSC. It directs the PSC to consult with the council in developing certain of rules the required under the Act. It also directs the council to survey the peer-reviewed scientific literature relating to the health effects of wind energy systems and to study state and national regulatory developments with regard to wind energy systems and to report to the Legislature every five years any recommendations of the council for legislation based on those developments.

- Directs the Department of Natural Resources (DNR) to identify areas in the state where wind turbines, if placed in those areas, may have a significant adverse effect on bat and migratory bird populations.
- Directs the DNR to study whether the department's statutory authority is sufficient to adequately protect wildlife and the environment from any adverse effect from the siting, construction, or operation of wind energy systems and report its conclusions to the Legislature. If the study concludes that the DNR's authority is not sufficient, the report must include recommendations for legislation that provides the DNR with such authority.

For further information, see Legislative Council Information Memorandum IM-2009-05, *Municipal Regulation of Wind Energy Systems (2009 Wisconsin Act 40)*.

**Effective Date:** 2009 Wisconsin Act 40 took effect on October 15, 2009.

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