

# WISCONSIN TOWNS ASSOCIATION CONVENTION

## Wind Turbine Siting and Related Issues

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by

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A. Wisconsin Statutes Section 66.0401

“No political subdivision may place any restriction ... unless the restriction satisfies one of the following conditions:

- (a) Serves to preserve or protect the public health or safety.
- (b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (c) Allows for a alternative system of comparable cost and efficiency”

Adopted 1994

B. Ecker Brothers v. Calumet County 321 Wis. 2d 51

2009 Court of Appeals decision

66.0401 requires case by case approach such as using a conditional use permit

Towns and counties cannot use a “one size fits all” ordinance.

Therefore a town or county siting ordinance that establishes uniform setbacks as other restrictions is ultra vires i.e. beyond the scope of its legal authority.

C. 2009 Act 40

(1) “No political subdivision may place any restriction ... that is more restrictive than the rules promulgated by the commission”

(2) Created new agency known as Wind Siting Council

- Survey peer reviewed scientific research regarding health impacts
- Study state and national regulatory developments
- Report to Legislature every five years
- Advise the PSC on the contents of its rules

- (3) Bans local restrictions on testing activities for suitability of a wind energy system
- (4) Creates local procedure for handling “application for approval”(for projects less than 100 megawatts)
  - Forty-five days to determine if application complete
  - Publish Class 1 Notice of Filing
  - Three month grace to adopt ordinance
  - Detailed record keeping requirements of approval process
  - Review by Public Service Commission
- (5) Authorizes dual ordinances by town and county
  - The more restrictive rules apply to the town

D. Wind Turbine Revenue to Local Government

- (1) For owners of more than 50 megawatts of generating capacity
  - \$1000.00 per megawatt of name-plate capacity to each of the town and county
  - plus \$2000.00 per megawatt of name-plate capacity divided one-third to towns and two-thirds to counties. ( for example revenue see attached)
- (2) For owners of less than 50 megawatts of generating capacity
  - No required revenue distribution to local governments
  - Some wind developers are proposing \$4000 per megawatt of name-plate capacity with one-third payable to the town, one-third payable to the county and one-third to be shared among nonparticipating residents near the wind turbines
  - This may be an opportunity for local governments to impose conditions

E. What is Left for Local Government to Regulate  
(If current PSC 128 is implemented)

- (1) PSC 128.10(1) - local gov't may adopt an ordinance with less restrictive provisions
- (2) 128.10(3) - local gov't may elect to have no ordinance
- (3) 128.12(2) - local gov't may require reasonable efforts to accommodate existing land uses and commercial enterprises
- (4) 128.12(2) - local gov't may require reasonable efforts to minimize conversion of ag

land

(5) 128.13(2)(c) - local gov't may require setback and height limits at private heliports at a medical facility

(6) 128.16(3) - local gov't may require new mitigation technology for personal communications

(7) 128.16(4) - local gov't may require new mitigation technology for commercial communications interference

(8) 128.18(3) - local gov't may establish reasonable requirements to minimize soil compaction, top soil mixing and damage to drainage systems on agricultural land

(9) 128.18(4)(c) - local gov't may require annual training for fire, police and other first responders

(10) 128.19 local - gov't may require review process and financial assurance for decommissioning

(11) 128.33(1) - local gov't may require information applicant has received from state and federal agencies

(12) 128.33(2) - local gov't may require wind owner to cooperate with any study coordinated by state agency

(13) 128.33(3) - local gov't may require owner of wind energy system to compensate owners of non participating residences within one-half mile of wind turbine  
per (\$600.00 per year for one turbine, \$800.00 per year for two turbines, \$1,000.00 year for three or more turbines, all indexed to CPI)

(14) 128.33(3)(m) - local gov't may require an agreement for monetary compensation to a farm operator within one-half mile of wind turbine for aerial spraying interference in growing potatoes, peas, beans or sweet corn

(15) 128.33(4) - local gov't may require a wind system owner to provide copies of all state and federal permits and approvals

(16) 128.33(5) - local gov't may require wind system owner to file annual report documenting operation and maintenance

(17) 128.36(1) - local gov't may require or may establish a procedure for monitoring compliance, including fees for assessment

- (18) 128.36(2) - local gov't may require wind system owner to pay reasonable fees for inspector to monitor compliance during construction
- (19) 128.41 - local gov't may establish a monitoring committee to oversee resolution of complaints regarding wind energy system
- (20) 128.61 - local gov't may elect to hold at least one (1) public meeting regarding small wind systems application
- (21) Use of joint development agreements
- roads plan to protect local roads and traffic