

66.0401 Regulation relating to solar and wind energy systems.

(1e) Definitions. In this section:

- (a)** “Application for approval” means an application for approval of a wind energy system under rules promulgated by the commission under s. [196.378 \(4g\) \(c\) 1.](#)
- (b)** “Commission” means the public service commission.
- (c)** “Political subdivision” means a city, village, town, or county.
- (d)** “Wind energy system” has the meaning given in s. [66.0403 \(1\) \(m\).](#)

(1m) Authority to restrict systems limited. No political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission under s. [196.378 \(4g\) \(b\).](#) No political subdivision may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. [13.48 \(2\) \(h\) 1. g.](#), or a wind energy system, 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 an alternative system of comparable cost and efficiency.

(2) Authority to require trimming of blocking vegetation. Subject to sub. [\(6\) \(a\)](#), a political subdivision may enact an ordinance relating to the trimming of vegetation that blocks solar energy, as defined in s. [66.0403 \(1\) \(k\)](#), from a collector surface, as defined under s. [700.41 \(2\) \(b\)](#), or that blocks wind from a wind energy system. The ordinance may include a designation of responsibility for the costs of the trimming. The ordinance may not require the trimming of vegetation that was planted by the owner or occupant of the property on which the vegetation is located before the installation of the solar or wind energy system.

(3) Testing activities. A political subdivision may not prohibit or restrict any person from conducting testing activities to determine the suitability of a site for the placement of a wind energy system. A political subdivision objecting to such testing may petition the commission to impose reasonable restrictions on the testing activity.

(4) Local procedure.

(a)

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

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

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

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

(b) A political subdivision shall make a record of its decision making on an application for approval, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the political subdivision in connection with the application for approval. The

political subdivision's record shall conform to the commission's rules promulgated under s. [196.378 \(4g\) \(c\) 2.](#)

- (c) A political subdivision shall base its decision on an application for approval on written findings of fact that are supported by the evidence in the record under par. [\(b\)](#). A political subdivision's procedure for reviewing the application for approval shall conform to the commission's rules promulgated under s. [196.378 \(4g\) \(c\) 3.](#)
- (d) Except as provided in par. [\(e\)](#), a political subdivision shall approve or disapprove an application for approval no later than 90 days after the day on which it notifies the applicant that the application for approval is complete. If a political subdivision fails to act within the 90 days, or within any extended time period established under par. [\(e\)](#), the application is considered approved.
- (e) A political subdivision may extend the time period in par. [\(d\)](#) if, within that 90-day period, the political subdivision authorizes the extension in writing. Any combination of the following extensions may be granted, except that the total amount of time for all extensions granted under this paragraph may not exceed 90 days:
 - 1. An extension of up to 45 days if the political subdivision needs additional information to determine whether to approve or deny the application for approval.
 - 2. An extension of up to 90 days if the applicant makes a material modification to the application for approval.
 - 3. An extension of up to 90 days for other good cause specified in writing by the political subdivision.
- (f)
 - 1. Except as provided in subd. [2.](#), a political subdivision may not deny or impose a restriction on an application for approval unless the political subdivision enacts an ordinance that is no more restrictive than the rules the commission promulgates under s. [196.378 \(4g\) \(b\)](#).
 - 2. A political subdivision may deny an application for approval if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development, as shown in a map that is adopted, as part of a comprehensive plan, under s. [66.1001 \(2\) \(b\)](#) and [\(f\)](#), before June 2, 2009, or as shown in such maps after December 31, 2015, as part of a comprehensive plan that is updated as required under s. [66.1001 \(2\) \(i\)](#). This subdivision applies to a wind energy system that has a nominal capacity of at least one megawatt.
- (g) A political subdivision that chooses to regulate wind energy systems shall enact an ordinance, subject to sub. [\(6\) \(b\)](#), that is no more restrictive than the applicable standards established by the commission in rules promulgated under s. [196.378 \(4g\)](#).
- (5) Public service commission review.
- (a) A decision of a political subdivision to determine that an application is incomplete under sub. [\(4\) \(a\) 1.](#), or to approve, disapprove, or impose a restriction upon a wind energy system, or an action of a political subdivision to enforce a restriction on a wind energy system, may be appealed only as provided in this subsection.
- (b)
 - 1. Any aggrieved person seeking to appeal a decision or enforcement action specified in par. [\(a\)](#) may begin the political subdivision's administrative review process. If the person is still aggrieved after the administrative review is completed, the person may file an appeal with the commission. No appeal to the commission under this subdivision may be filed later than 30 days after the political subdivision has completed its administrative review process. For purposes of this subdivision, if a political subdivision fails to complete its administrative review process within 90 days after an aggrieved person begins the review process, the political subdivision is considered to have completed the process on the 90th day after the person began the process.
 - 2. Rather than beginning an administrative review under subd. [1.](#), an aggrieved person seeking to appeal a decision or enforcement action of a political subdivision specified in par. [\(a\)](#) may file an appeal directly with the commission. No appeal to the commission under this subdivision may be filed later than 30 days after the decision or initiation of the enforcement action.
 - 3. An applicant whose application for approval is denied under sub. [\(4\) \(f\) 2.](#) may appeal the denial to the commission. The commission may grant the appeal notwithstanding the inconsistency of the application

for approval with the political subdivision's planned residential or commercial development if the commission determines that granting the appeal is consistent with the public interest.

- (c) Upon receiving an appeal under par. (b), the commission shall notify the political subdivision. The political subdivision shall provide a certified copy of the record upon which it based its decision or enforcement action within 30 days after receiving notice. The commission may request of the political subdivision any other relevant governmental records and, if requested, the political subdivision shall provide such records within 30 days after receiving the request.
- (d) The commission may confine its review to the records it receives from the political subdivision or, if it finds that additional information would be relevant to its decision, expand the records it reviews. The commission shall issue a decision within 90 days after the date on which it receives all of the records it requests under par. (c), unless for good cause the commission extends this time period in writing. If the commission determines that the political subdivision's decision or enforcement action does not comply with the rules it promulgates under s. [196.378 \(4g\)](#) or is otherwise unreasonable, the political subdivision's decision shall be superseded by the commission's decision and the commission may order an appropriate remedy.
- (e) In conducting a review under par. (d), the commission may treat a political subdivision's determination that an application under sub. (4) (a) 1. is incomplete as a decision to disapprove the application if the commission determines that a political subdivision has unreasonably withheld its determination that an application is complete.
- (f) Judicial review is not available until the commission issues its decision or order under par. (d). Judicial review shall be of the commission's decision or order, not of the political subdivision's decision or enforcement action. The commission's decision or order is subject to judicial review under ch. [227](#). Injunctive relief is available only as provided in s. [196.43](#).
- (6) Applicability of a political subdivision or county ordinance.
 - (a)
 - 1. A county ordinance enacted under sub. (2) applies only to the towns in the county that have not enacted an ordinance under sub. (2).
 - 2. If a town enacts an ordinance under sub. (2) after a county has enacted an ordinance under sub. (2), the county ordinance does not apply, and may not be enforced, in the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.
 - (b)
 - 1. Subject to subd. 2., a county ordinance enacted under sub. (4) applies only in the unincorporated parts of the county.
 - 2. If a town enacts an ordinance under sub. (4), either before or after a county enacts an ordinance under sub. (4), the more restrictive terms of the 2 ordinances apply to the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.
 - (c) If a political subdivision enacts an ordinance under sub. (4) (g) after the commission's rules promulgated under s. [196.378 \(4g\)](#) take effect, the political subdivision may not apply that ordinance to, or require approvals under that ordinance for, a wind energy system approved by the political subdivision under a previous ordinance or under a development agreement.

History: [1981 c. 354](#); [1981 c. 391 s. 210](#); [1993 a. 414](#); [1999 a. 150 ss. 78, 79, 84](#); Stats. 1999 s. 66.0401; [2001 a. 30](#); [2009 a. 40](#). This section is a legislative restriction on the ability of municipalities to regulate solar and wind energy systems. The statute is not superseded by s. 66.0403 or municipal zoning or conditional use powers. A municipality's consideration of an application for a conditional use permit for a system under this section must be in light of the restrictions placed on local regulation by this section. State ex rel. Numrich v. City of Mequon Board of Zoning Appeals, [2001 WI App 88](#), [242 Wis. 2d 677](#), [626 N.W.2d 366](#), 00-1643. Sub. (1) [now sub. (1m)] requires a case-by-case approach, such as a conditional use permit procedure, and does not allow political subdivisions to find legislative facts or make policy. The local governing arm must hear the specifics of the particular system and then decide whether a restriction is warranted. It may not promulgate an ordinance in which it arbitrarily sets a "one size fits all" scheme of requirements for any system. The conditions listed in sub. (1) (a) to (c) [now sub. (1m) (a) to (c)] are the standards circumscribing the power of political subdivisions, not openings for them to make policy that is contrary to the state's expressed policy. Ecker Bros. v. Calumet County, [2009 WI App 112](#), [321 Wis. 2d 51](#), [772 N.W.2d 240](#), 07-2109.

Exhibit F-3