

LEGAL ADVICE

Legislature tries to bring uniformity to wind farm regulation



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One of Gov. Jim Doyle's policy goals is to generate 25 percent of Wisconsin's electricity from renewable sources by 2025, and Wisconsin electric public utilities are under statutory mandates designed to ensure that at least 10 percent of our electric consumption comes from renewable sources by 2015. Wind-generated electricity is one way to meet these goals. As pressure increased for new renewable energy sources, so too did the friction between wind industry growth and municipal control over that growth.

In the wake of the 1979 energy crisis, the Wisconsin Legislature enacted statutes intended to encourage the development of wind and solar projects.

The statutes (Wis. Stat. 66.0401 and 66.0403) prohibit municipal restrictions on wind farm development unless the restriction "serves to preserve or protect the public health or safety."

Since the statutes were first enacted, wind turbine technology and the scale of wind farms have changed dramatically. No longer is Wisconsin's wind industry dominated by single wind turbine projects supplying electricity for an agricultural operation. Today, Wisconsin's wind industry consists of commercial-scale wind

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The large wind farm developments have encountered vocal opposition, particularly in communities with the best wind resources and the highest concentration of new wind farm developments. To address local concerns, some municipalities have enacted zoning ordinances prohibiting the placement of wind turbines within certain distances of roads, property lines and buildings, and requiring wind farm developers to obtain conditional use permits.

Municipalities with such ordinances assert the ordinances promote public health and safety, such as protection of residents from shadow flicker or noise from wind turbines; however, wind farm developers argue the ordinances intentionally hinder wind

farm development — engendering a "Not In My Backyard" attitude — and create a patchwork of inconsistent regulation throughout the state.

The tension between wind industry growth and municipal control of wind farm developments has led to lawsuits. In a recent case, a wind farm developer claimed that a Calumet County ordinance restricting wind farm development violated Wis. Stat. 66.0401 and 66.0403. The Wisconsin Court of Appeals agreed, concluding the ordinance exceeded the authority granted to municipalities by Wis. Stat. 66.0401 to regulate wind farms.

At the same time this and other litigation was ongoing, the Legislature was contemplating statutory changes that would, hopefully, end the debate over the extent of municipalities' authority to regulate wind farms.

On Sept. 16, the Assembly passed 2009 Senate Bill 185, announcing the

Legislature's decision that regulation of wind farm development should be uniform and centralized with the state. Under SB 185, the state Public Service Commission must develop rules for the construction and operation of wind farms, including uniform standards for the visual appearance of turbines, setback distances and shadow flicker. Any municipality that wants to regulate wind farms will be prohibited from enacting ordinances that are more restrictive than the PSC's uniform standards.

Wind farm developers may seek review by the PSC if they believe a municipal regulation is unreasonable or more restrictive than the PSC's uniform standards. Gov. Doyle signed the bill on Sept. 30, and shortly thereafter the PSC opened a docket (PSC Docket No. 01-AC-231) relating to the development of wind siting rules.

Whether uniform, centralized standards will actually increase wind farm development in Wisconsin is unclear; however, the struggle between state and local control of renewable energy projects is likely to recur as the 2015 and 2025 policy-goal deadlines near. ■

Jonathan D. Bundy, also an attorney with Whyte Hirschboeck Dudek S.C., assisted with this article.