

ENROLLED ACT NO. 64, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2010 BUDGET SESSION

AN ACT relating to siting and regulation of wind energy facilities; requiring permitting by boards of county commissioners; establishing minimum standards for wind energy facilities; providing for the review of county permitting decisions; allowing counties to adopt requirements; providing for referrals to the industrial siting council; amending the industrial siting council's jurisdiction; requiring rulemaking; providing penalties; requiring fees; requiring financial assurances; providing an appropriation; authorizing the reclassification and filling of a vacant position; requiring counties to promulgate rules; providing conforming provisions; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 18-5-501 through 18-5-513 are created to read:

ARTICLE 5  
WIND ENERGY FACILITIES

**18-5-501. Definitions.**

(a) As used in this article:

(i) "Industrial siting council" or "council" means the council created by W.S. 35-12-104;

(ii) "Wind energy facility" or "facility" means any wind powered electrical generation development consisting of an individual wind turbine or multiple wind turbines rated by the manufacturer to generate more than one-half (0.5) megawatt of electricity and includes all

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contiguous lands where the owner or developer has rights to erect wind turbines;

(iii) "Enlarge" or "enlargement" means adding additional wind turbines which are not permitted as part of an original permitting process;

(iv) "Owner" means the surface owner of land.

**18-5-502. County regulation of wind energy projects; exceptions.**

(a) It is unlawful to locate, erect, construct, reconstruct or enlarge a wind energy facility without first obtaining a permit from the board of county commissioners in the county in which the facility is located.

(b) If a wind energy facility is to be located in two (2) or more counties, a permit shall be obtained in each county in which the wind energy facility is to be located.

(c) No wind energy facility constructed or being constructed prior to July 1, 2010 shall be required to have the permit required by this section. No wind energy facility for which an application for a permit has been made to the industrial siting council, or that has received findings of fact, conclusions of law and an order from the industrial siting council, prior to July 1, 2010 shall be required to have the permit required by this section.

(d) Any wind energy facility which is not required to have a permit pursuant to subsection (c) of this section shall be required to obtain a permit for any enlargement of the facility after July 1, 2010.

**18-5-503. Application.**

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(a) To obtain the permit required by W.S. 18-5-502, the owner or developer of a wind energy facility shall submit an application to the board of county commissioners. The application shall:

(i) Certify that reasonable efforts have been undertaken to provide notice in writing to all owners of land within one (1) mile of the proposed wind energy facility and to all cities and towns located within twenty (20) miles of the wind energy facility. Notice shall include a general description of the project including its location, projected number of turbines and the likely routes of ingress and egress;

(ii) Certify that notice of the proposed wind energy facility will be published in a newspaper of general circulation in all counties in which the facility will be located at least twenty (20) days prior to the public hearing required by W.S. 18-5-506. The notice shall include a brief summary of the wind energy facility, invite the public to submit comments and identify the time and date of the hearing;

(iii) Certify that the proposed wind energy facility will comply with all the standards required by W.S. 18-5-504;

(iv) Certify that the proposed wind energy facility will comply with all applicable zoning and county land use regulations, which regulations shall be no less stringent than the standards required by this article;

(v) Certify that a written emergency management plan has been submitted for review and comment to the county fire warden, county emergency management coordinator

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and the county sheriff. If the permit is granted, the plan shall be supplemented and revised following construction of the facility and prior to its operation if there are any variations in the facility's construction which would materially impact the original emergency management plan;

(vi) Provide a waste management plan that includes an inventory of estimated solid wastes and a proposed disposal program for the construction, operation and eventual decommissioning of the proposed wind energy facility;

(vii) Provide evidence sufficient for the board of county commissioners to determine if the proposed wind energy facility has adequate legal access. The application also shall describe how private roadways within the facility will be marked as private roadways and shall acknowledge that no county is required to repair, maintain or accept any dedication of the private roadways to the public use. The application also shall include a traffic study of any public roadways leading to and away from the proposed facility and the board of county commissioners may require the applicant to enter into a reasonable road use agreement for the use of county roads prior to construction of the facility;

(viii) Provide a project plan indicating the proposed roadways, tower locations, substation locations, transmission, collector and gathering lines and other ancillary facility components. If the application is granted, the board of county commissioners shall require that the project plan be revised to show the final location of all facilities;

(ix) Certify that there shall be no advertising or promotional lettering on any tower, turbine, nacelle or

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blade beyond the manufacturer's or the applicant's logo on the nacelle of the turbine;

(x) Provide a site and facility reclamation and decommissioning plan which indicates the planned life of the wind energy facility and the means by which the facility and its site will be decommissioned and reclaimed at the end of the facility's life and which certifies that any owner of land within the wind energy facility and its site who is not the applicant has been consulted in development of the reclamation and decommissioning plan. Such plan shall comply with all requirements adopted by the industrial siting council under W.S. 35-12-105(d). If the permit is granted, the plan shall be updated every five (5) years until site reclamation and decommissioning is complete;

(xi) For wind energy facilities not meeting the definition of a facility as defined in W.S. 35-12-102(a)(vii), provide a detailed summary of any significant adverse environmental, social or economic effects that the proposed wind energy facility may have together with any preliminary plans developed to alleviate any of the adverse effects.

(b) A wind energy facility subject to this article shall meet the requirements adopted pursuant to W.S. 35-12-105(d) and (e) regardless of whether the facility is referred to the industrial siting council pursuant to W.S. 18-5-509 or is otherwise subject to the industrial siting act.

**18-5-504. Minimum standards; incorporation into other processes.**

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(a) No board of county commissioners shall issue a permit for a wind energy facility if that facility:

(i) Does not comply with standards properly adopted by the board of county commissioners for the construction of wind energy facilities, which standards shall not be less stringent than the standards required by this article;

(ii) Would locate the base of any tower at a distance of less than one hundred ten percent (110%) of the maximum height of the tower from any property line contiguous or adjacent to the facility, unless waived in writing by the owner of every property which would be located closer than the minimum distance;

(iii) Would locate the base of any tower at a distance of less than one hundred ten percent (110%) of the maximum height of the tower from any public road right-of-way;

(iv) Would construct any tower or other structure, other than underground structures, transmission lines, roadways and structures appurtenant to roadways, at a distance of less than five and one-half (5.5) times the maximum height of the tower, but in no event less than one thousand (1,000) feet from any platted subdivision unless this restriction is waived in writing by the owners of all lands included within the distance specified in this paragraph;

(v) Would locate the base of any tower at a distance of less than five and one-half (5.5) times the maximum height of the tower, but in no event less than one thousand (1,000) feet from a residential dwelling or occupied structure, unless waived in writing by the person

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holding title to the residential dwelling or occupied structure;

(vi) Would locate the base of any tower at a distance of less than one-half (1/2) mile from the limits of any city or town.

(b) No rule, regulation or law promulgated or applied by any county in this state shall adopt a standard less stringent than the minimum standards established in subsection (a) of this section. The minimum standards stated in subsection (a) of this section shall be incorporated into every existing or future county permitting or licensing process to which they are applicable so that no applicant for a permit under this article is required to submit more than one (1) application addressing these standards to any county.

(c) No board of county commissioners shall issue a permit under W.S. 18-5-502(a) until that county has adopted rules and regulations governing the notice that the application for a permit must provide to the record owners and claimants of mineral rights located on and under lands where the wind energy facility will be constructed. The rules shall conform to rules adopted by the industrial siting council for the same purpose pursuant to W.S. 35-12-105.

**18-5-505. Complete applications; notice.**

Upon receipt of an application, the board of county commissioners shall conduct a review of the application to determine if it contains all the information required by W.S. 18-5-503 and any applicable rules and regulations. If the board of county commissioners determines that the application is incomplete, it shall within thirty (30) days

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of receipt of the application notify the applicant of the specific deficiencies in the application. The applicant shall provide the additional information necessary within thirty (30) days of receipt of a request for additional information from the board. When the board of county commissioners determines that the application is complete it shall notify the applicant that the application is complete and shall provide notice of the date and time at which the hearing required by W.S. 18-5-506 will be conducted.

**18-5-506. Hearing and public comment.**

Any board of county commissioners receiving an application to permit a wind energy facility shall hold a public hearing to consider public comment on the application no less than forty-five (45) days and not more than sixty (60) days after determining that the application is complete. Written comment on the application shall be accepted by the board of county commissioners for not less than forty-five (45) days after determining that the application is complete.

**18-5-507. Decision of the board; findings necessary.**

(a) Within forty-five (45) days from the date of completion of the hearing required by W.S. 18-5-506, the board shall make complete findings, issue an opinion, render a decision upon the record either granting or denying the application and state whether or not the applicant has met the standards required by this article. The decision shall be subject to the remedies provided in W.S. 18-5-508. The board shall grant a permit if it determines that the proposed wind energy facility complies with all standards properly adopted by the board of county commissioners and the standards required by this article.

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(b) No permit shall be granted if the application is incomplete or if all notices required by W.S. 18-5-503 have not been timely given.

(c) A copy of the decision shall be served upon the applicant.

**18-5-508. Remedies.**

(a) Any party aggrieved by the final decision of the board of county commissioners may have the decision reviewed by the district court pursuant to Rule 12 of the Wyoming Rules of Appellate Procedure.

(b) When a decision is issued after hearing on an application for a permit under this article, the decision is final for purposes of judicial review.

**18-5-509. Referral.**

(a) Any board of county commissioners which receives an application to permit a wind energy facility which does not meet the definition of a facility as defined in W.S. 35-12-102(a)(vii) may refer the facility to the industrial siting council for additional permitting consistent with the requirements of the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119, but the provisions of W.S. 39-15-111 and 39-16-111 shall not apply. A referral shall be made only when a board of county commissioners finds there are potentially significant adverse environmental, social or economic issues which the county board of commissioners does not have the expertise to consider or authority to address.

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(b) Any facility referred to the industrial siting council under this section may apply to the council for a waiver of permit application pursuant to W.S. 35-12-107.

(c) Upon receiving a referral pursuant to this section and within fifteen (15) days after receipt of the referral, the director of the department of environmental quality may reject the referral by giving written notice of the rejection to the county making the referral and the applicant. No appeal from the decision of the director under this subsection shall be allowed.

(d) A referral made pursuant to this section shall not relieve a board of county commissioners from its obligation to consider whether the proposed wind energy facility should be permitted under the standards required by this article.

(e) A referral made pursuant to this section shall be made no later than thirty (30) days after an application is deemed complete pursuant to W.S. 18-5-505.

**18-5-510. Binding effect.**

Upon referral of a facility to the industrial siting council pursuant to W.S. 18-5-509, the facility shall not be withdrawn from the council's consideration without consent of the council. Any decision by the council shall be final except as provided in this article or pursuant to the remedies provided to other facilities permitted by the council.

**18-5-511. Revocation or suspension of permit.**

(a) A permit may be revoked or suspended for:

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(i) Any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the refusal to grant a permit;

(ii) Failure to comply with the terms or conditions of the permit after notice of the failure and reasonable opportunity to correct the failure;

(iii) Violation of this article, the rules and regulations adopted pursuant to this article or valid orders of the board of county commissioners or the industrial siting council;

(iv) Failure of the proposed wind energy facility to receive a required permit from the industrial siting council pursuant to the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119; or

(v) Failure of the permitted wind energy facility to:

(A) Transmit electricity created by wind energy for a period of two (2) consecutive years or more;

(B) Maintain land rights necessary to operate the wind energy facility.

**18-5-512. Penalties for violations.**

(a) No person shall:

(i) Commence to construct a wind energy facility on or after July 1, 2010 without first obtaining a permit required by this article;

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(ii) Construct, reconstruct, operate, locate, erect, maintain, enlarge, change or use a wind energy facility, after having first obtained a permit, other than in specific compliance with the permit; or

(iii) Cause any of the acts specified in this subsection to occur.

(b) Any person violating subsection (a) of this section is liable for a civil penalty of not more than ten thousand dollars (\$10,000.00) for each violation. Each day of a continuing violation constitutes a separate offense.

(c) Any wind turbine tower or wind generator erected in violation of this article shall subject the owner of the tower or generator to a penalty of seven hundred fifty dollars (\$750.00) per day for every tower or generator so erected.

(d) Any penalties collected pursuant to this section shall be paid and credited as provided by W.S. 8-1-109.

**18-5-513. Fees.**

(a) A board of county commissioners which receives an application under this article for the permitting of a wind energy facility may charge the applicant a reasonable fee which shall not exceed the reasonably anticipated costs of processing and considering the application and conducting public hearings.

(b) The board of county commissioners also may collect a reasonable building permit fee prior to commencement of construction which shall not exceed the reasonably anticipated administrative costs of issuing the

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building permit and overseeing compliance with permit conditions and requirements.

**Section 2.** W.S. 35-12-102(a)(vii)(C) and by creating a new subparagraph (E), 35-12-105 by creating new subsections (d) through (f) and 35-12-106(a) are amended to read:

**35-12-102. Definitions.**

(a) As used in this chapter:

(vii) "Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) as of May 30, 1987. Exempt activities shall not be included in the estimated construction cost of an industrial facility. The council shall adjust this amount, up or down, each year using recognized construction cost indices as the council determines to be relevant to the actual change in construction cost applicable to the general type of construction covered under this chapter. "Facility" also includes, regardless of construction cost:

(C) Any commercial radioactive waste management facility defined by W.S. 35-11-103(d)(v); ~~and~~

(E) Any facility over which a board of county commissioners has authority to issue the permit required by W.S. 18-5-502 and which facility the board of county commissioners has referred to the council under W.S. 18-5-509.

**35-12-105. Appointment and duties of administrator; staff; rules and regulations.**

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(d) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing decommissioning and site reclamation standards for wind energy facilities permitted under W.S. 35-12-102(a)(vii)(E) and other facilities permitted by boards of county commissioners pursuant to W.S. 18-5-502. Such standards shall preempt county rules or regulations concerning decommissioning and reclamation and shall be designed to assure the proper decommissioning and site reclamation of wind energy facilities at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes operations to cease. The council's regulation shall only preempt those facilities regulated under this act. In the event of any conflict between a standard applied under this subsection and a valid order of the Wyoming public service commission, the order of the public service commission shall be applied.

(e) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing financial assurance requirements for facilities permitted by it pursuant to W.S. 35-12-102(a)(vii)(E) and other facilities permitted by boards of county commissioners pursuant to W.S. 18-5-502. These rules and regulations shall not apply to facilities regulated by the Wyoming public service commission. These rules and regulations shall preempt county rules and regulations concerning financial assurances and shall be designed to provide adequate assurance that the permitted facilities will be properly reclaimed and decommissioned at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes

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operations to cease. The elements to consider when establishing adequate levels of financial assurance shall include credit worthiness, financial strength, credit history, credit rating and any other factors that reasonably bear upon the decision to accept the financial assurance. The financial assurance may be in any form acceptable to the council and can include a corporate guarantee, letter of credit, bond, deposit account or insurance policy.

(f) The council may adopt such rules and regulations, including fee structures, as are appropriate to accept and consider applications referred by any board of county commissioners under W.S. 18-5-509.

**35-12-106. Permit from council required prior to commencing construction of facility; electronic permitting; amendments; exceptions.**

(a) No person shall commence to construct a facility, as defined in this chapter, in this state without first obtaining a permit for that facility from the council. Any facility, for which a permit is required, shall be constructed, operated and maintained in conformity with the permit and any terms, conditions and modifications contained in the permit. A permit may only be issued pursuant to this chapter or pursuant to the provisions of W.S. 18-5-501 through 18-5-513 for facilities referred to the council.

### **Section 3.**

(a) Notwithstanding section 2 of this act, if 2010 Senate File 0066 is enacted into law, the amendment to W.S. 35-12-105 by creating new subsections (d) through (f) made by section 2 of this act shall not be effective and,

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instead, W.S. 35-12-105 by creating new subsections (d) through (f) is amended to read:

**35-12-105. Appointment and duties of administrator; staff; rules and regulations.**

(d) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing decommissioning and site reclamation standards for facilities permitted under W.S. 35-12-102(a)(vii)(E) and (F). Such standards shall preempt county rules or regulations concerning decommissioning and reclamation and shall be designed to assure the proper decommissioning and interim and final site reclamation of commercial facilities generating electricity from wind and wind energy facilities during construction and operation of the facility, at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes operations to cease. The council's regulation shall only preempt those facilities regulated under this act. In the event of any conflict between a standard applied under this subsection and a valid order of the Wyoming public service commission, the order of the public service commission shall be applied.

(e) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing financial assurance requirements for facilities permitted by it pursuant to W.S. 35-12-102(a)(vii)(E) and (F).

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These rules and regulations shall not apply to facilities that are public utilities and regulated by the Wyoming public service commission. These rules and regulations shall preempt county rules and regulations concerning financial assurances and shall be designed to provide adequate assurance that the permitted facilities will be properly reclaimed and decommissioned at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes operations to cease. The elements to consider when establishing adequate levels of financial assurance shall include credit worthiness, financial strength, credit history, credit rating and any other factors that reasonably bear upon the decision to accept a financial assurance. The financial assurance may be in any form acceptable to the council and may include a corporate guarantee, letter of credit, bond, deposit account or insurance policy.

(f) The council may adopt such rules and regulations, including fee structures, as are appropriate to accept and consider applications referred by any board of county commissioners under W.S. 18-5-509.

(b) This section shall not be effective if 2010 Senate File 0066 is not enacted into law.

**Section 4.** There is appropriated three hundred thirty-five thousand seven hundred fifty-four dollars (\$335,754.00) from the general fund to the department of environmental quality. This appropriation shall be for the period beginning with the effective date of this act and

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ending June 30, 2012. This appropriation shall only be expended for the purpose of carrying out the department's duties under this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2012. This appropriation shall not be included in the department's 2013-2014 standard biennial budget request.

**Section 5.** The department of environmental quality is authorized to reclassify and fill one (1) natural resource analyst full-time equivalent position which is vacant as of February 17, 2010, to a principal economist full-time equivalent position for purposes of carrying out the department's duties under this act. The appropriation in section 3 of this act shall be reduced dollar for dollar by any funds appropriated in 2010 House Bill 0001 to the department for the vacant position reclassified pursuant to this section.

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**Section 6.** This act is effective July 1, 2010.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk