

HOUSE BILL NO. HB0072

Regulation of wind energy facilities.

Sponsored by: Representative(s) Stubson, Anderson, R.,
Carson and Steward and Senator(s) Anderson,
J., Martin and Perkins

A BILL

for

1 AN ACT relating to siting and regulation of wind energy
2 facilities; requiring permitting by boards of county
3 commissioners; establishing minimum standards for wind
4 energy facilities; providing for the review of county
5 permitting decisions; allowing counties to adopt
6 requirements; providing for referrals to the industrial
7 siting council; amending the industrial siting council's
8 jurisdiction; requiring rulemaking; providing penalties;
9 requiring fees; requiring financial assurances; and
10 providing for an effective date.

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

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

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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 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.

1 **18-5-502. County regulation of wind energy projects;**
2 **exceptions.**

3

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

8

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

12

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

21

22 (d) Any wind energy facility which is not required to
23 have a permit pursuant to subsection (c) of this section

1 shall be required to obtain a permit for any enlargement of
2 the facility after July 1, 2010.

3

4 **18-5-503. Application.**

5

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

10

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

19

20 (ii) Certify that notice of the proposed wind
21 energy facility will be published in a newspaper of general
22 circulation in all counties in which the facility will be
23 located at least twenty (20) days prior to the public
24 hearing required by W.S. 18-5-506. The notice shall

1 include a brief summary of the wind energy facility, invite
2 the public to submit comments and identify the time and
3 date of the hearing;

4

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

8

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

13

14 (v) Certify that a written emergency management
15 plan has been submitted for review and comment to the
16 county fire warden, county emergency management coordinator
17 and the county sheriff. If the permit is granted, the plan
18 shall be supplemented and revised following construction of
19 the facility and prior to its operation if there are any
20 variations in the facility's construction which would
21 materially impact the original emergency management plan;

22

23 (vi) Provide a waste management plan that
24 includes an inventory of estimated solid wastes and a

1 proposed disposal program for the construction, operation
2 and eventual decommissioning of the proposed wind energy
3 facility;

4
5 (vii) Provide evidence sufficient for the board
6 of county commissioners to determine if the proposed wind
7 energy facility has adequate legal access. The application
8 also shall describe how private roadways within the
9 facility will be marked as private roadways and shall
10 acknowledge that no county is required to repair, maintain
11 or accept any dedication of the private roadways to the
12 public use. The application also shall include a traffic
13 study of any public roadways leading to and away from the
14 proposed facility and the board of county commissioners may
15 require the applicant to enter into a reasonable road use
16 agreement for the use of county roads prior to construction
17 of the facility;

18
19 (viii) Provide a project plan indicating the
20 proposed roadways, tower locations, substation locations,
21 transmission, collector and gathering lines and other
22 ancillary facility components. If the application is
23 granted, the board of county commissioners shall require

1 that the project plan be revised to show the final location
2 of all facilities;

3

4 (ix) Certify that there shall be no advertising
5 or promotional lettering on any tower, turbine, nacelle or
6 blade beyond the manufacturer's or the applicant's logo on
7 the nacelle of the turbine;

8

9 (x) Provide a site and facility reclamation and
10 decommissioning plan which indicates the planned life of
11 the wind energy facility and the means by which the
12 facility and its site will be decommissioned and reclaimed
13 at the end of the facility's life. Such plan shall comply
14 with all requirements adopted by the industrial siting
15 council under W.S. 35-12-105(d). If the permit is granted,
16 the plan shall be updated every five (5) years until site
17 reclamation and decommissioning is complete;

18

19 (xi) For wind energy facilities not meeting the
20 definition of a facility as defined in W.S.
21 35-12-102(a)(vii), provide a detailed summary of any
22 significant adverse environmental, social or economic
23 effects that the proposed wind energy facility may have

1 upon local governments together with any preliminary plans
2 developed to alleviate any of the adverse effects.

3

4 (b) A wind energy facility subject to this article
5 shall meet the requirements adopted pursuant to W.S.
6 35-12-105(d) and (e) regardless of whether the facility is
7 referred to the industrial siting council pursuant to W.S.
8 18-5-509 or is otherwise subject to the industrial siting
9 act.

10

11 **18-5-504. Minimum standards; incorporation into other**
12 **processes.**

13

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

16

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

22

23 (ii) Would locate the base of any tower at a
24 distance of less than one hundred ten percent (110%) of the

1 maximum height of the tower from any property line
2 contiguous or adjacent to the facility, unless waived in
3 writing by the owner of every property which would be
4 located closer than the minimum distance;

5

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

10

11 (iv) Would construct any tower or other
12 structure, other than underground structures, transmission
13 lines, roadways and structures appurtenant to roadways, at
14 a distance of less than one-quarter (1/4) mile from any
15 platted subdivision;

16

17 (v) Would locate the base of any tower at a
18 distance of less than one-quarter (1/4) mile from a
19 residential dwelling or occupied structure, unless waived
20 in writing by the person holding title to the residential
21 dwelling or occupied structure;

22

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

4
5 (b) No rule, regulation or law promulgated or applied
6 by any county in this state shall adopt a standard less
7 stringent than the minimum standards established in
8 subsection (a) of this section. The minimum standards
9 stated in subsection (a) of this section shall be
10 incorporated into every existing or future county
11 permitting or licensing process to which they are
12 applicable so that no applicant for a permit under this
13 article is required to submit more than one (1) application
14 addressing these standards to any county.

15

16 **18-5-505. Complete applications; notice.**

17

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

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

10

11 **18-5-506. Hearing and public comment.**

12

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

22

23 **18-5-507. Decision of the board; findings necessary.**

24

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

12

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

16

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

19

20 **18-5-508. Remedies.**

21

22 (a) Any party aggrieved by the final decision of the
23 board of county commissioners may have the decision

1 reviewed by the district court pursuant to Rule 12 of the
2 Wyoming Rules of Appellate Procedure.

3

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

7

8 **18-5-509. Referral.**

9

10 (a) Any board of county commissioners which receives
11 an application to permit a wind energy facility which does
12 not meet the definition of a facility as defined in W.S.
13 35-12-102(a)(vii) may refer the facility to the industrial
14 siting council for additional permitting consistent with
15 the requirements of the Industrial Development Information
16 and Siting Act, W.S. 35-12-101 through 35-12-119, but the
17 provisions of W.S. 39-15-111 and 39-16-111 shall not apply.
18 A referral shall be made only when a board of county
19 commissioners finds that significant adverse environmental,
20 social or economic issues are presented which the county
21 board of commissioners does not have the expertise to
22 consider or authority to address.

23

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

4

5 (c) Upon receiving a referral pursuant to this
6 section and within fifteen (15) days after receipt of the
7 referral, the director of the department of environmental
8 quality may reject the referral by giving written notice of
9 the rejection to the county making the referral and the
10 applicant.

11

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

17

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

21

22 **18-5-510. Binding effect.**

23

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

8

9 **18-5-511. Revocation or suspension of permit.**

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

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

17

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

21

22 (iii) Violation of this article, the rules and
23 regulations adopted pursuant to this article or valid

1 orders of the board of county commissioners or the
2 industrial siting council;

3

4 (iv) Failure of the proposed wind energy
5 facility to receive a required permit from the industrial
6 siting council pursuant to the Industrial Development
7 Information and Siting Act, W.S. 35-12-101 through
8 35-12-119; or

9

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

12

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

15

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

18

19 **18-5-512. Penalties for violations.**

20

21 (a) No person shall:

22

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

4
5 (ii) Construct, reconstruct, operate, locate,
6 erect, maintain, enlarge, change or use a wind energy
7 facility, after having first obtained a permit, other than
8 in specific compliance with the permit; or

9
10 (iii) Cause any of the acts specified in this
11 subsection to occur.

12
13 (b) Any person violating subsection (a) of this
14 section is liable for a civil penalty of not more than ten
15 thousand dollars (\$10,000.00) for each violation. Each day
16 of a continuing violation constitutes a separate offense.

17
18 (c) Any wind turbine tower or wind generator erected
19 in violation of this article shall subject the owner of the
20 tower or generator to a penalty of seven hundred fifty
21 dollars (\$750.00) per day for every tower or generator so
22 erected.

23

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

3

4 **18-5-513. Fees.**

5

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

12

13 (b) The board of county commissioners also may
14 collect a reasonable building permit fee prior to
15 commencement of construction which shall not exceed the
16 reasonably anticipated administrative costs of issuing the
17 building permit and overseeing compliance with permit
18 conditions and requirements.

19

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

24

1 **35-12-102. Definitions.**

2

3 (a) As used in this chapter:

4

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

17

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

20

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

1 county commissioners has referred to the council under W.S.
2 18-5-509.

3
4 **35-12-105. Appointment and duties of administrator;**
5 **staff; rules and regulations.**

6
7 (d) In addition to the rules and regulations adopted
8 under subsection (b) of this section, the council shall
9 promulgate rules and regulations prescribing
10 decommissioning and site reclamation standards for wind
11 energy facilities permitted under W.S. 35-12-102(a)(vii)(E)
12 and other facilities permitted by boards of county
13 commissioners pursuant to W.S. 18-5-502. Such standards
14 shall preempt county rules or regulations concerning
15 decommissioning and reclamation and shall be designed to
16 assure the proper decommissioning and site reclamation of
17 wind energy facilities at the end of their useful life,
18 upon revocation of a permit authorizing their operation or
19 upon the happening of any event which causes operations to
20 cease. In the event of any conflict between a standard
21 applied under this subsection and a valid order of the
22 Wyoming public service commission, the order of the public
23 service commission shall be applied.

24

1 (e) In addition to the rules and regulations adopted
2 under subsection (b) of this section, the council shall
3 promulgate rules and regulations prescribing financial
4 assurance requirements for facilities permitted by it
5 pursuant to W.S. 35-12-102(a)(vii)(E) and other facilities
6 permitted by boards of county commissioners pursuant to
7 W.S. 18-5-502. These rules and regulations shall not apply
8 to facilities regulated by the Wyoming public service
9 commission. These rules and regulations shall preempt
10 county rules and regulations concerning financial
11 assurances and shall be designed to provide adequate
12 assurance that the permitted facilities will be properly
13 reclaimed and decommissioned at the end of their useful
14 life, upon revocation of a permit authorizing their
15 operation or upon the happening of any event which causes
16 operations to cease. The elements to consider when
17 establishing adequate levels of financial assurance shall
18 include credit worthiness, financial strength, credit
19 history, credit rating and any other factors that
20 reasonably bear upon the decision to accept the financial
21 assurance. The financial assurance may be in any form
22 acceptable to the council and can include a corporate
23 guarantee, letter of credit, bond, deposit account or
24 insurance policy.

1

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

6

7 **35-12-106. Permit from council required prior to**
8 **commencing construction of facility; electronic permitting;**
9 **amendments; exceptions.**

10

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

21

22 **Section 3.** This act is effective July 1, 2010.

23

24

(END)