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1 Submitted to the Task Force on Wind Energy  
2 by Duke Energy.  
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4

5 2010 - STATE OF WYOMING  
6 HOUSE BILL 000\_\_

7  
8 Wind Energy Projects – County Regulation  
9 Sponsored by:

10 A BILL

11 for

12 AN ACT relating to county regulation of wind energy projects; creating Article 5. Wind Energy  
13 Regulation and sections 18-5-501 through 18-5-507; providing for definitions, TO BE  
14 UPDATED WHEN DRAFT COMPLETE and providing for an effective date.

15 *Be it enacted by the Legislature of the State of Wyoming*

16 Section 1. W.S. 18-5-501 through 18-5-507 are created to read:

17 **Article 5. Wind Energy Regulation**

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

19 (a) As used in this section:

20 (i) “Applicant” means the developer, owner, including the owner’s affiliate, of a  
21 project.

22 (ii) “Board” means a board of county commissioners.

23 (iii) “Commission” means a county planning and zoning commission.

24 (iv) “Permit” means the permit for a project issued by the board or the commission,  
25 whether such permit is called a “conditional use permit,” “wind energy permit” or some  
26 other name.

27 (v) “Project” means any wind energy development consisting of multiple wind  
28 turbines or an individual wind turbine that is capable of generating more than one half  
29 (0.5) megawatts.

30 **18-5-502. County Regulation of Wind Projects.**

- 1 (a) Except as provided in sub-section (c), no project shall be constructed, reconstructed,  
2 enlarged or operated within the state without first obtaining a permit from the board or  
3 commission where the project is to be located or is located.
- 4 (b) If a project is to be located in two or more counties, the applicant shall identify the  
5 county where most of the turbines will be located and that county or commission shall be  
6 responsible for issuing the permit. Other affected counties may participate in the permitting  
7 process by filing comments and appearing at a public hearing.
- 8 (c) In order to avoid duplicate permitting processes, if a project is subject to the jurisdiction  
9 of the industrial development information and siting act, W.S. 35-12-101 *et. seq.*, the permit  
10 required in sub-section (a) shall be limited to those issues and conditions identified in W.S. 18-5-  
11 504(b) and W.S. 18-5-505.

12 **18-5-503 Adoption of rules and regulations, assignment of permitting to county**  
13 **planning commission.**

- 14 (a) Any board may adopt rules and regulations governing the permitting of projects provided  
15 such rules and regulations do not conflict with W.S. 18-5-501 through 507, and provided that  
16 such regulations do not impose requirements that are more stringent than requirements imposed  
17 in this section.
- 18 (b) Any board may assign to its commission the responsibility to issue permits for projects.  
19 A decision of the commission is final and not subject to appeal to the board.

20 **18-5-504. Application to the county; certifications by the applicant; minimum set back**  
21 **requirements; fees.**

- 22 (a) The board or commission may require the applicant for a permit under W.S. 18-5-501(a)  
23 to submit the following information:
- 24 (i) Evidence that the proposed project complies with all applicable zoning and  
25 county land use regulations;
- 26 (ii) Evidence sufficient for the board or planning commission to determine that the  
27 proposed project site has adequate legal access.
- 28 (iii) A list of landowners, as available from the public records, that are within one half  
29 mile (.5) of any project component and a list of incorporated municipalities that are  
30 within twenty (20) miles of the proposed project. The board or commission shall provide  
31 notice of the application to the landowners and the municipalities.
- 32 (iv) A list of potentially affected federal, state and local land and resource  
33 management agencies.
- 34 (v) A draft emergency management plan. A final plan shall be submitted after the  
35 project is constructed but before it commences operation.
- 36 (vi) For projects subject to the jurisdiction of the industrial development information  
37 and siting act, W.S. 35-12-101 *et. seq.*, the applicant shall submit ten (10) copies of the

1 industrial siting application and ten (10) copies of the industrial siting permit, if the  
2 industrial siting permit has been issued at the time the application is submitted to the  
3 board or commission. The industrial siting permitting process and the permitting process  
4 under this section may proceed simultaneously.

5 (vii) For projects not subject to industrial siting jurisdiction the applicant shall provide  
6 a study addressing the following issues and the applicant shall provide the following  
7 documents:

8 (A) The socioeconomic impacts to the affected areas of the proposed project,  
9 including housing plans for construction and operation of the project, and a solid  
10 waste plan for both the construction phase as well as the decommissioning or  
11 repowering phase of the project;

12 (B) Wildlife and environmental considerations;

13 (C) Cultural, archeological and historic considerations;

14 (D) Visual resource considerations;

15 (E) A traffic impact study of the public roadways leading to the proposed site  
16 and surrounding ancillary roads;

17 (F) A preliminary site plan indicating proposed roadways, proposed tower  
18 locations, proposed substation locations, transmission, collector and gathering  
19 lines and other ancillary project components;

20 (G) A preliminary decommissioning and reclamation plan as set forth in W.S.  
21 18-5-505.

22 (H) For a project on state or federal lands, evidence of an appropriate  
23 agreement with state or federal agencies.

24 (b) The board may establish minimum set back requirements which may be no more  
25 stringent than the following:

26 (i) one hundred ten percent (110%) of the maximum height of the tower and blade  
27 set back from the boundary of the nearest landowner who is not participating in the  
28 project;

29 (ii) one hundred ten percent (110%) of the maximum height of the tower and blade  
30 set back from the nearest public and county road right of way;

31 (iii) one quarter mile set back from a platted subdivision;

32 (iv) one quarter mile set back from a residence or occupied structure;

33 (v) one half mile set back from the incorporated limits of a town or municipality.

1 (c) The board or the county planning commission may waive any set back requirement set  
2 forth in subsection (b). The landowner not participating in the project as described in subsection  
3 (b)(i) may waive the set back in that subsection.

4 (d) The applicant shall certify that there shall be no advertising or promotional lettering on  
5 any tower, turbine, nacelle or blade beyond the manufacturer's or the applicant's logo on the  
6 nacelle of the turbine.

7 (e) The board or the commission may assess fees to the applicant as follows:

8 (i) A fee to be paid at the time the application is filed. The fee shall be reasonable  
9 and commensurate with the administrative costs incurred by the county or the  
10 commission to process and review the application and all required information and  
11 conduct a public hearings and issue a permit in accordance with W.S. 18-5-501 through  
12 507.

13 (ii) A building permit fee which shall be paid prior to commencement of construction.  
14 This fee shall be reasonable and commensurate with the administrative costs incurred by  
15 the board or commission to issue the building permit and oversee compliance with permit  
16 conditions and requirements.

17 **18-5-505. Decommissioning and reclamation plan; financial assurance.**

18 (a) This subsection governs decommissioning and reclamation plans for all projects,  
19 establishes uniform standards for all projects in the state and controls, governs, supersedes and  
20 preempts any county rules and regulations dealing with decommissioning and reclamation of  
21 projects.

22 (b) As provided in W.S. 18-5-504(a)(vi)(G) the applicant shall file a preliminary  
23 decommissioning and reclamation plan. The plan shall include a description of methods of  
24 financial assurance specified in landowner agreements, a description of events triggering  
25 decommissioning, methods of facility removal and decommissioning, and methods for  
26 reclamation and restoration of the soil and vegetation.

27 (c) Before the end of the fifth year of the project's operation the owner shall file with the  
28 county a decommissioning and reclamation report prepared by a licensed professional. The  
29 report shall analyze and estimate the salvage and scrap value of the wind turbines and towers,  
30 and shall analyze and estimate the costs to decommission and reclaim the turbines, towers,  
31 foundations, access roadways, crane pads, buildings, and cables. An updated report shall also be  
32 filed before the end of the tenth year of operation of the project, identifying the then current  
33 salvage and scrap value of the wind turbines and towers, and the then current decommissioning  
34 and reclamation costs.

35 (d) Before the end of the fifteenth year of the project's operation, an updated report shall be  
36 filed with the county. The report shall address all the issues described in subsection (c) and  
37 include the then current costs of salvage and scrap value and the then current costs to  
38 decommission and reclaim the project. If the estimated salvage and scrap value exceed the  
39 estimated costs of decommissioning and reclamation, the project owner shall not be required to  
40 post evidence of financial assurance to cover the decommissioning and reclamation costs. If the

1 estimated salvage and scrap value is less than the estimated costs of decommissioning and  
2 reclamation the project owner shall file financial assurance with the county and the landowners  
3 as follows:

4 (i) The financial assurance shall be in an amount sufficient to adequately perform the  
5 required decommissioning and reclamation pursuant to the updated report and all local, state and  
6 federal applicable regulations.

7 (ii) The financial assurance may be in the form of a corporate guarantee, letter of  
8 credit, bond, deposit account, or insurance policy, as determined by the county and the  
9 landowners. In making the decision to accept the financial assurance the county and the  
10 landowners may take into account the credit worthiness, financial strength, credit history, credit  
11 rating and any other factors that reasonably bear on the decision to accept the instrument from  
12 the obligor. The beneficiaries of the financial assurance shall be the landowners, with the county  
13 as a third party beneficiary to execute on the financial assurance only in circumstances where the  
14 landowners do not accomplish the decommissioning and reclamation.

15 (iii) At the time the financial assurance is offered the project owner shall file a  
16 decommissioning and reclamation plan describing the triggering events for the decommissioning  
17 and set forth the procedures for the county and the landowners to execute upon the plan and the  
18 financial assurance. The plan shall provide for access by the county and landowners, upon  
19 reasonable notice, to effect and complete the decommissioning and reclamation. The financial  
20 assurance shall provide that the terms of the plan are binding upon the project owner and any  
21 successors, assigns or heirs.

22 (e) The report filed pursuant W.S. 18-5-505(d) shall be updated and filed with the county  
23 every two (2) years after the fifteenth year, until decommissioning is accomplished. If any report  
24 shows that the estimated salvage and scrap value is less than the estimated costs of  
25 decommissioning and reclamation, the project owner shall file financial assurance with the  
26 county and landowners as provided in W.S. 18-5-505(d)(i) – (iii).

27 **18-5-506. Procedures for review and issuance of permit; appeal.**

28 (a) This sub-section shall govern the process and procedures for review and issuance of a  
29 conditional use permit for any project.

30 (b) A permit shall be issued by the board or the commission within seventy five (75) days of  
31 the date the application was submitted.

32 (c) The process for review and issuance of the permit by the board or commission shall be as  
33 follows:

34 (i) The applicant shall submit ten (10) copies of the application to the board or  
35 commission.

36 (ii) Within ten (10) days of the submission of the application, the board or  
37 commission shall notify all affected landowners and municipalities as identified in W.S.  
38 18-5-503(a)(iii) and any potentially affected federal, state and local land and resource  
39 management agencies of the filing of the application.

1 (iii) The board or commission shall set a time and date for a public hearing which  
2 shall be no sooner than forty five (45) days and no later than sixty days (60) after the  
3 application was submitted.

4 (iv) The board or commission shall publish notice of the filing of the application once  
5 in a newspaper of general circulation at least twenty (20) days prior to the public hearing.  
6 The notice shall include a brief summary of the project, invite the public to submit  
7 comments and set forth the time and date of the public hearing.

8 (v) Prior to the public hearing the board or commission shall make such evaluations  
9 and investigations of the applicant and the information in the application as the board or  
10 commission determine are necessary to determine that a permit shall be granted. The  
11 board or commission may request additional information from the applicant, may retain  
12 professionals to review the application, and may request that other state and local  
13 agencies review the application.

14 (vi) The board or commission shall hold a public hearing at the time and date  
15 specified in the notice. The board or commission shall receive public comment and  
16 create a record of the public hearing.

17 (vii) Within seventy five (75) days of the submission of the application the board or  
18 commission shall issue the permit, which may include such terms, conditions and  
19 stipulations as the board or commission deems necessary to promote the public health,  
20 safety, morals and general welfare of the county and state, provided such terms,  
21 conditions and stipulations are consistent with W.S. 18-5-501 through 507.

22 (d) The issuance of the permit by the board or commission is a final administrative decision.  
23 If the applicant has received a permit from the industrial siting council pursuant to W.S. 35-12-  
24 101 *et seq.* only the applicant may file an appeal from the board or commission decision with the  
25 district court pursuant to the Administrative Procedure Act and the Rules of Civil Procedure. If  
26 the applicant's project is not subject to industrial siting jurisdiction pursuant to W.S. 35-12-101  
27 *et seq.* the applicant and any aggrieved person may file an appeal from the board or commission  
28 decision with the district court pursuant to the Administrative Procedure Act and the Rules of  
29 Civil Procedure.

30 **18-5-507. Penalty for violation.**

31 No person shall construct, reconstruct, or enlarge any wind energy project in violation of W.S.  
32 18-5-101 through 507. Each day's violation is a separate offense and is punishable by a fine of  
33 not more than \$750 per day. The county attorney in the county where the project should have  
34 been or was permitted may enforce this section.

35 **Section 2.** This Act is effective on July 1, 2010.

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