

2010

The Year Wind Blew Through the Capitol

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OVERVIEW

- House Bill 72/HEA 64
- House Bill 101/HEA 18

House Bill 72/HEA64

- Multifaceted Piece of Legislation
- Requires all wind generating facilities producing more than .5 megawatts of electricity to obtain a permit from the County where the facility is located prior to construction.
- Statute creates minimum standards for construction.
- Does not apply to projects constructed or being constructed on July 1, 2010 (effective date).
- Two counties, two permits

HB 72/HEA 64 Continued...

- Applications to County must include:
- Proof of efforts to notify land owners in 1 mile radius,
- Notice to Cities and Towns within a 20 mile radius (Notice must include description of project including number of turbines proposed).
- Projects comports with all local planning & zoning statutes.
- Requires Emergency Management Plan & Waste Management Plan (including decommissioning provisions)

HB 72/HEA 64 Continued

- Evidence of Legal Access.
- Explanation of private roadways within the facility.
- Traffic study showing use of public roadways that will be utilized to and away from the project.
- Identify location of towers, substations, collector lines and other ancillary facility components. Must be revised when final sites are identified.
- No advertising on the turbines
- Site and facility reclamation AND decommissioning plan for the end of the projects life (requires land owner consultation)
- Plan updated every 5 years until project is complete.

More on HB 72/HEA 64

- Must provide detailed summary of any adverse environmental, social or economic effects on area and efforts to alleviate said impacts.
- County Standards can be more stringent than statutory requirements.
- 110% setback requirement (waiver provision included)
- No less than 1,000 feet from subdivision, residential dwelling or occupied structure (waiver included)

More on HB 72/HEA 64

- Half mile setback from City or Towns.

BENEFITS OF THIS LEGISLATION FOR COUNTIES

- Legislation of this nature prevents competition between Counties.
- Provides certainty for developers.
- Additional mechanism for assistance by State with complex projects when a County may not have the resources.
- High level of public input through notice and hearings

Process at the County

- Application presented to Board of County Commissioners (or planning & zoning commission)
- Application must include all items as outlined, deemed complete or incomplete (30 days on both sides).
- Once complete a public hearing set on the application not less than 45 days, nor more than 60 days after the application is deemed complete.
- Written comments accepted for 45 days after application is complete.

Process at the County Continued..

- Within 45 days from the date of the hearing, board shall complete findings, issue an opinion and render a decision upon the record either granting or denying the application.
- Presumption is granting of permit if all elements have been met by applicant.

Industrial Siting & The County

- **REFERRAL PROCESS:** Wyo. Stat § 18-5-509
- How the referral gets to DEQ from the County.
- Board of County Commissioners may refer application to ISC for additional permitting on when BOCC find there are potentially significant adverse environmental, social or economic issues which the BOCC does not have the expertise to consider or authority to address.
- No impact assistance component if referred by the County. (Can't be self serving).

Referral Process from County

- DEQ director within 15 days may either accept or reject the referral. Decision not appealable.
- County must make a referral within 30 days after application is deemed complete.
- DEQ in the process of rulemaking on the referral process.

Revocation/Suspension Permit

- Any material false statements contained in the application.
- Failure to comply with the terms and conditions of the permit.
- Failure to receive ISC permit.
- Failure of facility to transmit electricity created by wind energy for a period of 2 consecutive years or more
- Maintain land rights necessary to operate the wind energy facility.

Penalty Provisions & Fees

- Civil Penalty of \$10k for each violation.
- If turbine is constructed without permit \$750 per day.
- Fees: BOCC can charge reasonable fee to process the application and conduct the public hearing.
- BOCC can collect reasonable building permit prior to commencement related to administrative costs of issuing building permit and overseeing compliance.

PRODUCTION TAX

- House Bill 101 imposes a tax upon the privilege of producing electricity from wind turbines.
- Rate: \$1.00 per megawatt hour
- Distribution of Revenue: Tax is distributed proportionately to the counties where the generating facility is located. 60% to the Counties and 40% to the State General Fund.
- Exemption for facilities owned or operated by a governmental entity.
- Tax starts 3 years after the first turbine produces electricity for sale.

PRODUCTION TAX

- Companies are to report the amount of megawatt hours produced in the state on or before February 1 of the following year that the electricity was produced.
- Penalty provisions codified for failure to report.

Effective Date: 1/1/2011

WRAP UP....

- Issues related to wind currently under review:
- Taxation Issues
- Wind Rights/Air Rights: Severance from the Surface
- Who owns the wind
- Task Force will be continuing discussions on wind topic.

QUESTIONS ??????

CONTACT INFORMATION

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