

WISCONSIN:

The 2011-2012 Wisconsin Legislative session resulted in some very positive new developments. Legislation enacted or considered in the session:

Regulatory Reform I (2011 Wisconsin Act 21): A special session bill passed early in 2011, this bill changed the rulemaking process in Wisconsin, giving the Governor's office a great deal more direct involvement in proposed rules that agencies issue, and also putting more statutory limits on how far agencies may go in interpreting the statutes passed by the legislature when they create or amend rules. Among other provisions the Act provides agencies may not implement or enforce standards or requirements for a license or permit unless these are expressly required in statute, and that the agency may not use the broad grants of authority used to create the agency when they write rules (in the past some agencies have created law based on these broad, non-explicit statutes). And, when an agency proposes a rule or amended rule it must submit these proposals to the Governor for review at the start of the agency rule-making process, and then again when the agency proposes the rule and before it has gone to the legislature for further review. The Act also requires economic impact statements accompany rules including detailed analysis of implementation and compliance costs (including rules affecting the utility industry).

Regulatory Reform II (2011 Wisconsin Act 155): Passed late in the session with broad bipartisan support, this bill targeted utility regulatory issues. It cleaned up technical and outdated provisions in the law and also raised the thresholds governing when the commission must first approve affiliated interest, and Certificate of Authority, projects. Affiliated interest transactions are essentially transactions within parts of the same utility company or between utilities: for instance Wisconsin Power and Light proposes to provide \$50,000 in services to assist American Transmission Company in substation work: current law required commission approval for projects like this up to \$50,000 and Act 155 raised the threshold to \$250,000 and required the PSCW to index the threshold to inflation. Certificate of Authority is the approval of non-power plant or transmission line projects that have fiscal impacts but are part of ongoing business needs: major ones involve environmental upgrades like bag-house construction. Act 155 requires the commission to act on CAs within a year of their being filed; it also raises the threshold for pre-approval by the PSCW to \$10 million for large utilities indexed for inflation. It made other changes including increasing the penalties for tampering with utility equipment and theft of electricity.

Tort Reform WI (2011 WI Act 2): Another special session bill passed early in the session, this bill included the "Daubert standard," requiring WI courts to apply Federal rules and standards governing admissibility of expert witness testimony; this should improve the quality of expert witness testimony and exclude some of the least professional testimony previously allowed in stray voltage cases.

Wind Siting: The issue was extremely controversial. The Commission promulgated wind siting rules creating uniform statewide standards that local governments could not exceed, shortly before the legislature came into session. Efforts were made throughout the suspend and repeal the rule, and various bills were introduced to create draconian wind siting standards that would have made it impossible to site wind in WI. While no bills passed and the rule promulgated by the PSCW is now in effect the whole controversy illustrates the rising backlash against wind farms in Wisconsin.

Wisconsin Political Developments:

Starting 2011 in the new session both houses and the Governor were Republican-controlled. Wisconsin was one of the states where the "Republican wave" of 2010 significantly remade electoral politics. Before the election in 2010, the statehouse was entirely controlled by the Democrats.

The recalls of senators and the governor are the biggest story of 2011-2012; several attempts over the last year were made to recall a number of senators; in 2011 two Republican senators were recalled after voting for **2011 Wisconsin Act 10**, the various collective bargaining reforms affecting state and local public employee unions. Further recalls were attempted in 2012; these gained national attention as well and Governor Walker was "reelected" (as was the Lt. Governor Rebecca Kleefisch), by margins wider than when they were first elected in November of 2010. Going in to the 2012 recalls the State Senate was deadlocked at 16-16 because of a resignation of a Republican senator; out of 4 senate races three seats remain Republican, and as of June 21 the fourth, in Racine, is undergoing a recount. However the Democrat is expected to win that recount (there are examples of possible voter fraud that are also being explored); for the time being the senate will have a 17-16 Democrat majority – but there will be no senate or legislative activity for the remainder of 2012.

Redistricting and 2012: The 2012 Senate recalls were held in the old districts; some of the Senators who win (including the Racine seat being recounted now) will be representing very different seats and may not be up for reelection for another two years. Redistricting was passed in 2011 and has withstood court challenges; the new map is strongly weighted to a Republican majority (it was passed when both houses and the Governor were Republican).

The November elections should see another flip of control in the Senate back to Republican hands. An open seat in northern Wisconsin is virtually certain to be won by the Republicans (the 12th Senate District), and a seat in the Fond du Lac area currently held by Democrat Jessica King (who successfully recalled the sitting Republican in 2011) is a Republican seat by the numbers. The Republicans have fielded a strong candidate and this will be one to watch. After the November elections Republicans will likely control the Senate – by one or possibly two votes.

The Assembly is currently held by Republicans by a 58R – 40D -1 Independent margin. Democrats have fielded a broad field of candidates, challenging incumbent Republicans in almost all of their districts, but the quality of many of the candidates they have fielded is not certain. Most expect the republicans to retain control, with perhaps a smaller margin.

MINNESOTA:

Minnesota's two houses went Republican in 2010, the Senate for the first time in over 30 years. The Governor's office, previously held by outgoing Governor Tim Pawlenty, changed parties when Mark Dayton (DFL) was elected. So Minnesota had divided government, and a relatively inexperienced field of Republican legislative leaders and staff. The two years have been relatively uneventful in terms of utility legislation; the Governor and Legislature went to a standstill in 2011 when they could not agree on how to patch up a multi-billion dollar state deficit; Government closed for several weeks in the summer, meaning parks shut down and liquor tax stamps were not being issued (so bars were facing being unable to sell un-stamped beer).

Presently the House is Republican by a 72-63 margin. The Senate is Republican by a 38-29 margin. With redistricting, there have been retirements as the result of pairings and changes to districts. The new map was issued by a court panel in February 2012 after the Governor vetoed the Republican map passed by the legislature. It is not yet clear what might happen in November. While the margins seem to favor the Republicans, it is a presidential year and voters may be pretty volatile. The legislature (especially the Senate) had very public internal leadership problems; their majority leader resigned her position and is not running again for office' after it was revealed by members of her caucus that she was having an affair with a staffer; the GOP State Party in Minnesota is also massively in debt, and it is not clear how effective it might be in the upcoming elections as a result.

Legislation Passed or Debated in 2011-2012:

The big issues in Minnesota in 2011-2012 were not utility-related. The budget in 2011 was the chief focal point; and in 2012 the Minnesota Viking stadium, and the state Bonding Bill, were the two major issues, as was tax legislation ultimately vetoed by Governor.

Cost of Service (failed): The Minnesota business community has been concerned that the Commission has skewed allocations of utility rates to favor other (residential) customer classes over industrial and commercial ones. They have made efforts to enact legislation what would direct the commission to adhere to equitable rate allocations; the Department of Commerce in particular opposed any changes; an attempt at an agreement fell apart late in the session. Utilities were OK with the bills that were proposed.

Right of First Refusal: This bill ensures that if a transmission line is proposed that affects a Minnesota utility service territory the host utility has first right to participate in the siting and ownership of the line. This was enacted.

Repeal of the Coal Moratorium (vetoed): Minnesota currently has a coal moratorium – requiring carbon offsets for any new plants. The newly republican legislature raised this issue in 2011, citing concerns that all forms of generation needed to be considered and that the moratorium was going to affect reliability and cost in the near future, when new plants were needed. They passed a bill repealing the moratorium and the bill was vetoed.

Repeal of Nuclear Moratorium (failed): The Governor opposed repeal of the nuclear moratorium and the bill failed to make it to his desk.

Upcoming 2013 Legislation (both Minnesota and Wisconsin):

The major legislation we see coming, in Minnesota, Wisconsin, and Iowa, is “Third party Generation” and other variations on promoting Distributed Generation (such as net metering and feed-in or advanced renewable tariffs).