

## 2013 DRAFTING REQUEST

### Bill

Received: 1/31/2013 Received By: mshovers  
Wanted: As time permits Same as LRB:  
For: Frank Lasee (608) 266-3512 By/Representing: David Lovell and Jessica  
May Contact: Drafter: mshovers  
Subject: Local Gov't - counties Addl. Drafters: mkunkel  
Local Gov't - munis generally  
Local Gov't - zoning  
Public Util. - misc. Extra Copies:

Submit via email: YES  
Requester's email: Sen.Lasee@legis.wisconsin.gov  
Carbon copy (CC) to:

---

### Pre Topic:

No specific pre topic given

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### Topic:

Limit municipal authority to regulate wind energy systems

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### Instructions:

See attached. Based on Leg. Council draft 0070/1

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 2/5/2013			_____			
/1	mkunkel 2/12/2013	evinz 2/6/2013	rschluet 2/6/2013	_____	mbarman 2/6/2013		State S&L
/2	mkunkel 2/22/2013	evinz 2/13/2013	jfrantze 2/13/2013	_____	lparisi 2/13/2013		State S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3		evinz 2/22/2013	rschluet 2/22/2013	_____	mbarman 2/22/2013	sbasford 2/28/2013	State S&L

FE Sent For:

*at intro  
3/8/13*

<END>

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13 ee  
2/23/13  


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**Local Gov't - zoning** Extra Copies:  
**Public Util. - misc.**

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**Topic:**

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**Instructions:**

See attached. Based on Leg. Council draft 0070/1

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FE Sent For:

*1/2 ev 2/13/13*  
*Jo 2/13*  
*JM 2/6/13*

<END>

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1?	mshovers	1 eev 2/6/13					

FE Sent For:

<END>

## Kunkel, Mark

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**From:** Kunkel, Mark  
**Sent:** Friday, February 22, 2013 11:10 AM  
**To:** Kovach, Robert  
**Cc:** Shovers, Marc  
**Subject:** FW: Wind energy systems bill LRB-1453

Rob:

You should get the new version later this afternoon.

--Mark

---

**From:** Kovach, Robert  
**Sent:** Friday, February 22, 2013 10:50 AM  
**To:** Shovers, Marc  
**Subject:** Wind energy systems bill LRB-1453

Dear Marc,

Senator Lasee and I have decided to simplify the wind bill. Lets get rid of all of the language about redefining what noise is and get rid of the language about rulemaking and all of those nonstatutory provisions.

Could you please put a rush on that? It's Senator Lasee's most important issue.

## **Rob Kovach**

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

1        **AN ACT to amend** 66.0401 (1m) (intro.) and 196.378 (4g) (b); and **to create** 66.0401  
2                    (1s) and 196.378 (4g) (a) 2m. of the statutes; **relating to:** limits on the municipal  
3                    regulation of wind energy systems.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** Current law limits restrictions that political subdivisions (cities, villages, towns, or counties) may impose on the installation or use of a wind energy system. Restrictions by a political subdivision may not be more restrictive than rules promulgated by the Public Service Commission (PSC). Furthermore, no restriction may be imposed by a political subdivision unless the restriction satisfies one of the conditions listed in s. 66.0401 (1m) (a) to (c). These conditions are that the restriction:

- (a) Serves to preserve or protect the public health or safety.
- (b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (c) Allows for an alternative system of comparable cost and efficiency.

Under this bill, political subdivisions may impose a restriction on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the PSC, if the restriction satisfies one of the conditions listed in s. 66.0401 (1m) (a) to (c).

Current law requires the PSC to promulgate rules regarding restrictions that political subdivisions may impose on the installation or use of wind energy systems. The rules must include setback requirements that provide reasonable protection from any health effects, including health effects from noise, associated with wind energy systems. This bill defines noise to include sound of all wavelengths and amplitudes. It also directs the PSC to amend its rules to account for health effects of inaudible sound.

Under current law, the PSC rules may include maximum audible sound levels. The bill provides that the PSC rules may include maximum audible and inaudible sound levels.

4                    **SECTION 1.** 66.0401 (1m) (intro.) of the statutes is amended to read:

1           **66.0401 (1m) AUTHORITY TO RESTRICT WIND ENERGY SYSTEMS LIMITED.** (intro.) No  
2 political subdivision may place any restriction, either directly or in effect, on the installation  
3 or use of a wind energy system that is more restrictive than the rules promulgated by the  
4 commission under s. 196.378 (4g) (b). ~~No political subdivision may place any restriction,~~  
5 ~~either directly or in effect, on the installation or use of a solar energy system, as defined in s.~~  
6 ~~13.48 (2) (h) 1. g., or a wind energy system,~~ unless the restriction satisfies one of the following  
7 conditions:

8           **SECTION 2.** 66.0401 (1s) of the statutes is created to read:

9           **66.0401 (1s) AUTHORITY TO RESTRICT SOLAR ENERGY SYSTEMS LIMITED.** No political  
10 subdivision may place any restriction, either directly or in effect, on the installation or use of  
11 a solar energy system, as defined in s. 13.48 (2) (h) 1. g. unless the restriction satisfies one of  
12 the following conditions:

13           (a) Serves to preserve or protect the public health or safety.

14           (b) Does not significantly increase the cost of the system or significantly decrease its  
15 efficiency.

16           (c) Allows for an alternative system of comparable cost and efficiency.

17           **SECTION 3.** 196.378 (4g) (a) 2m. of the statutes is created to read:

18           196.378 (4g) (a) 2m. "Noise" includes sound of all wavelengths and amplitudes.

19           **SECTION 4.** 196.378 (4g) (b) of the statutes is amended to read:

20           196.378 (4g) (b) The commission shall, with the advice of the wind siting council,  
21 promulgate rules that specify the restrictions a political subdivision may impose on the  
22 installation or use of a wind energy system consistent with the conditions specified in s.  
23 66.0401 (1m) (a) to (c). The subject matter of these rules shall include setback requirements  
24 that provide reasonable protection from any health effects, including health effects from noise

1 and shadow flicker, associated with wind energy systems. The subject matter of these rules  
2 shall also include decommissioning and may include visual appearance, lighting, electrical  
3 connections to the power grid, setback distances, maximum audible and inaudible sound  
4 levels, shadow flicker, proper means of measuring noise, interference with radio, telephone,  
5 or television signals, or other matters. A political subdivision may not place a restriction on  
6 the installation or use of a wind energy system that is more restrictive than these rules.

7 **SECTION 5. Nonstatutory provisions. (1)** No later than the first day of the fourth month  
8 beginning after the effective date of this section, the public service commission shall submit  
9 to the legislative council rules clearinghouse under s. 227.15 (1) of the Statutes, in draft form,  
10 amendments to the rules promulgated under s. 196.378 (4g) (b) that provide reasonable  
11 protection from health effects of sound waves in an inaudible range associated with wind  
12 energy systems.

13 (2) Using the procedure under s. 227.24, the public service commission shall  
14 promulgate an emergency rule that provides reasonable protection from health effects of  
15 sound waves in an inaudible range associated with wind energy systems. Notwithstanding s.  
16 227.24 (1) (a) and (3), the public service commission is not required to provide evidence that  
17 promulgating a rule under this section as an emergency rule is necessary for the preservation  
18 of the public peace, health, safety, or welfare and is not required to provide a finding of  
19 emergency for a rule promulgated under this section. Notwithstanding s. 227.24 (1) (c) and  
20 (2), an emergency rule promulgated under this paragraph remains in effect until the date on  
21 which the amendments promulgated under par. (1) take effect.

22 (END)

## Kunkel, Mark

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**From:** Lovell, David  
**Sent:** Tuesday, February 05, 2013 11:06 AM  
**To:** Kunkel, Mark  
**Cc:** Shovers, Marc; Ozalp, Jessica  
**Subject:** RE: Drafting request for Senator Lasee

Frequency and wave length are the same thing. Now that you mention it, though, I think that frequency is the word I was looking for and would have used if I had thought a little harder about it – so go with frequency. Thanks for catching that.

---

**From:** Kunkel, Mark  
**Sent:** Tuesday, February 05, 2013 9:48 AM  
**To:** Lovell, David  
**Cc:** Shovers, Marc  
**Subject:** RE: Drafting request for Senator Lasee

David:

Your draft includes a definition of “noise” as including sound of all wavelengths and amplitudes.

I looked at various definitions of sound, and it looks like frequency is another characteristic, in addition to wavelength and amplitude. Should the definition of “noise” also refer to all frequencies? Or does that not make any sense? (I majored in English, not Science....)

--Mark

---

**From:** Lovell, David  
**Sent:** Thursday, January 31, 2013 4:47 PM  
**To:** Shovers, Marc  
**Cc:** Kunkel, Mark; Ozalp, Jessica; Kovach, Robert  
**Subject:** Drafting request for Senator Lasee

Marc,

This afternoon, Jessica Ozalp and I dropped off WLC: 0070/1 as the basis for a drafting request on behalf of Senator Lasee. I have been looking further at s. 66.0401 and I think that our draft misses some necessary elements.

Under our draft, a municipality could impose restrictions on wind energy systems more restrictive than the PSC rules if the restrictions satisfy one or more of the conditions in s. 66.0401 (1m) (a) to (c).

However, s. 66.0401 (4) (f) 1. states that “...a political subdivision may not deny or impose a restriction on an application for approval unless the political subdivision enacts an ordinance that is no more restrictive than the rules the commission promulgates under s. 196.378 (4g) (b).”

Also, s. 66.0401 (4) (g) states: “A political subdivision that chooses to regulate wind energy systems shall enact an ordinance, subject to sub. (6) (b), that is no more restrictive than the applicable standards established by the commission in rules promulgated under s. 196.378 (4g).”

To accomplish Senator Lasee’s intent, it appears that exceptions to these provisions are needed for municipalities that regulate wind energy systems under ordinances that satisfy one or more of the conditions in s. 66.0401 (1m) (a) to (c).

I hope this makes sense to you. Let me or Jessica know if you have any questions.

David

---

David L. Lovell, Senior Analyst  
Wisconsin Legislative Council  
608-266-1537



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1453/1  
MES&MDK

Leev

O-NOTE

2013 BILL

5000

SAJ  
xrefJ

INSEAT 1-5  
gen cat

1 AN ACT <sup>gen cat</sup> relating to: limiting the regulation of wind energy systems by local  
2 governments, providing an exemption from emergency rule procedures,  
3 providing an exemption from rule-making procedures, and requiring the  
4 exercise of rule-making authority.

**Analysis by the Legislative Reference Bureau**

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

5 SECTION 1. 66.0401<sup>x</sup> (1m) (intro.) of the statutes is amended to read:  
6 66.0401 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) No A political  
7 subdivision may place any a restriction, ~~either directly or in effect~~, on the installation  
8 or use of a wind energy system that is more restrictive than the rules promulgated

**BILL**

**SECTION 1**

1 by the commission under s. 196.378 (4g) (b). ~~No political subdivision may place any~~  
2 ~~restriction, either directly, or in effect,~~ <sup>a restriction</sup> on the installation or use of a solar energy  
3 system, as defined in s. 13.48 (2) (h) 1. g., ~~or a wind energy system, unless but only~~  
4 if the restriction satisfies one of the following conditions: ↗ and 66.0401 (4) (f) ↗  
as renumbered ↗  
is amended to read: ↗

5 History: 1981 c. 354; 1981 c. 391 s. 210; 1993 a. 414; 1999 a. 150 ss. 78, 79, 84; Stats. 1999 s. 66.0401; 2001 a. 30; 2009 a. 40.

5 **SECTION 2.** 66.0401 (4) (f) 1. of the statutes is repealed.

6 **SECTION 3.** 66.0401 (4) (f) 2. of the statutes is renumbered 66.0401 (4) (f) <sup>2</sup>

7 **SECTION 4.** 66.0401 (4) (g) of the statutes is amended to read:

8 66.0401 (4) (g) A political subdivision that chooses to regulate wind energy  
9 systems shall enact an ordinance to do so, subject to sub. (6) (b), ~~that is no.~~ Subject  
10 to sub. (1m), the ordinance may be more restrictive than the applicable standards  
11 established by the commission in rules promulgated under s. 196.378 (4g).

12 History: 1981 c. 354; 1981 c. 391 s. 210; 1993 a. 414; 1999 a. 150 ss. 78, 79, 84; Stats. 1999 s. 66.0401; 2001 a. 30; 2009 a. 40.

12 **SECTION 5.** 66.0401 (5) (b) 3. of the statutes is amended to read:

13 66.0401 (5) (b) 3. An applicant whose application for approval is denied under  
14 sub. (4) (f) <sup>2</sup> ~~2~~, may appeal the denial to the commission. The commission may grant  
15 the appeal notwithstanding the inconsistency of the application for approval with  
16 the political subdivision's planned residential or commercial development if the  
17 commission determines that granting the appeal is consistent with the public  
18 interest.

19 History: 1981 c. 354; 1981 c. 391 s. 210; 1993 a. 414; 1999 a. 150 ss. 78, 79, 84; Stats. 1999 s. 66.0401; 2001 a. 30; 2009 a. 40.

19 ~~**SECTION 6.** 66.0401 (6) (c) of the statutes is amended to read:~~

20 66.0401 (6) (c) ~~If a political subdivision enacts an ordinance under sub. (4) (g)~~  
21 ~~(1m) after the commission's rules promulgated under s. 196.378 (4g) take effect, the~~  
22 ~~political subdivision may not apply that ordinance to, or require approvals under~~

INS  
2-7  
CPS:  
change  
component

**BILL**

1 that ordinance for, a wind energy system approved by the political subdivision under  
2 a previous ordinance or under a development agreement.

3 History: 1981 c. 354; 1981 c. 391 s. 210; 1993 a. 44; 1999 a. 150 ss. 78, 79, 84; Stats. 1999 s. 66.0401; 2001 a. 30; 2009 a. 40.

**SECTION 7.** 196.378 (4g) (a) 2m. of the statutes is created to read:

4 196.378 (4g) (a) 2m. "Noise" includes sound of all frequencies and amplitudes.

5 **SECTION 8.** 196.378 (4g) (b) of the statutes is amended to read:

6 196.378 (4g) (b) The commission shall, with the advice of the wind siting  
7 council, promulgate rules that specify the restrictions a political subdivision may  
8 impose on the installation or use of a wind energy system consistent with the  
9 conditions specified in s. 66.0401 (1m) (a) to (c). The subject matter of these rules  
10 shall include setback requirements that provide reasonable protection from any  
11 health effects, including health effects from noise and shadow flicker, associated with  
12 wind energy systems. The subject matter of these rules shall also include  
13 decommissioning and may include visual appearance, lighting, electrical  
14 connections to the power grid, setback distances, maximum audible and inaudible  
15 sound levels, shadow flicker, proper means of measuring noise, interference with  
16 radio, telephone, or television signals, or other matters. A political subdivision may  
17 not place a restriction on the installation or use of a wind energy system that is more  
18 restrictive than these rules.

19 History: 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406; 2011 a. 34, 155.

**SECTION 9. Nonstatutory provisions.**

20 A.R.A.

(1) PERMANENT RULES. No later than the first day of the 4th month beginning  
21 after the effective date of this subsection, the public service commission shall submit  
22 in proposed form to the legislative council staff under section 227.15 (1) of the  
23 statutes rules amending the rules promulgated under section 196.378 (4g) (b) of the  
24 statutes for the purpose of providing reasonable protection from health effects of

**BILL****SECTION 9**

1 sound waves in an inaudible range that are associated with wind energy systems.

2 Notwithstanding section 227.135 (2) of the statutes, the public service commission

3 is not required to present the statement of the scope of the rules required under this

4 subsection to the governor for approval. Notwithstanding section 227.185 of the

5 statutes, the public service commission is not required to present the rules required

6 under this subsection in final draft form to the governor for approval.

7 Notwithstanding section 227.137 (2) of the statutes, the public service commission

8 is not required to prepare an economic impact analysis for the rules required under

9 this subsection. Notwithstanding sections 227.14 (2g) and 227.19 (3) (e) of the

10 statutes, the public service commission is not required to submit the proposed rules

11 required under this subsection to the small business regulatory review board and is

12 not required to prepare a final regulatory flexibility analysis for the rules.

13 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,

14 the public service commission shall promulgate rules amending the rules

15 promulgated under section 196.378 (4g) (b) of the statutes for the purpose of

16 providing reasonable protection from health effects of sound waves in an inaudible

17 range that are associated with wind energy systems. Notwithstanding section

18 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not

19 required to provide evidence that promulgating a rule under this subsection as an

20 emergency rule is necessary for the preservation of public peace, health, safety, or

21 welfare and is not required to provide a finding of an emergency for a rule

22 promulgated under this subsection. Notwithstanding section 227.24 (1) (e) 1d. and

23 1g. of the statutes, the commission is not required to prepare a statement of scope

24 of the rules required under this subsection or present the rules to the governor for

25 approval. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the rules

**BILL**

1 promulgated under this subsection remain in effect until the date on which the rules  
2 promulgated under subsection (1) take effect, or July 1, 2016, whichever is sooner.

**SECTION 10. Initial applicability.**

3  
4 (1) The treatment of sections § 66.0401 (1m) (intro.) and (4) (g) of the statutes  
5 first applies to an ordinance that takes effect on the effective date of this subsection.

(END)

d-note

INS  
1-5

1 ~~AN ACT to amend 66.0401 (1m) (intro.) and 196.378 (4g) (b); and to create 66.0401~~  
 2 ~~(1s) and 196.378 (4g) (a) 2m. of the statutes; relating to: limits on the municipal~~  
 3 ~~regulation of wind energy systems.~~

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** Current law limits restrictions that political subdivisions (cities, villages, towns, or counties) may impose on the installation or use of a wind energy system. Restrictions by a political subdivision may not be more restrictive than rules promulgated by the Public Service Commission (PSC). Furthermore, no restriction may be imposed by a political subdivision unless the restriction satisfies one of the conditions listed in s. 66.0401 (1m) (a) to (c). These conditions are that the restriction:

- (a) Serves to preserve or protect the public health or safety.
- (b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (c) Allows for an alternative system of comparable cost and efficiency.

Under this bill, <sup>a</sup>political subdivisions may impose a restriction on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the PSC, if the restriction satisfies one of the conditions listed in s. 66.0401 (1m) (a) to (c).

Current law requires the PSC to promulgate rules regarding restrictions that political subdivisions may impose on the installation or use of wind energy systems. The rules must include setback requirements that provide reasonable protection from any health effects, including health effects from noise, associated with wind energy systems. This bill <sup>a</sup> defines noise to include sound of all wavelengths and <sup>a</sup>amplitudes. It also <sup>a</sup>directs the PSC to amend its rules to account for health effects of inaudible sound. *frequencies*

Under current law, the PSC rules may include maximum audible sound levels. The bill provides that the PSC rules may include maximum audible and inaudible sound levels.

4 SECTION 1. 66.0401 (1m) (intro.) of the statutes is amended to read:

INS 2-7

Section #. 66.0401 (4) (f) 2. of the statutes is amended to read:

66.0401 (4) (f) <sup>e</sup>(2). A political subdivision may deny an application for approval if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development, as shown in a map that is adopted, as part of a comprehensive plan, under s. 66.1001 (2) (b) and (f), before June 2, 2009, or as shown in such maps after December 31, 2015, as part of a comprehensive plan that is updated as required under s. 66.1001 (2) (i). This ~~subdivision~~ <sup>paragraph</sup> applies to a wind energy system that has a nominal capacity of at least one megawatt.

History: 1981 c. 354; 1981 c. 391 s. 210; 1993 a. 414; 1999 a. 150 ss. 78, 79, 84; Stats. 1999 s. 66.0401; 2001 a. 30; 2009 a. 40.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1453/1dn

MES&MDK.....

date

Sen. Lasee:

Please note the following about this bill:

1. I assume that you want the PSC's amended rules to go into effect as soon as possible. Therefore, I have exempted the rules from requirements for gubernatorial approval of both the statement of scope of the proposed rules and the final draft of the rules. I also exempted the rules from requirements relating to economic and small business impact analysis. If you want to revise the bill to impose any of the foregoing requirements on the rules, you will have probably have to give the PSC more time to promulgate the rules.

2. A nonstatutory provision of the bill allows for emergency rules that remain in effect until the amended permanent rules go into effect, or July 1, 2016, whichever is sooner. If you want to allow for the possibility for the emergency rules to remain in effect past July 1, 2016, let me know and I will revise the bill to move the relevant language from the nonstatutory provision to a statutory provision in s. 196.378 (4g). The rationale for moving the language is that nonstatutory provisions are generally limited to transitional requirements that do not apply beyond beyond July 1 of the even-numbered year of the legislature's next biennial session (i.e., July 1, 2016).

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1453/1dn

MDK:eev:rs

February 6, 2013

Sen. Lasee:

Please note the following about this bill:

1. I assume that you want the PSC's amended rules to go into effect as soon as possible. Therefore, I have exempted the rules from requirements for gubernatorial approval of both the statement of scope of the proposed rules and the final draft of the rules. I also exempted the rules from requirements relating to economic and small business impact analysis. If you want to revise the bill to impose any of the foregoing requirements on the rules, you will probably have to give the PSC more time to promulgate the rules.
2. A nonstatutory provision of the bill allows for emergency rules that remain in effect until the amended permanent rules go into effect, or July 1, 2016, whichever is sooner. If you want to allow for the possibility for the emergency rules to remain in effect past July 1, 2016, let me know and I will revise the bill to move the relevant language from the nonstatutory provision to a statutory provision in s. 196.378 (4g). The rationale for moving the language is that nonstatutory provisions are generally limited to transitional requirements that do not apply beyond beyond July 1 of the even-numbered year of the legislature's next biennial session (i.e., July 1, 2016).

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State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1453/1  
MES&MDK:ev:rs

2013 BILL

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INSEPT 1A

1 AN ACT *to repeal* 66.0401 (4) (f) 1.; *to renumber and amend* 66.0401 (4) (f) 2.;  
2 *to amend* 66.0401 (1m) (intro.), 66.0401 (4) (g), 66.0401 (5) (b) 3. and 196.378  
3 (4g) (b); and *to create* 196.378 (4g) (a) 2m. of the statutes; **relating to:** limiting  
4 the regulation of wind energy systems by local governments, providing an  
5 exemption from emergency rule procedures, providing an exemption from  
6 rule-making procedures, and requiring the exercise of rule-making authority.

**Analysis by the Legislative Reference Bureau**

~~This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.~~

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** Current law limits restrictions that political subdivisions (cities, villages, towns, or counties) may impose on the installation or use of a wind energy system. Restrictions by a political subdivision may not be more

**BILL**

restrictive than rules promulgated by the Public Service Commission (PSC). Furthermore, no restriction may be imposed by a political subdivision unless the restriction satisfies one of the conditions listed in s. 66.0401 (1m) (a) to (c). These conditions are that the restriction:

- (a) Serves to preserve or protect the public health or safety.
- (b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (c) Allows for an alternative system of comparable cost and efficiency.

Under this bill, a political subdivision may impose a restriction on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the PSC, if the restriction satisfies one of the conditions listed in s. 66.0401 (1m) (a) to (c).

Current law requires the PSC to promulgate rules regarding restrictions that political subdivisions may impose on the installation or use of wind energy systems. The rules must include setback requirements that provide reasonable protection from any health effects, including health effects from noise, associated with wind energy systems. This bill defines noise to include sound of all wavelengths and frequencies. It also directs the PSC to amend its rules to account for health effects of inaudible sound.

Under current law, the PSC rules may include maximum audible sound levels. The bill provides that the PSC rules may include maximum audible and inaudible sound levels.

1           **SECTION 1.** 66.0401 (1m) (intro.) of the statutes is amended to read:

2           66.0401 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) No A political  
3 subdivision may place any a restriction, ~~either directly or in effect~~, on the installation  
4 or use of a wind energy system that is more restrictive than the rules promulgated  
5 by the commission under s. 196.378 (4g) (b). ~~No political subdivision may place any~~  
6 ~~restriction, either directly, or in effect,~~ a restriction on the installation or use of a  
7 solar energy system, as defined in s. 13.48 (2) (h) 1. g., ~~or a wind energy system, unless~~  
8 but only if the restriction satisfies one of the following conditions:

9           **SECTION 2.** 66.0401 (4) (f) 1. of the statutes is repealed.

**BILL**

1           **SECTION 3.** 66.0401 (4) (f) 2. of the statutes is renumbered 66.0401 (4) (f), and  
2           66.0401 (4) (f), as renumbered, is amended to read:

3           66.0401 (4) (f) A political subdivision may deny an application for approval if  
4           the proposed site of the wind energy system is in an area primarily designated for  
5           future residential or commercial development, as shown in a map that is adopted,  
6           as part of a comprehensive plan, under s. 66.1001 (2) (b) and (f), before June 2, 2009,  
7           or as shown in such maps after December 31, 2015, as part of a comprehensive plan  
8           that is updated as required under s. 66.1001 (2) (i). This ~~subdivision~~ paragraph  
9           applies to a wind energy system that has a nominal capacity of at least one megawatt.

10           **SECTION 4.** 66.0401 (4) (g) of the statutes is amended to read:

11           66.0401 (4) (g) A political subdivision that chooses to regulate wind energy  
12           systems shall enact an ordinance to do so, subject to sub. (6) (b), ~~that is no.~~ Subject  
13           to sub. (1m), the ordinance may be more restrictive than the applicable standards  
14           established by the commission in rules promulgated under s. 196.378 (4g).

15           **SECTION 5.** 66.0401 (5) (b) 3. of the statutes is amended to read:

16           66.0401 (5) (b) 3. An applicant whose application for approval is denied under  
17           sub. (4) (f) 2. may appeal the denial to the commission. The commission may grant  
18           the appeal notwithstanding the inconsistency of the application for approval with  
19           the political subdivision's planned residential or commercial development if the  
20           commission determines that granting the appeal is consistent with the public  
21           interest.

22           **SECTION 6.** 196.378 (4g) (a) 2m. of the statutes is created to read:

23           196.378 (4g) (a) 2m. "Noise" includes sound of all frequencies and amplitudes.

24           **SECTION 7.** 196.378 (4g) (b) of the statutes is amended to read:

**BILL**

**SECTION 7**

*As provided in s. 66.0401(1m) § a*

1           196.378 (4g) (b) The commission shall, with the advice of the wind siting  
 2 council, promulgate rules that specify the restrictions a political subdivision may  
 3 impose on the installation or use of a wind energy system consistent with the  
 4 conditions specified in s. 66.0401 (1m) (a) to (e). The subject matter of these rules  
 5 shall include setback requirements that provide reasonable protection from any  
 6 health effects, including health effects from noise and shadow flicker, associated with  
 7 wind energy systems. The subject matter of these rules shall also include  
 8 decommissioning and may include visual appearance, lighting, electrical  
 9 connections to the power grid, setback distances, maximum audible and inaudible  
 10 sound levels, shadow flicker, proper means of measuring noise, interference with  
 11 radio, telephone, or television signals, or other matters. ~~A~~ political subdivision may  
 12 ~~not~~ place a restriction on the installation or use of a wind energy system that is more  
 13 restrictive than these rules.

**SECTION 8. Nonstatutory provisions.**

15           (1) PERMANENT RULES. No later than the first day of the 4th month beginning  
 16 after the effective date of this subsection, the public service commission shall submit  
 17 in proposed form to the legislative council staff under section 227.15 (1) of the  
 18 statutes rules amending the rules promulgated under section 196.378 (4g) (b) of the  
 19 statutes for the purpose of providing reasonable protection from health effects of  
 20 sound waves in an inaudible range that are associated with wind energy systems.  
 21 Notwithstanding section 227.135 (2) of the statutes, the public service commission  
 22 is not required to present the statement of scope of the rules required under this  
 23 subsection to the governor for approval. Notwithstanding section 227.185 of the  
 24 statutes, the public service commission is not required to present the rules required  
 25 under this subsection in final draft form to the governor for approval.

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*St. 14*

**BILL**

1 Notwithstanding section 227.137 (2) of the statutes, the public service commission  
2 is not required to prepare an economic impact analysis for the rules required under  
3 this subsection. Notwithstanding sections 227.14 (2g) and 227.19 (3) (e) of the  
4 statutes, the public service commission is not required to submit the proposed rules  
5 required under this subsection to the small business regulatory review board and is  
6 not required to prepare a final regulatory flexibility analysis for the rules.

7 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,  
8 the public service commission shall promulgate rules amending the rules  
9 promulgated under section 196.378 (4g) (b) of the statutes for the purpose of  
10 providing reasonable protection from health effects of sound waves in an inaudible  
11 range that are associated with wind energy systems. Notwithstanding section  
12 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not  
13 required to provide evidence that promulgating a rule under this subsection as an  
14 emergency rule is necessary for the preservation of public peace, health, safety, or  
15 welfare and is not required to provide a finding of an emergency for a rule  
16 promulgated under this subsection. Notwithstanding section 227.24 (1) (e) 1d. and  
17 1g. of the statutes, the commission is not required to prepare a statement of scope  
18 of the rules required under this subsection or present the rules to the governor for  
19 approval. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the rules  
20 promulgated under this subsection remain in effect until the date on which the rules  
21 promulgated under subsection (1) take effect, or July 1, 2016, whichever is sooner.

**SECTION 9. Initial applicability.**

22 (1) The treatment of section 66.0401 (1m) (intro.) and (4) (g) of the statutes first  
23 applies to an ordinance that takes effect on the effective date of this subsection.  
24

(END)

25  
D-note



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

5  
LRB-143/2dn

MDK:.....  
eev

date

Sen. Lasee:

This version is identical to the previous version, except for the following:

1. An LRB analysis replaces the Joint Legislative Council prefatory note.
2. The last sentence of s. 196.378 (4g) (b) is amended to clarify that, as provided in s. 66.0404 (1m), as amended, political subdivisions are allowed to impose restrictions that are more restrictive than the PSC rules.

1

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1453/2dn  
MDK:eev:jf

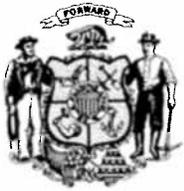
February 13, 2013

Sen. Lasee:

This version is identical to the previous version, except for the following:

1. An LRB analysis replaces the Joint Legislative Council prefatory note.
2. The last sentence of s. 196.378 (4g) (b) is amended to clarify that, as provided in s. 66.0401 (1m), as amended, political subdivisions are allowed to impose restrictions that are more restrictive than the PSC rules.

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## 2013 BILL

1 AN ACT *to repeal* 66.0401 (4) (f) 1.; *to renumber and amend* 66.0401 (4) (f) 2.;

2 *to amend* 66.0401 (1m) (intro.), 66.0401 (4) (g), 66.0401 (5) (b) 3. and 196.378

3 (4g) (b); and *to create* 196.378 (4g) (a) 2m. of the statutes; **relating to:** limiting

4 the regulation of wind energy systems by local governments, providing an

5 exemption from emergency rule procedures, providing an exemption from

6 rule-making procedures, and requiring the exercise of rule-making authority.

### *Analysis by the Legislative Reference Bureau*

Current law limits the authority of a city, village, town, or county (political subdivision) to regulate solar and wind energy systems. For both types of systems, current law prohibits a political subdivision from imposing a restriction on the installation or use of the system unless the restriction satisfies one of the following three conditions: 1) it serves to preserve or protect the public health or safety; 2) it does not significantly increase the cost of the system or significantly decrease the system's efficiency; or 3) it allows for an alternative system of comparable cost and efficiency. However, for wind energy systems, current law imposes an additional limitation on a political subdivision's authority by prohibiting a restriction that is more restrictive than rules promulgated by the Public Service Commission (PSC) under current law. This bill allows a political subdivision to impose a restriction on a wind energy system that is more restrictive than the PSC rules, but only if the restriction satisfies one of the foregoing three conditions. The bill does not affect a political subdivision's authority regarding solar energy systems.

**BILL**

This bill also makes changes to PSC's rule-making authority regarding wind energy systems. Under current law, the rules must include setback requirements that provide reasonable protection from any health effects associated with wind energy systems, including health effects from noise. The bill defines "noise" to include sound of all frequencies and amplitudes. Current law also allows the rules to include certain other requirements, including maximum audible sound levels. The bill also allows the rules to include maximum inaudible sound levels. Finally, the bill also requires PSC to amend its rules to provide reasonable protection from health effects of inaudible sound.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 66.0401 (1m) (intro.) of the statutes is amended to read:

2           66.0401 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) No A political  
3 subdivision may place any a restriction, ~~either directly or in effect~~, on the installation  
4 or use of a wind energy system that is more restrictive than the rules promulgated  
5 by the commission under s. 196.378 (4g) (b). ~~No political subdivision may place any~~  
6 ~~restriction, either directly, or in effect, a restriction~~ on the installation or use of a  
7 solar energy system, as defined in s. 13.48 (2) (h) 1. g., ~~or a wind energy system, unless~~  
8 but only if the restriction satisfies one of the following conditions:

9           **SECTION 2.** 66.0401 (4) (f) 1. of the statutes is repealed.

10           **SECTION 3.** 66.0401 (4) (f) 2. of the statutes is renumbered 66.0401 (4) (f), and  
11 66.0401 (4) (f), as renumbered, is amended to read:

12           66.0401 (4) (f) A political subdivision may deny an application for approval if  
13 the proposed site of the wind energy system is in an area primarily designated for  
14 future residential or commercial development, as shown in a map that is adopted,  
15 as part of a comprehensive plan, under s. 66.1001 (2) (b) and (f), before June 2, 2009,  
16 or as shown in such maps after December 31, 2015, as part of a comprehensive plan

**BILL**

1 that is updated as required under s. 66.1001 (2) (i). This ~~subdivision~~ paragraph  
2 applies to a wind energy system that has a nominal capacity of at least one megawatt.

3 **SECTION 4.** 66.0401 (4) (g) of the statutes is amended to read:

4 66.0401 (4) (g) A political subdivision that chooses to regulate wind energy  
5 systems shall enact an ordinance to do so, subject to sub. (6) (b), ~~that is no.~~ Subject  
6 to sub. (1m), the ordinance may be more restrictive than the applicable standards  
7 established by the commission in rules promulgated under s. 196.378 (4g).

8 **SECTION 5.** 66.0401 (5) (b) 3. of the statutes is amended to read:

9 66.0401 (5) (b) 3. An applicant whose application for approval is denied under  
10 sub. (4) (f) 2. may appeal the denial to the commission. The commission may grant  
11 the appeal notwithstanding the inconsistency of the application for approval with  
12 the political subdivision's planned residential or commercial development if the  
13 commission determines that granting the appeal is consistent with the public  
14 interest.

15 **SECTION 6.** 196.378 (4g) (a) 2m. of the statutes is created to read:

16 196.378 (4g) (a) 2m. "Noise" includes sound of all frequencies and amplitudes.

17 **SECTION 7.** 196.378 (4g) (b) of the statutes is amended to read:

18 196.378 (4g) (b) The commission shall, with the advice of the wind siting  
19 council, promulgate rules that specify the restrictions a political subdivision may  
20 impose on the installation or use of a wind energy system consistent with the  
21 conditions specified in s. 66.0401 (1m) (a) to (c). The subject matter of these rules  
22 shall include setback requirements that provide reasonable protection from any  
23 health effects, including health effects from noise and shadow flicker, associated with  
24 wind energy systems. The subject matter of these rules shall also include  
25 decommissioning and may include visual appearance, lighting, electrical

**BILL****SECTION 7**

1 connections to the power grid, setback distances, maximum audible ~~and inaudible~~  
2 sound levels, shadow flicker, proper means of measuring noise, interference with  
3 radio, telephone, or television signals, or other matters. ~~A~~ As provided in s. 66.0401  
4 (1m), a political subdivision may not place a restriction on the installation or use of  
5 a wind energy system that is more restrictive than these rules.

**SECTION 8. Nonstatutory provisions.**

6  
7 (1) PERMANENT RULES. No later than the first day of the 4th month beginning  
8 after the effective date of this subsection, the public service commission shall submit  
9 in proposed form to the legislative council staff under section 227.15 (1) of the  
10 statutes rules amending the rules promulgated under section 196.378 (4g) (b) of the  
11 statutes for the purpose of providing reasonable protection from health effects of  
12 sound waves in an inaudible range that are associated with wind energy systems.  
13 Notwithstanding section 227.135 (2) of the statutes, the public service commission  
14 is not required to present the statement of scope of the rules required under this  
15 subsection to the governor for approval. Notwithstanding section 227.185 of the  
16 statutes, the public service commission is not required to present the rules required  
17 under this subsection in final draft form to the governor for approval.  
18 Notwithstanding section 227.137 (2) of the statutes, the public service commission  
19 is not required to prepare an economic impact analysis for the rules required under  
20 this subsection. Notwithstanding sections 227.14 (2g) and 227.19 (3) (e) of the  
21 statutes, the public service commission is not required to submit the proposed rules  
22 required under this subsection to the small business regulatory review board and is  
23 not required to prepare a final regulatory flexibility analysis for the rules.

24 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,  
25 the public service commission shall promulgate rules amending the rules

**BILL**

1 promulgated under section 196.378 (4g) (b) of the statutes for the purpose of  
2 providing reasonable protection from health effects of sound waves in an inaudible  
3 range that are associated with wind energy systems. Notwithstanding section  
4 227.24 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not  
5 required to provide evidence that promulgating a rule under this subsection as an  
6 emergency rule is necessary for the preservation of public peace, health, safety, or  
7 welfare and is not required to provide a finding of an emergency for a rule  
8 promulgated under this subsection. Notwithstanding section 227.24 (1) (e) 1d. and  
9 1g. of the statutes, the commission is not required to prepare a statement of scope  
10 of the rules required under this subsection or present the rules to the governor for  
11 approval. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, the rules  
12 promulgated under this subsection remain in effect until the date on which the rules  
13 promulgated under subsection (1) take effect, or July 1, 2016, whichever is sooner.

**SECTION 9. Initial applicability.**

14  
15 (1) The treatment of section 66.0401 (1m) (intro.) and (4) (g) of the statutes first  
16 applies to an ordinance that takes effect on the effective date of this subsection.

17 (END)

**Basford, Sarah**

---

**From:** Kovach, Robert  
**Sent:** Thursday, February 28, 2013 3:42 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -1453/3 Topic: Limit municipal authority to regulate wind energy systems

Please Jacket LRB -1453/3 for the SENATE.