

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4107/1dn
MES&MDK:wlj:rs

February 19, 2008

Representative Montgomery:

I did not include the statement of legislative intent suggested by the PSC. Generally, LRB policy is to avoid such statements unless the bill is a recodification or if there is a reasonable probability that a provision of a bill may be declared unconstitutional and that the statement may help to sustain the provision. I don't believe that either exception applies.

Although an argument could be made that the bill violates a city's or village's home rule authority (see article XI, section 3, of the Wisconsin Constitution), I don't think this is a very strong argument. The bill deals with an area of mixed state and local authority, but it seems that many of the issues the PSC's rules may address, such as decommissioning, electrical connections to the power grid, and interference with radio, telephone, or television signals, are clearly of paramount state interest. In addition, the legislation applies to all cities and villages equally, and local action is not totally preempted. Under the bill, local ordinances must be consistent with PSC rules, but may not be more restrictive than those rules. This "no more restrictive" language suggests that there is some flexibility for local regulation in this area.

Please review created s. 66.0401 (6) to ensure that it meets your intent. A county ordinance in the area of the construction or operation of wind-powered electric generating projects preempts a municipality's ordinance, but a county ordinance that deals with trimming of vegetation that blocks solar or wind energy systems applies only in towns that have not acted in that area. Is this OK?

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