

**2007 DRAFTING REQUEST**

**Bill**

Received: **02/15/2008**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**

By/Representing: **Kristin**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact: **Amber Hodgson in Sen.  
Plale's office; John  
Lorence and Dave  
Ludwig @ the PSC**

Addl. Drafters: **mkunkel**

Subject: **Local Gov't - munis generally  
Local Gov't - counties  
Public Util. - energy**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Montgomery@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Uniform local regulation of wind energy systems; public service commission oversight

---

**Instructions:**

See Attached

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**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>
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/3			nmatzke 02/25/2008	_____ _____	cduerst 02/25/2008		S&L
/4	mshovers 02/26/2008	wjackson 02/26/2008	pgreensl 02/26/2008	_____ _____ _____	lparisi 02/26/2008 mbarman 02/27/2008	mbarman 02/27/2008	

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*at intro  
2/28*

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mbarman  
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re-submitted  
via e-mail

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*(Handwritten initials: ps, ps)*

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*(4) NES*  
*1/4 WJ 2/26*  
*2/26/08*

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13 MES 2/25/08  
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By/Representing: Kristin

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to 2/20  
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1? mshovers

1 WJ 2/18



1/1 MES 2/18/08

FE Sent For:

<END>

## Shovers, Marc

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**From:** Kunkel, Mark  
**Sent:** Friday, February 15, 2008 4:23 PM  
**To:** Shovers, Marc  
**Subject:** FW: Drafting Request

**Attachments:** Small wind farms regulation of 2-14-08.doc

---

**From:** Ruesch, Kristin  
**Sent:** Thursday, February 14, 2008 11:02 AM  
**To:** Kunkel, Mark  
**Cc:** Stolzenberg, John; Hodgson, Amber  
**Subject:** Drafting Request

Mark, attached please find drafting instructions for wind siting legislation. As I mentioned on the phone, we'd like to hear the legislation on Thursday, Feb 21, and so a draft as soon as possible would be greatly appreciated.



Small wind farms  
regulation of...

Thank you,

Kristin

**Kristin Ruesch**  
Office of Representative Phil Montgomery  
Room 129 West, State Capitol  
(608) 266-5841  
(888) 534-0004

Instructions

1  
2  
3  
4  
5  
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7

**Uniform Standards for Local Review of Wind Projects**

**February 14, 2008**

8  
9  
10  
11  
12  
13

SECTION 1. STATEMENT OF LEGISLATIVE INTENT. The legislature declares that because wind energy systems are a renewable resource of Wisconsin that provide energy to the state's entire electric system, ensuring that local units of government uniformly regulate their installation and use is a matter of statewide concern.

14  
15

SECTION 2. 66.0401 (1) of the statutes is renumbered 66.0401(1m) and, as renumbered, (1m) (intro.) is amended to read:

16  
17  
18  
19  
20  
21  
22  
23

**66.0401 (1m)** (intro.) No municipality may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules the commission promulgates under s. 196.378 (4g) (b). No county, city, town, or village ~~municipality~~ may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, ~~as defined in s. 66.0403 (1) (m),~~ unless the restriction satisfies one of the following conditions:

political subdivision

24  
25  
26

SECTION 3. 66.0401(1) of the statutes is created to read:

INSTRUCTIONS

1 66.0401 (1) DEFINITIONS. In this section:

2 (a) ~~FNS "A" from 3~~

3 (b) (a) "Commission" means the public service commission.

FNS "B" from P. 5

4 (c) (b) "Municipality" means a ~~county~~ <sup>political subdivision</sup> city, town or ~~village~~ <sup>village,</sup> ~~county~~ <sup>county</sup>

5 (e) (e) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

9 SECTION 4. 66.0401 (2) of the statutes is amended to read:

11 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. A ~~county,~~ <sup>political subdivision</sup>  
12 ~~city, village, or town~~ <sup>political subdivision</sup> municipality may provide by ordinance for the trimming of  
13 vegetation that blocks solar energy, as defined in s. 66.0403 (1) (k), from a collector  
14 surface, as defined under s. 700.41 (2) (b), or that blocks wind from a wind energy  
15 system, ~~as defined in s. 66.0403 (1) (m).~~ The ordinance may include, ~~but is not limited~~  
16 ~~to,~~ a designation of responsibility for the costs of the trimming. The ordinance may not  
17 require the trimming of vegetation that was planted by the owner or occupant of the  
18 property on which the vegetation is located before the installation of the solar or wind  
19 energy system.

21 SECTION 5. 66.0401 (3) of the statutes is created to read:



1  
2  
3 **Uniform Standards for Local Review of Wind Projects**  
4  
5

6 **February 14, 2008**  
7

8  
9 SECTION 1. STATEMENT OF LEGISLATIVE INTENT. The legislature  
10 declares that because wind energy systems are a renewable resource of Wisconsin that  
11 provide energy to the state's entire electric system, ensuring that local units of  
12 government uniformly regulate their installation and use is a matter of statewide concern.  
13

14 SECTION 2. 66.0401 (1) of the statutes is renumbered 66.0401(1m) and, as  
15 renumbered, (1m) (intro.) is amended to read:  
16

17 **66.0401 (1m)** (intro.) No municipality may place any restriction, either directly  
18 or in effect, on the installation or use of a wind energy system that is more restrictive than  
19 the rules the commission promulgates under s. 196.378 (4g) (b). ~~No county, city, town,~~  
20 ~~or village~~ municipality may place any restriction, either directly or in effect, on the  
21 installation or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind  
22 energy system, ~~as defined in s. 66.0403 (1) (m),~~ unless the restriction satisfies one of the  
23 following conditions:  
24

25 SECTION 3. 66.0401(1) of the statutes is created to read:  
26

1           **66.0401 (1) DEFINITIONS.** In this section:

2

3           (a) “Commission” means the public service commission.

4

5           (b) “Municipality” means a county, city, town or village.

6

7           (c) “Wind energy system” has the meaning given in s. 66.0403 (1) (m).

8

9           SECTION 4. 66.0401 (2) of the statutes is amended to read:

10

11           **66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION.** A ~~county,~~  
12 ~~city, village, or town~~ municipality may provide by ordinance for the trimming of  
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14 surface, as defined under s. 700.41 (2) (b), or that blocks wind from a wind energy  
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16 to, a designation of responsibility for the costs of the trimming. The ordinance may not  
17 require the trimming of vegetation that was planted by the owner or occupant of the  
18 property on which the vegetation is located before the installation of the solar or wind  
19 energy system.

20

21           SECTION 5. 66.0401 (3) of the statutes is created to read:

22

1           **66.0401 (3) TESTING ACTIVITIES.** A municipality may not prohibit or restrict  
2 testing activities undertaken for determining the suitability of a site for the placement of a  
3 wind energy system. A municipality objecting to such testing may petition the  
4 commission to impose reasonable restrictions on the activity.

5

6           SECTION 6. 66.0401 (4) of the statutes is created to read:

7

8           **66.0401 (4) MUNICIPAL PROCEDURE.** (a) In this subsection, “application for  
9 approval” means an application for approval of a wind energy system pursuant to rules  
10 the commission promulgates under s. 196.378 (4g) (c) 1.

11

12           (b) A municipality that receives an application for approval shall determine  
13 whether it is complete and, no later than 45 days after the application is filed, notify the  
14 applicant about the determination. If the municipality determines that the application is  
15 incomplete, the notice shall state the reason for the determination. An applicant may  
16 supplement and refile an application that the municipality has determined to be  
17 incomplete. There is no limit on the number of times that an applicant may refile an  
18 application for approval. If the municipality fails to determine whether an application for  
19 approval is complete within 45 days after the application is filed, the application shall be  
20 considered to be complete.

21

22           (c) A municipality shall make a record of its decision-making on an application  
23 for approval, including a recording of any public hearing, copies of documents submitted

1 at any public hearing, and copies of any other documents provided to the municipality in  
2 connection with the application for approval. The municipality's record shall conform to  
3 the commission's rules promulgated under s. 196.378 (4g) (c) 2.

4

5 (d) A municipality shall base its decision on an application for approval on  
6 written findings of fact that are supported by the evidence in the record under par. (c). A  
7 municipality's procedure for reviewing the application for approval shall conform to the  
8 commission's rules promulgated under s. 196.378 (4g) (c) 3.

9

10 (e) Except as provided in par. (f), a municipality shall approve or disapprove an  
11 application for approval no later than 90 days after the day on which it notifies the  
12 applicant that the application for approval is complete. If a municipality fails to act  
13 within the 90 days, or within any extended time period established under par. (f), the  
14 application is considered approved.

15

16 (f) A municipality may extend the time period in par. (e) if, within that 90-day  
17 period, the municipality authorizes the extension in writing. An extension may be  
18 authorized if the municipality needs additional information to determine whether to  
19 approve or deny the application for approval, if the applicant makes a material  
20 modification to the application for approval, or for other good cause specified in writing  
21 by the municipality.

22

1 (g) A municipality may not deny or impose a restriction on an application for  
2 approval unless the municipality adopts an ordinance that conforms to the rules the  
3 commission promulgates under s. 196.378 (4g) (b).  
4

5 (h) A municipality that chooses to regulate wind energy systems shall adopt an  
6 ordinance, consistent with the applicable standards established by the commission in  
7 rules promulgated under s. 196.378 (4g), within 90 days after the date the commission's  
8 rules take effect.  
9

10 SECTION 7. 66.0401 (5) of the statutes is created to read:  
11

12 **66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW.** (a) In this subsection, "large  
13 wind energy system" means a wind energy system that has a nominal capacity of at least  
14 one megawatt.  
15

16 (b) The decision of municipality to approve, reject, or impose a restriction upon a  
17 large wind energy system may only be appealed as provided in this subsection.  
18

19 (c) 1. Any aggrieved person seeking to appeal a decision of a municipality to  
20 approve, reject, or impose a restriction upon a large wind energy system may commence  
21 the administrative review process of the municipality. If the person is still aggrieved  
22 after the administrative review is completed, the person may file an appeal with the

1 commission. No appeal to the commission under this subdivision may be filed more than  
2 30 days after the municipality has completed its administrative review process.

3

4 2. Rather than commencing administrative review under subd. 1., an aggrieved  
5 person seeking to appeal a decision of a municipality to approve, reject, or impose a  
6 restriction upon a large wind energy system may file an appeal directly with the  
7 commission. No appeal to the commission under this subdivision may be filed more than  
8 30 days after the decision of the municipality to approve, reject, or impose a restriction  
9 upon the large wind energy system.

10

11 (d) Upon receiving an appeal under par. (c), the commission shall notify the  
12 municipality. The municipality shall provide a certified copy of the record upon which it  
13 based its decision, and of any other relevant municipal records the commission may  
14 request, within 30 days after receiving notice.

15

16 (e) The commission may confine its review to the records it receives from the  
17 municipality or, if it finds that additional information would be relevant to its decision,  
18 expand the record it reviews. The commission shall issue a decision within 90 days after  
19 the date when it receives all of the municipal records it requests under par. (d), unless for  
20 good cause the commission extends this time period in writing. If the commission  
21 determines that the municipality's decision does not comply with the rules it promulgates  
22 under s. 196.378 (4g) or is otherwise unreasonable, the municipality's decision shall be

1 superseded by the commission's decision and the commission may order an appropriate  
2 remedy.

3

4 (f) Judicial review is not available until the commission issues its decision under  
5 par. (e). Judicial review shall be of the commission's decision, not of the municipality's  
6 decision. The commission's decision is subject to judicial review under ch. 227.

7 Injunctive relief is only available as provided in s. 196.43.

8

9 SECTION 8. 196.378 (4) (title) is amended to read:

10

11 **196.378 (4) (title) RENEWABLE RESOURCE RULES.**

12

13 SECTION 9. 196.378 (4g) of the statutes is created to read:

14

15 **196.378 (4g) WIND SITING RULES. (a) In this subsection:**

16

17 1. "Application for approval" has the meaning given in s. 66.0401 (4) (a).

18

19 2. "Municipality" means a county, city, town or village.

20

21 3. "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

22

1 (b) The commission shall promulgate rules that specify the restrictions a  
2 municipality may impose on the installation or use of a wind energy system. The subject  
3 matter of these rules may include visual appearance, lighting, electrical connections to the  
4 power grid, setback distances, maximum audible sound levels, proper means of  
5 measuring noise, interference with radio, telephone, or television signals,  
6 decommissioning, or matters of public health and safety concerning wind energy  
7 systems. A municipality may not place a restriction on the installation or use of a wind  
8 energy system that is more restrictive than these rules.

9  
10 (c) In addition to the rules under par. (b), the commission shall promulgate rules  
11 that do all of the following:

12  
13 1. Specify the information and documentation to be provided in an application for  
14 approval in order to demonstrate that a proposed wind energy system complies with rules  
15 promulgated under par. (b).

16  
17 2. Specify the information and documentation to be included in a municipality's  
18 record of decision under s. 66.0401 (4) (c).

19  
20 3. Specify the procedure a municipality shall follow in reviewing an application  
21 for approval under s. 66.0401 (4).

22



1           SECTION 10. INITIAL APPLICABILITY. The public service commission  
2 review process for municipal decisions under section 66.0401 (5) of the statutes, as  
3 created by this act, first applies to municipal decisions issued after the public service  
4 commission's rules under section 196.378 (4g) of the statutes, as created by this act, take  
5 effect.

6

7

(End)

8

9

10 O:\Ludwig\Statutory proposals\Small wind farms regulation of; 2-14-08.doc

## **Summary of PSC Bill Draft Uniform Standards for Local Review of Wind Energy Systems**

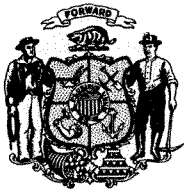
This bill draft requires that the Public Service Commission write rules establishing common standards for local units of government to use, if they choose to regulate the construction or operation of wind-powered electric generating projects. It also provides a process for municipal review of applications to install or use a wind energy system and a means of appealing a municipality's decision.

Current law allows municipalities a limited opportunity to place restrictions on the installation or use of a wind energy system. Municipal restrictions are allowable only if they preserve or protect the public health or safety, do not significantly increase the cost of the system or decrease its efficiency, or allow for an alternative system of comparable cost and efficiency. This bill draft directs the Public Service Commission to clarify current law by writing rules that specify the restrictions a municipality may impose. The subject matter of the rules could include topics such as visual appearance, lighting, setback distances, maximum audible sound levels, decommissioning projects after they have been retired, and matters of public health and safety. The bill draft prohibits municipalities from regulating wind energy systems in a manner more restrictive than allowed by the Public Service Commission's rules. It also prevents municipalities from restricting any tests that a project developer undertakes to determine if a site is suitable for a wind energy system.

The bill draft specifies how municipalities that choose to regulate proposed wind energy systems must respond when they receive project applications. It directs the Public Service Commission to write rules explaining the proper contents of a project application and requires the municipality to determine whether such an application is complete within 45 days after receipt. If it is incomplete, the municipality must explain how the application is deficient so a revised application can be filed. If the municipality fails to determine whether an application is complete within 45 days after filing, the application is automatically deemed complete.

Upon accepting a complete application for a proposed wind energy system, the municipality has 90 days to render a decision (unless it extends this time period for good cause, in writing) and must make a record of its decision-making. The bill draft requires that the Public Service Commission adopt rules identifying the information and documentation that a municipality must include in its record of decision, and specifying how a municipality must review project applications.

For proposed wind energy systems that are one megawatt or larger, a person who is aggrieved by a municipality's decision can seek review by the Public Service Commission. The municipality will certify its record to the Public Service Commission, which the agency can supplement as needed. The Public Service Commission must complete its review within 90 days after it receives all of the municipal records, unless it extends this time period for good cause in writing. If the Public Service Commission finds that the municipal decision does not comply with the agency's rules or is otherwise unreasonable, it must issue a superseding decision and order an appropriate remedy. Any further judicial review is of the Public Service Commission's decision, not of the municipality's decision.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-4107/?  
MES&MDK...Y:...

Wlj Rmk

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

NOTE

WANTED:  
TUES  
early p.m.

gen

- 1 AN ACT ...; relating to: requiring that local regulation of a wind energy system
- 2 must be consistent with Public Service Commission rules and granting rule
- 3 making authority.

**Analysis by the Legislative Reference Bureau**

Under current law, a city, village, town, or county (political subdivision) may not place any restrictions on the installation or use of an energy system (a solar energy system or a wind energy system) unless the restriction is for health or safety reasons, does not significantly increase the cost of the system or decrease its efficiency, or allows for an alternative comparable system.

This bill requires the Public Service Commission (PSC) to promulgate rules establishing common standards for political subdivisions to regulate the construction and operation of wind-powered generating projects. The rules must specify the restrictions a political subdivision may impose on the installation or use of such a project, and may include subjects such as visual appearance, setback distances, decommissioning, electrical connections to the power grid, and interference with radio, telephone, or television signals.

If a political subdivision chooses to regulate such projects, its ordinances must be consistent with the PSC rules and may not be more restrictive than those rules. The bill also specifies various standards, procedures for applicants, and approval timelines for political subdivisions that must be contained in a political subdivision's ordinance regulating wind-powered generating projects.

The bill prohibits a political subdivision from prohibiting or restricting any person from conducting tests to determine the suitability of a site for the possible

placement of a wind energy system, although the political subdivision may petition the PSC to impose reasonable restrictions on the testing.

With regard to a proposed wind energy system that is one megawatt or larger, the bill provides that a person who is aggrieved by a political subdivision's decision on the person's application may seek review by the PSC. If the PSC determines that the political subdivision's decision does not comply with the agency's rules or is unreasonable, it must issue a superseding decision and issue an appropriate remedy. The PSC's decision may be appealed to circuit court.

Except with regard to a political subdivision's ordinance relating to trimming vegetation that blocks solar or wind energy systems, the bill specifies that if a county enacts an ordinance relating to the construction or operation of a wind energy system, as provided by the bill, the county ordinance applies throughout the county and ~~supersedes any similar municipal ordinance.~~ *city, village or town*

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 (1) (intro.) of the statutes is renumbered 66.0401 (1m) *STET*  
2 (intro.) and amended to read:

3 66.0401 (1m) *B* AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) No county, city,  
4 town, or village political subdivision may place any restriction, either directly or in  
5 effect, on the installation or use of a wind energy system that is more restrictive than  
6 the rules promulgated by the commission under s. 196.378 (4g) (g). *(g)* No political  
7 subdivision may place any restriction, either directly or in effect, on the installation  
8 or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy  
9 system, as defined in s. 66.0403 (1) (m), unless the restriction satisfies one of the  
10 following conditions:

11 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.  
12 SECTION 2. 66.0401 (1) of the statutes is created to read:

66.0401 (1) DEFINITIONS. In this section:

1 (a) "Application for approval" means an application for approval of a wind  
2 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)

3 1.

4 (b) "Commission" means the Public Service Commission.

5 (c) "Large wind energy system" means a wind energy system that has a nominal  
6 capacity of at least one megawatt.

7 (d) "Municipality" means a city, village, or town.

8 (e) "Political subdivision" means a city, village, town, or county.

9 (f) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

10 SECTION 3. 66.0401 (2) of the statutes is amended to read:

11 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~  
12 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may ~~provide by~~  
13 enact an ordinance for relating to the trimming of vegetation that blocks solar  
14 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.  
15 700.41 (2) (b), or that blocks wind from a wind energy system, ~~as defined in s. 66.0403~~  
16 ~~(1) (m).~~ The ordinance may include, ~~but is not limited to,~~ a designation of  
17 responsibility for the costs of the trimming. The ordinance may not require the  
18 trimming of vegetation that was planted by the owner or occupant of the property on  
19 which the vegetation is located before the installation of the solar or wind energy  
20 system.

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.

21 SECTION 4. 66.0401 (3) of the statutes is created to read:

22 ~~66.0401 (3) TITLE.~~

23 INSERT 3-1 ✓

24 SECTION 5. 66.0401 (6) of the statutes is created to read:

**SECTION 5**

1           66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE. (a) 1. A county ordinance  
2 enacted under sub. (2) <sup>✓</sup> applies only to the towns in the county that have not enacted  
3 an ordinance under sub. (2).

4           2. If a town enacts an ordinance under sub. (2) after a county has enacted an  
5 ordinance under sub. (2), the county ordinance does not apply, and may not be  
6 enforced, in the town, except that if the town later repeals its ordinance, the county  
7 ordinance applies in that town.

8           (b) 1. A county ordinance enacted under sub. (4) applies in every municipality  
9 in the county.

10          2. If a county enacts an ordinance under sub (4) after a municipality has  
11 enacted an ordinance under sub. (4), the municipal ordinance does not apply, and  
12 may not be enforced, except that if the county later repeals its ordinance, a  
13 municipality's ordinance applies in that municipality.

14          INSERT 7-~~13~~ 9!

15                           (END)

INS  
3/1  
P. 1045

political subdivision

any person  
from conducting

1 **66.0401 (3) TESTING ACTIVITIES.** A municipality may not prohibit or restrict  
2 testing activities undertaken for determining the suitability of a site for the placement of a  
3 wind energy system. A municipality objecting to such testing may petition the  
4 commission to impose reasonable restrictions on the activity.

5  
6 SECTION ~~#~~ 66.0401 (4) of the statutes is created to read:

7  
8 **66.0401 (4) MUNICIPAL PROCEDURE.** (a) In this subsection, "application for  
9 approval" means an application for approval of a wind energy system pursuant to rules  
10 the commission promulgates under s. 196.378 (4g) (c) 1.

(c)  
LOCAL

INS  
make to  
P. 1045 line 2

INS

11  
12 ~~(a)~~ (b)

13 A municipality that receives an application for approval shall determine  
14 whether it is complete and, no later than 45 days after the application is filed, notify the  
15 applicant about the determination. If the municipality determines that the application is  
16 incomplete, the notice shall state the reason for the determination. An applicant may  
17 supplement and refile an application that the municipality has determined to be  
18 incomplete. There is no limit on the number of times that an applicant may refile an  
19 application for approval. If the municipality fails to determine whether an application for  
20 approval is complete within 45 days after the application is filed, the application shall be  
21 considered to be complete.

22 (b)

23 A municipality shall make a record of its decision making on an application  
for approval, including a recording of any public hearing, copies of documents submitted

3-1  
P. 2065

political subdivision

1 at any public hearing, and copies of any other documents provided to the municipality in  
2 connection with the application for approval. The municipality's record shall conform to  
3 the commission's rules promulgated under s. 196.378 (4g) (c) 2.

4  
5 (f) (d) A municipality shall base its decision on an application for approval on  
6 written findings of fact that are supported by the evidence in the record under par. (c). A  
7 municipality's procedure for reviewing the application for approval shall conform to the  
8 commission's rules promulgated under s. 196.378 (4g) (c) 3.

9  
10 (f) (e) Except as provided in par. (f), a municipality shall approve or disapprove an  
11 application for approval no later than 90 days after the day on which it notifies the  
12 applicant that the application for approval is complete. If a municipality fails to act  
13 within the 90 days, or within any extended time period established under par. (f), the  
14 application is considered approved.

15  
16 (f) (e) A municipality may extend the time period in par. (e) if, within that 90-day  
17 period, the municipality authorizes the extension in writing. An extension may be  
18 authorized if the municipality needs additional information to determine whether to  
19 approve or deny the application for approval, if the applicant makes a material  
20 modification to the application for approval, or for other good cause specified in writing  
21 by the municipality.

22



INS  
3/1  
P. 3015

political subdivision

1 (g) A municipality may not deny or impose a restriction on an application for  
2 approval unless the municipality ~~adopts~~ <sup>enacts</sup> an ordinance that conforms to the rules the  
3 commission promulgates under s. 196.378 (4g) (b).

comma here

4  
5 (h) A municipality that chooses to regulate wind energy systems shall ~~adopt~~ <sup>enact</sup> an  
6 ordinance <sup>subject to sub (b) that is</sup> consistent with the applicable standards established by the commission in  
7 rules promulgated under s. 196.378 (4g), within 90 days after the date the commission's  
8 rules take effect.

~~John  
Lorenza~~

10 SECTION ~~7~~ 66.0401 (5) of the statutes is created to read:

~~INS/B/2/10  
P. 3015~~

12 **66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW.** (a) In this subsection, "large  
13 wind energy system" means a wind energy system that has a nominal capacity of at least  
14 one megawatt.

a political subdivision

No  
IT

16 (b) The decision of municipality to approve, reject, or impose a restriction upon a  
17 large wind energy system may only be appealed <sup>as</sup> provided in this subsection.

9  
10

19 (c) 1. Any aggrieved person seeking to appeal a decision of a municipality to  
20 approve, reject, or impose a restriction upon a large wind energy system may <sup>begin</sup> commence  
21 the administrative review process of the <sup>political subdivisions</sup> municipality. If the person is still aggrieved  
22 after the administrative review is completed, the person may file an appeal with the

INS  
3-1  
p. 4 of 5

political subdivision

1 commission. No appeal to the commission under this subdivision may be filed ~~more~~ <sup>later</sup> than  
2 30 days after the ~~municipality~~ has completed its administrative review process.

3  
4 (a) 2. Rather than ~~commencing~~ <sup>beginning an</sup> administrative review under subd. 1., an aggrieved

5 person seeking to appeal a decision of a ~~municipality~~ to approve, reject, or impose a  
6 restriction upon a large wind energy system may file an appeal directly with the

7 commission. No appeal to the commission under this subdivision may be filed ~~more~~ <sup>later</sup> than  
8 30 days after the decision of the ~~municipality~~ to approve, reject, or impose a restriction

9 upon the large wind energy system.

10  
11 (b) (c) (d) Upon receiving an appeal under par. (c), the commission shall notify the

12 ~~municipality~~. The ~~municipality~~ shall provide a certified copy of the record upon which it  
13 based its decision, and of any other relevant ~~municipal~~ <sup>governmental</sup> records the commission may  
14 request, within 30 days after receiving notice.

15  
16 (d) (e) The commission may confine its review to the records it receives from the

17 ~~municipality~~ or, if it finds that additional information would be relevant to its decision,  
18 expand the record it reviews. The commission shall issue a decision within 90 days after  
19 the date <sup>on which</sup> when it receives all of the ~~municipal~~ records it requests under par. (d), unless for <sup>(c)</sup>

20 good cause the commission extends this time period in writing. If the commission

21 determines that the ~~municipality~~'s decision does not comply with the rules it promulgates

22 under s. 196.378 (4g) or is otherwise unreasonable, the ~~municipality~~'s decision shall be

INS  
3-1 p. 5 of 5

1 superseded by the commission's decision and the commission may order an appropriate  
2 remedy.

3  
4 (A) (c) (d) Judicial review is not available until the commission issues its decision under  
5 par. (c) (e) Judicial review shall be of the commission's decision, not of the municipality's <sup>political subdivisions</sup>  
6 decision. The commission's decision is subject to judicial review under ch. 227.

7 Injunctive relief is only available as provided in s. 196.43.

8 END of INS 3-1

INS  
7-10 p. 10 of 3

9 SECTION ~~8~~ 196.378 (4) (title) is ~~amended~~ <sup>repealed and</sup> to read: <sup>✓</sup>  
10 <sup>recreated</sup>

11 No. B  
12 **196.378 (4) (title) RENEWABLE RESOURCE RULES.**

13 SECTION ~~8~~ 196.378 (4g) of the statutes is created to read:

14  
15 B  
16 **196.378 (4g) WIND SITING RULES. (a) In this subsection:**  
17  $\Delta \Delta$

18 1. "Application for approval" has the meaning given in s. 66.0401 <sup>(a)</sup> (a). <sup>le</sup>

19 <sup>Political subdivision</sup>  
20 2. "Municipality" means a county, city, town or village. <sup>town or county</sup>  
21  $\Delta$

22 3. "Wind energy system" has the meaning given in s. 66.0403 (1) (m). <sup>✓</sup>

INS 7-9  
1.2.083

political subdivision

1 (b) The commission shall promulgate rules that specify the restrictions a  
 2 ~~municipality~~ may impose on the installation or use of a wind energy system. The subject  
 3 matter of these rules may include visual appearance, lighting, electrical connections to the  
 4 power grid, setback distances, maximum audible sound levels, proper means of  
 5 measuring noise, interference with radio, telephone, or television signals,  
 6 decommissioning, or matters of public health and safety concerning wind energy  
 7 systems. A ~~municipality~~ may not place a restriction on the installation or use of a wind  
 8 energy system that is more restrictive than these rules.

9  
 10 (c) In addition to the rules under par. (b), the commission shall promulgate rules  
 11 that do all of the following:

12  
 13 1. Specify the information and documentation to be provided in an application for  
 14 approval ~~in order~~ to demonstrate that a proposed wind energy system complies with rules  
 15 promulgated under par. (b).

16  
 17 2. Specify the information and documentation to be included in a ~~municipality's~~  
 18 record of decision under s. 66.0401 (4) (a). *b* ✓

19  
 20 3. Specify the procedure a ~~municipality~~ shall follow in reviewing an application  
 21 for approval under s. 66.0401 (4). ✓

22

P. 3012  
7-9 INS

No B

No U + No solid caps + B

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SECTION 10- INITIAL APPLICABILITY. The public service commission

review process for municipal decisions under section 66.0401 (5) of the statutes, as

created by this act, first applies to municipal decisions issued after the public service

commission's rules under section 196.378 (4g) of the statutes, as created by this act, take

effect.

(End) of ins 7-9

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

LRB-4107/?dn  
MES&MDK.../:...  
Wlj

Date

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 that 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 that 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. 66.040<sup>1</sup>(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?

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

**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?

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-4107/2  
MES&MDK:wj:rs

2007 BILL

stays  
Pmr

D-NOTE

WANTED today, now

repeal

1 AN ACT *to renumber and amend* 66.0401 (1) (intro.); *to amend* 66.0401 (2); *to*  
2 *repeal and recreate* 196.378 (4) (title); and *to create* 66.0401 (1e), 66.0401  
3 (3), 66.0401 (4), 66.0401 (5), 66.0401 (6) and 196.378 (4g) of the statutes;  
4 **relating to:** requiring that local regulation of a wind energy system be  
5 consistent with Public Service Commission rules and granting rule-making  
6 authority.

***Analysis by the Legislative Reference Bureau***

Under current law, a city, village, town, or county (political subdivision) may not place any restrictions on the installation or use of an energy system (a solar energy system or a wind energy system) unless the restriction is for health or safety reasons, does not significantly increase the cost of the system or decrease its efficiency, or allows for an alternative comparable system.

This bill requires the Public Service Commission (PSC) to promulgate rules establishing common standards for political subdivisions to regulate the construction and operation of wind-powered generating projects. The rules must specify the restrictions a political subdivision may impose on the installation or use of such a project, and may include subjects such as visual appearance, setback distances, decommissioning, electrical connections to the power grid, and interference with radio, telephone, or television signals.

If a political subdivision chooses to regulate such projects, its ordinances must be consistent with the PSC rules and may not be more restrictive than those rules.



**BILL**

The bill also specifies various standards, procedures for applicants, and approval timelines for political subdivisions that must be contained in a political subdivision's ordinance regulating wind-powered generating projects.

The bill prohibits a political subdivision from prohibiting or restricting any person from conducting tests to determine the suitability of a site for the possible placement of a wind energy system, although the political subdivision may petition the PSC to impose reasonable restrictions on the testing.

any  
With regard to a proposed wind energy system that is one megawatt or larger, the bill provides that a person who is aggrieved by a political subdivision's decision on the person's application may seek review by the PSC. If the PSC determines that the political subdivision's decision does not comply with the agency's rules or is unreasonable, it must issue a superseding decision and issue an appropriate remedy. The PSC's decision may be appealed to circuit court.

Except with regard to a political subdivision's ordinance relating to trimming vegetation that blocks solar or wind energy systems, the bill specifies that if a county enacts an ordinance relating to the construction or operation of a wind energy system, as provided by the bill, the county ordinance applies throughout the county and supersedes any similar city, village, or town ordinance.

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 Please fix comp.  
2

SECTION 1. 66.0401 (1) ~~(intro.)~~ of the statutes is renumbered 66.0401 (1m) <sup>and 66.0401 (1m)</sup> (intro.) and amended to read: <sup>as renumbered is</sup> **SET**

3 66.0401 (1m) **AUTHORITY TO RESTRICT SYSTEMS LIMITED.** (intro.) No county, city,  
4 town, or village political subdivision may place any restriction, either directly or in  
5 effect, on the installation or use of a wind energy system that is more restrictive than  
6 the rules promulgated by the commission under s. 196.378 (4g) (b). No political  
7 subdivision may place any restriction, either directly or in effect, on the installation  
8 or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy  
9 system, as defined in s. 66.0403 (1) (m), unless the restriction satisfies one of the  
10 following conditions:

11 SECTION 2. 66.0401 (1e) of the statutes is created to read:

**BILL**

1           66.0401 (1e) DEFINITIONS. In this section:

2           (a) "Application for approval" means an application for approval of a wind  
3 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)

4           1.

5           (b) "Commission" means the Public Service Commission.

6           (c) "Large wind energy system" means a wind energy system that has a nominal  
7 capacity of at least one megawatt.

8           (d) "Municipality" means a city, village, or town.

9           (e) "Political subdivision" means a city, village, town, or county.

10          (f) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

11          **SECTION 3.** 66.0401 (2) of the statutes is amended to read:

12          66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~  
13 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may provide by  
14 enact an ordinance for relating to the trimming of vegetation that blocks solar  
15 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.  
16 700.41 (2) (b), or that blocks wind from a wind energy system, ~~as defined in s. 66.0403~~  
17 ~~(1) (m)~~. The ordinance may include, ~~but is not limited to,~~ a designation of  
18 responsibility for the costs of the trimming. The ordinance may not require the  
19 trimming of vegetation that was planted by the owner or occupant of the property on  
20 which the vegetation is located before the installation of the solar or wind energy  
21 system.

22          **SECTION 4.** 66.0401 (3) of the statutes is created to read:

23          66.0401 (3) TESTING ACTIVITIES. A political subdivision may not prohibit or  
24 restrict any person from conducting testing activities to determine the suitability of  
25 a site for the placement of a wind energy system. A political subdivision objecting

**BILL****SECTION 4**

1 to such testing may petition the commission to impose reasonable restrictions on the  
2 testing activity.

3 **SECTION 5.** 66.0401 (4) of the statutes is created to read:

4 66.0401 (4) LOCAL PROCEDURE. (a) A political subdivision that receives an  
5 application for approval shall determine whether it is complete and, no later than 45  
6 days after the application is filed, notify the applicant about the determination. If  
7 the political subdivision determines that the application is incomplete, the notice  
8 shall state the reason for the determination. An applicant may supplement and  
9 refile an application that the political subdivision has determined to be incomplete.  
10 There is no limit on the number of times that an applicant may refile an application  
11 for approval. If the political subdivision fails to determine whether an application  
12 for approval is complete within 45 days after the application is filed, the application  
13 shall be considered to be complete.

14 (b) A political subdivision shall make a record of its decision making on an  
15 application for approval, including a recording of any public hearing, copies of  
16 documents submitted at any public hearing, and copies of any other documents  
17 provided to the political subdivision in connection with the application for approval.  
18 The political subdivision's record shall conform to the commission's rules  
19 promulgated under s. 196.378 (4g) (c) 2.

20 (c) A political subdivision shall base its decision on an application for approval  
21 on written findings of fact that are supported by the evidence in the record under par.

22 (b). A political subdivision's procedure for reviewing the application for approval  
23 shall conform to the commission's rules promulgated under s. 196.378 (4g) (c) 3.

24 (d) Except as provided in par. (e), a political subdivision shall approve or  
25 disapprove an application for approval no later than 90 days after the day on which

**BILL**

1 it notifies the applicant that the application for approval is complete. If a political  
2 subdivision fails to act within the 90 days, or within any extended time period  
3 established under par. (e), the application is considered approved.

4 (e) A political subdivision may extend the time period in par. (d) if, within that  
5 90-day period, the political subdivision authorizes the extension in writing. An  
6 extension may be authorized if the political subdivision needs additional information  
7 to determine whether to approve or deny the application for approval, if the applicant  
8 makes a material modification to the application for approval, or for other good cause  
9 specified in writing by the political subdivision.

10 (f) A political subdivision may not deny or impose a restriction on an application  
11 for approval unless the political subdivision enacts an ordinance that conforms to the  
12 rules the commission promulgates under s. 196.378 (4g) (b).

13 (g) A political subdivision that chooses to regulate wind energy systems shall  
14 enact an ordinance, subject to sub. (6) (b), that is consistent with the applicable  
15 standards established by the commission in rules promulgated under s. 196.378 (4g).

16 **SECTION 6.** 66.0401 (5) of the statutes is created to read:

17 66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW. (a) The decision of a political  
18 subdivision to approve, reject, or impose a restriction upon a large wind energy  
19 system may be appealed only as provided in this subsection.

20 (b) 1. Any aggrieved person seeking to appeal a decision of a political  
21 subdivision to approve, reject, or impose a restriction upon a large wind energy  
22 system may begin the political subdivision's administrative review process. If the  
23 person is still aggrieved after the administrative review is completed, the person may  
24 file an appeal with the commission. No appeal to the commission under this

**BILL**

1 subdivision may be filed later than 30 days after the political subdivision has  
2 completed its administrative review process.

3 2. Rather than beginning an administrative review under subd. 1., an  
4 aggrieved person seeking to appeal a decision of a political subdivision to approve,  
5 reject, or impose a restriction upon a large wind energy system may file an appeal  
6 directly with the commission. No appeal to the commission under this subdivision  
7 may be filed later than 30 days after the decision of the political subdivision to  
8 approve, reject, or impose a restriction upon the large wind energy system.

9 (c) Upon receiving an appeal under par. (b), the commission shall notify the  
10 political subdivision. The political subdivision shall provide a certified copy of the  
11 record upon which it based its decision, and of any other relevant governmental  
12 records the commission may request, within 30 days after receiving notice.

13 (d) The commission may confine its review to the records it receives from the  
14 political subdivision or, if it finds that additional information would be relevant to  
15 its decision, expand the record it reviews. The commission shall issue a decision  
16 within 90 days after the date on which it receives all of the records it requests under  
17 par. (c), unless for good cause the commission extends this time period in writing.  
18 If the commission determines that the political subdivision's decision does not  
19 comply with the rules it promulgates under s. 196.378 (4g) or is otherwise  
20 unreasonable, the political subdivision's decision shall be superseded by the  
21 commission's decision and the commission may order an appropriate remedy.

22 (e) Judicial review is not available until the commission issues its decision  
23 under par. (d). Judicial review shall be of the commission's decision, not of the  
24 political subdivision's decision. The commission's decision is subject to judicial  
25 review under ch. 227. Injunctive relief is available only as provided in s. 196.43.

**BILL**

1           **SECTION 7.** 66.0401 (6) of the statutes is created to read:

2           66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE. (a) 1. A county ordinance  
3 enacted under sub. (2) applies only to the towns in the county that have not enacted  
4 an ordinance under sub. (2).

5           2. If a town enacts an ordinance under sub. (2) after a county has enacted an  
6 ordinance under sub. (2), the county ordinance does not apply, and may not be  
7 enforced, in the town, except that if the town later repeals its ordinance, the county  
8 ordinance applies in that town.

9           (b) 1. A county ordinance enacted under sub. (4) applies in every municipality  
10 in the county.

11           2. If a county enacts an ordinance under sub. (4) after a municipality has  
12 enacted an ordinance under sub. (4), the municipal ordinance does not apply, and  
13 may not be enforced, except that if the county later repeals its ordinance, a  
14 municipality's ordinance applies in that municipality.

15           **SECTION 8.** 196.378 (4) (title) of the statutes is repealed and recreated to read:  
16 196.378 (4) (title) RENEWABLE RESOURCE RULES.

17           **SECTION 9.** 196.378 (4g) of the statutes is created to read:

18           196.378 (4g) WIND SITING RULES. (a) In this subsection:

19           1. "Application for approval" has the meaning given in s. 66.0401 (1e) (a).

20           2. "Political subdivision" means a city, village, town, or county.

21           3. "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

22           (b) The commission shall promulgate rules that specify the restrictions a  
23 political subdivision may impose on the installation or use of a wind energy system.  
24 The subject matter of these rules may include visual appearance, lighting, electrical  
25 connections to the power grid, setback distances, maximum audible sound levels,

**BILL**

**SECTION 9**

1 proper means of measuring noise, interference with radio, telephone, or television  
2 signals, decommissioning, or matters of public health and safety concerning wind  
3 energy systems. A political subdivision may not place a restriction on the  
4 installation or use of a wind energy system that is more restrictive than these rules.

5 (c) In addition to the rules under par. (b), the commission shall promulgate  
6 rules that do all of the following:

7 1. Specify the information and documentation to be provided in an application  
8 for approval to demonstrate that a proposed wind energy system complies with rules  
9 promulgated under par. (b)

10 2. Specify the information and documentation to be included in a political  
11 subdivision's record of decision under s. 66.0401 (4) (b).

12 3. Specify the procedure a political subdivision shall follow in reviewing an  
13 application for approval under s. 66.0401 (4).

**SECTION 10. Initial applicability.**

14  
15 (1) The public service commission review process for a political subdivision's  
16 decision under section 66.0401 (5) of the statutes first applies to a local decision that  
17 is issued after the public service commission's rules under section 196.378 (4g) of the  
18 statutes take effect.

19 (END)

*(D-note)*

*Rep. Montgomery  
This version of the bill corrects a number of  
typos in the bill. It makes no substantive changes.*

*AMS*

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

LRB-4107/2dn  
MES:wlj:jf

February 20, 2008

Rep. Montgomery:

This version of the bill corrects a number of typos in the bill. It makes no substantive changes.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)



**Shovers, Marc**

---

**From:** Ruesch, Kristin  
**Sent:** Friday, February 22, 2008 9:50 AM  
**To:** Shovers, Marc; Sakk, Lori - PSC  
**Cc:** Hodgson, Amber  
**Subject:** FW: wind redraft

Marc,

If the PSC has redrafting instructions, that's fine with us.

Lori, can you please also send me the redrafting instructions when you send them to Marc?

Thanks!

Krisitn

---

**From:** Sakk, Lori PSC [mailto:Lori.Sakk@psc.state.wi.us]  
**Sent:** Friday, February 22, 2008 9:47 AM  
**To:** Hodgson, Amber; Ruesch, Kristin  
**Subject:** wind redraft

Amber and Kristin –

We received comments from our workgroup members on the wind siting bill and are working on a redraft. Can you please authorize LRB to take redraft instructions from the PSC?

Thank you,  
Lori

---

*Lori A. Sakk*  
*Legislative Liaison*  
*Public Service Commission of Wisconsin*  
*610 North Whitney Way*  
*Madison, WI 53707-7854*  
*(608) 266-1383*  
[Lori.Sakk@psc.state.wi.us](mailto:Lori.Sakk@psc.state.wi.us)  
<http://psc.wi.us>

**Shovers, Marc**

**From:** Ludwig, David PSC [David.Ludwig@psc.state.wi.us]  
**Sent:** Monday, February 25, 2008 9:19 AM  
**To:** Shovers, Marc  
**Cc:** Sakk, Lori - PSC; Ludwig, David - PSC  
**Subject:** Redraft of LRB-4108/1; local regulation of wind energy siting

Here are several redrafts to LRB-4108/1. Sen. Plale and Rep. Montgomery have both authorized the PSC to send you redrafting instructions.

I. Avoiding a possible conflict between the statutory standards in 66.0401 and new PSC rules

To avoid any situation where the existing statutory standards that limit municipal restrictions on wind energy systems [66.0401(1m)(a) to (c)] might end up conflicting with the new PSC rules that are written under 196.378(4g), please redraft page 8, line 2 by removing "or matters of public health and safety concerning wind energy systems" and substituting "or matters consistent with the conditions specified in s. 66.0401(1m)(a) to (c)."

II. Priority of county or municipal ordinances

Please redraft s. 66.0401(6)(b) on page 7, lines 9 to 14 as follows:

"(b) If a town enacts an ordinance under sub. (4) after a county has enacted an ordinance under sub. (4), the more restrictive terms of the two ordinances apply to the town. If the town later repeals its ordinance, the county ordinance applies in that town."

This will remove the provision on page 7, lines 9 to 14 that gives county ordinances predominance over municipal ordinances when regulating wind energy systems. Instead, if a county and town both adopt wind energy siting ordinances, the more restrictive terms of the ordinances will apply to that town--subject to the provision, of course, that these ordinances cannot be more restrictive than any PSC rules.

III. Local ordinances not more restrictive than PSC rules

Curt Pawlisch called to point out that although the bill draft makes clear that local governments cannot adopt restrictions "more restrictive than PSC rules" in s. 66.0401(1m) and 196.378(4g)(b), different words are used elsewhere that may cause some confusion. On page 5, line 11, the draft says that a political subdivision can only impose restrictions if it "enacts an ordinance that conforms" to the PSC rules. Please redraft this to read, "enacts an ordinance that is no more restrictive than" the PSC rules.

IV. Time limits for extensions

On page 5, lines 4 to 9, 66.0401(4)(e) allows political subdivisions to extend the time periods for their review of an application for approval. Please redraft this paragraph so it reads as follows:

"(e) A political subdivision may extend the time period in par. (d) if, within that 90-day period, the political subdivision authorizes the extension in writing: An extension may be authorized OF UP TO 45 DAYS if the political subdivision needs additional information to determine whether to approve or deny the application for approval, OF UP TO 90 DAYS if the applicant makes a material modification to the application for approval, AND OF UP TO 90 DAYS for other good cause specified in writing by the political subdivision. THE TOTAL LENGTH OF ALL EXTENSIONS UNDER THIS PARAGRAPH MAY NOT EXCEED 90 DAYS."

V. Other changes

We discussed a few other drafting changes last week, none of which were substantive and which you may already have completed.

When you are finished, please immediately prepare this draft for introduction and deliver to to Sen. Plale's office and to Rep. Montgomery's office.

Thank you for all the work on this bill draft!

David Ludwig

266-5621



State of Wisconsin  
2007 - 2008 LEGISLATURE

-4107/3  
LRB-4108/7  
MES&MDK:wlj:rs

STMS (circled) (circled signature)

2007 BILL

WANTED,  
today

AMNA (circled)

Regen (circled)

1 AN ACT to renumber and amend 66.0401 (1); to amend 66.0401 (2); to repeal  
2 and recreate 196.378 (4) (title); and to create 66.0401 (1e), 66.0401 (3),  
3 66.0401 (4), 66.0401 (5), 66.0401 (6) and 196.378 (4g) of the statutes; relating  
4 to: requiring that local regulation of a wind energy system be consistent with  
5 Public Service Commission rules and granting rule-making authority.

**Analysis by the Legislative Reference Bureau**

Under current law, a city, village, town, or county (political subdivision) may not place any restrictions on the installation or use of an energy system (a solar energy system or a wind energy system) unless the restriction is for health or safety reasons, does not significantly increase the cost of the system or decrease its efficiency, or allows for an alternative comparable system.

This bill requires the Public Service Commission (PSC) to promulgate rules establishing common standards for political subdivisions to regulate the construction and operation of wind-powered generating projects. The rules must specify the restrictions a political subdivision may impose on the installation or use of such a project, and may include subjects such as visual appearance, setback distances, decommissioning, electrical connections to the power grid, and interference with radio, telephone, or television signals.

If a political subdivision chooses to regulate such projects, its ordinances ~~must be consistent with the PSC rules and~~ <sup>The PSC</sup> may not be more restrictive than ~~those~~ rules. The bill also specifies various standards, procedures for applicants, and approval

**BILL**

except that if a town enacts a similar ordinance, the more restrictive terms of the ordinance apply to the town

timelines for political subdivisions that must be contained in a political subdivision's ordinance regulating wind-powered generating projects.

The bill prohibits a political subdivision from prohibiting or restricting any person from conducting tests to determine the suitability of a site for the possible placement of a wind energy system, although the political subdivision may petition the PSC to impose reasonable restrictions on the testing.

With regard to a proposed wind energy system that is one megawatt or larger, the bill provides that any person who is aggrieved by a political subdivision's decision on the person's application may seek review by the PSC. If the PSC determines that the political subdivision's decision does not comply with the agency's rules or is unreasonable, it must issue a superseding decision and issue an appropriate remedy. The PSC's decision may be appealed to circuit court.

Except with regard to a political subdivision's ordinance relating to trimming vegetation that blocks solar or wind energy systems, the bill specifies that if a county enacts an ordinance relating to the construction or operation of a wind energy system, as provided by the bill, the county ordinance applies throughout the county and supersedes any similar city, village, or town ordinance. *only in the unincorporated parts of*

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 (1) of the statutes is renumbered 66.0401 (1m), and 66.040  
2 (1m) (intro.), as renumbered, is and amended to read:

3           66.0401 (1m) **AUTHORITY TO RESTRICT SYSTEMS LIMITED.** (intro.) No county, city,  
4 town, or village political subdivision may place any restriction, either directly or in  
5 effect, on the installation or use of a wind energy system that is more restrictive than  
6 the rules promulgated by the commission under s. 196.378 (4g) (b). No political  
7 subdivision may place any restriction, either directly or in effect, on the installation  
8 or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy  
9 system, as defined in s. 66.0403 (1) (m), unless the restriction satisfies one of the  
10 following conditions:

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

12           66.0401 (1e) **DEFINITIONS.** In this section:

**BILL**

1 (a) "Application for approval" means an application for approval of a wind  
2 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)

3 1.

4 (b) "Commission" means the Public Service Commission.

5 (c) "Large wind energy system" means a wind energy system that has a nominal  
6 capacity of at least one megawatt.

7 (d) "Municipality" means a city, village, or town.

8 (e) "Political subdivision" means a city, village, town, or county.

9 (f) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

10 **SECTION 3.** 66.0401 (2) of the statutes is amended to read:

11 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~  
12 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may provide by  
13 enact an ordinance for relating to the trimming of vegetation that blocks solar  
14 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.  
15 700.41 (2) (b), or that blocks wind from a wind energy system, ~~as defined in s. 66.0403~~  
16 ~~(1) (m)~~. The ordinance may include, ~~but is not limited to,~~ a designation of  
17 responsibility for the costs of the trimming. The ordinance may not require the  
18 trimming of vegetation that was planted by the owner or occupant of the property on  
19 which the vegetation is located before the installation of the solar or wind energy  
20 system.

21 **SECTION 4.** 66.0401 (3) of the statutes is created to read:

22 66.0401 (3) TESTING ACTIVITIES. A political subdivision may not prohibit or  
23 restrict any person from conducting testing activities to determine the suitability of  
24 a site for the placement of a wind energy system. A political subdivision objecting

**BILL**

1 to such testing may petition the commission to impose reasonable restrictions on the  
2 testing activity.

3 **SECTION 5.** 66.0401 (4) of the statutes is created to read:

4 66.0401 (4) LOCAL PROCEDURE. (a) A political subdivision that receives an  
5 application for approval shall determine whether it is complete and, no later than 45  
6 days after the application is filed, notify the applicant about the determination. If  
7 the political subdivision determines that the application is incomplete, the notice  
8 shall state the reason for the determination. An applicant may supplement and  
9 refile an application that the political subdivision has determined to be incomplete.  
10 There is no limit on the number of times that an applicant may refile an application  
11 for approval. If the political subdivision fails to determine whether an application  
12 for approval is complete within 45 days after the application is filed, the application  
13 shall be considered to be complete.

14 (b) A political subdivision shall make a record of its decision making on an  
15 application for approval, including a recording of any public hearing, copies of  
16 documents submitted at any public hearing, and copies of any other documents  
17 provided to the political subdivision in connection with the application for approval.  
18 The political subdivision's record shall conform to the commission's rules  
19 promulgated under s. 196.378 (4g) (c) 2.

20 (c) A political subdivision shall base its decision on an application for approval  
21 on written findings of fact that are supported by the evidence in the record under par.

22 (b). A political subdivision's procedure for reviewing the application for approval  
23 shall conform to the commission's rules promulgated under s. 196.378 (4g) (c) 3.

24 (d) Except as provided in par. (e), a political subdivision shall approve or  
25 disapprove an application for approval no later than 90 days after the day on which

**BILL** *except that the total amount of time for all extensions granted under this paragraph may not exceed 90 days*

1 it notifies the applicant that the application for approval is complete. If a political  
2 subdivision fails to act within the 90 days, or within any extended time period  
3 established under par. (e), the application is considered approved.

4 (e) A political subdivision may extend the time period in par. (d) if, within that  
5 90-day period, the political subdivision authorizes the extension in writing. *(An*

6 extension may be authorized if the political subdivision needs additional information  
*of up to 45 days*

7 to determine whether to approve or deny the application for approval if the applicant  
*An extension of up to 90 days*

8 makes a material modification to the application for approval *for other good cause*  
*An extension of up to 90 days*

9 specified in writing by the political subdivision.

10 (f) A political subdivision may not deny or impose a restriction on an application  
11 for approval unless the political subdivision enacts an ordinance that *is no more restrictive than*  
12 rules the commission promulgates under s. 196.378 (4g) (b).

13 (g) A political subdivision that chooses to regulate wind energy systems shall  
14 enact an ordinance, subject to sub. (6) (b), that is consistent with the applicable  
15 standards established by the commission in rules promulgated under s. 196.378 (4g).

**SECTION 6.** 66.0401 (5) of the statutes is created to read:

16 **66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW.** (a) The decision of a political  
17 subdivision to approve, reject, or impose a restriction upon a large wind energy  
18 system may be appealed only as provided in this subsection.

19 (b) 1. Any aggrieved person seeking to appeal a decision of a political  
20 subdivision to approve, reject, or impose a restriction upon a large wind energy  
21 system may begin the political subdivision's administrative review process. If the  
22 person is still aggrieved after the administrative review is completed, the person may  
23 file an appeal with the commission. No appeal to the commission under this  
24

*Not*  
*Any combination of the following extensions may be granted:*  
*of up to 45 days*  
*An extension of up to 90 days*  
*An extension of up to 90 days*



**BILL**

1 subdivision may be filed later than 30 days after the political subdivision has  
2 completed its administrative review process.

3 2. Rather than beginning an administrative review under subd. 1., an  
4 aggrieved person seeking to appeal a decision of a political subdivision to approve,  
5 reject, or impose a restriction upon a large wind energy system may file an appeal  
6 directly with the commission. No appeal to the commission under this subdivision  
7 may be filed later than 30 days after the decision of the political subdivision to  
8 approve, reject, or impose a restriction upon the large wind energy system.

9 (c) Upon receiving an appeal under par. (b), the commission shall notify the  
10 political subdivision. The political subdivision shall provide a certified copy of the  
11 record upon which it based its decision, and of any other relevant governmental  
12 records the commission may request, within 30 days after receiving notice.

13 (d) The commission may confine its review to the records it receives from the  
14 political subdivision or, if it finds that additional information would be relevant to  
15 its decision, expand the record it reviews. The commission shall issue a decision  
16 within 90 days after the date on which it receives all of the records it requests under  
17 par. (c), unless for good cause the commission extends this time period in writing.  
18 If the commission determines that the political subdivision's decision does not  
19 comply with the rules it promulgates under s. 196.378 (4g) or is otherwise  
20 unreasonable, the political subdivision's decision shall be superseded by the  
21 commission's decision and the commission may order an appropriate remedy.

22 (e) Judicial review is not available until the commission issues its decision  
23 under par. (d). Judicial review shall be of the commission's decision, not of the  
24 political subdivision's decision. The commission's decision is subject to judicial  
25 review under ch. 227. Injunctive relief is available only as provided in s. 196.43.

**BILL**

SECTION 7. 66.0401 (6) of the statutes is created to read:

66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE. (a) 1. A county ordinance enacted under sub. (2) applies only to the towns in the county that have not enacted an ordinance under sub. (2).

2. If a town enacts an ordinance under sub. (2) after a county has enacted an ordinance under sub. (2), the county ordinance does not apply, and may not be enforced, in the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

(b) 1. <sup>Subject to subd 2</sup> A county ordinance enacted under sub. (4) applies in <sup>only</sup> every municipality <sup>either before or</sup> ~~in~~ the county. <sup>County</sup>

2. If a <sup>town</sup> ~~county~~ enacts an ordinance under sub. (4) after a <sup>town</sup> ~~municipality~~ has enacted an ordinance under sub. (4), the <sup>ordinances apply to the town</sup> ~~municipal ordinance~~ <sup>may not be enforced</sup> does not apply, and <sup>the county</sup> ~~county~~ later repeals its ordinance, <sup>the municipality</sup> ~~county~~ ordinance applies in that <sup>town</sup> ~~municipality~~.

SECTION 8. 196.378 (4) (title) of the statutes is repealed and recreated to read:

196.378 (4) (title) RENEWABLE RESOURCE RULES.

SECTION 9. 196.378 (4g) of the statutes is created to read:

196.378 (4g) WIND SITING RULES. (a) In this subsection:

- 1. "Application for approval" has the meaning given in s. 66.0401 (1e) (a).
- 2. "Political subdivision" means a city, village, town, or county.
- 3. "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

(b) The commission shall promulgate rules that specify the restrictions a political subdivision may impose on the installation or use of a wind energy system. The subject matter of these rules may include visual appearance, lighting, electrical connections to the power grid, setback distances, maximum audible sound levels,

**BILL**

1 proper means of measuring noise, interference with radio, telephone, or television  
 2 signals, decommissioning, or matters of public health and safety concerning wind  
 3 ~~energy systems.~~ *consistent with the conditions specified in Ag 66.0401(1m)* A political subdivision may not place a restriction on the *(a) to (c)*  
 4 installation or use of a wind energy system that is more restrictive than these rules.

5 (c) In addition to the rules under par. (b), the commission shall promulgate  
 6 rules that do all of the following:

7 1. Specify the information and documentation to be provided in an application  
 8 for approval to demonstrate that a proposed wind energy system complies with rules  
 9 promulgated under par. (b)

10 2. Specify the information and documentation to be included in a political  
 11 subdivision's record of decision under s. 66.0401 (4) (b).

12 3. Specify the procedure a political subdivision shall follow in reviewing an  
 13 application for approval under s. 66.0401 (4).

**SECTION 10. Initial applicability.**

14 (1) The public service commission review process for a political subdivision's  
 15 decision under section 66.0401 (5) of the statutes first applies to a local decision that  
 16 is issued after the public service commission's rules under section 196.378 (4g) of the  
 17 statutes take effect.  
 18

(END)

## Shovers, Marc

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**From:** Hodgson, Amber  
**Sent:** Tuesday, February 26, 2008 4:16 PM  
**To:** Callisto, Eric - PSC; Sakk, Lori - PSC; Curt Pawlisch  
**Cc:** Ruesch, Kristin; Shovers, Marc  
**Subject:** RE: Wind Bill

I just want to confirm that Marc is working on these changes to the draft. (?)

Best,

Amber

---

**From:** Callisto, Eric PSC [mailto:Eric.Callisto@psc.state.wi.us]  
**Sent:** Tuesday, February 26, 2008 3:54 PM  
**To:** Sakk, Lori - PSC; Hodgson, Amber; Curt Pawlisch  
**Cc:** Ruesch, Kristin; Shovers, Marc  
**Subject:** RE: Wind Bill

I believe the change on page two, line one, should be a change to 66.0401.

---

**From:** Sakk, Lori PSC  
**Sent:** Tuesday, February 26, 2008 3:40 PM  
**To:** Hodgson, Amber; Callisto, Eric PSC; Curt Pawlisch  
**Cc:** Ruesch, Kristin; Shovers, Marc  
**Subject:** RE: Wind Bill

Everyone is fine with the bill; we just have three non-substantive changes:

- 1) In the second paragraph on page two of the analysis, delete "on the person's application"
- 2) On page two, line one, the statute should be 66.041 instead of 66.040 /
- 3) On page two, line two, delete the word "and"

Thank you again for all your work with this. Please let us know when a hearing is scheduled.

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**From:** Hodgson, Amber [mailto:Amber.Hodgson@legis.wisconsin.gov]  
**Sent:** Tuesday, February 26, 2008 9:50 AM  
**To:** Callisto, Eric PSC; Sakk, Lori PSC; Curt Pawlisch  
**Cc:** Ruesch, Kristin  
**Subject:** Wind Bill

Hello all,

Here is the wind draft that I received. As soon as everyone signs off, I can get it introduced. Just let me know.

Best,

Amber

<< File: 07-41083.pdf >>



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-4107/3  
MES&MDK:wlj:nwn

stays  
kma

2007 BILL

Wanted!

Today please

regen

1 AN ACT *to renumber and amend* 66.0401 (1); *to amend* 66.0401 (2); *to repeal*  
2 *and recreate* 196.378 (4) (title); and *to create* 66.0401 (1e), 66.0401 (3),  
3 66.0401 (4), 66.0401 (5), 66.0401 (6) and 196.378 (4g) of the statutes; **relating**  
4 **to:** requiring that local regulation of a wind energy system be consistent with  
5 Public Service Commission rules and granting rule-making authority.

***Analysis by the Legislative Reference Bureau***

Under current law, a city, village, town, or county (political subdivision) may not place any restrictions on the installation or use of an energy system (a solar energy system or a wind energy system) unless the restriction is for health or safety reasons, does not significantly increase the cost of the system or decrease its efficiency, or allows for an alternative comparable system.

This bill requires the Public Service Commission (PSC) to promulgate rules establishing common standards for political subdivisions to regulate the construction and operation of wind-powered generating projects. The rules must specify the restrictions a political subdivision may impose on the installation or use of such a project, and may include subjects such as visual appearance, setback distances, decommissioning, electrical connections to the power grid, and interference with radio, telephone, or television signals.

If a political subdivision chooses to regulate such projects, its ordinances may not be more restrictive than the PSC rules. The bill also specifies various standards, procedures for applicants, and approval timelines for political subdivisions that

**BILL**

must be contained in a political subdivision's ordinance regulating wind-powered generating projects.

The bill prohibits a political subdivision from prohibiting or restricting any person from conducting tests to determine the suitability of a site for the possible placement of a wind energy system, although the political subdivision may petition the PSC to impose reasonable restrictions on the testing.

With regard to a proposed wind energy system that is one megawatt or larger, the bill provides that any person who is aggrieved by a political subdivision's decision on the person's application may seek review by the PSC. If the PSC determines that the political subdivision's decision does not comply with the agency's rules or is unreasonable, it must issue a superseding decision and issue an appropriate remedy. The PSC's decision may be appealed to circuit court.

The bill specifies that if a county enacts an ordinance relating to the construction or operation of a wind energy system, as provided by the bill, the county ordinance applies only in the unincorporated parts of the county, except that if a town enacts a similar ordinance, the more restrictive terms of the two ordinances apply to the town.

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

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

1           SECTION 1. 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and <sup>660401</sup>~~66.0401~~  
2 (1m) (intro.), as renumbered, is and amended to read:

3           66.0401 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) No county, city,  
4 town, or village political subdivision may place any restriction, either directly or in  
5 effect, on the installation or use of a wind energy system that is more restrictive than  
6 the rules promulgated by the commission under s. 196.378 (4g) (b). No political  
7 subdivision may place any restriction, either directly or in effect, on the installation  
8 or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy  
9 system, ~~as defined in s. 66.0403 (1) (m),~~ unless the restriction satisfies one of the  
10 following conditions:

11           SECTION 2. 66.0401 (1e) of the statutes is created to read:

12           66.0401 (1e) DEFINITIONS. In this section:

**BILL**

1 (a) "Application for approval" means an application for approval of a wind  
2 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)  
3 1.

4 (b) "Commission" means the Public Service Commission.

5 (c) "Large wind energy system" means a wind energy system that has a nominal  
6 capacity of at least one megawatt.

7 (d) "Municipality" means a city, village, or town.

8 (e) "Political subdivision" means a city, village, town, or county.

9 (f) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

10 **SECTION 3.** 66.0401 (2) of the statutes is amended to read:

11 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~  
12 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may provide by  
13 enact an ordinance for relating to the trimming of vegetation that blocks solar  
14 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.  
15 700.41 (2) (b), or that blocks wind from a wind energy system, as defined in s. 66.0403  
16 (1) (m). The ordinance may include, ~~but is not limited to,~~ a designation of  
17 responsibility for the costs of the trimming. The ordinance may not require the  
18 trimming of vegetation that was planted by the owner or occupant of the property on  
19 which the vegetation is located before the installation of the solar or wind energy  
20 system.

21 **SECTION 4.** 66.0401 (3) of the statutes is created to read:

22 66.0401 (3) TESTING ACTIVITIES. A political subdivision may not prohibit or  
23 restrict any person from conducting testing activities to determine the suitability of  
24 a site for the placement of a wind energy system. A political subdivision objecting

**BILL**

1 to such testing may petition the commission to impose reasonable restrictions on the  
2 testing activity.

3 **SECTION 5.** 66.0401 (4) of the statutes is created to read:

4 66.0401 (4) LOCAL PROCEDURE. (a) A political subdivision that receives an  
5 application for approval shall determine whether it is complete and, no later than 45  
6 days after the application is filed, notify the applicant about the determination. If  
7 the political subdivision determines that the application is incomplete, the notice  
8 shall state the reason for the determination. An applicant may supplement and  
9 refile an application that the political subdivision has determined to be incomplete.  
10 There is no limit on the number of times that an applicant may refile an application  
11 for approval. If the political subdivision fails to determine whether an application  
12 for approval is complete within 45 days after the application is filed, the application  
13 shall be considered to be complete.

14 (b) A political subdivision shall make a record of its decision making on an  
15 application for approval, including a recording of any public hearing, copies of  
16 documents submitted at any public hearing, and copies of any other documents  
17 provided to the political subdivision in connection with the application for approval.  
18 The political subdivision's record shall conform to the commission's rules  
19 promulgated under s. 196.378 (4g) (c) 2.

20 (c) A political subdivision shall base its decision on an application for approval  
21 on written findings of fact that are supported by the evidence in the record under par.

22 (b). A political subdivision's procedure for reviewing the application for approval  
23 shall conform to the commission's rules promulgated under s. 196.378 (4g) (c) 3.

24 (d) Except as provided in par. (e), a political subdivision shall approve or  
25 disapprove an application for approval no later than 90 days after the day on which



**BILL**

1 it notifies the applicant that the application for approval is complete. If a political  
2 subdivision fails to act within the 90 days, or within any extended time period  
3 established under par. (e), the application is considered approved.

4 (e) A political subdivision may extend the time period in par. (d) if, within that  
5 90-day period, the political subdivision authorizes the extension in writing. Any  
6 combination of the following extensions may be granted, except that the total amount  
7 of time for all extensions granted under this paragraph may not exceed 90 days:

8 1. An extension of up to 45 days if the political subdivision needs additional  
9 information to determine whether to approve or deny the application for approval.

10 2. An extension of up to 90 days if the applicant makes a material modification  
11 to the application for approval.

12 3. An extension of up to 90 days for other good cause specified in writing by the  
13 political subdivision.

14 (f) A political subdivision may not deny or impose a restriction on an application  
15 for approval unless the political subdivision enacts an ordinance that is no more  
16 restrictive than the rules the commission promulgates under s. 196.378 (4g) (b).

17 (g) A political subdivision that chooses to regulate wind energy systems shall  
18 enact an ordinance, subject to sub. (6) (b), that is consistent with the applicable  
19 standards established by the commission in rules promulgated under s. 196.378 (4g).

20 **SECTION 6.** 66.0401 (5) of the statutes is created to read:

21 66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW. (a) The decision of a political  
22 subdivision to approve, reject, or impose a restriction upon a large wind energy  
23 system may be appealed only as provided in this subsection.

24 (b) 1. Any aggrieved person seeking to appeal a decision of a political  
25 subdivision to approve, reject, or impose a restriction upon a large wind energy

**BILL**

1 system may begin the political subdivision's administrative review process. If the  
2 person is still aggrieved after the administrative review is completed, the person may  
3 file an appeal with the commission. No appeal to the commission under this  
4 subdivision may be filed later than 30 days after the political subdivision has  
5 completed its administrative review process.

6 2. Rather than beginning an administrative review under subd. 1., an  
7 aggrieved person seeking to appeal a decision of a political subdivision to approve,  
8 reject, or impose a restriction upon a large wind energy system may file an appeal  
9 directly with the commission. No appeal to the commission under this subdivision  
10 may be filed later than 30 days after the decision of the political subdivision to  
11 approve, reject, or impose a restriction upon the large wind energy system.

12 (c) Upon receiving an appeal under par. (b), the commission shall notify the  
13 political subdivision. The political subdivision shall provide a certified copy of the  
14 record upon which it based its decision, and of any other relevant governmental  
15 records the commission may request, within 30 days after receiving notice.

16 (d) The commission may confine its review to the records it receives from the  
17 political subdivision or, if it finds that additional information would be relevant to  
18 its decision, expand the record it reviews. The commission shall issue a decision  
19 within 90 days after the date on which it receives all of the records it requests under  
20 par. (c), unless for good cause the commission extends this time period in writing.  
21 If the commission determines that the political subdivision's decision does not  
22 comply with the rules it promulgates under s. 196.378 (4g) or is otherwise  
23 unreasonable, the political subdivision's decision shall be superseded by the  
24 commission's decision and the commission may order an appropriate remedy.

**BILL**

1 (e) Judicial review is not available until the commission issues its decision  
2 under par. (d). Judicial review shall be of the commission's decision, not of the  
3 political subdivision's decision. The commission's decision is subject to judicial  
4 review under ch. 227. Injunctive relief is available only as provided in s. 196.43.

5 **SECTION 7.** 66.0401 (6) of the statutes is created to read:

6 **66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE.** (a) 1. A county ordinance  
7 enacted under sub. (2) applies only to the towns in the county that have not enacted  
8 an ordinance under sub. (2).

9 2. If a town enacts an ordinance under sub. (2) after a county has enacted an  
10 ordinance under sub. (2), the county ordinance does not apply, and may not be  
11 enforced, in the town, except that if the town later repeals its ordinance, the county  
12 ordinance applies in that town.

13 (b) 1. Subject to subd. 2., a county ordinance enacted under sub. (4) applies only  
14 in the unincorporated parts of the county.

15 2. If a town enacts an ordinance under sub. (4), either before or after a county  
16 enacts an ordinance under sub. (4), the more restrictive terms of the 2 ordinances  
17 apply to the town, except that if the town later repeals its ordinance, the county  
18 ordinance applies in that town.

19 **SECTION 8.** 196.378 (4) (title) of the statutes is repealed and recreated to read:

20 196.378 (4) (title) RENEWABLE RESOURCE RULES.

21 **SECTION 9.** 196.378 (4g) of the statutes is created to read:

22 196.378 (4g) WIND SITING RULES. (a) In this subsection:

23 1. "Application for approval" has the meaning given in s. 66.0401 (1e) (a).

24 2. "Political subdivision" means a city, village, town, or county.

25 3. "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

**BILL****SECTION 9**

1 (b) The commission shall promulgate rules that specify the restrictions a  
2 political subdivision may impose on the installation or use of a wind energy system.  
3 The subject matter of these rules may include visual appearance, lighting, electrical  
4 connections to the power grid, setback distances, maximum audible sound levels,  
5 proper means of measuring noise, interference with radio, telephone, or television  
6 signals, decommissioning, or matters consistent with the conditions specified in s.  
7 66.0401 (1m) (a) to (c). A political subdivision may not place a restriction on the  
8 installation or use of a wind energy system that is more restrictive than these rules.

9 (c) In addition to the rules under par. (b), the commission shall promulgate  
10 rules that do all of the following:

11 1. Specify the information and documentation to be provided in an application  
12 for approval to demonstrate that a proposed wind energy system complies with rules  
13 promulgated under par. (b)

14 2. Specify the information and documentation to be included in a political  
15 subdivision's record of decision under s. 66.0401 (4) (b).

16 3. Specify the procedure a political subdivision shall follow in reviewing an  
17 application for approval under s. 66.0401 (4).

**SECTION 10. Initial applicability.**

18 (1) The public service commission review process for a political subdivision's  
19 decision under section 66.0401 (5) of the statutes first applies to a local decision that  
20 is issued after the public service commission's rules under section 196.378 (4g) of the  
21 statutes take effect.  
22

23 (END)

**Barman, Mike**

---

**From:** Shovers, Marc  
**Sent:** Wednesday, February 27, 2008 11:15 AM  
**To:** Barman, Mike  
**Cc:** Ruesch, Kristin  
**Subject:** FW: Wind Bill

Hi Mike:

Please jacket LRB -4107/4 for the assembly and send another electronic copy of the bill to Kristin in Rep. Montgomery's office. Thanks.

Marc

---

**From:** Ruesch, Kristin  
**Sent:** Wednesday, February 27, 2008 11:02 AM  
**To:** Hodgson, Amber; Shovers, Marc  
**Subject:** RE: Wind Bill

Marc, I have the hard copy of 4107/4. For some reason, I just cannot find the electronic version to request the jacket. Basically I just need a pdf and the jacket.

Thanks! Kristin

---

**From:** Hodgson, Amber  
**Sent:** Wednesday, February 27, 2008 10:59 AM  
**To:** Shovers, Marc  
**Cc:** Ruesch, Kristin  
**Subject:** Wind Bill

Hi Marc,

Thanks for all your hard (& fast!) work on the wind bill. Could you please draft LRB 4108/4 for the Assembly for Kristin in Montgomery's office?

Thanks!

Amber

***Amber Hodgson***  
*Clerk, Senate Committee on Commerce, Utilities and Rail*  
*Office of State Senator Jeff Plale*  
*7th Senate District*  
*313 South, State Capitol*  
*Madison, WI 53707*  
*608.266.7505*  
*800.361.5487*

**Jackson, Wendy**

---

**From:** Shovers, Marc  
**Sent:** Thursday, March 06, 2008 5:54 PM  
**To:** Jackson, Wendy  
**Subject:** We need some CCCs

Hi Wendy:

We need a CCC for both SB 544 and AB 899. Both bills need a period after "par. (b)" on p. 8, line 13. Thanks.

Marc

Marc E. Shovers

Senior Legislative Attorney  
Legislative Reference Bureau  
Phone: (608) 266-0129  
Fax: (608) 264-6948  
e-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

CCC to AB 899

# Page 8, line 13: delete "(b)" and substitute "(b)@"

END

Wlj 3/11 ~~240~~-4107/A

**ASSEMBLY BILL 899**

1 (b) The commission shall promulgate rules that specify the restrictions a  
2 political subdivision may impose on the installation or use of a wind energy system.  
3 The subject matter of these rules may include visual appearance, lighting, electrical  
4 connections to the power grid, setback distances, maximum audible sound levels,  
5 proper means of measuring noise, interference with radio, telephone, or television  
6 signals, decommissioning, or matters consistent with the conditions specified in s.  
7 66.0401 (1m) (a) to (c). A political subdivision may not place a restriction on the  
8 installation or use of a wind energy system that is more restrictive than these rules.

9 (c) In addition to the rules under par. (b), the commission shall promulgate  
10 rules that do all of the following:

11 1. Specify the information and documentation to be provided in an application  
12 for approval to demonstrate that a proposed wind energy system complies with rules  
13 promulgated under par. (b)

14 2. Specify the information and documentation to be included in a political  
15 subdivision's record of decision under s. 66.0401 (4) (b).

16 3. Specify the procedure a political subdivision shall follow in reviewing an  
17 application for approval under s. 66.0401 (4).

**SECTION 10. Initial applicability.**

18 (1) The public service commission review process for a political subdivision's  
19 decision under section 66.0401 (5) of the statutes first applies to a local decision that  
20 is issued after the public service commission's rules under section 196.378 (4g) of the  
21 statutes take effect.  
22

23 (END)





State of Wisconsin  
2007-2008 LEGISLATURE

**CORRECTIONS IN:**

**2007 ASSEMBLY BILL 899**

Prepared by the Legislative Reference Bureau  
(March 11, 2008)

1. Page 8, line 13: delete "(b)" and substitute "(b).".

(END)