

2007 DRAFTING REQUEST**Senate Substitute Amendment (SSA-SB544)**Received: **03/11/2008**Received By: **mkunkel**Wanted: **As time permits**

Identical to LRB:

For: **Kathleen Vinehout (608) 266-8546**By/Representing: **David Lovell**This file may be shown to any legislator: **NO**Drafter: **mkunkel**

May Contact:

Addl. Drafters: **mshovers**Subject: **Local Gov't - misc**Extra Copies: **MES**Submit via email: **YES**Requester's email: **Sen.Vinehout@legis.wisconsin.gov**Carbon copy (CC:) to: **david.lovell@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Uniform local regulation of wind energy systems; creation of wind energy system review board

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 03/11/2008	csicilia 03/12/2008		_____			
/1			nmatzke 03/12/2008	_____	sbasford 03/12/2008	sbasford 03/12/2008	

FE Sent For:

<END>

2007 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB544)

Received: 03/11/2008

Received By: **mkunkel**

Wanted: As time permits

Identical to LRB:

For: **Kathleen Vinehout (608) 266-8546**

By/Representing: **David Lovell**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters: **mshovers**

Subject: **Local Gov't - misc**

Extra Copies: **MES**

Submit via email: **YES**

Requester's email: **Sen.Vinehout@legis.wisconsin.gov**

Carbon copy (CC:) to: **david.lovell@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Uniform local regulation of wind energy systems; creation of wind energy system review board

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel	1 gjs 3/12 08	awn 3/12	aww/jf 3/12			

FE Sent For:

<END>

Kunkel, Mark

From: Lovell, David
Sent: Monday, March 10, 2008 4:42 PM
To: Kunkel, Mark
Cc: Nilsestuen, Joel
Subject: Drafting request fo Sen. Vinehout

Mark,

As I indicated on the phone, Senator Vinehout is requesting a new substitute amendment to SB 544. She requests an amendment based on Senate Substitute Amendment 1 to SB 544, with the substance of Senate Amendment 3 to SB 544 added as a condition applicable to the rule-making by the newly-created board.

If you have any questions, please contact me or Joel Nilsestuen.

Thanks --

David

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

0-NOTE

WED 3-12
~~WED~~
NOW

2007 - 2008 LEGISLATURE

LRB 035471
MES&MDK:cs:J

SSA to

Stamp

5036411

SENATE SUBSTITUTE AMENDMENT 1,

TO 2007 SENATE BILL 544

PAN NOT
PAN

SA✓

March 7, 2008 - Offered by COMMITTEE ON COMMERCE, UTILITIES AND RAIL.

Reyer Cat

1 AN ACT *to renumber and amend* 66.0401 (1); *to amend* 15.795 (title) and
2 66.0401 (2); and *to create* 15.795 (2), 66.0401 (1e), 66.0401 (3), 66.0401 (4),
3 66.0401 (5), 66.0401 (6), 66.0401 (7) and 165.25 (4) (aw) of the statutes;
4 **relating to:** local regulation of wind energy systems, creation of a wind energy
5 system siting review board, and granting rule-making authority.

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

6 SECTION 1. 15.795 (title) of the statutes is amended to read:
7 **15.795 (title) Same; attached office and board.**
8 SECTION 2. 15.795 (2) of the statutes is created to read:
9 15.795 (2) WIND ENERGY SYSTEM SITING REVIEW BOARD. (a) In this section, "wind
10 energy system" has the meaning given in s. 66.0403 (1) (m).

1 (b) There is created a wind energy system siting review board which is attached
2 to the public service commission under s. 15.03. The board consists of the following
3 members:

4 1. A member representing the interests of towns, selected from a list of names
5 submitted by the Wisconsin Towns Association.

6 2. A member representing the interests of counties, selected from a list of
7 names submitted by the Wisconsin Counties Association.

8 3. A member representing wind energy development interests, selected from
9 a list of names submitted by wind energy developers.

10 4. A member representing renewable energy or environmental interests,
11 selected from a list of names submitted by statewide renewable energy or
12 environmental organizations.

13 5. Three other members.

14 (c) The members under par. (b) shall be nominated by the governor, and with
15 the advice and consent of the senate appointed, for 5-year terms.

16 **SECTION 3.** 66.0401 (1) of the statutes is renumbered 66.0401 (1m), and 66.0401
17 (1m) (intro.), as renumbered, is amended to read:

18 66.0401 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED. (intro.) ~~No county, city,~~
19 ~~town, or village political subdivision may place any restriction, either directly or in~~
20 ~~effect, on the installation or use of a wind energy system that is more restrictive than~~
21 ~~the rules promulgated by the board under sub. (7). No political subdivision may place~~
22 any restriction, either directly or in effect, on the installation or use of a solar energy
23 system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, ~~as defined in s.~~
24 ~~66.0403 (1) (m),~~ unless the restriction satisfies one of the following conditions:

25 **SECTION 4.** 66.0401 (1e) of the statutes is created to read:

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~~ ^{board} under s. ~~196.378 (4g)~~ ^{196.378 (4g) (c)} (c)

4 1.

5 (am) "Board" means the wind energy system siting review board under s.
6 15.795 (2).

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

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

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

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

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

13 SECTION 5. 66.0401 (2) of the statutes is amended to read:

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

24 SECTION 6. 66.0401 (3) of the statutes is created to read:

1 66.0401 (3) TESTING ACTIVITIES. A political subdivision may not prohibit or
2 restrict any person from conducting testing activities to determine the suitability of
3 a site for the placement of a wind energy system. A political subdivision objecting
4 to such testing may petition the board to impose reasonable restrictions on the
5 testing activity.

6 **SECTION 7.** 66.0401 (4) of the statutes is created to read:

7 66.0401 (4) POLITICAL SUBDIVISION PROCEDURE. (a) 1. Subject to subd. 2., no later
8 than 45 days after a political subdivision receives an application for approval, the
9 political subdivision shall notify the applicant whether the application for approval
10 is complete and, if it is not complete, what information is needed to complete the
11 application for approval. As soon as the applicant has provided all of the required
12 information, the political subdivision shall notify the applicant that the application
13 for approval is complete.

14 2. If a political subdivision that receives an application for approval under
15 subd. 1. does not have in effect an ordinance described under par. (g), the 45 day time
16 period for determining whether an application is complete, as described in subd. 1.,
17 does not begin until the first day of the 7th month beginning after the political
18 subdivision receives the application.

19 (b) A political subdivision shall make a record of its decision making on an
20 application for approval, including a recording of any public hearing, copies of
21 documents submitted at any public hearing, and copies of any other documents
22 provided to the political subdivision in connection with the application for approval.

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

25 (b).

1 (d) Except as provided in par. (e), a political subdivision shall approve or
2 disapprove an application for approval no more than 90 days after the day on which
3 it notifies the applicant that the application for approval is complete. If an applicant
4 complies with the rules promulgated under sub. (7) (b) 1. and the information and
5 documentation provided by the applicant is sufficient to establish, without
6 considering any other information or documentation, that the application complies
7 with applicable requirements for approval, the political subdivision shall approve
8 the application unless the political subdivision finds, based on other clear and
9 convincing information or documentation in the record, that the application does not
10 comply with applicable requirements.

11 (e) A political subdivision may extend the time limit in par. (d) if the political
12 subdivision needs additional information to determine whether to approve or deny
13 the application for approval, if the applicant makes a material modification to the
14 application for approval, or for other good cause specified in writing by the political
15 subdivision.

16 (f) A political subdivision may not deny or impose a restriction on an application
17 for approval unless the political subdivision enacts an ordinance that is no more
18 restrictive than the rules the board promulgates under sub (7) (a).

19 (g) A political subdivision that chooses to regulate wind energy systems shall
20 enact an ordinance, subject to sub. (6) (b), that is consistent with the applicable
21 standards established by the board in rules promulgated under sub. (7) (a).

22 (h) A political subdivision may not place a restriction on the installation or use
23 of a wind energy system that is more restrictive than the rules the board promulgates
24 under sub (7) (a).

25 **SECTION 8.** 66.0401 (5) of the statutes is created to read:

1 66.0401 (5) REVIEW OF SITING DECISIONS. (a) In this subsection “aggrieved
2 person” means a person who applied to a political subdivision for approval of a wind
3 energy system, a person who lives within 2 miles of a wind energy system that is
4 proposed to be sited, or a person who owns land within 2 miles of a wind energy
5 system that is proposed to be sited.

6 (b) An aggrieved person may challenge the decision of a political subdivision
7 on an application for approval on the grounds that the political subdivision
8 incorrectly applied the state standards under sub. (7) (a) that are applicable to the
9 wind energy system siting by requesting the board to review the decision. An
10 aggrieved person is not required to exhaust the political subdivision’s administrative
11 remedies before requesting review by the board. An aggrieved person shall request
12 a review under this paragraph within 30 days after the political subdivision approves
13 or disapproves the application for approval or, if the aggrieved person chooses to
14 exhaust the political subdivision’s administrative remedies, within 30 days after the
15 final decision in the political subdivision’s administrative review process.

16 (bm) Upon receiving a request under par. (b), the board shall notify the political
17 subdivision of the request. The political subdivision shall provide a certified copy of
18 the record under sub. (4) to the board within 30 days after the day on which it receives
19 the notice.

20 (c) Upon receiving the certified copy of the record under par. (bm), the board
21 shall determine whether the challenge is valid. The board shall make its decision
22 without deference to the decision of the political subdivision and shall base its
23 decision only on the evidence in the record under sub. (4) (b). The board shall make
24 its decision within 60 days after the day on which it receives the certified copy of the

1 record under par. (bm), except that the board may extend this time limit for good
2 cause specified in writing by the board.

3 (d) If the board determines that a challenge is valid, the board shall reverse the
4 decision of the political subdivision. The decision of the board is binding on the
5 political subdivision, subject to par. (e). If a political subdivision fails to comply with
6 a decision of the board that has not been appealed under par. (e), an aggrieved person
7 may bring an action to enforce the decision.

8 (e) An aggrieved person or the political subdivision may appeal the decision of
9 the board to circuit court. The filing of an appeal does not in itself stay the effect of
10 a decision of the board.

11 (f) A circuit court to which a decision of the board is appealed under par. (e) shall
12 review the decision of the board based on the evidence in the record under sub. (4)
13 (b).

14 **SECTION 9.** 66.0401 (6) of the statutes is created to read:

15 66.0401 **(6)** APPLICABILITY OF A COUNTY ORDINANCE. (a) 1. A county ordinance
16 enacted under sub. (2) applies only to the towns in the county that have not enacted
17 an ordinance under sub. (2).

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

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

24 2. If a town enacts an ordinance under sub. (4), either before or after a county
25 enacts an ordinance under sub. (4), the more restrictive terms of the 2 ordinances

1 apply to the town, except that if the town later repeals its ordinance, the county
2 ordinance applies in that town.

3 **SECTION 10.** 66.0401 (7) of the statutes is created to read:

4 66.0401 (7) WIND SITING RULES. (a) The board shall promulgate rules that
5 specify the restrictions a political subdivision may impose on the installation or use
6 of a wind energy system. The subject matter of these rules may include visual
7 appearance, lighting, electrical connections to the power grid, setback distances,
8 maximum audible sound levels, proper means of measuring noise, interference with
9 radio, telephone, or television signals, decommissioning, or matters consistent with
10 the conditions specified in sub. (1m) (a) to (c). The rules under this paragraph shall
11 recognize the diversity of localities in this state and shall establish distinct
12 standards for the siting of wind energy systems under distinct conditions related to
13 factors such as topography, geography, geology, soils, meteorology, and biological
14 resources.

15 (b) In addition to the rules under par. (a), the board shall promulgate rules that
16 do all of the following:

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

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

22 3. Specify the procedure a political subdivision shall follow in reviewing an
23 application for approval under sub. (4).

24 (c) The commission shall provide technical assistance to the board relating to
25 its promulgation of the rules under pars. (a) and (b).

1 **SECTION 11.** 165.25 (4) (aw) of the statutes is created to read:

2 165.25 **(4)** (aw) The department of justice shall furnish legal services to the
3 wind energy system siting review board in defending appeals under s. 66.0401 (5) (e)
4 of decisions of the board.

5 **SECTION 12. Nonstatutory provisions.**

6 (1) **TERMS OF INITIAL BOARD MEMBERS.** Notwithstanding the length of the terms
7 specified for members of the wind energy system siting review board in section
8 15.795 (2) (b) of the statutes, as created by this act, the initial members shall be
9 appointed for the following terms:

10 (a) The member appointed under section 15.795 (2) (b) 1. of the statutes, as
11 created by this act, for a term expiring on May 1, 2011.

12 (b) The member appointed under section 15.795 (2) (b) 2. of the statutes, as
13 created by this act, and one member appointed under section 15.795 (2) (b) 5. of the
14 statutes, as created by this act, for terms expiring on May 1, 2012.

15 (c) The member appointed under section 15.795 (2) (b) 3. of the statutes, as
16 created by this act, and one member appointed under section 15.795 (2) (b) 5. of the
17 statutes, as created by this act, for terms expiring on May 1, 2013.

18 (d) The member appointed under section 15.795 (2) (b) 4. of the statutes, as
19 created by this act, and one member appointed under section 15.795 (2) (b) 5. of the
20 statutes, as created by this act, for terms expiring on May 1, 2014.

21 **SECTION 13. Initial applicability.**

22 (1) The wind energy system siting review board review process for a political
23 subdivision's decision under section 66.0401 (5) of the statutes first applies to a local

1 decision that is issued after the wind energy system siting review board's rules under
2 section 66.0401 (7) of the statutes take effect.

3 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0364/1dn

MDK:/:...

cjs

is identical to

except that

Sen. Vinehout:

This substitute amendment incorporates SA 3 to SB 544 into SSA 1 to SB 544. In addition, I fixed a drafting error regarding the definition of "application for approval" in proposed s. 66.0401 (1e) (a).

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

91

You requested that I incorporate the language of SA 3 to SB 544 into this substitute amendment, but that language is already incorporated into SSA 1 to SB 544.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0364/1dn
MDK:cjs:nwn

March 12, 2008

Sen. Vinehout:

This substitute amendment is identical to SSA 1 to SB 544, except that I fixed a drafting error regarding the definition of "application for approval" in proposed s. 66.0401 (1e) (a).

You requested that I incorporate the language of SA 3 to SB 544 into this substitute amendment, but that language is already incorporated into SSA 1 to SB 544.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov