DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB−1048/1dn
MDK:kjf:jf

February 27, 2009

Sen. Plale:

This bill is based on 2007 SB−544, with the following changes based on your instructions dated February 11, 2009:

1. Proposed s. 196.378 (4g) (b) moves the phrase beginning with the word "consistent" from the 2nd sentence to the 1st sentence. However, I wasn't sure what to do with the reference to "matters" at the end of the 2nd sentence. Note that I referred to "other matters" instead of "matters." Is that okay?

2. The bill amends the definition of "wind energy system" in s. 66.0403 (1) (m) to refer to "associated facilities." I don't think it is necessary to include examples of what constitutes an associated facility.

3. In item 3 of your instructions, you want to revise the bill to allow an applicant to appeal an unreasonable failure to grant or withhold a completeness determination. In addition, you want such a failure to constitute a denial of the application that may be appealed under proposed s. 66.0401 (5). However, the bill already provides that, if a local unit of government fails to determine whether an application is complete, the application is considered to be complete. Therefore, I assume that you want to allow an applicant to appeal a determination that an application is incomplete. I did so by making such a determination appealable under s. 66.0401 (5). As a result, the PSC may find that the application is complete and order an appropriate remedy, such as requiring the local unit of government to consider the application. Is that okay?

4. The provisions of SA−1, SA−2, and SA−4 are included with the changes you requested.

5. Proposed s. 66.0401 (4) (a) 3. requires an applicant to mail or deliver an application to adjoining landowners on the same day that the application is made to a political subdivision. Is the timing okay, or do you want to allow more time, such as no later than 5 business days after the application is made? Also, you may want to consider whether notice should be provided to landowners within a specified distance from the site, rather than to adjoining landowners. Also, as noted below, the bill does not apply to wind energy systems with a nominal operating capacity of 100 MW or more. Therefore, it is not necessary to specify that notice to adjoining landowners is only required for systems with a nominal operating capacity of less than 100 MW.

Finally, I'm not sure what uniform siting standards you are referring to in item 6 of the instruction, as I did not understand the reference to the *RURAL* decision, which I assume is *Responsible Use of Rural and Agricultural Land v. PSC*, 239 Wis. 2d 660 (2000). However, note that this bill does not affect s. 196.491 (3) (i), which exempts from local ordinances an electric generating facility with a nominal capacity of 100 MW or more, if the PSC grants a CPCN to the facility. As a result, the requirements of s. 66.0401 apply to a wind energy system that has a nominal capacity of less than 100 MW.

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