

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1048/2dn
MES&MDK:kjf:md

March 19, 2009

Senator Plale:

Item 4 of your memo from March 10, 2009, requests a number of additions to the bill related to the enactment of the local ordinances. I'm not sure whether specific language needs to be added to address these concerns, but I've added a sentence to the end of created s. 66.0401 (4) (a) 2., and created a new sub. (4) (a) 4. Do these changes address your concerns?

Item 5 of your memo asks whether it's "clear that only a political subdivision as defined under the bill may regulate a wind energy system and that other local units of government would be precluded from doing so?" I believe so. I am not aware of any other local unit of government that currently has any authority to regulate wind energy systems. If you believe that any such authority exists, those statutes would need to be amended, but I don't believe that any other local unit of government may regulate wind energy systems.

Item 7 of your memo asks if the bill would preempt all existing, inconsistent ordinances. Beginning on the effective date of the bill, I believe that it would. Created s. 66.0401 (4) (g) states that "A political subdivision that chooses to regulate wind energy systems shall enact an ordinance, subject to sub. (6) (b), that is consistent with the applicable standards established by the commission in rules promulgated under s. 196.378 (4g)."

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Regarding item 1 of your memo, I created proposed s. 196.491 (3) (dg), which requires the PSC to "consider" consistency with the restrictions under the rules. Note that the word "consider" is arguably ambiguous. I think the word means that the PSC may issue a CPCN for a facility that is not consistent with the restrictions, as long as the PSC has addressed the issue of consistency. However, a court might conclude that "consider" imposes a duty on the PSC to reject an application for a facility that is not consistent with the restrictions. You may want to revise the bill to clarify your intent.

Regarding item 6, the bill allows for appeal to the PSC only if a proposed wind energy system is one megawatt or larger. For the sake of consistency, I assume that you want to allow an appeal of an enforcement action to the PSC only if the wind energy system that is the subject of the action is one megawatt or larger. Is my assumption correct?

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