

2009 DRAFTING REQUEST

Bill

Received: 12/04/2008

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Jeffrey Plale (608) 266-7505

By/Representing: Kevin

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

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: Sen.Plale@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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

Instructions:

Redraft 2007 SB 544 (04108/4), and SA 1, 2, and 4 (a1540, a1603, and a1596)

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>
/?	mshovers 12/05/2008 mkunkel 02/27/2009	kfollett 02/27/2009		_____			S&L
/1			jfrantze 02/27/2009	_____	mbarman 02/27/2009		S&L
/2	mshovers	kfollett	mduchek	_____	sbasford		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/16/2009 mkunkel	03/19/2009	03/20/2009	_____	03/20/2009		
	03/18/2009			_____			
/3	mkunkel	kfollett	rschluet	_____	cduerst		S&L
	03/25/2009	03/25/2009	03/26/2009	_____	03/26/2009		
	mkunkel	nmatzke		_____			
	04/07/2009	04/07/2009		_____			
/4			phenry	_____	sbasford	cduerst	
			04/08/2009	_____	04/08/2009	04/23/2009	

FE Sent For:

*at
intro*

<END>

2009 DRAFTING REQUEST

Bill

Received: **12/04/2008**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-7505**

By/Representing: **Kevin**

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

Drafter: **mshovers**

May Contact:

Adtl. Drafters: **mkunkel**

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

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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

Instructions:

Redraft 2007 SB 544 (04108/4), and SA 1, 2, and 4 (a1540, a1603, and a1596)

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>
/?	mshovers 12/05/2008 mkunkel 02/27/2009	kfollett 02/27/2009		_____			S&L
/1			jfrantze 02/27/2009	_____	mbarman 02/27/2009		S&L
/2	mshovers	kfollett	mduchek	_____	sbasford		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/16/2009 mkunkel 03/18/2009	03/19/2009	03/20/2009	_____	03/20/2009		
/3	mkunkel 03/25/2009 mkunkel 04/07/2009	kfollett 03/25/2009 nnatzke 04/07/2009	rschluet 03/26/2009	_____	cduerst 03/26/2009		S&L
/4			pherry 04/08/2009	_____	sbasford 04/08/2009		

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: **12/04/2008**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-7505**

By/Representing: **Kevin**

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

Drafter: **mshovers**

May Contact:

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: **Sen.Plale@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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

Instructions:

Redraft 2007 SB 544 (04108/4), and SA 1, 2, and 4 (a1540, a1603, and a1596)

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>
/?	mshovers 12/05/2008 mkunkel 02/27/2009	kfollett 02/27/2009	<i>4/8/09</i>	<i>4/8/09</i>			S&L
/1			jfrantze 02/27/2009		mbarman 02/27/2009		S&L
/2	mshovers	kfollett	mduchek		sbasford		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/16/2009 mkunkel	03/19/2009	03/20/2009	_____	03/20/2009		
	03/18/2009			_____			
/3	mkunkel	kfollett	rschluet	_____	cduerst		
	03/25/2009	03/25/2009	03/26/2009	_____	03/26/2009		

64 num
4/7

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: 12/04/2008

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Jeffrey Plale (608) 266-7505

By/Representing: Kevin

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

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: Sen.Plale@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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

Instructions:

Redraft 2007 SB 544 (04108/4), and SA 1, 2, and 4 (a1540, a1603, and a1596)

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>
/?	mshovers 12/05/2008 mkunkel 02/27/2009	kfollett 02/27/2009		_____			S&L
/1			jfrantze 02/27/2009	_____	mbarman 02/27/2009		S&L
/2	mshovers	kfollett 13 KF 3/25	mduchek PH	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/16/2009	03/19/2009	03/20/2009	_____	03/20/2009		
	mkunkel			_____			
	03/18/2009			_____			

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: 12/04/2008

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Jeffrey Plale (608) 266-7505

By/Representing: Kevin

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

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: Sen.Plale@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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

Instructions:

Redraft 2007 SB 544 (04108/4), and SA 1, 2, and 4 (a1540, a1603, and a1596)

Drafting History:

Table with 8 columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. It contains two rows of draft history with handwritten initials and dates.

Handwritten initials and dates: MD, MJF, 3/17, 3/20

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: 12/04/2008

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Jeffrey Plale (608) 266-7505

By/Representing: Kevin

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

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: Sen.Plale@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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

Instructions:

Redraft 2007 SB 544 (04108/4), and SA 1, 2, and 4 (a1540, a1603, and a1596)

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>
/?	mshovers	1/15/07 2/27	2/27	2/27			

FE Sent For:

<END>

Kunkel, Mark

From: Kunkel, Mark
Sent: Tuesday, January 13, 2009 3:10 PM
To: Brady, Kevin; 'pawlich@cwpb.com'
Cc: Shovers, Marc
Subject: RE: Status of Drafting

Kevin:

You asked Marc Shovers about the status of the wind siting legislation, which Marc and I are both working on. Also, I am addressing this email to Curt Pawlich, because Curt raised 2 concerns (see his email below) about the legislation, which is a redraft of 2007 SB 544.

In response to Curt's 1st point, because SB 544 does not affect s. 196.491 (3) (i), I don't think that SB 544 weakens the preemptive effect of a CPCN granted by the PSC. Section 196.491 (3) (i) states: "If installation or utilization of a facility for which a [CPCN] has been granted is precluded or inhibited by a local ordinance, the installation and utilization of the facility may nevertheless proceed." Note that facility includes a 100 MW or greater wind facility. As Curt notes, the PSC might give some weight to a local government's failure to approve such a facility in determining whether to grant a CPCN. However, once the PSC grants a CPCN to 100 MW or greater wind facility, the project may go forward in spite of local government disapproval. If you are concerned about the influence that a local government's disapproval may have on the PSC's decision to issue a CPCN, you could add language to s. 196.491 (3) prohibiting the PSC from considering local government disapprovals. Let me know if you think such language is necessary.

In response to Curt's 2nd point, I'm not sure if anything further is needed. Local governments will be subject to the rules promulgated by the PSC. Perhaps I don't fully understand Curt's point, but won't the rules be sufficient to prevent a local government from thwarting development?

After the above 2 issues are resolved, we can get a new bill to you fairly soon.

-- Mark

-----Original Message-----

From: Curt Pawlich [<mailto:pawlich@cwpb.com>]
Sent: Wednesday, December 24, 2008 9:16 AM
To: Brady, Kevin; Whitmore, Lori
Subject: Wind siting legislation

Kevin and Lori:

Could you pass this along to the drafters and authorize them to meet with me to talk through the issues identified below? I'd welcome/encourage your presence at the meeting.

I'm not sure we need to change SB 544, but I want to make sure we got it right.

1. Relationship of uniform siting standards to the CPCN

I think it would be worth our while to think through the relationship of the wind siting bill to the CPCN statute. SB 544 would have created uniform siting standards for wind energy systems for projects that included those greater in size than 100 MW. As a practical matter, how will this work? Under current law, a developer who obtains a CPCN would have a trump card over local approvals. On transmission projects that require a CPCN, ATC takes the position that it does not even need to apply to local units of government for zoning permits and such. On the other hand, the CPCN decision for Forward Wind showed that the developer had in fact applied for local conditional use permits. In that decision, the Commission granted deference to the setback requirements of one local unit of government. In another instance, the Commission simply preempted the local's unworkable requirements. I want to make sure we do nothing to weaken the preemptive force of a CPCN generally.

Suppose SB 544 becomes law and uniform siting standards are in place. The developer would need to get local approvals and a CPCN for projects that exceed 100 MW. It's possible in the abstract that the developer could be denied a local approval yet still obtain a CPCN. In reality, I suppose the Commission would simply take into account in its CPCN

deliberations that the project didn't pass muster under the uniform siting standards and deny the CPCN. What do you think?

2. Relationship of the topics that the standards would address 66.0401(1m)(a)-(c) and zoning/land use generally

I think the topics outlined in Section 9 of the bill work. Under current law, local units of government may regulate wind turbines on matters of health and safety, or impose requirements that don't add unduly to the cost. (See section 9 of the bill.) Do you folks agree? A related issue is local land use planning. There is one reported decision that 66.0401(1m)(a)-(c) means that locals cannot use their conditional use permitting authority to restrict wind energy systems. I want to make sure that our draft reflects an underlying intent, consistent with current law, that local units of government cannot use zoning or land use planning (e.g., Smart Growth) to thwart the uniform siting standards and wind development generally. (Obviously, setback requirements will indirectly have a land use impact and preclude commercial size wind turbines in urban areas, which is not only appropriate but how the wind industry sites turbines in any event). Do you folks think this is clear?

--Curt

Kunkel, Mark

From: Brady, Kevin
Sent: Wednesday, February 11, 2009 9:44 AM
To: Kunkel, Mark
Cc: 'Curt Pawlisch'; Whitmore, Lori
Subject: draftinginstructions.doc

Attachments: draftinginstructions.doc

Mark,

Attached are drafting instructions for the Windi Siting legislation from Senator Plale. Let me know if you have any questions.

Kevin Brady
Sen. Plale
6-7505



draftinginstructions.doc (23 K...

TO: Legislative Reference Bureau (Mark Kunkel)
FROM: Senator Jeff Plale (Contact: Kevin Brady 6-7505)
RE: Drafting instructions for wind siting legislation
DATE: February 11, 2009

Please redraft 2007 SB 544 as follows:

1. On page 8, line 2, after "system" insert "consistent with the conditions specified in s. 66.0401(1m)(a) to (c)". On page 8, lines 6 to 7, delete, "consistent with the conditions specified in s. 66.0401(1m)(a) to (c)".

2. Include a new section amending the definition of "wind energy system" to include "associated facilities," a term that is intended to include feeder lines, substations and other distribution or transmission facilities needed to interconnect the wind energy system." The drafter should determine whether it is necessary to specify these specific facilities in the statute.

3. Provide that an applicant may appeal from a local unit of government's unreasonable failure to grant or withhold a completeness determination. Such a failure to grant or withhold a completeness determination shall be deemed a denial of the application and appeals be taken under 66.0401(5).

4. Include the provisions of SA 1, SA 2 and SA 4 to SB 544 from last session except modify these amendments as follows:

*In SA 2, specify that realtors should be on the advisory committee created under s. 227.13 to help draft the uniform siting rules.

*In SA 4, on line 8, delete "7th" and insert "3rd".

5. For projects under 100 MW, specify that the wind developer must give notice of its application on landowners adjacent to property where wind turbines will be placed.

6. Specify that the Commission shall consider the uniform siting standards when considering a wind project that requires a CPCN. Our intent is that local units of government do not make siting decisions for wind energy projects greater than 100 MW, consistent with the *RURAL* decision. The drafter should determine whether this needs to be explicitly stated in the statute.

239 wis 2d 660

P 3 lines 5-6
add less than
100 MW?

Kunkel, Mark

From: Curt Pawlisch [pawlisch@cwpb.com]
Sent: Friday, February 13, 2009 4:21 PM
To: Lovell, David; Kunkel, Mark
Cc: Brady, Kevin
Subject: RE: Realtor amendment

Sounds good.

>>> "Lovell, David" <David.Lovell@legis.wisconsin.gov> 2/13/2009 4:18 PM

>>> >>>

OK -- I'll place the call at 9:30.

Thanks.

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

-----Original Message-----

From: Kunkel, Mark
Sent: Friday, February 13, 2009 3:53 PM
To: 'Curt Pawlisch'; Lovell, David
Cc: Brady, Kevin
Subject: RE: Realtor amendment

okay by me.

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Friday, February 13, 2009 3:52 PM
To: Lovell, David
Cc: Brady, Kevin; Kunkel, Mark
Subject: RE: Realtor amendment

Monday morning is wide open. How about 9:30 AM? Do you want to call me? 251-0101.

>>> "Lovell, David" <David.Lovell@legis.wisconsin.gov> 2/13/2009 3:23 PM

>>> >>>

Curt,

As you can see below, Kevin has asked Mark and me to react to the language you presented to him. Before responding to Kevin, Mark and I would like to talk with you. Could we set up a time Monday for a short phone conversation? I don't know what Mark's schedule is, but I am free any time.

Thanks --

David

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

-----Original Message-----

From: Brady, Kevin
Sent: Friday, February 13, 2009 1:56 PM

To: Lovell, David; Kunkel, Mark
Cc: 'Curt Pawlisch'
Subject: FW: Realtor amendment

David and Mark,

Could you look at Curt's email and let me know what you think about his proposal for and addition to the wind-siting legislation. Please feel free to follow-up with him for further information about his request.

Kevin

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Thursday, February 12, 2009 9:35 AM
To: Brady, Kevin
Cc: tlarson@wra.org
Subject: Realtor amendment

Kevin,

As we discussed last night, the realtors are looking for language to be included in the wind siting bill as follows:

"A wind developer shall consider a community's Smart Growth Plan in deciding where to locate turbines."

We could put a statement in the drafter's file that the placement of wind turbines in a manner that is inconsistent with a Smart Growth Plan would not be grounds for denying an application under the uniform siting standards.

In offering such language we need to make sure that it does not create an opening for wind energy opponents to litigate or create any kind of civil liability. Many wind developers are wary of the language--not because they think it's wrong policy, but because of the potential litigation issue. Here's a sample of what I got back from one developer:

THE FOLLOWING OBSERVATIONS ARE BASED ON MY ASSUMPTION THAT ONCE THE UNIFORM SITING STANDARDS ARE ADOPTED THEY WOULD BE IMPLEMENTED BY LOCAL GOVERNMENT, IN WHICH CASE AN ANTI-WIND LOCAL GOVERNMENT COULD DO ONE OR BOTH OF THE FOLLOWING, LAWFUL OR NOT.

A. EVEN THOUGH IT WOULD NOT BE GROUNDS FOR DENIAL THEY COULD STILL DENY THE PROJECT ON THE BASIS THAT THE PROJECT IS NOT CONSISTENT WITH THEIR SMART GROWTH PLAN. LOCAL GOVERNMENTS ROUTINELY IGNORE 66.0401 AND THERE IS NO REASON TO BELIEVE THEY WOULD NOT TAKE THEIR LIBERTIES WITH THIS PROVISION IN THE STATUTE.

B. MORE LIKELY, SINCE MOST SMART GROWTH PLANS DO NOT ADDRESS WIND POWER, THE LOCAL GOVERNMENT COULD ADOPT A MORATORIUM OR OTHERWISE TABLE THE APPLICATION UNTIL THE SMART GROWTH PLAN HAS BEEN AMENDED TO CONSIDER THE IMPACTS OF WIND POWER ON THE LOCAL COMMUNITY. THIS, AS YOU KNOW, COULD DRAG ON JUSTIFIABLY FOR MONTHS OR YEARS. AT THE END OF THIS PROCESS A COUNTY LIKE CALUMET COUNTY, FOR EXAMPLE, COULD STILL DETERMINE THAT WIND FARMS ARE INCOMPATIBLE LAND USES AND DENY THE PROJECT ON THAT BASIS. ALL THIS DOES IS MAKE IT TAKE LONGER TO GET TO THE COURTHOUSE.

ANTI-WIND LOCAL GOVERNMENTS HAVE PROVEN TIME AND AGAIN THAT THEY ARE WILLING TO IGNORE STATE STATUTES AND FORCE THESE THINGS INTO THE COURTHOUSE. ADDING THE SMART GROWTH PLAN PROVISION WOULD BE ANOTHER TOOL THEY WOULD USE TO FIGHT A WIND FARM. IT'S LIKE THE "PUBLIC HEALTH AND SAFETY" CLAUSE IN 66.0401.

With these thoughts in mind, we need to draft something air tight and we also need a Leg. Council memo that would offer reassurances to this and other developers that we are not opening up a can of worms.

Thanks, Kevin. And thanks Tom for your patience and understanding.

--Curt

Curt F. Pawlisch
Cullen Weston Pines & Bach LLP
122 West Washington Ave., Suite 900
Madison, WI 53703
E-Mail- pawlisch@cwpb.com
Office- (608) 251-0101
Fax- (608) 251-2883
www.cwpb.com

"This is a transmission from the law firm of Cullen Weston Pines & Bach LLP and may contain information which is proprietary, privileged, confidential, and protected by the attorney-client or attorney work product privileges. If (a) you are not the addressee or (b) you are not the intended recipient, that is, your e-mail address was used in error by the sender, you should know that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this transmission in error, please delete and/or destroy it and, if we have not already realized our error and contacted you, notify us immediately at our telephone number (608) 251-0101."

Kunkel, Mark

From: Curt Pawlisch [pawlisch@cwpb.com]
Sent: Thursday, February 19, 2009 4:36 PM
To: Brady, Kevin; Kunkel, Mark
Subject: RE: Drafting wind siting bill

Great. Agreed regarding later revision.

>>> "Kunkel, Mark" <Mark.Kunkel@legis.wisconsin.gov> 2/19/2009 4:33 PM

>>> >>>

I will work on a version that does what we've discussed to date, except for the realtor language that we discussed earlier this week. I'll also add the init. app. below. I plan to get this off my desk tomorrow, so you should have it soon.

We can always revise the draft to address realtor issues, if necessary.

-- Mark

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Thursday, February 19, 2009 4:31 PM
To: Brady, Kevin
Cc: Kunkel, Mark
Subject: Drafting wind siting bill

Kevin,

There is no easy resolution on the wind siting bill as it relates to the realtors. I'm pursuing a nonstatutory approach for now and I'll let you know how it goes. In the meantime, I'm hoping LRB is working on the draft.

Finally, one more suggestion on the draft as to initial applicability.

We should also say that as to projects above 100 MW, the requirement that the PSC consider the uniform siting standards first applies to applications for a CPCN filed after the rule containing the standards becomes effective.

Thanks.

--Curt

Kunkel, Mark

From: Lovell, David
Sent: Monday, February 23, 2009 2:36 PM
To: 'Larson, Tom'; Brady, Kevin; Curt Pawlisch; Kunkel, Mark
Subject: RE: Ignore last email--2 PM works

I have reserved the Legislative Council's small conference room from 4 to 5 today. I'll see you all then.

Tom, in case you are not familiar with my office, we are on the 4th floor of 1 E. Main St., upstairs from the Starbucks on the corner of E. Main and MLK Blvd. -- turn to your left as you come off the elevator.

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

-----Original Message-----

From: Larson, Tom [mailto:tlarson@wra.org]
Sent: Monday, February 23, 2009 1:52 PM
To: Brady, Kevin; Curt Pawlisch; Lovell, David; Kunkel, Mark
Subject: RE: Ignore last email--2 PM works

Works for me. Thanks.

Tom

-----Original Message-----

From: Brady, Kevin [mailto:Kevin.Brady@legis.wisconsin.gov]
Sent: Monday, February 23, 2009 1:50 PM
To: Larson, Tom; Curt Pawlisch; Lovell, David; Kunkel, Mark
Subject: RE: Ignore last email--2 PM works

4PM today would work for me...

-----Original Message-----

From: Larson, Tom [mailto:tlarson@wra.org]
Sent: Monday, February 23, 2009 1:48 PM
To: Brady, Kevin; Curt Pawlisch; Lovell, David; Kunkel, Mark
Subject: RE: Ignore last email--2 PM works

What time works best for you, Kevin?

-----Original Message-----

From: Brady, Kevin [mailto:Kevin.Brady@legis.wisconsin.gov]
Sent: Monday, February 23, 2009 1:47 PM
To: Curt Pawlisch; Lovell, David; Kunkel, Mark; Larson, Tom
Subject: RE: Ignore last email--2 PM works

Sorry for the late notice, but I just got back from a conference and Senator Plale gave me a list of urgent things to get done, I'd prefer to push it back.

Kevin

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Monday, February 23, 2009 12:57 PM
To: Lovell, David; Brady, Kevin; Kunkel, Mark; tlarson@wra.org

Subject: Ignore last email--2 PM works

I just saw that Kevin is available at 2 PM. Let's go with that if that works for everyone. David, I'll assume we are at your shop unless I hear from anyone to the contrary. Leg. Council--2 PM today.

-1048/1 -0983/H

LRB-4108/4
MES&MDK:wj:pg

Today
4:30 PM

O-NOTE

PMNR

2009 ~~2007~~ SENATE BILL 544

FWF

February 29, 2008 - Introduced by Senator PLALE, cosponsored by Representative MONTGOMERY. Referred to Committee on Commerce, Utilities and Rail.

repeal

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.

same as
INSERT
IA

wind energy systems

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

system
x

INSERT B

PSCs

systems

SENATE BILL 544

INSERT 2A

ew systems.

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 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.

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 66.0401
2 (1m) (intro.), as renumbered, is 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:

SENATE BILL 544

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

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) ^{1, Subject to subd. 2,} 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

INS
413

SENATE BILL 544

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. *specified in par. (a)*

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~~

determine that an application is incomplete under sub. (4) (a), or to

SENATE BILL 544

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.

specified in par. (a)

INS
6-13
NOT

INSERT 7-18

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).

SENATE BILL 544

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 ^{other} 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).

18 **SECTION 10. Initial applicability.**

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

(END)

O-Note

1

INSERT 1A:

not Current law defines "wind energy system" as equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

2

INSERT 1B:

not The bill also revises the definition of "wind energy system" to include associated facilities of the equipment specified under current law.

3

INSERT 2A:

Finally, the bill does not affect a provision under current law that exempts certain electric generating facilities from local ordinances. Under current law, a person may not construct an electric generating facility with a nominal operating capacity of 100 megawatts or more unless the PSC grants a certificate of public convenience and necessity (CPCN) to the person. If the PSC has granted a CPCN to such a facility, and if installation or utilization of the facility is precluded or inhibited by a local ordinance, current law provides that the installation and utilization of the facility may nevertheless proceed. Because this bill does not affect that provision, the authority of a political subdivision to regulate a wind energy system under the bill is limited to those wind energy systems with a nominal operating capacity of less than 100 megawatts.

4

INSERT 1-9 TO INS 4-13:

5

3. On the same day that an applicant makes an application for approval under subd. 1. for a wind energy system the applicant shall mail or deliver written notice of the application to the owners of land adjoining the site of the wind energy system.

8

INSERT 7-18:

9

SECTION 1. 66.0403 (1) (m) of the statutes is amended to read:

10

66.0403 (1) (m) "Wind energy system" means equipment and associated

11

facilities that ~~converts~~ convert and then ~~stores~~ store or ~~transfers~~ transfer energy

12

from the wind into usable forms of energy.

**SENATE AMENDMENT 4,
TO 2007 SENATE BILL 544**

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

1 At the locations indicated, amend the bill as follows:

2 1. Page 4, line 4: delete "A political" and substitute "1. Subject to subd. 2., a
3 political".

4 2. Page 4, line 13: after that line insert:

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

10 (END)

INS
4-13

3rd

INSERT
1-9 to INS. 4-13

**SENATE AMENDMENT 1,
TO 2007 SENATE BILL 544**

FNS
6-13

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

1 At the locations indicated, amend the bill as follows:

2 1. Page 6, line 14: delete lines 14 and 15 and substitute "record upon which
3 it based its decision within 30 days after receiving notice. The commission may
4 request of the political subdivision any other relevant governmental records and, if
5 requested, the political subdivision shall provide such records within 30 days after
6 receiving the request."
7

(END)

**SENATE AMENDMENT 2,
TO 2007 SENATE BILL 544**

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

insert 8-17

1 At the locations indicated, amend the bill as follows:

2 1. Page 8, line 17: after that line insert:

3 **SECTION 9m. Nonstatutory provisions.**

4 **(1m) ADVISORY COMMITTEE.**

5 (a) In this subsection:

6 1. "Political subdivision" means a city, village, town, or county.

7 2. "Wind energy system" has the meaning given in section 66.0403 (1) (m) of
8 the statutes. *has affected by this act*

9 (b) Before the public service commission may promulgate the rules required
10 under section 196.378 (4g) of the statutes, as created by this act, the commission shall
11 establish an advisory committee under section 227.13 of the statutes, composed of
12 representatives of wind energy system developers, political subdivisions, energy

realtors,

1

groups, environmental groups, and the public, to advise the commission on the

2

rules. *to*

3

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1048/1dn

MDK: *kgf*

Date

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.

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

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.

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

Kunkel, Mark

From: Brady, Kevin
Sent: Tuesday, March 10, 2009 9:02 PM
To: Kunkel, Mark; Whitmore, Lori
Cc: pawlisch@cwpb.com
Subject: FW: Revised second set of drafting instructions

Attachments: rl kunkel1.doc



rl kunkel1.doc (57
KB)

Mark,

Please disregard the earlier instructions. Here are the revised drafting instructions.

Kevin Brady

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Tue 3/10/2009 5:35 PM
To: Brady, Kevin; Whitmore, Lori
Subject: Revised second set of drafting instructions

Lori and Kevin:

With apologies, here is a revised set of drafting instructions. I took out the section for the realtors because after I sent you the instructions this PM, Tom Larson from the Realtors informed me that the formulation of "consider the Smart Growth Plan" was no longer good enough for them.

I have no idea what they are going to do on the bill at this point.

In any event, please re-submit to Mark. Sorry for the inconvenience.

--Curt

can be invoked. Also, we need to ensure that enforcement actions can be appealed to the Commission.

7. Preemptive effect. Is it clear that the bill would preempt all existing local ordinances that are inconsistent with the uniform siting standards rule that the Commission will promulgate?

8. Add shadow flicker to the list of issues the siting standards should address.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1048/2
MES&MDK:kjf:jf

3-18-09

Rmk

2009 BILL

~~Sodu~~

Due
3/19

D-NOTE

repeal

1 AN ACT *to renumber and amend* 66.0401 (1); *to amend* 66.0401 (2) and
2 66.0403 (1) (m); *to repeal and recreate* 196.378 (4) (title); and *to create*
3 66.0401 (1e), 66.0401 (3), 66.0401 (4), 66.0401 (5), 66.0401 (6) and 196.378 (4g)
4 of the statutes; **relating to:** requiring that local regulation of a wind energy
5 system be consistent with Public Service Commission rules and granting
6 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. Current law defines "wind energy system" as equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

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 energy systems. The bill also revises the definition of "wind energy system" to include associated facilities of the equipment specified under current law. The PSC's rules must specify the restrictions a political subdivision may impose on the installation or use of such a system, and may include

BILL

INSERT MDK 2A

or enforcement action

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 systems, 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 must be contained in a political subdivision's ordinance regulating the systems.

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 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.

or enforcement action

order

or order

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.

Finally, the bill does not affect a provision under current law that exempts certain electric generating facilities from local ordinances. Under current law, a person may not construct an electric generating facility with a nominal operating capacity of 100 megawatts or more unless the PSC grants a certificate of public convenience and necessity (CPCN) to the person. If the PSC has granted a CPCN to such a facility, and if installation or utilization of the facility is precluded or inhibited by a local ordinance, current law provides that the installation and utilization of the facility may nevertheless proceed. Because this bill does not affect that provision, the authority of a political subdivision to regulate a wind energy system under the bill is limited to those wind energy systems with a nominal operating capacity of less than 100 megawatts.

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

INSERT MDK 2B

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 66.0401
- 2 (1m) (intro.), as renumbered, is amended to read:

BILL

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

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

10 66.0401 (1e) DEFINITIONS. In this section:

11 (a) "Application for approval" means an application for approval of a wind
12 energy system under rules promulgated by the commission under s. 196.378 (4g) (c)
13 1.

14 (b) "Commission" means the public service commission.

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

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

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

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

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

21 66.0401 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION. ~~A county,~~
22 ~~city, village, or town~~ Subject to sub. (6) (a), a political subdivision may provide by
23 enact an ordinance for relating to the trimming of vegetation that blocks solar
24 energy, as defined in s. 66.0403 (1) (k), from a collector surface, as defined under s.
25 700.41 (2) (b), or that blocks wind from a wind energy system, ~~as defined in s. 66.0403~~

BILL**SECTION 3**

1 ~~(1) (m).~~ The ordinance may include, ~~but is not limited to,~~ a designation of
2 responsibility for the costs of the trimming. The ordinance may not require the
3 trimming of vegetation that was planted by the owner or occupant of the property on
4 which the vegetation is located before the installation of the solar or wind energy
5 system.

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

7 **66.0401 (3) TESTING ACTIVITIES.** A political subdivision may not prohibit or
8 restrict any person from conducting testing activities to determine the suitability of
9 a site for the placement of a wind energy system. A political subdivision objecting
10 to such testing may petition the commission to impose reasonable restrictions on the
11 testing activity.

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

13 **66.0401 (4) LOCAL PROCEDURE.** (a) 1. Subject to subd. 2., a political subdivision
14 that receives an application for approval shall determine whether it is complete and,
15 no later than 45 days after the application is filed, notify the applicant about the
16 determination. If the political subdivision determines that the application is
17 incomplete, the notice shall state the reason for the determination. An applicant
18 may supplement and refile an application that the political subdivision has
19 determined to be incomplete. There is no limit on the number of times that an
20 applicant may refile an application for approval. If the political subdivision fails to
21 determine whether an application for approval is complete within 45 days after the
22 application is filed, the application shall be considered to be complete.

23 2. If a political subdivision that receives an application for approval under
24 subd. 1. does not have in effect an ordinance described under par. (g), the 45-day time
25 period for determining whether an application is complete, as described in subd. 1.,

BILL

1 does not begin until the first day of the 3rd month beginning after the political
2 subdivision receives the application. NOT

3 3. On the same day that an applicant makes an application for approval under
4 subd. 1. for a wind energy system the applicant shall mail or deliver written notice
5 of the application to the owners of land adjoining the site of the wind energy system.

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

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

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

16 (d) Except as provided in par. (e), a political subdivision shall approve or
17 disapprove an application for approval no later than 90 days after the day on which
18 it notifies the applicant that the application for approval is complete. If a political
19 subdivision fails to act within the 90 days, or within any extended time period
20 established under par. (e), the application is considered approved.

21 (e) A political subdivision may extend the time period in par. (d) if, within that
22 90-day period, the political subdivision authorizes the extension in writing. Any
23 combination of the following extensions may be granted, except that the total amount
24 of time for all extensions granted under this paragraph may not exceed 90 days:

FNS
5-2

FNS
5-5

BILL

*MDK
INSERT 6-16*

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

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

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

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

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

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

14 66.0401 (5) PUBLIC SERVICE COMMISSION REVIEW. (a) *disapprove* The decision of a political
15 subdivision to determine that an application is incomplete under sub. (4) (a) or to
16 approve, *reject* or impose a restriction upon a large wind energy system, may be
17 appealed only as provided in this subsection. *1.*

18 (b) *so* 1. Any aggrieved person seeking to appeal a decision *or enforcement action* specified in par. (a) may
19 begin the political subdivision's administrative review process. If the person is still
20 aggrieved after the administrative review is completed, the person may file an
21 appeal with the commission. No appeal to the commission under this subdivision
22 may be filed later than 30 days after the political subdivision has completed its
23 administrative review process. *INSERT 6-23*

24 2. Rather than beginning an administrative review under subd. 1., an
25 aggrieved person seeking to appeal a decision of a political subdivision specified in

or enforcement action

BILL

or after initiation of the enforcement action

1 par. (a) may file an appeal directly with the commission. No appeal to the commission
2 under this subdivision may be filed later than 30 days after the decision.

3 (c) Upon receiving an appeal under par. (b), the commission shall notify the
4 political subdivision. The political subdivision shall provide a certified copy of the
5 record upon which it based its decision *or enforcement action* within 30 days after receiving notice. The
6 commission may request of the political subdivision any other relevant
7 governmental records and, if requested, the political subdivision shall provide such
8 records within 30 days after receiving the request.

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

18 *f* (e) Judicial review is not available until the commission issues its decision *or order*
19 under par. (d). Judicial review shall be of the commission's decision *or order* not of the
20 political subdivision's decision. *or enforcement action* The commission's decision *or order* is subject to judicial
21 review under ch. 227. Injunctive relief is available only as provided in s. 196.43.

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

22 **66.0401 (6) APPLICABILITY OF A COUNTY ORDINANCE.** (a) 1. A county ordinance
23 enacted under sub. (2) applies only to the towns in the county that have not enacted
24 an ordinance under sub. (2).
25

*Make
INSERT 7-17*

BILL**SECTION 7**

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

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

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

11 **SECTION 8.** 66.0403 (1) (m) of the statutes is amended to read:

12 66.0403 (1) (m) “Wind energy system” means equipment and associated
13 facilities that ~~converts~~ convert and then stores store or transfers transfer energy
14 from the wind into usable forms of energy.

15 **SECTION 9.** 196.378 (4) (title) of the statutes is repealed and recreated to read:

16 196.378 (4) (title) RENEWABLE RESOURCE RULES.

17 **SECTION 10.** 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 consistent with the conditions specified in s. 66.0401 (1m) (a) to (c). The subject
25 matter of these rules may include visual appearance, lighting, electrical connections

BILL

1 to the power grid, setback distances, maximum audible sound levels, proper means
2 of measuring noise, interference with radio, telephone, or television signals,
3 decommissioning, or other matters. A political subdivision may not place a
4 restriction on the installation or use of a wind energy system that is more restrictive
5 than these rules.

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

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

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

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

SECTION 11. Nonstatutory provisions.

(1) ADVISORY COMMITTEE.

(a) In this subsection:

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

2. "Wind energy system" has the meaning given in section 66.0403 (1) (m) of
the statutes, as affected by this act.

(b) Before the public service commission may promulgate the rules required
under section 196.378 (4g) of the statutes, as created by this act, the commission shall
establish an advisory committee under section 227.13 of the statutes, composed of
representatives of wind energy system developers, political subdivisions, energy

MDK
INSERT 9-14

BILL

1 groups, environmental groups, realtors, and the public, to advise the commission on
2 the rules.

3 **SECTION 12. Initial applicability.**

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

8 (END)

or enforcement action

or action

or initiated

D-NOTE

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1048/2insMES
MES&MDK:kjfjf

INS 5-2

~~no #~~ A political subdivision may notify an applicant at any time, after receipt of the application and before the first day of the 3rd month after its receipt, that it does not intend to enact an ordinance described under par. (g).

INS 5-5

~~P~~ 4. If an applicant's application is approved or considered to be approved under subd. 1., or if the application is not subject to regulation because the political subdivision does not enact an ordinance described under par. (g) within the time specified in subd. 2., a political subdivision may not consider an applicant's minor modification to the application to constitute a new application for the purposes of this subsection.

1 **INSERT MDK 2A:**

no # The PSC must also promulgate rules specifying requirements and procedures for a political subdivision to enforce such restrictions.

2 **INSERT MDK 2B:**

no # However, the bill requires the PSC to consider the restrictions specified in the rules described above when the PSC determines whether to grant a CPCN to a wind energy system with a nominal operating capacity of 100 megawatts or more.

3 **INSERT 6-16:**

4 no # or an action of a political subdivision to enforce a restriction on a large wind energy system,

6 **INSERT 6-23:**

no # For purposes of this subdivision, if a political subdivision fails to complete its administrative review process within 90 days after an aggrieved person begins the review process, the political subdivision is considered to have completed the process on the 90th day after the person began the process.

11 **INSERT 7-17:**

12 P (e) In conducting a review under par. (d), the commission may treat a political subdivision's determination that an application under sub. (4) (a) 1. is incomplete as a decision to disapprove the application.

15 **INSERT 9-14:**

16 P 4. Specify the requirements and procedures for a political subdivision to enforce the restrictions allowed under par. (b).

18 **SECTION 1.** 196.491 (3) (dg) of the statutes is created to read:

19 196.491 (3) (dg) In making a determination under par. (d) that applies to a large electric generating facility, if the large electric generating facility is a wind energy system, as defined in s. 66.0403 (1) (m), the commission shall consider whether

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

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

Date

Senator Plale:

X 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) (e) 2., and created a new sub. (4) (e) 4. Do these changes address your concerns? (a)

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. (a)

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)."

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

1
INSERT NOTE

1 installation or use of the facility is consistent with the restrictions specified in the
2 rules promulgated by the commission under s. 196.378 (4g) (b).

3 **INSERT TO D-NOTE:**

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

11 Regarding item 6, the bill allows for appeal to the PSC only if a proposed wind energy
12 system is ^{one} 1 megawatt or larger. For the sake of consistency, I assumed that you want to
13 allow an appeal of an enforcement action to the PSC only if the wind energy system that
14 is the subject of the action is ^{one} 1 megawatt or larger. Is my assumption correct?

15
16
17
18

one

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

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)."

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

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?

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

Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, March 25, 2009 11:20 AM
To: 'Curt Pawlisch'
Subject: RE: Adopting ordinances

I think that result is clear. Proposed s. 66.0401 (5) says: "A decision of a political subdivision ... to approve, disapprove, or impose a restriction upon a large wind energy system, or an action of a political subdivision to enforce a restriction on a large wind energy system, may be appealed only as provided in this subsection." The foregoing applies no matter whether an ordinance is less restrictive or consistent.

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Tuesday, March 24, 2009 2:24 PM
To: Kunkel, Mark; kevin.brady@psc.state.wi.us
Cc: Shovers, Marc
Subject: RE: Adopting ordinances

As long as it's clear that appeals can be taken to the PSC--whether from the uniform siting ordinance or from an ordinance that is less restrictive--then I agree there is not a problem and that we should keep with the formulation of "no more restrictive".

Thanks.

>>> "Kunkel, Mark" <Mark.Kunkel@legis.wisconsin.gov> 3/24/2009 2:19 PM

>>> >>>

Sorry about the delay in responding, but I don't think there is a problem if you say "no more restrictive" than the PSC's rules. Appeals are governed by proposed s. 66.0401 (5), not the PSC's rules. In fact, the PSC's rules don't say anything about appeals. Instead, the rules are concerned with allowable restrictions and requirements for applications to political subdivisions, records of decisions by political subdivisions, and enforcement by political subdivisions.

Let me know what you think.

-- Mark

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Friday, March 20, 2009 5:03 PM
To: kevin.brady@psc.state.wi.us
Cc: Kunkel, Mark
Subject: Adopting ordinances

As you recall, we wondered whether a local unit of government should adopt an ordinance that is "consistent with" or "less stringent than" the uniform siting standards.

Upon reflection, I am concerned that a local ordinance that is nominally less stringent might not afford appeal rights to the PSC from a denial of an application or for an enforcement action.

What is the right way to address this concern? One way to address this issue would be to adopt the "consistent" approach. Another would be for the bill to specify that an ordinance that is less stringent than the uniform siting standards still provide for appeals from denials or enforcement. I'm wondering if the easier approach is to just pursue the option of adopting an ordinance that is consistent. What do you all think?