

**2009 DRAFTING REQUEST**

**Assembly Amendment (AA-SB185)**

Received: **09/15/2009**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Huebsch (608) 266-0631**

By/Representing: **Jodi Jensen**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - electric**

Extra Copies: **MES, EVM**

Submit via email: **YES**

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

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

PSC environmental review of wind energy systems

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 09/15/2009	nmatzke 09/15/2009		_____			
/1			phenry 09/15/2009	_____	lparisi 09/15/2009	lparisi 09/15/2009	

FE Sent For:

<END>

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FE Sent For:

<END>

**Kunkel, Mark**

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**From:** Jensen, Jodi  
**Sent:** Tuesday, September 15, 2009 3:07 PM  
**To:** Kunkel, Mark  
**Cc:** Mueller, Eric  
**Subject:** RE: Amendments to AB 256

Sorry, but I just got the word from leadership - please draft the amendments to SSA2. Thanks!

---

**From:** Kunkel, Mark  
**Sent:** Tuesday, September 15, 2009 2:54 PM  
**To:** Jensen, Jodi  
**Cc:** Mueller, Eric  
**Subject:** RE: Amendments to AB 256

Okay.

---

**From:** Jensen, Jodi  
**Sent:** Tuesday, September 15, 2009 2:54 PM  
**To:** Kunkel, Mark  
**Cc:** Mueller, Eric  
**Subject:** RE: Amendments to AB 256

We don't know for certain if the Assembly will take up SB 185, but think it's likely absent an objection. But, for now, I think drafting them to ASA 2 is the safest route. We'll try to give you plenty of warning if we have to convert them to amendments to SSA2.

Also - you can take LRBA0584 and LRBA0540 off this list.

Thanks.

---

**From:** Kunkel, Mark  
**Sent:** Tuesday, September 15, 2009 2:45 PM  
**To:** Jensen, Jodi  
**Cc:** Mueller, Eric  
**Subject:** FW: Amendments to AB 256

Jodi, I see that today the Senate passed SSA2 to SB185, which is the Senate companion to ASA2 to AB 256.

Do you know if the Assembly plans to take up the Senate version tomorrow, rather than the Assembly version? If so, you would want Assembly amendments to SB185, as shown by SSA2.

If you don't know for sure what the Assembly is going to do, we can draft Assembly amendments to ASA2 to AB256, which is what you requested below, which we can quickly convert to amendments to SB185, as shown by SSA2, if you subsequently find out that you need to take that approach.

Any thoughts on how we should proceed?

09/15/2009

-- Mark

---

**From:** Jensen, Jodi  
**Sent:** Tuesday, September 15, 2009 2:40 PM  
**To:** Kunkel, Mark; Shovers, Marc  
**Subject:** Amendments to AB 256

Mark and Marc,

Thanks for all of your help with Rep. Huebsch's amendments. Please draft the following amendments to ASA 2 to AB 256.

LRBa0542/1

LRBa0670/1

LRBa0671/1

LRBa0540/1

I have attached LRBa0584/1 which was drafted to SB 185 but not introduced. Rep. Huebsch would like this drafted to ASA 2 with one change: replace "vicinity" in line 6 with a requirement that the property owner live within two miles of the wind energy system.

Let me know if you have any questions.

Jodi

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**From:** Jensen, Jodi  
**Sent:** Monday, September 14, 2009 2:53 PM  
**To:** Malszycki, Marcie  
**Cc:** Huebsch, Michael  
**Subject:** Amendments to AB 256

Require the PSC to promulgate rules on minimum setbacks from both existing residences and "buildable residential sites." Buildable residential site means the part of a parcel where a residence could be lawfully built or where an addition could be lawfully put onto an existing home. LRB 0542/1 attached.

Require the PSC to promulgate rules allowing a city, town, village or county to require a wind developer to compensate property owners within two miles of the wind energy system for negative impacts to their property. The compensation shall be based on the proximity to the wind energy system and other factors specified by the PSC. (This was a Cowles amendment in committee.) Amendment in drafting.

Require the PSC to complete an Environmental Assessment for all wind energy systems over 10 MW

and determine whether an EIS is necessary. If the PSC completes an EIS, the local government must hold a hearing on the findings prior to acting on an application for a wind development. LRB 0670/1 attached.

Require the PSC rules to prohibit a city, town, village or county from approving an application unless the developer can demonstrate the financial capacity to construct and operate the wind energy system in the absence of a purchase power agreement or financing secured based on expected revenues from a purchase power agreement. LRB 0671/1 attached.

Allow a local government to order owners of wind energy systems to remove a facility that is in violation of its ordinance. Violations would include failure to comply with setback requirements and limits on noise volume. The owners of the wind energy system can appeal the order in circuit court. LRB 0540/1 attached.



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBa0070/1  
MDK:jlf

to dan

NOTE

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ASSEMBLY AMENDMENT,  
TO 2009 ASSEMBLY BILL 256  
SB185

as shown by senate  
senate substitute  
amendment 2

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

2 1. Page <sup>6 13</sup> 4, line <sup>22</sup> 22: after that line insert:

3 "1g. At least 30 days before filing an application under subd. 1., an applicant  
4 for a wind energy system with a nominal capacity of at least 10 megawatts shall  
5 provide a notice to the commission that does all of the following:

- 6 a. Describes the applicant's tentative plans, designs, and timing.
- 7 b. Seeks a preliminary determination from the commission on alternatives to
- 8 the wind energy system that must be evaluated and the information necessary to
- 9 complete the commission's environmental review under s. 196.025 (7).

10 c. Seeks input concerning other agencies the applicant may be required to  
11 contact.

1 1r. At the time of filing an application under subd. 1., an applicant for a wind  
2 energy system with a nominal capacity of at least 10 megawatts shall provide to the  
3 commission a copy of the application, as well as a notice that does all of the following:

4 a. Identifies, develops, and evaluates reasonable alternatives to the wind  
5 energy system.

6 b. Includes a summary of the applicant's contacts with agencies, if any, that the  
7 commission has identified to the applicant in response to subd. 1g. c." ✓

8 **2.** Page <sup>7</sup>~~5~~, line <sup>4</sup>~~20~~: after "public hearing," insert "copies of any documents  
9 provided by the commission pursuant to s. 196.025 (7)." ✓

10 **3.** Page <sup>7</sup>~~6~~, line <sup>13</sup>~~5~~: delete "par. (e), a political subdivision shall" and substitute  
11 "pars. (e) and (em), a political subdivision shall, after holding a public hearing." ✓

12 **4.** Page <sup>7</sup>~~6~~, line <sup>17</sup>~~9~~: after "par. (e)" insert "or (em)" ✓

13 **5.** Page <sup>7</sup>~~6~~, line <sup>17</sup>~~9~~: after that line insert:

14 "(dm) If the commission prepares an environmental impact statement  
15 pursuant to s. 196.025 (7), the political subdivision may not hold the public hearing  
16 required under par. (d) until at least 30 days after the commission has distributed  
17 the final environmental impact statement." ✓

18 **6.** Page <sup>8</sup>~~6~~, line <sup>2</sup>~~19~~: after that line insert:

19 "(em) If the commission notifies the political subdivision that additional time  
20 is necessary for the the commission to carry out its duties under s. 196.025 (7), the  
21 political subdivision shall extend the time period under par. (d) by the additional  
22 time specified by the commission." ✓

23 **7.** Page <sup>11</sup>~~8~~, line <sup>17</sup>~~14~~: after that line insert:

24 "SECTION <sup>10m</sup>~~8m~~. 196.025 (7) of the statutes is created to read:

1           196.025 (7) ENVIRONMENTAL REVIEW OF CERTAIN WIND ENERGY SYSTEMS. (a) In this  
2 subsection:

3           1. “Application for approval” has the meaning given in s. 66.0401 (1e) (a).

4           2. “Political subdivision” means a city, village, town, or county.

5           3. “Wind energy system” means a wind energy system, as defined in s. 66.0403  
6 (1) (m), that has a nominal capacity of more than 10 megawatts and less than 100  
7 megawatts.

8           (b) If the commission receives a copy of an application for approval for a wind  
9 energy system under s. 66.0401 (4) (a) 1r., the commission shall treat the application  
10 for approval as a type II action under its rules promulgated under s. 1.11 and perform  
11 all review and other actions under the rules that are required for type II actions,  
12 except that, if the commission determines that an environmental impact statement  
13 is required under the rules, the commission is not required to hold a public hearing  
14 on the application for approval.

15           (c) If the commission cannot comply with par. (b) within the 90–day time period  
16 specified in s. 66.0401 (4) (d), the commission shall notify the political subdivision to  
17 which the application for approval was made and specify the additional time  
18 necessary for the commission to comply with par. (b).”.

19           8. Page <sup>13</sup>10, line <sup>24</sup>22: after that line insert:

20           “SECTION <sup>13m</sup>~~11m~~ 196.85 (1m) (e) of the statutes is created to read:

21           196.85 (1m) (e) For the purpose of direct assessment under sub. (1) of expenses  
22 incurred by the commission in connection with its activities under s. 196.025 (7), the



1 term “public utility” includes an applicant for an application for approval, as defined  
2 in s. 66.0401 (1e) (a), for a wind energy system, as defined in s. 196.025 (7) (a) 3.”.

3 (END)

D-note

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

LRBa0699/1dn

MDK:†:...

nwn

Date

Rep. Huebsch:

This amendment is identical to LRBa0670/1, except that it is drafted to SSA2 to SB-185.

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

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

LRBa0699/1dn  
MDK:nwn:ph

September 15, 2009

Rep. Huebsch:

This amendment is identical to LRBa0670/1, except that it is drafted to SSA2 to SB-185.

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