2011 DRAFTING REQUEST

Bill

Received: **02/21/2011**

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Leah Vukmir (608) 266-2512**

By/Representing: **Jason Rostan**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - energy**

Addl. Drafters:

Extra Copies: **MES**

Submit via email: **YES**

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

Carbon copy (CC:) to: **Scott.Grosz@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Wind energy system rules

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/P1	mkunkel 02/23/2011	csicilia 02/23/2011	jfrantze 02/23/2011	_____ _____	cduerst 02/23/2011		
/1	mkunkel 03/23/2011	csicilia 03/23/2011	phenry 03/23/2011	_____ _____	sbasford 03/23/2011	mbarman 03/28/2011	

FE Sent For:

None

<END>

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/1	mkunkel 03/23/2011	csicilia 03/23/2011	phenry 03/23/2011	_____ _____	sbasford 03/23/2011		

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FE Sent For: /1 gs 3/23 3/23 ph RS/ff

<END>

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For: **Leah Vukmir (608) 266-2512**

By/Representing: **Jason Rostan**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - energy**

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Extra Copies: **MES**

Submit via email: **YES**

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Wind energy system rules

Instructions:

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Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mkunkel	Plys 2/23 11		2/23			

FE Sent For:

<END>

Kunkel, Mark

From: Rostan, Jason
Sent: Friday, February 18, 2011 9:55 AM
To: Kunkel, Mark
Cc: Grosz, Scott
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Scott and I talked and we may just wait until after the hearing to get a little direction from the committee as to what the legislation should look like.

From: Kunkel, Mark
Sent: Friday, February 18, 2011 9:37 AM
To: Rostan, Jason
Cc: Grosz, Scott
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Okay.

Scott, give me a call when you have a chance.

-- Mark

From: Rostan, Jason
Sent: Friday, February 18, 2011 9:30 AM
To: Kunkel, Mark
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Hey Mark,

Having never worked on a bill like this before, I not sure I can answer the questions. As far as I know, we don't need to repeal Act 40.

I called Scott Grosz from Leg Council and told him to give you a call to give you some direction.

Let me know when you get a chance to talk.

Thanks.

Jason Rostan
Sen. Leah Vukmir's Office

From: Kunkel, Mark
Sent: Friday, February 18, 2011 9:17 AM
To: Rostan, Jason
Subject: Bill request to support suspension of PSC wind energy system rules

Jason:

I need a bit more guidance on this request as I'm wondering how much of 2009 Wisconsin Act 40 I should repeal in order to negate the PSC's authority to promulgate its rules affecting a local government's authority to regulate wind energy systems (i.e., PSC ch. 128).

I assume that it is necessary to repeal s. 196.378 (4g) (b) and (c), which were created in 2009 Wisconsin Act 40, and which require the PSC to promulgate rules affecting local government authority. However, the act also created s. 196.378 (4g) (d), which requires the PSC to promulgate rules requiring owners of certain wind energy systems to maintain proof of financial responsibility for decommissioning. Do you want to suspend those rules, or leave them alone? Also, the act created a wind siting council that, in addition to advising the PSC on rules, also must make a report to the legislature every

5 years. See s. 196.378 (4g) (e). The report isn't really related to the rules, so do you want to leave the report alone?

Also, the act created procedures that a local government must follow in regulating wind energy systems, and allowed for appeals of local government decisions to the PSC, which can overturn a local government if the local government didn't properly follow the rules or was otherwise unreasonable. You could retain the procedural requirements while eliminating references to rules. Under such an approach, a local government could regulate wind energy systems under the law in effect prior to the act, but would have to follow the procedures created by the act, which could include appeals to the PSC, which might be authorized to overturn a local government if the PSC determined that the local government wasn't reasonable. Under such an approach, the PSC would be limited to determining reasonableness, as compliance with the PSC's rules would no longer be relevant. Do you want to take such an approach, or do you want to eliminate all the requirements regarding local governments that were created by the act, in addition to those requirements that depend on the PSC's rules?

Finally, the act created s. 23.39, which requires DNR to create a map showing areas of the state in which a wind energy system might have a significant adverse impact on migratory birds and bats. I assume you want to leave that alone, as it is unrelated the PSC local government rules.

Please let me know what you want to do. Email back or give me a call if you have questions or want to discuss this further.

-- Mark
266-0131

Kunkel, Mark

From: Grosz, Scott
Sent: Friday, February 18, 2011 10:20 AM
To: Kunkel, Mark
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Mark,

I talked to Dick Sweet a bit about the non-stat idea. He thought it would work (noting, as we previously discussed, that an idea like this is novel); though he suggested language that would also reference the permanent suspension of CR 10-057. Something along the lines of:

"CR 10-057, filed with the LRB pursuant to s. 227.20 on [DATE], is permanently suspended and may not be used to satisfy the obligation to promulgate a rule under s. 196...(the cite for wind-siting rule-making from Act 40)."

Thanks,

Scott

From: Kunkel, Mark
Sent: Friday, February 18, 2011 9:37 AM
To: Rostan, Jason
Cc: Grosz, Scott
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Okay.

Scott, give me a call when you have a chance.

-- Mark

From: Rostan, Jason
Sent: Friday, February 18, 2011 9:30 AM
To: Kunkel, Mark
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Hey Mark,

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I called Scott Grosz from Leg Council and told him to give you a call to give you some direction.

Let me know when you get a chance to talk.

Thanks.

Jason Rostan
Sen. Leah Vukmir's Office

From: Kunkel, Mark
Sent: Friday, February 18, 2011 9:17 AM
To: Rostan, Jason
Subject: Bill request to support suspension of PSC wind energy system rules

Jason:

I need a bit more guidance on this request as I'm wondering how much of 2009 Wisconsin Act 40 I should repeal in order

to negate the PSC's authority to promulgate its rules affecting a local government's authority to regulate wind energy systems (i.e., PSC ch. 128).

I assume that it is necessary to repeal s. 196.378 (4g) (b) and (c), which were created in 2009 Wisconsin Act 40, and which require the PSC to promulgate rules affecting local government authority. However, the act also created s. 196.378 (4g) (d), which requires the PSC to promulgate rules requiring owners of certain wind energy systems to maintain proof of financial responsibility for decommissioning. Do you want to suspend those rules, or leave them alone? Also, the act created a wind siting council that, in addition to advising the PSC on rules, also must make a report to the legislature every 5 years. See s. 196.378 (4g) (e). The report isn't really related to the rules, so do you want to leave the report alone?

Also, the act created procedures that a local government must follow in regulating wind energy systems, and allowed for appeals of local government decisions to the PSC, which can overturn a local government if the local government didn't properly follow the rules or was otherwise unreasonable. You could retain the procedural requirements while eliminating references to rules. Under such an approach, a local government could regulate wind energy systems under the law in effect prior to the act, but would have to follow the procedures created by the act, which could include appeals to the PSC, which might be authorized to overturn a local government if the PSC determined that the local government wasn't reasonable. Under such an approach, the PSC would be limited to determining reasonableness, as compliance with the PSC's rules would no longer be relevant. Do you want to take such an approach, or do you want to eliminate all the requirements regarding local governments that were created by the act, in addition to those requirements that depend on the PSC's rules?

Finally, the act created s. 23.39, which requires DNR to create a map showing areas of the state in which a wind energy system might have a significant adverse impact on migratory birds and bats. I assume you want to leave that alone, as it is unrelated the PSC local government rules.

Please let me know what you want to do. Email back or give me a call if you have questions or want to discuss this further.

-- Mark
266-0131

Kunkel, Mark

From: Grosz, Scott
Sent: Friday, February 18, 2011 4:06 PM
To: Kunkel, Mark
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Mark,

Here are a few more of my thoughts on the non-stat drafting.

Would this work:

- Ch. PSC 128, filed with the LRB pursuant to s. 227.20, on [DATE], is repealed. The revisor is instructed to remove the chapter from the Administrative Code.
- Ch. PSC 128 may not be used to satisfy the obligation to promulgate a rule under s. 196…
- PSC shall promulgate rules under s. 196…[this last section is implied by the 2nd section, but it might not hurt to make it explicit]. Also, if Jason wanted this to be done by a date certain, language to that effect could be placed here.

Thanks,

Scott

From: Kunkel, Mark
Sent: Friday, February 18, 2011 9:37 AM
To: Rostan, Jason
Cc: Grosz, Scott
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Okay.

Scott, give me a call when you have a chance.

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From: Rostan, Jason
Sent: Friday, February 18, 2011 9:30 AM
To: Kunkel, Mark
Subject: RE: Bill request to support suspension of PSC wind energy system rules

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Thanks.

Jason Rostan
Sen. Leah Vukmir's Office

From: Kunkel, Mark
Sent: Friday, February 18, 2011 9:17 AM
To: Rostan, Jason
Subject: Bill request to support suspension of PSC wind energy system rules

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Please let me know what you want to do. Email back or give me a call if you have questions or want to discuss this further.

-- Mark
266-0131

Kunkel, Mark

From: Grosz, Scott
Sent: Friday, February 18, 2011 4:59 PM
To: Kunkel, Mark
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Sounds good. I suppose we can check with Jason to be sure on the timing (I tried calling a few mins ago but he was out), but it might make sense to have the non-stat prepared for Thursday.

Scott

From: Kunkel, Mark
Sent: Friday, February 18, 2011 4:56 PM
To: Grosz, Scott
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Oops. Didn't see your email below before I sent you my recent email. Been a hectic day, but we got a reprieve with the delay in the budget introduction.

I'll look at the suggestions below and probably try to talk with you again on Monday.

From: Grosz, Scott
Sent: Friday, February 18, 2011 4:06 PM
To: Kunkel, Mark
Subject: RE: Bill request to support suspension of PSC wind energy system rules

Mark,

Here are a few more of my thoughts on the non-stat drafting.

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Cc: Grosz, Scott
Subject: RE: Bill request to support suspension of PSC wind energy system rules

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Please let me know what you want to do. Email back or give me a call if you have questions or want to discuss this further.

-- Mark
266-0131

Kunkel, Mark

From: Kunkel, Mark
Sent: Monday, February 21, 2011 2:56 PM
To: Rostan, Jason
Cc: Grosz, Scott
Subject: Bill to support suspension of wind energy system rules

Jason,

I've been working with Scott Grosz at Leg. Council and am close to getting a prelim. draft done, but I have the following questions.

The prelim draft will consist of a nonstat provision that: 1) specifies that the PSC's rules, which are scheduled to go into effect on March 1, are repealed; and 2) directs the PSC to submit new proposed rules to leg. council staff by a specified deadline.

As for item 2, if you want a deadline, how much time do you want to give the PSC to prepare the new proposed rules? 6 months or so? Alternatively, you could decide not to include a deadline, and let the PSC take as long as necessary to prepare new proposed rules. Let me know your preference on this issue so I can get the prelim draft to you before the hearing on Thursday. If you decide you don't want a deadline, I may replace item 2 with a different language that makes it clear the PSC still has to promulgate the rules required under 2009 Wis. Act 40.

(Note that I can only provide you with a prelim. draft prior to the committee's hearing. The reason is that the analysis of the bill must describe what the committee did, and give the date of the committee's action. So I can't finalize the analysis until I know exactly what the committee did.)

-- Mark

State of Wisconsin
2011 - 2012 LEGISLATURE

LRB-1483/P1
MDK:/...:...
cjs

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today
by 4:30pm
if possible

Con Cat

AN ACT ...; **relating to:** wind energy system rules.

Analysis by the Legislative Reference Bureau

Current law requires the Public Service Commission (PSC), with the advice of the wind siting council, to promulgate rules that specify the restrictions that a city, village, town, or county (political subdivision) may impose on the installation or use of a "wind energy system," which is defined as equipment and associated facilities that convert and then store or transfer energy from the wind into usable forms of energy. The subject matter of the rules must include certain setback and decommissioning requirements, and may include visual appearance, lighting, electrical connections to the power grid, maximum audible sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, or television signals, or other matters. Current law prohibits a political subdivision from imposing a restriction that is more restrictive than the rules. Current law also requires the PSC to promulgate rules regarding the process used by political subdivisions to approve wind energy systems, as well as rules regarding enforcement of the restrictions by political subdivisions.

The PSC promulgated the rules under the current law provisions described above as clearinghouse rule number 10-057. The rules are effective March 1, 2011. This bill repeals those rules and requires the PSC to submit proposed rules pursuant to the current law provisions described above to the legislative council staff no later than 4 months after the bill's effective date. The bill is introduced as required by s. 227.26 (2) (f), stats., in support of the action of the Joint Committee for Review of

This

four

Administrative Rules in suspending chapter PSC 128, Wis. Adm. Code on _____, 2011.

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

SECTION 1. Nonstatutory provisions.

(1) In this section, "commission" means the public service commission.

(2) Chapter PSC 128, Wisconsin Administrative Code, as promulgated by the commission as clearinghouse rule number 10-057, is repealed. The commission shall submit in proposed form the rules that are required under section 196.378 (4g) (b), (c), and (d) of the statutes to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.

(END)

↑ a rule of the PSC ↑

d-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1483/P1dn
MDK:/...:...
gs

– date –

Sen. Vukmir:

Please review this preliminary draft to make sure it achieves your intent. Note that the analysis will have to be revised to provide the date of the committee's action. Also, depending on the nature of the committee's action, other revisions may be necessary.

In addition, note that the draft requires the PSC to submit new rules within approximately 6 months after the draft's effective date. Is that deadline okay, or do you want a different deadline? Alternatively, you may want no deadline at all. However, if you decide that you want no deadline, I may have to revise the draft to make it clear that the PSC must still promulgate the rules required under 2009 Wis. Act 40.

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-1483/P1dn
MDK:cjs:jf

February 23, 2011

Sen. Vukmir:

Please review this preliminary draft to make sure it achieves your intent. Note that the analysis will have to be revised to provide the date of the committee's action. Also, depending on the nature of the committee's action, other revisions may be necessary.

In addition, note that the draft requires the PSC to submit new rules within approximately 6 months after the draft's effective date. Is that deadline okay, or do you want a different deadline? Alternatively, you may want no deadline at all. However, if you decide that you want no deadline, I may have to revise the draft to make it clear that the PSC must still promulgate the rules required under 2009 Wis. Act 40.

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-1483/1dn
MDK:.../
gjs

– date –

Sen. Vukmir:

If Special Session AB-8 becomes law before this bill is enacted, you may want to amend this bill to address the new rule-making procedures created by Special Session AB-8. For example, you could: 1) exempt the rules required under this bill from the new procedures; 2) give the PSC more time to submit proposed rules to Legislative Council Staff; or 3) depending on your intent, take another approach. the

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

State of Wisconsin
2011 – 2012 LEGISLATURE

LRB–1483/P1
MDK:cjs:jf

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT **relating to:** wind energy system rules.

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Current law requires the Public Service Commission (PSC), with the advice of the wind siting council, to promulgate rules that specify the restrictions that a city, village, town, or county (political subdivision) may impose on the installation or use of a "wind energy system," which is defined as equipment and associated facilities that convert and then store or transfer energy from the wind into usable forms of energy. The subject matter of the rules must include certain setback and decommissioning requirements, and may include visual appearance, lighting, electrical connections to the power grid, maximum audible sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, or television signals, or other matters. Current law prohibits a political subdivision from imposing a restriction that is more restrictive than the rules. Current law also requires the PSC to promulgate rules regarding the process used by political subdivisions to approve wind energy systems, as well as rules regarding enforcement of the restrictions by political subdivisions.

The PSC promulgated the rules under the current law provisions described above as clearinghouse rule number 10–057. The rules are effective March 1, 2011. This bill repeals those rules and requires the PSC to submit proposed rules pursuant to the current law provisions described above to the legislative council staff no later than four months after the bill's effective date.

PLAIN

March 1

This bill is introduced as required by s. 227.26 (2) (t), stats., in support of the action of the Joint Committee for Review of Administrative Rules in suspending chapter PSC 128, Wis. Adm. Code, a rule of the PSC, on [redacted], 2011.

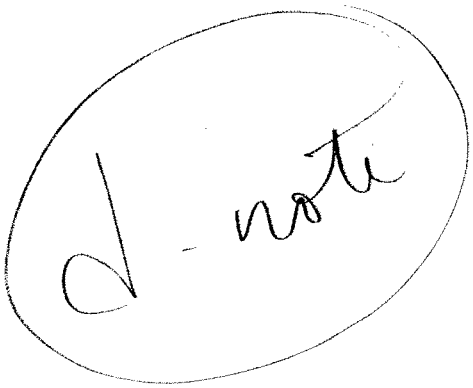
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Nonstatutory provisions.

(1) In this section, "commission" means the public service commission.

(2) Chapter PSC 128, Wisconsin Administrative Code, as promulgated by the commission as clearinghouse rule number 10–057, is repealed. The commission shall submit in proposed form the rules that are required under section 196.378 (4g) (b), (c), and (d) of the statutes to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.

(END)



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1483/1dn
MDK:cjs:ph

March 23, 2011

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E-mail: mark.kunkel@legis.wisconsin.gov

1.02(15) O-MAN

~~(15)~~ **Bills to Support Suspension or Prevent Promulgation of Rules.** If you draft a bill to support a rule suspension under s. 227.26 (2) (f), stats., or to prevent a promulgation under s. 227.19 (5) (e), stats., notify ~~the LRB~~ program assistants when you turn in the draft to the legislative editors. The program assistants will arrange to obtain and print the reports required as an appendix to the bill under ss. 227.19 (6) (a) and 227.26 (2) (g), stats. See sec. 4.036 (3), Drafting Manual, for an example of the last paragraph of the analysis to a bill to support suspension or prevent promulgation of a rule.

LRB-1483/1

Sen. Vukmir

Barman, Mike

From: Rostan, Jason
Sent: Friday, March 25, 2011 1:39 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1483/1 Topic: Wind energy system rules

Please Jacket LRB 11-1483/1 for the SENATE.