

**2011 DRAFTING REQUEST**

**Bill**

Received: 02/22/2011

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **Jon Kruse**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - energy**

Addl. Drafters:

Extra Copies: **TKK**

Submit via email: **YES**

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

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Wind energy system rules

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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 02/28/2011	wjackson 03/01/2011		_____			
/1			mduchek 03/01/2011	_____	sbasford 03/01/2011	ggodwin 04/15/2011	

FE Sent For:

<END>

*None*

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**Jacketed**  
Per MDK (Senate)

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/?	mkunkel	1WJ3/1	<del>WJ3/1</del>	PH LP			

FE Sent For:

<END>



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: SENATOR FRANK G. LASEE

FROM: David L. Lovell, Senior Analyst and Larry Konopacki, Staff Attorney **LAK**

RE: Observations on the Provisions of January 2011 Special Session Senate Bill 9 That Relate to Wind Energy Systems

DATE: February 24, 2011

The following are observations in regard to the provisions of January 2011 Special Session Senate Bill 9 (hereafter, "the bill") that relate to local regulation of wind energy systems. Certain observations relate to aspects of the bill that are unclear, which could lead to difficulties in interpreting and implementing the proposed law; others present ideas for how to better achieve the apparent intent of the bill. Based on these observations, the memorandum offers options you may want to consider in developing a new version of the bill for introduction in the 2011 Regular Session.

### **BACKGROUND**

#### **Current Law: 2009 Wisconsin Act 40**

Statutes dating to 1981 have limited municipal regulation of wind energy systems, prohibiting regulations that do not serve to preserve or protect public health or safety, or that significantly increase the cost or decrease the efficiency of wind energy systems. [s. 66.0401, Stats.] 2009 Wisconsin Act 40 significantly expanded this law, adding both procedural and substantive requirements. In a nutshell, Act 40 directed the Public Service Commission (PSC) to promulgate rules specifying the maximum level of regulation that a municipality may impose on a wind energy system and procedural requirements applicable to a municipality's adoptions of such regulations and the PSC's review of such regulations, upon complaint.

Act 40 created a Wind Siting Council and gave the council two principal tasks: (1) to advise the PSC regarding its rule-making; and (2) to survey peer-reviewed scientific research regarding the health effects of wind energy systems and national developments regarding regulation of the siting of wind energy systems, and to report to the Legislature at least once every five years on these topics.

The PSC has promulgated the rules required under Act 40 as ch. PSC 128, Wis. Adm. Code, which will take effect on March 1, 2011.

**Senate Bill 9**

The bill does all of the following:

- Deletes the requirement of current law that the PSC's rules include setback requirements that provide reasonable protection from any health effects associated with wind energy systems. It replaces this requirement with statutory setback requirements applicable to "large wind energy systems" (those with a total electric generating capacity greater than 300 kilowatts and consisting of turbines with electric generating capacities greater than 100 kilowatts).
- Requires that any rule promulgated by the PSC under Act 40 that involve a person who is affected by a wind energy system, including notice requirements, include "affected owners," which the bill defines as "the owner[s] of property located within one-half mile of property where a wind energy system is installed or proposed to be installed."
- Directs the PSC to prepare and make available to the public a brochure that describes wind energy systems, requirements under state law applicable to wind energy systems, and the possible impacts of wind energy systems on property owners.
- Specifies that the PSC's rules must include provisions that do the following:
  - Allow an affected owner who has entered into an agreement with a wind energy system developer regarding the installation or use of a wind energy system to terminate the agreement upon written notice given within 10 working days of the signing of the agreement.
  - Require a wind energy system developer to provide a copy of the PSC brochure regarding wind energy systems to an affected owner prior to entering into an agreement with the affected owner.
  - Require any person who negotiates an agreement relating to interests in real estate with an affected owner on behalf of a wind energy system developer to provide written notice that the individual is a licensed real estate broker or is exempt from such licensure.
- Adds to the duties of the Wind Siting Council the duty to study and to report to the Legislature regarding the impacts of wind energy systems on property values.

The bill specifies that the provisions described above take effect on the first day of the fourth month beginning after publication and that the statutory setback requirements created by the bill first apply to a wind energy system for which design or construction commences on that effective date.

## OBSERVATIONS

### Setback Requirements

#### *Application of Setbacks*

The setback requirements specified in ch. PSC 128 are stated as various distances from the vertical center line of a wind turbine tower to specified structures, property lines, or other features. The setback requirement specified in the bill is stated as at least 1,800 from the vertical center line of the wind turbine tower *of the wind energy system* to the property line of the property on which the *wind energy system* is located.

Wind energy systems typically consist of multiple wind turbines, located on multiple properties. As a result, it is not clear how to interpret the language of the bill that refers to the property line of the property on which the wind energy system is located. While this would appear to refer to the property on which a wind turbine tower is located, it does not say this. It might be clearer to delete the first reference in this language to a wind energy system and replace the second reference with a reference to the wind turbine tower.

#### *Reduction of Setback*

The bill allows a wind energy system developer to use a setback less than that specified in the bill if the lesser setback is agreed to by the owners of all adjoining properties. Tying this provision to adjoining landowners raises the potential for some perverse results, some of which may be consistent with your intent and others of which may not. Consider three scenarios:

1. Three neighboring properties are in a line on one side of a road. A wind energy system developer wants to erect a wind turbine on the middle property, but it is only 3,000 feet wide, not wide enough to accommodate the required 1,800 foot setback from the two neighbors. The developer proposes to place the turbine 1,000 feet from the neighbor on the east, and 2,000 feet from the neighbor on the west. Although the neighbor to the west is arguably advantaged by having the turbine placed 2,000 feet away, rather than the minimum 1,800 feet, that owner can withhold agreement and, effectively, prevent the placement of a turbine on the middle property. This result could occur even if the western neighbor's parcel were very large and any residence on it were far from the proposed wind turbine.
2. The developer in the preceding scenario has agreement to a reduced setback from all neighbors except the neighbor to the west. The developer persuades the owner of the middle property to divide a strip of land 100 feet wide from the west side of the parcel, creating a separate deed and tax parcel; the owner has an interest in getting the wind turbine built and so agrees to this suggestion. The owner to the west is no longer an adjoining landowner, and can no longer object to the reduced setback, even though his or her property is only 100 feet from the parcel on which the wind turbine will be erected.
3. A wind energy system developer wants to erect a wind turbine on a farm that adjoins a subdivision. Four lots of the subdivision, each 100 feet on a side, directly abut the farm. The developer obtains the agreement of the owners of these four lots to reduce the setback from

1,800 feet from the property line to 500 feet. The owners of the lots just past these four lots have had no say in the matter, but are now faced with the possibility of a wind turbine built only 600 feet from their property lines.

To avoid situations such as those in the second and third scenarios, and the more extreme results in the first scenario, the bill could be written in terms of the distance between a property and the property on which the turbine will be located. The bill already defines the term "affected owner" as the owner of property located within one-half mile of property on which a wind energy system is installed or proposed to be installed. One option is to revise the bill to specify that a reduced setback is allowed only if all affected owners agree.

### ***Safety Considerations***

A number of the setbacks specified in ch. PSC 128 appear to be established for purposes of public safety. These require a minimum setback of 1.1 times the maximum blade tip height from each of the following:

- Communications and electric transmission and distribution lines.
- Public rights-of-way. (In most, but not all, cases these will coincide with property lines.)
- Residences.

The bill appears to preempt these setbacks. Further, the setback provision of the bill does not guarantee any setback from such facilities. As a safety concern, it may be desirable to include separate setbacks for such facilities or to allow the PSC to include them in its rules.

Chapter PSC 128 also addresses setback and height limitations in relation to public use airports and heliports and hospital heliports. The bill also appears to preempt these provisions. It may be desirable to include provisions related to setback or height limitations in relation to airports or heliports. Alternatively, the bill could be left silent on this, leaving the matter to state and federal aviation regulators.

### **Termination of Agreements by Affected Owners**

Under the bill:

1. A wind energy system developer is required to provide the PSC's brochure regarding wind energy systems, their regulation, and their possible impacts on property owners to any affected owner prior to entering into an agreement with the affected owner regarding the installation or use of a wind energy system.
2. Allow an affected owner who has entered into an agreement with a wind energy system developer to terminate the agreement upon written notice given within 10 working days of the signing of the agreement.

The brochure may be the only way that an affected owner learns of his or her right to terminate an agreement within 10 days of signing the agreement. Arguably, failure of the developer to provide the

brochure could lead to an affected owner not terminating an agreement the owner may have wanted to terminate. While the developer is required to provide the brochure and failure to do so might be grounds on which to challenge an agreement, a court action would be required to make such a challenge. As an alternative, it may be desirable to specify in a revised bill that an affected owner may terminate an agreement within 10 working days of signing the agreement or receiving the brochure, whichever is later.

### **Real Estate Broker License**

The bill specifies that the PSC's rules must include a provision that requires any person who negotiates an agreement relating to interests in real estate with an affected owner on behalf of the owner or operator of a wind energy system to provide written notice that the individual is a licensed real estate broker or is exempt from such licensure. The bill defines "wind energy system owner" as a person with a direct ownership interest in the wind energy system, regardless of the person's involvement in the development of the project, or a person who, at the time a system is being developed, is acting as a developer by acquiring the necessary rights, permits, and approvals for or by planning for the construction and operation of the system, regardless of whether the person will own or operate the system.

With regard to the second element of this definition, there could be disagreement as to the meaning of "at the time a system is being developed." In particular, a developer may negotiate options for easements or leases with landowners as part of the process of determining whether development of a system on a particular site is feasible. It could be argued that, if a decision to develop a site has not been made at the time an agreement is negotiated, the system is not yet "being developed," and the requirement that the person negotiating the agreement provide notice that he or she is a licensed real estate broker or is exempt from licensure does not apply. It may be desirable to craft somewhat broader language for a revised bill to avoid such an argument.

### **Protection From Health Effects**

Act 40 requires that the PSC rules include setback requirements that provide reasonable protection from any health effects, including health effects from noise and shadow flicker, associated with wind energy systems. This would allow a person to challenge the PSC rules on the basis that the rules do not protect human health. In replacing rule-based setbacks with statutory setbacks, the bill repeals this health protection requirement. Without this requirement, an argument could be made that a person would no longer have the opportunity to challenge the rules on this basis. It may be desirable, in preparing a revised bill, to retain a reference to providing reasonable protection from health effects in the language directing the PSC to promulgate rules, and so preserve a person's ability to challenge the rules on this basis.

If you have questions regarding wind energy system siting, please contact either of us at the Legislative Council staff offices.

DLL:LAK:wu:ksm



**PSC 128.13 Siting criteria.** (1) **SETBACK DISTANCE AND HEIGHT REQUIREMENTS.** (a) An owner shall design and construct a wind energy system using the wind turbine setback distances shown in Table 1.

<b>Table 1</b>	
<b>Setback Description</b>	<b>Setback Distance</b>
<b>Occupied Community Buildings</b>	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
<b>Participating Residences</b>	1.1 times the maximum blade tip height
<b>Nonparticipating Residences</b>	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
<b>Participating Property Lines</b>	None
<b>Nonparticipating Property Lines</b>	1.1 times the maximum blade tip height
<b>Public Road Right-of-Way</b>	1.1 times the maximum blade tip height
<b>Overhead Communication and Electric Transmission or Distribution Lines</b> - Not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
<b>Overhead Utility Service Lines</b> - Lines to individual houses or outbuildings	None

(b) An owner shall measure wind turbine setback distances as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.

(c) An owner shall work with a political subdivision and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.

(d) The owner of a nonparticipating residence or occupied community building may waive the applicable wind

turbine setback distances in Table 1 for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance in Table 1 from a nonparticipating property line.



State of Wisconsin  
2011 - 2012 LEGISLATURE

January 2011 Special Session



LRB-098971

MDK:wjg

TUES 3-1  
1/30 PM  
if possible

**SENATE BILL 9**

stays  
-150711

LPS: Please check  
auto-refs, which  
should already be in place.

January 19, 2011 - Introduced by ~~COMMITTEE ON SENATE ORGANIZATION~~, by request of Governor Scott Walker. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

gen cost

1 AN ACT *to renumber* 196.378 (4g) (a) 1.; *to amend* 196.378 (4g) (b) and 196.378  
2 (4g) (e); and *to create* 196.378 (4g) (a) 1g., 196.378 (4g) (a) 2g., 196.378 (4g) (a)  
3 2r., 196.378 (4g) (a) 5., 196.378 (4g) (am), 196.378 (4g) (br), 196.378 (4g) (c) 5.,  
4 196.378 (4g) (c) 6., 196.378 (4g) (c) 7. and 196.378 (4g) (dm) of the statutes;  
5 **relating to:** requirements for wind energy systems, providing an exemption  
6 from emergency rule procedures, and granting rule-making authority.

***Analysis by the Legislative Reference Bureau***

Under current law, the Public Service Commission (PSC), with the advice of the wind siting council, must promulgate rules specifying the restrictions that a city, village, town, or county 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 wind energy into usable forms of energy. The restrictions must satisfy certain conditions, including preserving or protecting the public health or safety and not significantly increasing the cost of a wind energy system or significantly decreasing its efficiency. In addition, the subject matter of the rules must include setback requirements and decommissioning, and may include any of the following: 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 city, village, town, or county from placing a restriction on the

INSEPT 2A

installation or use of a wind energy system that is more restrictive than the PSC's rules.

This bill imposes additional requirements on the PSC's rules. The bill requires that, if a PSC rule involves a person who is affected by a wind energy system, including a rule that requires written notice, the rule must ensure that such a person includes an "affected owner," which the bill defines as the owner of property located within one-half mile of property on which a wind energy system is installed or proposed to be installed. ~~In addition,~~ the rules must allow an affected owner who has entered into an agreement with an owner or operator of a wind energy system regarding the installation or use of the wind energy system to terminate the agreement upon giving written notice of the termination no later than 10 working days after entering into the agreement. Also, the rules must require any individual who negotiates an agreement with an affected owner on behalf of an owner or operator regarding an interest in real estate related to the installation or use of a wind energy system to make a written disclosure that the individual is licensed as a real estate broker or is exempt from such licensure. The rules must also require inclusion of the written disclosure as an addendum to such an agreement. Additionally, the rules must require an owner or operator to provide a copy of a brochure prepared by the PSC to an affected owner prior to entering into an agreement with the affected owner regarding the installation or use of the wind energy system. The brochure must describe wind energy systems, requirements under state law applicable to wind energy systems, including any provisions of the PSC's rules that allow for waiver of any such requirements, and the possible impacts of wind energy systems on property owners, including affected owners.

The bill requires that

INSEPT 2B

of a wind energy system

~~In addition,~~ the bill eliminates the requirement for the PSC to promulgate rules regarding setback requirements, and requires instead that the owners of certain wind energy systems comply with ~~setback~~ requirements specified in the bill. The bill's ~~setback~~ requirements apply to the owner of a "large wind energy system," which the bill defines as a wind energy system that has a total installed nameplate capacity of more than 300 kilowatts and that consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. The bill defines the owner of a large wind energy system as any of the following: 1) a person with a direct ownership interest in such a system, regardless of whether the person was involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the system; or 2) a person acting as a developer of a large wind energy system by acquiring the necessary rights, permits, and approvals for or by planning for the construction and operation of the system, regardless of whether the person will own or operate the system. The foregoing definition is similar to a definition in rules promulgated by the PSC.

distance

Under the bill, the owner of a large wind energy system must design and construct the system so that ~~the setback distance is at least 1,800 feet. However, the bill allows for a setback distance of less than 1,800 feet if the owners of all of the following agree in writing: 1) properties adjoining the property on which the large wind energy system is located, and 2) properties separated only by a right-of-way from the property on which the large wind energy system is located.~~ The bill also

INSEPT 2C

specifies that setback distance must be measured as a straight line from the vertical center line of the wind turbine tower of the large wind energy system to the nearest point on the property line of the property on which the large wind energy system is located. This requirement is similar to a requirement in rules promulgated by the PSG.

Current law requires the wind siting council to submit a report to the legislature every five years that describes the following: 1) peer-reviewed scientific research regarding the health impacts of wind energy systems; and 2) state and national regulatory developments regarding the siting of wind energy systems. The report must also include any recommendations for legislation. The bill requires the wind siting council to study the impacts of wind energy systems on property values and to include the results of its study in the report.

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

1           SECTION 1. 196.378 (4g) (a) 1. of the statutes is renumbered 196.378 (4g) (a) 1r. ✓

2           SECTION 2. 196.378 (4g) (a) 1g. of the statutes is created to read:

3           196.378 (4g) (a) 1g. “Affected owner” means the owner of property located  
4 within one-half mile of property on which a wind energy system is installed or  
5 proposed to be installed.

6           SECTION 3. 196.378 (4g) (a) 2g. of the statutes is created to read:

7           196.378 (4g) (a) 2g. “Large wind energy system” means a wind energy system  
8 that has a total installed nameplate capacity of more than 300 kilowatts and that  
9 consists of individual wind turbines that have an installed nameplate capacity of  
10 more than 100 kilowatts.

11          SECTION 4. 196.378 (4g) (a) 2r. of the statutes is created to read:

12          196.378 (4g) (a) 2r. “Large wind energy system owner” means any of the  
13 following:

14           a. A person with a direct ownership interest in a large wind energy system,  
15 regardless of whether the person was involved in acquiring the necessary rights,

1 permits, and approvals or otherwise planning for the construction and operation of  
2 a large wind energy system.

3 b. At the time a large wind energy system is being developed, a person who is  
4 acting as a large wind energy system developer by acquiring the necessary rights,  
5 permits, and approvals for or by planning for the construction and operation of a  
6 large wind energy system, regardless of whether the person will own or operate the  
7 large wind energy system.

8 **SECTION 5.** 196.378 (4g) (a) 5. of the statutes is created to read:

9 196.378 (4g) (a) 5. "Working day" means each day except Saturday, Sunday, or  
10 a legal holiday under s. 995.20.

11 **SECTION 6.** 196.378 (4g) (am) of the statutes is created to read:

12 196.378 (4g) (am) 1. A large wind energy system owner shall design and  
13 construct a large wind energy system so that the setback distance is at least 1,800  
14 feet, unless the owners of all of the following properties agree in writing to a setback  
15 distance of less than 1,800 feet:

16 a. Properties that adjoin the property on which the large wind energy system  
17 is located.

18 b. Properties separated only by a right-of-way from the property on which the  
19 large wind energy system is located.

20 2. For purposes of this paragraph, setback distance shall be measured as a  
21 straight line from the vertical center line of the wind turbine tower of the large wind  
22 energy system to the nearest point on the property line of the property on which the  
23 large wind energy system is located.

24 **SECTION 7.** 196.378 (4g) (b) of the statutes is amended to read:

1 196.378 (4g) (b) The commission shall, with the advice of the wind siting  
2 council, promulgate rules that specify the restrictions a political subdivision may  
3 impose on the installation or use of a wind energy system consistent with the  
4 conditions specified in 66.0401 (1m) (a) to (c). ~~The subject matter of these rules~~  
5 ~~shall include setback requirements that provide reasonable protection from any~~  
6 ~~health effects including health effects from noise and shadow flicker, associated with~~  
7 ~~wind energy systems. The subject matter of these rules shall also include~~  
8 decommissioning and may include visual appearance, lighting, electrical  
9 connections to the power grid, setback distances, maximum audible sound levels,  
10 shadow flicker, proper means of measuring noise, interference with radio, telephone,  
11 or television signals, or other matters. A political subdivision may not place a  
12 restriction on the installation or use of a wind energy system that is more restrictive  
13 than these rules.

14 SECTION 8. 196.378 (4g) (br) of the statutes is created to read:

15 196.378 (4g) (br) Any rules promulgated under par. (b) that involve a person  
16 who is affected by a wind energy system, including rules requiring written notice,  
17 shall ensure that such a person includes an affected owner.

18 SECTION 9. 196.378 (4g) (c) 5 of the statutes is created to read:

19 196.378 (4g) (c) 5. Allow an affected owner who has entered into an agreement  
20 with the owner or operator of a wind energy system regarding the installation or use  
21 of the wind energy system to terminate the agreement upon giving written notice of  
22 the termination no later than 10 working days after entering into the agreement.

23 SECTION 10. 196.378 (4g) (c) 6. of the statutes is created to read:

24 196.378 (4g) (c) 6. Require the owner or operator of a wind energy system to  
25 provide a copy of the brochure specified in par. (dm) to an affected owner prior to

INSEAT  
5-13

INSEAT 5-22

1 entering into an agreement with the affected owner regarding the installation or use  
2 of the wind energy system.

3 **SECTION 11.** 196.378 (4g) (c) 7. of the statutes is created to read:

4 196.378 **(4g)** (c) 7. Require any individual who negotiates an agreement with  
5 an affected owner on behalf of the owner or operator of a wind energy system  
6 regarding an interest in real estate related to the installation or use of the wind  
7 energy system to make a written disclosure that the individual is licensed as a real  
8 estate broker under ch. 452 or is exempt from such licensure. The rules shall also  
9 require inclusion of the written disclosure as an addendum to the agreement.

10 **SECTION 12.** 196.378 (4g) (dm) of the statutes is created to read:

11 196.378 **(4g)** (dm) The commission shall prepare and make available to the  
12 public a brochure that describes wind energy systems, requirements under state law  
13 applicable to wind energy systems, including any provisions of the commission's  
14 rules that allow for waiver of any such requirements, and the possible impacts of  
15 wind energy systems on property owners, including affected owners.

16 **SECTION 13.** 196.378 (4g) (e) of the statutes is amended to read:

17 196.378 **(4g)** (e) The wind siting council shall survey the peer-reviewed  
18 scientific research regarding the health impacts of wind energy systems and study  
19 state and national regulatory developments regarding the siting of wind energy  
20 systems. The wind siting council shall also study the impacts of wind energy systems  
21 on property values. No later than October 1, 2014, and every 5 years thereafter, the  
22 wind siting council shall submit a report to the chief clerk of each house of the  
23 legislature, for distribution to the appropriate standing committees under s. 13.172  
24 (3), describing the research and regulatory developments, and property value



1 impacts, and including any recommendations of the council for legislation that is  
2 based on the research ~~and~~, regulatory developments, and property value impacts.

3 **SECTION 14. Nonstatutory provisions.**

4 ~~W.A.R.I.~~ (1) The public service commission shall submit in proposed form the rules that  
5 are necessary to comply with section 196.378 (4g) (br) of the statutes, as created by  
6 this act, and that are required under section 196.378 (4g) (c) 5., 6., and 7. of the  
7 statutes, as created by this act, to the legislative council staff under section 227.15  
8 (1) of the statutes no later than the first day of the 4th month beginning after the  
9 effective date of this subsection.

10 (2) The public service commission shall comply with section 196.378 (4g) (br)  
11 of the statutes, as created by this act, by using the procedure under section 227.24  
12 of the statutes to promulgate rules under section 196.378 (4g) (b) of the statutes <sup>as affected by this act,</sup> for  
13 the period before the effective date of the rules submitted under subsection (1), but ~~for~~  
14 not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject  
15 to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24  
16 (1) (a), (2) (b), and (3) of the statutes, the public service commission is not required  
17 to provide evidence that promulgating rules under this subsection as emergency  
18 rules is necessary for the preservation of the public peace, health, safety, or welfare  
19 and is not required to provide a finding of emergency for rules promulgated under  
20 this subsection.

21 (3) Using the procedure under section 227.24 of the statutes, the public service  
22 commission shall promulgate rules required under section 196.378 (4g) (c) 5., 6., and  
23 7. of the statutes, as created by ~~this act~~, for the period before the effective date of the  
24 rules submitted under subsection (1), <sup>Use A.R. 1</sup> but not to exceed the period authorized under  
25 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of

LRB:  
This  
should  
already  
be  
the  
case

~~W.A.R.I.~~

as affected by this act,  
Use A.R. 1

Use A.R. 1

1 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,  
2 the public service commission is not required to provide evidence that promulgating  
3 rules under this subsection as emergency rules is necessary for the preservation of  
4 the public peace, health, safety, or welfare and is not required to provide a finding  
5 of emergency for rules promulgated under this subsection.

6 **SECTION 15. Initial applicability.**

7 (1) The treatment of section 196.378 (4g) (am) of the statutes first applies to  
8 large wind energy systems for which ~~design~~ construction commences on the  
9 effective date of this subsection.

10 **SECTION 16. Effective date.**

11 (1) This act takes effect on the first day of the 4th month beginning after  
12 publication.

13 (END)



1

**INSERT 2A:**

The bill requires the restrictions under the rules to provide reasonable protection from any health effects associated with wind energy systems, including health effects from noise and shadow flicker. Under current law, the setback requirements under the rules must provide such protection. As noted below, the bill eliminates the setback requirements under the rules.

2

**INSERT 2B:**

or receiving the brochure, whichever is later

3

**INSERT 2C:**

the straight line distance from the vertical center line of any wind turbine tower of the system to the nearest point on the property line of the property on which the wind turbine tower is located is at least one-half mile. However, the bill allows a lesser distance if there is a written agreement between the owner of the large wind energy system and the owners of all property within one-half mile of the property on which the system is located agree. The bill also requires that the straight line distance from the vertical center line of any wind turbine tower of the system to the nearest point on the permanent foundation of any building must be at least 1.1 times the maximum blade tip height of the wind turbine tower, unless the owners of the system and the building agree in writing to a lesser distance. If the same person owns the large wind energy system and the building, the foregoing requirement does not apply. In addition, the bill requires that the straight line distance from the vertical center line of any wind turbine tower of the system to the nearest point on any public road right-of-way or overhead communication or electric transmission or distribution line must be at least 1.1 times the maximum blade tip height of the wind turbine tower.

4

**INSERT 4-12:**

5

A large wind energy system owner shall design and construct a large wind energy

6

system so that all of the following are satisfied:

7

1. The straight line distance from the vertical center line of any wind turbine

8

tower of the system to the nearest point on the property line of the property on which

9

the wind turbine tower is located is at least one-half mile, unless the large wind

10

energy system owner agrees in writing with all affected owners to a distance that is

11

less than one-half mile.



1 restriction on the installation or use of a wind energy system that is more restrictive  
2 than these rules.

3 **History:** 1999 a. 9; 2001 a. 30; 2005 a. 141; 2009 a. 40, 406.

**INSERT 5-22;**

4 **Not** or receiving the brochure specified in par. (dm), whichever is later

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

LRB-1507/1dn  
MDK:.....

WJ

Date

Sen. Lasee:

Please note the following about this bill, which is based on changes to Special Session SB-9 that were discussed with Jon Kruse and David Lovell at our meeting on February 24, 2011:

1. I revised s. 196.378 (4g) (am) to create new setback requirements. Regarding the setback requirement for buildings, I don't think it is necessary to define the term "building," unless there are certain buildings that you want to exclude. Also note I don't think it is necessary to refer to residences, as I think the term "building" encompasses residences.
2. I revised s. 196.378 (4g) (b) to require that the restrictions under the PSC's rules must provide reasonable protection from health effects, including health effects from noise and shadow flicker. Is that okay?
3. Section 196.378 (4g) (c) 5. is revised to allow termination of an agreement within 10 working days after entering into the agreement or after receiving the brochure, whichever is later.
4. Although we did not discuss at the meeting, I changed the initial applicability provision to refer to large wind energy systems for which construction commences on the effective date of the bill. Special Session SB-9 referred to systems for which **design or** construction commences on the effective date. However, because construction will always occur after design, the reference to design is not necessary. Please contact me if you want me to elaborate.

If you have any questions or additional drafting instructions, please contact me.

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-1507/1dn  
MDK:wlj:md

March 1, 2011

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