




# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A

### LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2011 LRB-0819 (For: DOA)

has been copied/added to the drafting file for


**2011 LRB-0989** (For: Senator Fitzgerald)

 Are These “Companion Bills” ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 01/21/2011 (Per: MGG & CMH)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

## Barman, Mike

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**From:** Hanaman, Cathlene  
**Sent:** Friday, January 21, 2011 11:12 AM  
**To:** Barman, Mike  
**Cc:** Gibson-Glass, Mary

Mary is correct; I told you about compiles, but I did not ask you to copy the file when we decompiled for Senator Fitzgerald. The file from -0748 should be accessible in -0990 (SB-10) ~~and 1016 (not introduced).~~

Same with -0819-- file should be accessible in -0989 (introduced SB-9) ~~and 1017 (not introduced).~~

Same with -0820 -- file should be accessible in -0991 (SB-8).

**2011 DRAFTING REQUEST**

**Bill**

Received: 12/28/2010

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Administration**

By/Representing: **Ryan Smith**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - energy**

Addl. Drafters:

Extra Copies: **TKK**

Submit via email: **YES**

Requester's email: **jennifer.kraus@wisconsin.gov**

Carbon copy (CC:) to: **r.murray@wisconsin.gov**  
**Sen.Cowles@legis.wisconsin.gov**  
**jana.steinmetz@wisconsin.gov**  
**david.schmiedicke@wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

---

**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>
/?							
/P1	mkunkel 12/29/2010	wjackson 12/29/2010	mduchek 12/29/2010	_____	cduerst 12/29/2010		
/1	mkunkel 01/04/2011	wjackson 01/04/2011	rschluet 01/04/2011	_____	lparisi 01/04/2011		

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**LRB-0819**

01/04/2011 03:23:43 PM

Page 2

FE Sent For:

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**r.murray@wisconsin.gov**  
**Sen.Cowles@legis.wisconsin.gov**  
**jana.steinmetz@doa.state.wi.us**

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/? /P1	mkunkel 12/29/2010	wjackson 12/29/2010	mduchek 12/29/2010	_____	cduerst 12/29/2010		

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11 WJ 1/4

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**2011 DRAFTING REQUEST**

**Bill**

Received: 12/28/2010

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Ryan Smith**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - energy**

Addl. Drafters:

Extra Copies: **TKK**

Submit via email: **YES**

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

Carbon copy (CC:) to:

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FE Sent For:

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		12/28		_____	_____		

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## Memorandum

**To:** Members, Senate Committee on Commerce, Utilities, Energy and Rail  
**From:** Tom Larson, Chief Lobbyist and Director of Legal and Public Affairs  
**Date:** October 1, 2010  
**Re:** Wind Siting Rule – Clearinghouse Rule 10-057

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The Wisconsin REALTORS® Association supports the creation of statewide standards for the siting of wind turbines and was actively involved in the wind energy system enabling legislation (2009 Wis. Act 40).

However, we oppose the proposed wind siting rules as currently drafted because they fail to adequately protect the interests of Wisconsin property owners. Specifically, we are concerned that the proposed rules (1) will allow wind turbines to be located too close to neighboring homes and buildings, and (2) fail to adequately protect the interests of property owners from a consumer-protection standpoint.

### **1. Proposed setback is inadequate to protect human health, property values and use and enjoyment of property**

The proposed rules establish the following setbacks from homes and property lines:

#### Medium and Large Wind Energy Systems

Participating residences	1.5 times the maximum blade tip height
Nonparticipating residences	3.1 times the maximum blade tip height
Participating property lines	None
Nonparticipating property lines	1.1 times the maximum blade tip height

Small Wind Energy Systems (wind energy system up to 300 kw that consists of individual turbines up to 100 kw (can be up to 150 ft))

Participating residences	None
Nonparticipating residences	1.0 times the maximum blade tip height
Participating property lines	None
Nonparticipating property lines	1.0 times the maximum blade tip height

For example, if a wind turbine is 300 ft high, the setback is 930 ft from a home or building on a neighboring piece of property, and only 450 ft from the home or building of the owner who has agreed to allow wind turbines on his/her property.



These distances were chosen, in part, for safety considerations (in case the turbine falls over) and fail to adequately address the following possible impacts of wind turbines on human health, use and enjoyment of property, and neighboring property values:

- **Health problems** – After wind farms have located in the area, some residents have complained of insomnia, anxiety, headaches and nausea. They have blamed their health problems on the pulsing noise coming from spinning turbines near their homes. (See "Turbines Too Loud? Take \$5000," <http://www.nytimes.com/2010/08/01/us/01wind.html?ref=wind-power>)
- **Noise** – Depending on the turbine model and wind speed, wind turbines can create a constant "whooshing" or pulsating noise that can be heard both inside and outside a home (day and night), if located too close. Studies have shown that an "average-size" turbine (2 megawatts, 100 meters high) located 1,000 feet away can produce the same amount of noise as a suburban area during the day (51 decibels). Many studies show that repeated noise levels of 45 dBA can have adverse consequences on human health. (See "For Those Near, The Miserable Hum of Clean Energy," <http://www.nytimes.com/2010/10/06/business/energy-environment/06noise.html?ref=wind-power>)
- **Excessive shadows on neighboring property** -- Depending upon the number of clouds and angle of the sun, wind turbines can create a "shadow flicker" (a term used to describe the shadow of the turning blades as it hits the ground) on nearby property. Some property owners have described the shadow effect on their home as being like "someone turning lights on and off inside the house at a rate of 80 times a minute" and lasting for almost an hour on sunny days. (See Wind Siting Council Final Recommendations to the Public Service Commission, August 6, 2010, Appendix E, Minority Report, pg. 12)
- **Property values** – A recent study of several Wisconsin wind farms showed that prospective buyers had a negative perception of nearby wind turbines. While the exact impact is difficult to quantify, the study indicated an average decrease in vacant residential property values ranging from 12% to 40%, depending on the size of the lot and the distance from the wind turbine. (See "Wind Turbines & Property Value," presentation by Kurt C. Kielisch, President/Sr. Appraiser – Appraiser Group One)

Similarly, a survey of REALTORS® working in a wind turbine area indicated that the impact on neighboring vacant land ranges from a 43% decrease if the wind turbine is located very close (within 600 ft) to 29% if the turbine is located in near proximity (½ mile away). With respect to the impact on improved property, the impacts are believed to be similar, but slightly lower (39% and 24%, respectively). (See "Wind Turbines & Property Value," presentation by Kurt C. Kielisch, President/Sr. Appraiser – Appraiser Group One)

Moreover, the proposed setback limits fail to meet setback limits (a) established by European countries, (b) recommended by wind turbine manufacturers, and (c) that are necessary to adequately protect against noise disturbance.

- In Europe, turbines are commonly located over 1200 ft away from residences. Moreover, many countries have adopted a setback of 4 x the height of the turbine or a maximum of 40 dBa at any time during the day. See Letter from Professor Jon McGowan, Renewable Research Energies Laboratory, March 14, 2008, [http://www.notuscleanenergy.com/images/UMass\\_RERL\\_Letter.pdf](http://www.notuscleanenergy.com/images/UMass_RERL_Letter.pdf)
- Wind turbine manufacturers recommend a safety zone of at least 1300 feet from a turbine. See Mechanical Operating and Maintenance Manual for the V90-3.0 MW turbine published by Vestas (<http://www.windaction.org/documents/16496>)
- According to a survey of residents living near wind turbines in Kewaunee County, individuals living within 2400 feet found noise to be problematic, 32% within 4800 feet and 4% greater than 1 mile were disturbed, and 67% reported disturbed sleep if they lived within 1200 feet. (Kabes 2001) (<http://www.windaction.org/documents/28688>)

**Recommendation** – To adequately address the negative impacts of wind turbines on neighboring property owners, we recommend that the proposed setback be increased to a more reasonable distance, such as to a minimum distance of at least (a) 3.1 times blade height from neighboring property lines, or (b) 1500 feet from a neighboring residence, whichever is greater.

## **2. Proposed rules fail to contain adequate consumer protections for property owners**

In addition to insufficient setbacks, the proposed rules fail to adequately protect the interests of property owners in several other ways, as identified below.

**a. Attorney review of contracts** – Unlike in most transactions, property owners entering into contracts involving wind energy system easements generally receive very little, if any, independent, professional advice as to how the terms of the contract will impact them. These property owners are often pressured to sign lengthy and sophisticated lease agreements without fully understanding the meaning of the lease terms because they were not given the opportunity to obtain advice from an attorney, REALTOR®, or other knowledgeable professional before entering into the contract. Moreover, the proposed rules allow these lease agreements to contain provisions that would override the minimum state standards designed to protect the health, safety and other interests of the property owners. See *e.g.*, PSC 128.13(5).

**Recommendation** – Because the terms of these leases could have an adverse impact on the health and safety of the property owners and the value of their property, we recommend that the rules be modified to provide property owners with up to ten days after entering into a contract with a wind energy company to have an attorney review the contract and, if necessary, terminate the contract if the attorney believes that the terms of the contract are not in the best interests of the property owner.

**b. Information brochure** – Many property owners are unaware of the potential health and safety risks of wind turbines if located too close to their homes or livestock. Moreover, most property owners will be unaware of the specific standards included in the wind energy rules designed to protect their interests. Most importantly, these property owners will be unaware that the proposed wind siting rules allow written lease agreements to include “waiver provisions” which allow wind developers to follow lesser standards if the property owner agrees to them in the writing.

**Recommendation** – To better inform property owners about some of the potential risks related to wind energy turbines, we recommend that (a) the state produce an informational brochure that describes wind energy systems, state standards (including the waiver provision) and some of the possible impacts on property owners, and (b) wind developers be required to provide property owners with this pamphlet prior to entering into a contract. This requirement would be similar to the informational brochure given to property owners neighboring a proposed large livestock facility, as required by Wis. Stats. s. 93.90 and Wis. Adm. Code ch. ATPC 51.

**c. Clarification that lease negotiators must have a Wisconsin real estate license** -- Under Wisconsin law, anyone who negotiates an interest in real estate for another person (including leases) and receives compensation must be licensed in Wisconsin as a real estate broker. See Wis. Stat. §452.01(2)(a). Real estate brokers owe certain fiduciary obligations to the public (e.g., must provide services honestly and fairly, prohibited from giving false information, must disclose all material adverse information) and are regulated by the Wisconsin Department of Regulation and Licensing. See Wis. Stat. § 452.133.

**Recommendation** – To ensure that those who are responsible for negotiating leases on behalf of wind developers are aware that they must be licensed as Wisconsin real estate brokers and have certain fiduciary obligations to the public, we recommend that the proposed rules be modified to specifically state that anyone who negotiates a lease on behalf of wind developer for the purpose of siting a wind turbine must have a real estate license, as set forth under Chapter 452 of the Wisconsin Statutes.

**d. Additional research** – The rule fails to include a requirement for the state to perform additional research on the health impacts of wind energy systems or the impacts of wind energy systems on neighboring property values. This information is important to better understand the true impacts of wind energy systems on human health and property values and whether any future modifications to the rules may be necessary.

**Recommendation** – We recommend that the rules be modified to require the state to gather information and conduct further studies about the true impacts of wind energy systems on neighboring property owners.

**e. Time period for addressing complaints** – The proposed rules provide owners of wind turbines with 30 days to respond to a complaint and up to 45 days to make a good faith effort to resolve complaints related to the wind turbine. See PSC 128.40(2). These time periods could cause property owners to be subject to unreasonable noise, shadow flicker and disruptions in cable and cell phone service for excessive periods of time.

128.40(6)(c)

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**Recommendation -- We recommend that the rules be modified to require owners of wind turbines to resolve all issues related to complaints within 14 days after receiving such complaints.**

**f. Definition of “affected nonparticipating residence”** -- The rule requires wind developers to provide notice of the shadow flicker requirements to owners of “affected nonparticipating residences” but the rule does not define the term “affected.” See PSC 128.15(5). Other sections of the rule specifically define the distance a nonparticipating residence must be away from the wind energy system. (See *e.g.*, PSC 128.14(6)).

**Recommendation -- We recommend that this term be further defined.**

**Kunkel, Mark**

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**From:** Bob [rtwelch14@yahoo.com]  
**Sent:** Monday, December 27, 2010 11:26 AM  
**To:** Kunkel, Mark; Smith, Ryan  
**Cc:** tlaron@wra.org  
**Subject:** Re: Tomorrow's meeting re: PSC wind siting rules

Mark,

Thanks for your comments. With regard to the setback, we are now looking at a setback for turbines of 1800 feet to a property line - unless the property owner has signed an agreement or easement which allows the developer to place the turbine closer.

Affected property should be any parcel within 1/2 mile of the project boundaries.

Bob

Sent via BlackBerry by AT&T

---

**From:** "Kunkel, Mark" <Mark.Kunkel@legis.wisconsin.gov>  
**Date:** Mon, 27 Dec 2010 11:19:49 -0600  
**To:** Smith, Ryan<Ryan.Smith@legis.wisconsin.gov>  
**Cc:** <tlaron@wra.org>; <rtwelch14@yahoo.com>  
**Subject:** Tomorrow's meeting re: PSC wind siting rules

In advance of our meeting tomorrow, please see my responses to the recommendations in the WRA memo dated Oct. 1, 2010.

1. Increase setback to "a more reasonable distance, **such as** to a minimum distance of at least (a) 3.1 times blade height from neighboring property lines), or (b) 1500 feet from a neighboring residence, whichever is greater." (Emphasis added.)

RESPONSE: I can draft such a requirement, but I want to make sure that it is what you want, as the memo recommends a requirement "such as" the above.

2. Allow "property owners ... up to ten days after entering into a contract with a wind energy company to have an attorney review the contract and, if necessary, terminate the contract if the attorney believes that the terms of the contract are not in the best interests of the property owner."

RESPONSE: Can you accomplish your intent by allowing a 10-day period to cancel a contract, without specifying a reason for the cancellation? Or do you want to say that a property owner can cancel within 10 days **only if** the property owner obtains the advice of an attorney **and only if** the attorney advises that the contract is not in the best interests of the property owner? Note that if you include the "best interest" requirement, you might have disputes over what constitutes the best interest of a property owner. For example, a wind system operator might argue that the attorney is wrong about best interest, and a court might have to resolve the issue. In addition, I'm having some trouble with "best interest" as a standard. In any negotiation, doesn't either side ultimately agree to something that is not necessarily in its best interest, that is, each side compromises somewhat? Also, what would prevent a property owner from repeatedly cancelling a contract until the property owner obtained everything the owner wanted, as being in the owner's best interest?

12/29/2010

3. Require "(a) the state produce an informational brochure that describes wind energy systems, state standards (including the waiver provision) and some of the possible impacts on property owners, and (b) wind developers be required to provide property owners with this pamphlet prior to entering into a contract."

RESPONSE: Who should produce the brochure, the PSC, the wind advisory council, or somebody else? How do you want to deal with the expenses of producing, printing, and making the brochure available to interested parties?

4. Require "anyone who negotiates a lease on behalf of wind developer for the purpose of siting a wind turbine must have a real estate license, as set forth under Chapter 452 of the Wisconsin Statutes."

RESPONSE: Section 452.03 already requires a person who acts a broker (i.e., engages in specified activities for compensation) to have a license. It would be redundant to restate that requirement in another statute. Also, under ch. 452, some persons are exempt from a the requirement to have a broker's license, and I assume you don't want to override those exemptions.

5. Require "the state to gather information and conduct further studies about the true impacts of wind energy systems on neighboring property owners."

RESPONSE: The statutes already require a report to the legislature every 5 years, as s. 196.378 (4g) (e) states the following: "The wind siting council shall survey the peer-reviewed scientific research regarding the health impacts of wind energy systems and study state and national regulatory developments regarding the siting of wind energy systems. No later than October 1, 2014, and every 5 years thereafter, the wind siting council shall submit a report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), describing the research and regulatory developments and including any recommendations of the council for legislation that is based on the research and regulatory developments." What do you want to do in addition to the foregoing reports?

6. Require "owners of wind turbines to resolve all issues related to complaints within 14 days after receiving such complaints."

RESPONSE: Who decides whether a complaint has been resolved? What happens if a complaint is not resolved within 14 days? As for the complaint itself, can it be a complaint about anything? And what happens if it is impossible to resolve a complaint? Perhaps you could deal with these issues by requiring that the good faith effort required by the PSC's proposed rules be completed within 14 days after receipt of a complaint.

7. Further define "affected" nonparticipating residence.

RESPONSE: How exactly do you want to define "affected"?

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**Kunkel, Mark**

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**From:** Kunkel, Mark  
**Sent:** Wednesday, December 29, 2010 10:53 AM  
**To:** Kunkel, Mark  
**Subject:** Meeting on Dec. 28

I met with Sen. Cowles, Ryan Smith, Bob Welch, and Tom Larson on Dec. 28 and received the following instructions regarding the items in my email dated Dec. 27:

1. Require setback distances per Bob Welch's response to my email, but apply only to wind energy systems that are not small as defined in the PSC's rules.
2. Require a 10-day cooling off period without the attorney review language.
3. PSC should produce the brochure. Don't address funding.
4. Impose a disclosure requirement on licensing status and make disclosure part of contract or agreement.
5. Add property values to 5-year studies required under current law.
6. Don't draft anything on this item for the time being.
7. Define "affected" as properties within 1/2 mile (per Bob Welch response to my email).

---

Mark D. Kunkel  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-0131



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0819/P1  
MDK:f...

Wlj

*U. noted*

*KOUNJ*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*LPS: Please  
check auto-ref.*

*Gen Cat*

1 AN ACT ...; relating to: requirements for wind energy systems, providing an  
2 exemption from emergency rule procedures and granting rule-making  
3 authority.

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

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

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

6 196.378 (4g) (a) 1g. "Affected owner" means the owner of property located  
7 within one-half mile of property on which a wind energy system is installed or  
8 proposed to be installed.

9 SECTION 3. 196.378 (4g) (a) 5. of the statutes is created to read:



1           196.378 (4g) (a) 5. "Working day" means each day except Saturday, Sunday, or  
2 a legal holiday under s. 995.20.

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

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

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

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

18           196.378 (4g) (bg) 1. Except as provided in subd. 2., the rules promulgated under  
19 par. (b) shall require a minimum setback distance of 1,800 feet for a wind energy  
20 system that has a total installed nameplate capacity of more than 300 kilowatts and  
21 that consists of individual wind turbines that have an installed nameplate capacity  
22 of more than 100 kilowatts.

1           2. The rules promulgated under par. (b) shall allow a setback distance of less  
2 than 1,800 feet for a wind energy system specified in subd. 1, but only if the owners  
3 of all of the following properties agree in writing to the setback distance:

4           a. Properties that adjoin the property on which the wind energy system is  
5 located.

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

8           3. For purposes of this paragraph, setback distance shall be measured as a  
9 straight line from the vertical center line of the wind turbine tower of the wind energy  
10 system to the nearest point on the property line of the property on which the wind  
11 energy system is located.

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

13           196.378 (4g) (br) Any rules promulgated under par. (b) that involve a person  
14 who is affected by a wind energy system shall ensure that such a person includes an  
15 affected owner.

16           **SECTION 7.** 196.378 (4g) (c) 5. of the statutes is created to read:

17           196.378 (4g) (c) 5. Allow an affected owner who has entered into an agreement  
18 with the owner or operator of a wind energy system regarding the installation or use  
19 of the wind energy system to terminate the agreement upon giving notice of the  
20 termination no later than 10 working days after entering into the agreement.

21           **SECTION 8.** 196.378 (4g) (c) 6. of the statutes is created to read:

22           196.378 (4g) (c) 6. Require the owner or operator of a wind energy system to  
23 provide a copy of the brochure specified in par. (dm) to an affected owner prior to  
24 entering into an agreement with the affected owner regarding the installation or use  
25 of the wind energy system.

1           **SECTION 9.** 196.378 (4g) (c) 7. of the statutes is created to read:

2           196.378 (4g) (c) 7. Require any individual who negotiates an agreement with  
3           an affected owner on behalf of the owner or operator of a wind energy system  
4           regarding an interest in real estate related to the installation or use of the wind  
5           energy system to make a written disclosure that the individual is licensed as a real  
6           estate broker under ch. 452 or is exempt from such licensure. The rules shall also  
7           require inclusion of the written disclosure as an addendum to the agreement.

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

9           196.378 (4g) (dm) The commission shall prepare and make available to the  
10          public a brochure that describes wind energy systems, requirements under state law  
11          applicable to wind energy systems, including any provisions of the commission's  
12          rules that allow for waiver of any such requirements, and the possible impacts of  
13          wind energy systems on property owners, including affected owners.

14          **SECTION 11.** 196.378 (4g) (e) of the statutes is amended to read:

15          196.378 (4g) (e) The wind siting council shall survey the peer-reviewed  
16          scientific research regarding the health impacts of wind energy systems and study  
17          state and national regulatory developments regarding the siting of wind energy  
18          systems. The wind siting council shall also study the impacts of wind energy systems  
19          on property values. No later than October 1, 2014, and every 5 years thereafter, the  
20          wind siting council shall submit a report to the chief clerk of each house of the  
21          legislature, for distribution to the appropriate standing committees under s. 13.172  
22          (3), describing the research ~~and~~, regulatory developments, and property value  
23          impacts, and including any recommendations of the council for legislation that is  
24          based on the research ~~and~~, regulatory developments, and property value impacts.

1           **SECTION 12. Nonstatutory provisions.**

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

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

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

1 rules under this subsection as emergency rules is necessary for the preservation of  
2 the public peace, health, safety, or welfare and is not required to provide a finding  
3 of emergency for rules promulgated under this subsection.

4 **SECTION 13. Effective date.**

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

7 (END)

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

LRB-0819/P1dn  
MDK:1:....

Wij

Date

Sen. Cowles:

Please review this draft to make sure it achieves your intent. I will draft the analysis after you've had a chance to review the draft and request changes. In particular, please note the following about the draft:

1. The language regarding wind energy systems in proposed s. 196.378 (4g) (bg) 1, is based on the language in the PSC's definition of "small wind energy system" in the s. PSC 128.01 (20), Wis. Adm. Code.

2. In proposed s. 196.378 (4g) (bg) 2., I wanted to make sure that agreements are obtained from property owners that adjoin the property on which a wind energy system is located, as well as property owners separated from such a property only by a right-of-way, such as a public road. Is my language okay?

3. I delayed the effective date by approximately 3 months, in order to give the PSC time to promulgate rules. You might want to get the PSC's input on whether additional time is necessary. In addition, I assumed that you want the rules to go into effect as quickly as possible, so I also required the PSC to use emergency rule procedures to put into effect temporary rules that are in effect during the period before the permanent rules go into effect. Is that okay?

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-0819/P1dn  
MDK:wlj:md

December 29, 2010

Sen. Cowles:

Please review this draft to make sure it achieves your intent. I will draft the analysis after you've had a chance to review the draft and request changes. In particular, please note the following about the draft:

1. The language regarding wind energy systems in proposed s. 196.378 (4g) (bg) 1. is based on the language in the PSC's definition of "small wind energy system" in s. PSC 128.01 (20), Wis. Adm. Code.
2. In proposed s. 196.378 (4g) (bg) 2., I wanted to make sure that agreements are obtained from property owners that adjoin the property on which a wind energy system is located, as well as property owners separated from such a property only by a right-of-way, such as a public road. Is my language okay?
3. I delayed the effective date by approximately three months in order to give the PSC time to promulgate rules. You might want to get the PSC's input on whether additional time is necessary. In addition, I assumed that you want the rules to go into effect as quickly as possible, so I also required the PSC to use emergency rule procedures to put into effect temporary rules that are in effect during the period before the permanent rules go into effect. Is that okay?

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

**Kunkel, Mark**

**From:** Smith, Ryan  
**Sent:** Monday, January 03, 2011 3:59 PM  
**To:** Kunkel, Mark  
**Subject:** FW: Draft review: LRB 11-0819/P1 Topic: Wind energy system rules  
Hey Mark,

Give me a call when you get a chance so we can talk through these possible changes.

Thanks,

Ryan  
6-0484

---

**From:** Larson, Tom [mailto:tlarson@wra.org]  
**Sent:** Thursday, December 30, 2010 12:32 PM  
**To:** Smith, Ryan; rtwelch14@yahoo.com  
**Subject:** RE: Draft review: LRB 11-0819/P1 Topic: Wind energy system rules

Ryan,

Thank you for the quick turnaround on the drafting. Mark did an outstanding job at capturing the ideas we discussed during our meeting.

Here are some questions and suggested changes for consideration:

*line 13*  
~~Section 4, line 3 -- This section suggests that setbacks are necessary only to protect human health. As a result, it fails to acknowledge that wind turbines, if located too close to neighboring property, could have a negative impact on property values. Accordingly, we recommend the following amendment -- after "shadow flicker," add "and from any negative impact on property values."~~

Section 6 -- I am not sure that this section makes it clear that we want all affected property owners to receive written notices required under the rules. Accordingly, we should clarify by adding ", including written notices," after "wind energy system."

Section 7, line 21 -- add "written" before "notice"

~~Section 12 and 13-- Do we really want to delay the effective date of all these requirements for 4 months after publication? What happens to all the property owners who will be impacted in the interim? I think we should make this time frame much shorter, if possible.~~

Let me know if you have questions. Thanks.

Tom

*— also make setback change discussed with Ryan on*

\*\*\*\*\*  
Thomas D. Larson - Chief Lobbyist and Director of Legal and Public Affairs  
Wisconsin REALTORS Association  
4801 Forest Run Road Suite 201  
Madison, WI 53704-7337  
Phone 608-240-8254  
Cell 608-212-0066

*1 - 4 - 11*

Fax 608-241-2901

1/3/2011



<<<<http://www.wra.org/>>>>

\*\*\*\*\*

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---

**From:** Smith, Ryan [mailto:Ryan.Smith@legis.wisconsin.gov]  
**Sent:** Wednesday, December 29, 2010 2:56 PM  
**To:** rtwelch14@yahoo.com; Larson, Tom  
**Subject:** FW: Draft review: LRB 11-0819/P1 Topic: Wind energy system rules

Can you guys give this a look and let me know what you think?

Thanks,

Ryan

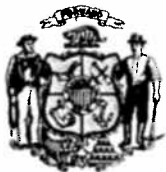
---

**From:** Mundell, Dana  
**Sent:** Wednesday, December 29, 2010 2:48 PM  
**To:** Smith, Ryan  
**Subject:** FW: Draft review: LRB 11-0819/P1 Topic: Wind energy system rules

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**From:** Duerst, Christina  
**Sent:** Wednesday, December 29, 2010 2:45 PM  
**To:** Sen.Cowles  
**Subject:** Draft review: LRB 11-0819/P1 Topic: Wind energy system rules

**Following is the PDF version of draft LRB 11-0819/P1 and drafter's note.**



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0819/P1  
MDK:wlj:md

stays → 1

TODAY

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

RM has  
all  
PUN

INSERT A

Regen

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) 5., 196.378 (4g) (bg),  
 3 196.378 (4g) (br), 196.378 (4g) (c) 5., 196.378 (4g) (c) 6., 196.378 (4g) (c) 7. and  
 4 196.378 (4g) (dm) of the statutes; **relating to:** requirements for wind energy  
 5 systems, providing an exemption from emergency rule procedures, and  
 6 granting rule-making authority.

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

~~This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.~~

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

- 7 **SECTION 1.** 196.378 (4g) (a) 1. of the statutes is renumbered 196.378 (4g) (a) 1r.
- 8 **SECTION 2.** 196.378 (4g) (a) 1g. of the statutes is created to read:

INSERT 2 - 6

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

INSERT 2-3

4 SECTION 3. 196.378 (4g) (a) 5. of the statutes is created to read:

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

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

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

21 SECTION 5. 196.378 (4g) (bg) of the statutes is created to read:

22 196.378 (4g) (bg) 1. Except as provided in subd. 2., the rules promulgated under  
23 par. (b) shall require a minimum setback distance of 1,800 feet for a wind energy  
24 system that has a total installed nameplate capacity of more than 300 kilowatts and

1 that consists of individual wind turbines that have an installed nameplate capacity  
2 of more than 100 kilowatts.

3 2. The rules promulgated under par. (b) shall allow a setback distance of less  
4 than 1,800 feet for a wind energy system specified in subd. 1., but only if the owners  
5 of all of the following properties agree in writing to the setback distance:

6 a. Properties that adjoin the property on which the wind energy system is  
7 located.

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

10 3. For purposes of this paragraph, setback distance shall be measured as a  
11 straight line from the vertical center line of the wind turbine tower of the wind energy  
12 system to the nearest point on the property line of the property on which the wind  
13 energy system is located.

14 **SECTION 6.** 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 shall ensure that such a person includes an  
17 affected owner.

INSERT 3-16 ✓

18 **SECTION 7.** 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 <sup>written</sup> notice of the  
22 termination no later than 10 working days after entering into the agreement.

23 **SECTION 8.** 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

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

3 **SECTION 9.** 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 10.** 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 11.** 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 12. Nonstatutory provisions.**

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

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

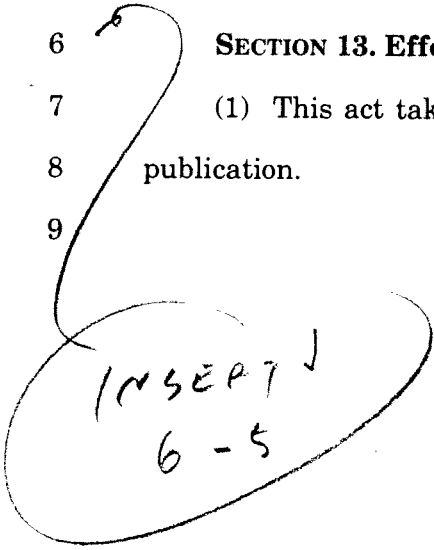
21 (3) Using the procedure under section 227.24 of the statutes, the public service  
22 commission shall promulgate rules required under section 196.378 (4g) (c) 5., 6., and  
23 7. of the statutes, as created by this act, for the period before the effective date of the  
24 rules submitted under subsection (1), 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

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 13. Effective date.**

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

9 (END)



INSERT ↓  
6-5

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0819/1ins  
MDK:.....

1

**INSERT A:**

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 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.

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



large wind energy

WAA/MS

of more than 300 kilowatts and that consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. In addition, the bill defines the owner of ~~each~~ a 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.

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 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 PSC.

Current law ~~also~~ <sup>(5)</sup> requires the wind siting council to submit a report to the legislature every 5 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.

**INSERT 2-3:**

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

196.378 (4g) (a) 2g. "Large wind energy system" means 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.

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

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



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

**INSERT 3-16:**

15 , including rules requiring written notice,

**INSERT 6-5:**

17 **SECTION 4 Initial applicability.**

18           (1) The treatment of section 196.378 (4g) (am) of the statutes first applies to  
19 large wind energy systems for which design or construction commences on the  
20 effective date of this subsection.



State of Wisconsin  
LEGISLATIVE REFERENCE BUREAU

**RESEARCH APPENDIX -**  
**PLEASE DO NOT REMOVE FROM DRAFTING FILE**

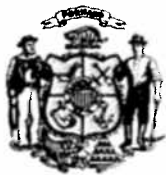
Date Transfer Requested: 01/07/2011 (Per: CMH)

- A - The 2011 drafting file for LRB-0748
- B - The 2011 drafting file for LRB-0819
- C - The 2011 drafting file for LRB-0820

**☛ Compile Draft – Appendix \_\_\_**

has been copied/added to the drafting file for

**2011 LRB-0929**



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0819/1  
MDK:wlj:rs

## 2011 BILL

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

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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.

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.

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

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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 PSC.

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,

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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:



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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 s. 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

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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

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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.

**SECTION 14. Nonstatutory provisions.**

3  
4 (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, for  
13 the period before the effective date of the rules submitted under subsection (1), but  
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), 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

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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.

**SECTION 15. Initial applicability.**

6  
7 (1) The treatment of section 196.378 (4g) (am) of the statutes first applies to  
8 large wind energy systems for which design or construction commences on the  
9 effective date of this subsection.

**SECTION 16. Effective date.**

10  
11 (1) This act takes effect on the first day of the 4th month beginning after  
12 publication.

13 (END)