

1 SB459
2 167101-2
3 By Senator Livingston (N & P)
4 RFD: Local Legislation
5 First Read: 07-MAY-15

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to DeKalb County; to require a person to
14 obtain a permit from the applicable local governing body prior
15 to installing or operating a wind energy conversion system; to
16 require compliance with applicable zoning; to provide for an
17 application process for a permit; to require the certification
18 of systems by a licensed engineer with certain experience; to
19 provide for regulations for the design, construction, and
20 operation of wind energy conversion systems; and to provide
21 for the removal of abandoned systems.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. This act shall only apply in DeKalb
24 County.

25 Section 2. For the purposes of this act, the
26 following words shall have the following meanings:

1 (1) DECIBEL. The unit of measure for sound pressure
2 using dBA scale.

3 (2) FINANCIAL ASSURANCE. Any assurance provided in
4 accordance with acceptable financial assurance instruments,
5 which include an escrow account, performance bond, or cash.

6 (3) LICENSED ENGINEER. A professional engineer
7 licensed by the State of Alabama.

8 (4) LOCAL GOVERNING BODY OF DeKalb COUNTY. The
9 DeKalb County Commission or a city or town council of a
10 municipality or town located in DeKalb County within whose
11 limits a wind energy conversion system is proposed to be
12 constructed, maintained, or operated.

13 (5) MANUAL AND AUTOMATIC CONTROLS. Devices that give
14 protection to power grids and limit rotation of the blades to
15 below the designed limits of the conversion system.

16 (6) WIND ENERGY CONVERSION SYSTEM or SYSTEM. Any
17 device such as a wind charger, windmill, or wind turbine that
18 is designed to convert wind energy to a form of usable energy
19 for the sole purpose of resale.

20 Section 3. (a) It shall be unlawful to construct,
21 erect, install, alter, operate, or locate a wind energy
22 conversion system in DeKalb County without first obtaining a
23 permit from a local governing body of DeKalb County.

24 (b) The property upon which the wind energy
25 conversion system is proposed to be located shall be
26 appropriately zoned by the respective municipal council or
27 county commission, if applicable.

1 (c) In the event a municipality elects to regulate
2 wind energy conversion systems within the corporate limits of
3 the municipality, the regulations of the municipality shall
4 govern, provided that the regulations meet minimum standards
5 established by the governing body of the county.

6 Section 4. (a) Each local governing body of DeKalb
7 County may adopt rules, laws, or ordinances governing the
8 construction, installation, and operation of a wind energy
9 conversion system, including the permit application process as
10 provided in Section 3. At a minimum, the rules, laws, or
11 ordinances shall address the following:

12 (1) Submission of information in an application form
13 requiring, at a minimum, an applicant to submit all of the
14 following information:

15 a. The applicant's and property owner's name,
16 address, and email address or telephone number.

17 b. A plot plan showing the location of the
18 conversion system pole or tower, guy lines where required, guy
19 line anchor bases, and the distance of each from all property
20 lines.

21 c. A visual simulation of the proposed wind energy
22 conversion system.

23 d. A reclamation plan that stipulates how the site
24 will be restored to its natural state after it ceases to be
25 operational.

26 (2) Procedures for notification to the public of the
27 application.

1 (3) Conditions in the permit for all of the
2 following:

3 a. Turbine types and designs.

4 b. Site layout and construction.

5 c. Operation and maintenance of the system,
6 including the requirement to restore, to the extent possible,
7 the area affected by the construction of the system to the
8 natural conditions that existed immediately before
9 construction of the system.

10 d. Revocation and suspension of a permit when
11 violations of the permit or other requirements occur.

12 e. Payment of fees for the necessary and reasonable
13 costs to the local governing body of DeKalb County, including
14 a fee of one thousand dollars (\$1,000) for each system, and
15 all costs to the local governing body of DeKalb County to
16 review the application, including any engineering fees,
17 inspection fees, and attorney fees incurred for the duration
18 of the permit.

19 Section 5. (a) An applicant shall maintain financial
20 assurance in an amount equal to the costs associated with the
21 reclamation plan and the removal of abandoned or unused wind
22 energy conversion systems.

23 (b) In addition to the financial assurance required
24 in subsection (a), an applicant shall maintain financial
25 assurance in the amount of one million dollars (\$1,000,000) to
26 cover any liability for damages to adjoining property and any
27 other damages under law. The financial assurance mechanism

1 shall remain in full force and effect during the construction
2 phase of any and all systems covered under the permit and
3 shall be maintained for the life of the system.

4 Section 6. (a) The safety of the design of all
5 conversion system towers shall be certified by a licensed
6 engineer with prior experience with wind energy conversion
7 systems. The standard for certification shall be good
8 engineering practices, including the requirement that the
9 systems comply with all building and electrical codes in this
10 state.

11 (b) A wind energy conversion system shall be
12 equipped with manual and automatic overspeed controls to limit
13 rotation of blades to a speed below the designed limits of the
14 conversion system. A licensed engineer shall certify that the
15 rotor and overspeed control design and fabrication conforms
16 with good engineering practices. Any changes or alterations
17 from the certified design shall not be permitted unless
18 accompanied by a licensed engineer's statement of
19 certification.

20 (c) All electrical compartments, storage facilities,
21 wire conduit and interconnections with utility companies shall
22 conform to federal, state, and local law.

23 Nothing in this act shall serve to alter, affect,
24 limit, or avoid other state laws and regulations that would
25 otherwise be applicable to the construction or operation of a
26 wind energy conversion system, to sales therefrom, or the sale

1 of a system, including, but not limited to, Title 37, Code of
2 Alabama 1975.

3 (d) A visible warning sign of "High Voltage" shall
4 be placed at the base of all systems. The letters of the sign
5 shall be a minimum of six inches in height.

6 (e) A tower or pole shall be unclimbable by design
7 or protected by any of the following anti-climbing devices:

8 (1) Fences with locking portals at least six feet
9 high.

10 (2) Anti-climbing devices 12 feet from the base of
11 the pole.

12 (3) Anchor points for guy wires supporting a tower
13 that are enclosed by a six-foot fence or located within the
14 confines of a yard that is completely surrounded by a fence.

15 (f) The compatibility of the tower structure with
16 the rotors and other components of the wind energy conversion
17 system shall be certified by a licensed engineer.

18 (g) It shall be the responsibility of the property
19 owner or the applicant to contact all federal, state, and
20 local regulating agencies regarding additional permits
21 necessary for the installation of wind energy conversion
22 systems, to include, but not be limited to, the Federal
23 Communications Commission, Federal Aviation Agency, and the
24 Alabama Department of Transportation.

25 (h) A licensed engineer shall certify that the
26 construction and installation of the wind energy conversion

1 system meets or exceeds the manufacturer's construction and
2 installation standards.

3 (i) The noise levels measured at the property line
4 of the property on which the system has been installed shall
5 not exceed 40 decibels.

6 (j) A wind energy conversion system may not encroach
7 upon adjacent properties as determined by a measure of 2,500
8 feet from the center-mass base of the system to the nearest
9 edge of the adjacent property.

10 (k) In addition to the requirements of subsection
11 (j), a wind energy conversion system shall also satisfy a
12 minimum setback for the tower that is no closer laterally than
13 one and one-half times the height of the tower to an overhead
14 electrical power line, excluding secondary electrical service
15 lines or service drops, and a minimum setback from underground
16 electrical distribution lines at least one-half times the
17 height of the tower. Any exception to the requirements of this
18 subsection shall be obtained from the owner or operator of the
19 electrical towers, lines, poles, or other facilities involved.

20 Section 7. A wind energy conversion system or tower
21 that does not operate continuously for 365 consecutive days
22 may be deemed abandoned and shall be removed by the operator
23 of the system. The permit holder may request that the local
24 governing body of DeKalb County delay the designation of
25 abandonment by submitting satisfactory proof that the system
26 has not been abandoned and a date when the system will become

1 operable. The decision to delay a designation of abandonment
2 shall be at the sole discretion of the local governing body.

3 Section 8. This act shall not interfere with,
4 abrogate, or annul any covenant or other agreement between any
5 parties. However, if this act imposes a greater restriction
6 upon the use of a wind energy conversion system than is
7 imposed by another law, rule, regulation, covenant, or
8 agreement, the more restrictive provision shall govern the
9 wind energy conversion system.

10 Section 9. To the extent that any applicant or owner
11 of a wind energy conversion system undertakes business
12 activities that cause it to be a utility or a commission
13 non-jurisdictional electric supplier, the applicant or owner
14 shall be subject to the jurisdiction and regulation of the
15 Alabama Public Service Commission in the same manner and to
16 the same extent as any other utility or commission
17 non-jurisdictional electric supplier.

18 Section 10. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.