

1 SB402
2 154848-3
3 By Senator Williams (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 25-FEB-14

1 SB402

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4 With Notice and Proof

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6 ENROLLED, An Act,

7 Relating to Cherokee County; to require a person to
8 obtain a permit from the applicable local governing body prior
9 to installing or operating a wind energy conversion system; to
10 require compliance with applicable zoning; to provide for an
11 application process for a permit; to require the certification
12 of systems by a licensed engineer with certain experience; to
13 provide for regulations for the design, construction, and
14 operation of wind energy conversion systems; and to provide
15 for the removal of abandoned systems.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. This act shall only apply in Cherokee
18 County.

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

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

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

1 (3) LICENSED ENGINEER. A professional engineer
2 licensed by the State of Alabama.

3 (4) LOCAL GOVERNING BODY OF CHEROKEE COUNTY. The
4 Cherokee County Commission or a city or town council of a
5 municipality or town located in Cherokee County within whose
6 limits a wind energy conversion system is proposed to be
7 constructed, maintained, or operated.

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

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

15 Section 3. (a) It shall be unlawful to construct,
16 erect, install, alter, operate, or locate a wind energy
17 conversion system in Cherokee County without first obtaining a
18 permit from a local governing body of Cherokee County.

19 (b) The property upon which the wind energy
20 conversion system is proposed to be located shall be
21 appropriately zoned by the respective municipal council or
22 county commission, if applicable.

23 (c) In the event a municipality elects to regulate
24 wind energy conversion systems within the corporate limits of

1 the municipality, the regulations of the municipality shall
2 govern.

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

9 (1) Submission of information in an application form
10 requiring, at a minimum, an applicant to submit all of the
11 following information:

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

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

18 c. A visual simulation of the proposed wind energy
19 conversion system.

20 d. A reclamation plan that stipulates how the site
21 will be restored to its natural state after it ceases to be
22 operational.

23 (2) Procedures for notification to the public of the
24 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 Cherokee County,
14 including a fee of one thousand dollars (\$1,000) for each
15 system, and all costs to the local governing body of Cherokee
16 County to review the application, including any engineering
17 fees, inspection fees, and attorney fees incurred for the
18 duration 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

1 cover any liability for damages to adjoining property and any
2 other damages under law. The financial assurance mechanism
3 shall remain in full force and effect during the construction
4 phase of any and all systems covered under the permit and
5 shall be maintained for the life of the system.

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

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

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

1 Nothing in this act shall serve to alter, affect,
2 limit, or avoid other state laws and regulations that would
3 otherwise be applicable to the construction or operation of a
4 wind energy conversion system, to sales therefrom, or the sale
5 of a system, including, but not limited to, Title 37, Code of
6 Alabama 1975.

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

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

12 (1) Fences with locking portals at least six feet
13 high.

14 (2) Anti-climbing devices 12 feet from the base of
15 the pole.

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

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

22 (g) It shall be the responsibility of the property
23 owner or the applicant to contact all federal, state, and
24 local regulating agencies regarding additional permits
25 necessary for the installation of wind energy conversion

1 systems, to include, but not be limited to, the Federal
2 Communications Commission, Federal Aviation Agency, and the
3 Alabama Department of Transportation.

4 (h) A licensed engineer shall certify that the
5 construction and installation of the wind energy conversion
6 system meets or exceeds the manufacturer's construction and
7 installation standards.

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

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

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

1 Section 7. A wind energy conversion system or tower
2 that does not operate continuously for 365 consecutive days
3 may be deemed abandoned and shall be removed by the operator
4 of the system. The permit holder may request that the local
5 governing body of Cherokee County delay the designation of
6 abandonment by submitting satisfactory proof that the system
7 has not been abandoned and a date when the system will become
8 operable. The decision to delay a designation of abandonment
9 shall be at the sole discretion of the local governing body.

10 Section 8. This act shall not interfere with,
11 abrogate, or annul any covenant or other agreement between any
12 parties. However, if this act imposes a greater restriction
13 upon the use of a wind energy conversion system than is
14 imposed by another law, rule, regulation, covenant, or
15 agreement, the more restrictive provision shall govern the
16 wind energy conversion system.

17 Section 9. To the extent that any applicant or owner
18 of a wind energy conversion system undertakes business
19 activities that cause it to be a utility or a commission
20 non-jurisdictional electric supplier, the applicant or owner
21 shall be subject to the jurisdiction and regulation of the
22 Alabama Public Service Commission in the same manner and to
23 the same extent as any other utility or commission
24 non-jurisdictional electric supplier.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB402

Senate 27-FEB-14

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Amended and passed 13-MAR-14

Senate concurred in House amendment 18-MAR-14

By: Senator Williams