SB12

158986-8

By Senator Williams

RFD: Energy and Natural Resources

First Read: 14-JAN-14

PFD: 07/19/2013

SB12

ENGROSSED

A BILL

TO BE ENTITLED

AN ACT

Relating to wind energy conversion systems, to provide definitions; to require a person to obtain permits from the Public Service Commission prior to installing or operating a system; to provide for an application process for a permit; to require the certification of systems by a licensed engineer with certain experience; to provide for regulations for the design, construction, and operation of wind energy conversion systems; to provide immunity to certain utilities and electric suppliers under certain conditions; to provide for the removal of abandoned systems; and to provide rulemaking authority to the Public Service Commission.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alabama Wind Energy Conversion Systems Act of 2014.

Section 2. It is the intent of the Legislature to provide for the effective and efficient use of wind energy conversion systems with the minimum regulation on the

location, design, and installation of conversion systems while preserving the public health, safety, and welfare of neighboring property owners or occupants.

Section 3. For the purposes of this act, the following words shall have the following meanings:

(1) AIRPORT. Any existing or planned area of land, water, or manmade construction that is used, made available, planned, or designed for the landing and departure of aircraft.

(2) AIRPORT HAZARD. Any structure, equipment, object of natural growth, or use of land that constitutes an obstruction to air navigation that does one or more of the following:

a. Exceeds the obstruction standards set forth in 14 Code of Federal Regulations Part 77, and has a physical or electromagnetic effect on air navigation facilities.

b. Requires an increase to a published instrument flight procedure altitude or minimum flight altitude.

c. Reduces usable runway length.

(3) COMMISSION. The Public Service Commission.

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

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

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

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

(8) METEOROLOGICAL EVALUATION TOWER. An anchored structure, including all guy wires and accessory facilities, on which one or more meteorological instruments are mounted for the purpose of meteorological data collection.

(9) TURBINE TOWER. Any tower designed for the generation of electrical power from wind power, including, without limitation, support structures, footings or foundations, braces, and directly related equipment and structures.

(10) WIND ENERGY CONVERSION SYSTEM, CONVERSION SYSTEM, or SYSTEM. Any device such as a wind charger, windmill, or wind turbine that is designed to convert wind energy to a form of usable energy for the sole purpose of resale. The term does not include any device described in the preceding sentence that is wholly owned by the consumer of the electric power where the consumer uses at least 90 percent of all of the power generated by the device on premises that are owned and operated exclusively by the consumer.

Section 4. It shall be unlawful to construct, erect, install, alter, operate, or locate a wind energy conversion system in this state without first obtaining permits from the Public Service Commission pursuant to this act.

Section 5. (a) Within 180 days from the passage of this act and approval by the Governor or its otherwise becoming law, the Public Service Commission shall adopt rules governing the construction, installation, and operation of a wind energy conversion system, including the permit application process. At a minimum, the rules shall address the following:

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

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

b. The address or footprint of the property where the system will be located.

c. A plot plan showing the location of the conversion system or turbine tower, guy lines where required, guy line anchor bases, and the distance of each from all property lines.

d. A visual simulation or artist rendering of the proposed conversion system.

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

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

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

a. Turbine types and designs.

b. Site layout and construction which accommodates the required setback provisions provided in this act.

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

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

e. Payment of fees for the necessary and reasonable costs of the commission, including a fee of one thousand dollars ($1,000) for each system and all costs of the commission to review the application, including any engineering fees, inspection fees, and attorney fees incurred for the duration of the permit.

(b) The commission shall keep an accurate accounting of all costs associated with the application and review of the application.

(c) Fees submitted pursuant to paragraph (a)(3)e., which are in excess of the referenced costs shall be returned to the owner of the system within 180 days of the issuance of a permit.

(d) If the commission fails to reject, deny, or approve a permit application required by this act within 120 days of the filing of the application, the application shall be deemed approved.

Section 6. (a)(1) An applicant shall maintain financial assurance in an amount equal to the costs associated with the reclamation plan and the removal of abandoned or unused wind energy conversion systems and the repair of any public or private infrastructure that may have been altered or damaged during construction, operation, or reclamation in an amount to be determined by the commission.

(2) The commission may not require an applicant to maintain financial assurance beyond the amount that would have ordinarily been required if the applicant has provided financial assurance to a local governmental entity for the wind energy conversion systems that are the subject of the application.

(b) In addition to the financial assurance required in subsection (a), an applicant shall maintain a liability insurance policy in the amount of one million dollars ($1,000,000) to cover any liability for damages to adjoining property, public or private infrastructure, and any other damages under law. The liability insurance policy shall remain in full force and effect during the construction phase of any and all systems covered under the permit and shall be maintained for the life of the system.

Section 7. (a) In accordance with the permit review process pursuant to Section 5, the safety of the design of all conversion system towers shall be certified by a licensed engineer with prior experience with wind energy conversion systems. The standard for certification shall be good

engineering practices, including the requirement that the systems comply with all building and electrical codes in this state.

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

(c)(1) All electrical compartments, storage facilities, wire conduit and interconnections with utility companies shall conform to federal, state, and local law and shall be subject to any applicable tariffs. Nothing in this act shall serve to alter, affect, limit, or avoid other state laws and regulations that would otherwise be applicable to the construction or operation of a wind energy conversion system, to sales therefrom, or the sale of a system, including, but not limited to, Title 37, Code of Alabama 1975.

(2) A utility may adopt safety, power quality, reliability, and interconnection requirements for a wind energy conversion system which are necessary to protect public safety, power quality, and system reliability.

(3) An operator of a wind energy conversion system, at all times, shall be responsible for the proper

installation, maintenance, and operation of the system and all related wiring, equipment, and apparatus.

(4) A utility does not have an obligation to install, maintain, operate, or inspect the electrical facilities of a wind energy conversion system, and the utility is not liable to any person, group of persons, or legal entity for damage to or loss of property, injury, or death that arises in any way from the improper installation, maintenance, or operation of the wind energy conversion system's electrical facilities or the failure of the operator of the system to satisfy all applicable interconnection requirements.

(d) A turbine tower shall be designed to be climbable from the interior of the turbine tower only.

(e) A meteorological evaluation tower shall be unclimbable by design. A meteorological evaluation tower that is 50 feet in height above the ground or higher, located outside the corporate boundaries of any city, and whose appearance is not otherwise mandated by state or federal law shall be marked, painted, flagged, or otherwise constructed to be recognizable in clean air during daylight hours. A meteorological evaluation tower that was erected prior to September 1, 2014, shall be marked as required by this section within one year after the effective date of this act. A meteorological evaluation tower that is erected on or after September 1, 2014, shall be marked as required by this section at the time it is erected. Marking required under this section includes marking the meteorological evaluation tower, guy

wires, and accessory facilities and shall satisfy all of the following:

(1) The top one-third of the meteorological evaluation tower shall be painted in equal, alternating bands of aviation orange and white, beginning with orange at the top of the tower and ending with orange at the bottom of the marked portion of the tower.

(2) Two marker balls shall be attached to and evenly spaced on each of the outside guy wires.

(3) One or more seven-foot safety sleeves shall be placed at each anchor point and shall extend from the anchor point along each guy wire attached to the anchor point.

(f) The governing board of a commission non-jurisdictional electric supplier, as defined by Section 37-4-140, Code of Alabama 1975, may adopt any safety, power quality, reliability, and interconnection requirements for a wind energy conversion system which it determines are necessary to protect public safety, ensure power quality, and enhance system reliability.

(g) A wind energy conversion system owner, at all times, shall be responsible for the proper installation, maintenance, and operation of the wind energy conversion system and all related wiring, equipment, and apparatus. A commission non-jurisdictional electric supplier does not have an obligation to install, maintain, operate, or inspect any electrical facilities owned or operated by the customer and is not liable to any person, group of persons, or legal entity

for damage to or loss of property, injury, or death that arises in any way from the improper installation, maintenance, or operation of the customer's electrical facilities or the failure of the customer to satisfy all applicable interconnection requirements.

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

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

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

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

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

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

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

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

(m) The noise levels directly attributable to the operation of the system measured at the property line of the property on which the system has been installed shall not exceed an average of 50 decibels.

(n)(1) A wind energy conversion system may not encroach upon occupied residential or commercial structures or public use areas as determined by a measure of five times the height of the turbine tower as measured laterally from the center-mass base of the system to the nearest edge of the residential or commercial structures or public use areas.

(2) A wind energy conversion system may not encroach upon a public use road as determined by a measure of 1.5 times the sum of the turbine tower and the measure of one turbine blade as measured laterally from the center-mass base of the system to the nearest edge of the public use road.

(3) Any exception to the requirements governing encroachments of residential or commercial structures, roads, or public use areas shall first require the written consent of the individual or legal entity that owns any affected residential or commercial property, road, or public use area in fee simple. The written consent shall be obtained prior to the consideration of an application by the commission.

(4) In addition to the requirements of subdivisions (1) and (2), a wind energy conversion system shall also satisfy a minimum setback for the tower that is no closer laterally than one and one-half times the height of the tower to an overhead electrical power line, excluding secondary electrical service lines or service drops, and a minimum setback from underground electrical distribution lines at least one-half times the height of the tower. Any exception to the requirements of this subdivision shall be obtained from the owner or operator of the electrical towers, lines, poles, or other facilities involved.

Section 8. Prior to approval by the commission, the property owner or applicant shall obtain written approval from the Alabama Department of Transportation stating that the proposed wind energy conversion system does not constitute an airport hazard.

Section 9. A wind energy conversion system or meteorological evaluation tower that does not operate continuously for 365 consecutive days may be deemed abandoned and shall be removed by the operator of the system. The permit holder may request that the commission delay the designation of abandonment by submitting satisfactory proof to the commission that the system has not been abandoned and a date when the system will become operable. The decision to delay a designation of abandonment shall be at the sole discretion of the commission.

Section 10. An applicant or permit holder may appeal any final action or order of the commission in the exercise of the jurisdiction, power, and authority conferred upon it by this act as provided in Division 3, Article 2, Chapter 1, Title 37, Code of Alabama 1975.

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

Section 12. (a) This act shall not interfere with, abrogate, or annul any covenant or other agreement between any parties.

(b) If this act imposes a greater restriction upon the use of a wind energy conversion system than is imposed by another law, rule, regulation, covenant, or agreement, the more restrictive provision of this act shall govern the wind energy conversion system. Upon issuance of a permit by the commission pursuant to this act, the owner of the system shall not be required to obtain another permit from any local governmental entity for the same purpose.

Section 13. Nothing in this act shall be construed to repeal, modify, or supersede Act 2013-440, 2013 Regular

Session, now appearing as Section 45-2-262, Code of Alabama 1975, relating to Baldwin County.

Section 14. This act shall not apply to Cleburne County.

Section 15. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

Senate

Read for the first time and referred to the Senate committee on Energy and Natural Resources	14-JAN-14
Read for the second time and placed on the calendar with 1 substitute and.....	06-FEB-14
Read for the third time and passed as amended	27-FEB-14

Yeas 24
Nays 6

Patrick Harris
Secretary