SB402

154848-3

By Senator Williams (N & P)

RFD: Local Legislation No. 1

First Read: 25-FEB-14
SB402

With Notice and Proof

ENROLLED, An Act,

Relating to Cherokee County; to require a person to obtain a permit from the applicable local governing body prior to installing or operating a wind energy conversion system; to require compliance with applicable zoning; 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; and to provide for the removal of abandoned systems.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

(2) FINANCIAL ASSURANCE. Any assurance provided in accordance with acceptable financial assurance instruments, which include an escrow account, performance bond, or cash.
(3) LICENSED ENGINEER. A professional engineer licensed by the State of Alabama.

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

(5) 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.

(6) WIND ENERGY 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.

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

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

(c) In the event a municipality elects to regulate wind energy conversion systems within the corporate limits of
the municipality, the regulations of the municipality shall govern.

Section 4. (a) Each local governing body of Cherokee County shall adopt rules, laws, or ordinances governing the construction, installation, and operation of a wind energy conversion system, including the permit application process as provided in Section 3. At a minimum, the rules, laws, or ordinances 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. A plot plan showing the location of the conversion system pole or tower, guy lines where required, guy line anchor bases, and the distance of each from all property lines.

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

d. 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.

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 to the local governing body of Cherokee County, including a fee of one thousand dollars ($1,000) for each system, and all costs to the local governing body of Cherokee County to review the application, including any engineering fees, inspection fees, and attorney fees incurred for the duration of the permit.

Section 5. (a) 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.

(b) In addition to the financial assurance required in subsection (a), an applicant shall maintain financial assurance in the amount of one million dollars ($1,000,000) to
cover any liability for damages to adjoining property and any other damages under law. The financial assurance mechanism 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 6. (a) 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) All electrical compartments, storage facilities, wire conduit and interconnections with utility companies shall conform to federal, state, and local law.
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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

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

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

(k) In addition to the requirements of subsection (j), 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 subsection shall be obtained from the owner or operator of the electrical towers, lines, poles, or other facilities involved.
Section 7. A wind energy conversion system or 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 local governing body of Cherokee County delay the designation of abandonment by submitting satisfactory proof 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 local governing body.

Section 8. This act shall not interfere with, abrogate, or annul any covenant or other agreement between any parties. However, 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 shall govern the wind energy conversion system.

Section 9. 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 10. 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.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

Patrick Harris
Secretary

House of Representatives
Amended and passed 13-MAR-14

Senate concurred in House amendment 18-MAR-14

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