

1 SB80
2 208902-1
3 By Senator Butler
4 RFD: Veterans and Military Affairs
5 First Read: 02-FEB-21
6 PFD: 01/27/2021

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8 SYNOPSIS: Under existing military land use planning
9 law, a county or a municipality whose territorial
10 boundaries are within two miles of any portion of a
11 military installation is required to give notice to
12 the military installation and an opportunity for
13 review of any local impact. The existing law does
14 not address tall structures and wind energy
15 facilities that could have an adverse impact on
16 military aviation and other operations.

17 This bill would revise these notification
18 and review requirements to require a county or
19 municipality to give an affected military
20 installation notice and an opportunity for review
21 of any proposed tall structure or wind energy
22 facility for potential impacts prior to approving
23 the tall structure or wind energy facility.

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25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Sections 11-106-3 and 11-106-4, Code of
3 Alabama 1975, and to add Section 11-106-6 to the Code of
4 Alabama 1975, relating to military land use planning; to
5 further define terms; to require certain reviews to be
6 conducted for any tall structure or wind energy facility
7 regardless of distance from a military installation; to
8 require adequate notice to the military installation of
9 applications to construct tall structures and wind energy
10 facilities to ensure the military installation is able to
11 resolve adverse impacts prior to a local government approving
12 a tall structure or wind energy facility.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 11-106-3 and 11-106-4, Code of
15 Alabama 1975, are amended to read as follows:

16 "§11-106-3.

17 "As used in this chapter, the following words shall
18 have the following meanings:

19 "(1) ADVERSE IMPACT ON MILITARY OPERATIONS AND
20 READINESS. The same meaning as provided for that term in
21 Section 183a(h) of Title 10 of the United States Code, and
22 consistent with Section 3.1.a.4 of DoD Instruction 4180.02.

23 "(2) DEPARTMENT OF DEFENSE SITING CLEARINGHOUSE. The
24 Military Aviation and Installation Assurance Siting
25 Clearinghouse of the Department of Defense, as established by
26 Section 183a of Title 10 of the United States Code.

1 "~~(1)~~(3) LOCAL GOVERNMENT. Any county or
2 municipality.

3 "~~(2)~~(4) LOCAL IMPACT ISSUE. Any adoption or
4 amendment by a local government of a proposed zoning plan,
5 comprehensive master plan, or land development regulations
6 that, if approved, may or will significantly affect any area
7 or airspace that is within two miles of a military
8 installation.

9 "~~(3)~~(5) MILITARY INSTALLATION. Any base, camp, post,
10 station, airfield, yard, center, or any other land area under
11 the jurisdiction of the United States Department of Defense,
12 including any leased facility, the total acreage of which
13 installation is in excess of 500 acres. The term military
14 installation does not include any facility used primarily for
15 civil works, river projects, or flood control projects.

16 "(6) NOTICE OF PRESUMED RISK. The notice provided by
17 the Department of Defense Siting Clearinghouse to an owner of
18 an energy facility pursuant to Section 183a(c)(2) of Title 10
19 of the United States Code.

20 "(7) TALL STRUCTURE. Any building, structure, or
21 unit within a multiunit building with a vertical height of
22 more than 200 feet measured from the top of the foundation of
23 the building, structure, or unit to the uppermost point of the
24 building, structure, or unit. The term does not include: wind
25 energy facilities, electrical transmission towers, slender
26 structures, or minor vertical projections of a parent
27 building, including, but not limited to, chimneys, flagpoles,

1 flues, spires, steeples, belfries, cupolas, antennas, poles,
2 lines, or wires, except that no such structure or vertical
3 projection may project more than 20 vertical feet above the
4 parent building.

5 "(8) WIND ENERGY FACILITY. Facilities for the
6 generation of electricity by wind power.

7 "§11-106-4.

8 "(a) Each local government whose territorial
9 boundaries are within two miles of all or any portion of a
10 military installation shall provide written notice to the
11 military installation's commanding officer and the flying
12 mission commanding officer if applicable, or their designees,
13 of any local impact issue.

14 "(b) Prior to approving any proposed tall structure
15 or wind energy facility, the local government shall follow the
16 requirements of Section 11-106-6. The requirements of Section
17 11-106-6 shall apply regardless of the distance of the tall
18 structure or wind energy facility from any military
19 installation and regardless of whether the local government's
20 territorial boundaries are within two miles of all or any
21 portion of a military installation."

22 Section 2. Section 11-106-6 is added to the Code of
23 Alabama 1975, to read as follows:

24 §11-106-6.

25 (a) The construction or operation of any tall
26 structure or wind energy facility in this state shall not
27 encroach upon or otherwise have an adverse impact on military

1 operations and readiness of any military installation or
2 branch of military.

3 (b) A local government, prior to approving an
4 application for the construction of a tall structure shall
5 require the applicant to file an application with the Federal
6 Aviation Administration under Section 44718 of Title 49 of the
7 United States Code, and provide the local government either of
8 the following:

9 (1) A written "Determination of No Hazard to Air
10 Navigation" issued by the Federal Aviation Administration
11 pursuant to Subpart D of Part 77 of Title 14 of the Code of
12 Federal Regulations.

13 (2) In coordination with any affected military
14 installation and the state Military Department, a written
15 determination resolving any adverse impact to military
16 operations identified during the aeronautics study conducted
17 pursuant to Subpart D of Part 77 of Title 14 of the Code of
18 Federal Regulations.

19 (3) The tall structure shall be in compliance with
20 subsection (a) even if the local government either does not
21 require an application prior to the construction of a tall
22 structure or does not require the application outlined in this
23 subsection if the applicant has otherwise complied with the
24 requirements of subdivision (1) or (2).

25 (c) A local government considering an application
26 for the construction of a wind energy facility, shall require

1 the applicant provide the following at least 270 days prior to
2 planned construction:

3 (1) Documentation that the owner or applicant has
4 transmitted notice relating to the construction of the wind
5 energy facility to the Department of Defense Siting
6 Clearinghouse, the state Military Department, and the state
7 Department of Transportation.

8 (2) A map showing the specific location and tower
9 hub height with rotor diameter for each proposed wind turbine.

10 (3) Documentation that the facility owner has either
11 initiated an informal review with the Department of Defense
12 Siting Clearinghouse under Section 211.7 of Title 32 of the
13 Code of Federal Regulations or filed for a formal review with
14 the Secretary of Transportation and the Federal Aviation
15 Administration pursuant to Section 44718 of Title 49 of the
16 United States Code.

17 (d) A local government may not approve an
18 application for the construction of a wind energy facility
19 prior to receiving documentation of one of the following:

20 (1) A completed Department of Defense Siting
21 Clearinghouse informal review resulting in a determination of
22 no presumed risk.

23 (2) A mitigation agreement between the owner or
24 applicant and the Department of Defense Siting Clearinghouse
25 resolving any notice of presumed risk.

26 (3) A written "Determination of No Hazard to Air
27 Navigation" issued by the Federal Aviation Administration

1 pursuant to Subpart D of Part 77 of Title 14 of the Code of
2 Federal Regulations.

3 (e) Notwithstanding subsection (d), a local
4 government may approve an application for the construction of
5 a wind energy facility conditioned upon the applicant
6 providing documentation of one of the requirements set out in
7 subsection (d).

8 (f) If any dispute arises between a local government
9 and an applicant or military installation relating to the
10 approval of any tall structure or wind energy facility, the
11 local government shall provide notice to the Governor or the
12 Governor's designee to facilitate resolution of the dispute.

13 (g) A local government may not require any other
14 formal written approval from a military installation to
15 approve an application for the construction of a tall
16 structure or wind energy facility.

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