

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

1 SB80

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4 ENROLLED, An Act,

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

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 "§11-106-3.

20 "As used in this chapter, the following words shall
21 have the following meanings:

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

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

5 "~~(1)~~(3) LOCAL GOVERNMENT. Any county or
6 municipality.

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

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

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

24 "(7) TALL STRUCTURE. Any building, structure, or
25 unit within a multiunit building with a vertical height of

1 more than 200 feet measured from the top of the foundation of
2 the building, structure, or unit to the uppermost point of the
3 building, structure, or unit. The term does not include: wind
4 energy facilities, electrical transmission towers, slender
5 structures, or minor vertical projections of a parent
6 building, including, but not limited to, chimneys, flagpoles,
7 flues, spires, steeples, belfries, cupolas, antennas, poles,
8 lines, or wires, except that no such structure or vertical
9 projection may project more than 20 vertical feet above the
10 parent building. The term also does not include any
11 communications structures requiring antenna structure
12 registration pursuant to 47 C.F.R. § 17.4.

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

15 "§11-106-4.

16 "(a) Each local government whose territorial
17 boundaries are within two miles of all or any portion of a
18 military installation shall provide written notice to the
19 military installation's commanding officer and the flying
20 mission commanding officer if applicable, or their designees,
21 of any local impact issue.

22 "(b) Prior to approving any proposed tall structure
23 or wind energy facility, the local government shall follow the
24 requirements of Section 11-106-6. The requirements of Section
25 11-106-6 shall apply regardless of the distance of the tall

1 structure or wind energy facility from any military
2 installation and regardless of whether the local government's
3 territorial boundaries are within two miles of all or any
4 portion of a military installation."

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

7 §11-106-6.

8 (a) The construction or operation of any tall
9 structure or wind energy facility in this state shall not
10 encroach upon or otherwise have an adverse impact on military
11 operations and readiness of any military installation or
12 branch of military.

13 (b) A local government, prior to approving an
14 application for the construction of a tall structure shall
15 require the applicant to file an application with the Federal
16 Aviation Administration under Section 44718 of Title 49 of the
17 United States Code, and provide the local government either of
18 the following:

19 (1) A written "Determination of No Hazard to Air
20 Navigation" issued by the Federal Aviation Administration
21 pursuant to Subpart D of Part 77 of Title 14 of the Code of
22 Federal Regulations.

23 (2) In coordination with any affected military
24 installation and the state Military Department, a written
25 determination resolving any adverse impact to military

1 operations identified during the aeronautics study conducted
2 pursuant to Subpart D of Part 77 of Title 14 of the Code of
3 Federal Regulations.

4 (3) The tall structure shall be in compliance with
5 subsection (a) even if the local government either does not
6 require an application prior to the construction of a tall
7 structure or does not require the application outlined in this
8 subsection if the applicant has otherwise complied with the
9 requirements of subdivision (1) or (2).

10 (c) A local government considering an application
11 for the construction of a wind energy facility, shall require
12 the applicant provide the following at least 270 days prior to
13 planned construction:

14 (1) Documentation that the owner or applicant has
15 transmitted notice relating to the construction of the wind
16 energy facility to the Department of Defense Siting
17 Clearinghouse, the state Military Department, and the state
18 Department of Transportation.

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

21 (3) Documentation that the facility owner has either
22 initiated an informal review with the Department of Defense
23 Siting Clearinghouse under Section 211.7 of Title 32 of the
24 Code of Federal Regulations or filed for a formal review with
25 the Secretary of Transportation and the Federal Aviation

1 Administration pursuant to Section 44718 of Title 49 of the
2 United States Code.

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

6 (1) A completed Department of Defense Siting
7 Clearinghouse informal review resulting in a determination of
8 no presumed risk.

9 (2) A mitigation agreement between the owner or
10 applicant and the Department of Defense Siting Clearinghouse
11 resolving any notice of presumed risk.

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

16 (e) Notwithstanding subsection (d), a local
17 government may approve an application for the construction of
18 a wind energy facility conditioned upon the applicant
19 providing documentation of one of the requirements set out in
20 subsection (d).

21 (f) If any dispute arises between a local government
22 and an applicant or military installation relating to the
23 approval of any tall structure or wind energy facility, the
24 local government shall provide notice to the Governor or the
25 Governor's designee to facilitate resolution of the dispute.

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

5 Section 3. This act shall become effective on the
6 first day of the third month following its passage and
7 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

SB80
Senate 04-FEB-21
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 04-MAR-21

Senate concurred in House amendment 09-MAR-21

By: Senator Butler