

**Department of Legislative Services**  
Maryland General Assembly  
2014 Session

**FISCAL AND POLICY NOTE**

Senate Bill 2 (Senator Edwards)  
Finance

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**Garrett County - Industrial Wind Energy Conversion Systems - Setback Requirement**

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This bill repeals a provision that authorizes an applicant for a proposed industrial wind energy conversion system in Garrett County to seek a variance in the minimum setback requirement with the county after obtaining written authorization from all adjoining property owners.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** Minimal. The bill applies in a limited number of circumstances.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** In Garrett County, on written authorization of all property owners of adjoining parcels to a proposed wind turbine in an industrial wind energy conversion system, the applicant of the proposed system may seek a variance with the Garrett County Department of Planning and Land Development of up to 50% of the minimum setback distance requirements. Each individual system must have a minimum setback distance of at least 2.5 times the structure height, where “structure height” is defined as the distance between the ground and the highest point of the structure or the highest point of the blade at its greatest extension.

**Background:** Chapter 463 of 2013 established setback requirements for new industrial wind energy conversion systems located in Garrett County in addition to other requirements related to decommissioning and pad site restoration. The requirements do not apply to any system that has submitted an interconnection application to the regional electric grid operator before March 1, 2013. Further, if Garrett County adopts a rule, regulation, law, or an ordinance for zoning of industrial wind energy conversion systems, that rule, regulation, law, or ordinance supersedes the Act.

A March 2013 letter from the Attorney General reviewed for constitutional and legal sufficiency the provision relating to adjoining property owners' consent to a variance from a setback requirement contained in SB 370 of 2013 (subsequently enacted as Chapter 463). The letter advises that, even though the State may enact a setback requirement for industrial wind energy conversion systems in Garrett County, any such law is likely to be unconstitutional on due process grounds if it requires the consent of adjoining property owners as a condition of seeking a variance from zoning restrictions.

The letter further indicates that the legislation failed to specify standards for the local zoning authority to apply when determining whether to grant a variance – thus failing to meet a constitutional requirement relating to the delegation of legislative power to administrative officials. The letter advised that the law is not wholly invalid, because the consent provision can be severed from other provisions that are constitutional and legally sufficient. The full text of the letter, which includes summaries of relevant court decisions, can be found at: [http://mgaleg.maryland.gov/2013RS/ag\\_letters/sb0370.pdf](http://mgaleg.maryland.gov/2013RS/ag_letters/sb0370.pdf).

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Public Service Commission, Garrett County, Department of Legislative Services

**Fiscal Note History:** First Reader - January 10, 2014  
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Analysis by: Stephen M. Ross

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510