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SENATE, No. 2528

STATE OF NEW JERSEY
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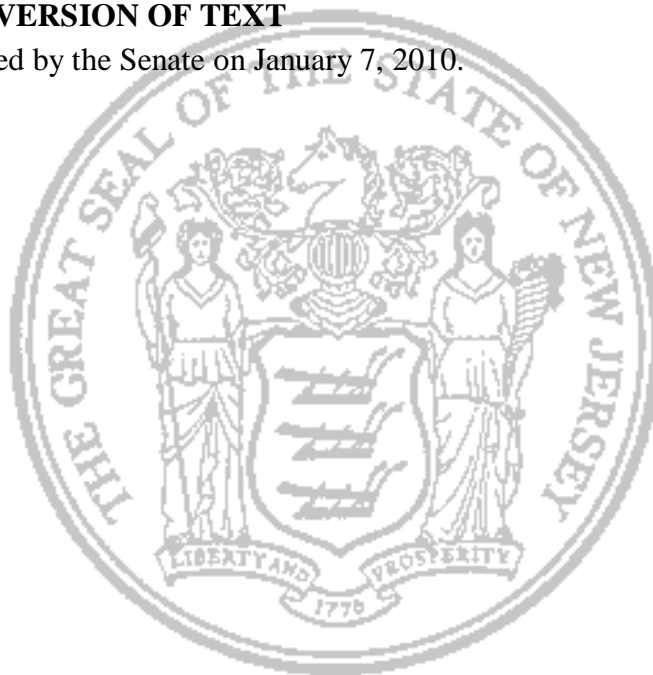
Senator Beck

SYNOPSIS

Provides for regulation of small wind energy systems by municipalities.

CURRENT VERSION OF TEXT

As amended by the Senate on January 7, 2010.



1 AN ACT concerning small wind energy systems and supplementing
2 Title 40 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 ²[1. For the purposes of this act:

8 “Small wind energy system” means a wind energy conversion
9 system consisting of a wind turbine, a tower, and associated control
10 or conversion electronics, which has a rated capacity consistent
11 with applicable ¹[construction codes] provisions of the State
12 Uniform Construction Code promulgated pursuant to the “State
13 Uniform Construction Code Act,” P.L.1975, c.217 (52:27D-119 et
14 seq.),¹ and which will be used primarily for onsite consumption;

15 “System height” means the height above grade of the tower plus
16 the wind generator.

17 “Tower height” means the height above grade of the fixed
18 portion of the tower, excluding the wind generator; and

19 “Wind generator” means blades and associated mechanical and
20 electrical conversion components mounted on top of the tower.]²

21

22 ²[2.] 1. a.² Ordinances adopted by municipalities to regulate
23 the installation and operation of small wind energy systems shall
24 not unreasonably limit such installations or unreasonably hinder the
25 performance of such installations. ²An application for development
26 or appeal involving a small wind energy system shall comply with
27 the appropriate notice and hearing provisions otherwise required for
28 the application or appeal pursuant to the “Municipal Land Use
29 Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).

30 b.² Unreasonable limits or hindrances to performance ²of a
31 small wind energy system² shall include the following:

32 ²(1)² Prohibiting small wind energy systems in all districts
33 within the municipality;

34 ²(2)² Restricting tower height or system height through
35 application of a generic ordinance or regulation on height that does
36 not specifically address allowable tower height or system height of
37 a small wind energy system;

38 ²(3)² Requiring a setback from property boundaries for a tower
39 that is greater than 150 percent of the system height. In a
40 municipality that does not adopt specific setback requirements for
41 small wind energy systems, any small wind energy system shall be
42 set back from the nearest property boundary a distance at least equal

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted December 14, 2009.

²Senate floor amendments adopted January 7, 2010.

1 to 150 percent of the system height; provided, however, that this
2 ²setback² requirement may be ²[modified] reduced² by the zoning
3 board of adjustment ²or, if otherwise appropriate, by the planning
4 board² upon application in an individual case if the applicant
5 establishes the conditions for a variance under ²[this act] the
6 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
7 to the board's satisfaction²;

8 ²(4)² Setting a noise level limit lower than 55 decibels, as
9 measured at the site property line, or not allowing for limit overages
10 during short-term events such as utility outages and severe wind
11 storms; and

12 ²(5)² Setting electrical or structural design criteria that exceed
13 applicable ¹[State, federal, or international building or electrical
14 codes or laws] provisions of the State Uniform Construction Code
15 promulgated pursuant to the "State Uniform Construction Code
16 Act," P.L.1975, c.217 (52.27D-119 et seq.)¹ ²and technical bulletins
17 issued pursuant to section 2 of P.L. , c. (C.) (pending before
18 the Legislature as this bill).

19 c. If the Commissioner of Environmental Protection has issued a
20 permit for the development of a small wind energy system under the
21 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
22 seq.), prior to the effective date of P.L. , c. (C.) (pending
23 before the Legislature as this bill), provisions of subsection b. of
24 this section shall not apply to an application for development for
25 that small wind energy system if the provisions of that subsection
26 would otherwise prohibit approval of the application or require the
27 approval to impose restrictions or limitations on the small wind
28 energy system, including but not limited to restrictions or
29 limitations on tower height or system height, the setback of the
30 system from property boundaries, and noise levels.

31 d. For the purposes of this section:

32 "Small wind energy system" means a wind energy conversion
33 system consisting of a wind turbine, a tower, and associated control
34 or conversion electronics, which has a rated capacity consistent
35 with applicable provisions of the State Uniform Construction Code
36 promulgated pursuant to the "State Uniform Construction Code
37 Act," P.L.1975, c.217 (52:27D-119 et seq.) and technical bulletins
38 issued pursuant to section 2 of P.L. , c. (C.) (pending before
39 the Legislature as this bill), and which will be used primarily for
40 onsite consumption;

41 "System height" means the height above grade of the tower plus
42 the wind generator;

43 "Tower height" means the height above grade of the fixed
44 portion of the tower, excluding the wind generator; and

45 "Wind generator" means blades and associated mechanical and
46 electrical conversion components mounted on top of the tower².

1 ²[3.] 2.² Within 10 months of enactment of ²[this act] P.L. ____,
2 c. ____ (C. ____) (pending before the Legislature as this bill)², the
3 Director of the Division of Codes and Standards in the Department
4 of Community Affairs¹, in consultation with the Department of
5 Environmental Protection,¹ shall ¹[promulgate] issue¹ a technical
6 bulletin which shall include model municipal ordinances for the
7 construction of small wind energy systems. Prior to
8 ²[development] issuance of the technical bulletin², the director
9 shall hold one or more public hearings and solicit comments from
10 interested parties. The Division of Codes and Standards in the
11 Department of Community Affairs shall ¹[provide a copy of the
12 technical bulletin to every municipal governing body] post the
13 technical bulletin on its Internet website¹.

14
15 ²[4.] 3.² Small wind energy systems shall be built to comply
16 with all applicable Federal Aviation Administration requirements,
17 including 14 C.F.R. part 77, subpart B regarding installations close
18 to airports, and all applicable airport zoning regulations.

19
20 ²[5.] 4.² A small wind energy system that is out of service for
21 a continuous 12-month period shall be deemed abandoned. The
22 ¹[planning board] municipal zoning enforcement officer¹ may issue
23 a notice of abandonment to the owner of an abandoned small wind
24 energy system. The owner shall have the right to respond to the
25 notice of abandonment within 30 days from the receipt date. The
26 ¹[planning board] municipal zoning enforcement officer¹ shall
27 withdraw the notice of abandonment and notify the owner that the
28 notice has been withdrawn if the owner provides the ¹[planning
29 board] municipal zoning enforcement officer¹ with information
30 demonstrating the small wind energy system has not been
31 abandoned. If the small wind energy system is determined to be
32 abandoned, the owner of the small wind energy system shall remove
33 the wind generator from the tower at the owner's sole expense
34 within three months of receipt of notice of abandonment. If the
35 owner fails to remove the wind generator from the tower, the
36 ¹[planning board] municipality¹ may pursue a legal action to have
37 the wind generator removed at the owner's expense.

38
39 ²[6. When the ¹[building inspector or municipal officer charged
40 with or responsible for the enforcement of building codes]
41 municipal zoning enforcement officer¹ determines that a use or
42 structure proposed in a building permit application will have the
43 potential for regional impact ¹[and no such determination has
44 previously been made by another municipal planning board, he or
45 she shall notify the local governing body. The building inspector or
46 municipal officer charged with or responsible for the enforcement

1 of building codes] and so advises the permit applicant, the
2 applicant¹ shall '[also]' notify by certified mail the '[regional]
3 county¹ planning board and the '[affected] governing bodies of any
4 adjoining¹ municipalities 'within 200 feet of the property', who
5 shall be provided 30 days to submit comment to the '[local
6 governing body and the building inspector] municipal zoning
7 enforcement officer¹ prior to the issuance of 'the zoning approval
8 that is prerequisite to the issuance of' the building permit.]²

9
10 ²[7.a. '[A building inspector or municipal officer charged with
11 or responsible for the enforcement of building codes] An applicant
12 for a building permit to construct a small wind energy system¹ shall
13 notify the owner '[or tenant]' of any property '[abutting upon]
14 within 200 feet of' the site of a proposed small wind energy system
15 by 'certified' mail upon application for a building permit to
16 construct '[a small wind energy] any such' system. Affected
17 owners '[and tenants]' shall be afforded a 30-day comment period
18 prior to the issuance of a 'zoning approval for any such' building
19 permit¹[. An appeal may be made] and shall have standing to
20 appeal the granting of any such zoning approval' to the municipal
21 planning board or to the zoning board of adjustment, as may be
22 appropriate.

23 b. The cost of notification shall be borne by the applicant 'who
24 shall provide proof to the municipal zoning enforcement officer that
25 all required notices have been given in the manner prescribed'.

26 c. The '[building inspector or municipal officer charged with
27 or responsible for the enforcement of building codes] municipal
28 zoning enforcement officer¹ shall provide notice 'to the municipal
29 governing body¹ of the application for 'the zoning approval that is
30 prerequisite to the issuance of' a building permit '[to the municipal
31 governing body]'.]²

32
33 ²[8.] 5.² This act shall take effect immediately.