

CHAPTER 244

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

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

C.40:55D-66.12 Municipal ordinances relative to small wind energy systems.

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

b. Unreasonable limits or hindrances to performance of a small wind energy system shall include the following:

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

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

(3) Requiring a setback from property boundaries for a tower that is greater than 150 percent of the system height. In a municipality that does not adopt specific setback requirements for small wind energy systems, any small wind energy system shall be set back from the nearest property boundary a distance at least equal to 150 percent of the system height; provided, however, that this setback requirement may be reduced by the zoning board of adjustment or, if otherwise appropriate, by the planning board upon application in an individual case if the applicant establishes the conditions for a variance under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) to the board's satisfaction;

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

(5) Setting electrical or structural design criteria that exceed applicable provisions of the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and technical bulletins issued pursuant to section 2 of P.L.2009, c.244 (C.40:55D-66.13).

c. If the Commissioner of Environmental Protection has issued a permit for the development of a small wind energy system under the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), prior to the effective date of P.L.2009, c.244 (C.40:55D-66.12 et seq.), provisions of subsection b. of this section shall not apply to an application for development for that small wind energy system if the provisions of that subsection would otherwise prohibit approval of the application or require the approval to impose restrictions or limitations on the small wind energy system, including but not limited to restrictions or limitations on tower height or system height, the setback of the system from property boundaries, and noise levels.

d. For the purposes of this section:

"Small wind energy system" means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity consistent with applicable provisions of the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et

seq.) and technical bulletins issued pursuant to section 2 of P.L.2009, c.244 (C.40:55D-66.13), and which will be used primarily for onsite consumption;

“System height” means the height above grade of the tower plus the wind generator;

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

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

C.40:55D-66.13 Issuance of technical bulletin.

2. Within 10 months of enactment of P.L.2009, c.244 (C.40:55D-66.12 et seq.), the Director of the Division of Codes and Standards in the Department of Community Affairs, in consultation with the Department of Environmental Protection, shall issue a technical bulletin which shall include model municipal ordinances for the construction of small wind energy systems. Prior to issuance of the technical bulletin, the director shall hold one or more public hearings and solicit comments from interested parties. The Division of Codes and Standards in the Department of Community Affairs shall post the technical bulletin on its Internet website.

C.40:55D-66.14 Compliance.

3. Small wind energy systems shall be built to comply with all applicable Federal Aviation Administration requirements, including 14 C.F.R. part 77, subpart B regarding installations close to airports, and all applicable airport zoning regulations.

C.40:55D-66.15 Conditions for deeming abandoned; legal action.

4. A small wind energy system that is out of service for a continuous 12-month period shall be deemed abandoned. The municipal zoning enforcement officer may issue a notice of abandonment to the owner of an abandoned small wind energy system. The owner shall have the right to respond to the notice of abandonment within 30 days from the receipt date. The municipal zoning enforcement officer shall withdraw the notice of abandonment and notify the owner that the notice has been withdrawn if the owner provides the municipal zoning enforcement officer with information demonstrating the small wind energy system has not been abandoned. If the small wind energy system is determined to be abandoned, the owner of the small wind energy system shall remove the wind generator from the tower at the owner's sole expense within three months of receipt of notice of abandonment. If the owner fails to remove the wind generator from the tower, the municipality may pursue a legal action to have the wind generator removed at the owner's expense.

5. This act shall take effect immediately.

Approved January 16, 2010.