

SENATE BILL 767

L2

EMERGENCY BILL

2lr2468
CF 2lr2471

By: **Senator Edwards**

Introduced and read first time: February 3, 2012

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Garrett County – County Commissioners – Wind Energy Conversion Systems**

3 FOR the purpose of requiring that certain wind energy conversion systems comply
4 with certain setback requirements; authorizing certain variances under certain
5 circumstances; requiring that before a permit is issued for certain wind energy
6 conversion systems, the Garrett County Department of Planning and Land
7 Development retain a certain professional engineer to prepare a certain cost
8 estimate and require the applicant to post a certain bond; requiring that the
9 bond be held as surety for certain purposes; requiring, on completion of the
10 construction of certain wind energy conversion systems and on a certain
11 periodic basis, the Department to retain a certain professional engineer for
12 certain purposes; authorizing the Department to alter the amount of a certain
13 bond under certain circumstances; providing for the release of a bond under
14 certain circumstances; authorizing the Department to require a certain owner to
15 decommission and restore a certain pad site under certain circumstances;
16 authorizing the use of a certain bond under certain circumstances; defining
17 certain terms; providing that a certain rule, regulation, law, or ordinance for
18 zoning of wind energy conversion systems supersedes this Act; providing for the
19 application of this Act; providing for the termination of this Act; making this Act
20 an emergency measure; and generally relating to wind turbines in Garrett
21 County.

22 BY adding to

23 Article 25 – County Commissioners
24 Section 236G
25 Annotated Code of Maryland
26 (2011 Replacement Volume)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
28 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article 25 – County Commissioners

236G.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DECOMMISSIONING” MEANS THE REMOVAL AND LEGAL DISPOSAL OF A WIND ENERGY CONVERSION SYSTEM AND ANY OTHER COMPONENTS RELATED TO THE WIND ENERGY CONVERSION SYSTEM, INCLUDING BUILDINGS, ROADS, CONCRETE, FENCING, GRAVEL, STONE, AND FOUNDATIONS TO A DEPTH OF 36 INCHES.

(3) “RESTORATION OF PAD SITE” MEANS, AT THE LOCATION OF THE WIND ENERGY CONVERSION SYSTEM:

(I) STABILIZING, GRADING, AND SEEDING DISTURBED AREAS TO GROW GROUND COVER; AND

(II) REPLACING THE EXCAVATED FOUNDATION AREAS WITH TOPSOIL THAT:

1. IS FREE OF NOXIOUS WEEDS, ROCKS, ROOT MAT, OR FOREIGN OBJECTS LARGER THAN 2 INCHES IN SIZE; AND

2. HAS PROPER SOIL NUTRIENTS TO PROVIDE AND SUSTAIN THE GROWTH OF GROUND COVER.

(4) “SETBACK DISTANCE” MEANS THE DISTANCE MEASURED FROM THE BASE OF A WIND ENERGY CONVERSION SYSTEM TO PROPERTY BOUNDARIES IN ALL DIRECTIONS.

(5) “STRUCTURE HEIGHT” MEANS THE MEASUREMENT FROM GROUND LEVEL AT THE BASE OF A WIND ENERGY CONVERSION SYSTEM TO THE TOP OF THE NACELLE OF THE WIND TURBINE.

(6) “WIND ENERGY CONVERSION SYSTEM” MEANS AN AGGREGATION OF PARTS, INCLUDING THE BASE, WIND TURBINE, GENERATOR, SUPPORTS, GUY WIRES, AND ACCESSORY EQUIPMENT IN A CONFIGURATION NECESSARY TO CONVERT THE POWER OF WIND INTO MECHANICAL OR ELECTRICAL ENERGY.

1 **(7) “WIND TURBINE” MEANS THE TOWER, HUB, BLADES, AND**
2 **NACELLE.**

3 **(B) THIS SECTION APPLIES ONLY TO GARRETT COUNTY.**

4 **(C) (1) EACH INDIVIDUAL WIND ENERGY CONVERSION SYSTEM WITH**
5 **A STRUCTURE HEIGHT:**

6 **(I) OF LESS THAN 200 FEET SHALL COMPLY WITH A**
7 **MINIMUM SETBACK DISTANCE EQUAL TO NO LESS THAN THE STRUCTURE**
8 **HEIGHT;**

9 **(II) OF GREATER THAN 200 FEET BUT LESS THAN 300 FEET**
10 **SHALL COMPLY WITH A MINIMUM SETBACK DISTANCE EQUAL TO NO LESS THAN**
11 **TWO TIMES THE STRUCTURE HEIGHT; AND**

12 **(III) OF GREATER THAN 300 FEET SHALL COMPLY WITH A**
13 **MINIMUM SETBACK DISTANCE EQUAL TO NO LESS THAN THREE TIMES THE**
14 **STRUCTURE HEIGHT.**

15 **(2) ON WRITTEN AUTHORIZATION OF ALL PROPERTY OWNERS OF**
16 **ADJOINING PARCELS TO A PROPOSED WIND ENERGY CONVERSION SYSTEM, THE**
17 **APPLICANT OF THE PROPOSED WIND ENERGY CONVERSION SYSTEM MAY SEEK A**
18 **VARIANCE WITH THE GARRETT COUNTY DEPARTMENT OF PLANNING AND**
19 **LAND DEVELOPMENT OF UP TO 50% OF THE MINIMUM SETBACK DISTANCE**
20 **REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

21 **(3) IF THE GARRETT COUNTY DEPARTMENT OF PLANNING AND**
22 **LAND DEVELOPMENT DETERMINES THAT CONCERNS REGARDING HEALTH,**
23 **SAFETY, AND WELFARE WARRANT SETBACKS THAT ARE IN EXCESS OF THE**
24 **MINIMUM SETBACK DISTANCE REQUIREMENTS UNDER PARAGRAPH (1) OF THIS**
25 **SUBSECTION, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND**
26 **DEVELOPMENT MAY INCREASE THE MINIMUM SETBACK DISTANCE**
27 **REQUIREMENTS UNDER PARAGRAPH (1) OF THIS SUBSECTION BY UP TO 50%.**

28 **(D) (1) BEFORE A PERMIT IS ISSUED FOR A WIND ENERGY**
29 **CONVERSION SYSTEM, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND**
30 **LAND DEVELOPMENT SHALL:**

31 **(I) AT THE APPLICANT’S EXPENSE, RETAIN AN**
32 **INDEPENDENT AND CERTIFIED PROFESSIONAL ENGINEER TO PREPARE A COST**
33 **ESTIMATE FOR DECOMMISSIONING AND RESTORATION OF THE PAD SITE; AND**

1 **(II) REQUIRE THE APPLICANT TO POST A BOND EQUAL TO**
2 **100% OF THE COST ESTIMATE DETERMINED UNDER ITEM (I) OF THIS**
3 **PARAGRAPH AND ADJUSTED BY A CONSTRUCTION PRICING INDEX TO ENSURE**
4 **THAT COST INCREASES DURING THE FOLLOWING 5-YEAR INTERVAL WILL NOT**
5 **DECREASE THE VALUE OF THE BOND.**

6 **(2) A BOND POSTED IN ACCORDANCE WITH PARAGRAPH (1)(II) OF**
7 **THIS SUBSECTION SHALL BE HELD BY THE GARRETT COUNTY FINANCE**
8 **DEPARTMENT TO BE USED AS SURETY IN THE EVENT OF NONCOMPLIANCE WITH**
9 **A REQUIREMENT UNDER THIS SECTION BY AN OWNER OF A WIND ENERGY**
10 **CONVERSION SYSTEM.**

11 **(3) (I) ON COMPLETION OF THE CONSTRUCTION OF A WIND**
12 **ENERGY CONVERSION SYSTEM, AND EVERY 5 YEARS THEREAFTER, THE**
13 **GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT**
14 **SHALL, AT THE APPLICANT'S EXPENSE, RETAIN AN INDEPENDENT CERTIFIED**
15 **PROFESSIONAL ENGINEER TO PREPARE A COST ESTIMATE, WITHOUT REGARD**
16 **TO SALVAGE VALUE, FOR DECOMMISSIONING AND RESTORATION OF THE PAD**
17 **SITE.**

18 **(II) THE GARRETT COUNTY DEPARTMENT OF PLANNING**
19 **AND LAND DEVELOPMENT MAY ALTER THE AMOUNT OF THE BOND**
20 **DETERMINED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH TO PROVIDE**
21 **ADEQUATE SECURITY FOR THE COSTS OF DECOMMISSIONING AND**
22 **RESTORATION OF THE PAD SITE.**

23 **(4) IF A WIND ENERGY CONVERSION SYSTEM IS SOLD, THE BOND**
24 **POSTED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION SHALL BE**
25 **RELEASED IF THE NEW OWNER POSTS A BOND WITH THE GARRETT COUNTY**
26 **FINANCE DEPARTMENT THAT:**

27 **(I) IS EQUAL TO THE AMOUNT OF THE BOND POSTED BY**
28 **THE SELLER; OR**

29 **(II) IS A GREATER AMOUNT IF THE GARRETT COUNTY**
30 **DEPARTMENT OF PLANNING AND LAND DEVELOPMENT DETERMINES THAT**
31 **ADDITIONAL SECURITY IS NECESSARY TO PROVIDE FOR THE COST OF**
32 **DECOMMISSIONING AND RESTORATION OF THE PAD SITE.**

33 **(5) (I) IF A WIND ENERGY CONVERSION SYSTEM HAS NOT**
34 **GENERATED ELECTRICITY FOR A CONTINUOUS PERIOD OF 180 DAYS OR AN**
35 **OWNER HAS ABANDONED A WIND ENERGY CONVERSION SYSTEM, THE GARRETT**

1 COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT MAY REQUIRE
2 THE OWNER TO DECOMMISSION AND RESTORE THE PAD SITE.

3 (II) IF THE OWNER FAILS TO COMPLY WITH THE
4 REQUIREMENTS UNDER THIS PARAGRAPH, THE BOND SHALL BE USED BY
5 GARRETT COUNTY TO COVER THE COSTS OF DECOMMISSIONING AND
6 RESTORATION OF THE PAD SITE.

7 SECTION 2. AND BE IT FURTHER ENACTED, That, if Garrett County adopts
8 a rule, a regulation, a law, or an ordinance for zoning of wind energy conversion
9 systems, that rule, regulation, law, or ordinance supersedes this Act.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
11 construed to apply only prospectively to wind energy conversion systems constructed
12 on or after the effective date of this Act and may not be applied or interpreted to have
13 any effect on or application to any wind energy conversion systems constructed before
14 the effective date of this Act.

15 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency
16 measure, is necessary for the immediate preservation of the public health or safety,
17 has been passed by a ye and nay vote supported by three-fifths of all the members
18 elected to each of the two Houses of the General Assembly, and shall take effect from
19 the date it is enacted. It shall remain effective through May 31, 2015, and, at the end
20 of May 31, 2015, with no further action required by the General Assembly, this Act
21 shall be abrogated and of no further force and effect.