

40:55D-66.12

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2009 **CHAPTER:** 244

NJSA: 40:55D-66.12 (Provides for regulation of small wind energy systems by municipalities)

BILL NO: A3740 (Substituted for S2528)

SPONSOR(S) DeAngelo and Others

DATE INTRODUCED: February 9, 2009

COMMITTEE: **ASSEMBLY:** Housing and Local Government
 SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 11, 2010
 SENATE: January 11, 2010

DATE OF APPROVAL: January 16, 2010

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted)

A3740

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: Yes
	SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	No
-----------------------------------	----

LEGISLATIVE FISCAL ESTIMATE:	Yes
-------------------------------------	-----

S2528

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill)	Yes
---	-----

COMMITTEE STATEMENT:	ASSEMBLY: No
-----------------------------	---------------------

SENATE:	Yes	Econ. 12-3-09 Budg. 12-14-09
----------------	-----	---------------------------------

FLOOR AMENDMENT STATEMENT:	Yes
-----------------------------------	-----

LEGISLATIVE FISCAL ESTIMATE:	Yes	12-15-09 1-15-10
-------------------------------------	-----	---------------------

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/RWH

[First Reprint]

ASSEMBLY, No. 3740

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 9, 2009

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

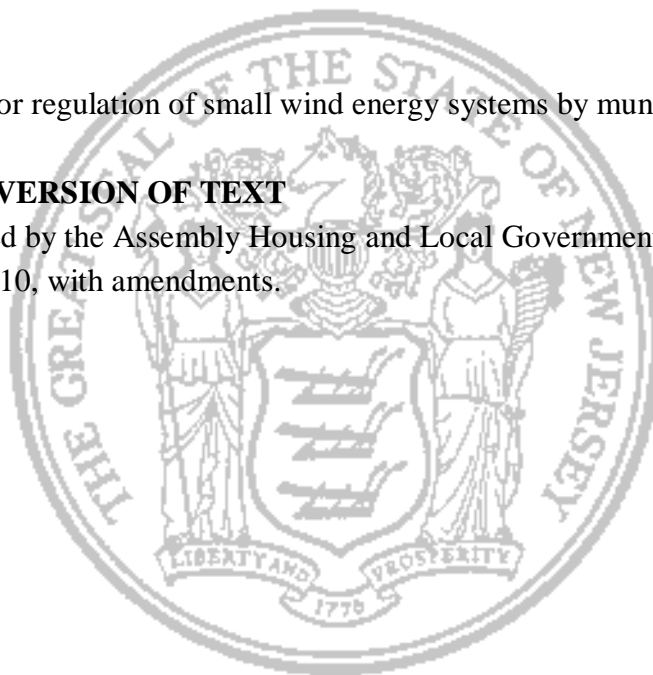
Senators B.Smith, Baroni and Beck

SYNOPSIS

Provides for regulation of small wind energy systems by municipalities.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Local Government Committee on January 4, 2010, with amendments.



(Sponsorship Updated As Of: 1/12/2010)

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 ¹[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 construction codes and which will be used primarily
12 for onsite consumption;

13 “System height” means the height above grade of the tower plus
14 the wind generator.

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

17 “Wind generator” means blades and associated mechanical and
18 electrical conversion components mounted on top of the tower.]¹

19

20 ¹[2.] 1. a.¹ Ordinances adopted by municipalities to regulate
21 the installation and operation of small wind energy systems shall
22 not unreasonably limit such installations or unreasonably hinder the
23 performance of such installations. ¹An application for development
24 or appeal involving a small wind energy system shall comply with
25 the appropriate notice and hearing provisions otherwise required for
26 the application or appeal pursuant to the "Municipal Land Use
27 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

28 b.¹ Unreasonable limits or hindrances to performance ¹of a small
29 wind energy system¹ shall include the following:

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

32 ¹(2)¹ Restricting tower height or system height through
33 application of a generic ordinance or regulation on height that does
34 not specifically address allowable tower height or system height of
35 a small wind energy system;

36 ¹(3)¹ Requiring a setback from property boundaries for a tower
37 that is greater than 150 percent of the system height. In a
38 municipality that does not adopt specific setback requirements for
39 small wind energy systems, any small wind energy system shall be
40 set back from the nearest property boundary a distance at least equal
41 to 150 percent of the system height; provided, however, that this
42 ¹setback¹ requirement may be ¹**[modified]** reduced¹ by the zoning
43 board of adjustment ¹or, if otherwise appropriate, by the planning

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:

¹Assembly AHO committee amendments adopted January 4, 2010.

1 board¹ upon application in an individual case if the applicant
2 establishes the conditions for a variance under '[this act] the
3 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
4 to the board's satisfaction¹;

5 '(4)¹ Setting a noise level limit lower than 55 decibels, as
6 measured at the site property line, or not allowing for limit overages
7 during short-term events such as utility outages and severe wind
8 storms; and

9 '(5)¹ Setting electrical or structural design criteria that exceed
10 applicable '[State, federal, or international building or electrical
11 codes or laws] provisions of the State Uniform Construction Code
12 promulgated pursuant to the "State Uniform Construction Code
13 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and technical
14 bulletins issued pursuant to section 2 of P.L. , c. (C.)
15 (pending before the Legislature as this bill).

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

28 d. For the purposes of this section:

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

38 "System height" means the height above grade of the tower plus
39 the wind generator;

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

42 "Wind generator" means blades and associated mechanical and
43 electrical conversion components mounted on top of the tower¹.

44
45 '[3.] 2.¹ Within 10 months of enactment of '[this act]
46 P.L. , c. (C.) (pending before the Legislature as this bill)¹,
47 the Director of the Division of Codes and Standards in the

1 Department of Community Affairs¹, in consultation with the
2 Department of Environmental Protection,¹ shall **['promulgate]**
3 issue¹ a technical bulletin which shall include model municipal
4 ordinances for the construction of small wind energy systems. Prior
5 to issuance of the technical bulletin¹, the director shall hold one or
6 more public hearings and solicit comments from interested parties.
7 The Division of Codes and Standards in the Department of
8 Community Affairs shall **['provide a copy of the technical bulletin**
9 **to every municipal governing body]** post the technical bulletin on
10 its Internet website¹.

11

12 **['4.] 3.**¹ Small wind energy systems shall be built to comply
13 with all applicable Federal Aviation Administration requirements,
14 including 14 C.F.R. part 77, subpart B regarding installations close
15 to airports, and all applicable airport zoning regulations.

16

17 **['5.] 4.**¹ A small wind energy system that is out of service for
18 a continuous 12-month period shall be deemed abandoned. The
19 **['planning board]** municipal zoning enforcement officer¹ may issue
20 a notice of abandonment to the owner of an abandoned small wind
21 energy system. The owner shall have the right to respond to the
22 notice of abandonment within 30 days from the receipt date. The
23 **['planning board]** municipal zoning enforcement officer¹ shall
24 withdraw the notice of abandonment and notify the owner that the
25 notice has been withdrawn if the owner provides the **['planning**
26 **board]** municipal zoning enforcement officer¹ with information
27 demonstrating the small wind energy system has not been
28 abandoned. If the small wind energy system is determined to be
29 abandoned, the owner of the small wind energy system shall remove
30 the wind generator from the tower at the owner's sole expense
31 within three months of receipt of notice of abandonment. If the
32 owner fails to remove the wind generator from the tower, the
33 **['planning board]** municipality¹ may pursue a legal action to have
34 the wind generator removed at the owner's expense.

35

36 **['6.** When the building inspector or municipal officer charged
37 with or responsible for the enforcement of building codes
38 determines that a use or structure proposed in a building permit
39 application will have the potential for regional impact and no such
40 determination has previously been made by another municipal
41 planning board, he or she shall notify the local governing body. The
42 building inspector or municipal officer charged with or responsible
43 for the enforcement of building codes shall also notify by certified
44 mail the regional planning board and the affected municipalities,
45 who shall be provided 30 days to submit comment to the local

1 governing body and the building inspector prior to the issuance of
2 the building permit.]¹

3

4 ¹[7. a. A building inspector or municipal officer charged with
5 or responsible for the enforcement of building codes shall notify the
6 owner or tenant of any property abutting upon the site of a proposed
7 small wind energy system by mail upon application for a building
8 permit to construct a small wind energy system. Affected owners
9 and tenants shall be afforded a 30-day comment period prior to the
10 issuance of a building permit. An appeal may be made to the
11 municipal planning board or to the zoning board of adjustment, as
12 may be appropriate.

13 b. The cost of notification shall be borne by the applicant.

14 c. The building inspector or municipal officer charged with or
15 responsible for the enforcement of building codes shall provide
16 notice of the application for a building permit to the municipal
17 governing body.]¹

18

19 ¹[8.] 5.¹ This act shall take effect immediately.

ASSEMBLY, No. 3740

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 9, 2009

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblywoman PAMELA R. LAMPITT

District 6 (Camden)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Provides for regulation of small wind energy systems by municipalities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/5/2009)

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 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 construction codes and which will be used primarily
12 for onsite consumption;

13 “System height” means the height above grade of the tower plus
14 the wind generator.

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

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

19

20 2. Ordinances adopted by municipalities to regulate the
21 installation and operation of small wind energy systems shall not
22 unreasonably limit such installations or unreasonably hinder the
23 performance of such installations. Unreasonable limits or
24 hindrances to performance shall include the following:

25 Prohibiting small wind energy systems in all districts within the
26 municipality;

27 Restricting tower height or system height through application of
28 a generic ordinance or regulation on height that does not
29 specifically address allowable tower height or system height of a
30 small wind energy system;

31 Requiring a setback from property boundaries for a tower that is
32 greater than 150 percent of the system height. In a municipality that
33 does not adopt specific setback requirements for small wind energy
34 systems, any small wind energy system shall be set back from the
35 nearest property boundary a distance at least equal to 150 percent of
36 the system height; provided, however, that this requirement may be
37 modified by the zoning board of adjustment upon application in an
38 individual case if the applicant establishes the conditions for a
39 variance under this act;

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

44 Setting electrical or structural design criteria that exceed
45 applicable State, federal, or international building or electrical
46 codes or laws.

1 3. Within 10 months of enactment of this act, the Director of the
2 Division of Codes and Standards in the Department of Community
3 Affairs shall promulgate a technical bulletin which shall include
4 model municipal ordinances for the construction of small wind
5 energy systems. Prior to development, the director shall hold one or
6 more public hearings and solicit comments from interested parties.
7 The Division of Codes and Standards in the Department of
8 Community Affairs shall provide a copy of the technical bulletin to
9 every municipal governing body.

10

11 4. Small wind energy systems shall be built to comply with all
12 applicable Federal Aviation Administration requirements, including
13 14 C.F.R. part 77, subpart B regarding installations close to
14 airports, and all applicable airport zoning regulations.

15

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

32

33 6. When the building inspector or municipal officer charged
34 with or responsible for the enforcement of building codes
35 determines that a use or structure proposed in a building permit
36 application will have the potential for regional impact and no such
37 determination has previously been made by another municipal
38 planning board, he or she shall notify the local governing body. The
39 building inspector or municipal officer charged with or responsible
40 for the enforcement of building codes shall also notify by certified
41 mail the regional planning board and the affected municipalities,
42 who shall be provided 30 days to submit comment to the local
43 governing body and the building inspector prior to the issuance of
44 the building permit.

45

46 7. a. A building inspector or municipal officer charged with or
47 responsible for the enforcement of building codes shall notify the
48 owner or tenant of any property abutting upon the site of a proposed

1 small wind energy system by mail upon application for a building
2 permit to construct a small wind energy system. Affected owners
3 and tenants shall be afforded a 30-day comment period prior to the
4 issuance of a building permit. An appeal may be made to the
5 municipal planning board or to the zoning board of adjustment, as
6 may be appropriate.

7 b. The cost of notification shall be borne by the applicant.

8 c. The building inspector or municipal officer charged with or
9 responsible for the enforcement of building codes shall provide
10 notice of the application for a building permit to the municipal
11 governing body.

12

13 8. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill provides for the regulation of small wind energy
19 systems by municipalities. Specifically, the bill prohibits
20 municipalities from adopting ordinances or resolutions regarding
21 the installation and operation of small wind energy systems that
22 unreasonably limit such installations or unreasonably hinder the
23 performance of such installations.

24 The bill requires the Director of the Division of Codes and
25 Standards in the Department of Community Affairs to promulgate a
26 technical bulletin which includes model municipal ordinances for
27 the construction of small wind energy systems, after holding one or
28 more public hearings and soliciting comments from interested
29 parties. A copy of the technical bulletin shall be provided to every
30 municipal governing body.

31 The bill provides that small wind energy systems shall be built to
32 comply with all applicable Federal Aviation Administration
33 requirements, including 14 C.F.R. part 77, subpart B regarding
34 installations close to airports, and all applicable airport zoning
35 regulations.

36 The bill provides a procedure for deeming a small wind energy
37 system to be abandoned, and for the withdrawal of the notice of
38 abandonment or the removal of the system after the owner's receipt
39 of a notice of abandonment, as well as a procedure for notifying
40 regional planning boards when a proposed small wind energy
41 system will have a regional impact.

42 Finally, the bill provides that a building inspector or municipal
43 officer charged with or responsible for the enforcement of building
44 codes shall notify the owner or tenant of any property abutting upon
45 the site of a proposed small wind energy system by mail upon
46 application for a building permit to construct a small wind energy
47 system. Affected owners and tenants shall be afforded a 30-day
48 comment period prior to the issuance of a building permit. An

A3740 DEANGELO, LAMPITT

5

1 appeal may be made to the municipal planning board or to the
2 zoning board of adjustment, as may be appropriate. The cost of
3 notification shall be borne by the applicant. The building inspector
4 or municipal officer charged with or responsible for the
5 enforcement of building codes shall provide notice of the
6 application for a building permit to the local governing body.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3740

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Housing and Local Government Committee reports favorably Assembly Bill No. 3740 with committee amendments.

As amended, the bill provides for the regulation of small wind energy systems by municipalities. Specifically, the bill prohibits municipalities from adopting ordinances regarding the installation and operation of small wind energy systems that unreasonably limit such installations or unreasonably hinder the performance of such installations.

The bill requires the Director of the Division of Codes and Standards in the Department of Community Affairs (DCA), in consultation with the Department of Environmental Protection, to promulgate a technical bulletin which includes model municipal ordinances for the construction of small wind energy systems, after holding one or more public hearings and soliciting comments from interested parties. A copy of the technical bulletin shall be posted on the DCA's Internet website.

The bill provides that small wind energy systems shall be built to comply with all applicable Federal Aviation Administration requirements.

The amended bill exempts from its provisions an applicant for the development of a small wind energy system from the restrictions set forth in the bill, such as those concerning height, setbacks and noise, if the applicant has already been issued a permit under the "Coastal Area Facility Review Act," N.J.S.A.13:19-1 et seq.

As amended, the bill provides a procedure for deeming a small wind energy system to be abandoned, and for the withdrawal of the notice of abandonment or the removal of the system after the owner's receipt of a notice of abandonment, as well as a procedure for notifying county planning boards when a proposed small wind energy system will have a regional impact. The amended bill makes the municipal zoning enforcement officer responsible for duties related to notices of abandonment.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1. Clarify that the regulation of small wind energy systems be consistent with the provisions of the State Uniform Construction Code;
2. Require that the technical bulletin regarding model municipal ordinances for construction of small wind energy systems be developed by DCA in consultation with the DEP and that that bulletin be posted on the DCA's Internet website;
3. Provide that the municipal zoning enforcement office, rather than the planning board is responsible for notices of abandonment of small wind energy systems;
4. Exempt an applicant for the development of a small wind energy system from the restrictions set forth in the bill, such as those concerning height, setbacks, and noise, if the applicant has already been issued a permit under CAFRA;
5. Eliminate provisions concerning notice to the county and nearby municipalities and property owners because they were found to be confusing and duplicative of those already contained in current law;
6. Make technical changes and clarifications to the bill.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3740
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: DECEMBER 16, 2009

SUMMARY

- Synopsis:** Provides for regulation of small wind energy systems by municipalities.
- Type of Impact:** No or negligible State cost; minor cost to municipal governments.
- Agencies Affected:** Department of Community Affairs; municipal planning boards and building code enforcement agencies.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Negligible	No impact	No impact
Local Cost	Minor administrative costs		

- The cost to Department of Community Affairs (DCA) of preparing and distributing a technical bulletin to municipal governing bodies would be nonexistent or negligible.
- The cost to local governments of performing the various notification and hearing activities required under the bill would not be significant.

BILL DESCRIPTION

Assembly Bill No. 3740 of 2009 prohibits municipalities from adopting ordinances or resolutions regarding the installation and operation of small wind energy systems that unreasonably limit or hinder the performance of such installations.

The bill requires the Director of the Division of Codes and Standards in the DCA to promulgate a technical bulletin that includes model municipal ordinances for the construction of small wind energy systems, after holding one or more public hearings and soliciting comments from interested parties. A copy of the technical bulletin shall be provided to every municipal governing body.

The bill establishes a statutory assumption that a small wind energy system in disuse for 12 consecutive months has been abandoned and provides for notification to the owner by the

municipal planning board of its finding of such abandonment. Upon such a finding, the owner must pay for removing the system or demonstrate its non-abandonment.

The bill provides that when a municipal code enforcement official finds that a use or structure proposed in a building permit application may have regional impact, and no municipal planning board has theretofore made such a finding, the official shall notify the local governing body, plus the regional planning board and the affected municipalities, who shall have 30 days to submit comments to the local government body and the official before the permit is issued.

Finally, the bill provides that a municipal code enforcement official shall notify the owner or tenant of any property abutting upon the site of a proposed small wind energy system by mail upon application for a building permit to construct a small wind energy system. Affected owners and tenants shall have 30 days in which to comment prior to the issuance of a building permit. An appeal may be made to the municipal planning board or to the zoning board of adjustment, as appropriate. The applicant shall bear the cost of notification. The building code enforcement official shall notify local governing body of the building permit application.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services believes that the bill's requirement that the director of DCA's Division of Codes and Standards prepare a technical bulleting of model ordinances for small wind energy system construction could be met through the use of existing staff, and that the cost to the department of distributing the bulletin to municipal governing bodies would be negligible. At the local level, the bill's new activity requirements are limited to (1) code official notification to owners of a finding of small wind energy system abandonment, (2) code official notification to local bodies and officials that a proposed use or structure may have regional impact, and (3) municipal planning board hearings of abutter appeals of building permits to construct a small wind energy system. The Office of Legislative Services notes that these activities are unlikely to require the hiring of additional local staff, and that any cost to local governments of performing these activities would not be significant.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Donald S. Margeson
Section Chief*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).

SENATE, No. 2528

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED FEBRUARY 2, 2009

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator BILL BARONI

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senator Beck

SYNOPSIS

Provides for regulation of small wind energy systems by municipalities.

CURRENT VERSION OF TEXT

As introduced.



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 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 construction codes and which will be used primarily
12 for onsite consumption;

13 “System height” means the height above grade of the tower plus
14 the wind generator.

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

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

19

20 2. Ordinances adopted by municipalities to regulate the
21 installation and operation of small wind energy systems shall not
22 unreasonably limit such installations or unreasonably hinder the
23 performance of such installations. Unreasonable limits or
24 hindrances to performance shall include the following:

25 Prohibiting small wind energy systems in all districts within the
26 municipality;

27 Restricting tower height or system height through application of
28 a generic ordinance or regulation on height that does not
29 specifically address allowable tower height or system height of a
30 small wind energy system;

31 Requiring a setback from property boundaries for a tower that is
32 greater than 150 percent of the system height. In a municipality that
33 does not adopt specific setback requirements for small wind energy
34 systems, any small wind energy system shall be set back from the
35 nearest property boundary a distance at least equal to 150 percent of
36 the system height; provided, however, that this requirement may be
37 modified by the zoning board of adjustment upon application in an
38 individual case if the applicant establishes the conditions for a
39 variance under this act;

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

44 Setting electrical or structural design criteria that exceed
45 applicable State, federal, or international building or electrical
46 codes or laws.

1 3. Within 10 months of enactment of this act, the Director of
2 the Division of Codes and Standards in the Department of
3 Community Affairs shall promulgate a technical bulletin which
4 shall include model municipal ordinances for the construction of
5 small wind energy systems. Prior to development, the director shall
6 hold one or more public hearings and solicit comments from
7 interested parties. The Division of Codes and Standards in the
8 Department of Community Affairs shall provide a copy of the
9 technical bulletin to every municipal governing body.

10

11 4. Small wind energy systems shall be built to comply with all
12 applicable Federal Aviation Administration requirements, including
13 14 C.F.R. part 77, subpart B regarding installations close to
14 airports, and all applicable airport zoning regulations.

15

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

32

33 6. When the building inspector or municipal officer charged
34 with or responsible for the enforcement of building codes
35 determines that a use or structure proposed in a building permit
36 application will have the potential for regional impact and no such
37 determination has previously been made by another municipal
38 planning board, he or she shall notify the local governing body. The
39 building inspector or municipal officer charged with or responsible
40 for the enforcement of building codes shall also notify by certified
41 mail the regional planning board and the affected municipalities,
42 who shall be provided 30 days to submit comment to the local
43 governing body and the building inspector prior to the issuance of
44 the building permit.

45

46 7. a. A building inspector or municipal officer charged with or
47 responsible for the enforcement of building codes shall notify the
48 owner or tenant of any property abutting upon the site of a proposed

1 small wind energy system by mail upon application for a building
2 permit to construct a small wind energy system. Affected owners
3 and tenants shall be afforded a 30-day comment period prior to the
4 issuance of a building permit. An appeal may be made to the
5 municipal planning board or to the zoning board of adjustment, as
6 may be appropriate.

7 b. The cost of notification shall be borne by the applicant.

8 c. The building inspector or municipal officer charged with or
9 responsible for the enforcement of building codes shall provide
10 notice of the application for a building permit to the municipal
11 governing body.

12

13 8. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill provides for the regulation of small wind energy
19 systems by municipalities. Specifically, the bill prohibits
20 municipalities from adopting ordinances or resolutions regarding
21 the installation and operation of small wind energy systems that
22 unreasonably limit such installations or unreasonably hinder the
23 performance of such installations.

24 The bill requires the Director of the Division of Codes and
25 Standards in the Department of Community Affairs to promulgate a
26 technical bulletin which includes model municipal ordinances for
27 the construction of small wind energy systems, after holding one or
28 more public hearings and soliciting comments from interested
29 parties. A copy of the technical bulletin shall be provided to every
30 municipal governing body.

31 The bill provides that small wind energy systems shall be built to
32 comply with all applicable Federal Aviation Administration
33 requirements, including 14 C.F.R. part 77, subpart B regarding
34 installations close to airports, and all applicable airport zoning
35 regulations.

36 The bill provides a procedure for deeming a small wind energy
37 system to be abandoned, and for the withdrawal of the notice of
38 abandonment or the removal of the system after the owner's receipt
39 of a notice of abandonment, as well as a procedure for notifying
40 regional planning boards when a proposed small wind energy
41 system will have a regional impact.

42 Finally, the bill provides that a building inspector or municipal
43 officer charged with or responsible for the enforcement of building
44 codes shall notify the owner or tenant of any property abutting upon
45 the site of a proposed small wind energy system by mail upon
46 application for a building permit to construct a small wind energy
47 system. Affected owners and tenants shall be afforded a 30-day
48 comment period prior to the issuance of a building permit. An

S2528 B. SMITH, BARONI

5

1 appeal may be made to the municipal planning board or to the
2 zoning board of adjustment, as may be appropriate. The cost of
3 notification shall be borne by the applicant. The building inspector
4 or municipal officer charged with or responsible for the
5 enforcement of building codes shall provide notice of the
6 application for a building permit to the local governing body.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 2528

STATE OF NEW JERSEY

DATED: DECEMBER 3, 2009

The Senate Economic Growth Committee reports favorably Senate Bill, No. 2528.

This bill provides for the regulation of small wind energy systems by municipalities. Specifically, the bill prohibits municipalities from adopting ordinances or resolutions regarding the installation and operation of small wind energy systems that unreasonably limit such installations or unreasonably hinder the performance of such installations.

The bill requires the Director of the Division of Codes and Standards in the Department of Community Affairs to promulgate a technical bulletin which includes model municipal ordinances for the construction of small wind energy systems, after holding one or more public hearings and soliciting comments from interested parties. A copy of the technical bulletin shall be provided to every municipal governing body.

The bill provides that 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.

The bill provides a procedure for deeming a small wind energy system to be abandoned, and for the withdrawal of the notice of abandonment or the removal of the system after the owner's receipt of a notice of abandonment, as well as a procedure for notifying regional planning boards when a proposed small wind energy system will have a regional impact.

Finally, the bill provides that a building inspector or municipal officer charged with or responsible for the enforcement of building codes shall notify the owner or tenant of any property abutting upon the site of a proposed small wind energy system by mail upon application for a building permit to construct a small wind energy system. Affected owners and tenants shall be afforded a 30-day comment period prior to the issuance of a building permit. An appeal may be made to the municipal planning board or to the zoning board of adjustment, as may be appropriate. The cost of notification shall be borne by the applicant. The building inspector or municipal officer charged with or responsible for the enforcement of building codes

shall provide notice of the application for a building permit to the local governing body.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2528

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 14, 2009

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2528, with committee amendments.

As amended, the bill provides for the regulation of small wind energy systems by municipalities. Specifically, the bill prohibits municipalities from adopting ordinances or resolutions regarding the installation and operation of small wind energy systems that unreasonably limit such installations or unreasonably hinder the performance of such installations.

The bill requires the Director of the Division of Codes and Standards in the Department of Community Affairs (DCA), in consultation with the Department of Environmental Protection, to promulgate a technical bulletin which includes model municipal ordinances for the construction of small wind energy systems, after holding one or more public hearings and soliciting comments from interested parties. A copy of the technical bulletin shall be posted on the DCA's Internet website.

The bill provides that small wind energy systems shall be built to comply with all applicable Federal Aviation Administration requirements.

As amended, the bill provides a procedure for deeming a small wind energy system to be abandoned, and for the withdrawal of the notice of abandonment or the removal of the system after the owner's receipt of a notice of abandonment, as well as a procedure for notifying county planning boards when a proposed small wind energy system will have a regional impact.

Finally, as amended, the bill provides that a permit applicant shall notify the owner of any property within 200 feet of a proposed small wind energy system by certified mail upon application for a building permit to construct any such system. Affected owners shall be afforded a 30-day comment period prior to the issuance of a zoning approval for such a building permit and shall have standing to appeal the granting of zoning approval. The cost of notification shall be borne by the applicant. The municipal zoning officer shall provide the local governing body notice of the application for the zoning approval that is prerequisite to the issuance of a building permit.

COMMITTEE AMENDMENTS:

The committee amendments:

- 1) Clarify that the regulation of small wind energy systems be consistent with the provisions of the State Uniform Construction Code;
- 2) Require that the technical bulletin regarding model municipal ordinances for construction of small wind energy systems be developed by DCA in consultation with the DEP and that that bulletin be posted on the DCA's Internet website;
- 3) Charge the municipal zoning enforcement officer, rather than the local planning board, with responsibilities under the bill related to small wind energy systems deemed abandoned;
- 4) Require the permit applicant to notify the county planning board and the governing bodies of any adjoining municipality as well as any owners within 200 feet of the property of the permit application; and
- 5) Require that the permit applicant provide proof of providing such notices.

FISCAL IMPACT:

The Office of Legislative Services (OLS) believes that the bill's requirement that the director of DCA's Division of Codes and Standards prepare a technical bulleting of model ordinances for small wind energy system construction could be met through the use of existing staff, and that the cost to the department of posting the bulletin on the Internet would be virtually zero. At the local level, the bill's new activity requirements are limited to (1) zoning enforcement officers' notification to owners of a finding of small wind energy system abandonment, and (2) municipal planning and zoning board hearings of appeals of building permits to construct a small wind energy system. The OLS notes that these activities are unlikely to require the hiring of additional local staff, and that any cost to local governments of performing these activities would not be significant.

STATEMENT TO
[First Reprint]
SENATE, No. 2528

with Senate Floor Amendments
(Proposed by Senator SMITH)

ADOPTED: JANUARY 7, 2010

These floor amendments would exempt an applicant for the development of a small wind energy system from the restrictions set forth in the bill, such as those concerning height, setbacks and noise, if the applicant has already been issued a permit under CAFRA.

The amendments also eliminate some provisions concerning notice to the county and nearby municipalities and property owners because they were found to be confusing and duplicative of those already contained under current law. The amendments also incorporate some technical changes and clarifications to the bill.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2528
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: DECEMBER 15, 2009

SUMMARY

Synopsis: Provides for regulation of small wind energy systems by municipalities.

Type of Impact: No or negligible State cost; minor cost to municipal governments.

Agencies Affected: Department of Community Affairs; municipal planning boards and building code enforcement agencies.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Negligible	No impact	No impact
Local Cost	Minor administrative costs		

- The cost to Department of Community Affairs (DCA) of preparing and distributing a technical bulletin to municipal governing bodies would be nonexistent or negligible.
- The cost to local governments of performing the various notification and hearing activities required under the bill would not be significant.

BILL DESCRIPTION

Senate Bill No. 2528 of 2009 prohibits municipalities from adopting ordinances or resolutions regarding the installation and operation of small wind energy systems that unreasonably limit or hinder the performance of such installations.

The bill requires the Director of the Division of Codes and Standards in the DCA to promulgate a technical bulletin that includes model municipal ordinances for the construction of small wind energy systems, after holding one or more public hearings and soliciting comments from interested parties. A copy of the technical bulletin shall be provided to every municipal governing body.

The bill establishes a statutory assumption that a small wind energy system in disuse for 12 consecutive months has been abandoned and provides for notification to the owner by the

municipal planning board of its finding of such abandonment. Upon such a finding, the owner must pay for removing the system or demonstrate its non-abandonment.

The bill provides that when a municipal code enforcement official finds that a use or structure proposed in a building permit application may have regional impact, and no municipal planning board has theretofore made such a finding, the official shall notify the local governing body, plus the regional planning board and the affected municipalities, who shall have 30 days to submit comments to the local government body and the official before the permit is issued.

Finally, the bill provides that a municipal code enforcement official shall notify the owner or tenant of any property abutting upon the site of a proposed small wind energy system by mail upon application for a building permit to construct a small wind energy system. Affected owners and tenants shall have 30 days in which to comment prior to the issuance of a building permit. An appeal may be made to the municipal planning board or to the zoning board of adjustment, as appropriate. The applicant shall bear the cost of notification. The building code enforcement official shall notify local governing body of the building permit application.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services believes that the bill's requirement that the director of DCA's Division of Codes and Standards prepare a technical bulleting of model ordinances for small wind energy system construction could be met through the use of existing staff, and that the cost to the department of distributing the bulletin to municipal governing bodies would be negligible. At the local level, the bill's new activity requirements are limited to (1) code official notification to owners of a finding of small wind energy system abandonment, (2) code official notification to local bodies and officials that a proposed use or structure may have regional impact, and (3) municipal planning board hearings of abutter appeals of building permits to construct a small wind energy system. The Office of Legislative Services notes that these activities are unlikely to require the hiring of additional local staff, and that any cost to local governments of performing these activities would not be significant.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Donald S. Margeson
Section Chief*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2528

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JANUARY 15, 2010

SUMMARY

Synopsis: Provides for regulation of small wind energy systems by municipalities.

Type of Impact: No or negligible State cost; minor cost to municipal governments.

Agencies Affected: Department of Community Affairs; municipal zoning enforcement agencies.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Negligible	\$0	\$0
Local Cost	Minor administrative costs - See comments below		

- The cost to the Department of Community Affairs (DCA) of preparing a technical bulletin and posting the bulletin on a DCA website would be nonexistent or negligible.
- The cost to local governments of implementing the bill's provisions concerning abandoned small wind energy systems would not be significant.

BILL DESCRIPTION

Senate Bill No. 2528 (2R) of 2009 prohibits municipalities from adopting ordinances or resolutions regarding the installation and operation of small wind energy systems that unreasonably limit or hinder the performance of such installations.

The bill requires the Director of the Division of Codes and Standards in the DCA to promulgate a technical bulletin that includes model municipal ordinances for the construction of small wind energy systems, after holding one or more public hearings and soliciting comments from interested parties. A copy of the technical bulletin shall be posted on the Division's Internet website.

The bill establishes a statutory assumption that a small wind energy system in disuse for 12 consecutive months has been abandoned and provides for notification to the owner by the

municipal zoning enforcement officer of a finding of such abandonment. Upon such a finding, the owner must pay for removing the system or demonstrate its non-abandonment. If a system determined to have been abandoned is not removed by the owner, the municipality is authorized to pursue legal action for such removal.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services believes that the bill's requirement that the director of DCA's Division of Codes and Standards prepare a technical bulletin of model ordinances for small wind energy system construction could be met through the use of existing staff, and that the cost to the department of posting the bulletin on the Division's website would be negligible. At the local level, the bill's new activity requirements are limited to zoning official notification to owners of a finding of small wind energy system abandonment and, in a few cases, municipal pursuit of legal action to compel removal at the owner's expense. The Office of Legislative Services notes that these activities are unlikely to require the hiring of additional local staff, and that any cost to local governments of performing these activities would not be significant.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Donald S. Margeson
Section Chief*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-6 et seq.).