

## Chapter 463

(Senate Bill 370)

AN ACT concerning

### **Garrett County – County Commissioners – Industrial Wind Energy Conversion Systems**

FOR the purpose of requiring that certain industrial wind energy conversion systems comply with certain setback requirements; authorizing certain variances under certain circumstances; requiring that before a permit is issued for certain industrial wind energy conversion systems, the Garrett County Department of Planning and Land Development retain at the applicant's expense a certain professional engineer to prepare a certain cost estimate and require the applicant to post a certain bond; requiring that the bond be held as surety for certain purposes; requiring, on completion of the construction of certain industrial wind energy conversion systems and on a certain periodic basis, the Department to retain at the applicant's expense a certain professional engineer for certain purposes; authorizing the Department to alter the amount of a certain bond under certain circumstances; providing for the release of a bond under certain circumstances; authorizing the Department to require a certain owner to decommission and restore a certain pad site under certain circumstances; authorizing the use of a certain bond under certain circumstances; defining certain terms; providing that a certain rule, regulation, law, or ordinance for zoning of industrial wind energy conversion systems supersedes this Act; providing for the application of this Act; providing for the effective date of certain provisions of this Act; providing for the termination of certain provisions of this Act; making this Act an emergency measure; and generally relating to wind turbines in Garrett County.

BY adding to

Article 25 – County Commissioners  
Section 236G  
Annotated Code of Maryland  
(2011 Replacement Volume and 2012 Supplement)

BY adding to

Article – Local Government  
Section 13–706  
Annotated Code of Maryland  
(As enacted by Chapter 119 (H.B. 472) of the Acts of the General Assembly of 2013)

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

**Article 25 – County Commissioners**

**236G.**

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

(2) (I) **“DECOMMISSIONING” MEANS THE REMOVAL AND LEGAL DISPOSAL OF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM AND ANY OTHER COMPONENTS RELATED TO THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM, INCLUDING SYSTEM.**

(II) **UNLESS THE PROPERTY OWNER SPECIFIES OTHERWISE, “DECOMMISSIONING” INCLUDES THE REMOVAL AND LEGAL DISPOSAL OF BUILDINGS, ROADS, CONCRETE, FENCING, GRAVEL, STONE, AND FOUNDATIONS TO A DEPTH OF 36 INCHES.**

(3) **“INDUSTRIAL 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 THAT IS INTENDED FOR SALE TO ENERGY PROVIDERS THROUGH THE ELECTRIC TRANSMISSION GRID.**

(4) **“RESTORATION OF PAD SITE” MEANS, AT THE LOCATION OF THE INDUSTRIAL 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.**

(5) **“SETBACK DISTANCE” MEANS THE DISTANCE MEASURED FROM THE BASE OF THE TOWER OF A WIND TURBINE IN AN INDUSTRIAL WIND**

~~ENERGY CONVERSION SYSTEM TO ANY RESIDENTIAL, COMMERCIAL, PUBLIC, OR AGRICULTURAL~~ OR SCHOOL BUILDING IN ALL DIRECTIONS.

(6) "STRUCTURE HEIGHT" MEANS THE MEASUREMENT FROM GROUND LEVEL AT THE BASE OF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM TO THE HIGHEST POINT OF THE STRUCTURE OR THE HIGHEST POINT OF THE BLADE AT ITS GREATEST EXTENSION.

(7) "WIND TURBINE" MEANS THE TOWER, HUB, BLADES, AND NACELLE.

(B) THIS SECTION APPLIES ONLY TO GARRETT COUNTY.

(C) (1) EACH INDIVIDUAL INDUSTRIAL WIND ENERGY CONVERSION SYSTEM SHALL COMPLY WITH A MINIMUM SETBACK DISTANCE EQUAL TO NO LESS THAN TWO AND A HALF TIMES THE STRUCTURE HEIGHT.

(2) 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 INDUSTRIAL WIND ENERGY CONVERSION 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 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(D) (1) BEFORE ~~A~~ AN OCCUPANCY PERMIT IS ISSUED FOR AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT SHALL:

(I) AT THE APPLICANT'S EXPENSE, RETAIN AN INDEPENDENT AND CERTIFIED PROFESSIONAL ENGINEER TO PREPARE A NET COST ESTIMATE FOR DECOMMISSIONING AND RESTORATION OF THE PAD SITE, LESS THE SALVAGE VALUE OF THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM; AND

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

(2) A BOND POSTED IN ACCORDANCE WITH PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE HELD BY THE GARRETT COUNTY FINANCE DEPARTMENT TO BE USED AS SURETY IN THE EVENT OF NONCOMPLIANCE WITH

**A REQUIREMENT UNDER THIS SECTION BY AN OWNER OF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM.**

**(3) (I) ON COMPLETION OF THE CONSTRUCTION OF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM, AND EVERY 10 YEARS THEREAFTER, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT SHALL, AT THE APPLICANT'S EXPENSE, RETAIN AN INDEPENDENT CERTIFIED PROFESSIONAL ENGINEER TO PREPARE A NET COST ESTIMATE, WITHOUT REGARD TO SALVAGE VALUE, FOR DECOMMISSIONING AND RESTORATION OF THE PAD SITE, LESS THE SALVAGE VALUE OF THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM.**

**(II) THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT MAY ALTER THE AMOUNT OF THE BOND DETERMINED UNDER ~~SUBPARAGRAPH (I) OF THIS PARAGRAPH~~ PARAGRAPH (1)(II) OF THIS SUBSECTION TO PROVIDE ADEQUATE SECURITY FOR THE COSTS OF DECOMMISSIONING AND RESTORATION OF THE PAD SITE.**

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

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

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

**(5) (I) IF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM HAS NOT GENERATED ELECTRICITY FOR A CONTINUOUS PERIOD OF ~~180~~ 365 DAYS OR AN OWNER HAS ABANDONED AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT MAY REQUIRE THE OWNER TO DECOMMISSION AND RESTORE THE PAD SITE.**

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

**(E) THIS SECTION DOES NOT APPLY TO ANY INDUSTRIAL WIND ENERGY CONVERSION SYSTEM THAT HAS SUBMITTED AN INTERCONNECTION APPLICATION TO THE PJM INTERCONNECTION QUEUE BEFORE MARCH 1, 2013.**

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Local Government

13-706.

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

(2) (I) “DECOMMISSIONING” MEANS THE REMOVAL AND LEGAL DISPOSAL OF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM AND ANY OTHER COMPONENTS RELATED TO THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM.

(II) UNLESS THE PROPERTY OWNER SPECIFIES OTHERWISE, “DECOMMISSIONING” INCLUDES THE REMOVAL AND LEGAL DISPOSAL OF BUILDINGS, ROADS, CONCRETE, FENCING, GRAVEL, STONE, AND FOUNDATIONS TO A DEPTH OF 36 INCHES.

(3) “INDUSTRIAL 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 THAT IS INTENDED FOR SALE TO ENERGY PROVIDERS THROUGH THE ELECTRIC TRANSMISSION GRID.

(4) “RESTORATION OF PAD SITE” MEANS, AT THE LOCATION OF THE INDUSTRIAL 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.

(5) “SETBACK DISTANCE” MEANS THE DISTANCE MEASURED FROM THE BASE OF THE TOWER OF A WIND TURBINE IN AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM TO ANY RESIDENTIAL OR SCHOOL BUILDING IN ALL DIRECTIONS.

(6) “STRUCTURE HEIGHT” MEANS THE MEASUREMENT FROM GROUND LEVEL AT THE BASE OF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM TO THE HIGHEST POINT OF THE STRUCTURE OR THE HIGHEST POINT OF THE BLADE AT ITS GREATEST EXTENSION.

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

(B) THIS SECTION DOES NOT APPLY TO ANY INDUSTRIAL WIND ENERGY CONVERSION SYSTEM THAT HAS SUBMITTED AN INTERCONNECTION APPLICATION TO THE PJM INTERCONNECTION QUEUE BEFORE MARCH 1, 2013.

(C) (1) IN GARRETT COUNTY, EACH INDIVIDUAL INDUSTRIAL WIND ENERGY CONVERSION SYSTEM SHALL COMPLY WITH A MINIMUM SETBACK DISTANCE EQUAL TO NO LESS THAN TWO AND ONE-HALF TIMES THE STRUCTURE HEIGHT.

(2) 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 INDUSTRIAL WIND ENERGY CONVERSION 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 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(D) (1) BEFORE AN OCCUPANCY PERMIT IS ISSUED FOR AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM IN GARRETT COUNTY, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT SHALL:

(I) AT THE APPLICANT’S EXPENSE, RETAIN AN INDEPENDENT AND CERTIFIED PROFESSIONAL ENGINEER TO PREPARE A NET COST ESTIMATE FOR DECOMMISSIONING AND RESTORATION OF THE PAD SITE, LESS THE SALVAGE VALUE OF THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM; AND

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

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

(3) (I) ON COMPLETION OF THE CONSTRUCTION OF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM IN GARRETT COUNTY, AND EVERY 10 YEARS THEREAFTER, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT, AT THE APPLICANT'S EXPENSE, SHALL RETAIN AN INDEPENDENT CERTIFIED PROFESSIONAL ENGINEER TO PREPARE A NET COST ESTIMATE FOR DECOMMISSIONING AND RESTORATION OF THE PAD SITE, LESS THE SALVAGE VALUE OF THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM.

(II) THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT MAY ALTER THE AMOUNT OF THE BOND DETERMINED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION TO PROVIDE ADEQUATE SECURITY FOR THE COSTS OF DECOMMISSIONING AND RESTORATION OF THE PAD SITE.

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

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

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

(5) (I) IF AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM IN GARRETT COUNTY HAS NOT GENERATED ELECTRICITY FOR A CONTINUOUS

PERIOD OF 365 DAYS OR AN OWNER HAS ABANDONED AN INDUSTRIAL WIND ENERGY CONVERSION SYSTEM, THE GARRETT COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT MAY REQUIRE THE OWNER TO DECOMMISSION AND RESTORE THE PAD SITE.

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

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That, if Garrett County adopts a rule, a regulation, a law, or an ordinance for zoning of industrial wind energy conversion systems, that rule, regulation, law, or ordinance supersedes this Act.

~~SECTION 3. 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively to industrial wind energy conversion systems constructed on or after the effective date of this Act and may not be applied or interpreted to have any effect on or application to any industrial wind energy conversion systems constructed before the effective date of this Act, notwithstanding Section 3 of this Act, Garrett County may not adopt a rule, a regulation, a law, or an ordinance for zoning of an industrial wind energy conversion system that has submitted an application to the PJM Interconnection queue before March 1, 2013.~~

SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect on the taking effect of Chapter 119 (H.B. 472) of the Acts of the General Assembly of 2013. If Section 2 of this Act takes effect, Section 1 of this Act shall be abrogated and of no further force and effect.

SECTION ~~4~~ 6. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and, except as provided in Section 5 of this Act, shall take effect from the date it is enacted.

**Approved by the Governor, May 16, 2013.**