

SENATE BILL 370

L2, C5

EMERGENCY BILL

3lr1249
CF HB 504

By: **Senator Edwards**

Introduced and read first time: January 25, 2013

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 2013

CHAPTER _____

1 AN ACT concerning

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
 2 Article 25 – County Commissioners
 3 Section 236G
 4 Annotated Code of Maryland
 5 (2011 Replacement Volume and 2012 Supplement)

6 BY adding to
 7 Article – Local Government
 8 Section 13–706
 9 Annotated Code of Maryland
 10 (As enacted by Chapter (H.B. 472) of the Acts of the General Assembly of
 11 2013)

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

14 **Article 25 – County Commissioners**

15 **236G.**

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

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

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

26 (3) **“INDUSTRIAL WIND ENERGY CONVERSION SYSTEM” MEANS AN**
 27 **AGGREGATION OF PARTS, INCLUDING THE BASE, WIND TURBINE, GENERATOR,**
 28 **SUPPORTS, GUY WIRES, AND ACCESSORY EQUIPMENT IN A CONFIGURATION**
 29 **NECESSARY TO CONVERT THE POWER OF WIND INTO MECHANICAL OR**
 30 **ELECTRICAL ENERGY THAT IS INTENDED FOR SALE TO ENERGY PROVIDERS**
 31 **THROUGH THE ELECTRIC TRANSMISSION GRID.**

32 (4) **“RESTORATION OF PAD SITE” MEANS, AT THE LOCATION OF**
 33 **THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM:**

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

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

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

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

7 (5) "SETBACK DISTANCE" MEANS THE DISTANCE MEASURED
8 FROM THE BASE OF THE TOWER OF A WIND TURBINE IN AN INDUSTRIAL WIND
9 ENERGY CONVERSION SYSTEM TO ANY RESIDENTIAL, ~~COMMERCIAL, PUBLIC, OR~~
10 ~~AGRICULTURAL~~ OR SCHOOL BUILDING IN ALL DIRECTIONS.

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

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

17 (B) THIS SECTION APPLIES ONLY TO GARRETT COUNTY.

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

21 (2) ON WRITTEN AUTHORIZATION OF ALL PROPERTY OWNERS OF
22 ADJOINING PARCELS TO A PROPOSED WIND TURBINE IN AN INDUSTRIAL WIND
23 ENERGY CONVERSION SYSTEM, THE APPLICANT OF THE PROPOSED INDUSTRIAL
24 WIND ENERGY CONVERSION SYSTEM MAY SEEK A VARIANCE WITH THE GARRETT
25 COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT OF UP TO 50%
26 OF THE MINIMUM SETBACK DISTANCE REQUIREMENTS UNDER PARAGRAPH (1)
27 OF THIS SUBSECTION.

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

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

1 LESS THE SALVAGE VALUE OF THE INDUSTRIAL WIND ENERGY CONVERSION
2 SYSTEM; AND

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

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

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

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

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

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

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

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

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

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

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

16 Article – Local Government

17 13-706.

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

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

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

28 (3) “INDUSTRIAL WIND ENERGY CONVERSION SYSTEM” MEANS AN
29 AGGREGATION OF PARTS, INCLUDING THE BASE, WIND TURBINE, GENERATOR,
30 SUPPORTS, GUY WIRES, AND ACCESSORY EQUIPMENT IN A CONFIGURATION
31 NECESSARY TO CONVERT THE POWER OF WIND INTO MECHANICAL OR
32 ELECTRICAL ENERGY THAT IS INTENDED FOR SALE TO ENERGY PROVIDERS
33 THROUGH THE ELECTRIC TRANSMISSION GRID.

1 **(4) “RESTORATION OF PAD SITE” MEANS, AT THE LOCATION OF**
2 **THE INDUSTRIAL WIND ENERGY CONVERSION SYSTEM:**

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

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

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

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

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

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

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

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

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

28 **(2) ON WRITTEN AUTHORIZATION OF ALL PROPERTY OWNERS OF**
29 **ADJOINING PARCELS TO A PROPOSED WIND TURBINE IN AN INDUSTRIAL WIND**
30 **ENERGY CONVERSION SYSTEM, THE APPLICANT OF THE PROPOSED INDUSTRIAL**
31 **WIND ENERGY CONVERSION SYSTEM MAY SEEK A VARIANCE WITH THE GARRETT**
32 **COUNTY DEPARTMENT OF PLANNING AND LAND DEVELOPMENT OF UP TO 50%**
33 **OF THE MINIMUM SETBACK DISTANCE REQUIREMENTS UNDER PARAGRAPH (1)**
34 **OF THIS SUBSECTION.**

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

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

10 (II) REQUIRE THE APPLICANT TO POST A BOND EQUAL TO
11 100% OF THE COST ESTIMATE DETERMINED UNDER ITEM (I) OF THIS
12 PARAGRAPH AND ADJUSTED BY AN ESTIMATED CONSTRUCTION PRICING INDEX
13 TO ENSURE THAT COST INCREASES DURING THE FOLLOWING 5-YEAR INTERVAL
14 WILL NOT DECREASE THE VALUE OF THE BOND.

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

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

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

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

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

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.