

[First Reprint]

**ASSEMBLY, No. 3740**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED FEBRUARY 9, 2009

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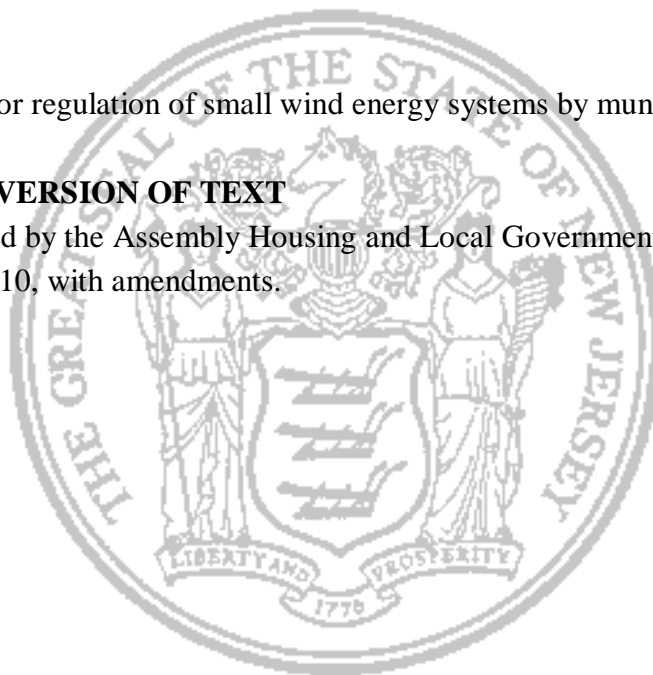
**Senators B.Smith, Baroni and Beck**

**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 <sup>1</sup>[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.]<sup>1</sup>

19

20 <sup>1</sup>[2.] 1. a.<sup>1</sup> 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. <sup>1</sup>An 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.<sup>1</sup> Unreasonable limits or hindrances to performance <sup>1</sup>of a small  
29 wind energy system<sup>1</sup> shall include the following:

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

32 <sup>1</sup>(2)<sup>1</sup> 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 <sup>1</sup>(3)<sup>1</sup> 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 <sup>1</sup>setback<sup>1</sup> requirement may be <sup>1</sup>**[modified]** reduced<sup>1</sup> by the zoning  
43 board of adjustment <sup>1</sup> or, 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:

<sup>1</sup>Assembly AHO committee amendments adopted January 4, 2010.

1 board<sup>1</sup> 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 satisfaction<sup>1</sup>;

5 '(4)<sup>1</sup> 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)<sup>1</sup> 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 tower<sup>1</sup>.

44  
45 '[3.] 2.<sup>1</sup> Within 10 months of enactment of '[this act]  
46 P.L. , c. (C. ) (pending before the Legislature as this bill)<sup>1</sup>,  
47 the Director of the Division of Codes and Standards in the

1 Department of Community Affairs<sup>1</sup>, in consultation with the  
2 Department of Environmental Protection,<sup>1</sup> shall **['promulgate]**  
3 issue<sup>1</sup> 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 bulletin<sup>1</sup>, 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 website<sup>1</sup>.

11

12 **['4.] 3.**<sup>1</sup> 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.**<sup>1</sup> 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 officer<sup>1</sup> 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 officer<sup>1</sup> 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 officer<sup>1</sup> 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]** municipality<sup>1</sup> 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. ]<sup>1</sup>

3  
4 <sup>1</sup>[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. ]<sup>1</sup>

18

19 <sup>1</sup>[8.] 5.<sup>1</sup> This act shall take effect immediately.