

1 SB99  
2 203993-2  
3 By Senators Butler and Reed  
4 RFD: Veterans and Military Affairs  
5 First Read: 04-FEB-20

SYNOPSIS: Under existing military land use planning law, a county or a municipality whose territorial boundaries are within two miles of any portion of a military installation is required to give notice to the military installation and an opportunity for review of any local impact. The existing law does not address tall structures and wind energy facilities that could have an adverse impact on military aviation and other operations.

This bill would revise these notification and review requirements to require a county or municipality to give an affected military installation notice and an opportunity for review of any proposed tall structure or wind energy facility for potential impacts prior to approving the tall structure or wind energy facility.

A BILL  
TO BE ENTITLED  
AN ACT

1  
2 To amend Sections 11-106-3 and 11-106-4, Code of  
3 Alabama 1975, and to add Section 11-106-6 to the Code of  
4 Alabama 1975, relating to military land use planning; to  
5 further define terms; to require certain reviews to be  
6 conducted for any tall structure or wind energy facility  
7 regardless of distance from a military installation; to  
8 require adequate notice to the military installation of  
9 applications to construct tall structures and wind energy  
10 facilities to ensure the military installation is able to  
11 resolve adverse impacts prior to a local government approving  
12 a tall structure or wind energy facility.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 11-106-3 and 11-106-4, Code of  
15 Alabama 1975, are amended to read as follows:

16 "§11-106-3.

17 "As used in this chapter, the following words shall  
18 have the following meanings:

19 "(1) ADVERSE IMPACT ON MILITARY OPERATIONS AND  
20 READINESS. The same meaning as provided for that term in  
21 Section 183a(h) of Title 10 of the United States Code.

22 "(2) DEPARTMENT OF DEFENSE SITING CLEARINGHOUSE. The  
23 Military Aviation and Installation Assurance Siting  
24 Clearinghouse of the Department of Defense, as established by  
25 section 183a of Title 10 of the United States Code.

26 "~~(1)~~ (3) LOCAL GOVERNMENT. Any county or  
27 municipality.

1           "~~(2)~~(4) LOCAL IMPACT ISSUE. Any adoption or  
2 amendment by a local government of a proposed zoning plan,  
3 comprehensive master plan, or land development regulations  
4 that, if approved, may or will significantly affect any area  
5 or airspace that is within two miles of a military  
6 installation.

7           "~~(3)~~(5) MILITARY INSTALLATION. Any base, camp, post,  
8 station, airfield, yard, center, or any other land area under  
9 the jurisdiction of the United States Department of Defense,  
10 including any leased facility, the total acreage of which  
11 installation is in excess of 500 acres. The term military  
12 installation does not include any facility used primarily for  
13 civil works, river projects, or flood control projects.

14           "(6) NOTICE OF PRESUMED RISK. The notice provided by  
15 the Department of Defense Siting Clearinghouse to an owner of  
16 an energy facility pursuant to Section 183a(c)(2) of Title 10  
17 of the United States Code.

18           "(7) TALL STRUCTURE. Any building, structure, or  
19 unit within a multiunit building with a vertical height of  
20 more than 200 feet measured from the top of the foundation of  
21 the building, structure, or unit and the uppermost point of  
22 the building, structure, or unit. The term does not include:  
23 wind energy facilities, electrical transmission towers,  
24 slender structures, or minor vertical projections of a parent  
25 building, including, but not limited to, chimneys, flagpoles,  
26 flues, spires, steeples, belfries, cupolas, antennas, poles,  
27 lines, or wires, except that no such structure or vertical

1 projection may project more than 20 vertical feet above the  
2 parent building.

3 "(8) WIND ENERGY FACILITY. Facilities for the  
4 generation of electricity by wind power.

5 "§11-106-4.

6 "(a) Each local government whose territorial  
7 boundaries are within two miles of all or any portion of a  
8 military installation shall provide written notice to the  
9 military installation's commanding officer and the flying  
10 mission commanding officer if applicable, or their designees,  
11 of any local impact issue.

12 "(b) Prior to approving any proposed tall structure  
13 or wind energy facility, the local government shall follow the  
14 requirements of Section 11-106-6. The requirements of Section  
15 11-106-6 shall apply regardless of the distance of the tall  
16 structure or wind energy facility from any military  
17 installation and regardless of whether the local government's  
18 territorial boundaries are within two miles of all or any  
19 portion of a military installation."

20 Section 2. Section 11-106-6 is added to the Code of  
21 Alabama 1975, to read as follows:

22 §11-106-6.

23 (a) The construction or operation of any tall  
24 structure or wind energy facility in this state shall not  
25 encroach upon or otherwise have an adverse impact on military  
26 operations and readiness of any military installation or  
27 branch of military.

1 (b) A local government, prior to approving an  
2 application for the construction of a tall structure shall  
3 require the applicant to file an application with the Federal  
4 Aviation Administration under Section 44718 of Title 49 of the  
5 United States Code, and provide the local government either of  
6 the following:

7 (1) A written "Determination of No Hazard to Air  
8 Navigation" issued by the Federal Aviation Administration  
9 pursuant to Subpart D of Part 77 of Title 14 of the Code of  
10 Federal Regulations.

11 (2) In coordination with any affected military  
12 installation and the state Military Department, a written  
13 determination resolving any adverse impact to military  
14 operations identified during the aeronautics study conducted  
15 pursuant to Subpart D of Part 77 of Title 14 of the Code of  
16 Federal Regulations.

17 (c) A local government considering an application  
18 for the construction of a wind energy facility, shall require  
19 the applicant provide the following at least 270 days prior to  
20 planned construction:

21 (1) Documentation that the owner or applicant has  
22 transmitted notice relating to the construction of the wind  
23 energy facility to the Department of Defense Siting  
24 Clearinghouse, the state Military Department, and the state  
25 Department of Transportation.

26 (2) A map showing the specific location and tower  
27 hub height with rotor diameter for each proposed wind turbine.

1           (3) Documentation that the facility owner has either  
2 initiated an informal review with the Department of Defense  
3 Siting Clearinghouse under Section 211.7 of Title 32 of the  
4 Code of Federal Regulations or filed for a formal review with  
5 the Secretary of Transportation and the Federal Aviation  
6 Administration pursuant to Section 44718 of Title 49 of the  
7 United States Code.

8           (d) A local government may not approve an  
9 application for the construction of a wind energy facility  
10 prior to receiving documentation of one of the following:

11           (1) A completed Department of Defense Siting  
12 Clearinghouse informal review resulting in a determination of  
13 no presumed risk.

14           (2) A mitigation agreement between the owner or  
15 applicant and the Department of Defense Siting Clearinghouse  
16 resolving any notice of presumed risk.

17           (3) A written "Determination of No Hazard to Air  
18 Navigation" issued by the Federal Aviation Administration  
19 pursuant to Subpart D of Part 77 of Title 14 of the Code of  
20 Federal Regulations.

21           (e) If any dispute arises between a local government  
22 and an applicant or military installation relating to the  
23 approval of any tall structure or wind energy facility, the  
24 local government shall provide notice to the Governor or the  
25 Governor's designee to facilitate resolution of the dispute.

1                   Section 3. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.