

SB91 INTRODUCED



1 SB91
2 6DP6ZZ1-1
3 By Senators Kelley, Jones
4 RFD: Veterans and Military Affairs
5 First Read: 04-Feb-25



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SYNOPSIS:

Existing law provides that a tall structure may not have an adverse impact on the operations of a military installation.

Existing law also requires a local government, before approving a tall structure near a military installation, to notify the Federal Aviation Administration; however, the governing body of counties do not have a uniform process in place requiring approval of constructing these tall structures.

This bill would require a person seeking to construct a tall structure within a minimum distance of a military installation to receive approval from the local government before construction may begin.

This bill would authorize a local government to seek enjoinder of the construction of a tall structure if prior approval was not granted.

This bill would also make conforming changes.

A BILL
TO BE ENTITLED
AN ACT

Relating to military installations; to amend Sections



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29 11-106-4 and 11-106-6, Code of Alabama 1975, to require
30 persons to obtain the approval of a local government before
31 constructing a tall structure within a certain distance of a
32 military installation; to authorize local governments to seek
33 enjoinder of the construction of a tall structure in certain
34 circumstances; and to make conforming changes.

35 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

36 Section 1. Sections 11-106-4 and 11-106-6, Code of
37 Alabama 1975, are amended to read as follows:

38 "§11-106-4

39 (a) Each local government whose territorial boundaries
40 are within two miles of ~~all or~~ any portion of a military
41 installation shall provide written notice to the military
42 installation's commanding officer and the flying mission
43 commanding officer if applicable, or their designees, of any
44 local impact issue.

45 (b) Prior to approving any proposed tall structure or
46 wind energy facility, the local government shall follow the
47 requirements of Section 11-106-6. ~~The requirements of Section~~
48 ~~11-106-6 shall apply regardless of the distance of the tall~~
49 ~~structure or wind energy facility from any military~~
50 ~~installation and regardless of whether the local government's~~
51 ~~territorial boundaries are within two miles of all or any~~
52 ~~portion of a military installation."~~

53 "§11-106-6

54 (a) The construction or operation of any tall structure
55 or wind energy facility in this state shall not encroach upon
56 or otherwise have an adverse impact on military operations and



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57 readiness of any military installation or branch of military.

58 (b) A person may not commence the construction of a
59 tall structure within two miles of a military installation
60 unless the person has obtained approval from the governing
61 body of the local government in which the tall structure will
62 be located as further provided in this section.

63 ~~(b)~~ (c) A governing body of a local government, ~~prior to~~
64 ~~approving an application for the construction of a tall~~
65 ~~structure shall~~ may not approve an application to commence
66 construction of a tall structure within two miles of a
67 military installation unless ~~require~~ the applicant ~~to file~~ has
68 filed an application with the Federal Aviation Administration
69 under 49 U.S.C. § 44718, and ~~provide~~ provided the governing
70 body of the local government either of the following:

71 (1) A written "Determination of No Hazard to Air
72 Navigation" issued by the Federal Aviation Administration
73 pursuant to 14 C.F.R. Part 77, Subpart D.

74 (2) In coordination with any affected military
75 installation and the state Military Department, a written
76 determination resolving any adverse impact to military
77 operations identified during the aeronautics study conducted
78 pursuant to 14 C.F.R. Part 77, Subpart D.

79 ~~(3) The tall structure shall be in compliance with~~
80 ~~subsection (a) even if the local government either does not~~
81 ~~require an application prior to the construction of a tall~~
82 ~~structure or does not require the application outlined in this~~
83 ~~subsection if the applicant has otherwise complied with the~~
84 ~~requirements of subdivision (1) or (2).~~



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85 (d) A local government may bring an action for
86 injunctive relief against any person that commences the
87 construction of a tall structure without obtaining prior
88 approval as required pursuant to this section.

89 ~~(d)~~ (e) A local government considering an application
90 for the construction of a wind energy facility shall require
91 the applicant to provide the following at least 270 days prior
92 to planned construction:

93 (1) Documentation that the owner or applicant has
94 transmitted notice relating to the construction of the wind
95 energy facility to the Department of Defense Siting
96 Clearinghouse, the state Military Department, and the state
97 Department of Transportation.

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

100 (3) Documentation that the facility owner has either
101 initiated an informal review with the Department of Defense
102 Siting Clearinghouse under 32 C.F.R. § 211.7 or filed for a
103 formal review with the Secretary of Transportation and the
104 Federal Aviation Administration pursuant to 49 U.S.C. § 44718.

105 ~~(d)~~ (f) A local government may not approve an
106 application for the construction of a wind energy facility
107 prior to receiving documentation of one of the following:

108 (1) A completed Department of Defense Siting
109 Clearinghouse informal review resulting in a determination of
110 no presumed risk.

111 (2) A mitigation agreement between the owner or
112 applicant and the Department of Defense Siting Clearinghouse



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113 resolving any notice of presumed risk.

114 (3) A written "Determination of No Hazard to Air
115 Navigation" issued by the Federal Aviation Administration
116 pursuant to 14 C.F.R. Part 77, Subpart D.

117 ~~(e)~~ (g) Notwithstanding subsection ~~(d)~~ (f), a local
118 government may approve an application for the construction of
119 a wind energy facility conditioned upon the applicant
120 providing documentation of one of the requirements set out in
121 subsection ~~(d)~~ (f).

122 ~~(f)~~ (h) If any dispute arises between a local government
123 and an applicant or military installation relating to the
124 approval of any tall structure or wind energy facility, the
125 local government shall provide notice to the Governor or the
126 ~~Governor's~~ Governor's designee to facilitate resolution of the
127 dispute.

128 ~~(g)~~ (i) A local government may not require any other
129 formal written approval from a military installation to
130 approve an application for the construction of a tall
131 structure or wind energy facility."

132 Section 2. This act shall become effective on October
133 1, 2025.