LEGISLATIVE GENERAL COUNSEL
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S.J.R. 1

JOINT RESOLUTION - RENEWABLE ENERGY SYSTEM

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patricia W. Jones

House Sponsor: _____

LONG TITLE

General Description:

This joint resolution of the Legislature addresses renewable energy systems.

Highlighted Provisions:

This resolution:

- directs the State Energy Program to assess the need for model solar and geothermal ordinances at the local government level and to report to the Legislature on its process for assessing the need;
- urges local governments to adopt a model ordinance for wind energy projects; and
- directs that a copy of the resolution be sent to the State Energy Program.

Special Clauses:

None

Be it resolved by the Legislature of the state of Utah:

WHEREAS, the state has established a target of 20 percent renewable energy electricity generation by the year 2025;

WHEREAS, it is the policy of the state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and

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economic utilization;

WHEREAS, the state wishes to provide clarity to the process of developing renewable energy projects and to reduce the bureaucratic and permitting burden for Utah residents, businesses, and local governments in developing renewable energy;

WHEREAS, the state finds that wind, geothermal, and solar energy are abundant, renewable, and non-polluting energy resources;

WHEREAS, wind, geothermal, and solar energy systems can help to offset growing energy and peak power demands;

WHEREAS, the state wishes to advance the use of wind, geothermal, and solar energy by all of its citizens, businesses, and industries;

WHEREAS, properly designed renewable energy installation ordinances can help communities facilitate greater access to wind, geothermal, and solar energy;

WHEREAS, it is the goal of the state to develop wind, geothermal, and solar power, while preserving farmlands and agricultural enterprises and adjoining residential and commercial developments as compatible adjoining uses, and the public health, safety, and general welfare will be protected and promoted by this ordinance;

WHEREAS, the state recognizes that the renewable energy industry is growing and can continue to benefit the state economically, and efforts to streamline renewable energy installations encourages economic development in the state;

WHEREAS, solar working groups meet quarterly throughout the state as administered by the State Energy Program; and

WHEREAS, geothermal working groups meet quarterly throughout the state as administered by the State Energy Program:

NOW, THEREFORE, BE IT RESOLVED that the State Energy Program be directed to assess the need for a model solar ordinance through a consensus building stakeholder process to include, if considered useful, the development of a model solar ordinance.

BE IT FURTHER RESOLVED that the State Energy Program be directed to report the findings of the consensus building stakeholder process and any resulting model solar ordinance to the Legislature no later than November 30, 2009.

BE IT FURTHER RESOLVED that the State Energy Program be directed to assess the need for a geothermal ordinance through a consensus building stakeholder process to include,

if considered useful, the development of a model geothermal ordinance.

BE IT FURTHER RESOLVED that the State Energy Program be directed to report the findings of the consensus building stakeholder process to the Legislature no later than November 30, 2009.

BE IT FURTHER RESOLVED that a copy of this joint resolution be sent to the State Energy Program.

BE IT FURTHER RESOLVED that the Legislature strongly urges local governments that wish to develop ordinances for wind energy projects to adopt the following model ordinance language as appropriate for their jurisdictions.

SMALL AND LARGE WIND SYSTEMS ORDINANCE

1.0 Purpose

The purpose of this [model] ordinance is to establish minimum requirements and regulations for the placement, construction, and modification of small wind energy systems, large wind energy systems, and wind metering towers and equipment as defined herein, while promoting the safe, effective, and efficient use of such systems.

2.0 Definitions

Abandoned: A wind energy system or project shall be considered abandoned when, once installed fails to operate for 24 months.

Height: The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point.

Large Wind Energy System: All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity greater than 100kW.

Meteorological Tower (Met tower): A temporary tower, housing or supporting wind measuring equipment for the purpose of establishing the viability of the wind generated energy by measuring and monitoring wind velocity, direction, shear, duration, intensity, and regularity.

Permit Granting Authority: The board of appeals or zoning administrator.

Rated Nameplate Capacity: The maximum rated output of electric power production

equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment rated in Watts or British Thermal Units (BTUs).

Small Wind Energy System: All equipment, machinery, and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads, and one or more wind turbines, which has a rated nameplate capacity of 100 kW or less.

Special Permit Granting Authority: The special permit granting authority shall be the board of city council, planning board, or zoning administrator as designated by zoning ordinance or by-law for the issuance of special permits, or by this section for the issuance of special permits to construct and operate small wind energy systems.

Special Use Permit: A permit provided by the special permitting authority for nonconforming small wind systems (e.g. a small wind system that does not meet the criteria for small wind systems set forth by this ordinance).

Zoning: Ordinances and bylaws adopted by cities and towns to regulate the use of land, buildings, and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety, and general welfare of their present and future inhabitants.

Zoning administrator: A person designated by the board of appeals pursuant to section 13 to assume certain duties of said board.

3.0 General Requirements -- Small Wind Energy System

3.1 Design Standards

3.1.1 Height

The height of small wind energy systems shall not exceed 200 feet in height without prior approval from the permit granting authority.

3.1.2 Setbacks

Small wind energy systems shall be set back at a distance equal to 110% of the total height of system from all inhabited structures, overhead utility lines, property lines, and public roads or public rights-of-ways.

3.1.3 Setback Waivers

The building inspector may reduce the minimum setback distance if written permission

is granted by permit granting authority.

3.1.4 Minimum Blade Height

The minimum height of the lowest extent of a turbine blade shall be 30 feet above the ground.

3.1.5 Color and Finish

The wind energy system shall be a neutral color that blends with the environment. Gray, beige, and white are recommended.

3.1.6 Lighting

Small wind energy systems shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the small wind energy system shall be limited to that required for safety and operational purposes.

3.1.7 Signage and Advertising

Signs and advertising shall be restricted to reasonable identification of the manufacturer, operator of the small wind energy system, utility, and safety signs.

3.1.8 Access

No tower shall have a climbing apparatus within 10 feet of the ground. All access doors or access ways to towers and electrical equipment shall be locked.

3.1.9 Noise

The small wind energy system and associated equipment shall not exceed 60 dBa as measured from the nearest neighboring inhabitable structure.

3.2 Siting Conditions and Property Maintenance

3.2.1 Land Clearing, Soil Erosion, and Habitat Impacts

If the permitting granting authority has standards for land clearing, soil erosion control, and habitat impact mitigation and/or habitat reclamation, those same standards should apply. If the Permit Granting Authority does not have previously prescribed standards, the following is recommended for adoption.

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the small wind energy system and is otherwise prescribed by applicable laws, regulations, and ordinances. Once the system is operational, any land that has been disturbed and is not necessary for the functioning of the system shall be reclaimed with natural vegetation immediately. Soil erosion is to

be mitigated by the use of silt fencing, the captured product of which can be used in the vegetation reclamation.

3.2.2 Minimum Lot Size

Small wind energy systems that are less than 80 feet in height may be constructed on lots one acre or less. If the small wind energy system is greater than 80 feet in height, the system must be constructed on a lot greater than one acre.

3.2.3 System Conditions

The applicant shall maintain the small wind energy system in good condition.

Maintenance shall include, but not be limited to, painting, mechanical/electrical repairs, structural repairs, and security measures.

3.2.4 Removal and Decommissioning Requirements

Any small wind energy system, which has reached the end of its useful life or has been abandoned, shall be removed. A small wind energy system shall be considered abandoned when it fails to operate for 24 months. Upon a Notice of Abandonment issued by the Building Inspector, the small wind energy system owner will have 60 days to provide sufficient evidence that the system has not been abandoned, or the Permit Granting Authority shall have the authority to enter the owner's property and remove the system at the owner's expense.

Once the system has been removed the owner is then responsible for land reclamation using the natural vegetation that was removed or disturbed upon construction of the project. To the greatest extent possible, the land shall be fully returned to its natural state within five years of the removal and decommissioning of the project.

3.3 Permit Granting Authority Issued Permits

3.3.1 Building Permits

Small wind energy systems shall be constructed as provided in this section by first obtaining a building permit from the appropriate Permit Granting Authority.

3.3.2 Modifications

Any physical modification to an existing and permitted wind energy system that materially alters the size and/or type of wind turbines or other equipment shall require a permit modification under this ordinance. Replacement of an already permitted turbine with a similar size and height will not require a permit modification.

3.3.3 Conditional Use Permits (CUP)

A conditional use permit may be granted in the case where a proposed small wind energy system or project does not satisfy the standard criteria of the building permit set forth under this ordinance. The applicant must then seek review and petition the Permit Granting Authority for a Conditional Use Permit. This CUP variance from the standard building permit criteria will only be applicable to that specific non-conforming project.

3.3.4 Expiration

A permit issued pursuant to this ordinance shall expire if:

(a) the small wind energy system is not installed and functioning within 24 months from the date the permit is issued; or

(b) the small wind energy system is abandoned.

3.3.5 Violations

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt.

3.3.6 Administration and Enforcement

(a) This ordinance shall be administered and enforced by the Building Inspector or other official as designated by the Permit Granting Authority.

(b) The Building Inspector may enter any property for which a building permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.

3.4 Compliance with Laws, Ordinances, and Regulations

The construction and operation of all such proposed small wind energy systems shall be consistent with all applicable local, state, and federal requirements, including all applicable safety, construction, environmental, electrical, communications,

and FAA aviation requirements.

4.0 General Requirements -- Large Wind Energy Systems and Projects

4.1 Design Standards

4.1.1 Height

The height of large wind energy systems shall not exceed 450 feet in height without

prior approval from the Permit Granting Authority.

4.1.2 Setbacks

Large wind energy systems shall be set back a distance equal to 110% of the total height of system from all inhabited structures, overhead utility lines, property lines, and public roads or public rights-of-ways.

4.1.3 Setback Waivers

The building inspector may reduce the minimum setback distance if written permission is granted by the Permit Granting Authority.

4.1.4 Minimum Blade Height

The minimum height of the lowest extent of a turbine blade shall be 30 feet above the ground surface.

4.1.5 Color and Finish

The large wind energy system shall be a neutral color that blends with the environment. Gray, beige, and white are recommended.

4.1.6 Lighting

Large wind energy systems and projects shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the large wind energy system shall be limited to that required for safety and operational purposes.

4.1.7 Signage and Advertising

Signs and advertising shall be restricted to reasonable identification of the manufacturer, operator of the large wind energy system, utility, and safety signs.

4.1.8 Access

No tower shall have a climbing apparatus that is external of the pole, within 10 feet of the ground. All access doors or access ways to towers and electrical equipment shall be kept locked for safety purposes.

4.1.9 Noise

The large wind energy system and associated equipment shall not exceed 60 dBa as measured from the nearest neighboring inhabitable structure.

4.2 Siting Conditions and Property Maintenance

4.2.1 Land Clearing, Soil Erosion, and Habitat Impacts

If the Permit Granting Authority has standards for land clearing, soil erosion control,

and habitat impact mitigation and/or habitat reclamation, those same standards should apply. If the Permit Granting Authority does not have previously prescribed standards, the following is recommended for adoption.

Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the large wind energy system and is otherwise prescribed by applicable laws, regulations, and ordinances. Once the system is operational, any land that has been disturbed and is not necessary for the functioning of the system shall be reclaimed with natural vegetation immediately. Soil erosion is to be mitigated by the use of silt fencing, any accumulated product of which can be used in the site reclamation.

4.2.3 System Conditions

The applicant shall maintain the large wind energy system and/or project in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and security measures.

4.2.4 Removal and Decommissioning Requirements

Any large wind energy system and/or project, which has reached the end of its useful life or has been abandoned, shall be removed. A large wind energy system or project shall be considered abandoned when it fails to operate for 24 months. Upon a Notice of Abandonment issued by the Building Inspector, the large wind energy system or project owner will have 60 days to provide sufficient evidence that the system has not been abandoned or the Permit Granting Authority shall have the authority to enter the owner's property and remove the system at the owner's expense.

4.2.5 Reclamation

Once the system has been removed the owner is then responsible for land reclamation using the natural vegetation that was removed or disturbed upon construction of the project. To the greatest extent possible, the land shall have returned to its natural state within five years of the removal and decommissioning of the project.

4.3 Permit Granting Authority Issued Permits

A large wind energy system shall be constructed as provided in this section by first obtaining a permit from the Permit Granting Authority. Permit applications for project expansions shall be based on the total nameplate capacity including the existing project.

4.3.1 Modifications

Any physical modification to an existing and permitted wind energy system that materially alters the size and/or type of wind turbines or other equipment shall require a permit modification under this ordinance. Replacement of an already permitted turbine with a similar size and height will not require a permit modification.

4.3.2 Conditional Use Permits

A conditional use permit may be granted in the case where a proposed large wind energy system or project does not satisfy the standard criteria of the building permit set forth under this ordinance. The applicant must then seek review of, and petition the Permit Granting Authority for a Conditional Use Permit. This CUP variance from the standard building permit criteria will only be applicable to that specific non-conforming project.

4.3.3 Expiration

A permit issued pursuant to this ordinance shall expire if:

(a) the large wind energy system or project is not installed and functioning within 48 months from the date the permit is issued; or

(b) the large wind energy system or project is abandoned.

4.3.4 Violations

It is unlawful for any person to construct, install, or operate a large wind energy system or project that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance. Large wind energy systems installed prior to the adoption of this ordinance are exempt.

4.3.5 Administration and Enforcement

(a) This ordinance shall be administered and enforced by the Building Inspector or other official as designated by the Permit Granting Authority.

(b) The Building Inspector may enter any property for which a building permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.

4.3.6 Penalties

Any person who fails to comply with any provision of this ordinance or a building permit issued, pursuant to this ordinance, shall be subject to enforcement and penalties

as allowed by applicable law.

4.4 Compliance with Laws, Ordinances, and Regulations

The construction and operation of all such proposed large wind energy systems shall be consistent with all applicable local, state, and federal requirements, including all applicable safety, construction, environmental, electrical, communications, and FAA aviation requirements.

5.0 General Requirements -- Temporary Meteorological Towers (Met towers)

5.1 Permitted Use by Rule

Met tower installations shall be considered a permitted use in all zoning districts where the following criteria are met.

(1) Applicants shall submit the following information to the Permit Granting Authority prior to commencing any installation or construction:

(a) a site plan drawn at an appropriate scale with the following information:

(i) the perimeter and dimensions of the property;

(ii) the names and locations of all streets, roads, or highways on or contiguous to the property;

(iii) the locations of all easements or rights-of-way on the property;

(iv) the names and locations of all rivers, streams, or waterways on or contiguous to the property;

(v) the use, location, and dimension of all structures on the property (include distance from all proposed structures to the property lines);

(vi) a scale; and

(vii) a north arrow.

(2) In addition to other applicable provisions set forth in these regulations, approval of met tower applications shall be subject to the following requirements:

(a) All necessary zoning certificates and building permits shall be applied for and issued, and all structural reviews shall be completed by the Permit Granting Authority prior to construction.

(b) The met tower shall be constructed in conformity with all applicable FAA regulations and all FAA notices and approvals shall be received and submitted to the Permit Granting Authority prior to any construction.

(c) Applicants shall furnish evidence that applicable rights-of-way have been granted for access to the met tower across any private, state, or BLM lands. For BLM right-of-way grants, applicants may furnish a copy of the signed BLM Right-of-Way Grant application together with evidence that applicable fees have been tendered to the BLM.

(d) The met tower shall be in place for a period not exceeding three years. Applicants shall provide the Permit Granting Authority with 90 days prior written notice of removal of the tower.

(e) In the event the applicant desires to relocate the met tower, the applicant shall receive prior written approval from the Permit Granting Authority and furnish coordinates for the new tower location.

(f) If the applicant desires to extend the tower usage period, a request for an extension must be submitted in writing 90 days prior to the expiration of this permit to the Permit Granting Authority for consideration.

(g) The met tower shall not physically obstruct or encumber any road, power line, or pipeline easement.

Legislative Review Note
as of 12-19-08 11:11 AM

Office of Legislative Research and General Counsel

S.J.R. 1 - Joint Resolution - Renewable Energy System

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/23/2009, 12:30:43 PM, Lead Analyst: Bleazard, M.

Office of the Legislative Fiscal Analyst