

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1068*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/7/09
PROPOSED COMMITTEE SUBSTITUTE S1068-PCS85264-SBf-61

Short Title: Permitting of Wind Energy Facilities.

(Public)

Sponsors:

Referred to:

March 31, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A SYSTEM OF PERMITS FOR THE SITING AND OPERATION
3 OF WIND ENERGY FACILITIES.

4 Whereas, S.L. 2007-398 established a Renewable Energy and Energy Efficiency
5 Portfolio Standard (REPS) to diversify the resources used to reliably meet the energy needs of
6 consumers in the State; and

7 Whereas, wind energy generation is a critical component for the State to meet the
8 requirements established by the REPS; and

9 Whereas, North Carolina has abundant wind resources in the coastal and mountain
10 regions; and

11 Whereas, it is the policy of the State to promote the development of wind energy in
12 a manner compatible with environmental protection, sustainable development, and the efficient
13 use of resources; Now, therefore,

14 The General Assembly of North Carolina enacts:

15 **SECTION 1.** G.S. 113A-103 is amended by adding a new subdivision to read:

16 "(12) "Wind energy facility" means the turbines, accessory buildings, transmission
17 facilities, and any other equipment necessary for the operation of the facility
18 that cumulatively, with any other wind energy facility whose turbines are
19 located within one-half mile of one another, have a rated capacity of three
20 megawatts or more of energy."

21 **SECTION 2.** Part 4 of Article 7 of Chapter 113A of the General Statutes is
22 amended by adding a new section to read:

23 **"§ 113A-118.3. Permits for wind energy facilities.**

24 (a) No person shall undertake development associated with a wind energy facility
25 anywhere in the coastal area without first obtaining a permit from the Commission.

26 (b) A person applying for a permit for a wind energy facility shall include all of the
27 following in an application for the permit:

28 (1) A narrative description of the proposed facility.

29 (2) A map showing the location of the proposed facility.

30 (3) The capacity of proposed energy generation.

31 (4) A copy of a deed, purchase agreement, lease agreement, or other legal
32 instrument demonstrating the right to develop the property.



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- 1 (5) Certification of adjacent property owner notification to the maximum extent
2 practicable.
- 3 (6) A study of the noise impacts of the turbines to be associated with the
4 proposed facility, unless the turbines will be located in a sound or in offshore
5 waters at least 0.60 miles from a shoreline.
- 6 (7) A study on shadow flicker impacts of the turbines to be associated with the
7 proposed facility, unless the turbines will be located in a sound or in offshore
8 waters at least 1.6 miles from a shoreline.
- 9 (8) A study on avian and bat impacts of the proposed facility.
- 10 (9) A study on viewshed impacts of the proposed facility.
- 11 (10) An explanation of how the proposed facility would be consistent with the
12 requirements in subsection (c) of this section.
- 13 (11) The application fee required by subsection (e) of this section.
- 14 (12) Other data or information the Commission may reasonably require.
- 15 (c) The Commission shall deny an application for a permit for a wind energy facility if
16 the Commission finds any one or more of the following:
- 17 (1) Construction or operation of the facility would be inconsistent with or
18 violate rules adopted by the Commission.
- 19 (2) Construction or operation of the facility would result in significant adverse
20 impacts to ecological systems, natural resources, cultural sites, recreation
21 areas, or historic sites of more than local significance, including national or
22 State parks or forests; wilderness areas; historic sites; recreation areas;
23 segments of the natural and scenic rivers system; wildlife refuges; preserves
24 and management areas; areas that provide habitat for threatened or
25 endangered species; primary nursery areas designated by the Marine
26 Fisheries Commission and the Wildlife Resources Commission; and critical
27 fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.
- 28 (3) Construction or operation of the facility would obstruct major navigation
29 channels or create a significant obstacle to navigation in coastal waters. For
30 purposes of this section, a wind energy facility in the coastal area is a water
31 dependent use.
- 32 (4) Construction or operation of the facility would have a significant adverse
33 impact on fish or wildlife.
- 34 (5) Construction or operation of the facility would have a significant adverse
35 impact on views from any State or national park, wilderness area, significant
36 natural heritage area as compiled by the North Carolina Natural Heritage
37 Program, or other public lands or private conservation lands designated or
38 dedicated due to their high recreational values.
- 39 (6) Construction or operation of the facility would interfere with air navigation
40 routes, air traffic control areas, military training routes, or special use
41 airspace.
- 42 (7) A permit for the facility would be denied under any other criteria set out in
43 G.S. 113A-120.
- 44 (8) The cumulative impact of the proposed facility with other existing or
45 proposed wind energy facilities would result in significant adverse impacts
46 to ecological systems, natural resources, cultural sites, recreation areas, or
47 historic sites of more than local significance.
- 48 (d) The Commission may include, as a condition of a permit for a wind energy facility,
49 a requirement that the permit holder mitigate any adverse impacts.

1 (e) An applicant for a permit for a wind energy facility under this section shall submit
2 with the application under subsection (b) of this section an application fee of two thousand
3 dollars (\$2,000).

4 (f) The Commission shall require an applicant for a permit for a wind energy facility to
5 provide a plan regarding the action to be taken upon the decommissioning and removal of the
6 wind energy facility. The plan shall include an estimate of the cost to decommission and
7 remove the wind energy facility. The plan shall also include a proposed description of the
8 condition of the site once the wind energy facility has been decommissioned and removed. The
9 Commission may require a bond, guarantee, insurance, or other financial instrument to provide
10 for the decommissioning and the removal of structures that comprise the wind energy facility.
11 The Commission shall consider the size of the wind energy facility, the location of the facility,
12 and the financial qualifications of the applicant in making its determination to grant or deny the
13 permit.

14 (g) The Commission shall hold a public hearing in the county in which the proposed
15 wind energy facility is to be located within 75 days of receipt of a completed application for a
16 wind energy facility. The Commission shall give a minimum of 30 days' notice of the public
17 hearing. The Commission shall make a final decision on a permit application within 150 days
18 following receipt of a completed application. If the Commission determines that an application
19 for a wind energy facility fails to meet the requirements for a permit under this section, the
20 Commission shall deny the application, and the application shall be returned to the applicant
21 accompanied by a written statement of the reasons for the denial. If the Commission fails to act
22 within any time period set forth in this subsection, the applicant may treat the failure to act as a
23 denial of the permit and may challenge the denial as provided under Chapter 150B of the
24 General Statutes.

25 (h) The issuance of a permit under this section shall not obviate the need for the
26 applicant to obtain any and all other applicable local, State, or federal permits, licenses, or
27 approvals.

28 (i) Nothing in this section shall be interpreted to limit: (i) the application of Article 7 of
29 Chapter 113A of the General Statutes to facilities permitted under this section, including the
30 permitting requirements of G.S. 113A-118 or (ii) the ability of a city or county to plan for and
31 regulate the siting of a wind energy facility in accordance with land-use regulations authorized
32 under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan for
33 regulation of the siting of a wind energy facility, a city or county shall consider the information,
34 factors, and criteria set out in subsections (b) and (c) of this section.

35 (j) Any person who proposes to construct or operate a wind energy facility within the
36 planning jurisdiction of a city or county must demonstrate compliance with any local
37 ordinances concerning land use and any applicable permitting processes.

38 (k) The Commission may adopt rules implementing this section. The Commission shall
39 consult with the Department to ensure consistent statewide permitting requirements within and
40 outside of the coastal area to the extent practicable.

41 (l) The Secretary of Environment and Natural Resources may impose an administrative
42 penalty on a person who constructs a wind energy facility without obtaining a permit under this
43 section or who constructs or operates a wind energy facility in violation of its permit terms and
44 conditions. Each day of a continuing violation shall constitute a separate violation. The penalty
45 shall not exceed ten thousand dollars (\$10,000) per day. The Secretary of Environment and
46 Natural Resources, irrespective of all other remedies at law, may institute an action for
47 injunctive relief against a person who constructs a wind energy facility without obtaining a
48 permit under this section or who constructs or operates a wind energy facility in violation of its
49 permit terms and conditions."

50 **SECTION 3.** Article 21 of Chapter 143 of the General Statutes is amended by
51 adding a new Part to read:

"Part 12. Permitting of Wind Energy Facilities.

"§ 143-215.74R. Definitions.

(1) Department. – The Department of Environment and Natural Resources.

(2) Wind energy facility. – Has the same meaning as defined in G.S. 113A-103.

"§ 143-215.74S. Permit to site wind energy facilities outside the coastal counties.

(a) No person shall undertake development associated with a wind energy facility anywhere outside the coastal area without first obtaining a permit from the Department.

(b) A person applying for a permit for a wind energy facility shall include all of the following in an application for the permit:

(1) A narrative description of the proposed facility.

(2) A map showing the location of the proposed facility.

(3) The capacity of proposed energy generation.

(4) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to develop the property.

(5) Certification of adjacent property owner notification to the maximum extent practicable.

(6) A study of the noise impacts of the proposed facility.

(7) A study on shadow flicker impacts of the proposed facility.

(8) A study on avian and bat impacts of the proposed facility.

(9) A study on viewshed impacts of the proposed facility.

(10) An explanation of how the proposed facility would be consistent with the requirements in subsection (c) of this section.

(11) The application fee required by subsection (e) of this section.

(12) Other data or information the Department may reasonably require.

(c) The Department shall deny an application for a permit for a wind energy facility if the Department finds any one or more of the following:

(1) Construction or operation of the facility would be inconsistent with or violate rules adopted by the Commission.

(2) Construction or operation of the facility would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance, including national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges; preserves and management areas; areas that provide habitat for threatened or endangered species; and primary nursery areas designated by the Wildlife Resources Commission.

(3) Construction or operation of the facility would have a significant adverse impact on fish or wildlife.

(4) Construction or operation of the facility would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.

(5) Construction or operation of the facility would interfere with air navigation routes, air traffic control areas, military training routes, or special use airspace.

(6) The proposed facility would be located in an area designated with a slide hazard ranking of 'moderate' or 'high' on a Stability Index Map prepared by the North Carolina Geological Survey.

(7) Construction of the facility would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

1 (8) The cumulative impact of the proposed facility with other existing or
2 proposed wind energy facilities would result in significant adverse impacts
3 to ecological systems, natural resources, cultural sites, recreation areas, or
4 historic sites of more than local significance.

5 (d) The Department may include as a condition of a permit for a wind energy facility a
6 requirement that the permit holder mitigate any adverse impacts.

7 (e) An applicant for a permit for a wind energy facility under this section shall submit
8 with the application under subsection (b) of this section an application fee of two thousand
9 dollars (\$2,000).

10 (f) The Department shall require an applicant for a permit for a wind energy facility to
11 provide a plan regarding the action to be taken upon the decommissioning and removal of the
12 wind energy facility. The plan shall include estimates of monetary costs and the proposed site
13 condition after decommissioning. The Department may require a bond, guarantee, insurance, or
14 other financial instrument to provide for decommissioning and removal of any structures that
15 comprise the facility. The Department shall consider the size of the wind energy facility, the
16 location of the facility, and the financial qualifications of the applicant in making its
17 determination to grant or deny the permit.

18 (g) The Department shall hold a public hearing in the county in which the proposed
19 wind energy facility is to be located within 75 days of receipt of a completed application for a
20 wind energy facility. The Department shall give a minimum of 30 days' notice of the public
21 hearing. The Department shall make a final decision on a permit application within 150 days
22 following receipt of a completed application. If the Department determines that an application
23 for a wind energy facility fails to meet the requirements for a permit under this section, the
24 Department shall deny the application, and the application shall be returned to the applicant
25 accompanied by a written statement of the reasons for the denial. If the Department fails to act
26 within any time period set forth in this subsection, the applicant may treat the failure to act as a
27 denial of the permit and may challenge the denial as provided under Chapter 150B of the
28 General Statutes.

29 (h) The issuance of a permit under this section shall not preclude the applicant from the
30 requirement to obtain any and all other applicable local, State, or federal permits, licenses, or
31 approvals.

32 (i) The Department may adopt rules governing the siting of wind energy facilities that
33 are subject to the permit requirements of this section. The Department shall consult with the
34 Coastal Resources Commission to ensure consistent statewide permitting requirements within
35 and outside the coastal area to the extent practicable.

36 **"§ 143-215.74T. Civil penalties.**

37 (a) The Secretary of Environment and Natural Resources may impose an administrative
38 penalty on a person who constructs a wind energy facility without obtaining a permit under this
39 Part or who constructs or operates a wind energy facility in violation of its permit terms and
40 conditions. Each day of a continuing violation shall constitute a separate violation. The penalty
41 shall not exceed ten thousand dollars (\$10,000) per day.

42 (b) The Secretary of Environment and Natural Resources, irrespective of all other
43 remedies at law, may institute an action for injunctive relief against a person who constructs a
44 wind energy facility without obtaining a permit under this Part or who constructs or operates a
45 wind energy facility in violation of its permit terms and conditions.

46 **"§ 143-215.74U. Local ordinances authorized.**

47 (a) Nothing in this Part shall be interpreted to limit the ability of a city or county to plan
48 for and regulate the siting of a wind energy facility in accordance with land use regulations
49 authorized under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan
50 for regulation of the siting of a wind energy facility, a city or county shall consider the
51 information, factors, and criteria set out in G.S. 143-215.74S(b) and (c).

1 (b) Any person who proposes to construct or operate a wind energy facility within the
2 planning jurisdiction of a city or county must demonstrate compliance with any local
3 ordinances concerning land use and any applicable permitting processes."

4 **SECTION 4.** G.S. 113A-206 reads as rewritten:

5 **"§ 113A-206. Definitions.**

6 Within the meaning of this Article:

- 7 ...
- 8 (3) "Tall buildings or structures" include any building, structure or unit within a
9 multiunit building with a vertical height of more than 40 feet measured from
10 the top of the foundation of said building, structure or unit and the
11 uppermost point of said building, structure or unit; provided, however, that
12 where such foundation measured from the natural finished grade of the crest
13 or the natural finished grade of the high side of the slope of a ridge exceeds 3
14 feet, then such measurement in excess of 3 feet shall be included in the
15 40-foot limitation described herein; provided, further, that no such building,
16 structure or unit shall protrude at its uppermost point above the crest of the
17 ridge by more than 35 feet. "Tall buildings or structures" do not include:
 - 18 a. Water, radio, telephone or television towers or any equipment for the
19 transmission of electricity or communications or both.
 - 20 b. Structures of a relatively slender nature and minor vertical
21 projections of a parent building, including chimneys, flagpoles, flues,
22 spires, steeples, belfries, cupolas, antennas, poles, wires, or
23 ~~windmills~~windmills, if the windmill is associated with a residence,
24 the primary purpose of the windmill is to generate electricity for use
25 within the residence, and the windmill is no more than 100 feet from
26 the base to the turbine hub.
 - 27 c. Buildings and structures designated as National Historic Sites on the
28 National Archives Registry.

29"

30 **SECTION 5.** This act becomes effective January 1, 2010, and applies to wind
31 energy facilities, as defined in G.S. 113A-103, as enacted by Section 1 of this act, that are
32 constructed on or after that date.