

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 484*
Committee Substitute Favorable 4/11/13
Committee Substitute #2 Favorable 4/18/13

Short Title: Permitting of Wind Energy Facilities.

(Public)

Sponsors:

Referred to:

April 1, 2013

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

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 62-2(a) reads as rewritten:

6 "(a) Upon investigation, it has been determined that the rates, services and operations of
7 public utilities as defined herein, are affected with the public interest and that the availability of
8 an adequate and reliable supply of electric power and natural gas to the people, economy and
9 government of North Carolina is a matter of public policy. It is hereby declared to be the policy
10 of the State of North Carolina:

11 ...

12 (10) To promote the development of renewable energy and energy efficiency
13 through the implementation of a Renewable Energy and Energy Efficiency
14 Portfolio Standard (REPS) that will do all of the following:

- 15 a. Diversify the resources used to reliably meet the energy needs of
16 consumers in the State.
17 b. Provide greater energy security through the use of indigenous energy
18 resources available within the ~~State~~ State in a manner compatible
19 with the efficient use of resources and the State's military and
20 economic interests.
21 c. Encourage private investment in renewable energy and energy
22 efficiency.
23 d. Provide improved air quality and other benefits to energy consumers
24 and citizens of the State."

25 SECTION 2. Chapter 143 of the General Statutes is amended by adding a new
26 Article to read:

27 "Article 21C.

28 "Permitting of Wind Energy Facilities.

29 "§ 143-215.115. Definitions.

30 In addition to the definitions set forth in G.S. 143-212, the following definitions apply to
31 this Article:

- 32 (1) "Major military installation" means Fort Bragg, Pope Army Airfield, Marine
33 Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry
34 Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point,
35 the United States Coast Guard Air Station at Elizabeth City, Naval Support



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1 Activity Northwest, and Seymour Johnson Air Force Base, in its own right
2 and as the responsible entity for the Dare County Bombing Range, and any
3 facility located within the State that is subject to the installations' oversight
4 and control.

5 (2) "Wind energy facility" means the turbines, accessory buildings, transmission
6 facilities, and any other equipment necessary for the operation of the facility
7 that cumulatively, with any other wind energy facility whose turbines are
8 located within one-half mile of one another, have a rated capacity of one
9 megawatt or more of energy per turbine or collectively.

10 (3) "Wind energy facility expansion" means any activity that (i) adds or
11 substantially modifies turbines or transmission facilities, including
12 increasing the height of such equipment, over that which was initially
13 permitted or (ii) increases the footprint of the wind energy facility over that
14 which was initially permitted.

15 **"§ 143-215.116. Permit to site wind energy facilities.**

16 No person shall undertake construction, operation, or expansion activities associated with a
17 wind energy facility in this State without first obtaining a permit from the Department.

18 **"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication**
19 **package requirements.**

20 (a) Permit Preapplication Site Evaluation Meeting. – No less than 120 days prior to
21 filing an application for a permit to construct, operate, or expand a wind energy facility, a
22 person shall request a preapplication site evaluation meeting to be held between the applicant
23 and the Department. The preapplication site evaluation meeting may be used by the participants
24 to:

25 (1) Conduct a preliminary evaluation of the site or sites for the proposed wind
26 energy facility or wind energy facility expansion. The preliminary evaluation
27 of the proposed wind energy facility or proposed wind energy facility
28 expansion shall determine if the site or sites:

29 a. Pose serious risk to civil air navigation or military air navigation
30 routes, air traffic control areas, military training routes, special-use
31 air space, radar, or other potentially affected military operations.

32 b. Pose serious risk to natural resources and uses, including to species
33 of concern or their habitats.

34 (2) Identify areas where proposed construction or expansion activities pose
35 minimal risk of interference with civil air navigation or military air
36 navigation routes, air traffic control areas, military training routes,
37 special-use air space, radar, or other potentially affected military operations.

38 (3) Identify areas where proposed construction or expansion activities pose
39 minimal risk to natural resources and uses, including avian, bat, and
40 endangered and threatened species.

41 (b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit
42 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this
43 section, the applicant for a wind energy facility or wind energy facility expansion shall submit a
44 preapplication package to the Department. The preapplication package shall include all of the
45 following:

46 (1) A narrative description of the proposed wind energy facility or proposed
47 wind energy facility expansion, including (i) the approximate number, type,
48 and height of wind turbines to be constructed; (ii) the total planned capacity
49 of the facility; and (iii) a description of any ancillary facilities.

50 (2) A map showing the approximate location of the proposed wind energy
51 facility or proposed wind energy facility expansion.

- 1 (3) A description of any known potential impacts of the proposed wind energy
2 project location on civil air navigation or military air navigation routes, air
3 traffic control areas, military training routes, special-use air space, radar, or
4 other potentially affected military operations. The applicant may use data
5 made available by the Department pursuant to G.S. 143-215.123 to satisfy
6 this requirement.
- 7 (4) A description of species of concern, habitats that support species of concern,
8 critical areas of wildlife congregation, and protected lands, as those species,
9 habitats, and critical areas are referenced in the March 23, 2012, United
10 States Fish and Wildlife Service Land-Based Wind Energy Guidelines
11 (OMB Control No. 1018-0148) that are or believed to be present at the site
12 of the proposed wind energy facility or proposed wind energy facility
13 expansion. The applicant may use data made available by the North Carolina
14 Wildlife Resources Commission, the Department, or other governmental
15 agency to satisfy this requirement.
- 16 (5) A list of the federal, State, and local agencies from which approvals will be
17 obtained and the name of those approvals required in order to authorize the
18 construction, operation, or expansion of the proposed wind energy facility.
- 19 (6) A schedule showing the anticipated dates for commencement of
20 construction, testing, and commercial operation of the proposed wind energy
21 facility or proposed wind energy facility expansion.

22 (c) Notice to Interested Parties. – No less than 14 days prior to the date of the permit
23 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this
24 section, the Department shall provide written notice of the meeting to the United States Army
25 Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife
26 Resources Commission, the commanding military officer or the commanding military officer's
27 designee of any potentially affected major military installation, and any other party that the
28 Department deems relevant. The notice shall include an invitation to participate in the permit
29 preapplication site evaluation meeting.

30 **"§ 143-215.118. Permit application scoping meeting and notice.**

31 (a) Scoping Meeting. – No less than 30 days prior to filing an application for a permit
32 for a proposed wind energy facility or proposed wind energy facility expansion, the applicant
33 shall request the scheduling of a scoping meeting between the applicant and the Department.
34 The applicant and the Department shall review the permit for the proposed wind energy facility
35 or proposed facility expansion at the scoping meeting.

36 (b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit
37 application scoping meeting with an applicant, the Department shall provide written notice of
38 the meeting to the commanding military officer of each major military installation, or the
39 commanding military officer's designee, the Federal Aviation Administration, the North
40 Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the
41 board of commissioners for each county and the governing body of each municipality in which
42 the wind energy facility or proposed wind energy facility expansion is proposed to be located,
43 and those local governments with jurisdictions over areas in which a major military installation
44 is located. The notice shall include an invitation to participate in the scoping meeting.

45 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**
46 **permit; public hearing; public comment.**

47 (a) Permit Requirements. – A person applying for a permit for a proposed wind energy
48 facility or proposed facility expansion shall include all of the following in an application for the
49 permit:

- 50 (1) A narrative description of the proposed wind energy facility or proposed
51 wind energy facility expansion.

- 1 (2) A map showing the location of the proposed wind energy facility or
2 proposed wind energy facility expansion that identifies the specific location
3 of each turbine.
- 4 (3) A copy of a deed, purchase agreement, lease agreement, or other legal
5 instrument demonstrating the right to construct, expand, or otherwise
6 develop a wind energy facility on the property.
- 7 (4) Identification by name and address of property owners adjacent to the
8 proposed wind energy facility or proposed wind energy facility expansion.
9 The applicant shall notify every property owner identified pursuant to this
10 subdivision by registered or certified mail or by any means authorized by
11 G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall
12 include all of the following:
- 13 a. The location of the proposed wind energy facility or proposed wind
14 energy facility expansion and the specific location of each turbine
15 proposed to be located within one-half mile of the boundary of the
16 adjacent property owner.
- 17 b. A description of the proposed wind energy facility or proposed wind
18 energy facility expansion.
- 19 (5) A description of civil air navigation or military air navigation routes, air
20 traffic control areas, military training routes, special-use air space, radar, or
21 other military operations that may be affected by the construction or
22 operation of the proposed wind energy facility or proposed wind energy
23 facility expansion.
- 24 (6) Documentation that addresses any potential adverse impact on military
25 operations and readiness as identified by the Department of Defense
26 Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations
27 (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- 28 (7) A written "Determination of No Hazard to Air Navigation" issued by the
29 Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14
30 Code of Federal Regulations (January 1, 2012 edition) for the proposed wind
31 energy facility or proposed wind energy facility expansion.
- 32 (8) A study of the noise impacts of the turbines to be associated with the
33 proposed wind energy facility or proposed wind energy facility expansion.
- 34 (9) A study on shadow flicker impacts of the turbines to be associated with the
35 proposed wind energy facility or proposed wind energy facility expansion,
36 unless the turbines will be located in a sound or in offshore waters.
- 37 (10) A study of the impact of the proposed wind energy facility or proposed wind
38 energy facility expansion on natural resources and uses, including avian, bat,
39 and endangered and threatened species.
- 40 (11) An explanation of how the proposed wind energy facility or proposed wind
41 energy facility expansion would be consistent with the criteria in subsection
42 (a) of G.S. 143-215.120.
- 43 (12) The application fee required by subsection (b) of this section.
- 44 (13) A plan regarding the action to be taken upon the decommissioning and
45 removal of the wind energy facility. The plan shall include an estimate of the
46 cost to decommission and remove the wind energy facility. The plan shall
47 also include the anticipated life of the project, an estimate of the cost to
48 decommission and remove the wind energy facility, a description of the
49 manner in which the facility will be decommissioned, and a description of
50 the expected condition of the site once the wind energy facility has been
51 decommissioned and removed.

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

2 (b) Fees. – An applicant for a permit for a proposed wind energy facility or proposed
3 wind energy facility expansion under this section shall submit with the application required
4 pursuant to subsection (a) of this section, an application fee of three thousand five hundred
5 dollars (\$3,500).

6 (c) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a
7 complete permit application for a proposed wind energy facility or proposed facility expansion
8 submitted pursuant to subsection (a) of this section, the Department shall provide notice of the
9 permit application to (i) the commanding military officer of all major military installations, (ii)
10 the commanding military officer of any military installation located outside the State that is
11 located within 50 nautical miles of the location of the proposed wind energy facility or
12 proposed wind energy facility expansion, and (iii) the board of commissioners for each county
13 and the governing body of each municipality in which the wind energy facility or wind energy
14 facility expansion is proposed to be located. The notice shall include:

15 (1) A copy of the map showing the location of the proposed wind energy facility
16 or proposed facility expansion that includes the specific locations of wind
17 turbines.

18 (2) A written request to the commanding military officer of a major military
19 installation, or the commanding military officer's designee, for technical
20 information related to any adverse impact on the installation's operations,
21 training, or mission, including military air navigation routes, air traffic
22 control areas, military training routes, special-use air space, radar, or other
23 military operations that may be affected.

24 (3) A written request for information related to potential adverse impacts of the
25 proposed wind energy facility or proposed wind energy facility expansion on
26 local governments from the board of commissioners for each county and the
27 governing body of each municipality.

28 (d) Provision of Permit Application to Affected Entities. – Except as provided by
29 G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military
30 officer of any major military installation, or the commanding military officer's designee, the
31 board of commissioners for any county in which the site is proposed to be located, or the
32 governing body of any municipality in which the site is proposed to be located, the Department
33 shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in
34 addition to any supplements, changes, or amendments to the permit application to the
35 requesting commanding military officer or local government.

36 (e) Public Hearing and Comment. – The Department shall hold a public hearing in each
37 county in which the wind energy facility or facility expansion is proposed to be located within
38 75 days of receipt of a completed permit application. The Department shall provide notice
39 including the time and location of the public hearing in a newspaper of general circulation in
40 each applicable county. The notice of public hearing shall be published for at least two
41 consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing.
42 The notice shall provide that any comments on the proposed wind energy facility or proposed
43 facility expansion should be submitted to the Department by a specified date, not less than 15
44 days from the date of the newspaper publication of the notice or 15 days after distribution of
45 the mailed notice, whichever is later. No less than 30 days prior to the scheduled public
46 hearing, the Department shall provide written notice of the hearing to:

47 (1) The North Carolina Utilities Commission.

48 (2) The Office of the Attorney General of North Carolina.

49 (3) The commanding military officer of any potentially affected major military
50 installation or the commanding military officer's designee.

1 (4) The board of commissioners for each county and the governing body of each
2 municipality with jurisdictions over areas in which a potentially affected
3 major military installation is located.

4 "**§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
5 **approvals required.**

6 (a) Permit Approval. – The Department shall approve an application for a permit for a
7 proposed wind energy facility or proposed wind energy facility expansion unless the
8 Department finds any one or more of the following:

9 (1) Construction or operation of the proposed wind energy facility or proposed
10 wind energy facility expansion would be inconsistent with or violate rules
11 adopted by the Department or any other provision of law.

12 (2) Construction or operation of the proposed wind energy facility or proposed
13 wind energy facility expansion would encroach upon or would otherwise
14 have a significant adverse impact on the mission, training, or operations of
15 any major military installation or branch of military in North Carolina and
16 result in a detriment to continued military presence in the State. In its
17 evaluation, the Department may consider whether the proposed wind energy
18 facility or proposed wind energy facility expansion would cause interference
19 with air navigation routes, air traffic control areas, military training routes,
20 or radar based on information submitted by the applicant pursuant to
21 subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any
22 information received by the Department pursuant to subdivision (2) of
23 subsection (c) of G.S. 143-215.119.

24 (3) Construction or operation of the proposed wind energy facility or proposed
25 wind energy facility expansion would result in significant adverse impacts to
26 ecological systems, natural resources, cultural sites, recreation areas, or
27 historic sites of more than local significance; including national or State
28 parks or forests, wilderness areas, historic sites, recreation areas, segments of
29 the natural and scenic rivers system, wildlife refuges, preserves and
30 management areas, areas that provide habitat for threatened or endangered
31 species, primary nursery areas designated by the Marine Fisheries
32 Commission and the Wildlife Resources Commission, and critical fisheries
33 habitat identified pursuant to the Coastal Habitat Protection Plan.

34 (4) Construction or operation of the proposed wind energy facility or proposed
35 wind energy facility expansion would have a significant adverse impact on
36 fish or wildlife.

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

43 (6) Construction or operation of the proposed wind energy facility or proposed
44 wind energy facility expansion would obstruct major navigation channels or
45 create a significant obstacle to navigation in coastal waters, as determined by
46 the United States Army Corps of Engineers and the United States Coast
47 Guard.

48 (7) A permit for a proposed wind energy facility or proposed wind energy
49 facility expansion would be denied under any other criteria set out in
50 G.S. 113A-120.

1 (8) Construction of the proposed wind energy facility or proposed wind energy
2 facility expansion would be prohibited under Article 14 of Chapter 113A of
3 the General Statutes, the Mountain Ridge Protection Act of 1983.

4 (9) The applicant is not in compliance with all applicable federal, State, or local
5 permit requirements, licenses, or approvals, including local zoning
6 requirements.

7 (b) Permit Decision. – The Department shall make a final decision on a permit
8 application within 90 days following receipt of a completed application. If the Department
9 requests additional information following the receipt of a completed application, the
10 Department shall make a final decision on a permit application within 30 days of receipt of the
11 requested information. If the Department determines that an application for a wind energy
12 facility or a wind energy facility expansion fails to meet the requirements for a permit under
13 this section, the Department shall deny the application, and the application shall be returned to
14 the applicant accompanied by a written statement of the reasons for the denial and any
15 modifications to the permit application that would make the application acceptable. If the
16 Department fails to act within the time period set forth in this subsection, the applicant may
17 treat the failure to act as a denial of the permit and may challenge the denial as provided under
18 Chapter 150B of the General Statutes.

19 (c) Permit Conditions. – The Department may include as a condition of a permit for a
20 proposed wind energy facility or proposed wind energy facility expansion a requirement that
21 the permit holder mitigate any adverse impacts.

22 (d) Other Approvals Required. – The issuance of a permit under this section shall not
23 obviate the need for the applicant to obtain any and all other applicable local, State, or federal
24 permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit,
25 as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to
26 facilities permitted under this section, including the permitting requirements of G.S. 113A-118
27 or (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility
28 in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of
29 the General Statutes.

30 **"§ 143-215.121. Financial assurance requirements.**

31 The applicant for a permit or a permit holder for a wind energy facility shall establish
32 financial assurance that will ensure that sufficient funds are available for decommissioning of
33 the facility and reclamation of the property to its condition prior to commencement of activities
34 on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be
35 incorporated, do business, or maintain assets in the State. To establish sufficient availability of
36 funds under this section, the applicant for a permit or a permit holder for a wind energy facility
37 may use insurance, financial tests, third-party guarantees by persons who can pass the financial
38 test, guarantees by corporate parents who can pass the financial test, irrevocable letters of
39 credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing,
40 shown to provide protection equivalent to the financial protection that would be provided by
41 insurance if insurance were the only mechanism used.

42 **"§ 143-215.122. Monitoring and reporting.**

43 The applicant shall annually submit copies to the Department of any post-construction
44 monitoring, such as reports on the impacts on wildlife in the location of and in the area
45 proximate to the wind energy facility or wind energy facility expansion and any impacts on
46 military operations that are required by the United States Fish and Wildlife Service, the North
47 Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any
48 other government agency.

49 **"§ 143-215.123. Annual review of military presence.**

50 The Department shall consult with representatives of the major military installations to
51 review information regarding military air navigation routes, air traffic control areas, military

1 training routes, special-use air space, radar, or other potentially affected military operations at
2 least once per year. The Department shall provide relevant information on civil air navigation
3 or military air navigation routes, air traffic control areas, military training routes, special-use air
4 space, radar, or other potentially affected military operations to permit applicants as requested.

5 **"§ 143-215.124. Record keeping.**

6 The Department shall serve as the custodian of all data, information, and records received
7 from a permit applicant or a major military installation pursuant to this Article and shall ensure
8 that information provided to the Department that constitutes trade secrets, as that term is
9 defined in G.S. 66-152, and that is designated as confidential or as a trade secret under
10 G.S. 132-1.2, is limited only to the Department, State employees, and other persons who have
11 executed a confidentiality agreement with the owner of such information. Information
12 designated as confidential or as a trade secret under G.S. 132-1.2 shall not be subject to
13 disclosure pursuant to G.S. 132-6.

14 **"§ 143-215.125. Rule making.**

15 The Environmental Management Commission shall adopt any rules necessary for the
16 implementation of this Article. In adopting rules, the Commission shall consult with the
17 Coastal Resources Commission to ensure that the development of statewide permitting
18 requirements is consistent with and in consideration of the characteristics unique to the coastal
19 area of the State to the maximum extent practicable.

20 **"§ 143-215.126. Civil penalties.**

21 (a) The Secretary of Environment and Natural Resources may impose an administrative
22 penalty on a person who constructs a wind energy facility or wind energy facility expansion
23 without obtaining a permit under this Article or who constructs or operates a wind energy
24 facility in violation of its permit terms and conditions. Each day of a continuing violation shall
25 constitute a separate violation. The penalty shall not exceed ten thousand dollars (\$10,000) per
26 day.

27 (b) The Secretary of Environment and Natural Resources, irrespective of all other
28 remedies at law, may institute an action for injunctive relief against a person who constructs a
29 wind energy facility without first obtaining a permit under this Article or who constructs or
30 operates a wind energy facility or facility expansion in violation of its permit terms and
31 conditions."

32 **SECTION 3.** This act is effective when it becomes law and applies only to those
33 wind energy facilities or wind energy facility expansions that have not received a written
34 "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration
35 on or before that date.