

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
Committee Substitute #3 Favorable 4/30/13

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,



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1 the United States Coast Guard Air Station at Elizabeth City, Naval Support
2 Activity Northwest, and Seymour Johnson Air Force Base, in its own right
3 and as the responsible entity for the Dare County Bombing Range, and any
4 facility located within the State that is subject to the installations' oversight
5 and control.

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

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

16 **"§ 143-215.116. Permit to site wind energy facilities.**

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

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

21 (a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to
22 filing an application for a permit to construct, operate, or expand a wind energy facility, a
23 person shall request a preapplication site evaluation meeting to be held between the applicant
24 and the Department. The preapplication site evaluation meeting shall be held no less than 120
25 days prior to filing an application for a permit to construct, operate, or expand a wind energy
26 facility and may be used by the participants to:

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

- 31 a. Pose serious risk to civil air navigation or military air navigation
32 routes, air traffic control areas, military training routes, special-use
33 air space, radar, or other potentially affected military operations.
34 b. Pose serious risk to natural resources and uses, including to species
35 of concern or their habitats.

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

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

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

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

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

24 (c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit
25 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this
26 section, the Department shall provide written notice of the meeting to the United States Army
27 Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife
28 Resources Commission, the commanding military officer or the commanding military officer's
29 designee of any potentially affected major military installation, and any other party that the
30 Department deems relevant. The notice shall include an invitation to participate in the permit
31 preapplication site evaluation meeting.

32 **"§ 143-215.118. Permit application scoping meeting and notice.**

33 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit
34 for a proposed wind energy facility or proposed wind energy facility expansion, the applicant
35 shall request the scheduling of a scoping meeting between the applicant and the Department.
36 The scoping meeting shall be held no less than 30 days prior to filing an application for a
37 permit for a proposed wind energy facility or proposed wind energy facility expansion. The
38 applicant and the Department shall review the permit for the proposed wind energy facility or
39 proposed facility expansion at the scoping meeting.

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

49 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**
50 **permit; public hearing; public comment.**

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

4 (1) A narrative description of the proposed wind energy facility or proposed
5 wind energy facility expansion.

6 (2) A map showing the location of the proposed wind energy facility or
7 proposed wind energy facility expansion that identifies the specific location
8 of each turbine.

9 (3) A copy of a deed, purchase agreement, lease agreement, or other legal
10 instrument demonstrating the right to construct, expand, or otherwise
11 develop a wind energy facility on the property.

12 (4) Identification by name and address of property owners adjacent to the
13 proposed wind energy facility or proposed wind energy facility expansion.
14 The applicant shall notify every property owner identified pursuant to this
15 subdivision by registered or certified mail or by any means authorized by
16 G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall
17 include all of the following:

18 a. The location of the proposed wind energy facility or proposed wind
19 energy facility expansion and the specific location of each turbine
20 proposed to be located within one-half mile of the boundary of the
21 adjacent property owner.

22 b. A description of the proposed wind energy facility or proposed wind
23 energy facility expansion.

24 (5) A description of civil air navigation or military air navigation routes, air
25 traffic control areas, military training routes, special-use air space, radar, or
26 other military operations that may be affected by the construction or
27 operation of the proposed wind energy facility or proposed wind energy
28 facility expansion.

29 (6) Documentation that addresses any potential adverse impact on military
30 operations and readiness as identified by the Department of Defense
31 Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations
32 (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

33 (7) Documentation that the applicant has either (i) submitted Federal Aviation
34 Administration Form 7460-1 for the turbines associated with the proposed
35 wind energy facility or proposed wind energy facility expansion or (ii)
36 initiated an informal review by the Department of Defense Siting
37 Clearinghouse of the proposed wind energy facility or proposed wind energy
38 facility expansion. If the applicant has submitted Federal Aviation
39 Administration Form 7460-1 in order to fulfill the requirements of this
40 subdivision, the applicant shall provide any determination reached by the
41 Federal Aviation Administration at the time the application is submitted to
42 the Department. If the Federal Aviation Administration has not made a
43 determination at the time the application is submitted to the Department, the
44 application shall include a description of the status of the applicant's
45 engagement with the Federal Aviation Administration and the Department of
46 Defense Siting Clearinghouse.

47 (8) A study of the noise impacts of the turbines to be associated with the
48 proposed wind energy facility or proposed wind energy facility expansion.

49 (9) A study on shadow flicker impacts of the turbines to be associated with the
50 proposed wind energy facility or proposed wind energy facility expansion,
51 unless the turbines will be located in a sound or in offshore waters.

1 (10) A study of the impact of the proposed wind energy facility or proposed wind
2 energy facility expansion on natural resources and uses, including avian, bat,
3 and endangered and threatened species.

4 (11) An explanation of how the proposed wind energy facility or proposed wind
5 energy facility expansion would be consistent with the criteria in subsection
6 (a) of G.S. 143-215.120.

7 (12) The application fee required by subsection (b) of this section.

8 (13) A plan regarding the action to be taken upon the decommissioning and
9 removal of the wind energy facility. The plan shall include an estimate of the
10 cost to decommission and remove the wind energy facility. The plan shall
11 also include the anticipated life of the project, an estimate of the cost to
12 decommission and remove the wind energy facility, a description of the
13 manner in which the facility will be decommissioned, and a description of
14 the expected condition of the site once the wind energy facility has been
15 decommissioned and removed.

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

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

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

31 (1) A copy of the map showing the location of the proposed wind energy facility
32 or proposed wind energy facility expansion that includes the specific
33 locations of wind turbines.

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

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

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

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

- 12 (1) The North Carolina Utilities Commission.
- 13 (2) The Office of the Attorney General of North Carolina.
- 14 (3) The commanding military officer of any potentially affected major military
15 installation or the commanding military officer's designee.
- 16 (4) The board of commissioners for each county and the governing body of each
17 municipality with jurisdictions over areas in which a potentially affected
18 major military installation is located.

19 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
20 **approvals required.**

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

- 24 (1) Construction or operation of the proposed wind energy facility or proposed
25 wind energy facility expansion would be inconsistent with or violate rules
26 adopted by the Department or any other provision of law.
- 27 (2) Construction or operation of the proposed wind energy facility or proposed
28 wind energy facility expansion would encroach upon or would otherwise
29 have a significant adverse impact on the mission, training, or operations of
30 any major military installation or branch of military in North Carolina and
31 result in a detriment to continued military presence in the State. In its
32 evaluation, the Department may consider whether the proposed wind energy
33 facility or proposed wind energy facility expansion would cause interference
34 with air navigation routes, air traffic control areas, military training routes,
35 or radar based on information submitted by the applicant pursuant to
36 subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any
37 information received by the Department pursuant to subdivision (2) of
38 subsection (c) of G.S. 143-215.119.
- 39 (3) Construction or operation of the proposed wind energy facility or proposed
40 wind energy facility expansion would result in significant adverse impacts to
41 ecological systems, natural resources, cultural sites, recreation areas, or
42 historic sites of more than local significance; including national or State
43 parks or forests, wilderness areas, historic sites, recreation areas, segments of
44 the natural and scenic rivers system, wildlife refuges, preserves and
45 management areas, areas that provide habitat for threatened or endangered
46 species, primary nursery areas designated by the Marine Fisheries
47 Commission and the Wildlife Resources Commission, and critical fisheries
48 habitat identified pursuant to the Coastal Habitat Protection Plan.
- 49 (4) Construction or operation of the proposed wind energy facility or proposed
50 wind energy facility expansion would have a significant adverse impact on
51 fish or wildlife.

- 1 (5) Construction or operation of the proposed wind energy facility or proposed
2 wind energy facility expansion would have a significant adverse impact on
3 views from any State or national park, wilderness area, significant natural
4 heritage area as compiled by the North Carolina Natural Heritage Program,
5 or other public lands or private conservation lands designated or dedicated
6 due to their high recreational values.
- 7 (6) Construction or operation of the proposed wind energy facility or proposed
8 wind energy facility expansion would obstruct major navigation channels or
9 create a significant obstacle to navigation in coastal waters, as determined by
10 the United States Army Corps of Engineers and the United States Coast
11 Guard.
- 12 (7) A permit for a proposed wind energy facility or proposed wind energy
13 facility expansion would be denied under any other criteria set out in
14 G.S. 113A-120.
- 15 (8) Construction of the proposed wind energy facility or proposed wind energy
16 facility expansion would be prohibited under Article 14 of Chapter 113A of
17 the General Statutes, the Mountain Ridge Protection Act of 1983.
- 18 (9) The applicant is not in compliance with all applicable federal, State, or local
19 permit requirements, licenses, or approvals, including local zoning
20 requirements.

21 (b) Permit Decision. – The Department shall make a final decision on a permit
22 application within 90 days following receipt of a completed application, except that the
23 Department shall not be required to make a final decision until the Department has
24 received a written "Determination of No Hazard to Air Navigation" issued by the Federal
25 Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of
26 Federal Regulations (January 1, 2012 edition). If the Department requests additional
27 information following the receipt of a completed application, the Department shall make a final
28 decision on a permit application within 30 days of receipt of the requested information. If the
29 Department determines that an application for a wind energy facility or a wind energy facility
30 expansion fails to meet the requirements for a permit under this section, the Department shall
31 deny the application, and the application shall be returned to the applicant accompanied by a
32 written statement of the reasons for the denial and any modifications to the permit application
33 that would make the application acceptable. If the Department fails to act within the time
34 period set forth in this subsection, the applicant may treat the failure to act as a denial of the
35 permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

36 (c) Permit Conditions. – The Department (i) may include as a condition of a permit for
37 a proposed wind energy facility or proposed wind energy facility expansion a requirement that
38 the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit
39 for a proposed wind energy facility or proposed wind energy facility expansion a requirement
40 that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued
41 by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the
42 Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind
43 energy facility or wind energy facility expansion shall become effective until the Department
44 has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the
45 Federal Aviation Administration for the facility. If the specific location of a turbine authorized
46 to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the
47 configuration of the wind energy facility varies from the information submitted by the applicant
48 upon which the Department has made its permit decision, the Department may reevaluate the
49 permit application and require the applicant to submit any additional information the
50 Department deems necessary to approve or deny a permit for the facility as reconfigured.

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

9 **"§ 143-215.121. Financial assurance requirements.**

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

21 **"§ 143-215.122. Monitoring and reporting.**

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

28 **"§ 143-215.123. Annual review of military presence.**

29 The Department shall consult with representatives of the major military installations to
30 review information regarding military air navigation routes, air traffic control areas, military
31 training routes, special-use air space, radar, or other potentially affected military operations at
32 least once per year. The Department shall provide relevant information on civil air navigation
33 or military air navigation routes, air traffic control areas, military training routes, special-use air
34 space, radar, or other potentially affected military operations to permit applicants as requested.

35 **"§ 143-215.124. Record keeping.**

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

44 **"§ 143-215.125. Rule making.**

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

50 **"§ 143-215.126. Civil penalties.**

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

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

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