

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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SENATE BILL 491

Short Title: Permitting of Wind Energy Facilities. (Public)

Sponsors: Senators Brown (Primary Sponsor); D. Davis, Kinnaird, Meredith; Pate, Rabin,
 and Sanderson.

Referred to: Agriculture/Environment/Natural Resources.

March 28, 2013

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. 2007-397 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 an important option available to meet the
8 requirements established by the REPS; and

9 Whereas, North Carolina has abundant wind resources throughout the State; and

10 Whereas, it is the policy of the State to promote the development of wind energy in
11 a manner that is compatible with North Carolina's military interests and environmental
12 protection that also preserves and sustains economic development and the efficient use of
13 natural and cultural resources; and

14 Whereas, the development of North Carolina's wind energy resources in a manner
15 that preserves and enhances the State's military activities and installations and that is also
16 compatible with the State's environmental and economic interests is of paramount importance
17 to the future of North Carolina; and

18 Whereas, the Federal Aviation Administration's review of potential hazards to civil
19 air navigation and the Department of Defense Siting Clearinghouse's review for unacceptable
20 risks to the national security of the United States do not protect North Carolina's military
21 interests and do not consider the preservation or enhancement of military operations in the
22 State; Now, therefore,

23 The General Assembly of North Carolina enacts:

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

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

30 ...

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

34 a. Diversify the resources used to reliably meet the energy needs of
35 consumers in the State.



- b. Provide greater energy security through the use of indigenous energy resources available within the ~~State~~State in a manner compatible with the efficient use of resources and the State's military and economic interests.
- c. Encourage private investment in renewable energy and energy efficiency.
- d. Provide improved air quality and other benefits to energy consumers and citizens of the State."

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

"Article 21C.

"Permitting of Wind Energy Facilities.

"§ 143-215.115. Definitions.

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

- (1) "Major Department of Defense military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune Marine Corps Air Base, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.
- (2) "Wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy.
- (3) "Wind energy facility expansion" means any activity that (i) adds or substantially modifies turbines or transmission facilities, including increasing the height of such equipment, over that which was initially permitted or (ii) increases the footprint of the wind energy facility over that which was initially permitted.

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

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

"§ 143-215.117. Permit pre-application site evaluation meeting; notice; pre-application package requirements; annual review of military presence.

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

- (1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:
 - a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

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

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

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

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

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

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

(3) A description of any known potential impacts of the proposed wind energy project location on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations. The applicant may use data made available by the Department pursuant to G.S. 143-215.123 to satisfy this requirement.

(4) A description of species of concern, habitats that support species of concern, critical areas of wildlife congregation, and protected lands, as those species, habitats, and critical areas are referenced in the March 23, 2012, United States Fish and Wildlife Service Land-Based Wind Energy Guidelines (OMB Control No. 1018-0148) that are or believed to be present at the site of the proposed wind energy facility or proposed wind energy facility expansion. The applicant may use data made available by the North Carolina Wildlife Resources Commission, the Department, or other governmental agency to satisfy this requirement.

(5) A list of the federal, State, and local agencies from which approvals will be obtained and the name of those approvals required in order to authorize the construction, operation, or expansion of the proposed wind energy facility.

(6) A schedule showing the anticipated dates for commencement of construction, testing, and commercial operation of the proposed wind energy facility or proposed wind energy facility expansion.

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

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

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

6 (b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit
7 application scoping meeting with an applicant, the Department shall provide written notice to
8 the commanding military officer of each major Department of Defense military installation, or
9 the commanding military officer's designee, the Federal Aviation Administration, the North
10 Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the
11 board of commissioners for each county and the governing body of each municipality in which
12 the wind energy facility or proposed wind energy facility expansion is proposed to be located,
13 and those local governments with jurisdictions over areas in which a major Department of
14 Defense military installation is located.

15 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**
16 **permit; public hearing; public comment.**

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

- 20 (1) A narrative description of the proposed wind energy facility or proposed
21 wind energy facility expansion.
- 22 (2) A map showing the location of the proposed wind energy facility or
23 proposed wind energy facility expansion that identifies the specific location
24 of each turbine.
- 25 (3) A copy of a deed, purchase agreement, lease agreement, or other legal
26 instrument demonstrating the right to construct, expand, or otherwise
27 develop a wind energy facility on the property.
- 28 (4) Identification by name and address of property owners adjacent to the
29 proposed wind energy facility or proposed wind energy facility expansion.
30 The applicant shall notify every property owner identified pursuant to this
31 subdivision by registered or certified mail or by any means authorized by
32 G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall
33 include all of the following:
 - 34 a. The location of the proposed wind energy facility or proposed wind
35 energy facility expansion and the specific location of each turbine
36 proposed to be located within one-half mile of the boundary of the
37 adjacent property owner.
 - 38 b. A description of the proposed wind energy facility or proposed wind
39 energy facility expansion.
- 40 (5) A description of civil air navigation or military air navigation routes, air
41 traffic control areas, military training routes, special-use air space, radar, or
42 other military operations that may be affected by the construction or
43 operation of the proposed wind energy facility or proposed wind energy
44 facility expansion.
- 45 (6) Documentation that addresses any potential adverse impact on military
46 operations and readiness as identified by the Department of Defense
47 Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations
48 (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- 49 (7) A written "Determination of No Hazard to Air Navigation" issued by the
50 Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14

- 1 Code of Federal Regulations (January 1, 2012 edition) for the proposed wind
2 energy facility or proposed wind energy facility expansion.
- 3 (8) A study of the noise impacts of the turbines to be associated with the
4 proposed wind energy facility or proposed wind energy facility expansion.
- 5 (9) A study on shadow flicker impacts of the turbines to be associated with the
6 proposed wind energy facility or proposed wind energy facility expansion,
7 unless the turbines will be located in a sound or in offshore waters.
- 8 (10) A study of the impact of the proposed wind energy facility or proposed wind
9 energy facility expansion on natural resources and uses, including avian, bat,
10 and endangered and threatened species.
- 11 (11) An explanation of how the proposed wind energy facility or proposed wind
12 energy facility expansion would be consistent with the criteria in subsection
13 (a) of G.S. 143-215.120.
- 14 (12) The application fee required by subsection (b) of this section.
- 15 (13) A plan regarding the action to be taken upon the decommissioning and
16 removal of the wind energy facility. The plan shall include an estimate of the
17 cost to decommission and remove the wind energy facility. The plan shall
18 also include the anticipated life of the project, an estimate of the cost to
19 decommission and remove the wind energy facility, a description of the
20 manner in which the facility will be decommissioned, and a description of
21 the expected condition of the site once the wind energy facility has been
22 decommissioned and removed.
- 23 (14) Certification of compliance with all applicable federal, State, or local permit
24 requirements, licenses, or approvals including local zoning requirements.
- 25 (15) Other data or information the Department may reasonably require.
- 26 (b) Fees. – An applicant for a permit for a proposed wind energy facility or proposed
27 wind energy facility expansion under this section shall submit with the application required
28 pursuant to subsection (a) of this section, an application fee of three thousand five hundred
29 dollars (\$3,500).
- 30 (c) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a
31 complete permit application for a proposed wind energy facility or proposed facility expansion
32 submitted pursuant to subsection (a) of this section, the Department shall provide notice of the
33 permit application to (i) the commanding military officer of all major Department of Defense
34 military installations, (ii) the commanding military officer of any military installation located
35 outside the State that is located within 50 nautical miles of the location of the proposed wind
36 energy facility or proposed wind energy facility expansion, and (iii) the board of
37 commissioners for each county and the governing body of each municipality in which the wind
38 energy facility or wind energy facility expansion is proposed to be located. The notice shall
39 include:
- 40 (1) A copy of the map showing the location of the proposed wind energy facility
41 or proposed facility expansion that includes the specific locations of wind
42 turbines.
- 43 (2) A written request to the commanding military officer of a major Department
44 of Defense military installation, or the commanding military officer's
45 designee for technical information related to any adverse impact on the
46 installation's operations, training, or mission, including military air
47 navigation routes, air traffic control areas, military training routes,
48 special-use air space, radar, or other military operations that may be affected.
- 49 (3) A written request for information related to potential adverse impacts of the
50 proposed wind energy facility or proposed wind energy facility expansion on

1 local governments from the board of commissioners for each county and the
2 governing body of each municipality.

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

11 (e) Public Hearing and Comment. – The Department shall hold a public hearing in each
12 county in which the wind energy facility or facility expansion is proposed to be located within
13 75 days of receipt of a completed permit application. The Department shall provide notice
14 including the time and location of the public hearing in a newspaper of general circulation in
15 each applicable county. The notice of public hearing shall be published for at least two
16 consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing.
17 The notice shall provide that any comments on the proposed wind energy facility or proposed
18 facility expansion should be submitted to the Department by a specified date, not less than 15
19 days from the date of the newspaper publication of the notice or 15 days after distribution of
20 the mailed notice, whichever is later. No less than 30 days prior to the scheduled public
21 hearing, the Department shall provide written notice of the hearing to:

22 (1) The North Carolina Utilities Commission.

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

24 (3) The commanding military officer of any potentially affected major
25 Department of Defense military installation or the commanding military
26 officer's designee.

27 (4) The board of commissioners for each county and the governing body of each
28 municipality with jurisdictions over areas in which a potentially affected
29 major Department of Defense military installation is located.

30 **§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
31 **approvals required.**

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

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

38 (2) Construction or operation of the proposed wind energy facility or proposed
39 wind energy facility expansion would encroach upon or otherwise interfere
40 with the mission, training, or operations of any major Department of
41 Defense military installation or branch of military in North Carolina and
42 result in a detriment to continued military presence in the State. In its
43 evaluation, the Department may consider whether the proposed wind energy
44 facility or proposed wind energy facility expansion would cause interference
45 with air navigation routes, air traffic control areas, military training routes,
46 or radar based on information submitted by the applicant pursuant to
47 subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any
48 information received by the Department pursuant to subdivision (2) of
49 subsection (c) of G.S. 143-215.119.

50 (3) Construction or operation of the proposed wind energy facility or proposed
51 wind energy facility expansion would result in significant adverse impacts to

1 ecological systems, natural resources, cultural sites, recreation areas, or
2 historic sites of more than local significance; including national or State
3 parks or forests, wilderness areas, historic sites, recreation areas, segments of
4 the natural and scenic rivers system, wildlife refuges, preserves and
5 management areas, areas that provide habitat for threatened or endangered
6 species, primary nursery areas designated by the Marine Fisheries
7 Commission and the Wildlife Resources Commission; and critical fisheries
8 habitat identified pursuant to the Coastal Habitat Protection Plan.

9 (4) Construction or operation of the proposed wind energy facility or proposed
10 wind energy facility expansion would have a significant adverse impact on
11 fish or wildlife.

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

18 (6) Construction or operation of the proposed wind energy facility or proposed
19 wind energy facility expansion would obstruct major navigation channels or
20 create a significant obstacle to navigation in coastal waters, as determined by
21 the United States Army Corps of Engineers and the United States Coast
22 Guard.

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

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

29 (b) Permit Decision. – The Department shall make a final decision on a permit
30 application within 90 days following receipt of a completed application. If the Department
31 requests additional information following the receipt of a completed application, the
32 Department shall make a final decision on a permit application within 30 days of receipt of the
33 requested information. If the Department determines that an application for a wind energy
34 facility or a wind energy facility expansion fails to meet the requirements for a permit under
35 this section, the Department shall deny the application, and the application shall be returned to
36 the applicant accompanied by a written statement of the reasons for the denial and any
37 modifications to the permit application that would make the application acceptable. If the
38 Department fails to act within the time period set forth in this subsection, the applicant may
39 treat the failure to act as a denial of the permit and may challenge the denial as provided under
40 Chapter 150B of the General Statutes.

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

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

"§ 143-215.121. Financial assurance requirements.

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

"§ 143-215.122. Monitoring and reporting.

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

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

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

"§ 143-215.124. Record keeping.

The Department shall serve as the custodian of all data, information, and records received from a permit applicant or a major Department of Defense military installation pursuant to this Article and shall ensure that information provided to the Department that constitutes trade secrets, as that term is defined in G.S. 66-152, and that are designated as confidential or as a trade secret under G.S. 132.1.2, is limited only to the Department, State employees, and other persons who have executed a confidentiality agreement with the owner of such information. Information designated as confidential or as a trade secret under G.S. 132.1.2 shall not be subject to disclosure pursuant to G.S. 132-6.

"§ 143-215.125. Rule making.

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

"§ 143-215.126. Civil penalties.

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

(b) The Secretary of Environment and Natural Resources, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a

1 wind energy facility without first obtaining a permit under this Article or who constructs or
2 operates a wind energy facility or facility expansion in violation of its permit terms and
3 conditions."

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