

March 27, 2009

S 1068. PERMITTING OF WIND ENERGY FACILITIES (=H 809). Filed 3/26/09. *TO ESTABLISH A SYSTEM OF PERMITS TO BE ISSUED BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR THE SITING OF WIND ENERGY FACILITIES.*

Identical to H 809, filed 3/25/09.

Intro. by Albertson.

GS 113A, 143

July 7, 2009

S 1068. PERMITTING OF WIND ENERGY FACILITIES. Filed 3/26/09. Senate committee substitute makes the following changes to 1st edition. Modifies the definition of *wind energy facility* in GS 113A-103 to mean 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 (was, in excess of two megawatts) of energy.

Deletes in proposed GS 113A-118.3 that the prohibition on undertaking development associated with a wind energy facility anywhere in the coastal area without a permit is *in addition to the requirements of GS 113A-118*. Clarifies that the information to be included in an application for a permit must contain certification of adjacent property owner notification *to the maximum extent practicable*. Also clarifies that the following must be included in the application: (1) a study of the noise impacts of turbines to be associated with the proposed facility, *unless the turbines will be located in a sound or in offshore waters at least 0.6 miles from a shoreline* and (2) a study on shadow flicker impacts of the turbines to be associated with the proposed facility, *unless the turbines will be located in a sound or in offshore waters at least 1.6 miles from a shoreline*. Adds that the Coastal Resources Commission (Commission) must deny a permit application if (1) the construction or operation of the facility would be inconsistent with or violate the rules adopted by the Commission or (2) construction or operation of the facility would interfere with air navigation routes, air traffic control areas, military training routes, or special use airspace. Clarifies that the Commission must deny a permit if construction or operation of the facility would have significant adverse impact on views from any state or national park, wilderness area, significant natural heritage area *as compiled by the NC Natural Heritage Program*, or public lands or private conservation lands designated or dedicated due to their high recreational value. Specifies that an applicant must include in the plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility (1) an estimate of the cost to decommission and remove the facility and (2) a proposed description of the site once the facility has been removed (was, estimates of monetary costs and the proposed site condition after decommissioning). Increases the period in which a public hearing must be held in the county where the proposed facility is to be located to within 75 (was, 60) days of receipt of a completed application. Requires the Commission to make a final decision on a permit application within 150 days following the receipt of a completed application. Provides for procedures related to denial of the application and failure of the Commission to act within the required time period. Specifies that nothing in the statute is to be interpreted to limit (1) the application of Article 7 of GS Chapter 113A to facilities, including the permitting requirements under GS 113A-118 or (2) the ability of a city or county to plan for or regulate the siting of facilities in accordance with land use regulations. Requires that any person who proposes to construct or operate a wind energy facility within the planning jurisdiction of a city or county must demonstrate compliance with any local ordinances concerning land use and any applicable permitting processes. Also makes clarifying and technical changes.

Deletes the proposed enactment of new Part 12 in Article 21 of GS Chapter 143, Permitting of Wind Energy Facilities, which provided for permitting of wind energy facilities outside the coastal area by the Department of Environment and Natural Resources.

Deletes the amendment to GS 113A-206(3), which excluded certain wind turbines from the definition of *tall buildings or structures*.

Deletes the whereas clause that states that wind energy facilities are large structures that are highly visible features on the landscape and have the potential to cause adverse environmental impacts.

Makes technical corrections.

Also makes conforming changes to the whereas clauses and the title.

July 14, 2009

S 1068. PERMITTING OF WIND ENERGY FACILITIES. Filed 3/26/09. Senate committee substitute makes the following changes to 2nd edition. Amends proposed GS 113A-118.3, regarding the siting of wind energy facilities in the coastal area, to require a city or county to consider the information, factors, and criteria set out in subsections (b) and (c) in developing a plan for regulation of the siting of a wind energy facility. Adds new subsection (l) to GS 113A-118.3 to authorize the Secretary of Environment and Natural Resources to impose an administrative penalty not to exceed \$10,000 per day on a person who constructs a wind energy facility in the coastal area without obtaining a permit. Provides that each day of a continuing violation is a separate violation and authorizes the Secretary to seek injunctive relief against a person in violation of this provision.

Reinserts new Part 12, *Permitting of Wind Energy Facilities*, to Article 21 of GS Chapter 143 (was, deleted proposed Part 12 from 2nd edition), setting out requirements for permits in areas of the state other than coastal areas and makes the following changes to Part 12. Includes that the permit application must contain certification that notice of the siting of the facility has been provided to adjacent property owners *to the maximum extent practicable*. Requires DENR to deny a permit if any one of several specified criteria and/or conditions are not met and expands that list to include findings by DENR that: (1) construction or operation of the facility would be inconsistent with or violate the rules adopted by the Commission (was, DENR); (2) construction or operation of the facility would have significant adverse impact to primary nursery areas designated by the Wildlife Resources Commission (was, nursery areas and critical fisheries designated by the Marine Fisheries Commission); (3) construction or operation of the facility would interfere with air navigation routes, air traffic control areas, military training routes, or special use airspace; (4) the proposed facility would be located in an area designated with a slide hazard ranking of *moderate* or *high* (was, high hazard or high risk of landslides); or (5) GS Chapter 113A, Article 14, the Mountain Ridge Protection Act of 1983 (Ridge Law) prohibits the construction of the facility.

Increases the period in which a public hearing must be held in the county where the proposed facility is to be located to within 75 (was, 60) days of receipt of a completed application. Requires DENR to make a final decision on a permit application within 150 days following the receipt of a completed application. Directs DENR to (1) deny an application if it determines that the application for the wind energy facility does not meet the requirements for a permit under this section and (2) return the application to the applicant with a written statement of the reasons for the denial. Allows the applicant to treat the failure of DENR to act within the time periods set out in this subsection as a denial of the permit and to challenge the denial as provided under GS Chapter 150B.

Amends proposed GS 143-215.74U, regarding the siting of wind energy facilities in the non-coastal areas of the state, to require a city or county to consider the information, factors, and criteria set out in proposed GS 143-215.74S(b) and (c) in developing a plan for regulation of the siting of a wind energy facility.

Amends GS 113A-206 to clarify that windmills that are (1) associated with a residence, (2) employed for the primary purpose of generating electricity for use within the residence, and (3) no more than 100 feet from the base to the turbine hub are not considered to be *tall buildings or structures* for the purposes of the Ridge Law (was, the exception of windmills from the definition of *tall buildings or structures* under the act includes wind turbines having less than 100 kilowatts rated capacity, cumulatively with other turbines within one-half mile).

Makes technical changes and a conforming change to the title.