

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1068*
PROPOSED COMMITTEE SUBSTITUTE S1068-PCS85258-TAf-26

Short Title: Permitting of Wind Energy Facilities.

(Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A SYSTEM OF PERMITS TO BE ISSUED BY THE COASTAL
RESOURCES COMMISSION FOR THE SITING AND OPERATION OF WIND
ENERGY FACILITIES.

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

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

Whereas, North Carolina has abundant wind resources in the coastal region; and

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

The General Assembly of North Carolina enacts:

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

"(12) "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."

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

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

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

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

(1) A narrative description of the proposed facility.

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

(3) The capacity of proposed energy generation.

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

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



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- 1 (6) A study of the noise impacts of the turbines to be associated with the
2 proposed facility, unless the turbines will be located in a sound or in offshore
3 waters at least 0.60 miles from a shoreline.
- 4 (7) A study on shadow flicker impacts of the turbines to be associated with the
5 proposed facility, unless the turbines will be located in a sound or in offshore
6 waters at least 1.6 miles from a shoreline.
- 7 (8) A study on avian and bat impacts of the proposed facility.
- 8 (9) A study on viewshed impacts of the proposed facility.
- 9 (10) An explanation of how the proposed facility would be consistent with the
10 requirements in subsection (c) of this section.
- 11 (11) The application fee required by subsection (e) of this section.
- 12 (12) Other data or information the Commission may reasonably require.
- 13 (c) The Commission shall deny an application for a permit for a wind energy facility if
14 the Commission finds any one or more of the following:
- 15 (1) Construction or operation of the facility would be inconsistent with or
16 violate rules adopted by the Commission.
- 17 (2) Construction or operation of the facility would result in significant adverse
18 impacts to ecological systems, natural resources, cultural sites, recreation
19 areas, or historic sites of more than local significance, including national or
20 State parks or forests; wilderness areas; historic sites; recreation areas;
21 segments of the natural and scenic rivers system; wildlife refuges; preserves
22 and management areas; areas that provide habitat for threatened or
23 endangered species; primary nursery areas designated by the Marine
24 Fisheries Commission and the Wildlife Resources Commission; and critical
25 fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.
- 26 (3) Construction or operation of the facility would obstruct major navigation
27 channels or create a significant obstacle to navigation in coastal waters. For
28 purposes of this section, a wind energy facility in the coastal area is a water
29 dependent use.
- 30 (4) Construction or operation of the facility would have a significant adverse
31 impact on fish or wildlife.
- 32 (5) Construction or operation of the facility would have a significant adverse
33 impact on views from any State or national park, wilderness area, significant
34 natural heritage area as compiled by the North Carolina Natural Heritage
35 Program, or other public lands or private conservation lands designated or
36 dedicated due to their high recreational values.
- 37 (6) Construction or operation of the facility would interfere with air navigation
38 routes, air traffic control areas, military training routes, or special use
39 airspace.
- 40 (7) A permit for the facility would be denied under any other criteria set out in
41 G.S. 113A-120.
- 42 (8) The cumulative impact of the proposed facility with other existing or
43 proposed wind energy facilities would result in significant adverse impacts
44 to ecological systems, natural resources, cultural sites, recreation areas, or
45 historic sites of more than local significance.
- 46 (d) The Commission may include, as a condition of a permit for a wind energy facility,
47 a requirement that the permit holder mitigate any adverse impacts.
- 48 (e) An applicant for a permit for a wind energy facility under this section shall submit
49 with the application under subsection (b) of this section an application fee of two thousand
50 dollars (\$2,000).

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

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

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

25 (i) Nothing in this section shall be interpreted to limit: (i) the application of Article 7 of
26 Chapter 113A of the General Statutes to facilities permitted under this section, including the
27 permitting requirements of G.S. 113A-118 or (ii) the ability of a city or county to plan for and
28 regulate the siting of a wind energy facility in accordance with land-use regulations authorized
29 under Chapter 160A and Chapter 153A of the General Statutes.

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

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

36 **SECTION 3.** This act becomes effective January 1, 2010, and applies to wind
37 energy facilities, as defined in G.S. 113A-103, as enacted by Section 1 of this act, that are
38 constructed on or after that date.