

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 694\*  
PROPOSED COMMITTEE SUBSTITUTE H694-PCS50353-SB-35

Short Title: ASU Wind Demonstration Project.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT APPALACHIAN STATE UNIVERSITY TO JOINTLY DEVELOP AND IMPLEMENT A WIND DEMONSTRATION PROJECT WITH THE HOLDER OF A PERMIT FOR A WIND ENERGY FACILITY THAT HAS BEEN ISSUED BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.

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 mountain 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; and

Whereas, the ridges and higher elevations of North Carolina's mountains are invaluable resources of the State that merit the protection that they currently receive under the Mountain Ridge Protection Act of 1983; and

Whereas, a demonstration project to develop a wind energy facility in a mountain region within the purview of the Mountain Ridge Protection Act under certain narrowly prescribed criteria would assist in determining whether wind energy can be developed in certain extremely limited portions of the mountain regions that are unsuitable for residential or recreational development and in a manner that is compatible with preserving scenic views and the quality of life that mountain residents and visitors treasure, as well as compatible with environmental protection, sustainable development, and energy independence; and

Whereas, Appalachian State University is conducting research on wind energy as part of the University's focus on using alternative energy resources and its goal of being a world leader in sustainability; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.** Definitions. – The following definitions apply to this act and its implementation:

(1) The definitions set out in G.S. 143-212.

(2) "Wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility



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1 that cumulatively, with any other wind energy facility whose turbines are  
2 located within one-half mile of one another, have a rated capacity of three  
3 megawatts or more of energy.

4 **SECTION 2.** Wind energy facility demonstration project; general conditions. –  
5 Appalachian State University shall assist a third party in selecting a site for the construction  
6 and operation of a wind energy facility demonstration project that does not exceed a rated  
7 capacity of 60 megawatts and that satisfies all the criteria in Section 3 of this act. The third  
8 party shall apply for and obtain all permits and authorizations necessary to construct, operate,  
9 and decommission the wind energy facility demonstration project as required by this act. Any  
10 agreement entered into between Appalachian State University and a third party pursuant to this  
11 section shall ensure that the University is provided with (i) cooperation and appropriate access  
12 to the wind energy facility demonstration project in order to develop and conduct research on  
13 the technological, environmental, and economic aspects of the demonstration project and (ii)  
14 financial support to cover the full cost of the research contemplated in this section.

15 **SECTION 3.** Wind energy facility demonstration project; site selection. –  
16 Notwithstanding Article 14 of Chapter 113A of the General Statutes, the site for a wind energy  
17 facility demonstration project shall satisfy all of the following criteria:

- 18 (1) The proposed site is located in a mountain ridge that is subject to protection  
19 under Article 14 of Chapter 113A of the General Statutes.
- 20 (2) The proposed site is located at least two miles from the Blue Ridge Parkway.
- 21 (3) The proposed site is located at least two miles from the Appalachian Trail.
- 22 (4) The proposed site is located within a county that has enacted an ordinance  
23 authorizing the siting of the wind energy facility under this demonstration  
24 project.
- 25 (5) The proposed site is unsuitable for future residential or recreational  
26 development due to its proximity within one mile of an existing mining  
27 operation, waste facility, power plant, or other similar commercial facility  
28 that has a permit or license issued by the Department of Environment and  
29 Natural Resources.
- 30 (6) The proposed site is located within 50 miles of Appalachian State  
31 University.

32 **SECTION 4.** Wind energy facility demonstration project; permitting. – The third  
33 party shall not undertake development associated with a wind energy facility demonstration  
34 project without first obtaining a permit from the Department of Environment and Natural  
35 Resources. The third party applying for a permit for a wind energy facility demonstration  
36 project shall include all of the following in an application for the permit:

- 37 (1) A narrative description of the proposed facility.
- 38 (2) A map showing the location of the proposed facility.
- 39 (3) The capacity of proposed energy generation.
- 40 (4) A copy of a deed, purchase agreement, lease agreement, or other legal  
41 instrument demonstrating the right to develop the property.
- 42 (5) Certification of adjacent property owner notification to the maximum extent  
43 practicable.
- 44 (6) A study of the noise impacts of the proposed facility.
- 45 (7) A study on shadow flicker impacts of the proposed facility.
- 46 (8) A study on avian and bat impacts of the proposed facility.
- 47 (9) A study on view shed impacts of the proposed facility.
- 48 (10) An explanation of how the proposed facility would be consistent with the  
49 requirements in Section 3 of this act.
- 50 (11) The application fee required by Section 7 of this act.
- 51 (12) Other data or information the Department may reasonably require.

1           **SECTION 5.** Criteria for denial of a permit application for a wind energy facility  
2 demonstration project. – The Department shall deny an application for a permit for a wind  
3 energy facility demonstration project if the Department finds any one or more of the following:

- 4           (1) Construction or operation of the facility would be inconsistent with or  
5 violate rules adopted by the Commission.
- 6           (2) Construction or operation of the facility would be inconsistent with or  
7 violate any applicable local government ordinances.
- 8           (3) Construction or operation of the facility would result in significant adverse  
9 impacts to ecological systems, natural resources, cultural sites, recreation  
10 areas, or historic sites of more than local significance, including national or  
11 State parks or forests; wilderness areas; historic sites; recreation areas;  
12 segments of the natural and scenic rivers system; wildlife refuges; preserves  
13 and management areas; areas that provide habitat for threatened or  
14 endangered species; and primary nursery areas designated by the Wildlife  
15 Resources Commission.
- 16           (4) Construction or operation of the facility would have a significant adverse  
17 impact on fish or wildlife.
- 18           (5) Construction or operation of the facility would have a significant adverse  
19 impact on views from any State or national park, wilderness area, significant  
20 natural heritage area as compiled by the North Carolina Natural Heritage  
21 Program, or other public lands or private conservation lands designated or  
22 dedicated due to their high recreational values.
- 23           (6) Construction or operation of the facility would interfere with air navigation  
24 routes, air traffic control areas, military training routes, or special use  
25 airspace.
- 26           (7) The cumulative impact of the proposed facility with other existing or  
27 proposed wind energy facilities would result in significant adverse impacts  
28 to ecological systems, natural resources, cultural sites, recreation areas, or  
29 historic sites of more than local significance.

30           **SECTION 6.** Wind energy facility demonstration project; additional permit  
31 conditions. – The Department may include the following conditions on a third party that seeks a  
32 permit for a wind energy facility demonstration project:

- 33           (1) A requirement that the third party mitigate any adverse impacts.
- 34           (2) A requirement that the third party engage Appalachian State University to  
35 conduct research on the technological, environmental, and economic aspects  
36 of the wind energy facility associated with the demonstration project as  
37 proposed and constructed at no cost to the University.

38           **SECTION 7.** Permit fees. – The third party applicant for a permit for a wind  
39 energy facility demonstration project under this act shall submit with the application required  
40 under Section 4 of this act an application fee of two thousand dollars (\$2,000).

41           **SECTION 8.** Plan for decommissioning or removal of wind energy facility  
42 demonstration project. – The Department shall require the third party applicant for a permit for  
43 a wind energy facility demonstration project to provide a plan regarding the action to be taken  
44 upon the decommissioning and removal of the demonstration project. The plan shall include an  
45 estimate of the cost to decommission and remove the demonstration project. The plan shall also  
46 include a proposed description of the condition of the site once the demonstration project has  
47 been decommissioned and removed. The Department may require a bond, guarantee, insurance,  
48 or other financial instrument to provide for decommissioning and removal of any structures that  
49 comprise the demonstration project. The Department shall consider the size of the  
50 demonstration project, the location of the project, and the financial qualifications of the  
51 applicant in making its determination to grant or deny the permit.

1           **SECTION 9.** Public hearing. – The Department shall hold a public hearing in the  
2 county or counties in which the proposed wind energy facility demonstration project is to be  
3 located within 75 days of receipt of a completed application for a demonstration project. The  
4 Department shall give a minimum of 30 days' notice of the public hearing. The Department  
5 shall make a final decision on a permit application within 150 days following receipt of a  
6 completed application. If the Department determines that an application for a demonstration  
7 project fails to meet the requirements for a permit under this section, the Department shall deny  
8 the application, and the application shall be returned to the applicant accompanied by a written  
9 statement of the reasons for the denial. If the Department fails to act within any time period set  
10 forth in this section, the applicant may treat the failure to act as a denial of the permit and may  
11 challenge the denial as provided under Chapter 150B of the General Statutes.

12           **SECTION 10.** Other applicable laws. – The issuance of a permit under this section  
13 shall not obviate the need for the third party applicant to obtain any and all other applicable  
14 local, State, or federal permits, licenses, or approvals.

15           **SECTION 11.** Rule making. – The Department may adopt rules implementing this  
16 section.

17           **SECTION 12.** Penalties. – The Secretary of Environment and Natural Resources  
18 may impose an administrative penalty on a person who constructs a wind energy facility  
19 without obtaining a permit under this section or who constructs or operates a wind energy  
20 facility demonstration project in violation of its permit terms and conditions. Each day of a  
21 continuing violation shall constitute a separate violation. The penalty shall not exceed one  
22 thousand dollars (\$1,000) per day. The Secretary of Environment and Natural Resources,  
23 irrespective of all other remedies at law, may institute an action for injunctive relief against a  
24 person who constructs a wind energy facility demonstration project without obtaining a permit  
25 under this section or who constructs or operates a wind energy facility demonstration project in  
26 violation of its permit terms and conditions.

27           **SECTION 13.** Wind energy facility demonstration project; commencement of  
28 construction and commercial operation. – Upon receipt of permit approval from the  
29 Department and any additional authorizations necessary to construct and operate the wind  
30 energy facility demonstration project, the third party shall commence construction of the  
31 demonstration project. Commercial operation of the demonstration project permitted and  
32 authorized pursuant to this act shall commence no later than November 1, 2018.

33           **SECTION 14.** Reports. – In order to determine the effectiveness of the wind  
34 energy facility demonstration project permitted and authorized pursuant to this act,  
35 Appalachian State University shall report no later than one year after the issuance of the permit,  
36 and annually thereafter, to the Department and the Environmental Review Commission of the  
37 General Assembly. The first report shall include the location of the site selected for the wind  
38 energy facility demonstration project and data on wind speeds and the potential for power  
39 generation collected from the demonstration project. Subsequent reports shall also include the  
40 power generated at the facility, the extent to which the demonstration project assists in the  
41 research on wind energy at the University, and any findings on the technological,  
42 environmental, and economic aspects of the demonstration project.

43           **SECTION 15.** This act is effective when it becomes law.