

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 484\*  
Committee Substitute Favorable 4/11/13  
PROPOSED COMMITTEE SUBSTITUTE H484-PCS70336-Taf-6

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,  
35 the United States Coast Guard Air Station at Elizabeth City, Naval Support



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1 Activity Northwest, and Seymour Johnson Air Force Base, in its own right  
2 and as the responsible entity for the Dare County Bombing Range, and any  
3 facility located within the State that is subject to the installations' oversight  
4 and control.

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

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

15 **"§ 143-215.116. Permit to site wind energy facilities.**

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

18 **"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication**  
19 **package requirements.**

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

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

29 a. Pose serious risk to civil air navigation or military air navigation  
30 routes, air traffic control areas, military training routes, special-use  
31 air space, radar, or other potentially affected military operations.

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

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

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

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

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

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

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

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

30          **"§ 143-215.118. Permit application scoping meeting and notice.**

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

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

45          **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**  
46          **permit; public hearing; public comment.**

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

- 50               (1)    A narrative description of the proposed wind energy facility or proposed  
51               wind energy facility expansion.

- 1           (2)    A map showing the location of the proposed wind energy facility or  
2           proposed wind energy facility expansion that identifies the specific location  
3           of each turbine.
- 4           (3)    A copy of a deed, purchase agreement, lease agreement, or other legal  
5           instrument demonstrating the right to construct, expand, or otherwise  
6           develop a wind energy facility on the property.
- 7           (4)    Identification by name and address of property owners adjacent to the  
8           proposed wind energy facility or proposed wind energy facility expansion.  
9           The applicant shall notify every property owner identified pursuant to this  
10          subdivision by registered or certified mail or by any means authorized by  
11          G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall  
12          include all of the following:
- 13           a.     The location of the proposed wind energy facility or proposed wind  
14           energy facility expansion and the specific location of each turbine  
15           proposed to be located within one-half mile of the boundary of the  
16           adjacent property owner.
- 17           b.     A description of the proposed wind energy facility or proposed wind  
18           energy facility expansion.
- 19          (5)    A description of civil air navigation or military air navigation routes, air  
20          traffic control areas, military training routes, special-use air space, radar, or  
21          other military operations that may be affected by the construction or  
22          operation of the proposed wind energy facility or proposed wind energy  
23          facility expansion.
- 24          (6)    Documentation that addresses any potential adverse impact on military  
25          operations and readiness as identified by the Department of Defense  
26          Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations  
27          (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- 28          (7)    A written "Determination of No Hazard to Air Navigation" issued by the  
29          Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14  
30          Code of Federal Regulations (January 1, 2012 edition) for the proposed wind  
31          energy facility or proposed wind energy facility expansion.
- 32          (8)    A study of the noise impacts of the turbines to be associated with the  
33          proposed wind energy facility or proposed wind energy facility expansion.
- 34          (9)    A study on shadow flicker impacts of the turbines to be associated with the  
35          proposed wind energy facility or proposed wind energy facility expansion,  
36          unless the turbines will be located in a sound or in offshore waters.
- 37          (10)   A study of the impact of the proposed wind energy facility or proposed wind  
38          energy facility expansion on natural resources and uses, including avian, bat,  
39          and endangered and threatened species.
- 40          (11)   An explanation of how the proposed wind energy facility or proposed wind  
41          energy facility expansion would be consistent with the criteria in subsection  
42          (a) of G.S. 143-215.120.
- 43          (12)   The application fee required by subsection (b) of this section.
- 44          (13)   A plan regarding the action to be taken upon the decommissioning and  
45          removal of the wind energy facility. The plan shall include an estimate of the  
46          cost to decommission and remove the wind energy facility. The plan shall  
47          also include the anticipated life of the project, an estimate of the cost to  
48          decommission and remove the wind energy facility, a description of the  
49          manner in which the facility will be decommissioned, and a description of  
50          the expected condition of the site once the wind energy facility has been  
51          decommissioned and removed.

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

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

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

15           (1) A copy of the map showing the location of the proposed wind energy facility  
16 or proposed facility expansion that includes the specific locations of wind  
17 turbines.

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

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

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

36           (e) Public Hearing and Comment. – The Department shall hold a public hearing in each  
37 county in which the wind energy facility or facility expansion is proposed to be located within  
38 75 days of receipt of a completed permit application. The Department shall provide notice  
39 including the time and location of the public hearing in a newspaper of general circulation in  
40 each applicable county. The notice of public hearing shall be published for at least two  
41 consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing.  
42 The notice shall provide that any comments on the proposed wind energy facility or proposed  
43 facility expansion should be submitted to the Department by a specified date, not less than 15  
44 days from the date of the newspaper publication of the notice or 15 days after distribution of  
45 the mailed notice, whichever is later. No less than 30 days prior to the scheduled public  
46 hearing, the Department shall provide written notice of the hearing to:

47           (1) The North Carolina Utilities Commission.

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

49           (3) The commanding military officer of any potentially affected major military  
50 installation or the commanding military officer's designee.

1           (4)    The board of commissioners for each county and the governing body of each  
2           municipality with jurisdictions over areas in which a potentially affected  
3           major military installation is located.

4    "**§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**  
5    **approvals required.**

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

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

12          (2)    Construction or operation of the proposed wind energy facility or proposed  
13          wind energy facility expansion would encroach upon or would otherwise  
14          have a significant adverse impact on the mission, training, or operations of  
15          any major military installation or branch of military in North Carolina and  
16          result in a detriment to continued military presence in the State. In its  
17          evaluation, the Department may consider whether the proposed wind energy  
18          facility or proposed wind energy facility expansion would cause interference  
19          with air navigation routes, air traffic control areas, military training routes,  
20          or radar based on information submitted by the applicant pursuant to  
21          subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any  
22          information received by the Department pursuant to subdivision (2) of  
23          subsection (c) of G.S. 143-215.119.

24          (3)    Construction or operation of the proposed wind energy facility or proposed  
25          wind energy facility expansion would result in significant adverse impacts to  
26          ecological systems, natural resources, cultural sites, recreation areas, or  
27          historic sites of more than local significance; including national or State  
28          parks or forests, wilderness areas, historic sites, recreation areas, segments of  
29          the natural and scenic rivers system, wildlife refuges, preserves and  
30          management areas, areas that provide habitat for threatened or endangered  
31          species, primary nursery areas designated by the Marine Fisheries  
32          Commission and the Wildlife Resources Commission, and critical fisheries  
33          habitat identified pursuant to the Coastal Habitat Protection Plan.

34          (4)    Construction or operation of the proposed wind energy facility or proposed  
35          wind energy facility expansion would have a significant adverse impact on  
36          fish or wildlife.

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

43          (6)    Construction or operation of the proposed wind energy facility or proposed  
44          wind energy facility expansion would obstruct major navigation channels or  
45          create a significant obstacle to navigation in coastal waters, as determined by  
46          the United States Army Corps of Engineers and the United States Coast  
47          Guard.

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

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

4           (9)     The applicant is not in compliance with all applicable federal, State, or local  
5           permit requirements, licenses, or approvals, including local zoning  
6           requirements.

7           (b)     Permit Decision. – The Department shall make a final decision on a permit  
8           application within 90 days following receipt of a completed application. If the Department  
9           requests additional information following the receipt of a completed application, the  
10          Department shall make a final decision on a permit application within 30 days of receipt of the  
11          requested information. If the Department determines that an application for a wind energy  
12          facility or a wind energy facility expansion fails to meet the requirements for a permit under  
13          this section, the Department shall deny the application, and the application shall be returned to  
14          the applicant accompanied by a written statement of the reasons for the denial and any  
15          modifications to the permit application that would make the application acceptable. If the  
16          Department fails to act within the time period set forth in this subsection, the applicant may  
17          treat the failure to act as a denial of the permit and may challenge the denial as provided under  
18          Chapter 150B of the General Statutes.

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

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

30          **"§ 143-215.121. Financial assurance requirements.**

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

42          **"§ 143-215.122. Monitoring and reporting.**

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

49          **"§ 143-215.123. Annual review of military presence.**

50          The Department shall consult with representatives of the major military installations to  
51          review information regarding military air navigation routes, air traffic control areas, military

1 training routes, special-use air space, radar, or other potentially affected military operations at  
2 least once per year. The Department shall provide relevant information on civil air navigation  
3 or military air navigation routes, air traffic control areas, military training routes, special-use air  
4 space, radar, or other potentially affected military operations to permit applicants as requested.

5 **"§ 143-215.124. Record keeping.**

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

14 **"§ 143-215.125. Rule making.**

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

20 **"§ 143-215.126. Civil penalties.**

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

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

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