

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

HOUSE BILL 484\*  
Committee Substitute Favorable 4/11/13  
Committee Substitute #2 Favorable 4/18/13  
PROPOSED COMMITTEE SUBSTITUTE H484-PCS30495-TAf-9

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,



\* H 4 8 4 - P C S 3 0 4 9 5 - T A F - 9 \*

1 the United States Coast Guard Air Station at Elizabeth City, Naval Support  
2 Activity Northwest, and Seymour Johnson Air Force Base, in its own right  
3 and as the responsible entity for the Dare County Bombing Range, and any  
4 facility located within the State that is subject to the installations' oversight  
5 and control.

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

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

16 **"§ 143-215.116. Permit to site wind energy facilities.**

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

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

21 (a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to  
22 filing an application for a permit to construct, operate, or expand a wind energy facility, a  
23 person shall request a preapplication site evaluation meeting to be held between the applicant  
24 and the Department. The preapplication site evaluation meeting shall be held no less than 120  
25 days prior to filing an application for a permit to construct, operate, or expand a wind energy  
26 facility and may be used by the participants to:

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

- 31 a. Pose serious risk to civil air navigation or military air navigation  
32 routes, air traffic control areas, military training routes, special-use  
33 air space, radar, or other potentially affected military operations.  
34 b. Pose serious risk to natural resources and uses, including to species  
35 of concern or their habitats.

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

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

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

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

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

24           (c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit  
25           preapplication site evaluation meeting scheduled in accordance with subsection (a) of this  
26           section, the Department shall provide written notice of the meeting to the United States Army  
27           Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife  
28           Resources Commission, the commanding military officer or the commanding military officer's  
29           designee of any potentially affected major military installation, and any other party that the  
30           Department deems relevant. The notice shall include an invitation to participate in the permit  
31           preapplication site evaluation meeting.

32           **"§ 143-215.118. Permit application scoping meeting and notice.**

33           (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit  
34           for a proposed wind energy facility or proposed wind energy facility expansion, the applicant  
35           shall request the scheduling of a scoping meeting between the applicant and the Department.  
36           The scoping meeting shall be held no less than 30 days prior to filing an application for a  
37           permit for a proposed wind energy facility or proposed wind energy facility expansion. The  
38           applicant and the Department shall review the permit for the proposed wind energy facility or  
39           proposed facility expansion at the scoping meeting.

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

49           **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**  
50           **permit; public hearing; public comment.**

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

4           (1) A narrative description of the proposed wind energy facility or proposed  
5 wind energy facility expansion.

6           (2) A map showing the location of the proposed wind energy facility or  
7 proposed wind energy facility expansion that identifies the specific location  
8 of each turbine.

9           (3) A copy of a deed, purchase agreement, lease agreement, or other legal  
10 instrument demonstrating the right to construct, expand, or otherwise  
11 develop a wind energy facility on the property.

12           (4) Identification by name and address of property owners adjacent to the  
13 proposed wind energy facility or proposed wind energy facility expansion.  
14 The applicant shall notify every property owner identified pursuant to this  
15 subdivision by registered or certified mail or by any means authorized by  
16 G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall  
17 include all of the following:

18           a.       The location of the proposed wind energy facility or proposed wind  
19 energy facility expansion and the specific location of each turbine  
20 proposed to be located within one-half mile of the boundary of the  
21 adjacent property owner.

22           b.       A description of the proposed wind energy facility or proposed wind  
23 energy facility expansion.

24           (5) A description of civil air navigation or military air navigation routes, air  
25 traffic control areas, military training routes, special-use air space, radar, or  
26 other military operations that may be affected by the construction or  
27 operation of the proposed wind energy facility or proposed wind energy  
28 facility expansion.

29           (6) Documentation that addresses any potential adverse impact on military  
30 operations and readiness as identified by the Department of Defense  
31 Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations  
32 (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

33           (7) Documentation that the applicant has either (i) submitted Federal Aviation  
34 Administration Form 7460-1 for the turbines associated with the proposed  
35 wind energy facility or proposed wind energy facility expansion or (ii)  
36 initiated an informal review by the Department of Defense Siting  
37 Clearinghouse of the proposed wind energy facility or proposed wind energy  
38 facility expansion. If the applicant has submitted Federal Aviation  
39 Administration Form 7460-1 in order to fulfill the requirements of this  
40 subdivision, the applicant shall provide any determination reached by the  
41 Federal Aviation Administration at the time the application is submitted to  
42 the Department. If the Federal Aviation Administration has not made a  
43 determination at the time the application is submitted to the Department, the  
44 application shall include a description of the status of the applicant's  
45 engagement with the Federal Aviation Administration and the Department of  
46 Defense Siting Clearinghouse.

47           (8) A study of the noise impacts of the turbines to be associated with the  
48 proposed wind energy facility or proposed wind energy facility expansion.

49           (9) A study on shadow flicker impacts of the turbines to be associated with the  
50 proposed wind energy facility or proposed wind energy facility expansion,  
51 unless the turbines will be located in a sound or in offshore waters.

1           (10) A study of the impact of the proposed wind energy facility or proposed wind  
2           energy facility expansion on natural resources and uses, including avian, bat,  
3           and endangered and threatened species.

4           (11) An explanation of how the proposed wind energy facility or proposed wind  
5           energy facility expansion would be consistent with the criteria in subsection  
6           (a) of G.S. 143-215.120.

7           (12) The application fee required by subsection (b) of this section.

8           (13) A plan regarding the action to be taken upon the decommissioning and  
9           removal of the wind energy facility. The plan shall include an estimate of the  
10           cost to decommission and remove the wind energy facility. The plan shall  
11           also include the anticipated life of the project, an estimate of the cost to  
12           decommission and remove the wind energy facility, a description of the  
13           manner in which the facility will be decommissioned, and a description of  
14           the expected condition of the site once the wind energy facility has been  
15           decommissioned and removed.

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

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

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

31           (1) A copy of the map showing the location of the proposed wind energy facility  
32           or proposed wind energy facility expansion that includes the specific  
33           locations of wind turbines.

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

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

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

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

- 12       (1) The North Carolina Utilities Commission.
- 13       (2) The Office of the Attorney General of North Carolina.
- 14       (3) The commanding military officer of any potentially affected major military  
15 installation or the commanding military officer's designee.
- 16       (4) The board of commissioners for each county and the governing body of each  
17 municipality with jurisdictions over areas in which a potentially affected  
18 major military installation is located.

19 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**  
20 **approvals required.**

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

- 24       (1) Construction or operation of the proposed wind energy facility or proposed  
25 wind energy facility expansion would be inconsistent with or violate rules  
26 adopted by the Department or any other provision of law.
- 27       (2) Construction or operation of the proposed wind energy facility or proposed  
28 wind energy facility expansion would encroach upon or would otherwise  
29 have a significant adverse impact on the mission, training, or operations of  
30 any major military installation or branch of military in North Carolina and  
31 result in a detriment to continued military presence in the State. In its  
32 evaluation, the Department may consider whether the proposed wind energy  
33 facility or proposed wind energy facility expansion would cause interference  
34 with air navigation routes, air traffic control areas, military training routes,  
35 or radar based on information submitted by the applicant pursuant to  
36 subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any  
37 information received by the Department pursuant to subdivision (2) of  
38 subsection (c) of G.S. 143-215.119.
- 39       (3) Construction or operation of the proposed wind energy facility or proposed  
40 wind energy facility expansion would result in significant adverse impacts to  
41 ecological systems, natural resources, cultural sites, recreation areas, or  
42 historic sites of more than local significance; including national or State  
43 parks or forests, wilderness areas, historic sites, recreation areas, segments of  
44 the natural and scenic rivers system, wildlife refuges, preserves and  
45 management areas, areas that provide habitat for threatened or endangered  
46 species, primary nursery areas designated by the Marine Fisheries  
47 Commission and the Wildlife Resources Commission, and critical fisheries  
48 habitat identified pursuant to the Coastal Habitat Protection Plan.
- 49       (4) Construction or operation of the proposed wind energy facility or proposed  
50 wind energy facility expansion would have a significant adverse impact on  
51 fish or wildlife.

- 1           (5)    Construction or operation of the proposed wind energy facility or proposed  
2           wind energy facility expansion would have a significant adverse impact on  
3           views from any State or national park, wilderness area, significant natural  
4           heritage area as compiled by the North Carolina Natural Heritage Program,  
5           or other public lands or private conservation lands designated or dedicated  
6           due to their high recreational values.
- 7           (6)    Construction or operation of the proposed wind energy facility or proposed  
8           wind energy facility expansion would obstruct major navigation channels or  
9           create a significant obstacle to navigation in coastal waters, as determined by  
10          the United States Army Corps of Engineers and the United States Coast  
11          Guard.
- 12          (7)    A permit for a proposed wind energy facility or proposed wind energy  
13          facility expansion would be denied under any other criteria set out in  
14          G.S. 113A-120.
- 15          (8)    Construction of the proposed wind energy facility or proposed wind energy  
16          facility expansion would be prohibited under Article 14 of Chapter 113A of  
17          the General Statutes, the Mountain Ridge Protection Act of 1983.
- 18          (9)    The applicant is not in compliance with all applicable federal, State, or local  
19          permit requirements, licenses, or approvals, including local zoning  
20          requirements.

21          (b)    Permit Decision. – The Department shall make a final decision on a permit  
22          application within 90 days following receipt of a completed application, except that the  
23          Department shall not be required to make a final decision until the Department has  
24          received a written "Determination of No Hazard to Air Navigation" issued by the Federal  
25          Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of  
26          Federal Regulations (January 1, 2012 edition). If the Department requests additional  
27          information following the receipt of a completed application, the Department shall make a final  
28          decision on a permit application within 30 days of receipt of the requested information. If the  
29          Department determines that an application for a wind energy facility or a wind energy facility  
30          expansion fails to meet the requirements for a permit under this section, the Department shall  
31          deny the application, and the application shall be returned to the applicant accompanied by a  
32          written statement of the reasons for the denial and any modifications to the permit application  
33          that would make the application acceptable. If the Department fails to act within the time  
34          period set forth in this subsection, the applicant may treat the failure to act as a denial of the  
35          permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

36          (c)    Permit Conditions. – The Department (i) may include as a condition of a permit for  
37          a proposed wind energy facility or proposed wind energy facility expansion a requirement that  
38          the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit  
39          for a proposed wind energy facility or proposed wind energy facility expansion a requirement  
40          that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued  
41          by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the  
42          Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind  
43          energy facility or wind energy facility expansion shall become effective until the Department  
44          has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the  
45          Federal Aviation Administration for the facility. If the specific location of a turbine authorized  
46          to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the  
47          configuration of the wind energy facility varies from the information submitted by the applicant  
48          upon which the Department has made its permit decision, the Department may reevaluate the  
49          permit application and require the applicant to submit any additional information the  
50          Department deems necessary to approve or deny a permit for the facility as reconfigured.

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

9 **"§ 143-215.121. Financial assurance requirements.**

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

21 **"§ 143-215.122. Monitoring and reporting.**

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

28 **"§ 143-215.123. Annual review of military presence.**

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

35 **"§ 143-215.124. Record keeping.**

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

44 **"§ 143-215.125. Rule making.**

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

50 **"§ 143-215.126. Civil penalties.**



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

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

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