

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 574  
PROPOSED COMMITTEE SUBSTITUTE H574-PCS30411-RI-12

Short Title: Wind Energy/Consistency With Military.

(Public)

Sponsors:

Referred to:

April 6, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO BETTER ENSURE COMPATIBILITY OF WIND ENERGY FACILITIES  
3 WITH MILITARY OPERATIONS AND READINESS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 21C of Chapter 143 of the General Statutes reads as  
6 rewritten:

7 "Article 21C.

8 "Permitting of Wind Energy Facilities.

9 ...

10 **"§ 143-215.116. Permit to site wind energy facilities.**

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

13 **"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication  
14 package requirements.**

15 (a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to  
16 filing an application for a permit to construct, operate, or expand a wind energy facility, a  
17 person shall request a preapplication site evaluation meeting to be held between the applicant  
18 and the Department. ~~applicant, the Department, and the Department of Military and Veterans~~  
19 Affairs. The preapplication site evaluation meeting shall be held no less than 120 days prior to  
20 filing an application for a permit to construct, operate, or expand a wind energy facility and  
21 may be used by the participants to:

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

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

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

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



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- 1 (3) Identify areas where proposed construction or expansion activities pose  
2 minimal risk to natural resources and uses, including avian, bat, and  
3 endangered and threatened species.  
4 ...

5 (c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit  
6 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this  
7 section, the Department shall provide written notice of the meeting to the Department of  
8 Military and Veterans Affairs, the United States Army Corps of Engineers, the United States  
9 Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the  
10 commanding military officer or the commanding military officer's designee of any potentially  
11 affected major military installation, and any other party that the Department deems relevant.  
12 The notice shall include an invitation to participate in the permit preapplication site evaluation  
13 meeting.

14 **"§ 143-215.118. Permit application scoping meeting and notice.**

15 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit  
16 for a proposed wind energy facility or proposed wind energy facility expansion, the applicant  
17 shall request the scheduling of a scoping meeting between the ~~applicant and the Department~~  
18 applicant, the Department, and the Department of Military and Veterans Affairs. The scoping  
19 meeting shall be held no less than 30 days prior to filing an application for a permit for a  
20 proposed wind energy facility or proposed wind energy facility expansion. The applicant and  
21 the Department shall review the permit for the proposed wind energy facility or proposed  
22 facility expansion at the scoping meeting.

23 (b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit  
24 application scoping meeting with an applicant, the Department shall provide written notice of  
25 the meeting to the Department of Military and Veterans Affairs, the commanding military  
26 officer of each major military installation, or the commanding military officer's designee, the  
27 Federal Aviation Administration, the North Carolina Wildlife Resources Commission, the  
28 United States Fish and Wildlife Service, the board of commissioners for each county and the  
29 governing body of each municipality in which the wind energy facility or proposed wind  
30 energy facility expansion is proposed to be located, and those local governments with  
31 jurisdictions over areas in which a major military installation is located. The notice shall  
32 include an invitation to participate in the scoping meeting.

33 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed  
34 permit; public hearing; public comment.**

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

- 38 (1) A narrative description of the proposed wind energy facility or proposed  
39 wind energy facility expansion.  
40 (2) A map showing the location of the proposed wind energy facility or  
41 proposed wind energy facility expansion that identifies the specific location  
42 of each turbine.  
43 (3) A copy of a deed, purchase agreement, lease agreement, or other legal  
44 instrument demonstrating the right to construct, expand, or otherwise  
45 develop a wind energy facility on the property.  
46 (4) Identification by name and address of property owners adjacent to the  
47 proposed wind energy facility or proposed wind energy facility expansion.  
48 The applicant shall notify every property owner identified pursuant to this  
49 subdivision by registered or certified mail or by any means authorized by  
50 G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall  
51 include all of the following:

- 1 a. The location of the proposed wind energy facility or proposed wind  
2 energy facility expansion and the specific location of each turbine  
3 proposed to be located within one-half mile of the boundary of the  
4 adjacent property owner.
- 5 b. A description of the proposed wind energy facility or proposed wind  
6 energy facility expansion.
- 7 (5) A description of civil air navigation or military air navigation routes, air  
8 traffic control areas, military training routes, special-use air space, radar, or  
9 other military operations that may be affected by the construction or  
10 operation of the proposed wind energy facility or proposed wind energy  
11 facility expansion.
- 12 (6) Documentation that addresses any potential adverse impact on military  
13 operations and readiness as identified by the Department of Defense  
14 Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations  
15 (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- 16 (7) Documentation that the applicant has either (i) submitted Federal Aviation  
17 Administration Form 7460-1 for the turbines associated with the proposed  
18 wind energy facility or proposed wind energy facility expansion or (ii)  
19 initiated an informal review by the Department of Defense Siting  
20 Clearinghouse of the proposed wind energy facility or proposed wind energy  
21 facility expansion. If the applicant has submitted Federal Aviation  
22 Administration Form 7460-1 in order to fulfill the requirements of this  
23 subdivision, the applicant shall provide any determination reached by the  
24 Federal Aviation Administration at the time the application is submitted to  
25 the Department. If the Federal Aviation Administration has not made a  
26 determination at the time the application is submitted to the Department, the  
27 application shall include a description of the status of the applicant's  
28 engagement with the Federal Aviation Administration and the Department of  
29 Defense Siting Clearinghouse.
- 30 (8) A study of the noise impacts of the turbines to be associated with the  
31 proposed wind energy facility or proposed wind energy facility expansion.  
32 This requirement can be met if the applicant demonstrates it has submitted a  
33 study pursuant to local requirements.
- 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. This  
37 requirement can be met if the applicant demonstrates it has submitted a study  
38 pursuant to local requirements.
- 39 (10) A study of the impact of the proposed wind energy facility or proposed wind  
40 energy facility expansion on natural resources and uses, including avian, bat,  
41 and endangered and threatened species.
- 42 (11) An explanation of how the proposed wind energy facility or proposed wind  
43 energy facility expansion would be consistent with the criteria in subsection  
44 (a) of G.S. 143-215.120.
- 45 (12) The application fee required by subsection (c) of this section.
- 46 (13) A plan regarding the action to be taken upon the decommissioning and  
47 removal of the wind energy facility. The plan shall include an estimate of the  
48 cost to decommission and remove the wind energy facility. The plan shall  
49 also include the anticipated life of the project, an estimate of the cost to  
50 decommission and remove the wind energy facility, a description of the  
51 manner in which the facility will be decommissioned, and a description of

1 the expected condition of the site once the wind energy facility has been  
2 decommissioned and removed.

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

4 ...

5 (d) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a  
6 complete permit application for a proposed wind energy facility or proposed wind energy  
7 facility expansion submitted pursuant to subsection (a) of this section, the Department shall  
8 provide notice of the permit application to (i) the commanding military officer of all major  
9 military installations, (ii) the commanding military officer of any military installation located  
10 outside the State that is located within 50 nautical miles of the location of the proposed wind  
11 energy facility or proposed wind energy facility expansion, ~~and (iii) (iii) the Department of~~  
12 Military and Veterans Affairs, and (iv) the board of commissioners for each county and the  
13 governing body of each municipality in which the wind energy facility or wind energy facility  
14 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 wind energy facility expansion that includes the specific  
17 locations of wind 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 (e) 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 (f) Public Hearing and Comment. – The Department shall hold a public hearing in each  
37 county in which the wind energy facility or wind energy facility expansion is proposed to be  
38 located within 75 days of receipt of a completed permit application. The Department shall  
39 provide notice including the time and location of the public hearing in a newspaper of general  
40 circulation in each applicable county. The notice of public hearing shall be published for at  
41 least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the  
42 hearing. The notice shall provide that any comments on the proposed wind energy facility or  
43 proposed wind energy facility expansion should be submitted to the Department by a specified  
44 date, not less than 15 days from the date of the newspaper publication of the notice or 15 days  
45 after distribution of the mailed notice, whichever is later. No less than 30 days prior to the  
46 scheduled public 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 (5) The Department of Military and Veterans Affairs.

5 **"§ 143-215.119A. Letter to proceed determination by Department of Military and**  
6 **Veterans Affairs.**

7 (a) Letter to Proceed. – Prior to issuing a permit under this Article, the applicant must  
8 obtain a letter to proceed from the Department of Military and Veterans Affairs as set forth in  
9 this section. The Department of Military and Veterans Affairs shall issue a letter to proceed  
10 only after the Department of Military and Veterans Affairs finds that the proposed wind energy  
11 facility or proposed wind energy facility expansion would not cause significant adverse impacts  
12 on air navigation routes, air traffic control areas, military training routes, or radar installations.  
13 For purposes of this section, "significant adverse impact" means any demonstrable adverse  
14 impact upon military operations and readiness, including flight operations research,  
15 development, testing, and evaluation and training in North Carolina, that (i) is likely to impair  
16 or degrade the ability of the Armed Forces to perform their warfighting missions; (ii) would  
17 result in a detriment to continued military presence in the State; and (iii) is unable to be  
18 addressed through mitigation measures.

19 (b) Time Line. – The Department of Military and Veterans Affairs shall determine  
20 whether to issue a letter to proceed under this section within 60 days of receiving the results of  
21 a formal or informal review by the Department of Defense Siting Clearinghouse, or within 60  
22 days of the public hearing required by G.S. 143-215.119(f), whichever occurs later.

23 (c) Basis for Letter. – The Department of Military and Veterans Affairs shall make its  
24 determination based on information submitted by the applicant pursuant to subdivisions (5) and  
25 (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department of  
26 Military and Veterans Affairs pursuant to subdivision (2) of subsection (d) of  
27 G.S. 143-215.119.

28 (d) Failure of Department to Act. – If the Department of Military and Veterans Affairs  
29 fails to issue a letter to proceed within the time line set forth in subsection (b) of this section,  
30 the applicant may treat the Department's failure to issue the letter as an issuance of a letter of  
31 concern as outlined in subsection (f) of this section.

32 (e) Finding of Significant Adverse Impact. – If the Department of Military and  
33 Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility  
34 expansion would cause significant adverse impacts to air navigation routes, air traffic control  
35 areas, military training routes, or radar installations, the Department of Military and Veterans  
36 Affairs shall issue a letter of concern to the Department and the applicant.

37 (f) Letter of Concern. – Within 90 days of issuance of a letter of concern under  
38 subsection (e) of this section, the Department of Military and Veterans Affairs shall engage  
39 with the applicant, the commanding military officer of any major military installation impacted  
40 in the letter of concern, the Department of Defense Clearinghouse designee for that installation,  
41 and those local governments with jurisdiction over any major military installation impacted in  
42 the letter of concern, to address the issues identified in the letter of concern. If the parties are  
43 unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the  
44 letter to proceed and may challenge the denial as provided under Chapter 150B of the General  
45 Statutes.

46 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**  
47 **approvals required.**

48 (a) Permit Approval. – The Department shall approve an application for a permit for a  
49 proposed wind energy facility or proposed wind energy facility expansion upon receipt of a  
50 letter to proceed from the Department of Military and Veterans Affairs issued as set forth in  
51 G.S. 143-215.119A unless the Department finds any one or more of the following:

- 1 (1) Construction or operation of the proposed wind energy facility or proposed  
2 wind energy facility expansion would be inconsistent with or violate rules  
3 adopted by the Department or any other provision of law.
- 4 ~~(2) Construction or operation of the proposed wind energy facility or proposed~~  
5 ~~wind energy facility expansion would encroach upon or would otherwise~~  
6 ~~have a significant adverse impact on the mission, training, or operations of~~  
7 ~~any major military installation or branch of military in North Carolina and~~  
8 ~~result in a detriment to continued military presence in the State. In its~~  
9 ~~evaluation, the Department may consider whether the proposed wind energy~~  
10 ~~facility or proposed wind energy facility expansion would cause interference~~  
11 ~~with air navigation routes, air traffic control areas, military training routes,~~  
12 ~~or radar based on information submitted by the applicant pursuant to~~  
13 ~~subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any~~  
14 ~~information received by the Department pursuant to subdivision (2) of~~  
15 ~~subsection (d) of G.S. 143-215.119.~~
- 16 (3) Construction or operation of the proposed wind energy facility or proposed  
17 wind energy facility expansion would result in significant adverse impacts to  
18 ecological systems, natural resources, cultural sites, recreation areas, or  
19 historic sites of more than local significance; including national or State  
20 parks or forests, wilderness areas, historic sites, recreation areas, segments of  
21 the natural and scenic rivers system, wildlife refuges, preserves and  
22 management areas, areas that provide habitat for threatened or endangered  
23 species, primary nursery areas designated by the Marine Fisheries  
24 Commission and the Wildlife Resources Commission, and critical fisheries  
25 habitat identified pursuant to the Coastal Habitat Protection Plan.
- 26 (4) Construction or operation of the proposed wind energy facility or proposed  
27 wind energy facility expansion would have a significant adverse impact on  
28 fish or wildlife.
- 29 ~~(5) Construction or operation of the proposed wind energy facility or proposed~~  
30 ~~wind energy facility expansion would have a significant adverse impact on~~  
31 ~~views from any State or national park, wilderness area, significant natural~~  
32 ~~heritage area as compiled by the North Carolina Natural Heritage Program,~~  
33 ~~or other public lands or private conservation lands designated or dedicated~~  
34 ~~due to their high recreational values.~~
- 35 (6) Construction or operation of the proposed wind energy facility or proposed  
36 wind energy facility expansion would obstruct major navigation channels or  
37 create a significant obstacle to navigation in coastal waters, as determined by  
38 the United States Army Corps of Engineers and the United States Coast  
39 Guard.
- 40 ~~(7) A permit for a proposed wind energy facility or proposed wind energy~~  
41 ~~facility expansion would be denied under any other criteria set out in G.S.~~  
42 ~~113A-120.~~
- 43 (8) Construction of the proposed wind energy facility or proposed wind energy  
44 facility expansion would be prohibited under Article 14 of Chapter 113A of  
45 the General Statutes, the Mountain Ridge Protection Act of 1983.
- 46 (9) The applicant is not in compliance with all applicable federal, State, or local  
47 permit requirements, licenses, or approvals, including local zoning  
48 requirements.
- 49 (b) Permit Decision. – The Department shall make a final decision on a permit  
50 application within 90 days following receipt of a completed application, ~~except that the~~  
51 ~~Department shall not be required to make a final decision until the Department has received a~~

1 ~~written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation~~  
2 ~~Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations~~  
3 ~~(January 1, 2012 edition).~~ application. If the Department requests additional information  
4 following the receipt of a completed application, the Department shall make a final decision on  
5 a permit application within 30 days of receipt of the requested information. If the Department  
6 determines that an application for a wind energy facility or a wind energy facility expansion  
7 fails to meet the requirements for a permit under this section, the Department shall deny the  
8 application, and the application shall be returned to the applicant accompanied by a written  
9 statement of the reasons for the denial and any modifications to the permit application that  
10 would make the application acceptable. If the Department fails to act within the time period set  
11 forth in this subsection, the applicant may treat the failure to act as a denial of the permit and  
12 may challenge the denial as provided under Chapter 150B of the General Statutes.

13 (c) Permit Conditions. – The Department (i) may include as a condition of a permit for  
14 a proposed wind energy facility or proposed wind energy facility expansion a requirement that  
15 the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit  
16 for a proposed wind energy facility or proposed wind energy facility expansion a requirement  
17 that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued  
18 by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the  
19 Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind  
20 energy facility or wind energy facility expansion shall become effective until the Department  
21 has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the  
22 Federal Aviation Administration for the facility. If the specific location of a turbine authorized  
23 to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the  
24 configuration of the wind energy facility varies from the information submitted by the applicant  
25 upon which the Department has made its permit decision, the Department may reevaluate the  
26 permit application and require the applicant to submit any additional information the  
27 Department deems necessary to approve or deny a permit for the facility as reconfigured.

28 (d) Other Approvals Required. – The issuance of a permit under this section shall not  
29 obviate the need for the applicant to obtain any and all other applicable local, State, or federal  
30 permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit,  
31 as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to  
32 facilities permitted under this section, including the permitting requirements of G.S. 113A-118,  
33 (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in  
34 accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the  
35 General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

36 (e) Permit Transfer. – The Department may transfer a permit issued pursuant to this  
37 Article provided that the successor-owner of the wind energy facility submits to the  
38 Department a written request for transfer of the permit and complies with all terms and  
39 conditions of the permit once the permit has been transferred. The Department may not impose  
40 new or different terms and conditions to the permit without prior express consent of the  
41 successor-owner.

42 **"§ 143-215.121. Financial assurance requirements.**

43 The applicant for a permit or a permit holder for a wind energy facility shall establish  
44 financial assurance that will ensure that sufficient funds are available for decommissioning of  
45 the facility and reclamation of the property to its condition prior to commencement of activities  
46 on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be  
47 incorporated, do business, or maintain assets in the State. To establish sufficient availability of  
48 funds under this section, the applicant for a permit or a permit holder for a wind energy facility  
49 may use insurance, financial tests, third-party guarantees by persons who can pass the financial  
50 test, guarantees by corporate parents who can pass the financial test, irrevocable letters of  
51 credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing,

1 shown to provide protection equivalent to the financial protection that would be provided by  
2 insurance if insurance were the only mechanism used. To satisfy this requirement, the applicant  
3 may demonstrate that it previously met the financial assurance requirements pursuant to local,  
4 State, or federal requirements.

5 **"§ 143-215.122. Monitoring and reporting.**

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

12 **"§ 143-215.123. Annual review of military presence.**

13 The Department of Military and Veterans Affairs shall consult with representatives of the  
14 major military installations to review information regarding military air navigation routes, air  
15 traffic control areas, military training routes, special-use air space, radar, or other potentially  
16 affected military operations at least once per year. The Department of Military and Veterans  
17 Affairs shall provide relevant information on civil air navigation or military air navigation  
18 routes, air traffic control areas, military training routes, special-use air space, radar, or other  
19 potentially affected military operations to permit applicants as requested. Information obtained  
20 in the annual review required under this section may be used to determine the impact of wind  
21 energy facilities and expansion of wind energy facilities that have not previously received a  
22 permit from the Department of Environmental Quality or a letter to proceed from the  
23 Department of Military and Veterans Affairs.

24 ...."

25 **SECTION 2.** This act is effective when it becomes law and applies only to those  
26 wind energy facilities or wind energy facility expansions for which no "Determination of No  
27 Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before  
28 that date.