

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 809\*

Short Title: Permitting of Wind Energy Facilities. (Public)

Sponsors: Representatives Harrison, Fisher, Owens (Primary Sponsors); Faison, Glazier, Insko, and Lucas.

Referred to: Energy and Energy Efficiency, if favorable, Environment and Natural Resources, if favorable, Finance.

March 26, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A SYSTEM OF PERMITS TO BE ISSUED BY THE  
3 DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR THE  
4 SITING OF WIND ENERGY FACILITIES.

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

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

10 Whereas, North Carolina has abundant wind resources in both the coastal and  
11 mountain regions; and

12 Whereas, wind energy facilities are large structures that are highly visible features  
13 on the landscape and have the potential to cause adverse environmental impacts; and

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

17 The General Assembly of North Carolina enacts:

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

19 "(12) "Wind energy facility" means the turbines, accessory buildings, transmission  
20 facilities, and any other equipment necessary for the operation of the facility  
21 that cumulatively with any other wind energy facility whose turbines are  
22 located within one-half mile of one another have a rated capacity in excess  
23 of two megawatts of energy."

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

26 "**§ 113A-118.3. Permits for wind energy facilities.**

27 (a) In addition to the requirements of G.S. 113A-118, no person shall undertake  
28 development associated with a wind energy facility anywhere in the coastal area without first  
29 obtaining a permit from the Commission.

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

32 (1) A narrative description of the proposed facility.

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

34 (3) The capacity of proposed energy generation.



- 1           (4) A copy of a deed, purchase agreement, lease agreement, or other legal  
2           instrument demonstrating the right to develop the property.
- 3           (5) Certification of adjacent property owner notification.
- 4           (6) A study of the noise impacts of the proposed facility.
- 5           (7) A study on shadow flicker impacts of the proposed facility.
- 6           (8) A study on avian and bat impacts of the proposed facility.
- 7           (9) A study on viewshed impacts of the proposed facility.
- 8           (10) An explanation of the how the proposed facility would be consistent with the  
9           requirements in subsection (c) of this section.
- 10          (11) The application fee as required under subsection (e) of this section.
- 11          (12) Such other data or information the Commission may reasonably require.
- 12          (c) The Commission shall deny an application for a permit for a wind energy facility if  
13 the Commission finds any one or more of the following:
- 14           (1) Construction or operation of the facility would result in significant adverse  
15 impacts to ecological systems, natural resources, cultural sites, recreation  
16 areas, or historic sites of more than local significance. Recreation areas  
17 under this subdivision include, but are not limited to, national or State parks  
18 or forests; wilderness areas; historic sites; recreation areas; segments of the  
19 natural and scenic rivers system; wildlife refuges; preserves and  
20 management areas; areas that provide habitat for threatened or endangered  
21 species; and primary nursery areas and critical fisheries habitat designated  
22 by the Marine Fisheries Commission.
- 23           (2) Construction or operation of the facility would obstruct major navigation  
24 channels or create a significant obstacle to navigation in coastal waters. For  
25 purposes of this section, a wind energy facility in the coastal area is a water  
26 dependent use.
- 27           (3) Construction or operation of the facility would have a significant adverse  
28 impact on fish or wildlife.
- 29           (4) Construction or operation of the facility would have a significant adverse  
30 impact on views from any State or national park, wilderness area, significant  
31 natural heritage area, or other designated public lands or dedicated private  
32 conservation lands with high recreational values.
- 33           (5) A permit for the facility would be denied under any other criteria set out in  
34 G.S. 113A-120.
- 35           (6) The cumulative impact of the proposed facility with other existing or  
36 proposed wind energy facilities would result in significant adverse impacts  
37 to ecological systems, natural resources, cultural sites, recreation areas, or  
38 historic sites of more than local significance.
- 39          (d) The Commission may include as a condition of a permit for a wind energy facility a  
40 requirement that the permit holder mitigate any adverse impacts.
- 41          (e) An applicant for a permit for a wind energy facility under this section shall submit  
42 with the application under subsection (b) of this section an application fee of two thousand  
43 dollars (\$2,000).
- 44          (f) The Commission shall require an applicant for a permit for a wind energy facility to  
45 provide a plan regarding the action to be taken upon the decommissioning and removal of the  
46 wind energy facility. The plan shall include estimates of monetary costs and the proposed site  
47 condition after decommissioning. The Commission may require a bond, guarantee, insurance,  
48 or other financial instrument to provide for the decommissioning and the removal of structures  
49 that comprise the wind energy facility. The Commission shall consider the size of the wind  
50 energy facility, the location of the facility, and the financial qualifications of the applicant in  
51 making its determination to grant or deny the permit.

1       (g)    The Commission shall hold a public hearing in the county in which the proposed  
2 wind energy facility is to be located within 60 days of receipt of a complete application for a  
3 wind energy facility. The Commission shall give a minimum of 30 days notice of the public  
4 hearing.

5       (h)    The issuance of a permit under this section shall not preclude the applicant from the  
6 requirement to obtain any and all other applicable local, State or federal permits, licenses, or  
7 approvals.

8       (j)    The Commission may adopt rules implementing this section. The Commission shall  
9 consult with the Department to ensure consistent statewide permitting requirements within and  
10 outside of the coastal area to the extent practicable."

11       **SECTION 3.** Article 21 of Chapter 143 of the General Statutes is amended by  
12 adding a new Part to read:

13                   "Part 12. Permitting of Wind Energy Facilities.

14 **"§ 143-215.74R. Definitions.**

15           (1)    Department. – The Department of Environment and Natural Resources.

16           (2)    Wind energy facility. – Defined in G.S. 113A-103.

17 **"§ 143-215.74S. Permit to site wind energy facilities outside the coastal counties.**

18       (a)    No person shall undertake development associated with a wind energy facility  
19 anywhere outside the coastal area without first obtaining a permit from the Department.

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

22           (1)    A narrative description of the proposed facility.

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

24           (3)    The capacity of proposed energy generation.

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

27           (5)    Certification of adjacent property owner notification.

28           (6)    A study of the noise impacts of the proposed facility.

29           (7)    A study on shadow flicker impacts of the proposed facility.

30           (8)    A study on avian and bat impacts of the proposed facility.

31           (9)    A study on viewshed impacts of the proposed facility.

32           (10)   An explanation of the how the facility would be consistent with the  
33 requirements in subsection (c) of this section.

34           (11)   The application fee as required under subsection (e) of this section.

35           (12)   Such other data or information the Department may reasonably require.

36       (c)    The Department shall deny an application for a permit for a wind energy facility if  
37 the Department finds any one or more of the following:

38           (1)    Construction or operation of the facility would be inconsistent with or  
39 violate rules adopted by the Department.

40           (2)    Construction or operation of the facility would result in significant adverse  
41 impacts to ecological systems, natural resources, cultural sites, recreation  
42 areas, or historic sites of more than local significance. Recreation areas  
43 under this subdivision include, but are not limited to, national or State parks  
44 or forests; wilderness areas; historic sites; recreation areas; segments of the  
45 natural and scenic rivers system; wildlife refuges; preserves and  
46 management areas; areas that provide habitat for threatened or endangered  
47 species; and primary nursery areas and critical fisheries habitat designated  
48 by the Marine Fisheries Commission.

49           (3)    Construction or operation of the facility would have a significant adverse  
50 impact on fish or wildlife.

1           (4)    Construction or operation of the facility would have a significant adverse  
2           impact on views from any State or national park, wilderness area, significant  
3           natural heritage area, or other designated public lands or dedicated private  
4           conservation lands with high recreational values.

5           (5)    The proposed facility would be located in a high hazard area, including areas  
6           identified as being at a high risk of landslides.

7           (6)    The cumulative impact of the proposed facility with other existing or  
8           proposed wind energy facilities would result in significant adverse impacts  
9           to ecological systems, natural resources, cultural sites, recreation areas, or  
10          historic sites of more than local significance.

11          (d)    The Department may include as a condition of a permit for a wind energy facility a  
12          requirement that the permit holder mitigate any adverse impacts.

13          (e)    An applicant for a permit for a wind energy facility under this section shall submit  
14          with the application under subsection (b) of this section an application fee of two thousand  
15          dollars (\$2,000).

16          (f)    The Department shall require an applicant for a permit for a wind energy facility to  
17          provide a plan regarding the action to be taken upon the decommissioning and removal of the  
18          wind energy facility. The plan shall include estimates of monetary costs and the proposed site  
19          condition after decommissioning. The Department may require a bond, guarantee, insurance, or  
20          other financial instrument to provide for decommissioning and removal of any structures that  
21          comprise the facility. The Department shall consider the size of the wind energy facility, the  
22          location of the facility, and the financial qualifications of the applicant in making its  
23          determination to grant or deny the permit.

24          (g)    The Department shall hold a public hearing in the county in which the proposed  
25          wind energy facility is to be located within 60 days of receipt of a complete application for a  
26          wind energy facility. The Department shall give a minimum of 30 days notice of the public  
27          hearing.

28          (h)    The issuance of a permit under this section shall not preclude the applicant from the  
29          requirement to obtain any and all other applicable local, State, or federal permits, licenses, or  
30          approvals.

31          (i)    The Department may adopt rules governing the siting of wind energy facilities that  
32          are subject to the permit requirements of this section. The Department shall consult with the  
33          Coastal Resources Commission to ensure consistent statewide permitting requirements within  
34          and outside the coastal area to the extent practicable.

35          **"§ 143-215.74T. Civil penalties.**

36          (a)    The Secretary of Environment and Natural Resources may impose an administrative  
37          penalty on a person who constructs a wind energy facility without obtaining a permit under this  
38          Part or who constructs a wind energy facility in violation of its permit terms and conditions.  
39          Each day of a continuing violation shall constitute a separate violation. The penalty shall not  
40          exceed ten thousand dollars (\$10,000) per day.

41          (b)    The Secretary of Environment and Natural Resources, irrespective of all other  
42          remedies at law, may institute an action for injunctive relief against a person who constructs a  
43          wind energy facility without obtaining a permit under this Part or who constructs or operates a  
44          wind energy facility in violation of its permit terms and conditions.

45          **"§ 143-215.74U. Local ordinances authorized.**

46          (a)    Nothing in this Part shall be interpreted to limit the ability of a city or county to plan  
47          for and regulate the siting of a wind energy facility in accordance with land use regulations  
48          authorized under Chapter 160A and Chapter 153A of the General Statutes.

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

1           **SECTION 4.** G.S. 113A-206 reads as rewritten:

2   "**§ 113A-206. Definitions.**

3       Within the meaning of this Article:

4           ...

5       (3)   "Tall buildings or structures" include any building, structure or unit within a  
6           multiunit building with a vertical height of more than 40 feet measured from  
7           the top of the foundation of said building, structure or unit and the  
8           uppermost point of said building, structure or unit; provided, however, that  
9           where such foundation measured from the natural finished grade of the crest  
10          or the natural finished grade of the high side of the slope of a ridge exceeds 3  
11          feet, then such measurement in excess of 3 feet shall be included in the  
12          40-foot limitation described herein; provided, further, that no such building,  
13          structure or unit shall protrude at its uppermost point above the crest of the  
14          ridge by more than 35 feet. "Tall buildings or structures" do not include:

- 15          a.     Water, radio, telephone or television towers or any equipment for the  
16                 transmission of electricity or communications or both.
- 17          b.     Structures of a relatively slender nature and minor vertical  
18                 projections of a parent building, including chimneys, flagpoles, flues,  
19                 spires, steeples, belfries, cupolas, antennas, poles, wires, or  
20                 ~~windmills~~windmills, including wind turbines for the generation of  
21                 electricity having less than 100 kilowatts rated capacity,  
22                 cumulatively with any other turbines within one-half mile, and wind  
23                 turbines of 100 kilowatts capacity and above, cumulatively with any  
24                 other turbines within one-half mile, to the extent allowed by a city or  
25                 county ordinance regulating the siting of wind turbines.
- 26          c.     Buildings and structures designated as National Historic Sites on the  
27                 National Archives Registry.

28           ...."

29       **SECTION 5.** This act becomes effective January 1, 2010, and applies to wind  
30       energy facilities, as defined in G.S. 113A-103, as enacted by Section 1 of this act, that are  
31       constructed on or after that date.