

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1068*

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

Sponsors: Senators Albertson; Atwater, Davis, Dorsett, Goss, Jenkins, Kinnaird, Purcell,
and Weinstein.

Referred to: Agriculture/Environment/Natural Resources.

March 31, 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.

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



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- 1 (5) Certification of adjacent property owner notification.
2 (6) A study of the noise impacts of the proposed facility.
3 (7) A study on shadow flicker impacts of the proposed facility.
4 (8) A study on avian and bat impacts of the proposed facility.
5 (9) A study on viewshed impacts of the proposed facility.
6 (10) An explanation of the how the proposed facility would be consistent with the
7 requirements in subsection (c) of this section.
8 (11) The application fee as required under subsection (e) of this section.
9 (12) Such other data or information the Commission may reasonably require.
10 (c) The Commission shall deny an application for a permit for a wind energy facility if
11 the Commission finds any one or more of the following:
12 (1) Construction or operation of the facility would result in significant adverse
13 impacts to ecological systems, natural resources, cultural sites, recreation
14 areas, or historic sites of more than local significance. Recreation areas
15 under this subdivision include, but are not limited to, national or State parks
16 or forests; wilderness areas; historic sites; recreation areas; segments of the
17 natural and scenic rivers system; wildlife refuges; preserves and
18 management areas; areas that provide habitat for threatened or endangered
19 species; and primary nursery areas and critical fisheries habitat designated
20 by the Marine Fisheries Commission.
21 (2) Construction or operation of the facility would obstruct major navigation
22 channels or create a significant obstacle to navigation in coastal waters. For
23 purposes of this section, a wind energy facility in the coastal area is a water
24 dependent use.
25 (3) Construction or operation of the facility would have a significant adverse
26 impact on fish or wildlife.
27 (4) Construction or operation of the facility would have a significant adverse
28 impact on views from any State or national park, wilderness area, significant
29 natural heritage area, or other designated public lands or dedicated private
30 conservation lands with high recreational values.
31 (5) A permit for the facility would be denied under any other criteria set out in
32 G.S. 113A-120.
33 (6) The cumulative impact of the proposed facility with other existing or
34 proposed wind energy facilities would result in significant adverse impacts
35 to ecological systems, natural resources, cultural sites, recreation areas, or
36 historic sites of more than local significance.
37 (d) The Commission may include as a condition of a permit for a wind energy facility a
38 requirement that the permit holder mitigate any adverse impacts.
39 (e) An applicant for a permit for a wind energy facility under this section shall submit
40 with the application under subsection (b) of this section an application fee of two thousand
41 dollars (\$2,000).
42 (f) The Commission shall require an applicant for a permit for a wind energy facility to
43 provide a plan regarding the action to be taken upon the decommissioning and removal of the
44 wind energy facility. The plan shall include estimates of monetary costs and the proposed site
45 condition after decommissioning. The Commission may require a bond, guarantee, insurance,
46 or other financial instrument to provide for the decommissioning and the removal of structures
47 that comprise the wind energy facility. The Commission shall consider the size of the wind
48 energy facility, the location of the facility, and the financial qualifications of the applicant in
49 making its determination to grant or deny the permit.
50 (g) The Commission shall hold a public hearing in the county in which the proposed
51 wind energy facility is to be located within 60 days of receipt of a complete application for a

1 wind energy facility. The Commission shall give a minimum of 30 days notice of the public
2 hearing.

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

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

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

11 "Part 12. Permitting of Wind Energy Facilities.

12 **"§ 143-215.74R. Definitions.**

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

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

15 **"§ 143-215.74S. Permit to site wind energy facilities outside the coastal counties.**

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

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

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

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

22 (3) The capacity of proposed energy generation.

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

25 (5) Certification of adjacent property owner notification.

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

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

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

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

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

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

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

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

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

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

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

49 (4) Construction or operation of the facility would have a significant adverse
50 impact on views from any State or national park, wilderness area, significant

1 natural heritage area, or other designated public lands or dedicated private
2 conservation lands with high recreational values.

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

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

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

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

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

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

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

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

33 **"§ 143-215.74T. Civil penalties.**

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

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

43 **"§ 143-215.74U. Local ordinances authorized.**

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

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

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

51 **"§ 113A-206. Definitions.**

1 Within the meaning of this Article:

2 ...

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

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

26"

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