

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 574
Committee Substitute Favorable 4/26/17

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.



- 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.