A BILL TO BE ENTITLED
AN ACT TO MINIMIZE INTERFERENCE WITH MILITARY OPERATIONS,
ENVIRONMENTAL DEGRADATION, REDUCTION OF PROPERTY RIGHTS, AND
HARMs TO PUBLIC HEALTH, SAFETY, AND WELFARE RESULTING FROM THE
SITING AND OPERATION OF INDUSTRIAL WIND ENERGY FACILITIES.

The General Assembly of North Carolina enacts:

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

"Article 21C.


In addition to the definitions set forth in G.S. 143-212, the following definitions apply to this Article:

(1) "Major military installation" means Fort Bragg, Pope Army Airfield, Marine Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, the Harvey Point Defense Testing Activity facility, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.

(1a) "WEF" means a wind energy facility or a wind energy facility expansion.

(2) "Wind energy facility" means the turbines, parcels of land containing one or more industrial-sized wind energy turbines rated at one megawatt or more, along with accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of one megawatt or more of energy. WEF. Except as provided by G.S. 143-215.119A(d), this Article applies only to a WEF located onshore. For purposes of this Article, an expansion of an existing WEF shall be considered a WEF unless the expansion (i) reduces the total footprint of the WEF and (ii) does not include any new land that was not previously part of the WEF site.

(3) "Wind energy facility expansion" means any activity that (i) adds additional turbines, or substantially (ii) modifies the size or rating of any existing
turbines or transmission facilities, including increasing the height of such equipment, turbines, or (iii) changes the footprint of the WEF over that which was initially permitted or (ii) increases the footprint of the wind energy facility over that which was initially permitted.

(4) "Site" means all parcels that make up the WEF, including those which are not contiguous.

(5) "Infrasound" means low frequency sound not ordinarily hearable by humans, but which may still affect humans, even if unaware of its presence.

(6) "Major WEF stakeholders" means the North Carolina Utilities Commission; the North Carolina Department of Health and Human Services; the North Carolina Department of Commerce; the North Carolina Department of Transportation; the United States Army Corps of Engineers; the United States Fish and Wildlife Service; the United States National Park Service; the North Carolina Wildlife Resources Commission; the commanding officer, or the commanding officer's designee, of any potentially affected major military installation; the North Carolina Military Affairs Commission; the county commission and governing body of each municipality in the county in which the WEF is proposed to be located; and any other stakeholders that the Department deems relevant.

"§ 143-215.116. Permit to site wind energy facilities a WEF.

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

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

(a) Permit PreApplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility WEF, a person shall request a preapplication site evaluation meeting to be held between the applicant and the Department. The permit preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility WEF and may shall be used by the participants to participants, together with the materials described in subsection (b) of this section, to do the following:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion WEF. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites proposed WEF may do any of the following:

   a. Pose serious risk to civil air navigation navigation, including aerial spraying or firefighting, or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

   b. Pose serious risk to natural resources and uses, including uses within five miles of the proposed WEF. This includes risk to species of concern or their habitats and includes decreased groundwater recharge, increased stormwater discharge, or increased turbidity and sedimentation in streams impacted by the WEF.

   c. Pose serious risks to the health, safety, and welfare of citizens residing within two miles of the proposed WEF.

(2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.
Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including groundwater, and avian, bat, and endangered and threatened species.

Identify areas where proposed construction or expansion activities pose minimal risk to the health, safety, and welfare of proximate residents.

(b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the applicant for a wind energy facility or wind energy facility expansion shall submit a preapplication package to the Department. To the extent that any documents contain verifiable trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act. The preapplication package shall include, in both printed and digital formats, all of the following:

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

2. A United States Geological Survey topographic map showing the approximate location of the proposed wind energy facility or proposed wind energy facility expansion and the anticipated location of the wind turbines.

3. A description of any known potential impacts of the proposed wind energy project location on civil air navigation, including aerial spraying or firefighting, or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or any other potentially affected military operations. The applicant may use data made available by the Department pursuant to G.S. 143-215.123 to satisfy this requirement.

4. A description of species of concern, habitats that support species of concern, critical areas of wildlife congregation, and protected lands, as those species, habitats, and critical areas are referenced in the March 23, 2012, United States Fish and Wildlife Service Land-Based Wind Energy Guidelines (OMB Control No. 1018-0148) that are or believed to be present at the site of the proposed wind energy facility or proposed wind energy facility expansion. The applicant may use data made available by the North Carolina Wildlife Resources Commission, the Department, or other governmental agency to satisfy this requirement.

5. A description of any known potential adverse impacts of the proposed wind energy facility on natural and agricultural resources, including groundwater, crop production, and animals. For purposes of this subdivision, "animals" includes wildlife, livestock, and domestic animals, including bats, raptors, and endangered and threatened species.

6. A description of any known potentially adverse impacts of the proposed wind energy facility on the health, safety, and welfare of proximate residents and visitors.

7. A list and status of the federal, State, and local agencies from which approvals will be obtained and the name of those approvals required in order to authorize the construction, operation, or expansion of the proposed wind energy facility.
(6)(7) A schedule showing the anticipated dates for commencement of construction, testing, and commercial operation of the proposed wind energy facility or proposed wind energy facility expansion WEF.

(8) An operation and maintenance plan that includes, at a minimum, routine and emergency checks for structural integrity, repairs, and rust prevention.

(9) The URL of a Web site created by the applicant with information about the proposed WEF which (i) provides the full text of all documents submitted by the applicant to any federal, State, or local government agency that are considered public records under State law; (ii) lists the titles, or a general description if the document has no title, of all documents submitted by the applicant to any federal, State, or local government agency that are considered proprietary and confidential under State law; (iii) lists the name and address of all leaseholders; (iv) provides an opportunity for regional citizens to make publicly shown comments on the proposed WEF; and (v) has been advertised in a locally circulated newspaper.

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

(d) The Department shall prepare detailed minutes or make an audio recording of the meeting, and the minutes or recording shall become an official part of the permit application package.

§ 143-215.118. Permit application scoping meeting and notice.

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion WEF, the applicant shall request the scheduling of a scoping meeting between the applicant and the Department. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion WEF. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion WEF at the scoping meeting. The scoping meeting shall be held in a county where the WEF is proposed to be located.

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

(c) The meeting shall be advertised pursuant to open meetings laws and shall be open to the public.

(d) The Department shall prepare detailed minutes or make an audio recording of the meeting, and the minutes or recording shall become an official part of the permit application package.
§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion WEF shall include all of the following in an application for the permit in both printed and digital format:

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

(2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion WEF that identifies the specific location, height, and rating of each turbine, anticipated turbine, and all other buildings, roads, and equipment that are a part of the WEF.

(3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument or lease agreement demonstrating the applicant’s right to construct, expand, or otherwise develop a wind energy facility WEF on all the property properties involved. For purposes of this subdivision, the lease agreement means the original full lease agreement and does not mean the memorandum of lease.

(4) Identification by name-Name and address of all property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion–within two miles of the perimeter of the WEF. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following: the information required by subdivisions (1) and (2) of this subsection.

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

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


(5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, aerial spraying activities, potential aerial firefighting activity, radar, or other civilian or military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion WEF.

(6) Documentation that addresses a description of any potential adverse impact on-on (i) military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) operations, (ii) military readiness, or (iii) the lives of military personnel and any mitigation-rectifying actions agreed to by the applicant.

(7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal-completed a review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation
Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant’s engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse. WEF. This includes an unredacted copy of the agreement negotiated through this process and unredacted copies of all correspondences between the applicant and the Department of Defense, including any Memoranda of Understanding. Nothing in this subdivision is intended to prevent the redaction of federally classified information.

(8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion. A list of the documentation submitted by the applicant to the Federal Aviation Administration associated with the proposed WEF and any approvals or determinations issued by the Federal Aviation Agency, including, but not limited to, the applicant’s "No Hazard Determination" documentation.

(9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters. If there are residential properties within two miles of the proposed WEF, a study of the possible human health impacts of the proposed WEF’s turbines. This study shall use established industry standards to thoroughly and objectively assess the potential impacts of such concerns as infrasound; audible noise; vibrations; electromagnetic fields; shadow flicker; blade glint; ice throw; and component liberation due to major storms, lightning, or other causes on humans within two miles of the WEF. The study shall be conducted by independent experts selected from a list of providers approved by the Department of Health and Human Services and paid for by the applicant.

(10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species. A study of the local and regional economic impacts of the proposed WEF. This study shall thoroughly and objectively assess the potential short-term and long-term financial impacts, including, but not limited to, construction employment and spending; property tax revenue; lease contracts; and impacts on tourism, agricultural yields, home values, and health care costs. The study shall be conducted by independent experts selected from a list of providers approved by the Department of Commerce and paid for by the applicant.

(11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120. A plan of action to be taken to deactivate the WEF, and to protect the public from harm due to WEF component liberation, during tornadoes, hurricanes, nor’easters, and other high wind conditions.

(12) The application fee required by subsection (c) of this section. An environmental assessment of the potential adverse impacts of the proposed WEF on ecosystems, including domestic animals, livestock, or wildlife, with specific analysis targeted at bat, avian, and endangered or threatened species, and including migratory flyways and corridors. The study shall be conducted
by independent experts selected from a list of providers approved by the
department and paid for by the applicant.

(13) A plan regarding the action to be taken upon the decommissioning and
removal of the wind energy facility. The plan shall include an estimate of the
cost to decommission and remove the wind energy facility. The plan shall
also include the anticipated life of the project, an estimate of the cost to
decommission and remove the wind energy facility, a description of the
manner in which the facility will be decommissioned, and a description of
the expected condition of the site once the wind energy facility has been
decommissioned and removed. A study of the proposed WEF's potential
impact on views or other aspects of any State or national park; wilderness
area; significant natural heritage area, as compiled by the NC Natural
Heritage Program; or other public lands or private conservation lands
designated or dedicated due to their high recreational values, if any of these
are in the viewshed of the proposed WEF. The study shall be conducted by
independent experts selected from a list of Department-approved providers
and paid for by the applicant.

(14) Other data or information the Department may reasonably require. A study of
the potential hydro-geological impacts of the proposed WEF on natural
resources, water bodies, flowing water sources, wetlands, groundwater,
aquifers, and private wells within two miles of the perimeter of the WEF.
This study will include stormwater discharge calculations, including
calculations of stream bank erosion and stream bed scour due to increased
stormwater discharge. The study will include a United States Geological
Survey topographic map showing the placement of monitoring wells for
determining a decrease in the water table of the surficial aquifer, and also a
decrease in hydraulic head of the underlying confined aquifers due to WEF
construction-related activities. The study shall be conducted by independent
experts selected from a list of Department-approved providers and paid for
by the applicant.

(15) Documentation for the applicant's proposed property value guarantee (PVG)
for all residential properties within two miles of the perimeter of the WEF.
The specific terms and conditions of the PVG are the responsibility of each
local governing body where the WEF is located. Such a PVG must
effectively protect the property values of all residential property owners
within two miles of the perimeter of the WEF.

(16) An incident response plan that ensures that local emergency responders have
the necessary equipment and training to effectively handle emergencies such
as oil spills, turbine fires, and turbine structural damage or collapse,
including access to equipment needed for rescue of trapped personnel.

(17) A plan regarding the action to be taken to decommission the WEF. The plan
shall be consistent with the terms and conditions specified in
G.S. 143-215.119B.


(19) An explanation of how the proposed WEF would be consistent with the
criteria in subsection (a) of G.S. 143-215.122.

(20) The application fee required by subsection (c) of this section.

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

(b) Confidentiality of Trade Secrets and Business Information. – To the extent that any
documents included in the permit application contain verifiable trade secrets or verifiable
confidential business information, those portions of the documents shall not be subject to
disclosure under the North Carolina Public Records Act.

(c) Fees. – An applicant for a permit for a proposed wind energy facility or proposed
wind energy facility expansion WEF under this section shall submit with the application
required pursuant to subsection (a) of this section an application fee of three thousand
five one hundred dollars ($3,500).($100.00) per rated faceplate megawatt of the full proposed
WEF.

(d) Notice of Receipt of Complete Permit Application. – Within 15 business days of
receipt of a complete permit application for a proposed wind energy facility or
proposed wind energy facility expansion WEF submitted pursuant to subsection (a) of this
section, the Department shall provide notice of the permit application to (i) the commanding
military officer of all major military installations, (ii) the commanding military officer of any
military installation located outside the State that is located within 50 nautical miles of the
location of the proposed wind energy facility or proposed wind energy facility expansion, and
(iii) the board of commissioners for each county and the governing body of each municipality
in which the wind energy facility or wind energy facility expansion is proposed to be
located-major WEF stakeholders. The notice shall include:

(1) A copy of the map showing the location of the proposed wind energy facility
or proposed wind energy facility expansion WEF that includes the specific
locations of wind turbines, locations, heights, and ratings of each wind
turbine, and all buildings and major equipment of the WEF, including
transmission lines.

(2) A written request to the commanding military officer of a major military
installation or the commanding military officer's designee commanding
officers of all major military installations, or their designees, and the
Military Affairs Commission for technical information related to any
adverse impact on the installation's operations, training, or mission,
including military air navigation routes, air traffic control areas, military
training routes, special-use air space, radar, or other military operations
that may be affected or lives of military personnel that may be put at risk.

(3) A written request to the board of commissioners and governing body of each
municipality, within two miles of where the WEF will be located, for
information related to potential adverse impacts of the proposed wind energy
facility or proposed wind energy facility expansion on local governments
from the board of commissioners for each county and the governing body of
each municipality. WEF on local governments, local businesses, local
property values, and local ecosystems.

(4) A written request to the Department of Health and Human Services for
information related to potential adverse human health impacts to citizens
within two miles of the WEF.

(e) Provision of Permit Application to Affected Entities. – Except as provided by G.S.
143-215.124, within 10 days of receipt of a written request from the commanding
military officer of any major military installation or the commanding military officer's
designee, the board of commissioners for any county in which the site is proposed to be located
or the governing body of any municipality in which the site is proposed to be located, the
Department shall provide a copy of a permit application material filed pursuant to subsection
(a) of this section, the Department shall provide a copy of such material, in addition to any
supplements, changes, or amendments to the permit application to the requesting commanding
military officer or local government, amendments, to the major WEF stakeholders and any other
parties the Department deems relevant.
(f) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion WEF is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion WEF should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

3. The commanding military officer of any potentially affected major military installation or the commanding military officer’s designee.

(4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located to the North Carolina Attorney General’s Office and all major WEF stakeholders. The Department shall create and maintain a record of comments made at any public hearings under this subsection.

§ 143.215.119A. Setback requirements.
(a) Turbines in a WEF shall maintain a setback from the property line of any residential or residentially zoned parcels outside the perimeter of the WEF. The setback shall be the greater of one mile or 10 times the maximum height of the turbine’s blade tip.
(b) Turbines in a WEF shall maintain a minimum setback of at least two and one-half times the maximum height of the turbine’s blade tip from any residential structure within the WEF.
(c) Turbines in a WEF shall maintain a minimum setback of at least two and one-half times the maximum height of the turbine’s blade tip from the perimeter of the WEF, and the right-of-way of any roadway maintained by the State or a municipality.
(d) For an offshore WEF, no turbines shall be sited within 24 miles of the nearest shore.
(e) No turbines in a WEF shall be sited within 30 miles of a major military installation.

No turbines in a WEF shall be sited within five miles of any low-level military flight paths. If it is determined by the commanding officer of any major military installation, or the commanding officer’s designee, or the Military Affairs Commission, that with these setbacks that the proposed WEF may result in an adverse impact upon the operation or readiness of a military installation or put the lives of military personnel at risk, the Department shall require a WEF setback in excess of the minimum setbacks required in this section. The increased setback distance shall be determined in a manner that minimizes the potential for encroachment upon the operational and readiness requirements of major military installations and minimizes the risk to the lives of military personnel.

§ 143.215.119B. Decommissioning and reclamation; recycling requirements; financial assurance requirements.
(a) The applicant for a permit or a permit holder for a WEF shall be responsible for proper decommissioning of any turbine following no electricity generation, for any reason, including permit revocation, for six consecutive months, unless a one-time three month extension is granted by the Department. The property will be returned to its original condition no later than one year following the six month period or extension. Decommissioning shall include the complete removal, including any subterranean portions, of all buildings, foundations, cabling, electrical components, turbines, and any other associated facilities or structures, to the level of four feet below grade. Upon decommissioning, the applicant for a
permit or a permit holder for a WEF shall be responsible for properly disposing of each piece
of equipment used in the WEF.

(b) The Department will hire qualified experts to determine a reasonable, conservative
cost for decommissioning the WEF, pursuant to subsection (a), which shall be at least one
hundred thousand dollars ($100,000) per turbine. This projection will not consider possible
scrap values of any WEF components.

(c) The applicant for a permit or a permit holder for a WEF shall establish financial
assurance of a type set forth in subsection (e) of this section that will ensure that sufficient
funds are available under this subsection, even if the applicant or permit holder becomes
insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(d) In order to continue to hold a permit under this Article, a permit holder must
maintain financial assurance and must provide any documentation requested by the Department
to establish that the permit holder continues to maintain financial assurance. A permit holder
shall notify the Department of any significant change in the (i) identity of any person or
structure of the business entity of the permit holder, owner, or operator of the WEF or (ii)
assets of the permit holder, owner, or operator of the WEF. The permit holder shall notify the
Department 30 days prior to making such a change. A change shall be considered significant if
it has the potential to affect the financial assurance of the permit holder, owner, or operator, or
if it would result in a change in the identity of the permit holder, owner, or operator for
purposes of either financial assurance or environmental compliance review. Based on its review
of the proposed changes, the Department may require the permit holder to reestablish financial
assurance, modify or revoke a permit, or require issuance of a new permit.

(e) To establish financial assurance under this section, the applicant may use insurance,
financial tests, third-party guarantees by persons who can pass the financial test, guarantees by
corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety
bonds, any other financial device, or any combination of the foregoing shown to provide
protection equivalent to the financial protection that would be provided by insurance if
insurance were the only mechanism used.

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

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

1. Construction or operation of the proposed wind energy facility or proposed
wind energy facility expansion would be inconsistent with or violate
rules adopted by the Department or any other provision of law.

2a. Operation of the proposed wind energy facility would likely create unacceptable
interference with civilian air navigation, including aerial spraying or
firefighting activities, or any type of civilian or military radar systems.

2. Construction or operation of the proposed wind energy facility or proposed
wind energy facility expansion would encroach upon or would
otherwise have a significant adverse impact on the mission, training, or
operations of any major military installation or branch of military in North
Carolina and result in a detriment to continued military presence in the State.
In its evaluation, the Department may consider whether the proposed wind
energy facility or proposed wind energy facility expansion would cause
interference with air navigation routes, air traffic control areas, military
training routes, or radar based on information submitted by the applicant
pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119.
and any information received by the Department pursuant to subdivision (2)
of subsection (d) of G.S. 143-215.119, major military installation, or put the
lives of military personnel in jeopardy, based upon the conclusions of
Military Affairs Commission or consulted military personnel.
(3) Construction or operation of the proposed wind energy facility or proposed
wind energy facility expansion would result in significant adverse impacts to
ecological systems, natural resources, cultural sites, recreation areas, or
historic sites of more than local significance; including national or State
parks or forests, wilderness areas, historic sites, recreation areas, segments of
the natural and scenic rivers system, wildlife refuges, preserves and
management areas, areas that provide habitat for threatened or endangered
species, primary nursery areas designated by the Marine Fisheries
Commission and the Wildlife Resources Commission, and critical fisheries
habitat identified pursuant to the Coastal Habitat Protection Plan. Operation
of the proposed WEF would either (i) create noise levels exceeding 35
decibels (dBA) Lmax for more than five consecutive minutes, as measured
from the property line of any adjacent parcel, or (ii) possibly cause serious
health, safety, or welfare complications to citizens in the region, based upon
the level determined by the Department of Health and Human Services to
adequately protect proximate residents or visitors from infrasound.
(4) Construction or operation of the proposed wind energy facility or proposed
wind energy facility expansion would have a significant adverse impact on
fish or wildlife. Operation of the proposed WEF would likely be a net
economic liability to the host communities based upon the conclusions of the
North Carolina Department of Commerce.
(5) Construction or operation of the proposed wind energy facility or proposed
wind energy facility expansion would have a significant adverse impact on
views from any State or national park, wilderness area, significant natural
heritage area as compiled by the North Carolina Natural Heritage Program,
or other public lands or private conservation lands designated or dedicated
due to their high recreational values. Construction or operation of the WEF
would have a significant adverse impact on domestic animals, livestock, or
wildlife.
(6) Construction or operation of the proposed wind energy facility or proposed
wind energy facility expansion would obstruct major navigation channels or
create a significant obstacle to navigation in coastal waters, as determined by
the United States Army Corps of Engineers and the United States Coast
Guard. Construction or operation of the proposed WEF would result in
significant adverse impacts to ecological systems, natural resources,
wilderness areas, wildlife reserves, wildlife refuges, preserves, flyways,
odies of water, groundwater, wetlands, environmental management areas,
national or State parks or forests, segments of the natural and scenic rivers
system, and locations that provide habitat for threatened or endangered
species.
(7) A permit for a proposed wind energy facility or proposed wind energy
facility expansion would be denied under any other criteria set out in G.S.
113A-120. Construction or operation of the proposed WEF would result in
significant adverse impacts to recreation areas, cultural locations, historic
venues of more than local significance, archaeological sites, or cemeteries.
(8) Construction of the proposed wind energy facility or proposed wind energy
facility expansion would be prohibited under Article 14 of Chapter 113A of
the General Statutes, the Mountain Ridge Protection Act of 1983. Operation
of the proposed WEF would have a significant adverse impact on views or
other aspects of any State or national park; wilderness area; significant natural heritage area, as compiled by the North Carolina Natural Heritage Program; or other public lands or private conservation lands designated or dedicated due to their high recreational values.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements. The applicant has not agreed to an adequate property value guarantee.

(10) The applicant has not submitted an acceptable incident response plan.

(11) The applicant has failed to establish an acceptable decommissioning plan in accordance with G.S. 143-215.119B.

(12) The applicant has not submitted a bona fide power purchase agreement.

(13) A permit for a proposed WEF would be denied under any other criteria as set forth under G.S. 113A-119A.

(14) Construction of the proposed WEF would be prohibited under the Mountain Ridge Protection Act of 1983, Article 14 of Chapter 113A of the General Statutes.

(15) The applicant is not in full compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including any local zoning laws.

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

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written “Determination of No Hazard to Air Navigation” issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the “Determination of No Hazard to Air Navigation” issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a “Determination of No Hazard to Air Navigation” or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.
Department shall include, as a condition of a permit for a proposed WEF, a requirement that the applicant satisfactorily resolve all adverse impacts. This permit is good for two years from approval date, and no extension will be granted. At least one turbine shall be erected and operating for this permit to stay in force. This permit is not an authority to build. A conditional use permit or special use permit process under local zoning law shall not start until 15 days after this permit has been granted.

(c1) Permit Compliance. – If during the WEF's operation any condition of this permit is violated, then the permit holder will cease operation of all turbines that are in violation within one day of being notified by any governmental agency. The turbines shall not resume operation until the terms of the violation are fully corrected, to the satisfaction of the notifying agency.

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

§ 143-215.120A. Construction related damage.

(a) The owner of any permitted WEF shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the WEF construction. The applicant shall reimburse the Department of Transportation (DOT) for repairs and reconstruction to roads that are necessary due to the construction or decommissioning of the WEF. A qualified independent third party, agreed upon by DOT and the applicant, shall be hired to evaluate, document, and rate the road conditions prior to construction or decommissioning of the WEF, and again 30 days after the WEF is completed or removed.

(b) Any road damage during construction found by the third party to be caused by activities of the applicant or one or more of its subcontractors shall be repaired or reconstructed to the satisfaction of DOT or the county at the applicant’s expense, prior to the final inspection. In addition, the applicant shall pay for all costs related to this third party pre-inspection work prior to receipt of the final inspection.

(c) The surety for removal of a decommissioned WEF shall not be released until any road damage that is identified by this third party during and after decommissioning due to activities of the applicant or the applicant’s contractors or subcontractors has been repaired or reconstructed to the satisfaction of the DOT or the county at the applicant's expense. In addition, the applicant shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety per G.S. 143-215.119B.

§ 143-215.121. Financial assurance requirements.

The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.
"§ 143-215.122. Monitoring and reporting.  
The applicant shall annually submit copies to the Department of all post-construction monitoring, such as reports on ambient noise levels, groundwater testing, groundwater levels in the surficial aquifer, hydraulic head measurements in lower confined aquifers, PVG claims, the impacts on humans or wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and within five miles of the WEF. The applicant shall annually submit copies to the Department of any impacts on military operations post-construction monitoring or reports that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, major WEF stakeholders or any other government agency. The applicant shall also annually submit copies to the Department of any post-construction monitoring or reports on any impacts on military operations.

The Department shall consult with representatives of the major military installations, major military installation representatives and MAC to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department shall provide relevant information it is aware of on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military or civilian operations to permit applicants as requested.

…

"§ 143-215.126. Civil penalties.  
(a) The Secretary of Environmental Quality may impose an administrative penalty on a person who constructs a wind energy facility or wind energy facility expansion WEF without obtaining a permit under this Article or who constructs or operates a wind energy facility WEF in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall be no less than one thousand dollars ($1,000) per day and shall not exceed ten thousand dollars ($10,000) per day.

(b) The Secretary of Environmental Quality, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind energy facility WEF without first obtaining a permit under this Article or who constructs or operates a wind energy facility or wind energy facility expansion WEF in violation of its permit terms and conditions.

(a) Any person who owns, operates, or controls a WEF shall maintain (i) commercial general liability insurance, covering personal injuries, death, and property damage of ten million dollars ($10,000,000) per occurrence, with a total of twenty million dollars ($20,000,000) coverage aggregate, which shall specifically include the affected counties and municipalities and their officers, councils, employees, committee members, attorneys, agents, and consultants as additional named insureds and (ii) umbrella coverage of fifty million dollars ($50,000,000).

(b) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State.

(c) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Department with at least 30 days' prior written notice in advance of a cancellation.

(d) No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Department a copy of each of the policies or certificates representing the insurance in the required amounts.
(e) Any person who owns, operates, or controls a WEF shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by the construction, maintenance, operation, decommissioning, disassembly, or demolition of that WEF.

(f) In order to provide maximum protection for the public interest, any actions brought pursuant to this section may be brought against any one or more of the persons having control over the WEF or the activity that caused or contributed to the damages. All such persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles.

(g) There shall be no liability under this section for a person otherwise liable who can establish by a preponderance of the evidence that the damage was caused by any of the following:

1. An act of God.
2. An act of war or sabotage.
3. An act or omission by the federal government, or the State, or its political subdivisions.
4. An act or omission by, or at the direction of, a law enforcement officer or fireman.
5. An act or omission by a third party who is not an agent, employee, contractor, or subcontractor of the person who is liable under this section.

(h) Nothing in this section shall deprive a claimant from electing to pursue any other cause of action for damages or injunctive relief under statutory or common law.

§ 143-215.128. Indemnification.

(a) All permits issued under this Article shall contain an indemnification provision applicable to the governing bodies for the WEF. For purposes of this section, "governing bodies" shall mean the State, each county containing all or part of the WEF, and the governing bodies of all municipalities in each of those counties, and shall include their employees or agents.

(b) The WEF permit applicant shall at all times defend, indemnify, protect, save, hold harmless, and exempt the governing bodies from penalties, damages, costs, charges, or other expenses arising out of claims, suits, demands, causes of action, or award of damages at law or in equity, whether compensatory or punitive, which might arise out of, or are caused by, the placement, construction, erection, modification, location, equipment performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of the WEF, excepting, however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of the governing bodies.

(c) Reasonable attorneys' fees, consultants' fees, and expert witness fees shall be included in those costs that are recoverable by the governing bodies under the indemnification required by this section."

SECTION 2. This act is effective when it becomes law and applies to all wind energy facilities filing a permit application under Article 21C of Chapter 143 of the General Statutes, as amended by this act on or after that date.