A BILL TO BE ENTITLED
AN ACT TO ESTABLISH A SYSTEM OF PERMITS FOR THE SITING AND OPERATION
OF WIND ENERGY FACILITIES.

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

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

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

Whereas, it is the policy of the State to promote the development of wind energy in
a manner compatible with environmental protection, sustainable development, and the efficient
use of resources; Now, therefore,
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-103 is amended by adding a new subdivision to read:
“(12) "Wind energy facility" means the turbines, 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 three
megawatts or more of energy."

SECTION 2. Part 4 of Article 7 of Chapter 113A of the General Statutes is
amended by adding a new section to read:
"§ 113A-118.3. Permits for wind energy facilities.
(a) No person shall undertake development associated with a wind energy facility
anywhere in the coastal area without first obtaining a permit from the Commission.
(b) A person applying for a permit for a wind energy facility shall include all of the
following in an application for the permit:
   (1) A narrative description of the proposed facility.
   (2) A map showing the location of the proposed facility.
   (3) The capacity of proposed energy generation.
   (4) A copy of a deed, purchase agreement, lease agreement, or other legal
       instrument demonstrating the right to develop the property.
   (5) Certification of adjacent property owner notification to the maximum extent
       practicable.
A study of the noise impacts of the turbines to be associated with the proposed facility, unless the turbines will be located in a sound or in offshore waters at least 0.60 miles from a shoreline.

A study on shadow flicker impacts of the turbines to be associated with the proposed facility, unless the turbines will be located in a sound or in offshore waters at least 1.6 miles from a shoreline.

A study on avian and bat impacts of the proposed facility.

A study on viewshed impacts of the proposed facility.

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

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

Other data or information the Commission may reasonably require.

The Commission shall deny an application for a permit for a wind energy facility if the Commission finds any one or more of the following:

1. Construction or operation of the facility would be inconsistent with or violate rules adopted by the Commission.
2. Construction or operation of the facility 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.
3. Construction or operation of the facility would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters. For purposes of this section, a wind energy facility in the coastal area is a water dependent use.
4. Construction or operation of the facility would have a significant adverse impact on fish or wildlife.
5. Construction or operation of the facility 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.
6. Construction or operation of the facility would interfere with air navigation routes, air traffic control areas, military training routes, or special use airspace.
7. A permit for the facility would be denied under any other criteria set out in G.S. 113A-120.
8. The cumulative impact of the proposed facility with other existing or proposed wind energy facilities would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance.

The Commission may include, as a condition of a permit for a wind energy facility, a requirement that the permit holder mitigate any adverse impacts.

An applicant for a permit for a wind energy facility under this section shall submit with the application under subsection (b) of this section an application fee of two thousand dollars ($2,000).
(f) The Commission shall require an applicant for a permit for a wind energy facility to provide 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 a proposed description of the condition of the site once the wind energy facility has been decommissioned and removed. The Commission may require a bond, guarantee, insurance, or other financial instrument to provide for the decommissioning and the removal of structures that comprise the wind energy facility. The Commission shall consider the size of the wind energy facility, the location of the facility, and the financial qualifications of the applicant in making its determination to grant or deny the permit.

(g) The Commission shall hold a public hearing in the county in which the proposed wind energy facility is to be located within 75 days of receipt of a completed application for a wind energy facility. The Commission shall give a minimum of 30 days' notice of the public hearing. The Commission shall make a final decision on a permit application within 150 days following receipt of a completed application. If the Commission determines that an application for a wind energy facility fails to meet the requirements for a permit under this section, the Commission shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial. If the Commission fails to act within any time period set forth in this subsection, the applicant may 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.

(h) 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.

(i) Nothing in this section shall be interpreted to limit: (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 or (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan for regulation of the siting of a wind energy facility, a city or county shall consider the information, factors, and criteria set out in subsections (b) and (c) of this section.

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

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

(l) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who constructs a wind energy facility without obtaining a permit under this section or who constructs or operates a wind energy facility in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars ($10,000) per day. The Secretary of Environment and Natural Resources, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind energy facility without obtaining a permit under this section or who constructs or operates a wind energy facility in violation of its permit terms and conditions."

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


§ 143-215.74R. Definitions.

(1) Department. – The Department of Environment and Natural Resources.
§ 143-215.74S. Permit to site wind energy facilities outside the coastal counties.

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

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

1. A narrative description of the proposed facility.
2. A map showing the location of the proposed facility.
3. The capacity of proposed energy generation.
4. A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to develop the property.
5. Certification of adjacent property owner notification to the maximum extent practicable.
6. A study of the noise impacts of the proposed facility.
7. A study on shadow flicker impacts of the proposed facility.
8. A study on avian and bat impacts of the proposed facility.
9. A study on viewshed impacts of the proposed facility.
10. An explanation of how the proposed facility would be consistent with the requirements in subsection (c) of this section.
11. The application fee required by subsection (e) of this section.
12. Other data or information the Department may reasonably require.

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

1. Construction or operation of the facility would be inconsistent with or violate rules adopted by the Commission.
2. Construction or operation of the facility 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; and primary nursery areas designated by the Wildlife Resources Commission.
3. Construction or operation of the facility would have a significant adverse impact on fish or wildlife.
4. Construction or operation of the facility 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.
5. Construction or operation of the facility would interfere with air navigation routes, air traffic control areas, military training routes, or special use airspace.
6. The proposed facility would be located in an area designated with a slide hazard ranking of 'moderate' or 'high' on a Stability Index Map prepared by the North Carolina Geological Survey.
7. Construction of the facility would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.
8. The cumulative impact of the proposed facility with other existing or proposed wind energy facilities would result in significant adverse impacts
to ecological systems, natural resources, cultural sites, recreation areas, or
historic sites of more than local significance.

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

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

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

(g) The Department shall hold a public hearing in the county in which the proposed
wind energy facility is to be located within 75 days of receipt of a completed application for a
wind energy facility. The Department shall give a minimum of 30 days' notice of the public
hearing. The Department shall make a final decision on a permit application within 150 days
following receipt of a completed application. If the Department determines that an application
for a wind energy facility 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. If the Department fails to act
within any time period set forth in this subsection, the applicant may 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.

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

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

§ 143-215.74T. Civil penalties.

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

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

§ 143-215.74U. Local ordinances authorized.

(a) Nothing in this Part shall be interpreted to limit the ability of a city or county to plan
for and regulate the siting of a wind energy facility in accordance with land use regulations
authorized under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan
for regulation of the siting of a wind energy facility, a city or county shall consider the
information, factors, and criteria set out in G.S. 143-215.74S(b) and (c).
(b) Any person who proposes to construct or operate a wind energy facility within the planning jurisdiction of a city or county must demonstrate compliance with any local ordinances concerning land use and any applicable permitting processes."

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

Within the meaning of this Article:

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

a. Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.

b. Structures of a relatively slender nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills, if the windmill is associated with a residence, the primary purpose of the windmill is to generate electricity for use within the residence, and the windmill is no more than 100 feet from the base to the turbine hub.

c. Buildings and structures designated as National Historic Sites on the National Archives Registry.

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