

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

S

3

SENATE BILL 1068\*  
Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/7/09  
Finance Committee Substitute Adopted 7/14/09

Short Title: Permitting of Wind Energy Facilities.

(Public)

Sponsors:

Referred to:

March 31, 2009

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

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

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

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

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

14 The General Assembly of North Carolina enacts:

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

16 "(12) "Wind energy facility" means the turbines, accessory buildings, transmission  
17 facilities, and any other equipment necessary for the operation of the facility  
18 that cumulatively, with any other wind energy facility whose turbines are  
19 located within one-half mile of one another, have a rated capacity of three  
20 megawatts or more of energy."

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

23 **"§ 113A-118.3. Permits for wind energy facilities.**

24 (a) No person shall undertake development associated with a wind energy facility  
25 anywhere in the coastal area without first obtaining a permit from the Commission.

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

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

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

30 (3) The capacity of proposed energy generation.

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

33 (5) Certification of adjacent property owner notification to the maximum extent  
34 practicable.



- 1           (6) A study of the noise impacts of the turbines to be associated with the  
2 proposed facility, unless the turbines will be located in a sound or in offshore  
3 waters at least 0.60 miles from a shoreline.
- 4           (7) A study on shadow flicker impacts of the turbines to be associated with the  
5 proposed facility, unless the turbines will be located in a sound or in offshore  
6 waters at least 1.6 miles from a shoreline.
- 7           (8) A study on avian and bat impacts of the proposed facility.
- 8           (9) A study on viewshed impacts of the proposed facility.
- 9           (10) An explanation of how the proposed facility would be consistent with the  
10 requirements in subsection (c) of this section.
- 11           (11) The application fee required by subsection (e) of this section.
- 12           (12) Other data or information the Commission may reasonably require.
- 13       (c) The Commission shall deny an application for a permit for a wind energy facility if  
14 the Commission finds any one or more of the following:
- 15           (1) Construction or operation of the facility would be inconsistent with or  
16 violate rules adopted by the Commission.
- 17           (2) Construction or operation of the facility would result in significant adverse  
18 impacts to ecological systems, natural resources, cultural sites, recreation  
19 areas, or historic sites of more than local significance, including national or  
20 State parks or forests; wilderness areas; historic sites; recreation areas;  
21 segments of the natural and scenic rivers system; wildlife refuges; preserves  
22 and management areas; areas that provide habitat for threatened or  
23 endangered species; primary nursery areas designated by the Marine  
24 Fisheries Commission and the Wildlife Resources Commission; and critical  
25 fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.
- 26           (3) Construction or operation of the facility would obstruct major navigation  
27 channels or create a significant obstacle to navigation in coastal waters. For  
28 purposes of this section, a wind energy facility in the coastal area is a water  
29 dependent use.
- 30           (4) Construction or operation of the facility would have a significant adverse  
31 impact on fish or wildlife.
- 32           (5) Construction or operation of the facility would have a significant adverse  
33 impact on views from any State or national park, wilderness area, significant  
34 natural heritage area as compiled by the North Carolina Natural Heritage  
35 Program, or other public lands or private conservation lands designated or  
36 dedicated due to their high recreational values.
- 37           (6) Construction or operation of the facility would interfere with air navigation  
38 routes, air traffic control areas, military training routes, or special use  
39 airspace.
- 40           (7) A permit for the facility would be denied under any other criteria set out in  
41 G.S. 113A-120.
- 42           (8) The cumulative impact of the proposed facility with other existing or  
43 proposed wind energy facilities would result in significant adverse impacts  
44 to ecological systems, natural resources, cultural sites, recreation areas, or  
45 historic sites of more than local significance.
- 46       (d) The Commission may include, as a condition of a permit for a wind energy facility,  
47 a requirement that the permit holder mitigate any adverse impacts.
- 48       (e) An applicant for a permit for a wind energy facility under this section shall submit  
49 with the application under subsection (b) of this section an application fee of two thousand  
50 dollars (\$2,000).

1       (f)     The Commission shall require an applicant for a permit for a wind energy facility to  
2 provide a plan regarding the action to be taken upon the decommissioning and removal of the  
3 wind energy facility. The plan shall include an estimate of the cost to decommission and  
4 remove the wind energy facility. The plan shall also include a proposed description of the  
5 condition of the site once the wind energy facility has been decommissioned and removed. The  
6 Commission may require a bond, guarantee, insurance, or other financial instrument to provide  
7 for the decommissioning and the removal of structures that comprise the wind energy facility.  
8 The Commission shall consider the size of the wind energy facility, the location of the facility,  
9 and the financial qualifications of the applicant in making its determination to grant or deny the  
10 permit.

11       (g)     The Commission shall hold a public hearing in the county in which the proposed  
12 wind energy facility is to be located within 75 days of receipt of a completed application for a  
13 wind energy facility. The Commission shall give a minimum of 30 days' notice of the public  
14 hearing. The Commission shall make a final decision on a permit application within 150 days  
15 following receipt of a completed application. If the Commission determines that an application  
16 for a wind energy facility fails to meet the requirements for a permit under this section, the  
17 Commission shall deny the application, and the application shall be returned to the applicant  
18 accompanied by a written statement of the reasons for the denial. If the Commission fails to act  
19 within any time period set forth in this subsection, the applicant may treat the failure to act as a  
20 denial of the permit and may challenge the denial as provided under Chapter 150B of the  
21 General Statutes.

22       (h)     The issuance of a permit under this section shall not obviate the need for the  
23 applicant to obtain any and all other applicable local, State, or federal permits, licenses, or  
24 approvals.

25       (i)     Nothing in this section shall be interpreted to limit: (i) the application of Article 7 of  
26 Chapter 113A of the General Statutes to facilities permitted under this section, including the  
27 permitting requirements of G.S. 113A-118 or (ii) the ability of a city or county to plan for and  
28 regulate the siting of a wind energy facility in accordance with land-use regulations authorized  
29 under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan for  
30 regulation of the siting of a wind energy facility, a city or county shall consider the information,  
31 factors, and criteria set out in subsections (b) and (c) of this section.

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

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

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

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

49                     "Part 12. Permitting of Wind Energy Facilities.

50       "§ 143-215.74R. Definitions.

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

1           (2) Wind energy facility. – Has the same meaning as defined in G.S. 113A-103.

2 **"§ 143-215.74S. Permit to site wind energy facilities outside the coastal counties.**

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

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

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

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

9               (3) The capacity of proposed energy generation.

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

12              (5) Certification of adjacent property owner notification to the maximum extent  
13 practicable.

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

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

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

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

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

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

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

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

24               (1) Construction or operation of the facility would be inconsistent with or  
25 violate rules adopted by the Commission.

26               (2) Construction or operation of the facility would result in significant adverse  
27 impacts to ecological systems, natural resources, cultural sites, recreation  
28 areas, or historic sites of more than local significance, including national or  
29 State parks or forests; wilderness areas; historic sites; recreation areas;  
30 segments of the natural and scenic rivers system; wildlife refuges; preserves  
31 and management areas; areas that provide habitat for threatened or  
32 endangered species; and primary nursery areas designated by the Wildlife  
33 Resources Commission.

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

36               (4) Construction or operation of the facility would have a significant adverse  
37 impact on views from any State or national park, wilderness area, significant  
38 natural heritage area as compiled by the North Carolina Natural Heritage  
39 Program, or other public lands or private conservation lands designated or  
40 dedicated due to their high recreational values.

41               (5) Construction or operation of the facility would interfere with air navigation  
42 routes, air traffic control areas, military training routes, or special use  
43 airspace.

44               (6) The proposed facility would be located in an area designated with a slide  
45 hazard ranking of 'moderate' or 'high' on a Stability Index Map prepared by  
46 the North Carolina Geological Survey.

47               (7) Construction of the facility would be prohibited under Article 14 of Chapter  
48 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

49               (8) The cumulative impact of the proposed facility with other existing or  
50 proposed wind energy facilities would result in significant adverse impacts

1 to ecological systems, natural resources, cultural sites, recreation areas, or  
2 historic sites of more than local significance.

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

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

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

16 (g) The Department shall hold a public hearing in the county in which the proposed  
17 wind energy facility is to be located within 75 days of receipt of a completed application for a  
18 wind energy facility. The Department shall give a minimum of 30 days' notice of the public  
19 hearing. The Department shall make a final decision on a permit application within 150 days  
20 following receipt of a completed application. If the Department determines that an application  
21 for a wind energy facility fails to meet the requirements for a permit under this section, the  
22 Department shall deny the application, and the application shall be returned to the applicant  
23 accompanied by a written statement of the reasons for the denial. If the Department fails to act  
24 within any time period set forth in this subsection, the applicant may treat the failure to act as a  
25 denial of the permit and may challenge the denial as provided under Chapter 150B of the  
26 General Statutes.

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

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

34 **"§ 143-215.74T. Civil penalties.**

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

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

44 **"§ 143-215.74U. Local ordinances authorized.**

45 (a) Nothing in this Part shall be interpreted to limit the ability of a city or county to plan  
46 for and regulate the siting of a wind energy facility in accordance with land use regulations  
47 authorized under Chapter 160A and Chapter 153A of the General Statutes. In developing a plan  
48 for regulation of the siting of a wind energy facility, a city or county shall consider the  
49 information, factors, and criteria set out in G.S. 143-215.74S(b) and (c).

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

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

5 **"§ 113A-206. Definitions.**

6 Within the meaning of this Article:

7 ...  
8 (3) "Tall buildings or structures" include any building, structure or unit within a  
9 multiunit building with a vertical height of more than 40 feet measured from  
10 the top of the foundation of said building, structure or unit and the  
11 uppermost point of said building, structure or unit; provided, however, that  
12 where such foundation measured from the natural finished grade of the crest  
13 or the natural finished grade of the high side of the slope of a ridge exceeds 3  
14 feet, then such measurement in excess of 3 feet shall be included in the  
15 40-foot limitation described herein; provided, further, that no such building,  
16 structure or unit shall protrude at its uppermost point above the crest of the  
17 ridge by more than 35 feet. "Tall buildings or structures" do not include:

- 18 a. Water, radio, telephone or television towers or any equipment for the  
19 transmission of electricity or communications or both.
- 20 b. Structures of a relatively slender nature and minor vertical  
21 projections of a parent building, including chimneys, flagpoles, flues,  
22 spires, steeples, belfries, cupolas, antennas, poles, wires, or  
23 ~~windmills~~windmills, if the windmill is associated with a residence,  
24 the primary purpose of the windmill is to generate electricity for use  
25 within the residence, and the windmill is no more than 100 feet from  
26 the base to the turbine hub.
- 27 c. Buildings and structures designated as National Historic Sites on the  
28 National Archives Registry.

29 ...."

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