

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 574

Short Title: Wind Energy/Consistency With Military. (Public)

Sponsors: Representatives Grange, Szoka, and Watford (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Energy and Public Utilities, if favorable, Homeland Security, Military, and Veterans Affairs

April 6, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO BETTER ENSURE COMPATIBILITY OF WIND ENERGY FACILITIES
3 WITH MILITARY OPERATIONS AND READINESS.

4 The General Assembly of North Carolina enacts:

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

7 "Article 21C.

8 "Permitting of Wind Energy Facilities.

9 ...

10 **"§ 143-215.116. Permit to site wind energy facilities.**

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

14 **"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication
15 package requirements.**

16 (a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to
17 filing an application for a permit to ~~construct, operate, construct~~ or expand a wind energy
18 facility, a person shall request a preapplication site evaluation meeting to be held between the
19 ~~applicant and the Department.~~ applicant, the Department, and the Department of Military and
20 Veterans Affairs. The preapplication site evaluation meeting shall be held no less than 120 days
21 prior to filing an application for a permit to construct, operate, or expand a wind energy facility
22 and may be used by the participants to:

- 23 (1) Conduct a preliminary evaluation of the site or sites for the proposed wind
24 energy facility or wind energy facility expansion. The preliminary evaluation
25 of the proposed wind energy facility or proposed wind energy facility
26 expansion shall determine if the site or sites:
27 a. Pose serious risk to civil air navigation or military air navigation
28 routes, air traffic control areas, military training routes, special-use
29 air space, radar, or other potentially affected military operations.
30 b. Pose serious risk to natural resources and uses, including to species
31 of concern or their habitats.
32 (2) Identify areas where proposed construction or expansion activities pose
33 minimal risk of interference with civil air navigation or military air



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

6 ...
7 (c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit
8 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this
9 section, the Department shall provide written notice of the meeting to the United States Army
10 Corps of Engineers, the United States Fish and Wildlife Service, the Department of Military
11 and Veterans Affairs, the North Carolina Wildlife Resources Commission, the commanding
12 military officer or the commanding military officer's designee of any potentially affected major
13 military installation, and any other party that the Department deems relevant. The notice shall
14 include an invitation to participate in the permit preapplication site evaluation meeting.

15 **"§ 143-215.118. Permit application scoping meeting and notice.**

16 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit
17 for a proposed wind energy facility or proposed wind energy facility expansion, the applicant
18 shall request the scheduling of a scoping meeting between the ~~applicant and the Department.~~
19 applicant, the Department, and the Department of Military and Veterans Affairs. The scoping
20 meeting shall be held no less than 30 days prior to filing an application for a permit for a
21 proposed wind energy facility or proposed wind energy facility expansion. The applicant and
22 the Department shall review the permit for the proposed wind energy facility or proposed
23 facility expansion at the scoping meeting.

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

34 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed
35 permit; public hearing; public comment.**

36 (a) Permit Requirements. – A person applying for a permit for a proposed wind energy
37 facility or proposed wind energy facility expansion shall include all of the following in an
38 application for the permit:

- 39 (1) A narrative description of the proposed wind energy facility or proposed
40 wind energy facility expansion.
41 (2) A map showing the location of the proposed wind energy facility or
42 proposed wind energy facility expansion that identifies the specific location
43 of each turbine.
44 ~~(3) A copy of a deed, purchase agreement, lease agreement, or other legal
45 instrument demonstrating the right to construct, expand, or otherwise
46 develop a wind energy facility on the property.~~
47 ~~(4) Identification by name and address of property owners adjacent to the
48 proposed wind energy facility or proposed wind energy facility expansion.
49 The applicant shall notify every property owner identified pursuant to this
50 subdivision by registered or certified mail or by any means authorized by~~

- 1 G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall
2 include all of the following:
- 3 a. ~~The location of the proposed wind energy facility or proposed wind~~
4 ~~energy facility expansion and the specific location of each turbine~~
5 ~~proposed to be located within one half mile of the boundary of the~~
6 ~~adjacent property owner.~~
- 7 b. ~~A description of the proposed wind energy facility or proposed wind~~
8 ~~energy facility expansion.~~
- 9 (5) A description of civil air navigation or military air navigation routes, air
10 traffic control areas, military training routes, special-use air space, radar, or
11 other military operations that may be affected by the construction or
12 operation of the proposed wind energy facility or proposed wind energy
13 facility expansion.
- 14 (6) Documentation that addresses any potential adverse impact on military
15 operations and readiness as identified by the Department of Defense
16 Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations
17 (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- 18 (7) Documentation that the applicant has either (i) submitted Federal Aviation
19 Administration Form 7460-1 for the turbines associated with the proposed
20 wind energy facility or proposed wind energy facility expansion or (ii)
21 initiated an informal review by the Department of Defense Siting
22 Clearinghouse of the proposed wind energy facility or proposed wind energy
23 facility expansion. If the applicant has submitted Federal Aviation
24 Administration Form 7460-1 in order to fulfill the requirements of this
25 subdivision, the applicant shall provide any determination reached by the
26 Federal Aviation Administration at the time the application is submitted to
27 the Department. If the Federal Aviation Administration has not made a
28 determination at the time the application is submitted to the Department, the
29 application shall include a description of the status of the applicant's
30 engagement with the Federal Aviation Administration and the Department of
31 Defense Siting Clearinghouse.
- 32 (8) ~~A study of the noise impacts of the turbines to be associated with the~~
33 ~~proposed wind energy facility or proposed wind energy facility expansion.~~
- 34 (9) ~~A study on shadow flicker impacts of the turbines to be associated with the~~
35 ~~proposed wind energy facility or proposed wind energy facility expansion,~~
36 ~~unless the turbines will be located in a sound or in offshore waters.~~
- 37 (10) A study of the impact of the proposed wind energy facility or proposed wind
38 energy facility expansion on natural resources and uses, including avian, bat,
39 and endangered and threatened species.
- 40 (11) An explanation of how the proposed wind energy facility or proposed wind
41 energy facility expansion would be consistent with the criteria in subsection
42 (a) of G.S. 143-215.120.
- 43 (12) The application fee required by subsection (c) of this section.
- 44 (13) A plan regarding the action to be taken upon the decommissioning and
45 removal of the wind energy facility. The plan shall include an estimate of the
46 cost to decommission and remove the wind energy facility. The plan shall
47 also include the anticipated life of the project, an estimate of the cost to
48 decommission and remove the wind energy facility, a description of the
49 manner in which the facility will be decommissioned, and a description of
50 the expected condition of the site once the wind energy facility has been
51 decommissioned and removed.

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

2 ...

3 (d) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a
4 complete permit application for a proposed wind energy facility or proposed wind energy
5 facility expansion submitted pursuant to subsection (a) of this section, the Department shall
6 provide notice of the permit application to (i) the commanding military officer of all major
7 military installations, (ii) ~~the commanding military officer of any military installation located~~
8 ~~outside the State that is located within 50 nautical miles of the location of the proposed wind~~
9 ~~energy facility or proposed wind energy facility expansion, the Department of Military and~~
10 Veterans Affairs, and (iii) the board of commissioners for each county and the governing body
11 of each municipality in which the wind energy facility or wind energy facility expansion is
12 proposed to be located. The notice shall include:

- 13 (1) A copy of the map showing the location of the proposed wind energy facility
14 or proposed wind energy facility expansion that includes the specific
15 locations of wind turbines.
- 16 (2) A written request to the commanding military officer of a major military
17 installation or the commanding military officer's designee, for technical
18 information related to any adverse impact on the installation's operations,
19 training, or mission, including military air navigation routes, air traffic
20 control areas, military training routes, special-use air space, radar or other
21 military operations that may be affected.
- 22 (3) A written request for information related to potential adverse impacts of the
23 proposed wind energy facility or proposed wind energy facility expansion on
24 local governments from the board of commissioners for each county and the
25 governing body of each municipality.

26 (e) Provision of Permit Application to Affected Entities. – Except as provided by
27 G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military
28 officer of any major military installation or the commanding military officer's designee, the
29 board of commissioners for any county in which the site is proposed to be located or the
30 governing body of any municipality in which the site is proposed to be located, the Department
31 shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in
32 addition to any supplements, changes, or amendments to the permit application to the
33 requesting commanding military officer or local government.

34 (f) Public Hearing and Comment. – The Department shall hold a public hearing in each
35 county in which the wind energy facility or wind energy facility expansion is proposed to be
36 located within 75 days of receipt of a completed permit application. The Department shall
37 provide notice including the time and location of the public hearing in a newspaper of general
38 circulation in each applicable county. The notice of public hearing shall be published for at
39 least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the
40 hearing. The notice shall provide that any comments on the proposed wind energy facility or
41 proposed wind energy facility expansion should be submitted to the Department by a specified
42 date, not less than 15 days from the date of the newspaper publication of the notice or 15 days
43 after distribution of the mailed notice, whichever is later. No less than 30 days prior to the
44 scheduled public hearing, the Department shall provide written notice of the hearing to:

- 45 (1) The North Carolina Utilities Commission.
- 46 (2) The Office of the Attorney General of North Carolina.
- 47 (3) The commanding military officer of any potentially affected major military
48 installation or the commanding military officer's designee.
- 49 (4) The board of commissioners for each county and the governing body of each
50 municipality with jurisdictions over areas in which a potentially affected
51 major military installation is located.

1 (5) The Department of Military and Veterans Affairs.

2 "**§ 143-215.119A. Letter to proceed determination by Department of Military and**
3 **Veterans Affairs.**

4 (a) Letter to Proceed. – Prior to issuing a permit under this Article, the applicant must
5 obtain a letter to proceed from the Department of Military and Veterans Affairs as set forth in
6 this section. The Department of Military and Veterans Affairs shall issue a letter to proceed
7 only after the Department of Military and Veterans Affairs finds that the proposed wind energy
8 facility or proposed expansion of a wind energy facility would not cause significant adverse
9 impacts on air navigation routes, air traffic control areas, military training routes, or radar
10 installations. For purposes of this section, "significant adverse impact" means any demonstrable
11 adverse impact upon military operations and readiness, including flight operations research,
12 development, testing, and evaluation and training, that (i) is likely to impair or degrade the
13 ability of the Armed Forces to perform their warfighting missions and (ii) is unable to be
14 addressed through mitigation measures.

15 (b) Time Line. – The Department of Military and Veterans Affairs shall determine
16 whether to issue a letter to proceed under this section within 60 days of the public hearing
17 required by G.S. 143-215.119(e).

18 (c) Basis for Letter. – The Department of Military and Veterans Affairs shall make its
19 determination based on information submitted by the applicant pursuant to subdivisions (5) and
20 (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department of
21 Military and Veterans Affairs pursuant to subdivision (2) of subsection (d) of
22 G.S. 143-215.119.

23 (d) Failure of Department to Act. – If the Department of Military and Veterans Affairs
24 fails to issue a letter to proceed within the time line set forth in subsection (b) of this section,
25 the Department shall treat the failure to issue the letter as confirmation that the proposed wind
26 energy facility or proposed expansion of a wind energy facility would not cause significant
27 adverse impacts on air navigation routes, air traffic control areas, military training routes, or
28 radar installations.

29 (e) Finding of Significant Adverse Impact. – If the Department of Military and
30 Veterans Affairs finds that the proposed wind energy facility or proposed wind energy facility
31 expansion would cause significant adverse impacts to air navigation routes, air traffic control
32 areas, military training routes, or radar installations, the Department of Military and Veterans
33 Affairs shall issue a letter of concern to the Department and the applicant.

34 (f) Letter of Concern. – Within 90 days of issuance of a letter of concern under
35 subsection (e) of this section, the Department of Military and Veterans Affairs shall engage
36 with the applicant, the commanding military officer of any major military installation impacted
37 in the letter of concern, and the Department of Defense Clearinghouse designee for that
38 installation to address the issues identified in the letter of concern. If the parties are unable to
39 resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to
40 proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

41 "**§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
42 **approvals required.**

43 (a) Permit Approval. – The Department shall approve an application for a permit for a
44 proposed wind energy facility or proposed wind energy facility expansion upon receipt of a
45 letter to proceed from the Department of Military and Veterans Affairs issued as set forth in
46 G.S. 143-215.119A unless the Department finds any one or more of the following:

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

50 (2) ~~Construction or operation of the proposed wind energy facility or proposed~~
51 ~~wind energy facility expansion would encroach upon or would otherwise~~

1 ~~have a significant adverse impact on the mission, training, or operations of~~
2 ~~any major military installation or branch of military in North Carolina and~~
3 ~~result in a detriment to continued military presence in the State. In its~~
4 ~~evaluation, the Department may consider whether the proposed wind energy~~
5 ~~facility or proposed wind energy facility expansion would cause interference~~
6 ~~with air navigation routes, air traffic control areas, military training routes,~~
7 ~~or radar based on information submitted by the applicant pursuant to~~
8 ~~subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any~~
9 ~~information received by the Department pursuant to subdivision (2) of~~
10 ~~subsection (d) of G.S. 143-215.119.~~

11 (3) Construction or operation of the proposed wind energy facility or proposed
12 wind energy facility expansion would result in significant adverse impacts to
13 ecological systems, natural resources, cultural sites, recreation areas, or
14 historic sites of more than local significance; including national or State
15 parks or forests, wilderness areas, historic sites, recreation areas, segments of
16 the natural and scenic rivers system, wildlife refuges, preserves and
17 management areas, areas that provide habitat for threatened or endangered
18 species, primary nursery areas designated by the Marine Fisheries
19 Commission and the Wildlife Resources Commission, and critical fisheries
20 habitat identified pursuant to the Coastal Habitat Protection Plan.

21 (4) Construction or operation of the proposed wind energy facility or proposed
22 wind energy facility expansion would have a significant adverse impact on
23 fish or wildlife.

24 ~~(5) Construction or operation of the proposed wind energy facility or proposed~~
25 ~~wind energy facility expansion would have a significant adverse impact on~~
26 ~~views from any State or national park, wilderness area, significant natural~~
27 ~~heritage area as compiled by the North Carolina Natural Heritage Program,~~
28 ~~or other public lands or private conservation lands designated or dedicated~~
29 ~~due to their high recreational values.~~

30 (6) Construction or operation of the proposed wind energy facility or proposed
31 wind energy facility expansion would obstruct major navigation channels or
32 create a significant obstacle to navigation in coastal waters, as determined by
33 the United States Army Corps of Engineers and the United States Coast
34 Guard.

35 ~~(7) A permit for a proposed wind energy facility or proposed wind energy~~
36 ~~facility expansion would be denied under any other criteria set out in G.S.~~
37 ~~113A-120.~~

38 (8) Construction of the proposed wind energy facility or proposed wind energy
39 facility expansion would be prohibited under Article 14 of Chapter 113A of
40 the General Statutes, the Mountain Ridge Protection Act of 1983.

41 (9) The applicant is not in compliance with all applicable federal, State, or local
42 permit requirements, licenses, or approvals, including local zoning
43 requirements.

44 (b) Permit Decision. – The Department shall make a final decision on a permit
45 application within 90 days following receipt of a completed application, ~~except that the~~
46 ~~Department shall not be required to make a final decision until the Department has received a~~
47 ~~written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation~~
48 ~~Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations~~
49 ~~(January 1, 2012 edition).~~ application. If the Department requests additional information
50 following the receipt of a completed application, the Department shall make a final decision on
51 a permit application within 30 days of receipt of the requested information. If the Department

1 determines that an application for a wind energy facility or a wind energy facility expansion
2 fails to meet the requirements for a permit under this section, the Department shall deny the
3 application, and the application shall be returned to the applicant accompanied by a written
4 statement of the reasons for the denial and any modifications to the permit application that
5 would make the application acceptable. If the Department fails to act within the time period set
6 forth in this subsection, the applicant may treat the failure to act as a ~~denial of the permit and~~
7 ~~may challenge the denial as provided under Chapter 150B of the General Statutes.~~ grant of the
8 permit.

9 (c) Permit Conditions. – The Department (i) may include as a condition of a permit for
10 a proposed wind energy facility or proposed wind energy facility expansion a requirement that
11 the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit
12 for a proposed wind energy facility or proposed wind energy facility expansion a requirement
13 that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued
14 by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the
15 Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind
16 energy facility or wind energy facility expansion shall become effective until the Department
17 has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the
18 Federal Aviation Administration for the facility. If the specific location of a turbine authorized
19 to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the
20 configuration of the wind energy facility varies from the information submitted by the applicant
21 upon which the Department has made its permit decision, the Department may reevaluate the
22 permit application and require the applicant to submit any additional information the
23 Department deems necessary to approve or deny a permit for the facility as reconfigured.

24 (d) Other Approvals Required. – The issuance of a permit under this section shall not
25 obviate the need for the applicant to obtain any and all other applicable local, State, or federal
26 permits, licenses, or approvals. However, obtaining other applicable local, State, or federal
27 permits, licenses, or approvals shall not be a requirement for the consideration and grant of a
28 permit under this section. Furthermore, nothing in this Article shall be interpreted to limit, as
29 applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities
30 permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the
31 ability of a city or county to plan for and regulate the siting of a wind energy facility in
32 accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the
33 General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

34 ~~"§ 143-215.121. Financial assurance requirements.~~

35 ~~The applicant for a permit or a permit holder for a wind energy facility shall establish~~
36 ~~financial assurance that will ensure that sufficient funds are available for decommissioning of~~
37 ~~the facility and reclamation of the property to its condition prior to commencement of activities~~
38 ~~on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be~~
39 ~~incorporated, do business, or maintain assets in the State. To establish sufficient availability of~~
40 ~~funds under this section, the applicant for a permit or a permit holder for a wind energy facility~~
41 ~~may use insurance, financial tests, third party guarantees by persons who can pass the financial~~
42 ~~test, guarantees by corporate parents who can pass the financial test, irrevocable letters of~~
43 ~~credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing,~~
44 ~~shown to provide protection equivalent to the financial protection that would be provided by~~
45 ~~insurance if insurance were the only mechanism used.~~

46 **"§ 143-215.122. Monitoring and reporting.**

47 The applicant shall annually submit copies to the Department of any post-construction
48 monitoring, such as reports on the impacts on wildlife in the location of and in the area
49 proximate to the wind energy facility or wind energy facility expansion and any impacts on
50 military operations that are required by the United States Fish and Wildlife Service, the North

1 Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any
2 other government agency.

3 **"§ 143-215.123. Annual review of military presence.**

4 The Department of Military and Veterans Affairs shall consult with representatives of the
5 major military installations to review information regarding military air navigation routes, air
6 traffic control areas, military training routes, special-use air space, radar, or other potentially
7 affected military operations at least once per year. The Department of Military and Veterans
8 Affairs shall provide relevant information on civil air navigation or military air navigation
9 routes, air traffic control areas, military training routes, special-use air space, radar, or other
10 potentially affected military operations to permit applicants as requested. Information obtained
11 in the annual review required under this section may be used to determine the impact of wind
12 energy facilities and expansion of wind energy facilities that have not previously received a
13 permit from the Department of Military and Veterans Affairs or a letter to proceed from the
14 Department of Military and Veterans Affairs.

15"

16 **SECTION 2.** This act is effective when it becomes law and applies only to those
17 wind energy facilities or wind energy facility expansions for which no "Determination of No
18 Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before
19 that date.