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HOUSE BILL 484*

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PROPOSED SENATE COMMITTEE SUBSTITUTE H484-PCS30541-Taf-14

Short Title: Permitting of Wind Energy Facilities.

(Public)

Sponsors:

Referred to:

April 1, 2013

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

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 143 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 21C.

8 "Permitting of Wind Energy Facilities.

9 **"§ 143-215.115. Definitions.**

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

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

20 (2) "Wind energy facility" means the turbines, accessory buildings, transmission
21 facilities, and any other equipment necessary for the operation of the facility
22 that cumulatively, with any other wind energy facility whose turbines are
23 located within one-half mile of one another, have a rated capacity of one
24 megawatt or more of energy.

25 (3) "Wind energy facility expansion" means any activity that (i) adds or
26 substantially modifies turbines or transmission facilities, including
27 increasing the height of such equipment, over that which was initially
28 permitted or (ii) increases the footprint of the wind energy facility over that
29 which was initially permitted.

30 **"§ 143-215.116. Permit to site wind energy facilities.**

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



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1 "§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication
2 package requirements.

3 (a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to
4 filing an application for a permit to construct, operate, or expand a wind energy facility, a
5 person shall request a preapplication site evaluation meeting to be held between the applicant
6 and the Department. The preapplication site evaluation meeting shall be held no less than 120
7 days prior to filing an application for a permit to construct, operate, or expand a wind energy
8 facility and may be used by the participants to:

9 (1) Conduct a preliminary evaluation of the site or sites for the proposed wind
10 energy facility or wind energy facility expansion. The preliminary evaluation
11 of the proposed wind energy facility or proposed wind energy facility
12 expansion shall determine if the site or sites:

13 a. Pose serious risk to civil air navigation or military air navigation
14 routes, air traffic control areas, military training routes, special-use
15 air space, radar, or other potentially affected military operations.

16 b. Pose serious risk to natural resources and uses, including to species
17 of concern or their habitats.

18 (2) Identify areas where proposed construction or expansion activities pose
19 minimal risk of interference with civil air navigation or military air
20 navigation routes, air traffic control areas, military training routes,
21 special-use air space, radar, or other potentially affected military operations.

22 (3) Identify areas where proposed construction or expansion activities pose
23 minimal risk to natural resources and uses, including avian, bat, and
24 endangered and threatened species.

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

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

36 (2) A map showing the approximate location of the proposed wind energy
37 facility or proposed wind energy facility expansion.

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

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

1 Wildlife Resources Commission, the Department, or other governmental
2 agency to satisfy this requirement.

3 (5) A list of the federal, State, and local agencies from which approvals will be
4 obtained and the name of those approvals required in order to authorize the
5 construction, operation, or expansion of the proposed wind energy facility.

6 (6) A schedule showing the anticipated dates for commencement of
7 construction, testing, and commercial operation of the proposed wind energy
8 facility or proposed wind energy facility expansion.

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

17 **"§ 143-215.118. Permit application scoping meeting and notice.**

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

25 (b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit
26 application scoping meeting with an applicant, the Department shall provide written notice of
27 the meeting to the commanding military officer of each major military installation, or the
28 commanding military officer's designee, the Federal Aviation Administration, the North
29 Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the
30 board of commissioners for each county and the governing body of each municipality in which
31 the wind energy facility or proposed wind energy facility expansion is proposed to be located,
32 and those local governments with jurisdictions over areas in which a major military installation
33 is located. The notice shall 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 (b) 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 (a1) Confidentiality of Trade Secrets and Business Information. – To the extent that any
3 documents included in the permit application contain trade secrets or confidential business
4 information, those portions of the documents shall not be subject to disclosure under the North
5 Carolina Public Records Act.

6 (b) Fees. – An applicant for a permit for a proposed wind energy facility or proposed
7 wind energy facility expansion under this section shall submit with the application required
8 pursuant to subsection (a) of this section, an application fee of three thousand five hundred
9 dollars (\$3,500).

10 (c) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a
11 complete permit application for a proposed wind energy facility or proposed wind energy
12 facility expansion submitted pursuant to subsection (a) of this section, the Department shall
13 provide notice of the permit application to (i) the commanding military officer of all major
14 military installations, (ii) the commanding military officer of any military installation located
15 outside the State that is located within 50 nautical miles of the location of the proposed wind
16 energy facility or proposed wind energy facility expansion, and (iii) the board of
17 commissioners for each county and the governing body of each municipality in which the wind
18 energy facility or wind energy facility expansion is proposed to be located. The notice shall
19 include:

20 (1) A copy of the map showing the location of the proposed wind energy facility
21 or proposed wind energy facility expansion that includes the specific
22 locations of wind turbines.

23 (2) A written request to the commanding military officer of a major military
24 installation or the commanding military officer's designee, for technical
25 information related to any adverse impact on the installation's operations,
26 training, or mission, including military air navigation routes, air traffic
27 control areas, military training routes, special-use air space, radar or other
28 military operations that may be affected.

29 (3) A written request for information related to potential adverse impacts of the
30 proposed wind energy facility or proposed wind energy facility expansion on
31 local governments from the board of commissioners for each county and the
32 governing body of each municipality.

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

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

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

8 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
9 **approvals required.**

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

- 13 (1) Construction or operation of the proposed wind energy facility or proposed
14 wind energy facility expansion would be inconsistent with or violate rules
15 adopted by the Department or any other provision of law.
- 16 (2) Construction or operation of the proposed wind energy facility or proposed
17 wind energy facility expansion would encroach upon or would otherwise
18 have a significant adverse impact on the mission, training, or operations of
19 any major military installation or branch of military in North Carolina and
20 result in a detriment to continued military presence in the State. In its
21 evaluation, the Department may consider whether the proposed wind energy
22 facility or proposed wind energy facility expansion would cause interference
23 with air navigation routes, air traffic control areas, military training routes,
24 or radar based on information submitted by the applicant pursuant to
25 subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any
26 information received by the Department pursuant to subdivision (2) of
27 subsection (c) of G.S. 143-215.119.
- 28 (3) Construction or operation of the proposed wind energy facility or proposed
29 wind energy facility expansion would result in significant adverse impacts to
30 ecological systems, natural resources, cultural sites, recreation areas, or
31 historic sites of more than local significance; including national or State
32 parks or forests, wilderness areas, historic sites, recreation areas, segments of
33 the natural and scenic rivers system, wildlife refuges, preserves and
34 management areas, areas that provide habitat for threatened or endangered
35 species, primary nursery areas designated by the Marine Fisheries
36 Commission and the Wildlife Resources Commission, and critical fisheries
37 habitat identified pursuant to the Coastal Habitat Protection Plan.
- 38 (4) Construction or operation of the proposed wind energy facility or proposed
39 wind energy facility expansion would have a significant adverse impact on
40 fish or wildlife.
- 41 (5) Construction or operation of the proposed wind energy facility or proposed
42 wind energy facility expansion would have a significant adverse impact on
43 views from any State or national park, wilderness area, significant natural
44 heritage area as compiled by the North Carolina Natural Heritage Program,
45 or other public lands or private conservation lands designated or dedicated
46 due to their high recreational values.
- 47 (6) Construction or operation of the proposed wind energy facility or proposed
48 wind energy facility expansion would obstruct major navigation channels or
49 create a significant obstacle to navigation in coastal waters, as determined by
50 the United States Army Corps of Engineers and the United States Coast
51 Guard.

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

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

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

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

25 (c) Permit Conditions. – The Department (i) may include as a condition of a permit for
26 a proposed wind energy facility or proposed wind energy facility expansion a requirement that
27 the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit
28 for a proposed wind energy facility or proposed wind energy facility expansion a requirement
29 that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued
30 by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the
31 Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind
32 energy facility or wind energy facility expansion shall become effective until the Department
33 has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the
34 Federal Aviation Administration for the facility. If the specific location of a turbine authorized
35 to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the
36 configuration of the wind energy facility varies from the information submitted by the applicant
37 upon which the Department has made its permit decision, the Department may reevaluate the
38 permit application and require the applicant to submit any additional information the
39 Department deems necessary to approve or deny a permit for the facility as reconfigured.

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

48 **"§ 143-215.121. Financial assurance requirements.**

49 The applicant for a permit or a permit holder for a wind energy facility shall establish
50 financial assurance that will ensure that sufficient funds are available for decommissioning of
51 the facility and reclamation of the property to its condition prior to commencement of activities

1 on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be
2 incorporated, do business, or maintain assets in the State. To establish sufficient availability of
3 funds under this section, the applicant for a permit or a permit holder for a wind energy facility
4 may use insurance, financial tests, third-party guarantees by persons who can pass the financial
5 test, guarantees by corporate parents who can pass the financial test, irrevocable letters of
6 credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing,
7 shown to provide protection equivalent to the financial protection that would be provided by
8 insurance if insurance were the only mechanism used.

9 **"§ 143-215.122. Monitoring and reporting.**

10 The applicant shall annually submit copies to the Department of any post-construction
11 monitoring, such as reports on the impacts on wildlife in the location of and in the area
12 proximate to the wind energy facility or wind energy facility expansion and any impacts on
13 military operations that are required by the United States Fish and Wildlife Service, the North
14 Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any
15 other government agency.

16 **"§ 143-215.123. Annual review of military presence.**

17 The Department shall consult with representatives of the major military installations to
18 review information regarding military air navigation routes, air traffic control areas, military
19 training routes, special-use air space, radar, or other potentially affected military operations at
20 least once per year. The Department shall provide relevant information on civil air navigation
21 or military air navigation routes, air traffic control areas, military training routes, special-use air
22 space, radar, or other potentially affected military operations to permit applicants as requested.

23 **"§ 143-215.124. Record keeping.**

24 The Department shall serve as the custodian of all data, information, and records received
25 from a permit applicant or a major military installation pursuant to this Article and shall ensure
26 that information provided to the Department that constitutes trade secrets, as that term is
27 defined in G.S. 66-152, and that is designated as confidential or as a trade secret under
28 G.S. 132-1.2, is limited only to the Department, State employees, and other persons who have
29 executed a confidentiality agreement with the owner of such information. Information
30 designated as confidential or as a trade secret under G.S. 132-1.2 shall not be subject to
31 disclosure pursuant to G.S. 132-6.

32 **"§ 143-215.125. Rule making.**

33 The Environmental Management Commission shall adopt any rules necessary for the
34 implementation of this Article. In adopting rules, the Commission shall consult with the
35 Coastal Resources Commission to ensure that the development of statewide permitting
36 requirements is consistent with and in consideration of the characteristics unique to the coastal
37 area of the State to the maximum extent practicable.

38 **"§ 143-215.126. Civil penalties.**

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

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

50 **SECTION 2.** This act is effective when it becomes law and applies only to those
51 wind energy facilities or wind energy facility expansions that have not received a written

1 "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration
2 on or before that date.