

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 1068\*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/7/09

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 TO BE ISSUED BY THE COASTAL  
3 RESOURCES COMMISSION FOR THE SITING AND OPERATION OF WIND  
4 ENERGY FACILITIES.

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

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

10 Whereas, North Carolina has abundant wind resources in the coastal region; 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.

35 (6) A study of the noise impacts of the turbines to be associated with the  
36 proposed facility, unless the turbines will be located in a sound or in offshore  
37 waters at least 0.60 miles from a shoreline.



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

1 condition of the site once the wind energy facility has been decommissioned and removed. The  
2 Commission may require a bond, guarantee, insurance, or other financial instrument to provide  
3 for the decommissioning and the removal of structures that comprise the wind energy facility.  
4 The Commission shall consider the size of the wind energy facility, the location of the facility,  
5 and the financial qualifications of the applicant in making its determination to grant or deny the  
6 permit.

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

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

21 (i) Nothing in this section shall be interpreted to limit: (i) the application of Article 7 of  
22 Chapter 113A of the General Statutes to facilities permitted under this section, including the  
23 permitting requirements of G.S. 113A-118 or (ii) the ability of a city or county to plan for and  
24 regulate the siting of a wind energy facility in accordance with land-use regulations authorized  
25 under Chapter 160A and Chapter 153A of the General Statutes.

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

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

32 **SECTION 3.** This act becomes effective January 1, 2010, and applies to wind  
33 energy facilities, as defined in G.S. 113A-103, as enacted by Section 1 of this act, that are  
34 constructed on or after that date.