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SENATE BILL DRS35342-MQfa-88 (02/03)

Short Title: Renewable Energy Property Protection. (Public)

Sponsors: Senators Cook and Brock (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PREVENT INTERFERENCE WITH PROPERTY RIGHTS, ENVIRONMENTAL  
3 DAMAGE, AND HARMS TO PUBLIC HEALTH RESULTING FROM THE SITING AND  
4 OPERATION OF RENEWABLE ENERGY FACILITIES.

5 The General Assembly of North Carolina enacts:

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

7 "Article 21C.

8 "Permitting and Control of Wind and Renewable 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 this  
11 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 Point  
14 Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United  
15 States Coast Guard Air Station at Elizabeth City, Naval Support Activity  
16 Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and  
17 Seymour Johnson Air Force Base, in its own right and as the responsible entity  
18 for the Dare County Bombing Range, and any facility located within the State  
19 that is subject to the installations' oversight and control.

20 (1a) "Renewable energy facility" means a facility, other than a "wind energy  
21 facility," as defined in G.S. 62-133.8. This term does not include (i) solar  
22 collectors that gather solar radiation as a substitute for traditional energy for  
23 water heating, active space heating and cooling, passive heating, or generating  
24 electricity for a detached single-family residence or (ii) biomass resources.

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

30 (3) "Wind energy facility expansion" means any activity that (i) adds or  
31 ~~substantially~~ modifies turbines or transmission facilities, including increasing  
32 the height of such equipment, over that which was initially permitted or (ii)  
33 increases the footprint of the wind energy facility over that which was initially  
34 permitted.

35 "§ 143-215.116. Permit to site wind or renewable energy facilities.



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

4 ...  
5 **"§ 143-215.117A. Permit preapplication site evaluation meeting; notice; preapplication**  
6 **package requirements.**

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

- 13 (1) Conduct a preliminary evaluation of the site or sites for the proposed renewable  
14 energy facility or renewable energy facility expansion. The preliminary  
15 evaluation of the proposed renewable energy facility or proposed renewable  
16 energy facility expansion shall determine if the site or sites do the following:
  - 17 a. Pose serious risk to civil air navigation or military air navigation routes,  
18 air traffic control areas, military training routes, special-use air space,  
19 radar, or other potentially affected military operations.
  - 20 b. Pose serious risk to natural resources and uses, including to species of  
21 concern or their habitats.
- 22 (2) Identify areas where proposed construction or expansion activities pose  
23 minimal risk of interference with civil air navigation or military air navigation  
24 routes, air traffic control areas, military training routes, special-use air space,  
25 radar, or other potentially affected military operations.
- 26 (3) Identify areas where proposed construction or expansion activities pose  
27 minimal risk to natural resources and uses, including avian, bat, and endangered  
28 and threatened species.

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

- 36 (1) A narrative description of the proposed renewable energy facility or proposed  
37 renewable energy facility expansion, including (i) type and physical dimensions  
38 of renewable energy equipment to be constructed; (ii) the total planned capacity  
39 of the facility; and (iii) a description of any ancillary facilities.
- 40 (2) A map showing the approximate location of the proposed renewable energy  
41 facility or proposed renewable energy facility expansion.
- 42 (3) A description of any known potential impacts of the proposed renewable energy  
43 project location on civil air navigation or military air navigation routes, air  
44 traffic control areas, military training routes, special-use air space, radar, or  
45 other potentially affected military operations. The applicant may use data made  
46 available by the Department pursuant to G.S. 143-215.123 to satisfy this  
47 requirement.
- 48 (4) A list of the federal, State, and local agencies from which approvals will be  
49 obtained and the name of those approvals required in order to authorize the  
50 construction, operation, or expansion of the proposed renewable energy facility.

1           (5) A schedule showing the anticipated dates for commencement of construction,  
2           testing, and commercial operation of the proposed renewable energy facility or  
3           proposed renewable energy facility expansion.

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

12 **"§ 143-215.118. Permit application scoping meeting and notice.**

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

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

30 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**  
31 **permit; public hearing; public comment.**

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

35           (1) A narrative description of the proposed ~~wind energy~~ facility or proposed ~~wind~~  
36           ~~energy~~ facility expansion.

37           (2) A map showing the location of the proposed ~~wind energy~~ facility or proposed  
38           ~~wind energy~~ facility expansion that identifies the specific location of each  
39           ~~turbine-turbine~~ or other renewable energy equipment.

40           (3) A copy of a deed, purchase agreement, lease agreement, or other legal  
41           instrument demonstrating the right to construct, expand, or otherwise develop a  
42           wind or renewable energy facility on the property.

43           (4) Identification by name and address of property owners adjacent to the proposed  
44           ~~wind energy~~ facility or proposed ~~wind energy~~ facility expansion. The applicant  
45           shall notify every property owner identified pursuant to this subdivision by  
46           registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in  
47           a form approved by the Department. The notice shall include all of the  
48           following:

49           a. The location of the proposed ~~wind energy~~ facility or proposed ~~wind~~  
50           ~~energy~~ facility expansion and the specific location of each turbine or

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

1 description of the expected condition of the site once the wind or renewable  
2 energy facility has been decommissioned and removed.

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

4 (b) Confidentiality of Trade Secrets and Business Information. – To the extent that any  
5 documents included in the permit application contain trade secrets or confidential business  
6 information, those portions of the documents shall not be subject to disclosure under the North  
7 Carolina Public Records Act.

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

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

22 (1) A copy of the map showing the location of the proposed ~~wind energy~~ facility or  
23 proposed ~~wind energy~~ facility expansion that includes the specific locations of  
24 wind ~~turbines~~ turbines or other renewable energy equipment.

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

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

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

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

1 newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is  
2 later. No less than 30 days prior to the scheduled public hearing, the Department shall provide  
3 written notice of the hearing to:

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

11 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**  
12 **approvals required.**

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

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

- 1 create a significant obstacle to navigation in coastal waters, as determined by  
2 the United States Army Corps of Engineers and the United States Coast Guard.
- 3 (7) A permit for a proposed ~~wind energy~~ facility or proposed ~~wind energy~~ facility  
4 expansion would be denied under any other criteria set out in G.S. 113A-120.
- 5 (8) Construction of the proposed ~~wind energy~~ facility or proposed ~~wind energy~~  
6 facility expansion would be prohibited under Article 14 of Chapter 113A of the  
7 General Statutes, the Mountain Ridge Protection Act of 1983.
- 8 (9) The applicant is not in compliance with all applicable federal, State, or local  
9 permit requirements, licenses, or approvals, including local zoning  
10 requirements.
- 11 (10) Operation of the proposed facility would create an ambient noise measurement  
12 exceeding 35 decibels, as measured from the property line of any adjacent  
13 parcel.
- 14 (11) The applicant has failed to establish adequate financial assurance for  
15 decommissioning in accordance with G.S. 143-215.128.

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

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

48 (d) Other Approvals Required. – The issuance of a permit under this section shall not  
49 obviate the need for the applicant to obtain any and all other applicable local, State, or federal  
50 permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as  
51 applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities

1 permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the  
2 ability of a city or county to plan for and regulate the siting of a wind or renewable energy facility  
3 in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the  
4 General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

5 **"§ 143-215.121. Financial assurance requirements.**

6 The applicant for a permit or a permit holder for a wind or renewable energy facility shall  
7 establish financial assurance that will ensure that sufficient funds are available for  
8 decommissioning of the facility and reclamation of the property to its condition prior to  
9 commencement of activities on the site, even if the applicant or permit holder becomes insolvent  
10 or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish  
11 sufficient availability of funds under this section, the applicant for a permit or a permit holder for a  
12 wind or renewable energy facility may use insurance, financial tests, third-party guarantees by  
13 persons who can pass the financial test, guarantees by corporate parents who can pass the financial  
14 test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, or any  
15 combination of the foregoing, shown to provide protection equivalent to the financial protection  
16 that would be provided by insurance if insurance were the only mechanism used.

17 **"§ 143-215.122. Monitoring and reporting.**

18 The applicant shall annually submit copies to the Department of any post-construction  
19 monitoring, such as reports on ambient noise levels, groundwater testing, the impacts on wildlife  
20 in the location of and in the area proximate to the wind or renewable energy facility or wind or  
21 renewable energy facility ~~expansion~~expansion, and any impacts on military operations that are  
22 required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources  
23 Commission, the North Carolina Utilities Commission, or any other government agency.

24 ...

25 **"§ 143-215.126. Civil penalties.**

26 (a) The Secretary of Environmental Quality ~~may~~shall impose an administrative penalty on  
27 a person who constructs a wind or renewable energy facility or wind or renewable energy facility  
28 expansion without obtaining a permit under this Article or who constructs or operates a wind or  
29 renewable energy facility in violation of its permit terms and conditions. Each day of a continuing  
30 violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars  
31 (\$10,000) per day.

32 (b) The Secretary of Environmental Quality, irrespective of all other remedies at law, may  
33 institute an action for injunctive relief against a person who constructs a wind or renewable energy  
34 facility without first obtaining a permit under this Article or who constructs or operates a wind or  
35 renewable energy facility or wind or renewable energy facility expansion in violation of its permit  
36 terms and conditions.

37 **"§ 143-215.127. Setback and landscape buffer requirements.**

38 (a) Setback requirements. – A wind or renewable energy facility shall be sited no nearer  
39 than one and one-half miles from the property line of any adjacent parcels. The one and one-half  
40 mile setback requirement shall not apply to adjacent parcels having common ownership with the  
41 facility or the parcel where the facility is situated.

42 A wind or renewable energy facility shall maintain a minimum setback of at least two and  
43 one-half times the height of a turbine from all easements and the right-of-way of any roadway  
44 maintained by the State or a municipality.

45 (b) If it is determined, based upon the input received from the written request to the  
46 commanding military officer of a major military installation or the commanding officer's designee  
47 pursuant to G.S. 143-215.119(d), that the proximity of the proposed wind or renewable energy  
48 facility to a military installation may have an adverse impact upon the operations of that military  
49 installation, the Department may require a minimum setback for wind or renewable energy  
50 equipment or activity in excess of the minimum setback required pursuant to subsection (a) of this  
51 section. The setback distance shall be established in consultation with the commanding military



1 officer of the military installation or the commanding officer's designee and shall be determined in  
2 a manner that minimizes the potential for encroachment upon the operational requirements of the  
3 military installation.

4 (c) Landscape buffer requirements for solar farms. – A solar farm shall maintain a  
5 landscape buffer by installing native landscaping, including trees and shrubs, in a perimeter  
6 surrounding the solar farm and any equipment related to that solar farm. The landscape buffer  
7 shall provide the greatest degree of screening feasible and shall minimize visual contact with the  
8 solar farm for any adjacent parcels. For the purposes of this subsection, a "solar farm" means an  
9 array of multiple solar collectors that transmit solar energy and where the collection of solar  
10 energy is the primary land use for the parcel on which it is situated.

11 **"§ 143-215.128. Decommissioning and reclamation; recycling requirements; financial**  
12 **assurance requirements.**

13 (a) The applicant for a permit or a permit holder for a wind or renewable energy facility  
14 shall be responsible for proper decommissioning of the facility and all equipment upon cessation  
15 of activities, and reclamation of the property to its condition prior to commencement of activities  
16 on the site, no later than one year following completion of the operations. Decommissioning shall  
17 include the complete removal, including any subterranean portions, of all buildings, foundations,  
18 cabling, electrical components, turbines, and any other associated facilities or structures. Upon  
19 decommissioning, the applicant for a permit or a permit holder for a wind or renewable energy  
20 facility shall be responsible for properly recycling each piece of equipment used in the facility.

21 (b) In addition to the requirements of G.S. 143-215.119(a)(13), the applicant for a permit  
22 or a permit holder for a wind or renewable energy facility shall establish financial assurance that  
23 will ensure that sufficient funds are available for decommissioning of the facility and reclamation  
24 of the property to its condition prior to commencement of activities on the site, even if the  
25 applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or  
26 maintain assets in the State. To establish sufficient availability of funds under this section, the  
27 applicant for a permit or a permit holder for a wind or renewable energy facility shall provide to  
28 the Department a bond, secured with sufficient surety as approved by the Department, in an  
29 amount not less than fifteen percent (15%) of the assessed value of the real property and installed  
30 wind or renewable energy property located thereon.

31 (c) In order to continue to hold a permit under this Article, a permit holder must maintain  
32 financial responsibility and must provide any information requested by the Department to  
33 establish that the permit holder continues to maintain financial responsibility. A permit holder  
34 shall notify the Department of any significant change in the (i) identity of any person or structure  
35 of the business entity that holds the permit for the facility, (ii) identity of any person or structure of  
36 the business entity that owns or operates the facility, or (iii) assets of the permit holder, owner, or  
37 operator of the facility. The permit holder shall notify the Department within 30 days of a  
38 significant change. A change shall be considered significant if it has the potential to affect the  
39 financial responsibility of the permit holder, owner, or operator, or if it would result in a change in  
40 the identity of the permit holder, owner, or operator for purposes of either financial responsibility  
41 or environmental compliance review. Based on its review of the changes, the Department may  
42 require the permit holder to reestablish financial responsibility and may modify or revoke a  
43 permit, or require issuance of a new permit.

44 **"§ 143-215.129. Liability for damage caused.**

45 (a) Any person who owns, operates, or controls a wind or renewable energy facility shall  
46 be strictly liable, without regard to fault, for damages to persons or property, public or private,  
47 caused by the construction, maintenance, operation, decommissioning, disassembly, or demolition  
48 of that facility.

49 (b) In order to provide maximum protection for the public interest, any actions brought  
50 pursuant to subsection (a) of this section may be brought against any one or more of the persons  
51 having control over the wind or renewable energy facility or the activity that caused or contributed

1 to the damages. All such persons shall be jointly and severally liable, but ultimate liability as  
2 between the parties may be determined by common-law principles.

3 (c) There shall be no liability under this section for a person otherwise liable who can  
4 establish by a preponderance of the evidence that the damage was caused by any of the following:

5 (1) An act of God.

6 (2) An act of war or sabotage.

7 (3) An act or omission by the United States government or the State of North  
8 Carolina or its political subdivisions.

9 (4) An act or omission by or at the direction of a law enforcement officer or  
10 fireman.

11 (5) An act or omission by a third party who is not an agent, employee, contractor,  
12 or subcontractor of the person who is liable under this section.

13 (d) Nothing in this section shall deprive a claimant from electing to pursue any other cause  
14 of action for damages or injunctive relief under statutory or common law."

15 **SECTION 2.** There is appropriated from the General Fund to the Department of  
16 Environmental Quality for the 2016-2017 fiscal year the sum of fifty thousand dollars (\$50,000)  
17 for implementation of the permitting requirements for renewable energy facilities.

18 **SECTION 3.** Section 1 of this act becomes effective December 1, 2016, and applies  
19 to applications for permits submitted on or after that date. Section 2 of this act becomes effective  
20 July 1, 2017. The remainder of this act is effective when it becomes law.