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SENATE BILL DRS15076-BH-1* (02/22)

Short Title: Responsible Wind Energy Implementation. (Public)

Sponsors: Senators Cook, Sanderson, and Brock (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MINIMIZE INTERFERENCE WITH MILITARY OPERATIONS,
3 ENVIRONMENTAL DEGRADATION, REDUCTION OF PROPERTY RIGHTS, AND
4 HARMS TO PUBLIC HEALTH, SAFETY, AND WELFARE RESULTING FROM THE
5 SITING AND OPERATION OF INDUSTRIAL WIND ENERGY FACILITIES.

6 The General Assembly of North Carolina enacts:

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

9 "Article 21C.

10 "Permitting and Control of Industrial Wind Energy Facilities.

11 **"§ 143-215.115. Definitions.**

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

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

23 (1a) "WEF" means a wind energy facility or a wind energy facility expansion.

24 (2) "Wind energy facility" means ~~the turbines, parcels of land containing one or~~
25 more industrial-sized wind energy turbines rated at one megawatt or more,
26 along with accessory buildings, transmission facilities, and any other
27 equipment necessary for the operation of the ~~facility that cumulatively, with~~
28 ~~any other wind energy facility whose turbines are located within one half~~
29 ~~mile of one another, have a rated capacity of one megawatt or more of~~
30 ~~energy.~~ WEF. Except as provided by G.S. 143-215.119A(d), this Article
31 applies only to a WEF located onshore. For purposes of this Article, an
32 expansion of an existing WEF shall be considered a WEF unless the
33 expansion (i) reduces the total footprint of the WEF and (ii) does not include
34 any new land that was not previously part of the WEF site.

35 (3) "Wind energy facility expansion" means any activity that (i) adds additional
36 turbines, ~~or substantially~~(ii) modifies the size or rating of any existing



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turbines or transmission facilities, including increasing the height of such equipment, turbines, or (iii) changes the footprint of the WEF over that which was initially permitted or (ii) increases the footprint of the wind energy facility over that which was initially permitted.

(4) "Site" means all parcels that make up the WEF, including those which are not contiguous.

(5) "Infrasound" means low frequency sound not ordinarily hearable by humans, but which may still affect humans, even if unaware of its presence.

(6) "Major WEF stakeholders" means the North Carolina Utilities Commission; the North Carolina Department of Health and Human Services; the North Carolina Department of Commerce; the North Carolina Department of Transportation; the United States Army Corps of Engineers; the United States Fish and Wildlife Service; the United States National Park Service; the North Carolina Wildlife Resources Commission; the commanding officer, or the commanding officer's designee, of any potentially affected major military installation; the North Carolina Military Affairs Commission; the county commission and governing body of each municipality in the county in which the WEF is proposed to be located; and any other stakeholders that the Department deems relevant.

"§ 143-215.116. Permit to site wind energy facilities, a WEF.

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

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

(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility, WEF, a person shall request a preapplication site evaluation meeting to be held between the applicant and the Department. The permit preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility WEF and ~~may~~ shall be used by the ~~participants to~~ participants, together with the materials described in subsection (b) of this section, to do the following:

(1) Conduct a preliminary evaluation of the site ~~or sites~~ for the proposed wind energy facility or wind energy facility expansion. WEF. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the ~~site or sites~~ proposed WEF may do any of the following:

a. Pose serious risk to civil air navigation, including aerial spraying or firefighting, or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

b. Pose serious risk to natural resources and uses, including uses within five miles of the proposed WEF. This includes risk to species of concern or their habitats, habitats and includes decreased groundwater recharge, increased stormwater discharge, or increased turbidity and sedimentation in streams impacted by the WEF.

c. Pose serious risks to the health, safety, and welfare of citizens residing within two miles of the proposed WEF.

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

- 1 (3) Identify areas where proposed construction or expansion activities pose
2 minimal risk to natural resources and uses, including groundwater, and
3 avian, bat, and endangered and threatened species.
- 4 (4) Identify areas where proposed construction or expansion activities pose
5 minimal risk to the health, safety, and welfare of proximate residents.
- 6 (b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit
7 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this
8 section, the applicant for a ~~wind energy facility or wind energy facility expansion~~ WEF shall
9 submit a preapplication package to the Department. To the extent that any documents contain
10 verifiable trade secrets or confidential business information, those portions of the documents
11 shall not be subject to disclosure under the North Carolina Public Records Act. The
12 preapplication package shall ~~include~~ include, in both printed and digital formats, all of the
13 following:
- 14 (1) A narrative description of the ~~proposed wind energy facility or proposed~~
15 ~~wind energy facility expansion, WEF~~, including (i) the ~~approximate number,~~
16 ~~type, type and height~~ maximum physical dimensions of wind turbines to be
17 constructed; (ii) the total planned capacity of the ~~facility; WEF~~; and (iii) a
18 description of any ancillary facilities.
- 19 (2) A United States Geological Survey topographic map showing the
20 approximate location of the proposed ~~wind energy facility or proposed wind~~
21 ~~energy facility expansion~~ WEF and the anticipated location of the WEF's
22 turbines.
- 23 (3) A description of any known potential impacts of the proposed ~~wind energy~~
24 ~~project location~~ WEF on civil air navigation navigation, including aerial
25 spraying or firefighting, or military air navigation routes, air traffic control
26 areas, military training routes, special-use air space, radar, or any other
27 potentially affected military operations. ~~The applicant may use data made~~
28 ~~available by the Department pursuant to G.S. 143-215.123 to satisfy this~~
29 ~~requirement.~~
- 30 (4) ~~A description of species of concern, habitats that support species of concern,~~
31 ~~critical areas of wildlife congregation, and protected lands, as those species,~~
32 ~~habitats, and critical areas are referenced in the March 23, 2012, United~~
33 ~~States Fish and Wildlife Service Land Based Wind Energy Guidelines~~
34 ~~(OMB Control No. 1018-0148) that are or believed to be present at the site~~
35 ~~of the proposed wind energy facility or proposed wind energy facility~~
36 ~~expansion. The applicant may use data made available by the North Carolina~~
37 ~~Wildlife Resources Commission, the Department, or other governmental~~
38 ~~agency to satisfy this requirement.~~
- 39 (4) A description of any known potential adverse impacts of the proposed WEF
40 on natural and agricultural resources, including groundwater, crop
41 production, and animals. For purposes of this subdivision, "animals"
42 includes wildlife, livestock, and domestic animals, including bats, raptors,
43 and endangered and threatened species.
- 44 (5) A description of any known potentially adverse impacts of the proposed
45 WEF on the health, safety, and welfare of proximate residents and visitors.
- 46 (5)(6) A list and status of the federal, State, and local agencies from which
47 approvals will be obtained and the name of those approvals required ~~in order~~
48 to authorize the construction, operation, or expansion of the proposed ~~wind~~
49 ~~energy facility~~ WEF.

1 ~~(6)~~(7) A schedule showing the anticipated dates for commencement of
2 construction, testing, and commercial operation of the proposed ~~wind energy~~
3 ~~facility or proposed wind energy facility expansion~~. ~~WEF.~~

4 (8) An operation and maintenance plan that includes, at a minimum, routine and
5 emergency checks for structural integrity, repairs, and rust prevention.

6 (9) The URL of a Web site created by the applicant with information about the
7 proposed WEF which (i) provides the full text of all documents submitted by
8 the applicant to any federal, State, or local government agency that are
9 considered public records under State law; (ii) lists the titles, or a general
10 description if the document has no title, of all documents submitted by the
11 applicant to any federal, State, or local government agency that are
12 considered proprietary and confidential under State law; (iii) lists the name
13 and address of all leaseholders; (iv) provides an opportunity for regional
14 citizens to make publically shown comments on the proposed WEF; and (v)
15 has been advertised in a locally circulated newspaper.

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

25 (d) The Department shall prepare detailed minutes or make an audio recording of the
26 meeting, and the minutes or recording shall become an official part of the permit application
27 package.

28 **"§ 143-215.118. Permit application scoping meeting and notice.**

29 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit
30 for a proposed ~~wind energy facility or proposed wind energy facility expansion~~, ~~WEF~~, the
31 applicant shall request the scheduling of a scoping meeting between the applicant and the
32 Department. The scoping meeting shall be held no less than 30 days prior to filing an
33 application for a permit for a proposed ~~wind energy facility or proposed wind energy facility~~
34 ~~expansion~~. ~~WEF~~. The applicant and the Department shall review the permit for the proposed
35 ~~wind energy facility or proposed facility expansion~~ ~~WEF~~ at the scoping meeting. The scoping
36 meeting shall be held in a county where the WEF is proposed to be located.

37 (b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit
38 application scoping meeting with an applicant, the Department shall provide written notice of
39 the meeting to the ~~commanding military officer of each major military installation, or the~~
40 ~~commanding military officer's designee, the Federal Aviation Administration, the North~~
41 ~~Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the~~
42 ~~board of commissioners for each county and the governing body of each municipality in which~~
43 ~~the wind energy facility or proposed wind energy facility expansion is proposed to be located,~~
44 ~~and those local governments with jurisdictions over areas in which a major military installation~~
45 ~~is located~~ major WEF stakeholders. The notice shall include an invitation to participate in the
46 scoping meeting.

47 (c) The meeting shall be advertised pursuant to open meetings laws and shall be open to
48 the public.

49 (d) The Department shall prepare detailed minutes or make an audio recording of the
50 meeting, and the minutes or recording shall become an official part of the permit application
51 package.

- 1 "§ 143-215.119. Permit application requirements; fees; notice of receipt of completed
2 permit; public hearing; public comment.
- 3 (a) Permit Requirements. – A person applying for a permit for a ~~proposed wind energy~~
4 ~~facility or proposed wind energy facility expansion~~ WEF shall include all of the following in an
5 application for the ~~permit~~; permit in both printed and digital format.
- 6 (1) A narrative description of the proposed ~~wind energy facility or proposed~~
7 ~~wind energy facility expansion~~. WEF.
- 8 (2) A map showing the location of the proposed ~~wind energy facility or~~
9 ~~proposed wind energy facility expansion~~ WEF that identifies the specific
10 ~~location~~ location, height, and rating of each turbine-anticipated turbine, and
11 all other buildings, roads, and equipment that are a part of the WEF.
- 12 (3) A copy of a deed, purchase agreement, ~~lease agreement, or other legal~~
13 ~~instrument~~ or lease agreement demonstrating the applicant's right to
14 construct, expand, or otherwise develop a wind energy facility WEF on all
15 the property-properties involved. For purposes of this subdivision, the lease
16 agreement means the original full lease agreement and does not mean the
17 memorandum of lease.
- 18 (4) ~~Identification by name~~ Name and address of all property owners adjacent to
19 ~~the proposed wind energy facility or proposed wind energy facility~~
20 ~~expansion~~. within two miles of the perimeter of the WEF. The applicant
21 shall notify every property owner identified pursuant to this subdivision by
22 registered or certified mail or by any means authorized by G.S. 1A-1, Rule
23 4, in a form approved by the Department. The notice shall include ~~all of the~~
24 ~~following~~; the information required by subdivisions (1) and (2) of this
25 subsection.
- 26 a. ~~The location of the proposed wind energy facility or proposed wind~~
27 ~~energy facility expansion and the specific location of each turbine~~
28 ~~proposed to be located within one half mile of the boundary of the~~
29 ~~adjacent property owner.~~
- 30 b. ~~A description of the proposed wind energy facility or proposed wind~~
31 ~~energy facility expansion.~~
- 32 (4a) The applicant's North Carolina Utilities Commission Certificate of Public
33 Convenience and Necessity.
- 34 (5) A description of ~~civil air navigation or military air navigation routes, air~~
35 ~~traffic control areas, military training routes, special-use air space, aerial~~
36 ~~spraying activities, potential aerial firefighting activity, radar, or other~~
37 ~~civilian or military operations that may be affected by the construction or~~
38 ~~operation of the proposed wind energy facility or proposed wind energy~~
39 ~~facility expansion~~. WEF.
- 40 (6) ~~Documentation that addresses~~ A description of any potential adverse impact
41 ~~on on (i) military operations and readiness as identified by the Department of~~
42 ~~Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal~~
43 ~~Regulations (July 1, 2012 edition) operations, (ii) military readiness, or (iii)~~
44 ~~the lives of military personnel, and any mitigation-rectifying actions agreed~~
45 ~~to by the applicant.~~
- 46 (7) Documentation that the applicant has ~~either (i) submitted Federal Aviation~~
47 ~~Administration Form 7460-1 for the turbines associated with the proposed~~
48 ~~wind energy facility or proposed wind energy facility expansion or (ii)~~
49 ~~initiated an informal-completed a review by the Department of Defense~~
50 ~~Siting Clearinghouse of the proposed wind energy facility or proposed wind~~
51 ~~energy facility expansion. If the applicant has submitted Federal Aviation~~

1 Administration Form 7460-1 in order to fulfill the requirements of this
2 subdivision, the applicant shall provide any determination reached by the
3 Federal Aviation Administration at the time the application is submitted to
4 the Department. If the Federal Aviation Administration has not made a
5 determination at the time the application is submitted to the Department, the
6 application shall include a description of the status of the applicant's
7 engagement with the Federal Aviation Administration and the Department of
8 Defense Siting Clearinghouse. WEF. This includes an unredacted copy of
9 the agreement negotiated through this process and unredacted copies of all
10 correspondences between the applicant and the Department of Defense,
11 including any Memoranda of Understanding. Nothing in this subdivision is
12 intended to prevent the redaction of federally classified information.

13 (8) ~~A study of the noise impacts of the turbines to be associated with the~~
14 ~~proposed wind energy facility or proposed wind energy facility expansion.~~A
15 list of the documentation submitted by the applicant to the Federal Aviation
16 Administration associated with the proposed WEF and any approvals or
17 determinations issued by the Federal Aviation Agency, including, but not
18 limited to, the applicant's "No Hazard Determination" documentation.

19 (9) ~~A study on shadow flicker impacts of the turbines to be associated with the~~
20 ~~proposed wind energy facility or proposed wind energy facility expansion,~~
21 ~~unless the turbines will be located in a sound or in offshore waters. If there~~
22 ~~are residential properties within two miles of the proposed WEF, a study of~~
23 ~~the possible human health impacts of the proposed WEF's turbines. This~~
24 ~~study shall use established industry standards to thoroughly and objectively~~
25 ~~assess the potential impacts of such concerns as infrasound; audible noise~~
26 ~~vibrations; electromagnetic fields; shadow flicker; blade glint; ice throw; and~~
27 ~~component liberation due to major storms, lightning, or other causes on~~
28 ~~humans within two miles of the WEF. The study shall be conducted by~~
29 ~~independent experts selected from a list of providers approved by the~~
30 ~~Department of Health and Human Services and paid for by the applicant.~~

31 (10) ~~A study of the impact of the proposed wind energy facility or proposed wind~~
32 ~~energy facility expansion on natural resources and uses, including avian, bat,~~
33 ~~and endangered and threatened species.~~A study of the local and regional
34 economic impacts of the proposed WEF. This study shall thoroughly and
35 objectively assess the potential short-term and long-term financial impacts,
36 including, but not limited to, construction employment and spending;
37 property tax revenue; lease contracts; and impacts on tourism, agricultural
38 yields, home values, and health care costs. The study shall be conducted by
39 independent experts selected from a list of providers approved by the
40 Department of Commerce and paid for by the applicant.

41 (11) ~~An explanation of how the proposed wind energy facility or proposed wind~~
42 ~~energy facility expansion would be consistent with the criteria in subsection~~
43 ~~(a) of G.S. 143-215.120. A plan of action to be taken to deactivate the WEF,~~
44 ~~and to protect the public from harm due to WEF component liberation,~~
45 ~~during tornadoes, hurricanes, nor'easters, and other high wind conditions.~~

46 (12) ~~The application fee required by subsection (c) of this section.~~An
47 environmental assessment of the potential adverse impacts of the proposed
48 WEF on ecosystems, including domestic animals, livestock, or wildlife, with
49 specific analysis targeted at bat, avian, and endangered or threatened species,
50 and including migratory flyways and corridors. The study shall be conducted

- 1 by independent experts selected from a list of providers approved by the
2 Department and paid for by the applicant.
- 3 (13) ~~A plan regarding the action to be taken upon the decommissioning and~~
4 ~~removal of the wind energy facility. The plan shall include an estimate of the~~
5 ~~cost to decommission and remove the wind energy facility. The plan shall~~
6 ~~also include the anticipated life of the project, an estimate of the cost to~~
7 ~~decommission and remove the wind energy facility, a description of the~~
8 ~~manner in which the facility will be decommissioned, and a description of~~
9 ~~the expected condition of the site once the wind energy facility has been~~
10 ~~decommissioned and removed. A study of the proposed WEF's potential~~
11 ~~impact on views or other aspects of any State or national park; wilderness~~
12 ~~area; significant natural heritage area, as compiled by the NC Natural~~
13 ~~Heritage Program; or other public lands or private conservation lands~~
14 ~~designated or dedicated due to their high recreational values, if any of these~~
15 ~~are in the viewshed of the proposed WEF. The study shall be conducted by~~
16 ~~independent experts selected from a list of Department-approved providers~~
17 ~~and paid for by the applicant.~~
- 18 (14) ~~Other data or information the Department may reasonably require. A study of~~
19 ~~the potential hydro-geological impacts of the proposed WEF on natural~~
20 ~~resources, water bodies, flowing water sources, wetlands, groundwater,~~
21 ~~aquifers, and private wells within two miles of the perimeter of the WEF.~~
22 ~~This study will include stormwater discharge calculations, including~~
23 ~~calculations of stream bank erosion and stream bed scour due to increased~~
24 ~~stormwater discharge. The study will include a United States Geological~~
25 ~~Survey topographic map showing the placement of monitoring wells for~~
26 ~~determining a decrease in the water table of the surficial aquifer, and also a~~
27 ~~decrease in hydraulic head of the underlying confined aquifers due to WEF~~
28 ~~construction-related activities. The study shall be conducted by independent~~
29 ~~experts selected from a list of Department-approved providers and paid for~~
30 ~~by the applicant.~~
- 31 (15) Documentation for the applicant's proposed property value guarantee (PVG)
32 for all residential properties within two miles of the perimeter of the WEF.
33 The specific terms and conditions of the PVG are the responsibility of each
34 local governing body where the WEF is located. Such a PVG must
35 effectively protect the property values of all residential property owners
36 within two miles of the perimeter of the WEF.
- 37 (16) An incident response plan that ensures that local emergency responders have
38 the necessary equipment and training to effectively handle emergencies such
39 as oil spills, turbine fires, and turbine structural damage or collapse,
40 including access to equipment needed for rescue of trapped personnel.
- 41 (17) A plan regarding the action to be taken to decommission the WEF. The plan
42 shall be consistent with the terms and conditions specified in
43 G.S. 143-215.119B.
- 44 (18) The Power Purchase Agreement (PPA).
- 45 (19) An explanation of how the proposed WEF would be consistent with the
46 criteria in subsection (a) of G.S. 143-215.122.
- 47 (20) The application fee required by subsection (c) of this section.
- 48 (21) Other data or information the Department may reasonably require.
- 49 (b) Confidentiality of Trade Secrets and Business Information. – To the extent that any
50 documents included in the permit application contain verifiable trade secrets or verifiable

1 confidential business information, those portions of the documents shall not be subject to
2 disclosure under the North Carolina Public Records Act.

3 (c) Fees. – An applicant for a permit for a proposed ~~wind energy facility or proposed~~
4 ~~wind energy facility expansion~~ WEF under this section shall submit with the application
5 required pursuant to subsection (a) of this ~~section,~~ section an application fee of ~~three thousand~~
6 ~~five one hundred dollars (\$3,500).~~ (\$100.00) per rated faceplate megawatt of the full proposed
7 WEF.

8 (d) Notice of Receipt of Complete Permit Application. – Within ~~40~~ 15 ~~business~~ days of
9 receipt of a ~~complete~~ completed permit application for a ~~proposed wind energy facility or~~
10 ~~proposed wind energy facility expansion~~ WEF submitted pursuant to subsection (a) of this
11 section, the Department shall provide notice of the permit application to ~~(i) the commanding~~
12 ~~military officer of all major military installations, (ii) the commanding military officer of any~~
13 ~~military installation located outside the State that is located within 50 nautical miles of the~~
14 ~~location of the proposed wind energy facility or proposed wind energy facility expansion, and~~
15 ~~(iii) the board of commissioners for each county and the governing body of each municipality~~
16 ~~in which the wind energy facility or wind energy facility expansion is proposed to be~~
17 ~~located.~~ major WEF stakeholders. The notice shall include:

18 (1) A copy of the map showing the location of the ~~proposed wind energy facility~~
19 ~~or proposed wind energy facility expansion~~ WEF that includes the specific
20 ~~locations of wind turbines.~~ locations, heights, and ratings of each wind
21 turbine, and all buildings and major equipment of the WEF, including
22 transmission lines.

23 (2) A written request to the ~~commanding military officer of a major military~~
24 ~~installation or the commanding military officer's designee,~~ commanding
25 officers of all major military installations, or their designees, and the
26 Military Affairs Commission for technical information related to any
27 adverse impact on the installation's operations, training, or mission,
28 including military air navigation routes, air traffic control areas, military
29 training routes, special-use air space, ~~radar~~ radar, or other military operations
30 ~~that may be affected.~~ or lives of military personnel that may be put at risk.

31 (3) A written request to the board of commissioners and governing body of each
32 municipality, within two miles of where the WEF will be located, for
33 information related to potential adverse impacts of the ~~proposed wind energy~~
34 ~~facility or proposed wind energy facility expansion on local governments~~
35 ~~from the board of commissioners for each county and the governing body of~~
36 ~~each municipality.~~ WEF on local governments, local businesses, local
37 property values, and local ecosystems.

38 (4) A written request to the Department of Health and Human Services for
39 information related to potential adverse human health impacts to citizens
40 within two miles of the WEF.

41 (e) Provision of Permit Application to Affected Entities. – ~~Except as provided by G.S.~~
42 ~~143-215.124, within~~ Within 10 days of receipt of a written request from the ~~commanding~~
43 ~~military officer of any major military installation or the commanding military officer's~~
44 ~~designee, the board of commissioners for any county in which the site is proposed to be located~~
45 ~~or the governing body of any municipality in which the site is proposed to be located, the~~
46 ~~Department shall provide a copy of a permit application material filed pursuant to subsection~~
47 ~~(a) of this section, the Department shall provide a copy of such material, in addition to any~~
48 ~~supplements, changes, or amendments to the permit application to the requesting commanding~~
49 ~~military officer or local government.~~ amendments, to the major WEF stakeholders and any other
50 parties the Department deems relevant.

1 (f) Public Hearing and Comment. – The Department shall hold a public hearing in each
2 county in which the ~~wind energy facility or wind energy facility expansion~~ WEF is proposed to
3 be located within 75 days of receipt of a completed permit application. The Department shall
4 provide notice including the time and location of the public hearing in a newspaper of general
5 circulation in each applicable county. The notice of public hearing shall be published for at
6 least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the
7 hearing. The notice shall provide that any comments on the ~~proposed wind energy facility or~~
8 ~~proposed wind energy facility expansion~~ WEF should be submitted to the Department by a
9 specified date, not less than 15 days from the date of the newspaper publication of the notice or
10 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to
11 the scheduled public hearing, the Department shall provide written notice of the hearing to:

12 (1) ~~The North Carolina Utilities Commission.~~

13 (2) ~~The Office of the Attorney General of North Carolina.~~

14 (3) ~~The commanding military officer of any potentially affected major military~~
15 ~~installation or the commanding military officer's designee.~~

16 (4) ~~The board of commissioners for each county and the governing body of each~~
17 ~~municipality with jurisdictions over areas in which a potentially affected major military~~
18 ~~installation is located.~~ to the North Carolina Attorney General's Office and all major WEF
19 stakeholders. The Department shall create and maintain a record of comments made at any
20 public hearings under this subsection.

21 **"§ 143-215.119A. Setback requirements.**

22 (a) Turbines in a WEF shall maintain a setback from the property line of any residential
23 or residentially zoned parcels outside the perimeter of the WEF. The setback shall be the
24 greater of one mile or 10 times the maximum height of the turbine's blade tip.

25 (b) Turbines in a WEF shall maintain a minimum setback of at least two and one-half
26 the maximum height of the turbine's blade tip from any residential structure within the WEF.

27 (c) Turbines in a WEF shall maintain a minimum setback of at least two and one-half
28 times the maximum height of the turbine's blade tip from the perimeter of the WEF, and the
29 right-of-way of any roadway maintained by the State or a municipality.

30 (d) For an offshore WEF, no turbines shall be sited within 24 miles of the nearest shore.

31 (e) No turbines in a WEF shall be sited within 30 miles of a major military installation.
32 No turbines in a WEF shall be sited within five miles of any low-level military flight paths. If it
33 is determined by the commanding officer of any major military installation, or the commanding
34 officer's designee, or the Military Affairs Commission, that with these setbacks that the
35 proposed WEF may result in an adverse impact upon the operation or readiness of a military
36 installation or put the lives of military personnel at risk, the Department shall require a WEF
37 setback in excess of the minimum setbacks required in this section. The increased setback
38 distance shall be determined in a manner that minimizes the potential for encroachment upon
39 the operational and readiness requirements of major military installations and minimizes the
40 risk to the lives of military personnel.

41 **"§ 143-215.119B. Decommissioning and reclamation; recycling requirements; financial**
42 **assurance requirements.**

43 (a) The applicant for a permit or a permit holder for a WEF shall be responsible for
44 proper decommissioning of any turbine following no electricity generation, for any reason,
45 including permit revocation, for six consecutive months, unless a one-time three month
46 extension is granted by the Department. The property will be returned to its original condition
47 no later than one year following the six month period or extension. Decommissioning shall
48 include the complete removal, including any subterranean portions, of all buildings,
49 foundations, cabling, electrical components, turbines, and any other associated facilities or
50 structures, to the level of four feet below grade. Upon decommissioning, the applicant for a

1 permit or a permit holder for a WEF shall be responsible for properly disposing of each piece
2 of equipment used in the WEF.

3 (b) The Department will hire qualified experts to determine a reasonable, conservative
4 cost for decommissioning the WEF, pursuant to subsection (a), which shall be at least one
5 hundred thousand dollars (\$100,000) per turbine. This projection will not consider possible
6 scrap values of any WEF components.

7 (c) The applicant for a permit or a permit holder for a WEF shall establish financial
8 assurance of a type set forth in subsection (e) of this section that will ensure that sufficient
9 funds are available under this subsection, even if the applicant or permit holder becomes
10 insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

11 (d) In order to continue to hold a permit under this Article, a permit holder must
12 maintain financial assurance and must provide any documentation requested by the Department
13 to establish that the permit holder continues to maintain financial assurance. A permit holder
14 shall notify the Department of any significant change in the (i) identity of any person or
15 structure of the business entity of the permit holder, owner, or operator of the WEF or (ii)
16 assets of the permit holder, owner, or operator of the WEF. The permit holder shall notify the
17 Department 30 days prior to making such a change. A change shall be considered significant if
18 it has the potential to affect the financial assurance of the permit holder, owner, or operator, or
19 if it would result in a change in the identity of the permit holder, owner, or operator for
20 purposes of either financial assurance or environmental compliance review. Based on its review
21 of the proposed changes, the Department may require the permit holder to reestablish financial
22 assurance, modify or revoke a permit, or require issuance of a new permit.

23 (e) To establish financial assurance under this section, the applicant may use insurance,
24 financial tests, third-party guarantees by persons who can pass the financial test, guarantees by
25 corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety
26 bonds, any other financial device, or any combination of the foregoing shown to provide
27 protection equivalent to the financial protection that would be provided by insurance if
28 insurance were the only mechanism used.

29 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
30 **approvals required.**

31 (a) Permit Approval. – The Department shall approve an application for a permit for a
32 proposed ~~wind energy facility or proposed wind energy facility expansion~~ WEF unless the
33 Department finds any one or more of the following:

34 (1) Construction or operation of the proposed ~~wind energy facility or proposed~~
35 ~~wind energy facility expansion~~ WEF would be inconsistent with or violate
36 rules adopted by the Department or any other provision of law.

37 (1a) Operation of the proposed WEF would likely create unacceptable
38 interference with civilian air navigation, including aerial spraying or
39 firefighting activities, or any type of civilian or military radar systems.

40 (2) Construction or operation of the proposed ~~wind energy facility or proposed~~
41 ~~wind energy facility expansion~~ WEF would encroach upon or would
42 otherwise have a significant adverse impact on the mission, training, or
43 operations of any ~~major military installation or branch of military in North~~
44 ~~Carolina and result in a detriment to continued military presence in the State.~~
45 ~~In its evaluation, the Department may consider whether the proposed wind~~
46 ~~energy facility or proposed wind energy facility expansion would cause~~
47 ~~interference with air navigation routes, air traffic control areas, military~~
48 ~~training routes, or radar based on information submitted by the applicant~~
49 ~~pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119,~~
50 ~~and any information received by the Department pursuant to subdivision (2)~~
51 ~~of subsection (d) of G.S. 143-215.119.~~ major military installation, or put the

- 1 lives of military personnel in jeopardy, based upon the conclusions of
2 Military Affairs Commission or consulted military personnel.
- 3 (3) ~~Construction or operation of the proposed wind energy facility or proposed~~
4 ~~wind energy facility expansion would result in significant adverse impacts to~~
5 ~~ecological systems, natural resources, cultural sites, recreation areas, or~~
6 ~~historic sites of more than local significance; including national or State~~
7 ~~parks or forests, wilderness areas, historic sites, recreation areas, segments of~~
8 ~~the natural and scenic rivers system, wildlife refuges, preserves and~~
9 ~~management areas, areas that provide habitat for threatened or endangered~~
10 ~~species, primary nursery areas designated by the Marine Fisheries~~
11 ~~Commission and the Wildlife Resources Commission, and critical fisheries~~
12 ~~habitat identified pursuant to the Coastal Habitat Protection Plan. Operation~~
13 of the proposed WEF would either (i) create noise levels exceeding 35
14 decibels (dbA) Lmax for more than five consecutive minutes, as measured
15 from the property line of any adjacent parcel, or (ii) possibly cause serious
16 health, safety, or welfare complications to citizens in the region, based upon
17 the level determined by the Department of Health and Human Services to
18 adequately protect proximate residents or visitors from infrasound.
- 19 (4) ~~Construction or operation of the proposed wind energy facility or proposed~~
20 ~~wind energy facility expansion would have a significant adverse impact on~~
21 ~~fish or wildlife. Operation of the proposed WEF would likely be a net~~
22 economic liability to the host communities based upon the conclusions of the
23 North Carolina Department of Commerce.
- 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. Construction or operation of the WEF~~
30 would have a significant adverse impact on domestic animals, livestock, or
31 wildlife.
- 32 (6) ~~Construction or operation of the proposed wind energy facility or proposed~~
33 ~~wind energy facility expansion would obstruct major navigation channels or~~
34 ~~create a significant obstacle to navigation in coastal waters, as determined by~~
35 ~~the United States Army Corps of Engineers and the United States Coast~~
36 ~~Guard. Construction or operation of the proposed WEF would result in~~
37 significant adverse impacts to ecological systems, natural resources,
38 wilderness areas, wildlife reserves, wildlife refuges, preserves, flyways,
39 bodies of water, groundwater, wetlands, environmental management areas,
40 national or State parks or forests, segments of the natural and scenic rivers
41 system, and locations that provide habitat for threatened or endangered
42 species.
- 43 (7) ~~A permit for a proposed wind energy facility or proposed wind energy~~
44 ~~facility expansion would be denied under any other criteria set out in G.S.~~
45 ~~113A-120. Construction or operation of the proposed WEF would result in~~
46 significant adverse impacts to recreation areas, cultural locations, historic
47 venues of more than local significance, archaeological sites, or cemeteries.
- 48 (8) ~~Construction of the proposed wind energy facility or proposed wind energy~~
49 ~~facility expansion would be prohibited under Article 14 of Chapter 113A of~~
50 ~~the General Statutes, the Mountain Ridge Protection Act of 1983. Operation~~
51 of the proposed WEF would have a significant adverse impact on views or

1 other aspects of any State or national park; wilderness area; significant
2 natural heritage area, as compiled by the North Carolina Natural Heritage
3 Program; or other public lands or private conservation lands designated or
4 dedicated due to their high recreational values.

5 (9) The applicant is not in compliance with all applicable federal, State, or local
6 permit requirements, licenses, or approvals, including local zoning
7 requirements. The applicant has not agreed to an adequate property value
8 guarantee.

9 (10) The applicant has not submitted an acceptable incident response plan.

10 (11) The applicant has failed to establish an acceptable decommissioning plan in
11 accordance with G.S. 143-215.119B.

12 (12) The applicant has not submitted a bona fide power purchase agreement.

13 (13) A permit for a proposed WEF would be denied under any other criteria as set
14 forth under G.S. 113A-119A.

15 (14) Construction of the proposed WEF would be prohibited under the Mountain
16 Ridge Protection Act of 1983, Article 14 of Chapter 113A of the General
17 Statutes.

18 (15) The applicant is not in full compliance with all applicable federal, State, or
19 local permit requirements, licenses, or approvals, including any local zoning
20 laws.

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

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

1 Department shall include, as a condition of a permit for a proposed WEF, a requirement that the
2 applicant satisfactorily resolve all adverse impacts. This permit is good for two years from
3 approval date, and no extension will be granted. At least one turbine shall be erected and
4 operating for this permit to stay in force. This permit is not an authority to build. A conditional
5 use permit or special use permit process under local zoning law shall not start until 15 days
6 after this permit has been granted.

7 (c1) Permit Compliance. – If during the WEF's operation any condition of this permit is
8 violated, then the permit holder will cease operation of all turbines that are in violation within
9 one day of being notified by any governmental agency. The turbines shall not resume operation
10 until the terms of the violation are fully corrected, to the satisfaction of the notifying agency.

11 (d) Other Approvals Required. – The issuance of a permit under this section shall not
12 obviate the need for the applicant to obtain any and all other applicable local, State, or federal
13 permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit,
14 as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to
15 facilities permitted under this section, including the permitting requirements of G.S. 113A-118,
16 (ii) the ability of a city or county to plan for and regulate the siting of a ~~wind energy~~
17 ~~facility~~ WEF in accordance with land-use regulations authorized under Chapter 160A and
18 Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the
19 General Statutes. If there are any conflicts between this law and local regulations, the more
20 stringent of the two shall govern.

21 **"§ 143-215.120A. Construction related damage.**

22 (a) The owner of any permitted WEF shall, to the extent practicable, repair or replace
23 all real or personal property, public or private, damaged during the WEF construction. The
24 applicant shall reimburse the Department of Transportation (DOT) for repairs and
25 reconstruction to roads that are necessary due to the construction or decommissioning of the
26 WEF. A qualified independent third party, agreed upon by DOT and the applicant, shall be
27 hired to evaluate, document, and rate the road conditions prior to construction or
28 decommissioning of the WEF, and again 30 days after the WEF is completed or removed.

29 (b) Any road damage during construction found by the third party to be caused by
30 activities of the applicant or one or more of its subcontractors shall be repaired or reconstructed
31 to the satisfaction of DOT or the county at the applicant's expense, prior to the final inspection.
32 In addition, the applicant shall pay for all costs related to this third party pre-inspection work
33 prior to receipt of the final inspection.

34 (c) The surety for removal of a decommissioned WEF shall not be released until any
35 road damage that is identified by this third party during and after decommissioning due to
36 activities of the applicant or the applicant's contractors or subcontractors has been repaired or
37 reconstructed to the satisfaction of the DOT or the county at the applicant's expense. In addition,
38 the applicant shall pay for all costs related to work of this third party's inspection prior to
39 receipt of the release of the surety per G.S. 143-215.119B.

40 **"§ 143-215.121. Financial assurance requirements.**

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

1 **"§ 143-215.122. Monitoring and reporting.**

2 The applicant shall annually submit copies to the Department of ~~any~~all post-construction
3 monitoring, such as reports on ambient noise levels, groundwater testing, ground water levels
4 in the surficial aquifer, hydraulic head measurements in lower confined aquifers, PVG claims,
5 the impacts on humans or wildlife in the location of and in the area proximate to the wind
6 energy facility or wind energy facility expansion and within five miles of the WEF. The
7 applicant shall annually submit copies to the Department of any impacts on military
8 operationspost-construction monitoring or reports that are required by the ~~United States Fish~~
9 ~~and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina~~
10 ~~Utilities Commission,~~major WEF stakeholders or any other government agency. The applicant
11 shall also annually submit copies to the Department of any post-construction monitoring or
12 reports on any impacts on military operations.

13 **"§ 143-215.123. Annual review of military presence.**

14 The Department shall consult with ~~representatives of the major military installations~~major
15 military installation representatives and MAC to review information regarding military air
16 navigation routes, air traffic control areas, military training routes, special-use air space, radar,
17 or other potentially affected military operations at least once per year. The Department shall
18 provide ~~relevant information it is aware of~~ on civil air navigation or military air navigation
19 routes, air traffic control areas, military training routes, special-use air space, radar, or other
20 potentially affected military or civilian operations to permit applicants as requested.

21 ...

22 **"§ 143-215.126. Civil penalties.**

23 (a) The Secretary of Environmental Quality ~~may~~shall impose an administrative penalty
24 on a person who constructs a ~~wind energy facility or wind energy facility expansion~~WEF
25 without obtaining a permit under this Article or who constructs or operates a ~~wind energy~~
26 ~~facility~~WEF in violation of its permit terms and conditions. Each day of a continuing violation
27 shall constitute a separate violation. The penalty shall be no less than one thousand dollars
28 (\$1,000) per day and shall not exceed ten thousand dollars (\$10,000) per day.

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

34 **"§ 143-215.127. Liability.**

35 (a) Any person who owns, operates, or controls a WEF shall maintain (i) commercial
36 general liability insurance, covering personal injuries, death, and property damage of ten
37 million dollars (\$10,000,000) per occurrence, with a total of twenty million dollars
38 (\$20,000,000) coverage aggregate, which shall specifically include the affected counties and
39 municipalities and their officers, councils, employees, committee members, attorneys, agents,
40 and consultants as additional named insureds and (ii) umbrella coverage of fifty million dollars
41 (\$50,000,000).

42 (b) The insurance policies shall be issued by an agent or representative of an insurance
43 company licensed to do business in the State.

44 (c) The insurance policies shall contain an endorsement obligating the insurance
45 company to furnish the Department with at least 30 days' prior written notice in advance of a
46 cancellation.

47 (d) No more than 15 days after the grant of the permit and before construction is
48 initiated, the permit holder shall deliver to the Department a copy of each of the policies or
49 certificates representing the insurance in the required amounts.

1 (e) Any person who owns, operates, or controls a WEF shall be strictly liable, without
2 regard to fault, for damages to persons or property, public or private, caused by the construction,
3 maintenance, operation, decommissioning, disassembly, or demolition of that WEF.

4 (f) In order to provide maximum protection for the public interest, any actions brought
5 pursuant to this section may be brought against any one or more of the persons having control
6 over the WEF or the activity that caused or contributed to the damages. All such persons shall
7 be jointly and severally liable, but ultimate liability as between the parties may be determined
8 by common-law principles.

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

12 (1) An act of God.

13 (2) An act of war or sabotage.

14 (3) An act or omission by the federal government, or the State, or its political
15 subdivisions.

16 (4) An act or omission by, or at the direction of, a law enforcement officer or
17 fireman.

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

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

22 **"§ 143-215.128. Indemnification.**

23 (a) All permits issued under this Article shall contain an indemnification provision
24 applicable to the governing bodies for the WEF. For purposes of this section, "governing
25 bodies" shall mean the State, each county containing all or part of the WEF, and the governing
26 bodies of all municipalities in each of those counties, and shall include their employees or
27 agents.

28 (b) The WEF permit applicant shall at all times defend, indemnify, protect, save, hold
29 harmless, and exempt the governing bodies from penalties, damages, costs, charges, or other
30 expenses arising out of claims, suits, demands, causes of action, or award of damages at law or
31 in equity, whether compensatory or punitive, which might arise out of, or are caused by, the
32 placement, construction, erection, modification, location, equipment performance, use,
33 operation, maintenance, repair, installation, replacement, removal, or restoration of the WEF,
34 excepting, however, any portion of such claims, suits, demands, causes of action, or award of
35 damages as may be attributable to the negligent or intentional acts or omissions of the
36 governing bodies.

37 (c) Reasonable attorneys' fees, consultants' fees, and expert witness fees shall be
38 included in those costs that are recoverable by the governing bodies under the indemnification
39 required by this section."

40 **SECTION 2.** This act is effective when it becomes law and applies to all wind
41 energy facilities filing a permit application under Article 21C of Chapter 143 of the General
42 Statutes, as amended by this act on or after that date.