



HOUSE BILL 574: Wind Energy/Consistency With Military.

2017-2018 General Assembly

Committee:	House Energy and Public Utilities. If favorable, re-refer to Homeland Security, Military, and Veterans Affairs	Date:	April 18, 2017
Introduced by:	Reps. Grange, Szoka, Watford	Prepared by:	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H574-CSRI-7		

OVERVIEW: House Bill 574 would modify the permitting process governing wind energy facilities.

The PCS makes technical, clarifying, and conforming changes to the First Edition of the bill.

CURRENT LAW: Article 21C of Chapter 143 the General Statutes requires all wind energy facilities that have a rated capacity of one megawatt or more to obtain a permit from the Department of Environmental Quality (DEQ) for construction and operation of the facility.

A permit application for a proposed wind energy facility must include:

- A narrative description of the proposed facility and map showing the location of each turbine.
- A description of civil air navigation or military activities that may be affected by the construction or operation of the proposed facility.
- Documentation addressing any potential adverse impacts on military activities as identified by the Department of Defense (DOD) Clearinghouse and any mitigation actions agreed to by the applicant.
- A study of the noise and shadow flicker impacts of the turbines associated with the proposed facility.
- A study of the effects of the proposed facility on natural resources.
- The permit application fee of \$3,500.
- A plan for decommissioning and removal of the facility.

DEQ must approve an application for a proposed wind energy facility unless DEQ finds that construction or operation of the facility would:

- Be inconsistent with or violate applicable rules under the Administrative Code, or any other provision of law.
- Encroach upon or otherwise have a significant adverse impact on military operations.
- Result in significant adverse impacts to natural resources, fish, wildlife, or views from State or national parks and other areas with high recreational values.

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House PCS 574

Page 2

- Obstruct major navigation channels.
- Be denied based on criteria under the Coastal Area Management Act or prohibited under the Mountain Ridge Protection Act.
- Not comply with all applicable federal, State, or local permitting requirements, licenses, or approvals, including local zoning requirements.

Article 21C otherwise requires permit holders to:

- Establish financial assurance that will ensure sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State.
- Submit copies of any required post-construction monitoring annually to the DEQ.

The Secretary of Environmental Quality is authorized to impose an administrative penalty in an amount not to exceed ten thousand dollars (\$10,000) per day, or institute an action for injunctive relief, in response to construction or operation of a facility in violation of the permitting requirements.

BILL ANALYSIS: The bill would make the following changes to the permitting process for wind energy facilities:

- Eliminate the need for a permit to operate a wind energy facility, requiring only a permit to construct a facility or expand a facility.
- Add the Department of Military and Veterans Affairs (DMVA) as a State entity that, along with DEQ, has responsibility for evaluating certain criteria for permit issuance to construct or expand wind energy facilities.
- Eliminate several required elements of a permit application for a wind energy facility, including:
 - Submission of copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.
 - Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion, and a requirement that the permit applicant provide notice to these property owners of: (i) the location of the proposed wind energy facility or expansion, and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner; and (ii) a description of the proposed wind energy facility or expansion.
 - Studies of: (i) the noise impacts of the turbines to be associated with the proposed wind energy facility or expansion; and (ii) shadow flicker impacts of the turbines to be associated with the facility, unless the turbines will be located in a sound or in offshore waters.
- Eliminate a requirement that DEQ provide notice of a completed permit application to the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of a proposed wind energy facility or facility expansion.
- Require a permit applicant for a wind energy facility or facility expansion to obtain a letter to proceed from the DMVA. The DMVA is directed to issue such a letter only after it has

House PCS 574

Page 3

determined that the proposed wind energy facility or proposed expansion of a wind energy facility would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations."significant adverse impact" is defined under the bill to mean "any demonstrable adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training, that (i) is likely to impair or degrade the ability of the Armed Forces to perform their warfighting missions and (ii) is unable to be addressed through mitigation measures." The DMVA must determine whether to issue a letter to proceed within 60 days of the public hearing required by the permitting process under existing law. If the DMVA fails to act within that timeframe, the applicant may treat the failure to act as the DMVA's determination that the proposed facility or expansion would not cause significant adverse impacts on air navigation routes, air traffic control areas, military training routes, or radar installations. If, however, within that timeframe the DMVA determines that the proposed facility or expansion would cause significant adverse impacts to military operations, the DMVA must issue a letter of concern to DEQ and the applicant. If a letter of concern is issued, the DMVA must engage with the applicant, the commanding military officer of any major military installation impacted in the letter of concern, and the DoD Clearinghouse designee for that installation to address the issues identified in the letter of concern. If the parties are unable to resolve the concerns, the applicant may treat the failure to agree as a denial of the letter to proceed and may challenge the denial as provided under Chapter 150B of the General Statutes.

- Modify DEQ's permit approval criteria to: (i) add receipt of a letter to proceed from the DMVA as requirement for approval; and (ii) eliminate DEQ's own consideration of a proposed facility's impact on military operations, as well as consideration of whether construction of a proposed wind energy facility or expansion would:
 - Have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.
 - Be denied under the permitting criteria established for development under the Coastal Area Management Act.

In addition:

- DEQ would no longer have to delay a final decision on a permit application pending receipt of a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration.
- DEQ's failure to act within 90 days of receipt of a completed application, would be treated as granting of the permit by DEQ (rather than a denial as provided under existing law).
- Eliminate the requirement that permit holders establish financial assurance that will ensure sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State.

House PCS 574

Page 4

EFFECTIVE DATE: This bill would be effective when it becomes law, and would apply only to those wind energy facilities or wind energy facility expansions for which no "Determination of No Hazard to Air Navigation" has been issued by the Federal Aviation Administration on or before that date.