



HOUSE BILL 574: Wind Energy/Consistency With Military.

2017-2018 General Assembly

Committee: House Energy and Public Utilities. If **Date:** April 26, 2017
favorable, re-refer to Homeland Security,
Military, and Veterans Affairs. If favorable,
re-refer to Rules, Calendar, and Operations of
the House

Introduced by: Reps. Grange, Szoka, Watford

Prepared by: Jennifer McGinnis
Committee Counsel

Analysis of: PCS to First Edition
H574-CSRI-12

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 574 would modify the permitting process governing wind energy facilities.*

The PCS would make the following changes to the First Edition of the bill:

- Reinstate language from existing law that requires a permit to operate a wind energy facility (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires the Department of Environmental Quality (DEQ) to 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 (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires notice to adjacent property owners (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires a permit application for a wind energy facility include 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 (which language would have been eliminated by the First Edition).
- Reinstate language from existing law that requires 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. The PCS would add language to the requirement for these studies to provide that the requirements can be met if the applicant demonstrates it has submitted such a study pursuant to local requirements.
- Reinstate language from existing law which provides that failure of DEQ to act within 90 days of receipt of a completed application, would be treated as a denial of the permit by DEQ (which had would have been modified to provide that DEQ's failure to act within the required timeframe would be treated as a grant of the permit under the First Edition).

Karen Cochrane-Brown
Director



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Legislative Analysis
Division
919-733-2578

House PCS 574

Page 2

- Eliminate language included in the First Edition of the bill providing that obtaining other applicable local, State, or federal permits, licenses, or approvals would not be a requirement for the consideration and grant of a permit under the State permit process for wind energy facilities.
- Would modify language concerning the Department of Military and Veterans Affairs' (DMVA) failure to act within the required timeframe for a "letter to proceed" to provide that this would be treated as the DMVA's issuance "a letter of concern" with respect to a permit application for a proposed wind energy facility or facility expansion. The First edition would have allowed the applicant to 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.
- Would add an element to the definition of the term "significant adverse impact" with respect to the DMVA's analysis of a wind facility's impact on military operations, to include whether impacts from the facility would result in a detriment to continued military presence in the State.
- Reinstate language from existing law which requires that applicants and permit holders for wind energy facilities 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 (which language would have been eliminated by the First Edition). The PCS also adds language to the requirement under existing law that provides: "To satisfy this requirement, the applicant may demonstrate that it previously met the financial assurance requirements pursuant to local, state or federal requirements."
- Would add language to existing law to allow DEQ to transfer a permit for a wind facility provided that the successor-owner of the facility submits a written request for the transfer of the permit to DEQ, and complies with all terms and conditions of the permit once the permit has been transferred. The provision would also prohibit DEQ from imposing new or different terms and conditions on the permit without prior express consent of the successor-owner.

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 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.

House PCS 574

Page 3

- 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.
- 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 PCS would make the following changes to the permitting process for wind energy facilities:

- Add the 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.
- 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 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; (ii) would result in a detriment to continued military presence in the State; and (iii) 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, it would be treated as an issuance of a "letter of concern" (explained below). If, however, within that timeframe the DMVA determines that the proposed facility or expansion would cause significant adverse impacts to military

House PCS 574

Page 4

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.

- Add language to existing law to allow DEQ to transfer a permit for a wind facility provided that the successor-owner of the facility submits a written request for the transfer of the permit to DEQ, and complies with all terms and conditions of the permit once the permit has been transferred. The provision would also prohibit DEQ from imposing new or different terms and conditions on the permit without prior express consent of the successor-owner.

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.