



SENATE BILL 377: Military Base Protection Act.

2019-2020 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	May 6, 2019
Introduced by:	Sens. Brown, Newton, Sanderson	Prepared by:	Jennifer McGinnis
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *Senate Bill 377 would prohibit the construction, operation, or expansion activities associated with a wind energy facility in any location included in the area designated in red as "Significant" on the map entitled "Vertical Obstruction Impact on the NC Military Mission."*

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.
- Obstruct major navigation channels.
- Be denied based on criteria under the Coastal Area Management Act or prohibited under the Mountain Ridge Protection Act.

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- 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.

BACKGROUND: Section 13 of S.L. 2017-192/H589 established a moratorium on the consideration of applications and on the issuance of permits for wind energy facilities and wind energy expansions in the State from January 1, 2017, to December 31, 2018. The act also directed the General Assembly to study the extent and scope of military operations in the State in order to create maps and data to be used to communicate the temporal and spatial use of land-, air-, and water-based military operations and identify areas where energy infrastructure and development pose a threat to, encroach upon, or otherwise reduce operations, training capabilities, or readiness. The act required the Legislative Services Officer to issue an RFP for collection of data and creation of maps by September 1, 2017, and the contract was let to AECOM. The study, including maps and data, and findings and recommendations, was due on or before May 31, 2018.

BILL ANALYSIS: The bill would prohibit construction, operation, or expansion activities associated with a wind energy facility in any location included in the area designated in red as "Significant" on the map entitled "Vertical Obstruction Impact on the NC Military Mission." The Department of Commerce and the Department of Environmental Quality would be required to make the map available on their Web sites for public access.

EFFECTIVE DATE: This bill would be effective when it becomes law and would apply to applications for permits for a proposed wind energy facility or a proposed wind energy facility expansion pending or submitted on or after that date.