

DENR to Issue Siting Permits for Wind Energy Facilities

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In April, I posted a discussion of the background of proposed legislation (HB 484 and SB 491) concerning the siting of wind energy facilities in North Carolina. In particular, the legislature was responding to concerns about the impact of such facilities on military training and operations in North Carolina: high speed combat aircraft at low altitudes and 600 foot tall wind turbines are a potentially dangerous combination. Promoting alternative energy facilities while protecting the military mission in North Carolina—the second largest segment of the North Carolina economy—are the twin goals of the proposed legislation.

After amendments in both the House and Senate, HB484 was passed and signed into law by the Governor last week. It is effective immediately and provides a procedure for the North Carolina Department of Environment and Resources (“DENR”) to issue permits for the siting of wind energy facilities, taking into consideration impacts on military operations and training, as well as environmental impacts. The statute is at: <http://www.ncleg.net/Sessions/2013/Bills/House/HTML/H484v9.html>.

The permitting process set out in the statute is summarized in the [attached table](#).

The statute as well as Executive Order 124 (signed by Governor Perdue) charge DENR with staying abreast of military operational and training needs as they may impact the siting of wind energy facilities and sharing that information with applicants. This, plus threshold consultation steps prescribed by the statute, are designed to identify potential problems early in the process—before a complete application is even submitted. Once a potential site has been preliminarily evaluated and the project scoped, the application process will require the applicant to study and provide information on potential turbine noise and flicker impacts as well as potential impacts on military operations and training and natural resources (including endangered and threatened species). There are specific provisions for the early involvement of officials from potentially affected military programs, environmental agencies other than DENR (U.S. Fish and Wildlife, the N.C. Wildlife Resources Commission) as well as local governments. After the application has been fully developed, there will be an opportunity for public comment and hearing. There are protections built into the process for confidential, proprietary information (trade secrets). The entire process is also coordinated with FAA and Department of Defense evaluations, but does not defer to the evaluations made in those processes.

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As pointed out in our earlier posting, DENR has a long history of working closely with the military and already has a substantial body of knowledge about areas in the state where development of alternative energy would not adversely affect military operations and training. In supporting the passage of the legislation, DENR assured legislators and the public that, consistent with DENR's Mission Statement, it sees its role in permitting the siting of facilities as one of assisting in a constructive way rather than obstructing responsible development, consistent with DENR's goal of protecting both the environment and other significant partners in North Carolina's economy. The permitting process will be handled initially through DENR's Division of Energy, Mining and Land Resources.

Brooks Pierce has several attorneys familiar with this process and DENR's information sources regarding military operations and training in North Carolina. For more information regarding this new legislation please contact Bill Cary at bcary@brookspierce.com.

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