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**S. 100**

**STATUS INFORMATION**

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Summary: Wind energy facilities

**HISTORY OF LEGISLATIVE ACTIONS**

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12/9/2020 Senate Referred to Committee on **Judiciary**

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\100_20201209.docx)

**A** **BILL**

TO AMEND SECTION 58‑33‑20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS APPLICABLE TO THE “UTILITY FACILITY SITING AND ENVIRONMENTAL PROTECTION ACT”, SO AS TO REVISE THE DEFINITION OF “MAJOR UTILITY FACILITY” AND TO PROVIDE DEFINITIONS FOR “DOD SITING CLEARINGHOUSE”, “NOTICE OF PRESUMED RISK”, “ADVERSE IMPACT ON MILITARY OPERATIONS AND READINESS”, “MAJOR MILITARY BASE”, AND “WIND ENERGY FACILITY”; TO AMEND SECTION 58‑33‑120, RELATING TO APPLICATIONS FOR A CERTIFICATE TO CONSTRUCT A UTILITY FACILITY, SO AS TO PROVIDE THAT CERTAIN INFORMATION REGARDING WIND ENERGY FACILITIES MUST BE INCLUDED ON THE APPLICATION; AND TO AMEND SECTION 58‑33‑140, RELATING TO THE PARTIES TO CERTIFICATION PROCEEDINGS, SO AS TO PROVIDE THAT THE PARTIES ALSO SHALL INCLUDE THE SOUTH CAROLINA AERONAUTICS COMMISSION AND THE DOD SITING CLEARINGHOUSE FOR PROCEEDINGS RELATED TO WIND ENERGY FACILITIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 58‑33‑20 of the 1976 Code is amended to read:

“Section 58‑33‑20. The following words, when used in this chapter, has the following meanings, unless otherwise clearly apparent from the context:

(1) The term ‘commission’ means Public Service Commission.

(2) The term ‘major utility facility’ means:

(a) electric generating plant and associated facilities designed for, or capable of, operation at a capacity of more than seventy‑five megawatts.

(b) an electric transmission line and associated facilities of a designed operating voltage of one hundred twenty‑five kilovolts or more; provided, however, that the words ‘major utility facility’ shall not include electric distribution lines and associated facilities, nor shall the words ‘major utility facility’ include electric transmission lines and associated facilities leased to and operated by (or which upon completion of construction are to be leased to and operated by) the South Carolina Public Service Authority.

(c) a wind energy facility that, pursuant to 49 U.S.C. Section 44718, is required to undergo an aeronautical study.

(3) The term ‘commence to construct’ means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include surveying or changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

(4) The term ‘municipality’ means any county or municipality within this State.

(5) The term ‘person’ includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, municipality, any other organization, or any combination of any of the foregoing, but shall not include the South Carolina Public Service Authority.

(6) The term ‘public utility’ or ‘utility’ means any person engaged in the generating, distributing, sale, delivery, or furnishing of electricity for public use.

(7) The term ‘land’ means any real estate or any estate or interest therein, including water and riparian rights, regardless of the use to which it is devoted.

(8) The term ‘certificate’ means a certificate of environmental compatibility and public convenience and necessity.

(9) The term ‘regulatory staff’ means the executive director or the executive director and the employees of the Office of Regulatory Staff.

(10) The term ‘DoD Siting Clearinghouse’ means the Military Aviation and Installation Assurance Siting Clearinghouse of the Department of Defense, as established by 10 U.S.C. Section 183a.

(11) The term ‘Notice of presumed risk’ means the notice provided by the DoD Siting Clearinghouse to an owner of an energy facility pursuant to 10 U.S.C. Section 183a(c)(2).

(12) The term ‘adverse impact on military operations and readiness’ has the same meaning as provided for that term in 10 U.S.C. Section 183a(h).

(13) The term ‘major military base’ includes, but is not limited to, Fort Jackson, Shaw Air Force Base, Marine Corps Air Station Beaufort, Marine Corps Recruit Depot Parris Island, Joint Base Charleston, McEntire Joint National Guard Base, and any facility, range, or military training route located within the State that is subject to the base commanders’ use, oversight, or control, to include locations where the military conducts other testing and training activities such as tactical landing zones, special use airspace, and terrain flight routes. The term also shall include the United States Coast Guard Stations at Charleston and Georgetown.

(14) The term ‘wind energy facility’ means an electrical wind generation facility, or other supporting structures subject to the commission’s jurisdiction, whose primary purpose is to generate electricity.”

SECTION 2. Section 58‑33‑120 of the 1976 Code is amended to read:

“Section 58‑33‑120. (1) An applicant for a certificate shall file an application with the commission, in such form as the commission may prescribe. The application must contain the following information:

(a) a description of the location and of the major utility facility to be built;

(b) a summary of any studies which have been made by or for applicant of the environmental impact of the facility;

(c) a statement explaining the need for the facility; ~~and~~

(d) for wind energy generation facilities:

(i) a map shall identify the specific location and tower hub height with rotor diameter for each proposed wind turbine; and

(ii) documentation that the facility owner has completed the review required by the DoD Siting Clearinghouse pursuant to 32 C.F.R. Part 211. No person having received a DoD Siting Clearinghouse notice of presumed risk pursuant to 10 U.S.C. Section 183a, shall be issued a certificate for the construction or operation of any wind energy facility, until such time as any adverse impacts on military operations and readiness have been resolved through a mitigation agreement, or other means, as agreed to between the Department of Defense and the wind energy facility owner. Areas of adverse impact on military operations and readiness include, but are not limited to, military training routes, drop zones, approaches to runways, radar sites, and bombing ranges, to include locations where the military conducts other testing and training activities such as tactical landing zones, special use airspace, and terrain flight routes; and

(e) any other information as the applicant may consider relevant or as the commission may by regulation or order require. A copy of the study referred to in item (b) above shall be filed with the commission, if ordered, and shall be available for public information.

(2) Each application shall be accompanied by proof of service of a copy of the application on the Office of Regulatory Staff, the chief executive officer of each municipality, and the head of each state and local government agency, charged with the duty of protecting the environment or of planning land use, in the area in the county in which any portion of the facility is to be located. The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed. For wind energy facilities, proof of service of a copy of the application to the commanding officers of major military bases, the DoD Siting Clearinghouse, and the South Carolina Aeronautics Commission also shall accompany the application.

(3) Each application also must be accompanied by proof that public notice was given to persons residing in the municipalities entitled to receive notice under subsection (2) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in newspapers of general circulation as will serve substantially to inform such persons of the application.

(4) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies, or persons identified in subsections (2) and (3) of this section may be cured pursuant to orders of the commission designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the commission may, after filing, require the applicant to serve notice of the application or copies thereof, or both, upon such other persons, and file proof thereof, as the commission may deem appropriate.

(5) An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe. Notice of the application shall be given as set forth in subsections (2) and (3) of this section.”

SECTION 3. Section 58‑33‑140 of the 1976 Code is amended to read:

“Section 58‑33‑140. (1) The parties to a certification proceeding shall include:

(a) the applicant;

(b) the Office of Regulatory Staff, the Department of Health and Environmental Control, the Department of Natural Resources, and the Department of Parks, Recreation and Tourism;

(c) each municipality and government agency entitled to receive service of a copy of the application under subsection (2) of Section 58‑33‑120 if it has filed with the commission a notice of intervention as a party within thirty days after the date it was served with a copy of the application; ~~and~~

(d) any person residing in a municipality entitled to receive service of a copy of the application under subsection (2) of Section 58‑33‑120, any domestic nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health, or other biological values, to preserve historical sites, to promote consumer interest, to represent commercial and industrial groups, or to promote the orderly development of the area in which the facility is to be located; or any other person, if such a person or organization has petitioned the commission for leave to intervene as a party, within thirty days after the date given in the published notice as the date for filing the application, and if the petition has been granted by the commission for good cause shown; and

(e) for proceedings related to wind energy facilities, the South Carolina Aeronautics Commission and the DoD Siting Clearinghouse also must be parties to the proceedings.

(2) Any person may make a limited appearance in the sixty days after the date given in the published notice as the date for filing the application. No person making a limited appearance shall be a party or shall have the right to present oral testimony or argument or cross‑examine witnesses.

(3) The commission may, in extraordinary circumstances for good cause shown, and giving consideration to the need for timely start of construction of the facility, grant a petition for leave to intervene as a party to participate in subsequent phases of the proceeding, filed by a municipality, government agency, person, or organization which is identified in paragraphs (b) or (c) of subsection (1) of this section, but which failed to file a timely notice of intervention or petition for leave to intervene, as the case may be.”

SECTION 4. This act takes effect upon approval by the Governor.

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