

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 433\*  
Committee Substitute Favorable 4/10/13  
Third Edition Engrossed 4/11/13  
Senate Commerce Committee Substitute Adopted 4/23/13  
Senate Judiciary I Committee Substitute Adopted 5/9/13

Short Title: Land Use Surrounding Military Installations.

(Public)

Sponsors:

Referred to:

March 27, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO SUPPORT THE ACTIVITIES OF THE ARMED FORCES AND TO  
3 MAINTAIN AND ENHANCE THE MILITARY'S PRESENCE IN NORTH CAROLINA  
4 BY REGULATING THE HEIGHT OF BUILDINGS AND STRUCTURES LOCATED IN  
5 AREAS THAT SURROUND MILITARY INSTALLATIONS IN THE STATE.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Chapter 143 of the General Statutes is amended by adding a new  
8 Article to read:

9 "Article 9G.

10 "Military Lands Protection.

11 "§ 143-151.70. Short title.

12 This Article shall be known as the Military Lands Protection Act of 2013.

13 "§ 143-151.71. Definitions.

14 Within the meaning of this Article:

- 15 (1) "Area surrounding major military installations" is the area that extends five  
16 miles beyond the boundary of a major military installation and may include  
17 incorporated and unincorporated areas of counties and municipalities.  
18 (2) "Building Code Council" means the Council created pursuant to Article 9 of  
19 Chapter 143 of the General Statutes.  
20 (3) "Commissioner" means the Commissioner of Insurance.  
21 (4) "Construction" includes reconstruction, alteration, or expansion.  
22 (5) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp  
23 Lejeune Marine Corps Air Base, New River Marine Corps Air Station,  
24 Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny  
25 Point, the United States Coast Guard Air Station at Elizabeth City, Naval  
26 Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort  
27 Fisher, and Seymour Johnson Air Force Base, in its own right and as the  
28 responsible entity for the Dare County Bombing Range, and any facility  
29 located within the State that is subject to the installations' oversight and  
30 control.  
31 (6) "Person" means any individual, partnership, firm, association, joint venture,  
32 public or private corporation, trust, estate, commission, board, public or



1 private institution, utility, cooperative, interstate body, the State of North  
2 Carolina and its agencies and political subdivisions, or other legal entity.

3 (7) "Tall buildings or structures" means any building, structure, or unit within a  
4 multiunit building with a vertical height of more than 200 feet measured  
5 from the top of the foundation of the building, structure, or unit and the  
6 uppermost point of the building, structure, or unit. "Tall buildings or  
7 structures" does not include:

8 a. Water, radio, telephone, cellular, or television towers or any  
9 equipment for the transmission of electricity or communications or  
10 both.

11 b. Slender structures and minor vertical projections of a parent building,  
12 including chimneys, flagpoles, flues, spires, steeples, belfries,  
13 cupolas, antennas, poles, wires, or windmills. Windmills exempt  
14 pursuant to this sub-subdivision shall project no more than 20  
15 vertical feet above the parent building.

16 c. Buildings and structures listed individually or as contributing  
17 resources within a district listed in the National Register of Historic  
18 Places.

19 **"§ 143-151.72. Legislative findings.**

20 North Carolina has a vested economic interest in preserving, maintaining, and sustaining  
21 land uses that are compatible with military activities at major installations. Development  
22 located proximate to military installations has been identified as a critical issue impacting the  
23 long-term viability of the military in this State. Additional concerns associated with  
24 development include loss of access to air space and coastal and marine areas and radio  
25 frequency encroachment. The construction of tall buildings or structures in areas surrounding  
26 major military installations is of utmost concern to the State as those buildings and structures  
27 may interfere with or impede the military's ability to carry out activities that are vital to its  
28 function and future presence in North Carolina.

29 **"§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

30 (a) No county or city may authorize the construction of, and no person may construct, a  
31 tall building or structure in any area surrounding a major military installation in this State,  
32 unless the county or city is in receipt of either a letter of endorsement issued to the person by  
33 the Building Code Council pursuant to G.S. 143-151.75 or proof of the Council's failure to act  
34 within the time allowed pursuant to G.S. 143-151.75.

35 (b) No county or city may authorize the provision of the following utility services to  
36 any building or structure constructed in violation of subsection (a) of this section: electricity,  
37 telephone, gas, water, sewer, or septic system.

38 **"§ 143-151.74. Exemption from applicability.**

39 Wind energy facilities and wind energy facility expansions, as those terms are defined in  
40 Chapter 143 of the General Statutes, that are subject to the applicable permit requirements of  
41 that Chapter shall be exempt from obtaining the endorsement required by this Article.

42 **"§ 143-151.75. Endorsement for construction of tall buildings or structures required.**

43 (a) No person shall undertake construction of a tall building or structure in any area  
44 surrounding a major military installation in this State without either first obtaining the  
45 endorsement from the Building Code Council or proof of the Council's failure to act within the  
46 time allowed.

47 (b) A person seeking endorsement for the construction of a tall building or structure in  
48 any area surrounding a major military installation in this State shall provide written notice of  
49 the intent to seek endorsement to the commanders of the installation that is located within five  
50 miles of the proposed construction of a tall building or structure and shall provide all of the  
51 following to the Building Code Council:

- 1           (1)    Identification of the major military installation and the base commander of  
2           the installation that is located within five miles of the proposed construction  
3           of a tall building or structure.
- 4           (2)    A copy of the written notice sent to the commanders of the installation  
5           identified in subdivision (1) of this subsection that is located within five  
6           miles of the proposed construction of a tall building or structure.
- 7           (3)    A written statement from the base commander of the installation identified  
8           in subdivision (1) of this subsection that includes both of the following:
- 9           a.     A determination whether the location of the proposed construction of  
10          the tall building or structure is within a protected area that surrounds  
11          the installation.
- 12          b.     A determination whether any activities of the installation may be  
13          adversely affected by the proposed construction of the tall building or  
14          structure. A detailed description of the potential adverse effects,  
15          including frequency disturbances and physical obstructions, shall  
16          accompany the determination required by this sub-subdivision.
- 17          (4)    A written "Determination of No Hazard to Air Navigation" issued by the  
18          Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14  
19          of the Code of Federal Regulations (January 1, 2012, Edition) for the  
20          proposed construction of the tall building or structure.
- 21          (c)    The Building Code Council shall not endorse the construction of a tall building or  
22          structure if the Council finds any one or more of the following:
- 23               (1)    Construction of the proposed tall building or structure would encroach upon  
24               or otherwise interfere with the mission, training, or operations of any major  
25               military installation in North Carolina and result in a detriment to continued  
26               military presence in the State. In its evaluation, the Building Code Council  
27               may consider whether the proposed tall building or structure would cause  
28               interference with air navigation routes, air traffic control areas, military  
29               training routes, or radar based on the written statement received from a  
30               commander of a major military installation required pursuant to subdivision  
31               (3) of subsection (b) of this section and written comments received by  
32               members of affected communities.
- 33               (2)    The Council is not in receipt of the written "Determination of No Hazard to  
34               Air Navigation" issued to the person by the Federal Aviation Administration  
35               required pursuant to subdivision (4) of subsection (b) of this section.
- 36          (d)    The Building Code Council shall make a final decision on the request for  
37          endorsement of the construction of a tall building or structure within 60 days of receipt of the  
38          items provided by the person pursuant to subsection (b) of this section. If the Council  
39          determines that a request for the construction of a tall building or structure fails to meet the  
40          requirements for endorsement under this section, the Council shall deny the request. The  
41          Council shall notify the person of the denial, and the notice shall include a written statement of  
42          the reasons for the denial. If the Council fails to act within any time period set forth in this  
43          section, the person may treat the failure to act as a decision to endorse the construction.
- 44          (e)    The Building Code Council may meet by telephone, video, or Internet conference,  
45          so long as consistent with applicable law regarding public meetings, to make a decision on a  
46          request for endorsement for the construction of a tall building or structure pursuant to  
47          subsection (d) of this section.
- 48          **"§ 143-151.76. Application to existing tall buildings and structures.**
- 49          G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding  
50          major military installations upon the effective date of this Article as follows:

1           (1) No reconstruction, alteration, or expansion may aggravate or intensify a  
2           violation by an existing building or structure that did not comply with  
3           G.S. 143-151.73 upon its effective date.

4           (2) No reconstruction, alteration, or expansion may cause or create a violation  
5           by an existing building or structure that did comply with G.S. 143-151.73  
6           upon its effective date.

7 **"§ 143-151.77. Enforcement and penalties.**

8           In addition to injunctive relief, the Commissioner may assess and collect a civil penalty  
9           against any person who violates any of the provisions of this Article or rules adopted pursuant  
10          to this Article, as provided in this subsection. The maximum civil penalty for a violation is five  
11          thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each  
12          day of a continuing violation may constitute a separate violation if the person is not in the  
13          process of remedying the violation.

14          (1) The Commissioner shall determine the amount of the civil penalty and shall  
15          notify the person who is assessed the civil penalty of the amount of the  
16          penalty and the reason for assessing the penalty. The notice of assessment  
17          shall be served by any means authorized under Rule 4 of G.S. 1A-1 and shall  
18          direct the violator to either pay the assessment or contest the assessment  
19          within 30 calendar days by filing a petition for a contested case under Article  
20          3 of Chapter 150B of the General Statutes. If a violator does not pay a civil  
21          penalty assessed by the Commissioner within 30 calendar days after it is  
22          due, the Commissioner shall request that the Attorney General institute a  
23          civil action to recover the amount of the assessment. The civil action may be  
24          brought in the superior court of any county where the violation occurred. A  
25          civil action must be filed within one year of the date the assessment was due.  
26          An assessment that is not contested is due when the violator is served with a  
27          notice of assessment. An assessment that is contested is due at the  
28          conclusion of the administrative and judicial review of the assessment.

29          (2) In determining the amount of the penalty, the Commissioner shall consider  
30          the degree and extent of harm caused by the violation, the cost of rectifying  
31          the damage, the amount of money the violator saved by noncompliance,  
32          whether the violation was committed willfully, the prior record of the  
33          violator in complying or failing to comply with this Article, and the action of  
34          the person to remedy the violation.

35          (3) The clear proceeds of civil penalties collected by the Commissioner under  
36          this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in  
37          accordance with G.S. 115C-457.2."

38          **SECTION 2.** G.S. 143-138 is amended by adding a new subsection to read:

39          "(j2) Pursuant to Article 9G of Chapter 143 of the General Statutes, the Building Code  
40          Council is authorized to review and endorse proposals for the construction of tall buildings or  
41          structures in areas surrounding major military installations, as those terms are defined in  
42          G.S. 143-151.71."

43          **SECTION 3.** This act becomes effective October 1, 2013.