

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

H

D

HOUSE BILL 433\*  
Committee Substitute Favorable 4/10/13  
Third Edition Engrossed 4/11/13  
PROPOSED SENATE COMMITTEE SUBSTITUTE H433-PCS70344-SV-14

Short Title: Land Use Surrounding Military Installations.

(Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO SUPPORT THE ACTIVITIES OF THE ARMED FORCES AND TO  
MAINTAIN AND ENHANCE THE MILITARY'S PRESENCE IN NORTH CAROLINA  
BY REGULATING THE HEIGHT OF BUILDINGS AND STRUCTURES LOCATED IN  
AREAS THAT SURROUND MILITARY INSTALLATIONS IN THE STATE.

The General Assembly of North Carolina enacts:

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

"Article 9G.

"Military Lands Protection.

**"§ 143-151.70. Short title.**

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

**"§ 143-151.71. Definitions.**

Within the meaning of this Article:

- (1) "Area surrounding major military installations" is the area that extends five miles beyond the boundary of a major military installation and may include incorporated and unincorporated areas of counties and municipalities.
- (2) "Construction" includes reconstruction, alteration, or expansion.
- (3) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune Marine Corps Air Base, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.
- (4) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.
- (5) "Secretary" means the Secretary of Administration.
- (6) "State Construction Office" means the State Construction Office within the Department of Administration.



\* H 4 3 3 - P C S 7 0 3 4 4 - S V - 1 4 \*

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

- 6           a.   Water, radio, telephone, cellular, or television towers or any  
7           equipment for the transmission of electricity or communications or  
8           both.  
9           b.   Slender structures and minor vertical projections of a parent building,  
10           including chimneys, flagpoles, flues, spires, steeples, belfries,  
11           cupolas, antennas, poles, wires, or windmills. Windmills exempt  
12           pursuant to this sub-subdivision shall project no more than 20  
13           vertical feet above the parent building.  
14           c.   Buildings and structures listed individually or as contributing  
15           resources within a district listed in the National Register of Historic  
16           Places.

17   **"§ 143-151.72. Legislative findings.**

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

27   **"§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

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

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

36   **"§ 143-151.74. Exemption from applicability.**

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

40   **"§ 143-151.75. Endorsement for construction of tall buildings or structures required.**

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

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

- 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           Code of Federal Regulations (January 1, 2012 Edition) for the proposed  
20           construction of the tall building or structure.
- 21       (c)   The State Construction Office shall not endorse the construction of a tall building or  
22       structure if the Office 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 State Construction Office  
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 Office 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 State Construction Office 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 Office determines  
39       that a request for the construction of a tall building or structure fails to meet the requirements  
40       for endorsement under this section, the Office shall deny the request. The Office shall notify  
41       the person of the denial, and the notice shall include a written statement of the reasons for the  
42       denial. If the Office fails to act within any time period set forth in this section, the person may  
43       treat the failure to act as a decision to endorse the construction.
- 44       **§ 143-151.76. Application to existing tall buildings and structures.**
- 45       G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding  
46       major military installations upon the effective date of this Article as follows:
- 47           (1)   No reconstruction, alteration, or expansion may aggravate or intensify a  
48           violation by an existing building or structure that did not comply with  
49           G.S. 143-151.73 upon its effective date.

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

4   "**§ 143-151.77. Injunctive relief.**

5           Whenever reasonable cause exists to believe that a person has violated this Article or rules  
6   adopted pursuant to this Article, the Secretary may request the Attorney General to institute a  
7   civil action for injunctive relief to restrain the violation. The Attorney General may institute the  
8   action in the name of the State upon relation of the Department of Administration in the  
9   superior court of the county in which the violation occurred. Upon a determination by the court  
10 that the alleged violation of the provisions of this Article or of rules adopted pursuant to this  
11 Article has occurred or is threatened, the court shall grant the relief necessary to prevent or  
12 abate the violation or threatened violation."

13           **SECTION 2.** This act becomes effective October 1, 2013.