

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
Sixth Edition Engrossed 5/15/13
Proposed Conference Committee Substitute H433-PCCS80374-TA-1

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



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1 located within the State that is subject to the installations' oversight and
2 control.

3 (6) "Person" means any individual, partnership, firm, association, joint venture,
4 public or private corporation, trust, estate, commission, board, public or
5 private institution, utility, cooperative, interstate body, the State of North
6 Carolina and its agencies and political subdivisions, or other legal entity.

7 (7) "Tall buildings or structures" means any building, structure, or unit within a
8 multiunit building with a vertical height of more than 200 feet measured
9 from the top of the foundation of the building, structure, or unit and the
10 uppermost point of the building, structure, or unit. "Tall buildings or
11 structures" do not include buildings and structures listed individually or as
12 contributing resources within a district listed in the National Register of
13 Historic Places.

14 **"§ 143-151.72. Legislative findings.**

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

24 **"§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

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

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

33 **"§ 143-151.74. Exemptions from applicability.**

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

38 (b) Cellular and television towers erected to temporarily replace cellular and television
39 towers that are damaged or destroyed due to a natural disaster shall be exempt from obtaining
40 the endorsement required by this Article provided all of the following conditions are met:

41 (1) The height of the cellular or television tower that is erected to temporarily
42 replace the cellular or television tower that is damaged or destroyed does not
43 exceed the height of the original cellular or television tower.

44 (2) A disaster has been declared pursuant to Chapter 166A of the General
45 Statutes for the area in which the damaged or destroyed cellular or television
46 tower is located.

47 (3) The temporary cellular or television tower shall only remain in place until
48 the expiration of the declared disaster.

49 (c) The modification, replacement, removal, or addition of antennas on cellular or
50 television towers in an area surrounding a major military installation shall be exempt from

1 obtaining the endorsement required by this Article provided the modification, replacement,
2 removal, or addition does not increase the vertical height of the structure.

3 **"§ 143-151.75. Endorsement for proposed tall buildings or structures required.**

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

8 (b) A person seeking endorsement for a proposed tall building or structure in any area
9 surrounding a major military installation in this State shall provide written notice of the intent
10 to seek endorsement to the base commander of the major military installation that is located
11 within five miles of the proposed tall building or structure and shall provide all of the following
12 to the Building Code Council:

13 (1) Identification of the major military installation and the base commander of
14 the installation that is located within five miles of the proposed tall building
15 or structure.

16 (2) A copy of the written notice sent to the base commander of the installation
17 identified in subdivision (1) of this subsection that is located within five
18 miles of the proposed tall building or structure.

19 (3) A written "Determination of No Hazard to Air Navigation" issued by the
20 Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14
21 of the Code of Federal Regulations (January 1, 2012, Edition) for the
22 proposed tall building or structure.

23 (c) After receipt of the information provided by the applicant pursuant to subsection (b)
24 of this section, the Building Code Council shall, in writing, request a written statement
25 concerning the proposed tall building or structure from the base commander of the major
26 military installation identified in subdivision (1) of subsection (b) of this section. The Building
27 Code Council shall request that the following information be included in the written statement
28 from the base commander:

29 (1) A determination whether the location of the proposed tall building or
30 structure is within a protected area that surrounds the installation.

31 (2) A determination whether any activities of the installation may be adversely
32 affected by the proposed tall building or structure. A detailed description of
33 the potential adverse effects, including frequency disturbances and physical
34 obstructions, shall accompany the determination required by this
35 subdivision.

36 (d) The Building Code Council shall not endorse a tall building or structure if the
37 Council finds any one or more of the following:

38 (1) The proposed tall building or structure would encroach upon or otherwise
39 interfere with the mission, training, or operations of any major military
40 installation in North Carolina and result in a detriment to continued military
41 presence in the State. In its evaluation, the Building Code Council may
42 consider whether the proposed tall building or structure would cause
43 interference with air navigation routes, air traffic control areas, military
44 training routes, or radar based on the written statement received from a base
45 commander as provided in subsection (c) of this section and written
46 comments received by members of affected communities. Provided,
47 however, if the Building Code Council does not receive a written statement
48 requested pursuant to subsection (c) of this section within 45 days of
49 issuance of the request to the base commander, the Building Code Council
50 shall deem the tall building or structure as endorsed by the base commander.

1 (2) The Council is not in receipt of the written "Determination of No Hazard to
2 Air Navigation" issued to the person by the Federal Aviation Administration
3 required pursuant to subdivision (3) of subsection (b) of this section.

4 (e) The Building Code Council shall make a final decision on the request for
5 endorsement of a tall building or structure within 90 days from the date on which the Council
6 requested the written statement from the base commander of the major military installation
7 identified in subdivision (1) of subsection (b) of this section. If the Council determines that a
8 request for a tall building or structure fails to meet the requirements for endorsement under this
9 section, the Council shall deny the request. The Council shall notify the person of the denial,
10 and the notice shall include a written statement of the reasons for the denial. If the Council fails
11 to act within any time period set forth in this section, the person may treat the failure to act as a
12 decision to endorse the tall building or structure.

13 (f) The Building Code Council may meet by telephone, video, or Internet conference,
14 so long as consistent with applicable law regarding public meetings, to make a decision on a
15 request for endorsement for a tall building or structure pursuant to subsection (e) of this section.
16 **"§ 143-151.76. Application to existing tall buildings and structures.**

17 G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding
18 major military installations upon the effective date of this Article as follows:

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

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

25 **"§ 143-151.77. Enforcement and penalties.**

26 In addition to injunctive relief, the Commissioner may assess and collect a civil penalty
27 against any person who violates any of the provisions of this Article or rules adopted pursuant
28 to this Article, as provided in this subsection. The maximum civil penalty for a violation is five
29 thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each
30 day of a continuing violation may constitute a separate violation.

31 (1) The Commissioner shall determine the amount of the civil penalty and shall
32 notify the person who is assessed the civil penalty of the amount of the
33 penalty and the reason for assessing the penalty. The notice of assessment
34 shall be served by any means authorized under Rule 4 of G.S. 1A-1 and shall
35 direct the violator to either pay the assessment or contest the assessment
36 within 30 calendar days by filing a petition for a contested case under Article
37 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil
38 penalty assessed by the Commissioner within 30 calendar days after it is
39 due, the Commissioner shall request that the Attorney General institute a
40 civil action to recover the amount of the assessment. The civil action may be
41 brought in the superior court of any county where the violation occurred. A
42 civil action must be filed within one year of the date the assessment was due.
43 An assessment that is not contested is due when the violator is served with a
44 notice of assessment. An assessment that is contested is due at the
45 conclusion of the administrative and judicial review of the assessment.

46 (2) In determining the amount of the penalty, the Commissioner shall consider
47 the degree and extent of harm caused by the violation, the cost of rectifying
48 the damage, the amount of money the violator saved by noncompliance,
49 whether the violation was committed willfully, the prior record of the
50 violator in complying or failing to comply with this Article, and the action of
51 the person to remedy the violation.

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

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

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

9 **SECTION 3.** The North Carolina Advisory Commission on Military Affairs, or its
10 successor, shall study the feasibility and desirability of creating a "North Carolina Military
11 Clearinghouse" to protect the mission capabilities of the major military installations in the State
12 from incompatible development through collaboration with military, federal, State, local
13 government, and private stakeholders to prevent, minimize, or mitigate adverse impacts on
14 military operations, readiness, and testing. The Commission shall report its findings and
15 recommendations, including legislative proposals, to the Governor and the General Assembly
16 on or before the convening of the 2014 Session of the 2013 General Assembly.

17 **SECTION 4.** Section 3 of this act is effective when this act becomes law. The
18 remainder of this act becomes effective October 1, 2013, and applies to tall buildings and
19 structures for which construction is initiated on or after that date.