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Short Title: Military Operations Protection Act of 2016.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT NORTH CAROLINA'S MILITARY FOOTPRINT BY (1) MODIFYING THE PERMITTING PROCESS FOR WIND ENERGY FACILITIES, THE ENDORSEMENT PROCESS FOR CONSTRUCTION OF TALL BUILDINGS AND STRUCTURES, AND THE PROCEDURE FOR ADOPTING, AMENDING, OR REPEALING ORDINANCES IN ORDER TO PROVIDE THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS WITH THE RESPONSIBILITY FOR CONSIDERATION AND REVIEW OF MILITARY-RELATED CRITERIA AND (2) ESTABLISHING THE NORTH CAROLINA SENTINEL LANDS COMMITTEE TO COORDINATE THE OVERLAPPING PRIORITY AREAS IN THE VICINITY OF THE STATE'S MAJOR MILITARY INSTALLATIONS.

The General Assembly of North Carolina enacts:

PART I. MODIFY THE APPROVAL PROCESS FOR PERMITTING WIND ENERGY FACILITIES

SECTION 1.(a) Article 21C of Chapter 143 of the General Statutes reads as rewritten:

"Article 21C.

"Permitting of Wind Energy Facilities.

"§ 143-215.115. Definitions.

In addition to the definitions set forth in G.S. 143-212, the following definitions apply to this Article:

- (1) "Major military installation" means Fort Bragg, Pope Army Airfield, Marine Corps Base Camp Lejeune, 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, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, Camp Butner, North Carolina National Guard Joint Force Headquarters, and any facility located within the State that is subject to the installations' oversight and control.
- (2) "Wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of one megawatt or more of energy.



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- 1 (3) "Wind energy facility expansion" means any activity that (i) adds or
2 substantially modifies turbines or transmission facilities, including increasing
3 the height of such equipment, over that which was initially permitted or (ii)
4 increases the footprint of the wind energy facility over that which was initially
5 permitted.

6 **"§ 143-215.116. Permit to site wind energy facilities.**

7 No person shall undertake construction, operation, or expansion activities associated with a
8 wind energy facility in this State without first obtaining a permit from the Department.

9 **"§ 143-215.116A. Prohibitions; low level flight compatibility.**

10 (a) Construction, operation, or expansion activities associated with a wind energy facility
11 shall be prohibited in any location identified as a "Red Zone," "Orange Zone," "Yellow Zone,"
12 "Green Zone," or "Grey Zone-Rotary Operations Area" as those zones are identified on the Low
13 Level Flight Compatibility, Figure 3-1 – March 2016 Edition of the North Carolina Military
14 Affairs Commission Compatible Use Map Atlas.

15 (b) The Department shall consult with the Military Affairs Commission and the
16 Department of Military and Veterans Affairs, at least annually, to ensure that the Low Level Flight
17 Compatibility, Figure 3-1 – March 2016 Edition of the North Carolina Military Affairs
18 Commission Compatible Use Map Atlas, is up-to-date to reflect potential development conflicts to
19 existing military operations and to future military operations that may be considered for military's
20 mission, readiness, and training. Based on their review, the Department of Military and Veterans
21 Affairs and the Commission may update Figure 3-1 from time-to-time. After an update has
22 occurred, the agencies shall present the new map and relevant data to the General Assembly for
23 the General Assembly's consideration of a statutory revision to incorporate the updated map.

24 (c) The Department is authorized to withhold from the public record any relevant data that
25 it deems critical to national security but, when queried, shall identify where such data has been
26 protected from inclusion in public records.

27 **"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication**
28 **package requirements.**

29 ...

30 (b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit
31 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section,
32 the applicant for a wind energy facility or wind energy facility expansion shall submit a
33 preapplication package to the Department. To the extent that any documents contain trade secrets
34 or confidential business information, those portions of the documents shall not be subject to
35 disclosure under the North Carolina Public Records Act. The preapplication package shall include
36 all of the following:

- 37 (1) A narrative description of the proposed wind energy facility or proposed wind
38 energy facility expansion, including (i) the approximate number, type, and
39 height of wind turbines to be constructed; (ii) the total planned capacity of the
40 facility; and (iii) a description of any ancillary facilities.
- 41 (2) A map showing the approximate location of the proposed wind energy facility
42 or proposed wind energy facility expansion.
- 43 (3) A description of any known potential impacts of the proposed wind energy
44 project location on civil air navigation or military air navigation routes, air
45 traffic control areas, military training routes, special-use air space, radar, or
46 other potentially affected military operations. The applicant may use data made
47 available by the Department of Military and Veterans Affairs pursuant to
48 G.S. 143-215.123 to satisfy this requirement.
- 49 (4) A description of species of concern, habitats that support species of concern,
50 critical areas of wildlife congregation, and protected lands, as those species,
51 habitats, and critical areas are referenced in the March 23, 2012, United States

1 Fish and Wildlife Service Land-Based Wind Energy Guidelines (OMB Control
2 No. 1018-0148) that are or believed to be present at the site of the proposed
3 wind energy facility or proposed wind energy facility expansion. The applicant
4 may use data made available by the North Carolina Wildlife Resources
5 Commission, the Department, or other governmental agency to satisfy this
6 requirement.

7 (5) A list of the federal, State, and local agencies from which approvals will be
8 obtained and the name of those approvals required in order to authorize the
9 construction, operation, or expansion of the proposed wind energy facility.

10 (6) A schedule showing the anticipated dates for commencement of construction,
11 testing, and commercial operation of the proposed wind energy facility or
12 proposed wind energy facility expansion.

13 ...
14 **"§ 143-215.118. Permit application scoping meeting and notice.**

15 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a
16 proposed wind energy facility or proposed wind energy facility expansion, the applicant shall
17 request the scheduling of a scoping meeting between the applicant and the Department. The
18 scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a
19 proposed wind energy facility or proposed wind energy facility expansion. ~~The applicant and the
20 Department shall review the permit for the proposed wind energy facility or proposed facility
21 expansion at the scoping meeting.~~

22 ...
23 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed
24 permit; public hearing; public comment.**

25 (a) Permit Requirements. – A person applying for a permit for a proposed wind energy
26 facility or proposed wind energy facility expansion shall include all of the following in an
27 application for the permit:

28 (1) A narrative description of the proposed wind energy facility or proposed wind
29 energy facility expansion.

30 (2) A map showing the location of the proposed wind energy facility or proposed
31 wind energy facility expansion that identifies the specific location of each
32 turbine.

33 (3) A copy of a deed, purchase agreement, lease agreement, or other legal
34 instrument demonstrating the right to construct, expand, or otherwise develop a
35 wind energy facility on the property.

36 (4) Identification by name and address of property owners adjacent to living within
37 one-half mile of the proposed wind energy facility or proposed wind energy
38 facility expansion. The applicant shall notify every property owner identified
39 pursuant to this subdivision by registered or certified mail or by any means
40 authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The
41 notice shall include all of the following:

42 a. The location of the proposed wind energy facility or proposed wind
43 energy facility expansion and the specific location of each turbine
44 proposed to be located within one-half mile of the ~~boundary of the~~
45 ~~adjacent property owner property.~~

46 b. A description of the proposed wind energy facility or proposed wind
47 energy facility expansion.

48 (5) A description of civil air navigation or military air navigation routes, air traffic
49 control areas, military training routes, special-use air space, radar, or other
50 military operations that may be affected by the construction or operation of the
51 proposed wind energy facility or proposed wind energy facility expansion.

- 1 (6) Documentation that addresses any potential adverse impact on military
2 operations and readiness as identified by the Department of Defense
3 Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations
4 (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- 5 (7) Documentation that the applicant has either (i) submitted Federal Aviation
6 Administration Form 7460-1 for the turbines associated with the proposed wind
7 energy facility or proposed wind energy facility expansion or (ii) initiated an
8 informal review by the Department of Defense Siting Clearinghouse of the
9 proposed wind energy facility or proposed wind energy facility expansion. If
10 the applicant has submitted Federal Aviation Administration Form 7460-1 in
11 order to fulfill the requirements of this subdivision, the applicant shall provide
12 any determination reached by the Federal Aviation Administration at the time
13 the application is submitted to the Department. If the Federal Aviation
14 Administration has not made a determination at the time the application is
15 submitted to the Department, the application shall include a description of the
16 status of the applicant's engagement with the Federal Aviation Administration
17 and the Department of Defense Siting Clearinghouse.
- 18 (8) A study of the noise impacts of the turbines to be associated with the proposed
19 wind energy facility or proposed wind energy facility expansion.
- 20 (9) A study on shadow flicker impacts of the turbines to be associated with the
21 proposed wind energy facility or proposed wind energy facility expansion,
22 unless the turbines will be located in a sound or in offshore waters.
- 23 (10) A study of the impact of the proposed wind energy facility or proposed wind
24 energy facility expansion on natural resources and uses, including avian, bat,
25 and endangered and threatened species.
- 26 (11) An explanation of how the proposed wind energy facility or proposed wind
27 energy facility expansion would be consistent with the criteria in subsection (a)
28 of G.S. 143-215.120.
- 29 (12) The application fee required by subsection (c) of this section.
- 30 (13) A plan regarding the action to be taken upon the decommissioning and removal
31 of the wind energy facility. The plan shall include an estimate of the cost to
32 decommission and remove the wind energy facility. The plan shall also include
33 the anticipated life of the project, an estimate of the cost to decommission and
34 remove the wind energy facility, a description of the manner in which the
35 facility will be decommissioned, and a description of the expected condition of
36 the site once the wind energy facility has been decommissioned and removed.
- 37 (14) Other data or information the Department may reasonably require.

38 (a1) A person applying for a permit for a proposed wind energy facility or proposed wind
39 energy facility expansion shall provide copies of the noise and shadow flicker studies required
40 pursuant to subdivisions (8) and (9) of subsection (a) of this section to the Department of Health
41 and Human Services for review of the potential health effects posed by the proposed facility. The
42 Department of Health and Human Services shall provide the results of its review of the studies and
43 its recommendations for further action, if any, to the Department. If in the conduct of its review of
44 either the noise or shadow flicker impact studies, or both, the Department of Health and Human
45 Services determines that those impacts would be deleterious to human health, the Department of
46 Health and Human Services shall notify the Department accordingly, in writing, with a
47 recommendation that the Department deny the permit.

48 ...

49 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
50 **approvals required.**

1 (a) Permit Approval. – The Department shall approve an application for a permit for a
2 proposed wind energy facility or proposed wind energy facility expansion unless the Department
3 finds any one or more of the following:

- 4 (1) Construction or operation of the proposed wind energy facility or proposed
5 wind energy facility expansion would be inconsistent with or violate rules
6 adopted by the ~~Department~~ Department, the Department of Military and
7 Veterans Affairs, or any other provision of law.
- 8 (2) Construction or operation of the proposed wind energy facility or proposed
9 wind energy facility expansion would encroach upon or would otherwise have a
10 significant adverse impact on the mission, training, or operations of any major
11 military installation or branch of military in North Carolina and result in a
12 detriment to continued military presence in the State. In its evaluation, the
13 Department may consider whether the proposed wind energy facility or
14 proposed wind energy facility expansion would cause interference with air
15 navigation routes, air traffic control areas, military training routes, or radar
16 based on information submitted by the applicant pursuant to subdivisions (5)
17 and (6) of subsection (a) of G.S. 143-215.119, and any information received by
18 the Department pursuant to subdivision (2) of subsection (d) of
19 G.S. 143-215.119.
- 20 (3) Construction or operation of the proposed wind energy facility or proposed
21 wind energy facility expansion would result in significant adverse impacts to
22 ecological systems, natural resources, cultural sites, recreation areas, or historic
23 sites of more than local significance; including national or State parks or
24 forests, wilderness areas, historic sites, recreation areas, segments of the natural
25 and scenic rivers system, wildlife refuges, preserves and management areas,
26 areas that provide habitat for threatened or endangered species, primary nursery
27 areas designated by the Marine Fisheries Commission and the Wildlife
28 Resources Commission, and critical fisheries habitat identified pursuant to the
29 Coastal Habitat Protection Plan.
- 30 (4) Construction or operation of the proposed wind energy facility or proposed
31 wind energy facility expansion would have a significant adverse impact on fish
32 or wildlife.
- 33 (5) Construction or operation of the proposed wind energy facility or proposed
34 wind energy facility expansion would have a significant adverse impact on
35 views from any State or national park, wilderness area, significant natural
36 heritage area as compiled by the North Carolina Natural Heritage Program, or
37 other public lands or private conservation lands designated or dedicated due to
38 their high recreational values.
- 39 (6) Construction or operation of the proposed wind energy facility or proposed
40 wind energy facility expansion would obstruct major navigation channels or
41 create a significant obstacle to navigation in coastal waters, as determined by
42 the United States Army Corps of Engineers and the United States Coast Guard.
- 43 (7) A permit for a proposed wind energy facility or proposed wind energy facility
44 expansion would be denied under any other criteria set out in G.S. 113A-120.
- 45 (8) Construction of the proposed wind energy facility or proposed wind energy
46 facility expansion would be prohibited under Article 14 of Chapter 113A of the
47 General Statutes, the Mountain Ridge Protection Act of 1983.
- 48 (9) The applicant is not in compliance with all applicable federal, State, or local
49 permit requirements, licenses, or approvals, including local zoning
50 requirements.

1 (10) That construction of the proposed wind energy facility or proposed wind energy
2 facility expansion would pose a significant adverse impact on human health, as
3 evidenced by receipt of the written notice from the Department of Health and
4 Human Services submitted pursuant to G.S. 143-215.119(a1).

5 ...

6 **"§ 143-215.123. Annual review of military presence.**

7 The Department of Military and Veterans Affairs shall consult with representatives of the
8 major military installations to review information regarding military air navigation routes, air
9 traffic control areas, military training routes, special-use air space, radar, or other potentially
10 affected military operations at least once per ~~year~~ year-year and shall provide such information to the
11 Department. The Department shall provide relevant information on civil air navigation or military
12 air navigation routes, air traffic control areas, military training routes, special-use air space, radar,
13 or other potentially affected military operations to permit applicants as requested.

14 ...

15 **"§ 143-215.125. Rule making.**

16 The Department of Military and Veterans Affairs and the Environmental Management
17 Commission shall adopt any rules necessary for the implementation of pertaining to their
18 respective jurisdictions to implement this Article. In adopting rules, the Environmental
19 Management Commission shall consult with the Coastal Resources Commission to ensure that the
20 development of statewide permitting requirements is consistent with and in consideration of the
21 characteristics unique to the coastal area of the State to the maximum extent practicable.

22 "

23 **SECTION 1.(b)** This section becomes effective when this act becomes law and applies
24 to applications for permits for a proposed wind energy facility or a proposed wind energy facility
25 expansion submitted on or after that date.

26
27 **PART II. DISCRETE MODIFICATION OF THE ENDORSEMENT PROCESS FOR THE**
28 **CONSTRUCTION OF TALL BUILDINGS AND STRUCTURES**

29 **SECTION 2.(a)** Article 9G of Chapter 143 of the General Statutes reads as rewritten:

30 "Article 9G.

31 "Military Lands Protection.

32 **"§ 143-151.70. Short title.**

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

34 **"§ 143-151.71. Definitions.**

35 Within the meaning of this Article:

36 (1) "Area surrounding major military installations" is the area that extends five
37 miles beyond the boundary of a major military installation and may include
38 incorporated and unincorporated areas of counties and municipalities.

39 (1a) "Adjutant General" means the Adjutant General of the North Carolina National
40 Guard or the Adjutant General's designee.

41 (2) Repealed by Session Laws 2014-79, s. 2, effective July 22, 2014.

42 (3) ~~"Commissioner" means the Commissioner of Insurance.~~

43 (4) "Construction" includes reconstruction, alteration, or expansion.

44 (5) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp
45 Lejeune Marine Corps Air Base, New River Marine Corps Air Station, Cherry
46 Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the
47 United States Coast Guard Air Station at Elizabeth City, Naval Support
48 Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and
49 Seymour Johnson Air Force Base, in its own right and as the responsible entity
50 for the Dare County Bombing Range, and any facility located within the State
51 that is subject to the installations' oversight and control.

- 1 (5a) "National Guard facilities" means Camp Butner and the North Carolina
2 National Guard Joint Force Headquarters.
- 3 (6) "Person" means any individual, partnership, firm, association, joint venture,
4 public or private corporation, trust, estate, commission, board, public or private
5 institution, utility, cooperative, interstate body, the State of North Carolina and
6 its agencies and political subdivisions, or other legal entity.
- 7 (6a) "Secretary" means the Secretary of the Department of Administration.
- 8 ~~(6a)~~(6b) "State Construction Office" means the State Construction Office of the
9 Department of Administration.
- 10 (7) "Tall buildings or structures" means any building, structure, or unit within a
11 multiunit building with a vertical height of more than 200 feet measured from
12 the top of the foundation of the building, structure, or unit and the uppermost
13 point of the building, structure, or unit. "Tall buildings or structures" do not
14 include buildings and structures listed individually or as contributing resources
15 within a district listed in the National Register of Historic Places.

16 **"§ 143-151.72. Legislative findings.**

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

26 **"§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

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

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

35 **"§ 143-151.74. Exemptions from applicability.**

36 (a) Wind energy facilities and wind energy facility expansions, as those terms are defined
37 in Article 21C of Chapter 143 of the General Statutes, that are subject to the applicable permit
38 requirements of that Chapter shall be exempt from obtaining the endorsement required by this
39 Article.

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

- 44 (1) The height of the cellular, radio, or television tower that is erected to
45 temporarily replace the cellular, radio, or television tower that is damaged or
46 destroyed does not exceed the height of the original cellular, radio, or television
47 tower.
- 48 (2) A disaster has been declared pursuant to Chapter 166A of the General Statutes
49 for the area in which the damaged or destroyed cellular, radio, or television
50 tower is located.

1 (3) The temporary cellular, radio, or television tower shall only remain in place
2 until the expiration of the declared disaster.

3 (c) The modification, replacement, removal, or addition of antennas on cellular, radio, or
4 television towers in an area surrounding a major military installation shall be exempt from
5 obtaining the endorsement required by this Article provided the modification, replacement,
6 removal, or addition does not increase the vertical height of the structure.

7 **"§ 143-151.75. Endorsement for proposed tall buildings or structures required.**

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

12 (a1) No person shall undertake construction of a tall building or structure in any area
13 located within one-quarter mile (1/4 mile) of a National Guard facility without first obtaining an
14 endorsement from the State Construction Office.

15 (b) A person seeking endorsement for a proposed tall building or structure in any area
16 surrounding a major military installation in this State shall provide written notice of the intent to
17 seek endorsement to the base commander of the major military installation that is located within
18 five miles of the proposed tall building or structure and shall provide all of the following to the
19 State Construction Office:

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

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

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

30 (c) After receipt of the information provided by the ~~applicant—person~~ pursuant to
31 subsection (b) of this section, the State Construction Office shall, in writing, request a written
32 statement concerning the proposed tall building or structure from the base commander of the
33 major military installation identified in subdivision (1) of subsection (b) of this section. The State
34 Construction Office shall request that the following information be included in the written
35 statement from the base commander:

36 (1) A determination whether the location of the proposed tall building or structure
37 is within a ~~protected~~an area that surrounds the major military installation.

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

42 (d) The State Construction Office shall not endorse a tall building or structure if the State
43 Construction Office finds any one or more of the following:

44 (1) The proposed tall building or structure would encroach upon or otherwise
45 interfere with the mission, training, or operations of any major military
46 installation in North Carolina and result in a detriment to continued military
47 presence in the State. In its evaluation, the State Construction Office may
48 consider whether the proposed tall building or structure would cause
49 interference with air navigation routes, air traffic control areas, military training
50 routes, or radar based on the written statement received from a base commander
51 as provided in subsection (c) of this section and written comments received by

1 members of affected communities. Provided, however, if the State Construction
2 Office does not receive a written statement requested pursuant to subsection (c)
3 of this section within 45 days of issuance of the request to the base commander,
4 the State Construction Office shall deem the tall building or structure as
5 ~~endorsed~~denied by the base commander.

6 (2) The State Construction Office is not in receipt of the written "Determination of
7 No Hazard to Air Navigation" issued to the person by the Federal Aviation
8 Administration required pursuant to subdivision (3) of subsection (b) of this
9 section.

10 (d1) A person seeking endorsement for a proposed tall building or structure in any area
11 located within one-quarter mile (1/4 mile) of a National Guard facility shall consult with the
12 Adjutant General to determine whether any activities of the facility may be adversely affected by
13 the proposed tall building or structure. A written summary of the consultation between the person
14 and the Adjutant General, including findings and recommendations of the Adjutant General as to
15 whether or not to endorse the proposed tall building or structure, shall be submitted to the State
16 Construction Office and evaluated in accordance with subsections (d2) and (e) of this section.

17 (d2) The State Construction Office shall not endorse a tall building or structure in any area
18 located within one-quarter mile (1/4 mile) of a National Guard facility if the State Construction
19 Office finds any one or more of the following:

20 (1) As evidenced by receipt of the written summary from the Adjutant General
21 submitted pursuant to subsection (d1) of this section, construction of the
22 proposed tall building or structure would encroach upon or otherwise interfere
23 with the mission, training, or operations of National Guard facility and result in
24 a detriment to its continued presence in the State. In its evaluation, the State
25 Construction Office may consider whether the proposed tall building or
26 structure would cause interference with air navigation routes, air traffic control
27 areas, military training routes, or radar based on the written statement received
28 as provided in subsection (d1) of this section. Provided, however, if the State
29 Construction Office does not receive the written statement pursuant to
30 subsection (d1) of this section within 45 days of the date of the consultation
31 between the person and the Adjutant General, the State Construction Office
32 shall construe the Adjutant General's failure to submit the written statement as a
33 recommendation to deny endorsement of the tall building or structure.

34 (2) The State Construction Office is not in receipt of the written "Determination of
35 No Hazard to Air Navigation" issued to the person by the Federal Aviation
36 Administration required pursuant to subdivision (3) of subsection (b) of this
37 section.

38 (e) The State Construction Office shall make a final decision on the request for
39 endorsement of a tall building or structure within 90 days from the date on which either (i) the
40 State Construction Office requested the written statement from the base commander of the major
41 military installation identified in subdivision (1) of subsection (b) of this section-~~section~~ or (ii) the
42 State Construction Office received the written summary of the consultation between the person
43 and the Adjutant General submitted in accordance with subsection (d1) of this section. If the State
44 Construction Office determines that a request for a tall building or structure fails to meet the
45 requirements for endorsement under this section, the State Construction Office shall deny the
46 request. The State Construction Office shall notify the person of the denial, and the notice shall
47 include a written statement of the reasons for the denial. If the State Construction Office fails to
48 act within any time period set forth in this section, the person may treat the failure to act as a
49 decision to ~~endorse~~deny endorsement of the tall building or structure.

1 ~~(f) The State Construction Office may meet by telephone, video, or Internet conference, so~~
2 ~~long as consistent with applicable law regarding public meetings, to make a decision on a request~~
3 ~~for endorsement for a tall building or structure pursuant to subsection (e) of this section.~~

4 **"§ 143-151.76. Application to existing tall buildings and structures.**

5 G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding major
6 military installations ~~upon the effective date of this Article on October 1, 2013,~~ as follows:

- 7 (1) No reconstruction, alteration, or expansion may aggravate or intensify a
8 violation by an existing building or structure that did not comply with
9 G.S. 143-151.73 ~~upon its effective date on October 1, 2013.~~
- 10 (2) No reconstruction, alteration, or expansion may cause or create a violation by
11 an existing building or structure that did comply with G.S. 143-151.73 ~~upon its~~
12 ~~effective date on October 1, 2013.~~

13 **"§ 143-151.77. Enforcement and penalties.**

14 (a) In addition to injunctive ~~relief,~~ relief, as provided by subsection (e) of this section, the
15 ~~Commissioner~~ Secretary may assess and collect a civil penalty against any person who violates
16 any of the provisions of this Article or rules adopted pursuant to this Article, as provided in this
17 section. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil
18 penalty may be assessed from the date of the violation. Each day of a continuing violation may
19 constitute a separate violation.

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

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

38 (d) The clear proceeds of civil penalties collected by the ~~Commissioner~~ Secretary under
39 this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with
40 G.S. 115C-457.2.

41 (e) Whenever the Secretary has reasonable cause to believe that any person has violated or
42 is threatening to violate any of the provisions of this Article, a rule implementing this Article, or
43 any of the terms of any endorsement issued pursuant to this Article, the State Construction Office
44 may, either before or after the institution of any other action or proceeding authorized by this
45 Article, request the Attorney General to institute a civil action in the name of the State upon the
46 request of the State Construction Office for injunctive relief to restrain the violation or threatened
47 violation and for such other and further relief in the premises as the court shall deem proper. The
48 Attorney General may institute such action in the superior court of the county in which the
49 violation occurred or may occur or, in the Attorney General's discretion, in the superior court of
50 the county in which the person responsible for the violation or threatened violation resides or has
51 the person's principal place of business. Upon a determination by the court that the alleged

1 violation of the provisions of this Article or the regulations of the State Construction Office has
2 occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation
3 or threatened violation. Neither the institution of the action nor any of the proceedings thereon
4 shall relieve any party to such proceedings from any penalty prescribed for violation of this
5 Article."

6 **SECTION 2.(b)** This section is effective when this act becomes law and applies to
7 requests for endorsements to construct tall buildings or structures submitted on or after that date.

8
9 **PART III. AUTHORIZE THE DEPARTMENT OF MILITARY AND VETERANS**
10 **AFFAIRS TO REVIEW MILITARY-RELATED CRITERIA FOR PERMITTING WIND**
11 **ENERGY FACILITIES**

12 **SECTION 3.(a)** Article 21C of Chapter 143 of the General Statutes, as amended by
13 Section 1(a) of this act, reads as rewritten:

14 "Article 21C.

15 "Permitting of Wind Energy Facilities.

16 ...
17 **"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication**
18 **package requirements.**

19 (a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing
20 an application for a permit to construct, operate, or expand a wind energy facility, a person shall
21 request a preapplication site evaluation meeting to be held between the ~~applicant and the~~
22 ~~Department, applicant, the Department, and the Department of Military and Veterans Affairs.~~ The
23 preapplication site evaluation meeting shall be held no less than 120 days prior to filing an
24 application for a permit to construct, operate, or expand a wind energy facility and may be used by
25 the participants to:

26 ...
27 (b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit
28 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section,
29 the applicant for a wind energy facility or wind energy facility expansion shall submit a
30 preapplication package to the ~~Department.~~ Department and the Department of Military and
31 Veterans Affairs. To the extent that any documents contain trade secrets or confidential business
32 information, those portions of the documents shall not be subject to disclosure under the North
33 Carolina Public Records Act. The preapplication package shall include all of the following:

34 ...
35 **"§ 143-215.118. Permit application scoping meeting and notice.**

36 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a
37 proposed wind energy facility or proposed wind energy facility expansion, the applicant shall
38 request the scheduling of a scoping meeting between the applicant, the Department, and the
39 Department of Military and Veterans Affairs. The scoping meeting shall be held no less than 30
40 days prior to filing an application for a permit for a proposed wind energy facility or proposed
41 wind energy facility expansion.

42 ...
43 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**
44 **permit; public hearing; public comment.**

45 (a) Permit Requirements. – A person applying for a permit for a proposed wind energy
46 facility or proposed wind energy facility expansion shall include all of the following in an
47 application for the ~~permit;~~ permit to be submitted to the Department and the Department of
48 Military and Veterans Affairs:

49 ...
50 (f) Public Hearing and Comment. – The Department shall hold a public hearing in each
51 county in which the wind energy facility or wind energy facility expansion is proposed to be

1 located within 75 days of receipt of a completed permit application. The Department shall provide
 2 notice including the time and location of the public hearing in a newspaper of general circulation
 3 in each applicable county. The notice of public hearing shall be published for at least two
 4 consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The
 5 notice shall provide that any comments on the proposed wind energy facility or proposed wind
 6 energy facility expansion should be submitted to the Department by a specified date, not less than
 7 15 days from the date of the newspaper publication of the notice or 15 days after distribution of
 8 the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing,
 9 the Department shall provide written notice of the hearing to:

- 10 (1) The North Carolina Utilities Commission.
- 11 (2) The Office of the Attorney General of North Carolina.
- 12 (3) The commanding military officer of any potentially affected major military
 13 installation or the commanding military officer's designee.
- 14 (4) The board of commissioners for each county and the governing body of each
 15 municipality with jurisdictions over areas in which a potentially affected major
 16 military installation is located.
- 17 (5) The Department of Military and Veterans Affairs.

18 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**
 19 **approvals required.**

20 (a) Permit Approval. – The Department shall approve an application for a permit for a
 21 proposed wind energy facility or proposed wind energy facility expansion unless the Department
 22 finds any one or more of the following:

- 23 (1) Construction or operation of the proposed wind energy facility or proposed
 24 wind energy facility expansion would be inconsistent with or violate rules
 25 adopted by the Department, the Department of Military and Veterans Affairs, or
 26 any other provision of law.
- 27 (2) ~~Construction~~ The Department of Military and Veterans Affairs has issued a
 28 recommendation to deny the permit pursuant to G.S. 143-215.120A(b), on the
 29 basis that construction or operation of the proposed wind energy facility or
 30 proposed wind energy facility expansion would encroach upon or would
 31 otherwise have a significant adverse impact on the mission, training, or
 32 operations of any major military installation or branch of military in North
 33 Carolina and result in a detriment to continued military presence in the State. ~~In~~
 34 ~~its evaluation, the Department may consider whether the proposed wind energy~~
 35 ~~facility or proposed wind energy facility expansion would cause interference~~
 36 ~~with air navigation routes, air traffic control areas, military training routes, or~~
 37 ~~radar based on information submitted by the applicant pursuant to subdivisions~~
 38 ~~(5) and (6) of subsection (a) of G.S. 143-215.119, and any information received~~
 39 ~~by the Department pursuant to subdivision (2) of subsection (d) of G.S.~~
 40 ~~143-215.119.~~

41 ...

42 (b) Permit Decision. –The Department shall make a final decision on a permit application
 43 within 90 days following receipt of a completed application, except that the Department shall not
 44 be required to make a final decision until the Department has ~~received~~ received both (i) a
 45 recommendation, issued pursuant to G.S. 143-215.120A, from the Department of Military and
 46 Veterans Affairs as to whether approve or deny a permit for the proposed wind energy facility or
 47 proposed wind energy facility expansion, and (ii) a written "Determination of No Hazard to Air
 48 Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of
 49 Title 14 of the Code of Federal Regulations (January 1, 2012 edition). If the Department requests
 50 additional information following the receipt of a completed application, the Department shall
 51 make a final decision on a permit application within 30 days of receipt of the requested

1 information. If the Department determines that an application for a wind energy facility or a wind
2 energy facility expansion fails to meet the requirements for a permit under this section, the
3 Department shall deny the application, and the application shall be returned to the applicant
4 accompanied by a written statement of the reasons for the denial and any modifications to the
5 permit application that would make the application acceptable. If the Department fails to act
6 within the time period set forth in this subsection, the applicant may treat the failure to act as a
7 denial of the permit and may challenge the denial as provided under Chapter 150B of the General
8 Statutes.

9 ...
10 **"§ 143-215.120A. Evaluation of military-related criteria required from the Department of**
11 **Military and Veterans Affairs; recommendation to Department of Environmental**
12 **Quality.**

13 (a) The Department of Military and Veterans Affairs shall evaluate whether the
14 construction or operation of the proposed wind energy facility or wind energy facility expansion
15 would encroach upon or would otherwise have a significant adverse impact on the mission,
16 training, or operations of any major military installation or branch of military in North Carolina
17 and result in a detriment to continued military presence in the State. In its evaluation, the
18 Department of Military and Veterans Affairs may consider whether the proposed wind energy
19 facility or proposed wind energy facility expansion would cause interference with air navigation
20 routes, air traffic control areas, military training routes, or radar based on information submitted
21 by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and
22 any information received by the Department pursuant to subdivision (2) of subsection (d) of
23 G.S. 143-215.119.

24 (b) Based on its evaluation of the criteria set forth in subsection (a) of this section, the
25 Department of Military and Veterans Affairs shall issue a recommendation to the Department as to
26 whether the Department should approve or deny an application for a proposed wind energy facility
27 or wind energy facility expansion, which shall include findings of fact that document the basis for
28 the recommendation. The Department of Military and Veterans Affairs shall issue its
29 recommendation as to whether to approve or deny an application for a permit within 60 days
30 following receipt of a completed application. If the Department of Military and Veterans Affairs
31 fails to act within the time period set forth in this subsection, the Department shall treat the failure
32 to act as a recommendation to deny an application for a proposed wind energy facility or wind
33 energy facility expansion on the basis that the facility or expansion would encroach upon or would
34 otherwise have a significant adverse impact on the mission, training, or operations of any major
35 military installation or branch of military in North Carolina and result in a detriment to continued
36 military presence in the State.

37"

38 **SECTION 3.(b)** This section becomes effective October 1, 2018, and applies to
39 applications for permits for a proposed wind energy facility or a proposed wind energy facility
40 expansion submitted on or after that date.

41
42 **PART IV. AUTHORIZE THE DEPARTMENT OF MILITARY AND VETERANS**
43 **AFFAIRS TO REVIEW MILITARY-RELATED CRITERIA AND ENDORSE THE**
44 **CONSTRUCTION OF TALL BUILDINGS AND STRUCTURES**

45 **SECTION 4.(a)** The Revisor of Statutes shall make the following recodifications in
46 connection with the transfer of the Military Lands Protection Act of 2013:

- 47 (1) Article 9G of Chapter 143 of the General Statutes (Military Lands Protection) is
48 recodified into Part 12 of Article 14 of Chapter 143B of the General Statutes
49 with the sections to be numbered as G.S. 143B-1315A through 143B-1315H,
50 respectively.

1 **SECTION 4.(b)** Part 12 of Article 14 of Chapter 143B of the General Statutes, as
2 recodified by subsection (a) of this section and as amended by Section 2(a) of this act, reads as
3 rewritten:

4 ~~"Article 9G. Part 12. Military Lands Protection.~~

5 **"§ 143B-1315A. Short title.**

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

7 **"§ 143B-1315B. Definitions.**

8 Within the meaning of this Article:

9 (1) "Area surrounding major military installations" is the area that extends five
10 miles beyond the boundary of a major military installation and may include
11 incorporated and unincorporated areas of counties and municipalities.

12 (1a) "Adjutant General" means the Adjutant General of the North Carolina National
13 Guard, or the Adjutant General's designee.

14 (2) Repealed by Session Laws 2014-79, s. 2, effective July 22, 2014.

15 (3) Repealed.

16 (4) "Construction" includes reconstruction, alteration, or expansion.

17 (4a) "Department" means the Department of Military and Veterans Affairs.

18 (5) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp
19 Lejeune Marine Corps Air Base, New River Marine Corps Air Station, Cherry
20 Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the
21 United States Coast Guard Air Station at Elizabeth City, Naval Support
22 Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and
23 Seymour Johnson Air Force Base, in its own right and as the responsible entity
24 for the Dare County Bombing Range, and any facility located within the State
25 that is subject to the installations' oversight and control.

26 (5a) "National Guard facilities" means Camp Butner and the North Carolina
27 National Guard Joint Force Headquarters.

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

32 (6a) "Secretary" means the Secretary of the Department of ~~Administration.~~Military
33 and Veterans Affairs.

34 (6b) ~~"State Construction Office" means the State Construction Office of the
35 Department of Administration.~~

36 (7) "Tall buildings or structures" means any building, structure, or unit within a
37 multiunit building with a vertical height of more than 200 feet (200') measured
38 from the top of the foundation of the building, structure, or unit and the
39 uppermost point of the building, structure, or unit. "Tall buildings or structures"
40 do not include buildings and structures listed individually or as contributing
41 resources within a district listed in the National Register of Historic Places.

42 ...

43 **"§ 143B-1315D. Certain buildings and structures prohibited without endorsement.**

44 (a) No county or city may authorize the construction of and no person may construct a tall
45 building or structure in any area surrounding a major military installation in this State, unless the
46 county or city is in receipt of either a letter of endorsement issued to the person by the ~~State
47 Construction Office~~Department pursuant to ~~G.S. 143-151.75.~~G.S. 143B-1315F.

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

51 ...

1 **"§ 143B-1315F. Endorsement for proposed tall buildings or structures required.**

2 (a) No person shall undertake construction of a tall building or structure in any area
3 surrounding a major military installation in this State without first obtaining the endorsement from
4 the ~~State Construction Office~~Department.

5 (a1) No person shall undertake construction of a tall building or structure in any area
6 located within one-quarter mile (¼ mile) of a National Guard facility without first obtaining an
7 endorsement from the ~~State Construction Office~~Department.

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 to
10 seek endorsement to the base commander of the major military installation that is located within
11 five miles of the proposed tall building or structure and shall provide all of the following to the
12 ~~State Construction Office~~Department:

- 13 (1) Identification of the major military installation and the base commander of the
14 installation that is located within five miles of the proposed tall building or
15 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 miles
18 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 of
21 the Code of Federal Regulations (January 1, 2012, Edition) for the proposed tall
22 building or structure.

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

- 29 (1) A determination whether the location of the proposed tall building or structure
30 is within an area that surrounds the major military 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 the
33 potential adverse effects, including frequency disturbances and physical
34 obstructions, shall accompany the determination required by this subdivision.

35 (d) The ~~State Construction Office~~Department shall not endorse a tall building or structure
36 if the ~~State Construction Office~~Department finds any one or more of the following:

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

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

5 (d1) A person seeking endorsement for a proposed tall building or structure in any area
6 located within one-quarter mile (¼ mile) of a National Guard facility shall consult with the
7 Adjutant General to determine whether any activities of the facility may be adversely affected by
8 the proposed tall building or structure. A written summary of the consultation between the person
9 and the Adjutant General, including findings and recommendations of the Adjutant General as to
10 whether or not to endorse the proposed tall building or structure, shall be submitted to the ~~State~~
11 ~~Construction Office~~Department and evaluated in accordance with subsections (d2) and (e) of this
12 section.

13 (d2) The ~~State Construction Office~~Department shall not endorse a tall building or structure
14 in any area located within one-quarter mile (¼ mile) of a National Guard facility if the ~~State~~
15 ~~Construction Office~~Department finds any one or more of the following:

16 (1) As evidenced by receipt of the written summary from the Adjutant General
17 submitted pursuant to subsection (d1) of this section, construction of the
18 proposed tall building or structure would encroach upon or otherwise interfere
19 with the mission, training, or operations of National Guard Facility and result in
20 a detriment to its continued presence in the State. In its evaluation, the ~~State~~
21 ~~Construction Office~~Department may consider whether the proposed tall
22 building or structure would cause interference with air navigation routes, air
23 traffic control areas, military training routes, or radar based on the written
24 statement received as provided in subsection (d1) of this section. Provided,
25 however, if the ~~State Construction Office~~Department does not receive the
26 written statement pursuant to subsection (d1) of this section within 45 days of
27 the date of the consultation between the person and the Adjutant General, the
28 ~~State Construction Office~~Department shall construe the Adjutant General's
29 failure to submit the written statement as a recommendation to deny
30 endorsement of the tall building or structure.

31 (2) The ~~State Construction Office~~Department is not in receipt of the written
32 "Determination of No Hazard to Air Navigation" issued to the person by the
33 Federal Aviation Administration required pursuant to subdivision (3) of
34 subsection (b) of this section.

35 (e) The ~~State Construction Office~~Department shall make a final decision on the request for
36 endorsement of a tall building or structure within 90 days from the date on which either (i) the
37 ~~State Construction Office~~Department requested the written statement from the base commander of
38 the major military installation identified in subdivision (1) of subsection (b) of this section or (ii)
39 the ~~State Construction Office~~Department received the written summary of the consultation
40 between the person and the Adjutant General submitted in accordance with subsection (d1) of this
41 section. If the ~~State Construction Office~~Department determines that a request for a tall building or
42 structure fails to meet the requirements for endorsement under this section, the ~~State Construction~~
43 ~~Office~~Department shall deny the request. The ~~State Construction Office~~Department shall notify
44 the person of the denial, and the notice shall include a written statement of the reasons for the
45 denial. If the ~~State Construction Office~~Department fails to act within any time period set forth in
46 this section, the person may treat the failure to act as a decision to deny endorsement of the tall
47 building or structure.

48 **"§ 143B-1315G. Application to existing tall buildings and structures.**

49 ~~G.S. 143-151.73~~G.S. 143B-1315D applies to tall buildings or structures that existed in an area
50 surrounding major military installations on October 1, 2013, 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~~ G.S. 143B-1315D on October 1, 2013.

4 (2) No reconstruction, alteration, or expansion may cause or create a violation by
5 an existing building or structure that did comply with ~~G.S. 143-151.73~~
6 G.S. 143B-1315D on October 1, 2013.

7 "**§ 143B-1315H. Enforcement and penalties.**

8 (a) In addition to injunctive ~~relief~~, relief, as provided by subsection (e) of this section, the
9 Secretary may assess and collect a civil penalty against any person who violates any of the
10 provisions of this Article or rules adopted pursuant to this Article, as provided in this section. The
11 maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be
12 assessed from the date of the violation. Each day of a continuing violation may constitute a
13 separate violation.

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

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

31 (d) The clear proceeds of civil penalties collected by the Secretary under this subsection
32 shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

33 (e) Whenever the Secretary has reasonable cause to believe that any person has violated or
34 is threatening to violate any of the provisions of this Article, a rule implementing this Article, or
35 any of the terms of any endorsement issued pursuant to this Article, the ~~State Construction Office~~
36 Department may, either before or after the institution of any other action or proceeding authorized
37 by this Article, request the Attorney General to institute a civil action in the name of the State
38 upon the request of the ~~State Construction Office~~Department for injunctive relief to restrain the
39 violation or threatened violation and for such other and further relief in the premises as the court
40 shall deem proper. The Attorney General may institute such action in the superior court of the
41 county in which the violation occurred or may occur or, in the Attorney General's discretion, in the
42 superior court of the county in which the person responsible for the violation or threatened
43 violation resides or has the person's principal place of business. Upon a determination by the court
44 that the alleged violation of the provisions of this Article or the regulations of the ~~State~~
45 Construction OfficeDepartment has occurred or is threatened, the court shall grant the relief
46 necessary to prevent or abate the violation or threatened violation. Neither the institution of the
47 action nor any of the proceedings thereon shall relieve any party to such proceedings from any
48 penalty prescribed for violation of this Article."

49 **SECTION 4.(c)** This section becomes effective October 1, 2018, and applies to
50 requests for endorsements to construct tall buildings or structures submitted on or after that date.
51

1 **PART V. MODIFY LOCAL GOVERNMENT ORDINANCE-MAKING PROCEDURES**
2 **TO AUTHORIZE THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS TO**
3 **REVIEW AND COMMENT ON MILITARY-RELATED CRITERIA**

4 **SECTION 5.(a)** G.S. 153A-323 reads as rewritten:

5 **"§ 153A-323. Procedure for adopting, amending, or repealing ordinances under this Article**
6 **and Chapter 160A, Article 19.**

7 (a) Before adopting, amending, or repealing any ordinance authorized by this Article or
8 Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance
9 or amendment. The board shall cause notice of the hearing to be published once a week for two
10 successive calendar weeks. The notice shall be published the first time not less than 10 days nor
11 more than 25 days before the date fixed for the hearing. In computing such period, the day of
12 publication is not to be included but the day of the hearing shall be included.

13 (b) If the adoption or modification of the ordinance would result in any of the changes
14 listed in this subsection and those changes would be located five miles or less from the perimeter
15 boundary of a military base, the board of commissioners shall provide written notice of the
16 proposed changes by certified mail, or by any other written means reasonably designed to provide
17 actual notice, to the Department of Military and Veterans Affairs and the commander of the
18 military base or the commander's designee not less than 10 days nor more than 25 days before the
19 date fixed for the public hearing. Prior to the date of the public hearing, the Department of
20 Military and Veterans Affairs and the military may provide comments or analysis to the board
21 regarding the compatibility of the proposed changes with military operations at the base. If the
22 board does not receive a response within 30 days of the notice, the Department of Military and
23 Veterans Affairs and the military is are deemed to waive the comment period. If the Department of
24 Military and Veterans Affairs and the military provides provide comments or analysis regarding
25 the compatibility of the proposed ordinance or amendment with military operations at the base, the
26 board of commissioners shall take the comments and analysis into consideration before making a
27 final determination on the ordinance. The proposed changes requiring notice are:

- 28 (1) Changes to the zoning map.
29 (2) Changes that affect the permitted uses of land.
30 (3) Changes relating to telecommunications ~~towers or windmills~~ towers and tall
31 buildings and structures, as that term is defined in Article 9G of Chapter 143 of
32 the General Statutes.
33 (3a) Changes relating to wind energy facilities or wind energy facility expansions as
34 those terms are defined in Article 21C of Chapter 143 of the General Statutes.
35 (4) Changes to proposed new major subdivision preliminary plats.
36 (5) An increase in the size of an approved subdivision by more than fifty percent
37 (50%) of the subdivision's total land area including developed and undeveloped
38 land."

39 **SECTION 5.(b)** G.S. 160A-364 reads as rewritten:

40 **"§ 160A-364. Procedure for adopting, amending, or repealing ordinances under Article.**

41 (a) Before adopting, amending, or repealing any ordinance authorized by this Article, the
42 city council shall hold a public hearing on it. A notice of the public hearing shall be given once a
43 week for two successive calendar weeks in a newspaper having general circulation in the area. The
44 notice shall be published the first time not less than 10 days nor more than 25 days before the date
45 fixed for the hearing. In computing such period, the day of publication is not to be included but the
46 day of the hearing shall be included.

47 (b) If the adoption or modification of the ordinance would result in any of the changes
48 listed in this subsection and those changes would be located five miles or less from the perimeter
49 boundary of a military base, the governing body of the local government shall provide written
50 notice of the proposed changes by certified mail, or by any other written means reasonably
51 designed to provide actual notice, to the Department of Military and Veterans Affairs and the

1 commander of the military base or the commander's designee not less than 10 days nor more than
 2 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the
 3 Department of Military and Veterans Affairs and the military may provide comments or analysis
 4 to the board [governing body of the local government] regarding the compatibility of the proposed
 5 changes with military operations at the base. If the board [governing body of the local
 6 government] does not receive a response within 30 days of the notice, the Department of Military
 7 and Veterans Affairs and the military ~~is~~are deemed to waive the comment period. If the
 8 Department of Military and Veterans Affairs and the military ~~provides~~provide comments or
 9 analysis regarding the compatibility of the proposed ordinance or amendment with military
 10 operations at the base, the governing body of the local government shall take the comments and
 11 analysis into consideration before making a final determination on the ordinance. The proposed
 12 changes requiring notice are:

- 13 (1) Changes to the zoning map.
- 14 (2) Changes that affect the permitted uses of land.
- 15 (3) Changes relating to telecommunications ~~towers or windmills~~towers and tall
 16 buildings and structures, as that term is defined in Article 9G of Chapter 143 of
 17 the General Statutes.
- 18 (3a) Changes relating to wind energy facilities or wind energy facility expansions as
 19 those terms are defined in Article 21C of Chapter 143 of the General Statutes.
- 20 (4) Changes to proposed new major subdivision preliminary plats.
- 21 (5) An increase in the size of an approved subdivision by more than fifty percent
 22 (50%) of the subdivision's total land area including developed and undeveloped
 23 land."
 24

25 PART VI. CONFORMING CHANGES

26 **SECTION 6.(a)** G.S. 143B-1211 is amended by adding a new subdivision to read:

27 "§ 143B-1211. Powers and duties of the Department of Military and Veterans Affairs.

28 It shall be the duty of the Department of Military and Veterans Affairs to do all of the
 29 following:

- 30 ...
- 31 (25) Maintain, and make available to the public, including posting to the
 32 Department's Web site, accurate maps of (i) the zones identified on the Low
 33 Level Flight Compatibility, Figure 3-1 – March 2016 Edition of the North
 34 Carolina Military Affairs Commission Compatible Use Map Atlas, as provided
 35 in G.S. 143-215.116A, and (ii) the areas surrounding major military
 36 installations, and military training routes and military operating areas, as
 37 defined in G.S. 143B-1315B, that are subject to the provisions of Part 12 of this
 38 Article."

39 **SECTION 6.(b)** G.S. 143-135.29 is repealed.

40 **SECTION 6.(c)** This section is effective when this act becomes law.

41 **SECTION 7.(a)** G.S. 143B-1211, as amended by Section 6(a) of this act, is amended
 42 by adding two new subdivisions to read:

43 "§ 143B-1211. Powers and duties of the Department of Military and Veterans Affairs.

44 It shall be the duty of the Department of Military and Veterans Affairs to do all of the
 45 following:

- 46 ...
- 47 (26) Issue recommendations to the Department of Environmental Quality as to
 48 whether the Department of Environmental Quality should approve or deny an
 49 application for a proposed wind energy facility or wind energy facility
 50 expansion as provided in G.S. 143-215.120A, and otherwise assist in

1 administration and implementation of the provisions of Article 21C of Chapter
2 143 of the General Statutes.

3
4
5 (27) Issue endorsements for the construction of proposed tall buildings or structures
6 as provided in G.S. 143B-1315F and otherwise assist in the administration and
7 implementation of the provisions of Part 12 of this Article."

8 **SECTION 7.(b)** This section becomes effective October 1, 2018, and applies to
9 certifications and endorsements issued on or after that date.

10
11 **PART VII. ESTABLISH NORTH CAROLINA SENTINEL LANDSCAPES COMMITTEE**

12 **SECTION 8.(a)** Committee Established. – There is established the North Carolina
13 Sentinel Landscape Committee (Committee) administratively housed within the College of
14 Natural Resources at North Carolina State University.

15 **SECTION 8.(b)** Findings and Purpose. – The General Assembly finds that sentinel
16 landscapes are places where preserving the working and rural character of the State's private lands
17 is important for both national defense and conservation priorities. It is the intent of the General
18 Assembly to direct the Committee to coordinate the overlapping priority areas in the vicinity of
19 and where testing and training occurs on major military installations, as that term is defined in
20 G.S. 143-215.115. Further, the Committee shall assist landowners in improving their land to
21 benefit their operations and enhance wildlife habitats while furthering the State's vested economic
22 interest in preserving, maintaining, and sustaining land uses that are compatible with military
23 activities at major military installations and National Guard facilities. In its work, the Committee
24 shall develop and implement programs and strategies that (i) protect working lands in the vicinity
25 of and where testing and training occurs on major military installations, (ii) address restrictions
26 that inhibit military testing and training, and (iii) forestall incompatible development in the
27 vicinity of and where testing and training occurs on military installations.

28 **SECTION 8.(c)** Powers and Duties. – The Committee shall:

- 29 (1) Identify and designate certain lands to be contained in the sentinel landscape of
30 this State that are of particular import to the nation's defense and in the vicinity
31 of and where testing and training occur on major military installations. In this
32 work, the Committee may seek advice and recommendations from stakeholders
33 who have experience in this sort of identification and designation.
- 34 (2) In designating sentinel lands as directed by subdivision (1) of this subsection,
35 the Committee shall evaluate all working or natural lands that the Committee
36 identifies as contributing to the long-term sustainability of the military missions
37 conducted in this State. In its evaluation of which lands to designate as sentinel
38 lands, the Committee shall consult with and seek input from:
- 39 a. The United States Department of Defense.
 - 40 b. The North Carolina Commander's Council.
 - 41 c. The United States Department of Agriculture.
 - 42 d. The United States Department of the Interior.
 - 43 e. Elected officials from units of local government located in the vicinity
44 of and where testing and training occurs on the proposed sentinel lands.
 - 45 f. Any other stakeholders that the Committee deems appropriate.
- 46 (3) Develop recommendations to encourage landowners located within the sentinel
47 landscape designated pursuant to subdivision (1) of this subsection to
48 voluntarily participate in and begin or continue land uses compatible with the
49 United States Department of Defense operations in this State.
- 50 (4) Provide technical support services and assistance to landowners who
51 voluntarily participate in the sentinel landscape program.

1 **SECTION 8.(d)** Membership. – The Committee shall consist of at least the four
2 following members:

- 3 (1) The Commissioner of Agriculture, or the Commissioner's designee
- 4 (2) The Secretary of the Department of Military and Veterans Affairs, or the
5 Secretary's designee.
- 6 (3) The Secretary of Natural and Cultural Resources, or the Secretary's designee.
- 7 (4) The Dean of the College of Natural Resources at North Carolina State
8 University, or the Dean's designee.

9 The Committee chair shall be one of the four listed members above and the Committee
10 chair may appoint members representing other State agencies, local government officials, and
11 nongovernmental organizations that are experienced in land management activities within sentinel
12 lands.

13 **SECTION 8.(e)** Transaction of Business. – The Committee shall meet, at a minimum,
14 at least once during each calendar quarter and at other times at the call of the chair. A majority of
15 members of the Committee shall constitute a quorum. The first Committee meeting shall take
16 place within 30 days of the effective date of this act.

17 **SECTION 8.(f)** Reports. – The Committee shall report on its activities conducted to
18 implement this section, including any findings, recommendations, and legislative proposals, to the
19 North Carolina Military Affairs Commission and the Agriculture and Forestry Awareness Study
20 Commission beginning September 1, 2016, and annually thereafter until such time as the
21 Committee completes its work.

22 **SECTION 8.(g)** Administrative Assistance. – All clerical and other services required
23 by the Committee shall be supplied by the membership and shall be provided with funds available.

24 **SECTION 8.(h)** Effective Date. – This section becomes effective when this act
25 becomes law.

26 27 **PART VIII. STUDY POTENTIAL CONFLICTS BETWEEN ENERGY-RELATED** 28 **INFRASTRUCTURE DEVELOPMENT AND LOW LEVEL FLIGHT COMPATIBILITY**

29 **SECTION 9.** The Department of Military and Veterans Affairs, in consultation with
30 the Division of Energy, Mineral, and Land Resources in the Department of Environmental
31 Quality, shall study the potential conflicts posed by energy-related infrastructure development
32 within the Red, Orange, and Yellow Zones as detailed in the Low Level Flight Compatibility,
33 Figure 3-1 – March 2016 Edition of the North Carolina Military Affairs Commission Compatible
34 Use Map Atlas. In the conduct of its study, the Department shall evaluate on- and near-shore
35 infrastructure development related to wind, solar, and oil and gas energy activities. The
36 Department shall also study infrastructure that has the potential to disrupt or weaken radar
37 operability or reliability. The Department may maintain records and documents that support the
38 work of this study confidentially in accordance with G.S. 143B-1216. The Department of Military
39 and Veterans Affairs shall report its findings, recommendations, and any legislative proposals to
40 the Joint Legislative Energy Policy Commission on or before December 15, 2017.

41 42 **PART IX. EFFECTIVE DATE**

43 **SECTION 10.** Except as otherwise provided, this act is effective when it becomes
44 law.