

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 433*

Short Title: Land Use Surrounding Military Installations. (Public)

Sponsors: Representatives J. Bell, Stam, McElraft, and Whitmire (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Homeland Security, Military, and Veterans Affairs, if favorable, Judiciary Subcommittee A.

March 27, 2013

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Article 9G.

"Military Lands Protection.

"§ 143-151.70. Short title.

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

"§ 143-151.71. Definitions.

Within the meaning of this Article:

- (1) "Area surrounding major Department of Defense military installations" is the area that extends five miles beyond the boundary of a major Department of Defense military installation and may include incorporated and unincorporated areas of counties and municipalities.
- (2) "Building Code Council" means the Council created pursuant to Article 9 of Chapter 143 of the General Statutes.
- (3) "Commissioner" means the Commissioner of Insurance.
- (4) "Construction" includes reconstruction, alteration, or expansion.
- (5) "Major Department of Defense military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune, New River Marine Corps Air Station, Seymour Johnson Air Force Base, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, and the United States Coast Guard Air Station at Elizabeth City.
- (6) "Person" includes any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.
- (7) "Tall buildings or structures" includes any building, structure, or unit within a multiunit building with a vertical height of more than 200 feet measured



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1 from the top of the foundation of the building, structure, or unit and the
2 uppermost point of the building, structure, or unit. "Tall buildings or
3 structures" does not include:

4 a. Water, radio, telephone, cellular, or television towers or any
5 equipment for the transmission of electricity or communications or
6 both.

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

12 c. Buildings and structures designated as National Historic Sites on the
13 National Archives Registry.

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

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

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 Department of Defense military
27 installation in this State unless the county or city is in receipt of either a certification issued to
28 the person by the Building Code Council pursuant to G.S. 143-151.75 or proof of the Council's
29 failure to act 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. Exemption from applicability.**

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

37 **"§ 143-151.75. Certification for construction of tall buildings or structures required.**

38 (a) No person shall undertake construction of a tall building or structure in any area
39 surrounding a major Department of Defense military installation in this State without either
40 first obtaining a certification from the Building Code Council authorizing such construction or
41 proof of the Council's failure to act within the time allowed.

42 (b) A person applying for certification for construction of a tall building or structure in
43 any area surrounding a major Department of Defense military installation in this State shall
44 include all of the following in an application for the certification:

45 (1) Identification of the major Department of Defense military installation and
46 the base commander of such installation that is located within five miles of
47 the proposed construction of a tall building or structure.

48 (2) Certification of written notice to the commanders of the installation
49 identified in subdivision (1) of this subsection that is located within five
50 miles of the proposed construction of a tall building or structure.

- 1 (3) A written statement from the base commander of the installation identified
2 in subdivision (1) of this subsection that includes:
3 a. A determination whether the location of the proposed construction of
4 the tall building or structure is within a protected area that surrounds
5 the installation.
6 b. A determination whether any activities of the installation may be
7 adversely affected by the proposed construction of the tall building or
8 structure. A detailed description of the potential adverse effects,
9 including frequency disturbances and physical obstructions, shall
10 accompany the determination required by this sub-subdivision.
11 (4) A written "Determination of No Hazard to Air Navigation" issued by the
12 Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14
13 Code of Federal Regulations (January 1, 2012 Edition) for the proposed
14 construction of the tall building or structure.

15 (c) The Building Code Council shall deny an application for a certification for
16 construction of a tall building or structure if the Council finds any one or more of the
17 following:

- 18 (1) Construction of the proposed tall building or structure would encroach upon
19 or otherwise interfere with the mission, training, or operations of any major
20 Department of Defense military installation in North Carolina and result in a
21 detriment to continued military presence in the State. In its evaluation, the
22 Building Code Council may consider whether the proposed tall building or
23 structure would cause interference with air navigation routes, air traffic
24 control areas, military training routes, or radar based on the written
25 statement received from a commander of a major Department of Defense
26 military installation required pursuant to subdivision (3) of subsection (b) of
27 this section and written comments received by members of affected
28 communities.
29 (2) The Council is not in receipt of the written "Determination of No Hazard to
30 Air Navigation" issued to the applicant by the Federal Aviation
31 Administration required pursuant to subdivision (4) of subsection (b) of this
32 section.

33 (d) The Building Code Council shall make a final decision on an application for
34 certification within 60 days or on or before the Council's next scheduled meeting, whichever
35 occurs last, following receipt of a completed application. If the Council determines that an
36 application for the construction of a tall building or structure fails to meet the requirements for
37 a certification under this section, the Council shall deny the application, and the application
38 shall be returned to the applicant accompanied by a written statement of the reasons for the
39 denial. If the Council fails to act within any time period set forth in this section, the applicant
40 may treat the failure to act as an approval of the permit.

41 **"§ 143-151.76. Application to existing tall buildings and structures.**

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

- 45 (1) No reconstruction, alteration, or expansion may aggravate or intensify a
46 violation by an existing building or structure that did not comply with
47 G.S. 143-151.73 upon its effective date.
48 (2) No reconstruction, alteration, or expansion may cause or create a violation
49 by an existing building or structure that did comply with G.S. 143-151.73
50 upon its effective date.

51 **"§ 143-151.77. Enforcement and penalties.**

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

7 (1) The Commissioner shall determine the amount of the civil penalty and shall
8 notify the person who is assessed the civil penalty of the amount of the
9 penalty and the reason for assessing the penalty. The notice of assessment
10 shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall
11 direct the violator to either pay the assessment or contest the assessment
12 within 30 calendar days by filing a petition for a contested case under Article
13 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil
14 penalty assessed by the Commissioner within 30 calendar days after it is
15 due, the Commissioner shall request that the Attorney General institute a
16 civil action to recover the amount of the assessment. The civil action may be
17 brought in the superior court of any county where the violation occurred. A
18 civil action must be filed within one year of the date the assessment was due.
19 An assessment that is not contested is due when the violator is served with a
20 notice of assessment. An assessment that is contested is due at the
21 conclusion of the administrative and judicial review of the assessment.

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

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

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