

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 433\*  
Committee Substitute Favorable 4/10/13  
Third Edition Engrossed 4/11/13

Short Title: Land Use Surrounding Military Installations.

(Public)

Sponsors:

Referred to:

March 27, 2013

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

6 The General Assembly of North Carolina enacts:

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

9 "Article 9G.

10 "Military Lands Protection.

11 "**§ 143-151.70. Short title.**

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

13 "**§ 143-151.71. Definitions.**

14 Within the meaning of this Article:

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



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

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

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

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

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

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

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

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

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

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

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

45           (b) A person seeking endorsement for the construction of a tall building or structure in  
46 any area surrounding a major Department of Defense military installation in this State shall  
47 provide all of the following to the State Construction Office:

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

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

18       (c)   The State Construction Office shall not endorse the construction of a tall building or  
19       structure if the Office finds any one or more of the following:

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

34       (d)   The State Construction Office shall make a final decision on the request for  
35       endorsement of the construction of a tall building or structure within 60 days of receipt of the  
36       items provided by the person pursuant to subsection (b) of this section. If the Office determines  
37       that a request for the construction of a tall building or structure fails to meet the requirements  
38       for endorsement under this section, the Office shall deny the request, and the request shall be  
39       returned to the person accompanied by a written statement of the reasons for the denial. If the  
40       Office fails to act within any time period set forth in this section, the person may treat the  
41       failure to act as a decision to endorse the construction.

42       **"§ 143-151.76. Application to existing tall buildings and structures.**

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

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

1 **"§ 143-151.77. Enforcement and penalties.**

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

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

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

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

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