

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**HOUSE BILL 433
RATIFIED BILL**

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

The General Assembly of North Carolina enacts:

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

"Article 9G.
"Military Lands Protection.

"§ 143-151.70. Short title.

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

"§ 143-151.71. Definitions.

Within the meaning of this Article:

- (1) "Area surrounding major military installations" is the area that extends five miles beyond the boundary of a major military installation and may include incorporated and unincorporated areas of counties and municipalities.
- (2) "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 military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune Marine Corps Air Base, New River Marine Corps Air Station, Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, 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, and any facility located within the State that is subject to the installations' oversight and control.
- (6) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.
- (7) "Tall buildings or structures" means any building, structure, or unit within a multiunit building with a vertical height of more than 200 feet measured from the top of the foundation of the building, structure, or unit and the uppermost point of the building, structure, or unit. "Tall buildings or structures" do not include buildings and structures listed individually or as contributing resources within a district listed in the National Register of Historic Places.

"§ 143-151.72. Legislative findings.

North Carolina has a vested economic interest in preserving, maintaining, and sustaining land uses that are compatible with military activities at major installations. Development located proximate to military installations has been identified as a critical issue impacting the long-term viability of the military in this State. Additional concerns associated with development include loss of access to air space and coastal and marine areas and radio



frequency encroachment. The construction of tall buildings or structures in areas surrounding major military installations is of utmost concern to the State as those buildings and structures may interfere with or impede the military's ability to carry out activities that are vital to its function and future presence in North Carolina.

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

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

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

"§ 143-151.74. Exemptions from applicability.

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

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

- (1) The height of the cellular or television tower that is erected to temporarily replace the cellular or television tower that is damaged or destroyed does not exceed the height of the original cellular or television tower.
- (2) A disaster has been declared pursuant to Chapter 166A of the General Statutes for the area in which the damaged or destroyed cellular or television tower is located.
- (3) The temporary cellular or television tower shall only remain in place until the expiration of the declared disaster.

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

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

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

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

- (1) Identification of the major military installation and the base commander of the installation that is located within five miles of the proposed tall building or structure.
- (2) A copy of the written notice sent to the base commander of the installation identified in subdivision (1) of this subsection that is located within five miles of the proposed tall building or structure.
- (3) A written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012, Edition) for the proposed tall building or structure.

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

- (1) A determination whether the location of the proposed tall building or structure is within a protected area that surrounds the installation.
- (2) A determination whether any activities of the installation may be adversely affected by the proposed tall building or structure. A detailed description of the potential adverse effects, including frequency disturbances and physical obstructions, shall accompany the determination required by this subdivision.

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

- (1) The proposed tall building or structure would encroach upon or otherwise interfere with the mission, training, or operations of any major military installation in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Building Code Council may consider whether the proposed tall building or structure would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on the written statement received from a base commander as provided in subsection (c) of this section and written comments received by members of affected communities. Provided, however, if the Building Code Council does not receive a written statement requested pursuant to subsection (c) of this section within 45 days of issuance of the request to the base commander, the Building Code Council shall deem the tall building or structure as endorsed by the base commander.
- (2) The Council is not in receipt of the written "Determination of No Hazard to Air Navigation" issued to the person by the Federal Aviation Administration required pursuant to subdivision (3) of subsection (b) of this section.

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

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

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

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

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

"§ 143-151.77. Enforcement and penalties.

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

- (1) The Commissioner shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under Rule 4 of G.S. 1A-1 and shall direct the violator to either pay the assessment or contest the assessment within 30 calendar days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil

penalty assessed by the Commissioner within 30 calendar days after it is due, the Commissioner shall request that the Attorney General institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred. A civil action must be filed within one year of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 18th day of June, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____, m. this _____ day of _____, 2013