

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 389

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

Sponsors: Senators Brown (Primary Sponsor); Apodaca, Daniel, Meredith; Pate, and Sanderson.

Referred to: Commerce.

March 21, 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 from the top of the foundation of the building, structure, or unit and the



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

- 3 a. Water, radio, telephone, cellular, or television towers or any
4 equipment for the transmission of electricity or communications or
5 both.
6 b. Slender structures and minor vertical projections of a parent building,
7 including chimneys, flagpoles, flues, spires, steeples, belfries,
8 cupolas, antennas, poles, wires, or windmills. Windmills exempt
9 pursuant to this sub-subdivision shall project no more than 20
10 vertical feet above the parent building.
11 c. Buildings and structures designated as National Historic Sites on the
12 National Archives Registry.

13 **"§ 143-151.72. Legislative findings.**

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

23 **"§ 143-151.73. Certain buildings and structures prohibited without certification.**

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

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

32 **"§ 143-151.74. Exemption from applicability.**

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

36 **"§ 143-151.75. Certification for construction of tall buildings or structures required.**

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

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

- 44 (1) Identification of the major Department of Defense military installation and
45 the base commander of such installation that is located within five miles of
46 the proposed construction of a tall building or structure.
47 (2) Certification of written notice to the commanders of the installation
48 identified in subdivision (1) of this subsection that is located within five
49 miles of the proposed construction of a tall building or structure.
50 (3) A written statement from the base commander of the installation identified
51 in subdivision (1) of this subsection that includes:

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

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

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

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

39 **"§ 143-151.76. Application to existing tall buildings and structures.**

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

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

49 **"§ 143-151.77. Enforcement and penalties.**

50 In addition to injunctive relief, the Commissioner may assess and collect a civil penalty
51 against any person who violates any of the provisions of this Article or rules adopted pursuant

1 to this Article, as provided in this subsection. The maximum civil penalty for a violation is five
2 thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each
3 day of a continuing violation may constitute a separate violation if the person is not in the
4 process of remedying the violation.

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

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

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

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