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Overview of North Carolina Military Compatibility Legislation

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House Bill 254, Session Law 2013-59

An act amending the requirements related to notice of land-use planning and zoning changes to be given to a military base by counties or cities near the military base.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-323(b) reads as rewritten:

- (a) If the adoption or modification of the ordinance would result in any of the changes to the zoning map or would change or affect the permitted uses of land listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested or by any other written means reasonably designed to provide actual notice, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the military may provide comments or analysis to the board regarding the compatibility of the proposed changes with military operations at the base. If the board does not receive a response within 30 days of the notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance. The proposed changes requiring notice are:
- (1) Changes to the zoning map.
 - (2) Changes that affect the permitted uses of land.
 - (3) Changes relating to telecommunications towers or windmills.
 - (4) Changes to proposed new major subdivision preliminary plats.
 - (5) An increase in the size of an approved subdivision by more than fifty percent (50%) of the subdivision's total land area including developed and undeveloped land.

SECTION 2. G.S. 160A-364(b) reads as rewritten:

- (b) If the adoption or modification of the ordinance would result in any of the changes to the zoning map or would change or affect the permitted uses of land listed in this subsection and those changes would be located five miles or less from the perimeter boundary of a military base, the board of commissioners shall provide written notice of the proposed changes by certified mail, return receipt requested or by any other written means reasonably designed to provide actual notice, to the commander of the military base or the commander's designee not less than 10 days nor more than 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the military may provide comments or analysis to the board regarding the compatibility of the proposed changes with military operations at the base. If the board does not receive a response within 30 days of the notice, the military is deemed to waive the comment period. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the board of commissioners shall take the comments and analysis into consideration before making a final determination on the ordinance. The proposed changes requiring notice are:

Changes to the zoning map.



- (1) Changes that affect the permitted uses of land.
- (2) Changes relating to telecommunications towers or windmills.
- (3) Changes to proposed new major subdivision preliminary plats.
- (4) An increase in the size of an approved subdivision by more than fifty percent (50%) of the subdivision's total land area including developed and undeveloped land.

SECTION 3. This act is effective when it becomes law and applies to planning and zoning changes initiated on or after that date.

In the General Assembly read three times and ratified this the 22nd day of May, 2013.

House Bill 433, Session Law 2013-206

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.



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- (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



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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.

House Bill 484, Session Law 2013-51

An act to establish a permitting program for the siting and operation of wind energy facilities.

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



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§ 143-215.116. Permit to site wind energy facilities.

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

§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication package requirements.

- (a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility, a person shall request a preapplication site evaluation meeting to be held between the applicant and the Department. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility and may be used by the participants to:
- (1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:
 - a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.
 - b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.
 - (2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.
 - (3) Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including avian, bat, and endangered and threatened species.
- (b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the applicant for a wind energy facility or wind energy facility expansion shall submit a preapplication package to the Department. To the extent that any documents contain trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act. The preapplication package shall include all of the following:
- (1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion, including (i) the approximate number, type, and height of wind turbines to be constructed; (ii) the total planned capacity of the facility; and (iii) a description of any ancillary facilities.
 - (2) A map showing the approximate location of the proposed wind energy facility or proposed wind energy facility expansion.
 - (3) A description of any known potential impacts of the proposed wind energy project location on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations. The applicant may use data made available by the Department pursuant to G.S. 143-215.123 to satisfy this requirement.
 - (4) A description of species of concern, habitats that support species of concern, critical areas of wildlife congregation, and protected lands, as those species, habitats, and critical areas are referenced in the March 23, 2012, United States Fish and Wildlife Service Land-Based Wind Energy Guidelines (OMB Control No. 1018-0148) that are or believed to be present at the site of the proposed wind energy facility or proposed wind energy facility expansion. The applicant may use data made available by the North Carolina



Wildlife Resources Commission, the Department, or other governmental agency to satisfy this requirement.

- (5) A list of the federal, State, and local agencies from which approvals will be obtained and the name of those approvals required in order to authorize the construction, operation, or expansion of the proposed wind energy facility.
 - (6) A schedule showing the anticipated dates for commencement of construction, testing, and commercial operation of the proposed wind energy facility or proposed wind energy facility expansion.
- (c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the Department shall provide written notice of the meeting to the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the commanding military officer or the commanding military officer's designee of any potentially affected major military installation, and any other party that the Department deems relevant. The notice shall include an invitation to participate in the permit preapplication site evaluation meeting.

§ 143-215.118. Permit application scoping meeting and notice.

- (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the applicant and the Department. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.
- (b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit application scoping meeting with an applicant, the Department shall provide written notice of the meeting to the commanding military officer of each major military installation, or the commanding military officer's designee, the Federal Aviation Administration, the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located, and those local governments with jurisdictions over areas in which a major military installation is located. The notice shall include an invitation to participate in the scoping meeting.

§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.

- (a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:
 - (1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.
 - (2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.
 - (3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.
 - (4) Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:



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- a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.
 - b. A description of the proposed wind energy facility or proposed wind energy facility expansion.
- (5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.
- (6) Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- (7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant's engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.
- (8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion.
- (9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters.
- (10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.
- (11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.
- (12) The application fee required by subsection (b) of this section.
- (13) A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of the expected condition of the site once the wind energy facility has been decommissioned and removed.
- (14) Other data or information the Department may reasonably require.
 - a. Confidentiality of Trade Secrets and Business Information. – To the extent that any documents included in the permit application contain trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act.



- b. Fees. – An applicant for a permit for a proposed wind energy facility or proposed wind energy facility expansion under this section shall submit with the application required pursuant to subsection (a) of this section, an application fee of three thousand five hundred dollars (\$3,500).
- c. Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion, and (iii) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:
- (1) A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.
 - (2) A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.
 - (3) A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on local governments from the board of commissioners for each county and the governing body of each municipality.
- d. Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.
- e. Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:
- (1) The North Carolina Utilities Commission.



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- (2) The Office of the Attorney General of North Carolina.
- (3) The commanding military officer of any potentially affected major military installation or the commanding military officer's designee.
- (4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located.

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

- (a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion unless the Department finds any one or more of the following:
- (1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.
 - (2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (c) of G.S. 143-215.119.
 - (3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.
 - (4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.
 - (5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.
 - (6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.
 - (7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.



- (8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.
- (9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.
- (b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed application, except that the Department shall not be required to make a final decision until the Department has received 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). If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.
- (c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain 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 facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.
- (d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118, (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes, or (iii) the applicable requirements of Chapter 62 of the General Statutes.

§ 143-215.121. Financial assurance requirements.

The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its



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condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of House Bill 484 Session Law 2013-51 Page 7 credit, trusts, surety bonds, or any other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used.

§ 143-215.122. Monitoring and reporting.

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency.

§ 143-215.123. Annual review of military presence.

The Department shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested.

§ 143-215.124. Record keeping.

The Department shall serve as the custodian of all data, information, and records received from a permit applicant or a major military installation pursuant to this Article and shall ensure that information provided to the Department that constitutes trade secrets, as that term is defined in G.S. 66-152, and that is designated as confidential or as a trade secret under G.S. 132-1.2, is limited only to the Department, State employees, and other persons who have executed a confidentiality agreement with the owner of such information. Information designated as confidential or as a trade secret under G.S. 132-1.2 shall not be subject to disclosure pursuant to G.S. 132-6.

§ 143-215.125. Rule making.

The Environmental Management Commission shall adopt any rules necessary for the implementation of this Article. In adopting rules, the Commission shall consult with the Coastal Resources Commission to ensure that the development of statewide permitting requirements is consistent with and in consideration of the characteristics unique to the coastal area of the State to the maximum extent practicable.

§ 143-215.126. Civil penalties.

- (a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who constructs a wind energy facility or wind energy facility expansion without obtaining a permit under this Article or who constructs or operates a wind energy facility in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars (\$10,000) per day.
- (b) The Secretary of Environment and Natural Resources, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind energy facility without first obtaining a permit



under this Article or who constructs or operates a wind energy facility or wind energy facility expansion in violation of its permit terms and conditions."

SECTION 2. This act is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions that have not received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration on or before that date.

In the General Assembly read three times and ratified this the 16th day of May, 2013.

Senate Bill 614, Session Law 2014-79

An act to further protect military, to make amendments to the military affairs commission, and to protect sensitive military documents.

The General Assembly of North Carolina enacts:

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

§ 143-135.29. Review of Military Lands Protection Act proposals.

The State Construction Office shall maintain, and make available to the public, accurate maps of areas surrounding major military installations, including Military Training Routes and Military Operating Areas, as defined in G.S. 143-151.71, that are subject to the provisions of Article 9G of Chapter 143 of the General Statutes.

SECTION 2. G.S. 143-151.71 reads as rewritten:

§ 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) "State Construction Office" means the State Construction Office of the Department of Administration.



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- (8) "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."

SECTION 3. G.S. 143-151.73 reads as rewritten:

§ 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 State Construction Office pursuant to G.S. 143-151.75 or proof of the Council's State Construction Office'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."

SECTION 4. G.S. 143-151.75 reads as rewritten:

§ 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 State Construction Office or proof of the Council's State Construction Office'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: State Construction Office:
- (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 State Construction Office 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 State Construction Office 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 State Construction Office shall not endorse a tall building or structure if the Council State Construction Office 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 State Construction Office 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 State Construction Office 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 State Construction Office shall deem the tall building or structure as endorsed by the base commander.
 - (2) The Council State Construction Office 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 State Construction Office 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 State Construction Office 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 State Construction Office determines that a request for a tall building or structure fails to meet the requirements for endorsement under this section, the Council State Construction Office shall deny the request. The Council State Construction Office shall notify the person of the denial, and the notice shall include a written statement of the reasons for the denial. If the Council State Construction Office 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 State Construction Office 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."

SECTION 5. G.S. 143-138(j2) is repealed.

SECTION 6. G.S. 127C-1 is amended by adding a new subsection to read:

- (d) Meetings and Records. – In accordance with Article 33C of Chapter 143 of the General Statutes and Chapter 132 of the General Statutes, the Commission may withhold documents and discussions related to the federal government's process to determine closure or realignment of military installations withheld from public inspection so long as public inspection would frustrate the purpose of confidentiality.

SECTION 7. Chapter 127C of the General Statutes is amended by adding a new section to read:

§ 127C-5. Protection of sensitive documents.

- (a) In carrying out any purpose set out in G.S. 127C-1(b), the Commission and the Department of Commerce may share documents and discussions protected from disclosure under G.S. 132-1.2 and G.S. 143-318.11 with other



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public bodies. Any information shared under this subsection shall be confidential and exempt from Chapter 132 of the General Statutes to the same extent that it is confidential in the possession of the Commission or the Department.

- (b) In carrying out any purpose set out in G.S. 127C-1(b), the Commission and the Department of Commerce may share documents and discussions protected from disclosure under G.S. 132-1.2 and G.S. 143-318.11 with any third party in its discretion. Any information shared under this subsection shall be shared under an agreement to keep the information confidential to the same extent that it is confidential in the possession of the Commission or the Department.

SECTION 8. G.S. 132-1.2 is amended by adding a new subdivision to read:

- (6) Reveals documents related to the federal government's process to determine closure or realignment of military installations until a final decision has been made by the federal government in that process.

SECTION 9.(a) G.S. 143-318.11(a)(4) reads as rewritten:

- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations, negotiations, or to discuss matters relating to military installation closure or realignment. Any action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.

SECTION 9.(b) This section becomes effective when it becomes law and applies to meetings held or on after that date.

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

In the General Assembly read three times and ratified this the 16th day of July, 2014.