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Short Title: Military Operations Protection Act of 2016. (Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO PROTECT NORTH CAROLINA'S MILITARY FOOTPRINT BY (1) MODIFYING THE PERMITTING PROCESS FOR WIND ENERGY FACILITIES, THE ENDORSEMENT PROCESS FOR CONSTRUCTION OF TALL BUILDINGS AND STRUCTURES, AND THE PROCEDURE FOR ADOPTING, AMENDING, OR REPEALING ORDINANCES IN ORDER TO PROVIDE THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS WITH THE RESPONSIBILITY FOR CONSIDERATION AND REVIEW OF MILITARY-RELATED CRITERIA AND (2) ESTABLISHING THE NORTH CAROLINA SENTINEL LANDS COMMITTEE TO COORDINATE THE OVERLAPPING PRIORITY AREAS IN THE VICINITY OF THE STATE'S MAJOR MILITARY INSTALLATIONS.

The General Assembly of North Carolina enacts:

**PART I. MODIFY THE APPROVAL PROCESS FOR PERMITTING WIND ENERGY FACILITIES**

**SECTION 1.(a)** Article 21C of Chapter 143 of the General Statutes reads as rewritten:  
"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, Camp Butner, North Carolina National Guard Joint Force Headquarters, 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



1 located within one-half mile of one another, have a rated capacity of one  
2 megawatt or more of energy.

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

8 **"§ 143-215.116. Permit to site wind energy facilities.**

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

11 **"§ 143-215.116A. Prohibitions; low level flight compatibility.**

12 (a) Construction, operation, or expansion activities associated with a wind energy facility  
13 shall be prohibited in any location identified as a "Red Zone," "Orange Zone," "Yellow Zone,"  
14 "Green Zone," or "Grey Zone-Rotary Operations Area" as those zones are identified on the Low  
15 Level Flight Compatibility, Figure 3-1 – March 2016 Edition of the North Carolina Military  
16 Affairs Commission Compatible Use Map Atlas.

17 (b) The Department shall consult with the Military Affairs Commission and the  
18 Department of Military and Veterans Affairs, at least annually, to review and ensure that the Low  
19 Level Flight Compatibility, Figure 3-1 – March 2016 Edition of the North Carolina Military  
20 Affairs Commission Compatible Use Map Atlas, is up-to-date to reflect potential development  
21 conflicts to existing military operations and to future military operations that may be considered  
22 for the military's mission, readiness, and training. The Department of Military and Veterans  
23 Affairs and the Commission may propose updates to Figure 3-1 based on the results of their  
24 review. After an update has been proposed, the agencies shall submit the proposed updated map,  
25 relevant data in support of the proposed updated map, and the compilation of public comments  
26 received pursuant to G.S. 143-215.123 to the Environmental Review Commission for the  
27 Commission's consideration of whether to recommend to the General Assembly a statutory  
28 revision to incorporate the proposed updated map.

29 (c) The Department is authorized to withhold from the public record any relevant data that  
30 it deems critical to national security but, when queried, shall identify where such data has been  
31 protected from inclusion in public records.

32 **"§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication**  
33 **package requirements.**

34 ...

35 (b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit  
36 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section,  
37 the applicant for a wind energy facility or wind energy facility expansion shall submit a  
38 preapplication package to the Department. To the extent that any documents contain trade secrets  
39 or confidential business information, those portions of the documents shall not be subject to  
40 disclosure under the North Carolina Public Records Act. The preapplication package shall include  
41 all of the following:

- 42 (1) A narrative description of the proposed wind energy facility or proposed wind  
43 energy facility expansion, including (i) the approximate number, type, and  
44 height of wind turbines to be constructed; (ii) the total planned capacity of the  
45 facility; and (iii) a description of any ancillary facilities.
- 46 (2) A map showing the approximate location of the proposed wind energy facility  
47 or proposed wind energy facility expansion.
- 48 (3) A description of any known potential impacts of the proposed wind energy  
49 project location on civil air navigation or military air navigation routes, air  
50 traffic control areas, military training routes, special-use air space, radar, or  
51 other potentially affected military operations. The applicant may use data made

1 available by the Department of Military and Veterans Affairs pursuant to  
2 G.S. 143-215.123 to satisfy this requirement.

3 (4) A description of species of concern, habitats that support species of concern,  
4 critical areas of wildlife congregation, and protected lands, as those species,  
5 habitats, and critical areas are referenced in the March 23, 2012, United States  
6 Fish and Wildlife Service Land-Based Wind Energy Guidelines (OMB Control  
7 No. 1018-0148) that are or believed to be present at the site of the proposed  
8 wind energy facility or proposed wind energy facility expansion. The applicant  
9 may use data made available by the North Carolina Wildlife Resources  
10 Commission, the Department, or other governmental agency to satisfy this  
11 requirement.

12 (5) A list of the federal, State, and local agencies from which approvals will be  
13 obtained and the name of those approvals required in order to authorize the  
14 construction, operation, or expansion of the proposed wind energy facility.

15 (6) A schedule showing the anticipated dates for commencement of construction,  
16 testing, and commercial operation of the proposed wind energy facility or  
17 proposed wind energy facility expansion.

18 ...

19 **"§ 143-215.118. Permit application scoping meeting and notice.**

20 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a  
21 proposed wind energy facility or proposed wind energy facility expansion, the applicant shall  
22 request the scheduling of a scoping meeting between the applicant and the Department. The  
23 scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a  
24 proposed wind energy facility or proposed wind energy facility expansion. ~~The applicant and the~~  
25 ~~Department shall review the permit for the proposed wind energy facility or proposed facility~~  
26 ~~expansion at the scoping meeting.~~

27 ...

28 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed**  
29 **permit; public hearing; public comment.**

30 (a) Permit Requirements. – A person applying for a permit for a proposed wind energy  
31 facility or proposed wind energy facility expansion shall include all of the following in an  
32 application for the permit:

33 (1) A narrative description of the proposed wind energy facility or proposed wind  
34 energy facility expansion.

35 (2) A map showing the location of the proposed wind energy facility or proposed  
36 wind energy facility expansion that identifies the specific location of each  
37 turbine.

38 (3) A copy of a deed, purchase agreement, lease agreement, or other legal  
39 instrument demonstrating the right to construct, expand, or otherwise develop a  
40 wind energy facility on the property.

41 (4) Identification by name and address of property owners adjacent to living within  
42 one-half mile of the proposed wind energy facility or proposed wind energy  
43 facility expansion. The applicant shall notify every property owner identified  
44 pursuant to this subdivision by registered or certified mail or by any means  
45 authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The  
46 notice shall include all of the following:

47 a. The location of the proposed wind energy facility or proposed wind  
48 energy facility expansion and the specific location of each turbine  
49 proposed to be located within one-half mile of the ~~boundary of the~~  
50 ~~adjacent property owner property.~~

- 1                   b.       A description of the proposed wind energy facility or proposed wind  
2                                   energy facility expansion.
- 3           (5)     A description of civil air navigation or military air navigation routes, air traffic  
4                   control areas, military training routes, special-use air space, radar, or other  
5                   military operations that may be affected by the construction or operation of the  
6                   proposed wind energy facility or proposed wind energy facility expansion.
- 7           (6)     Documentation that addresses any potential adverse impact on military  
8                   operations and readiness as identified by the Department of Defense  
9                   Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations  
10                  (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.
- 11          (7)     Documentation that the applicant has either (i) submitted Federal Aviation  
12                   Administration Form 7460-1 for the turbines associated with the proposed wind  
13                   energy facility or proposed wind energy facility expansion or (ii) initiated an  
14                   informal review by the Department of Defense Siting Clearinghouse of the  
15                   proposed wind energy facility or proposed wind energy facility expansion. If  
16                   the applicant has submitted Federal Aviation Administration Form 7460-1 in  
17                   order to fulfill the requirements of this subdivision, the applicant shall provide  
18                   any determination reached by the Federal Aviation Administration at the time  
19                   the application is submitted to the Department. If the Federal Aviation  
20                   Administration has not made a determination at the time the application is  
21                   submitted to the Department, the application shall include a description of the  
22                   status of the applicant's engagement with the Federal Aviation Administration  
23                   and the Department of Defense Siting Clearinghouse.
- 24          (8)     A study of the noise impacts of the turbines to be associated with the proposed  
25                   wind energy facility or proposed wind energy facility expansion.
- 26          (9)     A study on shadow flicker impacts of the turbines to be associated with the  
27                   proposed wind energy facility or proposed wind energy facility expansion,  
28                   unless the turbines will be located in a sound or in offshore waters.
- 29          (10)    A study of the impact of the proposed wind energy facility or proposed wind  
30                   energy facility expansion on natural resources and uses, including avian, bat,  
31                   and endangered and threatened species.
- 32          (11)    An explanation of how the proposed wind energy facility or proposed wind  
33                   energy facility expansion would be consistent with the criteria in subsection (a)  
34                   of G.S. 143-215.120.
- 35          (12)    The application fee required by subsection (c) of this section.
- 36          (13)    A plan regarding the action to be taken upon the decommissioning and removal  
37                   of the wind energy facility. The plan shall include an estimate of the cost to  
38                   decommission and remove the wind energy facility. The plan shall also include  
39                   the anticipated life of the project, an estimate of the cost to decommission and  
40                   remove the wind energy facility, a description of the manner in which the  
41                   facility will be decommissioned, and a description of the expected condition of  
42                   the site once the wind energy facility has been decommissioned and removed.
- 43          (14)    Other data or information the Department may reasonably require.
- 44          (a1)    A person applying for a permit for a proposed wind energy facility or proposed wind  
45          energy facility expansion shall provide copies of the noise and shadow flicker studies required  
46          pursuant to subdivisions (8) and (9) of subsection (a) of this section to the Department of Health  
47          and Human Services for review of the potential health effects posed by the proposed facility. The  
48          Department of Health and Human Services may consult faculty from the University of North  
49          Carolina's School of Medicine or Gillings School of Global Public Health who are expert in the  
50          health impacts of noise, shadow flicker, or both in its evaluation of these studies. The Department  
51          of Health and Human Services shall provide the results of its review of the studies and its

1 recommendations for further action, if any, to the Department. If in the conduct of its review of  
2 either the noise or shadow flicker impact studies, or both, the Department of Health and Human  
3 Services determines that those impacts would be deleterious to human health, the Department of  
4 Health and Human Services shall notify the Department accordingly, in writing, with a  
5 recommendation that the Department deny the permit. The Department of Health and Human  
6 Services shall issue its recommendation to the Department within 60 days following receipt of a  
7 completed application.

8 ...

9 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other**  
10 **approvals required.**

11 (a) Permit Approval. – The Department shall approve an application for a permit for a  
12 proposed wind energy facility or proposed wind energy facility expansion unless the Department  
13 finds any one or more of the following:

- 14 (1) Construction or operation of the proposed wind energy facility or proposed  
15 wind energy facility expansion would be inconsistent with or violate rules  
16 adopted by the ~~Department~~ Department, the Department of Military and  
17 Veterans Affairs, or any other provision of law.
- 18 (2) Construction or operation of the proposed wind energy facility or proposed  
19 wind energy facility expansion would encroach upon or would otherwise have a  
20 significant adverse impact on the mission, training, or operations of any major  
21 military installation or branch of military in North Carolina and result in a  
22 detriment to continued military presence in the State. In its evaluation, the  
23 Department may consider whether the proposed wind energy facility or  
24 proposed wind energy facility expansion would cause interference with air  
25 navigation routes, air traffic control areas, military training routes, or radar  
26 based on information submitted by the applicant pursuant to subdivisions (5)  
27 and (6) of subsection (a) of G.S. 143-215.119, and any information received by  
28 the Department pursuant to subdivision (2) of subsection (d) of  
29 G.S. 143-215.119.
- 30 (3) Construction or operation of the proposed wind energy facility or proposed  
31 wind energy facility expansion would result in significant adverse impacts to  
32 ecological systems, natural resources, cultural sites, recreation areas, or historic  
33 sites of more than local significance; including national or State parks or  
34 forests, wilderness areas, historic sites, recreation areas, segments of the natural  
35 and scenic rivers system, wildlife refuges, preserves and management areas,  
36 areas that provide habitat for threatened or endangered species, primary nursery  
37 areas designated by the Marine Fisheries Commission and the Wildlife  
38 Resources Commission, and critical fisheries habitat identified pursuant to the  
39 Coastal Habitat Protection Plan.
- 40 (4) Construction or operation of the proposed wind energy facility or proposed  
41 wind energy facility expansion would have a significant adverse impact on fish  
42 or wildlife.
- 43 (5) Construction or operation of the proposed wind energy facility or proposed  
44 wind energy facility expansion would have a significant adverse impact on  
45 views from any State or national park, wilderness area, significant natural  
46 heritage area as compiled by the North Carolina Natural Heritage Program, or  
47 other public lands or private conservation lands designated or dedicated due to  
48 their high recreational values.
- 49 (6) Construction or operation of the proposed wind energy facility or proposed  
50 wind energy facility expansion would obstruct major navigation channels or

1 create a significant obstacle to navigation in coastal waters, as determined by  
2 the United States Army Corps of Engineers and the United States Coast Guard.

3 (7) A permit for a proposed wind energy facility or proposed wind energy facility  
4 expansion would be denied under any other criteria set out in G.S. 113A-120.

5 (8) Construction of the proposed wind energy facility or proposed wind energy  
6 facility expansion would be prohibited under Article 14 of Chapter 113A of the  
7 General Statutes, the Mountain Ridge Protection Act of 1983.

8 (9) The applicant is not in compliance with all applicable federal, State, or local  
9 permit requirements, licenses, or approvals, including local zoning  
10 requirements.

11 (10) That construction of the proposed wind energy facility or proposed wind energy  
12 facility expansion would pose a significant adverse impact on human health, as  
13 evidenced by receipt of the written notice from the Department of Health and  
14 Human Services submitted pursuant to G.S. 143-215.119(a1).

15 ...

16 "**§ 143-215.123. Annual review of military ~~presence~~; public notice of and public**  
17 **hearing on proposed updated maps.**

18 (a) The Department of Military and Veterans Affairs shall consult with representatives of  
19 the major military installations to review information regarding military air navigation routes, air  
20 traffic control areas, military training routes, special-use air space, radar, or other potentially  
21 affected military operations at least once per year. ~~year~~ and shall provide such information to the  
22 Department. The Department of Military and Veterans Affairs shall provide relevant information  
23 on civil air navigation or military air navigation routes, air traffic control areas, military training  
24 routes, special-use air space, radar, or other potentially affected military operations to permit  
25 applicants as requested.

26 (b) If the Department of Military and Veterans Affairs and the Military Affairs  
27 Commission proposes to update the Low Level Flight Compatibility, Figure 3-1 map pursuant to  
28 G.S. 143-215.116A, the Department of Military and Veterans Affairs shall, prior to submitting the  
29 proposed updated map to the Environmental Review Commission for review, do all of the  
30 following:

31 (1) Publish the proposed updated map on each agency's Web site for public review  
32 and comment except for data deemed critical to national security as provided in  
33 G.S. 143-216.116A(c).

34 (2) Hold at least one public hearing within 30 days of completing an updated map.

35 (3) Provide notice at least 30 days in advance of the hearing, including the time and  
36 location of the public hearing, in (i) a newspaper of general circulation in the  
37 county in which the hearing will take place and (ii) on the its Web site.

38 (4) Evaluate all of the public comments received on the proposed updated map and  
39 prepare a compilation of the comments and the Department of Military and  
40 Veterans Affairs' response to the comments, if any, to accompany the proposed  
41 map when it is submitted to the Environmental Review Commission.

42 ...

43 "**§ 143-215.125. Rule making.**

44 The Department of Military and Veterans Affairs and the Environmental Management  
45 Commission shall adopt any rules necessary ~~for the implementation of~~ pertaining to their  
46 respective jurisdictions to implement this Article. In adopting rules, the Environmental  
47 Management Commission shall consult with the Coastal Resources Commission to ensure that the  
48 development of statewide permitting requirements is consistent with and in consideration of the  
49 characteristics unique to the coastal area of the State to the maximum extent practicable.

50 ...."



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

4 **"§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

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

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

13 **"§ 143-151.74. Exemptions from applicability.**

14 (a) Wind energy facilities and wind energy facility expansions, as those terms are defined  
15 in Article 21C of Chapter 143 of the General Statutes, that are subject to the applicable permit  
16 requirements of that Chapter shall be exempt from obtaining the endorsement required by this  
17 Article.

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

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

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

35 **"§ 143-151.75. Endorsement for proposed tall buildings or structures required.**

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

40 (a1) No person shall undertake construction of a tall building or structure in any area  
41 located within one-quarter mile (1/4 mile) of a National Guard facility without either first  
42 obtaining an endorsement from the State Construction Office or proof of the State Construction  
43 Office's failure to act within the time allowed.

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

- 49 (1) Identification of the major military installation and the base commander of the  
50 installation that is located within five miles of the proposed tall building or  
51 structure.



1 (2) A copy of the written notice sent to the base commander of the installation  
2 identified in subdivision (1) of this subsection that is located within five miles  
3 of the proposed tall building or structure.

4 (3) A written "Determination of No Hazard to Air Navigation" issued by the  
5 Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of  
6 the Code of Federal Regulations (January 1, 2012, Edition) for the proposed tall  
7 building or structure.

8 (c) After receipt of the information provided by the ~~applicant~~ person pursuant to  
9 subsection (b) of this section, the State Construction Office shall, in writing, request a written  
10 statement concerning the proposed tall building or structure from the base commander of the  
11 major military installation identified in subdivision (1) of subsection (b) of this section. The State  
12 Construction Office shall request that the following information be included in the written  
13 statement from the base commander:

14 (1) A determination whether the location of the proposed tall building or structure  
15 is within a ~~protected~~ an area that surrounds the major military installation.

16 (2) A determination whether any activities of the installation may be adversely  
17 affected by the proposed tall building or structure. A detailed description of the  
18 potential adverse effects, including frequency disturbances and physical  
19 obstructions, shall accompany the determination required by this subdivision.

20 (d) The State Construction Office shall not endorse a tall building or structure if the State  
21 Construction Office finds any one or more of the following:

22 (1) The proposed tall building or structure would encroach upon or otherwise  
23 interfere with the mission, training, or operations of any major military  
24 installation in North Carolina and result in a detriment to continued military  
25 presence in the State. In its evaluation, the State Construction Office may  
26 consider whether the proposed tall building or structure would cause  
27 interference with air navigation routes, air traffic control areas, military training  
28 routes, or radar based on the written statement received from a base commander  
29 as provided in subsection (c) of this section and written comments received by  
30 members of affected communities. Provided, however, if the State Construction  
31 Office does not receive a written statement requested pursuant to subsection (c)  
32 of this section within 45 days of issuance of the request to the base commander,  
33 the State Construction Office shall deem the tall building or structure as  
34 ~~endorsed~~ eligible by the base commander.

35 (2) The State Construction Office is not in receipt of the written "Determination of  
36 No Hazard to Air Navigation" issued to the person by the Federal Aviation  
37 Administration required pursuant to subdivision (3) of subsection (b) of this  
38 section.

39 (d1) A person seeking endorsement for a proposed tall building or structure in any area  
40 located within one-quarter mile (1/4 mile) of a National Guard facility shall consult with the  
41 Adjutant General to determine whether any activities of the facility may be adversely affected by  
42 the proposed tall building or structure. A written summary of the consultation between the person  
43 and the Adjutant General, including findings and recommendations of the Adjutant General as to  
44 whether or not to endorse the proposed tall building or structure, shall be submitted to the State  
45 Construction Office and evaluated in accordance with subsections (d2) and (e) of this section.

46 (d2) The State Construction Office shall not endorse a tall building or structure in any area  
47 located within one-quarter mile (1/4 mile) of a National Guard facility if the State Construction  
48 Office finds any one or more of the following:

49 (1) As evidenced by receipt of the written summary from the Adjutant General  
50 submitted pursuant to subsection (d1) of this section, construction of the  
51 proposed tall building or structure would encroach upon or otherwise interfere

1 with the mission, training, or operations of National Guard facility and result in  
2 a detriment to its continued presence in the State. In its evaluation, the State  
3 Construction Office may consider whether the proposed tall building or  
4 structure would cause interference with air navigation routes, air traffic control  
5 areas, military training routes, or radar based on the written statement received  
6 as provided in subsection (d1) of this section. Provided, however, if the State  
7 Construction Office does not receive the written statement pursuant to  
8 subsection (d1) of this section within 45 days of the date of the consultation  
9 between the person and the Adjutant General, the State Construction Office  
10 shall construe the Adjutant General's failure to submit the written statement as  
11 the Adjutant General having no objection to the tall building or structure.

12 (2) The State Construction Office is not in receipt of the written "Determination of  
13 No Hazard to Air Navigation" issued to the person by the Federal Aviation  
14 Administration required pursuant to subdivision (3) of subsection (b) of this  
15 section.

16 (e) The State Construction Office shall make a final decision on the request for  
17 endorsement of a tall building or structure within 90 days from the date on which either (i) the  
18 State Construction Office requested the written statement from the base commander of the major  
19 military installation identified in subdivision (1) of subsection (b) of this section or (ii) the  
20 date of the consultation between the person and the Adjutant General conducted in accordance  
21 with subsection (d1) of this section. If the State Construction Office determines that a request for a  
22 tall building or structure fails to meet the requirements for endorsement under this section, the  
23 State Construction Office shall deny the request. The State Construction Office shall notify the  
24 person of the denial, and the notice include a written statement of the reasons for the denial. If the  
25 State Construction Office fails to act within any time period set forth in this section, the person  
26 may treat the failure to act as ~~a decision to endorse the~~ State Construction Office having no  
27 objection to the tall building or structure.

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

31 **"§ 143-151.76. Application to existing tall buildings and structures.**

32 G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding major  
33 military installations ~~upon the effective date of this Article on October 1, 2013,~~ as follows:

34 (1) No reconstruction, alteration, or expansion may aggravate or intensify a  
35 violation by an existing building or structure that did not comply with  
36 G.S. 143-151.73 ~~upon its effective date on October 1, 2013.~~

37 (2) No reconstruction, alteration, or expansion may cause or create a violation by  
38 an existing building or structure that did comply with G.S. 143-151.73 ~~upon its~~  
39 ~~effective date on October 1, 2013.~~

40 **"§ 143-151.77. Enforcement and penalties.**

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

47 (b) ~~The Commissioner-Secretary~~ shall determine the amount of the civil penalty and shall  
48 notify the person who is assessed the civil penalty of the amount of the penalty and the reason for  
49 assessing the penalty. The notice of assessment shall be served by any means authorized under  
50 Rule 4 of G.S. 1A-1 and shall direct the violator to either pay the assessment or contest the  
51 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-Secretary~~ within 30 calendar days after it is due, the ~~Commissioner-Secretary~~ 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.

(c) In determining the amount of the penalty, the ~~Commissioner-Secretary~~ 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.

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

(e) Whenever the Secretary has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article, a rule implementing this Article, or any of the terms of any endorsement issued pursuant to this Article, the State Construction Office may, either before or after the institution of any other action or proceeding authorized by this Article, request the Attorney General to institute a civil action in the name of the State upon the request of the State Construction Office for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in the Attorney General's discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has the person's principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Article or the regulations of the State Construction Office has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article."

**SECTION 2.(b)** This section is effective when this act becomes law and applies to requests for endorsements to construct tall buildings or structures submitted on or after that date.

**PART III. AUTHORIZE THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS TO REVIEW MILITARY-RELATED CRITERIA FOR PERMITTING WIND ENERGY FACILITIES**

**SECTION 3.(a)** Article 21C of Chapter 143 of the General Statutes, as amended by Section 1(a) of this act, reads as rewritten:

"Article 21C.

"Permitting of Wind Energy Facilities.

...

**§ 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~~ applicant, the Department, and the Department of Military and Veterans Affairs. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an

1 application for a permit to construct, operate, or expand a wind energy facility and may be used by  
2 the participants to:

3 ...

4 (b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit  
5 preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section,  
6 the applicant for a wind energy facility or wind energy facility expansion shall submit a  
7 preapplication package to the ~~Department.~~Department and the Department of Military and  
8 Veterans Affairs. To the extent that any documents contain trade secrets or confidential business  
9 information, those portions of the documents shall not be subject to disclosure under the North  
10 Carolina Public Records Act. The preapplication package shall include all of the following:

11 ...

12 **"§ 143-215.118. Permit application scoping meeting and notice.**

13 (a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a  
14 proposed wind energy facility or proposed wind energy facility expansion, the applicant shall  
15 request the scheduling of a scoping meeting between the ~~applicant and the Department.~~applicant,  
16 the Department, and the Department of Military and Veterans Affairs. The scoping meeting shall  
17 be held no less than 30 days prior to filing an application for a permit for a proposed wind energy  
18 facility or proposed wind energy facility expansion.

19 ...

20 **"§ 143-215.119. Permit application requirements; fees; notice of receipt of completed  
21 permit; public hearing; public comment.**

22 (a) Permit Requirements. – A person applying for a permit for a proposed wind energy  
23 facility or proposed wind energy facility expansion shall include all of the following in an  
24 application for the ~~permit;~~permit to be submitted to the Department and the Department of  
25 Military and Veterans Affairs:

26 ...

27 (f) Public Hearing and Comment. – The Department shall hold a public hearing in each  
28 county in which the wind energy facility or wind energy facility expansion is proposed to be  
29 located within 75 days of receipt of a completed permit application. The Department shall provide  
30 notice including the time and location of the public hearing in a newspaper of general circulation  
31 in each applicable county. The notice of public hearing shall be published for at least two  
32 consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The  
33 notice shall provide that any comments on the proposed wind energy facility or proposed wind  
34 energy facility expansion should be submitted to the Department by a specified date, not less than  
35 15 days from the date of the newspaper publication of the notice or 15 days after distribution of  
36 the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing,  
37 the Department shall provide written notice of the hearing to:

- 38 (1) The North Carolina Utilities Commission.
- 39 (2) The Office of the Attorney General of North Carolina.
- 40 (3) The commanding military officer of any potentially affected major military  
41 installation or the commanding military officer's designee.
- 42 (4) The board of commissioners for each county and the governing body of each  
43 municipality with jurisdictions over areas in which a potentially affected major  
44 military installation is located.
- 45 (5) The Department of Military and Veterans Affairs.

46 **"§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other  
47 approvals required.**

48 (a) Permit Approval. – The Department shall approve an application for a permit for a  
49 proposed wind energy facility or proposed wind energy facility expansion unless the Department  
50 finds any one or more of the following:

1 (1) Construction or operation of the proposed wind energy facility or proposed  
2 wind energy facility expansion would be inconsistent with or violate rules  
3 adopted by the Department, the Department of Military and Veterans Affairs, or  
4 any other provision of law.

5 (2) ~~Construction~~ The Department of Military and Veterans Affairs determines that,  
6 pursuant to G.S. 143-215.120A(b), construction or operation of the proposed  
7 wind energy facility or proposed wind energy facility expansion would  
8 encroach upon or would otherwise have a significant adverse impact on the  
9 mission, training, or operations of any major military installation or branch of  
10 military in North Carolina and result in a detriment to continued military  
11 presence in the State. In its evaluation, the Department may consider whether  
12 the proposed wind energy facility or proposed wind energy facility expansion  
13 would cause interference with air navigation routes, air traffic control areas,  
14 military training routes, or radar based on information submitted by the  
15 applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S.  
16 143-215.119, and any information received by the Department pursuant to  
17 subdivision (2) of subsection (d) of G.S. 143-215.119.

18 ...

19 (b) Permit Decision. –The Department shall make a final decision on a permit application  
20 within 90 days following receipt of a completed application, except that the Department shall not  
21 be required to make a final decision until the Department has ~~received~~ received both (i) a  
22 determination, issued pursuant to G.S. 143-215.120A, from the Department of Military and  
23 Veterans Affairs as to whether approve or deny a permit for the proposed wind energy facility or  
24 proposed wind energy facility expansion, and (ii) a written "Determination of No Hazard to Air  
25 Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of  
26 Title 14 of the Code of Federal Regulations (January 1, 2012 edition). If the Department requests  
27 additional information following the receipt of a completed application, the Department shall  
28 make a final decision on a permit application within 30 days of receipt of the requested  
29 information. If the Department determines that an application for a wind energy facility or a wind  
30 energy facility expansion fails to meet the requirements for a permit under this section, the  
31 Department shall deny the application, and the application shall be returned to the applicant  
32 accompanied by a written statement of the reasons for the denial and any modifications to the  
33 permit application that would make the application acceptable. If the Department fails to act  
34 within the time period set forth in this subsection, the applicant may treat the failure to act as a  
35 denial of the permit and may challenge the denial as provided under Chapter 150B of the General  
36 Statutes.

37 ...

38 **§ 143-215.120A. Evaluation of military-related criteria required from the Department of**  
39 **Military and Veterans Affairs; recommendation to Department of Environmental**  
40 **Quality.**

41 (a) The Department of Military and Veterans Affairs shall evaluate whether the  
42 construction or operation of the proposed wind energy facility or wind energy facility expansion  
43 would encroach upon or would otherwise have a significant adverse impact on the mission,  
44 training, or operations of any major military installation or branch of military in North Carolina  
45 and result in a detriment to continued military presence in the State. In its evaluation, the  
46 Department of Military and Veterans Affairs may consider whether the proposed wind energy  
47 facility or proposed wind energy facility expansion would cause interference with air navigation  
48 routes, air traffic control areas, military training routes, or radar based on information submitted  
49 by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and  
50 any information received by the Department pursuant to subdivision (2) of subsection (d) of  
51 G.S. 143-215.119.

(b) Based on its evaluation of the criteria set forth in subsection (a) of this section, the Department of Military and Veterans Affairs shall issue a determination to the Department as to whether the proposed wind energy facility or wind energy facility expansion encroaches on military missions, training or operations, which shall include findings of fact that document the basis for the determination. If in the conduct of its review, the Department of Military and Veterans Affairs determines that the proposed wind energy facility or wind energy facility following receipt of a completed application.

...."

**SECTION 3.(b)** This section becomes effective October 1, 2018, and applies to applications for permits for a proposed wind energy facility or a proposed wind energy facility expansion submitted on or after that date.

**PART IV. AUTHORIZE THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS TO REVIEW MILITARY-RELATED CRITERIA AND ENDORSE THE CONSTRUCTION OF TALL BUILDINGS AND STRUCTURES**

**SECTION 4.(a)** The Revisor of Statutes shall recodify Article 9G of Chapter 143 of the General Statutes (Military Lands Protection) as Part 12 of Article 14 of Chapter 143B of the General Statutes with the sections to be numbered as G.S. 143B-1315A through 143B-1315H, respectively.

**SECTION 4.(b)** Part 12 of Article 14 of Chapter 143B of the General Statutes, as recodified by subsection (a) of this section and as amended by Section 2(a) of this act, reads as rewritten:

"Part 12. Military Lands Protection.

**"§ 143B-1315A. Short title.**

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

**"§ 143B-1315B. 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.
- (1a) "Adjutant General" means the Adjutant General of the North Carolina National Guard, or the Adjutant General's designee.
- (2) Repealed by Session Laws 2014-79, s. 2, effective July 22, 2014.
- (3) Repealed.
- (4) "Construction" includes reconstruction, alteration, or expansion.
- (4a) "Department" means the Department of Military and Veterans Affairs.
- (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.
- (5a) "National Guard facilities" means Camp Butner and the North Carolina National Guard Joint Force Headquarters.
- (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.

- 1 (6a) "Secretary" means the Secretary of the Department of ~~Administration~~Military  
 2 and Veterans Affairs.  
 3 (6b) ~~"State Construction Office" means the State Construction Office of the~~  
 4 ~~Department of Administration.~~  
 5 (7) "Tall buildings or structures" means any building, structure, or unit within a  
 6 multiunit building with a vertical height of more than 200 feet (200') measured  
 7 from the top of the foundation of the building, structure, or unit and the  
 8 uppermost point of the building, structure, or unit. "Tall buildings or structures"  
 9 do not include buildings and structures listed individually or as contributing  
 10 resources within a district listed in the National Register of Historic Places.

11 ...

12 **"§ 143B-1315D. Certain buildings and structures prohibited without endorsement.**

13 (a) No county or city may authorize the construction of and no person may construct a tall  
 14 building or structure in any area surrounding a major military installation in this State, unless the  
 15 county or city is in receipt of either a letter of endorsement issued to the person by the ~~State~~  
 16 ~~Construction Office-Department~~ pursuant to ~~G.S. 143-151.75~~G.S. 143B-1315F or proof of the  
 17 ~~State Construction Office's-Department's~~ failure to act within the time allowed pursuant to ~~G.S.~~  
 18 ~~143-151.75~~G.S. 143B-1315F.

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

22 ...

23 **"§ 143B-1315F. Endorsement for proposed tall buildings or structures required.**

24 (a) No person shall undertake construction of a tall building or structure in any area  
 25 surrounding a major military installation in this State without either first obtaining the  
 26 endorsement from the ~~State Construction Office-Department~~ or proof of the ~~State Construction~~  
 27 ~~Office's-Department's~~ failure to act within the time allowed.

28 (a1) No person shall undertake construction of a tall building or structure in any area  
 29 located within one-quarter mile (1/4 mile) of a National Guard facility without either first  
 30 obtaining an endorsement from the ~~State Construction Office-Department~~ or proof of the ~~State~~  
 31 ~~Construction Office's-Department's~~ failure to act within the time allowed.

32 (b) A person seeking endorsement for a proposed tall building or structure in any area  
 33 surrounding a major military installation in this State shall provide written notice of the intent to  
 34 seek endorsement to the base commander of the major military installation that is located within  
 35 five miles of the proposed tall building or structure and shall provide all of the following to the  
 36 ~~State Construction Office-Department:~~

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

47 (c) After receipt of the information provided by the person pursuant to subsection (b) of  
 48 this section, the ~~State Construction Office-Department~~ shall, in writing, request a written statement  
 49 concerning the proposed tall building or structure from the base commander of the major military  
 50 installation identified in subdivision (1) of subsection (b) of this section. The ~~State Construction~~

1 ~~Office~~ Department shall request that the following information be included in the written  
2 statement from the base commander:

3 (1) A determination whether the location of the proposed tall building or structure  
4 is within an area that surrounds the major military installation.

5 (2) A determination whether any activities of the installation may be adversely  
6 affected by the proposed tall building or structure. A detailed description of the  
7 potential adverse effects, including frequency disturbances and physical  
8 obstructions, shall accompany the determination required by this subdivision.

9 (d) The ~~State Construction Office~~ Department shall not endorse a tall building or structure  
10 if the ~~State Construction Office~~ Department finds any one or more of the following:

11 (1) The proposed tall building or structure would encroach upon or otherwise  
12 interfere with the mission, training, or operations of any major military  
13 installation in North Carolina and result in a detriment to continued military  
14 presence in the State. In its evaluation, the ~~State Construction Office~~  
15 Department may consider whether the proposed tall building or structure would  
16 cause interference with air navigation routes, air traffic control areas, military  
17 training routes, or radar based on the written statement received from a base  
18 commander as provided in subsection (c) of this section and written comments  
19 received by members of affected communities. Provided, however, if the ~~State~~  
20 ~~Construction Office~~ Department does not receive a written statement requested  
21 pursuant to subsection (c) of this section within 45 days of issuance of the  
22 request to the base commander, the ~~State Construction Office~~ Department shall  
23 deem the tall building or structure as eligible by the base commander.

24 (2) The ~~State Construction Office~~ Department is not in receipt of the written  
25 "Determination of No Hazard to Air Navigation" issued to the person by the  
26 Federal Aviation Administration required pursuant to subdivision (3) of  
27 subsection (b) of this section.

28 (d1) A person seeking endorsement for a proposed tall building or structure in any area  
29 located within one-quarter mile ( $\frac{1}{4}$  mile) of a National Guard facility shall consult with the  
30 Adjutant General to determine whether any activities of the facility may be adversely affected by  
31 the proposed tall building or structure. A written summary of the consultation between the person  
32 and the Adjutant General, including findings and recommendations of the Adjutant General as to  
33 whether or not to endorse the proposed tall building or structure, shall be submitted to the ~~State~~  
34 ~~Construction Office~~ Department and evaluated in accordance with subsections (d2) and (e) of this  
35 section.

36 (d2) The ~~State Construction Office~~ Department shall not endorse a tall building or structure  
37 in any area located within one-quarter mile ( $\frac{1}{4}$  mile) of a National Guard facility if the ~~State~~  
38 ~~Construction Office~~ Department finds any one or more of the following:

39 (1) As evidenced by receipt of the written summary from the Adjutant General  
40 submitted pursuant to subsection (d1) of this section, construction of the  
41 proposed tall building or structure would encroach upon or otherwise interfere  
42 with the mission, training, or operations of National Guard Facility and result in  
43 a detriment to its continued presence in the State. In its evaluation, the ~~State~~  
44 ~~Construction Office~~ Department may consider whether the proposed tall  
45 building or structure would cause interference with air navigation routes, air  
46 traffic control areas, military training routes, or radar based on the written  
47 statement received as provided in subsection (d1) of this section. Provided,  
48 however, if the ~~State Construction Office~~ Department does not receive the  
49 written statement pursuant to subsection (d1) of this section within 45 days of  
50 the date of the consultation between the person and the Adjutant General, the  
51 ~~State Construction Office~~ Department shall construe the Adjutant General's



1 failure to submit the written statement as the Adjutant General having no  
2 objection to the tall building or structure.

- 3 (2) The ~~State Construction Office Department~~ is not in receipt of the written  
4 "Determination of No Hazard to Air Navigation" issued to the person by the  
5 Federal Aviation Administration required pursuant to subdivision (3) of  
6 subsection (b) of this section.

7 (e) The ~~State Construction Office Department~~ shall make a final decision on the request  
8 for endorsement of a tall building or structure within 90 days from the date on which either (i) the  
9 ~~State Construction Office Department~~ requested the written statement from the base commander  
10 of the major military installation identified in subdivision (1) of subsection (b) of this section or  
11 (ii) the date of the consultation between the person and the Adjutant General conducted in  
12 accordance with subsection (d1) of this section. If the ~~State Construction Office Department~~  
13 determines that a request for a tall building or structure fails to meet the requirements for  
14 endorsement under this section, the ~~State Construction Office Department~~ shall deny the request.  
15 The ~~State Construction Office Department~~ shall notify the person of the denial, and the notice  
16 shall include a written statement of the reasons for the denial. If the ~~State Construction Office~~  
17 ~~Department~~ fails to act within any time period set forth in this section, the person may treat the  
18 failure to act as the ~~State Construction Office Department~~ having no objection to the tall building  
19 or structure.

20 **"§ 143B-1315G. Application to existing tall buildings and structures.**

21 ~~G.S. 143-151.73~~ G.S. 143B-1315D applies to tall buildings or structures that existed in an area  
22 surrounding major military installations on October 1, 2013, as follows:

- 23 (1) No reconstruction, alteration, or expansion may aggravate or intensify a  
24 violation by an existing building or structure that did not comply with  
25 ~~G.S. 143-151.73~~ G.S. 143B-1315D on October 1, 2013.  
26 (2) No reconstruction, alteration, or expansion may cause or create a violation by  
27 an existing building or structure that did comply with ~~G.S. 143-151.73~~  
28 G.S. 143B-1315D on October 1, 2013.

29 **"§ 143B-1315H. Enforcement and penalties.**

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

36 (b) The Secretary shall determine the amount of the civil penalty and shall notify the  
37 person who is assessed the civil penalty of the amount of the penalty and the reason for assessing  
38 the penalty. The notice of assessment shall be served by any means authorized under Rule 4 of  
39 G.S. 1A-1 and shall direct the violator to either pay the assessment or contest the assessment  
40 within 30 calendar days by filing a petition for a contested case under Article 3 of Chapter 150B of  
41 the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30  
42 calendar days after it is due, the Secretary shall request that the Attorney General institute a civil  
43 action to recover the amount of the assessment. The civil action may be brought in the superior  
44 court of any county where the violation occurred. A civil action must be filed within one year of  
45 the date the assessment was due. An assessment that is not contested is due when the violator is  
46 served with a notice of assessment. An assessment that is contested is due at the conclusion of the  
47 administrative and judicial review of the assessment.

48 (c) In determining the amount of the penalty, the Secretary shall consider the degree and  
49 extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the  
50 violator saved by noncompliance, whether the violation was committed willfully, the prior record

1 of the violator in complying or failing to comply with this Article, and the action of the person to  
2 remedy the violation.

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

5 (e) Whenever the Secretary has reasonable cause to believe that any person has violated or  
6 is threatening to violate any of the provisions of this Article, a rule implementing this Article, or  
7 any of the terms of any endorsement issued pursuant to this Article, the ~~State Construction Office~~  
8 Department may, either before or after the institution of any other action or proceeding authorized  
9 by this Article, request the Attorney General to institute a civil action in the name of the State  
10 upon the request of the ~~State Construction Office-Department~~ for injunctive relief to restrain the  
11 violation or threatened violation and for such other and further relief in the premises as the court  
12 shall deem proper. The Attorney General may institute such action in the superior court of the  
13 county in which the violation occurred or may occur or, in the Attorney General's discretion, in the  
14 superior court of the county in which the person responsible for the violation or threatened  
15 violation resides or has the person's principal place of business. Upon a determination by the court  
16 that the alleged violation of the provisions of this Article or the regulations of the ~~State~~  
17 Construction Office-Department has occurred or is threatened, the court shall grant the relief  
18 necessary to prevent or abate the violation or threatened violation. Neither the institution of the  
19 action nor any of the proceedings thereon shall relieve any party to such proceedings from any  
20 penalty prescribed for violation of this Article."

21 **SECTION 4.(c)** This section becomes effective October 1, 2018, and applies to  
22 requests for endorsements to construct tall buildings or structures submitted on or after that date.

23  
24 **PART V. MODIFY LOCAL GOVERNMENT ORDINANCE-MAKING PROCEDURES**  
25 **TO AUTHORIZE THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS TO**  
26 **REVIEW AND COMMENT ON MILITARY-RELATED CRITERIA**

27 **SECTION 5.(a)** G.S. 153A-323 reads as rewritten:

28 "**§ 153A-323. Procedure for adopting, amending, or repealing ordinances under this Article**  
29 **and Chapter 160A, Article 19.**

30 (a) Before adopting, amending, or repealing any ordinance authorized by this Article or  
31 Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance  
32 or amendment. The board shall cause notice of the hearing to be published once a week for two  
33 successive calendar weeks. The notice shall be published the first time not less than 10 days nor  
34 more than 25 days before the date fixed for the hearing. In computing such period, the day of  
35 publication is not to be included but the day of the hearing shall be included.

36 (b) If the adoption or modification of the ordinance would result in any of the changes  
37 listed in this subsection and those changes would be located five miles or less from the perimeter  
38 boundary of a military base, the board of commissioners shall provide written notice of the  
39 proposed changes by certified mail, or by any other written means reasonably designed to provide  
40 actual notice, to the Department of Military and Veterans Affairs and the commander of the  
41 military base or the commander's designee not less than 10 days nor more than 25 days before the  
42 date fixed for the public hearing. Prior to the date of the public hearing, the Department of  
43 Military and Veterans Affairs and the military may provide comments or analysis to the board  
44 regarding the compatibility of the proposed changes with military operations at the base. If the  
45 board does not receive a response within 30 days of the notice, the Department of Military and  
46 Veterans Affairs and the military ~~is-are~~ deemed to waive the comment period. If the Department of  
47 Military and Veterans Affairs and the military ~~provides-provide~~ comments or analysis regarding  
48 the compatibility of the proposed ordinance or amendment with military operations at the base, the  
49 board of commissioners shall take the comments and analysis into consideration before making a  
50 final determination on the ordinance. The proposed changes requiring notice are:

51 (1) Changes to the zoning map.

- 1 (2) Changes that affect the permitted uses of land.  
2 (3) Changes relating to telecommunications ~~towers or windmills~~ towers and tall  
3 buildings and structures, as that term is defined in Article 9G of Chapter 143 of  
4 the General Statutes.  
5 (3a) Changes relating to wind energy facilities or wind energy facility expansions as  
6 those terms are defined in Article 21C of Chapter 143 of the General Statutes.  
7 (4) Changes to proposed new major subdivision preliminary plats.  
8 (5) An increase in the size of an approved subdivision by more than fifty percent  
9 (50%) of the subdivision's total land area including developed and undeveloped  
10 land."

11 **SECTION 5.(b)** G.S. 160A-364 reads as rewritten:

12 **"§ 160A-364. Procedure for adopting, amending, or repealing ordinances under Article.**

13 (a) Before adopting, amending, or repealing any ordinance authorized by this Article, the  
14 city council shall hold a public hearing on it. A notice of the public hearing shall be given once a  
15 week for two successive calendar weeks in a newspaper having general circulation in the area. The  
16 notice shall be published the first time not less than 10 days nor more than 25 days before the date  
17 fixed for the hearing. In computing such period, the day of publication is not to be included but the  
18 day of the hearing shall be included.

19 (b) If the adoption or modification of the ordinance would result in any of the changes  
20 listed in this subsection and those changes would be located five miles or less from the perimeter  
21 boundary of a military base, the governing body of the local government shall provide written  
22 notice of the proposed changes by certified mail, or by any other written means reasonably  
23 designed to provide actual notice, to the Department of Military and Veterans Affairs and the  
24 commander of the military base or the commander's designee not less than 10 days nor more than  
25 25 days before the date fixed for the public hearing. Prior to the date of the public hearing, the  
26 Department of Military and Veterans Affairs and the military may provide comments or analysis  
27 to the board [governing body of the local government] regarding the compatibility of the proposed  
28 changes with military operations at the base. If the board [governing body of the local  
29 government] does not receive a response within 30 days of the notice, the Department of Military  
30 and Veterans Affairs and the military ~~is~~ are deemed to waive the comment period. If the  
31 Department of Military and Veterans Affairs and the military ~~provides~~ provide comments or  
32 analysis regarding the compatibility of the proposed ordinance or amendment with military  
33 operations at the base, the governing body of the local government shall take the comments and  
34 analysis into consideration before making a final determination on the ordinance. The proposed  
35 changes requiring notice are:

- 36 (1) Changes to the zoning map.  
37 (2) Changes that affect the permitted uses of land.  
38 (3) Changes relating to telecommunications ~~towers or windmills~~ towers and tall  
39 buildings and structures, as that term is defined in Article 9G of Chapter 143 of  
40 the General Statutes.  
41 (3a) Changes relating to wind energy facilities or wind energy facility expansions as  
42 those terms are defined in Article 21C of Chapter 143 of the General Statutes.  
43 (4) Changes to proposed new major subdivision preliminary plats.  
44 (5) An increase in the size of an approved subdivision by more than fifty percent  
45 (50%) of the subdivision's total land area including developed and undeveloped  
46 land."  
47

48 **PART VI. CONFORMING CHANGES**

49 **SECTION 6.(a)** G.S. 143B-1211 is amended by adding a new subdivision to read:

50 **"§ 143B-1211. Powers and duties of the Department of Military and Veterans Affairs.**

1 It shall be the duty of the Department of Military and Veterans Affairs to do all of the  
2 following:

3 ...  
4 (25) Maintain, and make available to the public, including posting to the  
5 Department's Web site, accurate maps of (i) the zones identified on the Low  
6 Level Flight Compatibility, Figure 3-1 – March 2016 Edition of the North  
7 Carolina Military Affairs Commission Compatible Use Map Atlas, as provided  
8 in G.S. 143-215.116A, and (ii) the areas surrounding major military  
9 installations, and military training routes and military operating areas, as  
10 defined in G.S. 143B-1315B, that are subject to the provisions of Part 12 of this  
11 Article."

12 **SECTION 6.(b)** G.S. 143-135.29 is repealed.

13 **SECTION 6.(c)** This section is effective when this act becomes law.

14 **SECTION 7.(a)** G.S. 143B-1211, as amended by Section 6(a) of this act, is amended  
15 by adding two new subdivisions to read:

16 **"§ 143B-1211. Powers and duties of the Department of Military and Veterans Affairs.**

17 It shall be the duty of the Department of Military and Veterans Affairs to do all of the  
18 following:

19 ...  
20 (26) Issue recommendations to the Department of Environmental Quality as to  
21 whether the Department of Environmental Quality should approve or deny an  
22 application for a proposed wind energy facility or wind energy facility  
23 expansion as provided in G.S. 143-215.120A, and otherwise assist in  
24 administration and implementation of the provisions of Article 21C of Chapter  
25 143 of the General Statutes.

26  
27  
28 (27) Issue endorsements for the construction of proposed tall buildings or structures  
29 as provided in G.S. 143B-1315F and otherwise assist in the administration and  
30 implementation of the provisions of Part 12 of this Article."

31 **SECTION 7.(b)** This section becomes effective October 1, 2018, and applies to  
32 certifications and endorsements issued on or after that date.

## 34 **PART VII. ESTABLISH NORTH CAROLINA SENTINEL LANDSCAPES COMMITTEE**

35 **SECTION 8.(a)** Committee Established. – There is established the North Carolina  
36 Sentinel Landscape Committee (Committee) administratively housed within the College of  
37 Natural Resources at North Carolina State University.

38 **SECTION 8.(b)** Findings and Purpose. – The General Assembly finds that sentinel  
39 landscapes are places where preserving the working and rural character of the State's private lands  
40 is important for both national defense and conservation priorities. It is the intent of the General  
41 Assembly to direct the Committee to coordinate the overlapping priority areas in the vicinity of  
42 and where testing and training occurs on major military installations, as that term is defined in  
43 G.S. 143-215.115. Further, the Committee shall assist landowners in improving their land to  
44 benefit their operations and enhance wildlife habitats while furthering the State's vested economic  
45 interest in preserving, maintaining, and sustaining land uses that are compatible with military  
46 activities at major military installations and National Guard facilities. In its work, the Committee  
47 shall develop and implement programs and strategies that (i) protect working lands in the vicinity  
48 of and where testing and training occurs on major military installations, (ii) address restrictions  
49 that inhibit military testing and training, and (iii) forestall incompatible development in the  
50 vicinity of and where testing and training occurs on military installations.

51 **SECTION 8.(c)** Powers and Duties. – The Committee shall:

- 1 (1) Identify and designate certain lands to be contained in the sentinel landscape of  
2 this State that are of particular import to the nation's defense and in the vicinity  
3 of and where testing and training occur on major military installations. In this  
4 work, the Committee may seek advice and recommendations from stakeholders  
5 who have experience in this sort of identification and designation.
- 6 (2) In designating sentinel lands as directed by subdivision (1) of this subsection,  
7 the Committee shall evaluate all working or natural lands that the Committee  
8 identifies as contributing to the long-term sustainability of the military missions  
9 conducted in this State. In its evaluation of which lands to designate as sentinel  
10 lands, the Committee shall consult with and seek input from:
- 11 a. The United States Department of Defense.
  - 12 b. The North Carolina Commander's Council.
  - 13 c. The United States Department of Agriculture.
  - 14 d. The United States Department of the Interior.
  - 15 e. Elected officials from units of local government located in the vicinity  
16 of and where testing and training occurs on the proposed sentinel lands.
  - 17 f. Any other stakeholders that the Committee deems appropriate.
- 18 (3) Develop recommendations to encourage landowners located within the sentinel  
19 landscape designated pursuant to subdivision (1) of this subsection to  
20 voluntarily participate in and begin or continue land uses compatible with the  
21 United States Department of Defense operations in this State.
- 22 (4) Provide technical support services and assistance to landowners who  
23 voluntarily participate in the sentinel landscape program.

24 **SECTION 8.(d) Membership.** – The Committee shall consist of at least the four  
25 following members:

- 26 (1) The Commissioner of Agriculture, or the Commissioner's designee
- 27 (2) The Secretary of the Department of Military and Veterans Affairs, or the  
28 Secretary's designee.
- 29 (3) The Secretary of Natural and Cultural Resources, or the Secretary's designee.
- 30 (4) The Dean of the College of Natural Resources at North Carolina State  
31 University, or the Dean's designee.

32 The Committee chair shall be one of the four listed members above and the Committee  
33 chair may appoint members representing other State agencies, local government officials, and  
34 nongovernmental organizations that are experienced in land management activities within sentinel  
35 lands.

36 **SECTION 8.(e) Transaction of Business.** – The Committee shall meet, at a minimum,  
37 at least once during each calendar quarter and at other times at the call of the chair. A majority of  
38 members of the Committee shall constitute a quorum. The first Committee meeting shall take  
39 place within 30 days of the effective date of this act.

40 **SECTION 8.(f) Reports.** – The Committee shall report on its activities conducted to  
41 implement this section, including any findings, recommendations, and legislative proposals, to the  
42 North Carolina Military Affairs Commission and the Agriculture and Forestry Awareness Study  
43 Commission beginning September 1, 2016, and annually thereafter until such time as the  
44 Committee completes its work.

45 **SECTION 8.(g) Administrative Assistance.** – All clerical and other services required  
46 by the Committee shall be supplied by the membership and shall be provided with funds available.

47 **SECTION 8.(h) Effective Date.** – This section becomes effective when this act  
48 becomes law.

49  
50 **PART VIII. STUDY POTENTIAL CONFLICTS BETWEEN ENERGY-RELATED**  
51 **INFRASTRUCTURE DEVELOPMENT AND LOW LEVEL FLIGHT COMPATIBILITY**

1           **SECTION 9.** The Department of Military and Veterans Affairs, in consultation with  
2 the Division of Energy, Mineral, and Land Resources in the Department of Environmental  
3 Quality, shall study the potential conflicts posed by energy-related infrastructure development  
4 within the Red, Orange, and Yellow Zones as detailed in the Low Level Flight Compatibility,  
5 Figure 3-1 – March 2016 Edition of the North Carolina Military Affairs Commission Compatible  
6 Use Map Atlas. In the conduct of its study, the Department shall evaluate on- and near-shore  
7 infrastructure development related to wind, solar, and oil and gas energy activities. The  
8 Department shall also study infrastructure that has the potential to disrupt or weaken radar  
9 operability or reliability. The Department may maintain records and documents that support the  
10 work of this study confidentially in accordance with G.S. 143B-1216. The Department of Military  
11 and Veterans Affairs shall report its findings, recommendations, and any legislative proposals to  
12 the Joint Legislative Energy Policy Commission on or before December 15, 2017.

13  
14 **PART IX. EFFECTIVE DATE**

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