



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 763: Military Operations Protection Act of 2016.

2016-2017 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 27, 2016
Introduced by:	Reps. Millis, J. Bell, Riddell	Prepared by:	Jennifer Mundt
Analysis of:	Fourth Edition		Legislative Analyst

SUMMARY: *The 4th Edition of House Bill 763 would: (1) modify 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) establish the North Carolina Sentinel Lands Committee to coordinate the overlapping priority areas in the vicinity of the State's major military installations.*

CURRENT LAW: Article 21C of Chapter 143 of the General Statutes (Permitting of Wind Energy Facilities) provides a framework, implemented and administered by the Department of Environmental Quality (DEQ), for the siting and operation of wind energy facilities in the State.

Article 9G of Chapter 143 of the General Statutes (Military Lands Protection Act of 2013) provides a framework, implemented and administered by the State Construction Office (SCO) in the Department of Administration, for the siting and construction of tall buildings and structures that are 200' or taller in an area that extends 5 miles beyond the boundary of a major military installation in the State.

BILL ANALYSIS: House Bill 763 would amend the statutes governing the permitting of wind energy facilities and the endorsement of tall buildings and structures and would also provide the Department of Military and Veterans Affairs (DMVA) with the authority to consider and review the military-related criteria required by each of those programs as follows:

Section 1, effective when the act becomes law, would amend the permitting program for wind energy facilities to:

- Add Camp Butner and North Carolina National Guard Joint Force Headquarters to the definition of "major military installation."
- Prohibit the construction of wind energy facilities or expansions in any location identified as a "Red Zone," "Orange Zone," "Yellow Zone," "Green Zone," or "Grey Zone-Rotary Operations Area" as those zones are identified on the Low Level Flight Compatibility, Figure 3-1 – March 2016 Edition of the North Carolina Military Affairs Commission Compatible Use Map Atlas (*see attached map*).
- Set out a process by which DMVA and the Military Affairs Commission (MAC) review and recommend updates to the low level flight compatibility map (including provisions requiring public comment and public hearing) which, if proposed, must be submitted to the Environmental

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Review Commission, which may then make a recommendation that the General Assembly enact a statutory revision to update the proposed map.

- Require a permit applicant to provide copies of the noise and shadow flicker studies to the Department of Health and Human Services (DHHS) for review of potential health effects. In its review, DHHS may consult faculty from the University of North Carolina School of Medicine or School of Public Health who are expert in noise or shadow flicker.
- Direct DHHS to notify DEQ in writing within 60 days following receipt of a completed application, if in its review, DHHS finds that either noise impacts, shadow flicker impacts, or both would be deleterious to human health and, if so; recommend that DEQ deny the permit.
- Include significant adverse impact on human health, as evidenced by the written notice by DHHS to DEQ required above, as criterion on which DEQ must deny a permit application.
- Direct DMVA, rather than DEQ, to annually review information regarding potentially impacted military operations.
- Direct DMVA to adopt rules necessary to administer provisions of the Article.

Section 2, effective when the act becomes law, would amend the tall buildings and structures endorsement program to:

- Include the terms "Adjutant General," "National Guard facilities," and "Secretary," as well as make other conforming and technical amendments.
- Set out a separate endorsement process for construction of tall buildings or structures located within ¼ mile of a National Guard facility.
- Change the default action to "deemed eligible" or "having no objection," rather than an endorsement of a tall building or structure, if the State Construction Office (SCO) fails to act within the time periods established in the Article.
- Include provisions for the institution of civil actions for violations of the Article.

Section 3 would authorize DMVA to review the military-related criteria in permit applications for wind energy facilities. Specifically, this section creates a new statute (G.S. 143-215.120A) that establishes a process by which DMVA makes a determination, including findings of fact, to DEQ as to whether the proposed wind energy facility encroaches on military missions, training, or operations. **Section 3 would become effective October 1, 2018, and applies to applications for permits wind energy facilities submitted on or after that date.**

Section 4 would transfer to DMVA, from SCO, the administration and implementation of the Military Lands Protection Act of 2013 (Act). This section also recodifies the Act into Article 14 of Chapter 143B of the General Statutes, within the statutory jurisdiction of DMVA. **Section 4 would become effective October 1, 2018, and applies to requests for endorsements for tall buildings or structures submitted on or after that date.**

Section 5 would modify the statutory local government ordinance making procedures to direct a unit of local government, in addition to notifying the commander of a military base, to also notify DMVA when the adoption or modification of an ordinance would result in changes located five miles or less from the perimeter boundary of a military base. This section also clarifies that the proposed changes include those relating to tall buildings and structures and wind energy facilities.

Section 6 would make conforming changes to transfer the responsibility for maintaining and making available accurate maps of areas of (i) the zones identified on the Low Level Flight Compatibility,

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Figure 3 1 – March 2016 Edition of the North Carolina Military Affairs Commission Compatible Use Map Atlas and (ii) the areas surrounding military installations from SCO to DMVA.

Section 7 would amend the powers and duties of DMVA to conform to the changes made in Sections 3 and 4 of this act directing the agency to issue recommendations to DEQ to either permit or deny wind energy facility applications and to issue endorsements for tall buildings and structures. **Section 7 would become effective October 1, 2018, and applies to certifications and endorsements issued on or after that date.**

Section 8 would establish the North Carolina Sentinel Landscape Committee (Committee), administratively housed within the Department of Agriculture and Consumer Services (DACCS). The Committee is directed to:

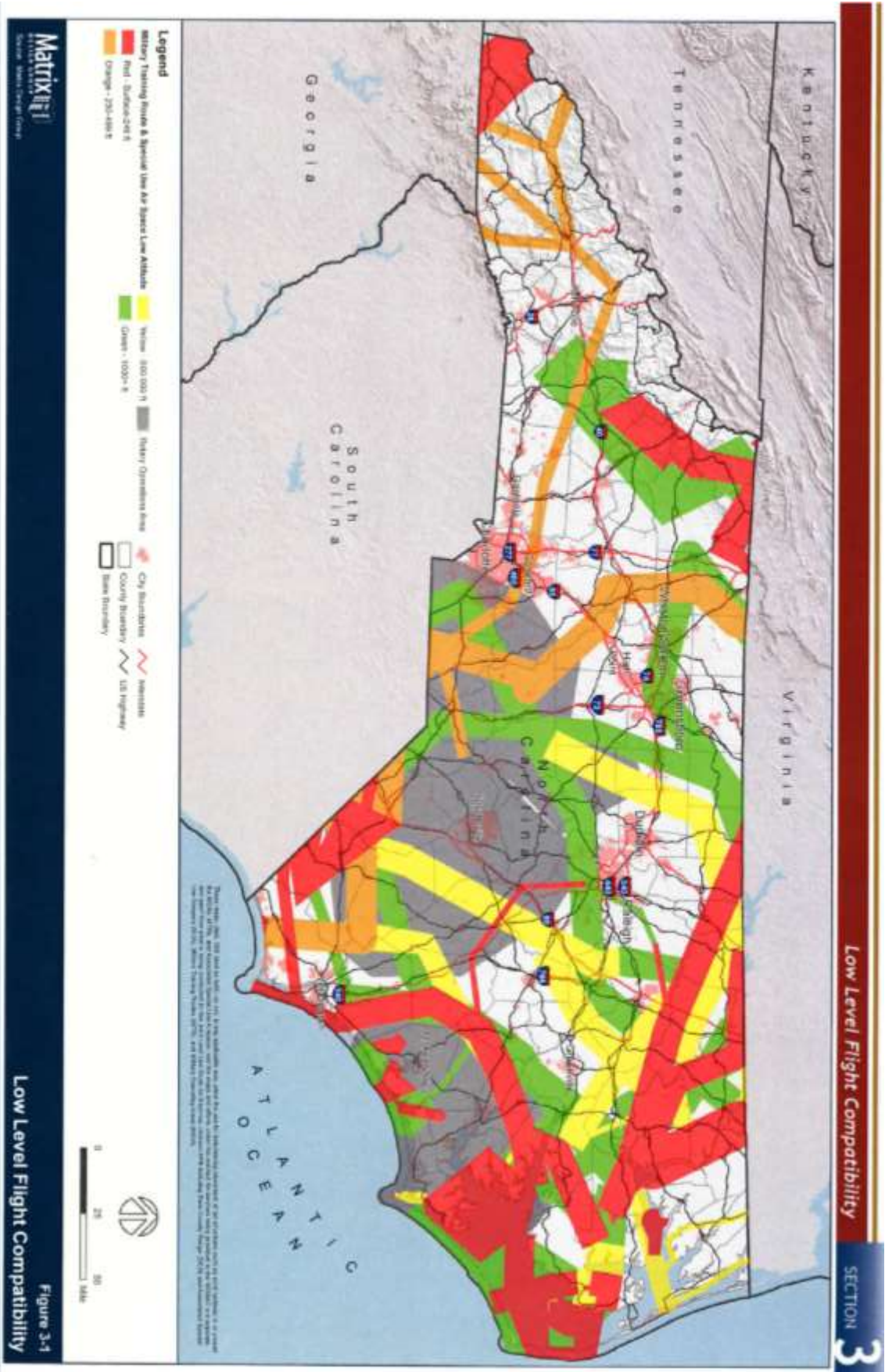
1. Identify and designate certain lands to be contained in the sentinel landscape of this State that are of particular import to the nation's defense and in the vicinity of major military installations.
2. Evaluate all working or natural lands that the Committee identifies as contributing to the long-term sustainability of the military missions in the State.
3. Develop recommendations to encourage landowners located within the sentinel landscapes (as designated above) to voluntarily participate in and begin or continue land uses that are compatible with the United States Department of Defense operations in this State.
4. Provide technical support and assistance to landowners who voluntarily participate in the sentinel landscape program.

In addition to the chair appointing members who represent other State agencies, local government officials, and nongovernmental organizations that are experienced in land management activities within sentinel lands, the Committee is made up of the following four members: (i) the Commissioner of Agriculture, or the Commissioner's designee, who will serve as chair; (ii) the Secretary of DMVA, or the Secretary's designee; (iii) the Secretary of Natural and Cultural Resources, or the Secretary's designee; and (iv) the chair of the Soil and Water Conservation Commission.

The Committee must report on its activities to implement this section along with any findings, recommendations, and legislative proposals to both the Military Affairs Commission and the Agriculture and Forestry Awareness Study Commission beginning September 1, 2016, and every six months thereafter until such time as the Committee completes its work.

Section 9 would direct DMVA, in consultation with the Division of Energy, Mineral, and Land Resources in DEQ, to study the potential conflicts posed by energy-related infrastructure development within the Red, Orange, and Yellow Zones, identified in the Low Level Flight Compatibility map. Specifically, DMVA must evaluate on- and near-shore infrastructure development related to wind, solar, oil, and gas energy activities and infrastructure that has the potential to disrupt or weaken radar operability or reliability. DMVA must report its findings, recommendations, and any legislative proposals to the Joint Legislative Energy Policy Commission by December 15, 2017.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.



Low Level Flight Compatibility Figure 3-1 of the

March 2016 Edition of the NC Military Affairs Commission Compatible Use Map Atlas