

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 836*
House Committee Substitute Favorable 8/6/09
House Committee Substitute #2 Favorable 6/10/10
PROPOSED HOUSE COMMITTEE SUBSTITUTE S836-PCS75403-SB-96

Short Title: Oil Spill Liability, Response, & Preparedness.

(Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) CLARIFY LIABILITY FOR DAMAGES CAUSED BY THE DISCHARGE OF NATURAL GAS, OIL, OR DRILLING WASTE INTO STATE COASTAL FISHING WATERS OR OFFSHORE WATERS; (2) PROVIDE FOR THE REVIEW OF INFORMATION REQUIRED FOR A PROPOSED OFFSHORE FOSSIL FUEL FACILITY IN ORDER TO DETERMINE CONSISTENCY WITH STATE GUIDELINES FOR THE COASTAL AREA; (3) DIRECT THE COASTAL RESOURCES COMMISSION TO REVIEW EXISTING LAWS AND REGULATIONS THAT PERTAIN TO OFFSHORE ENERGY EXPLORATION AND PRODUCTION IN LIGHT OF THE EXPLOSION, SINKING, AND SUBSEQUENT DISCHARGE OF OIL FROM THE BRITISH PETROLEUM DEEPWATER HORIZON OFFSHORE DRILLING RIG; (4) DIRECT THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO IMMEDIATELY REVIEW AND UPDATE THE STATE OIL SPILL CONTINGENCY PLAN IN ORDER TO PREPARE THE STATE IN THE EVENT THAT OIL DISCHARGED FROM THE BRITISH PETROLEUM DEEPWATER HORIZON OFFSHORE DRILLING RIG IS TRANSPORTED BY CURRENTS OR OTHER MECHANISMS TO THE NORTH CAROLINA COAST; AND (5) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REVIEW LIMITATIONS ON RECOVERY BY THE STATE FOR DAMAGE TO PUBLIC RESOURCES AND FOR THE COST OF OIL OR OTHER HAZARDOUS SUBSTANCE CLEANUP ESTABLISHED PURSUANT TO G.S. 143-215.89.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-215.89 reads as rewritten:

"§ 143-215.89. **Multiple liability for necessary expenses-expenses; limit on State recovery.**

(a) Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances into the waters of the State, including any amount recoverable by the State as necessary expenses.

(b) The total recovery by the State for damage to the public resources pursuant to G.S. 143-215.90 and for the cost of oil or other hazardous substances cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the



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1 United States government on account of such discharge. The limitations on recovery referenced
2 in this subsection shall not apply to damages recoverable pursuant to G.S. 143-215.94CC."

3 **SECTION 1.(b)** G.S. 143-215.94BB reads as rewritten:

4 **"§ 143-215.94BB. Definitions.**

5 In addition to the definitions set out in G.S. 143-215.77, ~~as used in this Part,~~ the following
6 definitions shall ~~apply:~~ apply to this Part:

7 (1) "Damages" are damages for any of the following:

- 8 a. Injury or harm to real or personal property, which includes the cost
9 of restoring, repairing, or replacing any real or personal property
10 damaged or destroyed by a discharge under this section, any income
11 lost from the time such property is damaged to the time such property
12 is restored, repaired, or replaced, and any reduction in value of such
13 property caused by such discharge by comparison with its value prior
14 thereto.
- 15 b. Business loss, including loss of income or impairment of earning
16 capacity due to damage to real or personal property or to damage or
17 destruction of natural resources upon which such income or earning
18 capacity is reasonably dependent.
- 19 c. Interest on loans obtained or other financial obligations incurred by
20 an injured party for the purpose of ameliorating the adverse effects of
21 a discharge pending the payment of a claim in full as provided by
22 this Article.
- 23 d. Costs of cleanup, removal, or treatment of natural gas, oil, or drilling
24 waste discharges.
- 25 e. Costs of restoration, rehabilitation, and, where possible, replacement
26 of wildlife or other natural resources damaged as a result of a
27 discharge.
- 28 f. When the injured party is the State or one of its political
29 subdivisions, in addition to any injury described in subparagraphs (a)
30 to (e), inclusive, damages include all of the following:
 - 31 1. Injury to natural resources or wildlife, including recreational
32 or commercial fisheries, and loss of use and enjoyment of
33 public beaches and other public resources or facilities within
34 the jurisdiction of the State or one of its political
35 subdivisions.
 - 36 2. Costs to assess damages to natural resources, wildlife, or
37 habitat.
 - 38 3. Costs incurred to monitor the cleanup of the natural gas, oil,
39 or drilling waste spilled.
 - 40 4. Loss of State or local government tax revenues resulting from
41 damages to real or personal property proximately resulting
42 from a discharge.

43 (2) For the purposes of this Part, "oil" and "drilling wastes" include, but are not
44 limited to: petroleum, refined or processed petroleum, petroleum
45 by-products, oil sludge, oil refuse, oil mixed with wastes and chemicals, or
46 other materials used in the exploration, recovery, or processing of oil. "Oil"
47 does not include oil carried in a vessel for use as fuel in that vessel.

48 (3) "Natural gas" includes natural gas, liquefied natural gas, and natural gas
49 by-products. "Natural gas" does not include natural gas carried in a vessel
50 for use as fuel in that vessel.

- 1 (4) "Exploration" means undersea boring, drilling, ~~and soil sampling, soil~~
 2 ~~sampling, and any other technique employed to assess and evaluate the~~
 3 ~~presence of subterranean oil and natural gas deposits.~~
- 4 (5) "Injured party" means any person who suffers damages from natural gas, oil,
 5 or drilling waste which is discharged or leaks into marine waters, or from
 6 offshore exploration. The State, or a county or municipality, may be an
 7 injured party.
- 8 (6) "Responsible person" means any of the following:
 9 a. The owner or transporter of natural gas, oil, or drilling waste which
 10 causes an injury covered by this Part.
 11 b. The owner, operator, lessee of, or person who charters by demise,
 12 any offshore well, undersea site, facility, oil rig, oil platform, vessel,
 13 or pipeline which is the source of natural gas, oil, drilling waste, or is
 14 the source or location of exploration which causes an injury covered
 15 by this Part.
- 16 "Responsible party" does not include the United States, the State, any
 17 county, municipality or public governmental agency; however, this
 18 exception to the definition of "responsible person" shall not be read to
 19 exempt utilities from the provisions of this Part.
- 20 (7) "Offshore waters" shall include both the territorial sea extending seaward
 21 from the coastline of North Carolina ~~to the State and federal boundary, and~~
 22 ~~United States jurisdictional waters of the Atlantic Ocean adjacent to the~~
 23 ~~territorial sea of the State or any other coastal state bordering the Atlantic~~
 24 ~~Ocean, including the Gulf of Mexico, and the exclusive economic zone~~
 25 ~~extending seaward from the territorial sea of each such state.~~
- 26 (8) "Natural resources" shall include "marine and estuarine resources" and
 27 "wildlife resources" as those terms are defined in G.S. 113-129(11) and
 28 G.S. 113-129(17), respectively.
- 29 (9) "Coastal fishing waters" has the same meaning as in G.S. 113-129.
- 30 (10) "Exclusive economic zone" has the same meaning as in section 1001(8) of
 31 the Oil Pollution Act of 1990, 33 U.S.C. § 2701(8)."

32 **SECTION 1.(c)** G.S. 143-215.94CC reads as rewritten:

33 **"§ 143-215.94CC. Liability under this section; exceptions.**

34 (a) Any responsible person shall be strictly liable, notwithstanding any language of
 35 limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect
 36 damages incurred within the territorial jurisdiction of the State by any injured party, ~~which~~
 37 that arise out of, or are caused by, by any of the following:

- 38 (1) ~~the discharge or leaking~~ The discharge, as defined in G.S. 143-215.77, of
 39 natural gas, oil, or drilling waste into or onto "coastal fishing waters" as
 40 defined in G.S. 113-129(4), or offshore waters, or by any exploration in or
 41 upon coastal fishing waters or offshore waters, from any of the following
 42 sources: sources wherever located:
- 43 (1)a. Any ~~offshore~~ well or undersea site at which there is exploration for
 44 or extraction or recovery of natural gas or oil.
- 45 (2)b. Any ~~offshore~~ facility, oil rig, or oil platform at which there is
 46 exploration for, or extraction, recovery, processing, or storage of,
 47 natural gas or oil.
- 48 (3)c. Any vessel ~~offshore~~ in which natural gas, oil, or drilling waste is
 49 transported, processed or stored other than for purposes of fuel for
 50 the vessel carrying it.

1 ~~(4)d.~~ Any pipeline ~~located offshore~~ in which natural gas, oil, or drilling
2 waste is transported.

3 (2) Any exploration in or upon coastal fishing waters.

4 (3) Any technique or method used for cleanup and removal of any discharge of
5 natural gas, oil, or drilling waste from any source listed in subdivision (1) of
6 this subsection into or onto coastal fishing waters, including, but not limited
7 to, chemical dispersants.

8 (b) A responsible person is not liable to an injured party under this section for any of
9 the following:

10 (1) Damages, other than costs of removal incurred by the State or a local
11 government, caused solely by any act of war, hostilities, civil war, or
12 insurrection or by an unanticipated grave natural disaster or other act of God
13 of an exceptional, inevitable, and irresistible character, which could not have
14 been prevented or avoided by the exercise of due care or foresight.

15 (2) Damages caused solely by the negligence or intentional malfeasance of that
16 injured party.

17 (3) Damages caused solely by the criminal act of a third party other than the
18 defendant or an agent or employee of the defendant. In any action arising
19 under the provisions of this Article wherein this exception is raised as a
20 defense to liability, the burden of proving that the alleged third-party
21 intervention occurred in such a manner as to limit the liability of the person
22 sought to be held liable shall be upon the person charged.

23 (4) Natural seepage not caused by a responsible person.

24 (5) ~~Discharge or leaking~~ of oil or natural gas from a private pleasure boat or
25 commercial fishing vessel having a fuel capacity of less than 500 gallons.

26 (6) Damages which arise out of, or are caused by, a discharge ~~which that~~ is
27 authorized by and in compliance with a State or federal permit.

28 (7) Damages that could have been reasonably mitigated by the injured party in
29 accordance with common law.

30 (c) A court of suitable jurisdiction in any action under this Part may award reasonable
31 costs of the suit and attorneys' fees, and the costs of any necessary expert witnesses, to any
32 prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any
33 prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit
34 under this Part in bad faith or solely for purposes of harassing the defendant."

35 **SECTION 1.(d)** G.S. 143-215.94JJ reads as rewritten:

36 "**§ 143-215.94JJ. Federal law.**

37 Nothing in this Part shall authorize State agencies to impose any duties or obligations in
38 conflict with limitations on State authority established by federal law at the time such agency
39 action is taken. Likewise, no additional liability is established by this Part to the extent that, at
40 the time of the injury, federal law establishes limits on liability which preempt State law. The
41 federal limits on liability established in the Oil Pollution Act of 1990, 33 U.S.C.A. §§ 2701 to
42 2762, shall not apply to discharges or pollution by oil within the territorial jurisdiction of the
43 State."

44 **SECTION 2.** Part 4 of Article 7 of Chapter 113A of the General Statutes is
45 amended by adding a new section to read:

46 "**§ 113A-119.2. Review of offshore fossil fuel facilities.**

47 (a) In addition to the definitions set out in G.S. 113A-103, as used in this section, the
48 following definitions shall apply:

49 (1) "Coastal fishing waters" has the same meaning as in G.S. 113-129.

50 (2) "Discharge" has the same meaning as in G.S. 143-215.77.

- 1 (3) "Offshore fossil fuel facility" means those facilities for the exploration,
2 development, or production of oil or natural gas which, because of their size,
3 magnitude, or scope of impacts, have the potential to affect any land or
4 water use or natural resource of the coastal area. For purposes of this
5 definition, offshore fossil fuel facilities shall include, but are not limited to:
6 a. Structures, including drill ships and floating platforms and structures
7 relocated from other states or countries, located in coastal fishing
8 waters.
9 b. Any equipment associated with a structure described in
10 sub-subdivision a. of this subdivision, including, but not limited to,
11 pipelines and vessels that are used to carry, transport, or transfer oil,
12 natural gas, liquid natural gas, liquid propane gas, or synthetic gas.
13 c. Onshore support or staging facilities associated with a structure
14 described in sub-subdivision a. of this subdivision.
15 (4) "Oil" has the same meaning as in G.S. 143-215.77.
16 (b) In addition to any other information necessary to determine consistency with State
17 guidelines adopted pursuant to G.S. 113A-107, the following information is required for the
18 review of an offshore fossil fuel facility located in coastal fishing waters:
19 (1) All information required to be included in an Exploration Plan required
20 pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).
21 (2) All information required to be included in an Oil-Spill Response Plan
22 required pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009
23 edition).
24 (3) An assessment of alternatives to the proposed offshore fossil fuel facility
25 that would minimize the likelihood of an unauthorized discharge.
26 (4) An assessment of the potential for an unauthorized discharge to cause
27 temporary or permanent violations of the federal and State water quality
28 standards, including the antidegradation policy adopted pursuant to section
29 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).
30 (5) Any other information that the Commission determines necessary for
31 consistency review."

32 **SECTION 3.** In light of the recent events pertaining to the British Petroleum
33 Deepwater Horizon offshore drilling rig, the Coastal Resources Commission shall review
34 existing statutes and modify existing rules that pertain to offshore energy exploration and
35 production and make recommendations, if any, to the Environmental Review Commission on
36 or before October 1, 2011.

37 **SECTION 4.** The Department of Crime Control and Public Safety shall
38 immediately review the potential impacts of oil leaking from the British Petroleum Deepwater
39 Horizon offshore drilling rig on the North Carolina coast and shall update the Oil Spill
40 Contingency Plan, required by G.S. 143-215.94HH, as necessary to ensure the State's
41 preparedness in the event the oil leaking from the British Petroleum Deepwater Horizon
42 offshore drilling rig is transported by currents or other mechanisms to the North Carolina coast
43 or the State's waters. In updating the plan, the Department shall assess the actions that are being
44 implemented to manage and mitigate economic and environmental impacts resulting from the
45 spill, determine which solutions have proven successful, identify the best management
46 practices available to address the impacts, and identify the resources necessary to carry out the
47 Oil Spill Contingency Plan.

48 **SECTION 5.** The Department of Environment and Natural Resources shall review
49 the limitations on recovery by the State for damage to public resources and for the cost of oil or
50 other hazardous substance cleanup established pursuant to G.S. 143-215.89. The Department

1 shall report the results of its review, including any recommendations for changes to the
2 limitations, to the Environmental Review Commission on or before December 1, 2010.

3 **SECTION 6.** This act is effective when it becomes law. Sections 1(a), 1(b), 1(c),
4 and 1(d) of this act apply to any damages, as defined in G.S. 143-215.94BB, incurred on or
5 after that date.