

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 151
PROPOSED COMMITTEE SUBSTITUTE S151-PCS85230-SB-2

Short Title: Coastal Policy Reform Act of 2013.

(Public)

Sponsors:

Referred to:

March 4, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND MARINE FISHERIES LAWS, AMEND THE LAW GOVERNING
3 THE CONSTRUCTION OF TERMINAL GROINS, AMEND CAMA PERMITTING
4 LAWS, AND CLARIFY THAT CITIES AND COUNTIES MAY ENFORCE
5 ORDINANCES WITHIN THE STATE'S PUBLIC TRUST AREAS.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. AMEND MARINE FISHERIES LAW**

9 **SECTION 1.** G.S. 113-172 reads as rewritten:

10 **"§ 113-172. License agents.**

11 (a) The Secretary shall designate license agents for the Department. ~~At least one license~~
12 ~~agent shall be designated for each county that contains or borders on coastal fishing waters. The~~
13 ~~Secretary may designate additional license agents in any county if the Secretary determines that~~
14 ~~additional agents are needed to provide efficient service to the public.~~ The Division and license
15 agents designated by the Secretary under this section shall issue licenses authorized under this
16 Article in accordance with this Article and the rules of the Commission. The Secretary may
17 require license agents to enter into a contract that provides for their duties and compensation,
18 post a bond, and submit to reasonable inspections and audits. If a license agent violates any
19 provision of this Article, the rules of the Commission, or the terms of the contract, the
20 Secretary may initiate proceedings for the forfeiture of the license agent's bond and may
21 summarily suspend, revoke, or refuse to renew a designation as a license agent and may
22 impound or require the return of all licenses, moneys, record books, reports, license forms and
23 other documents, ledgers, and materials pertinent or apparently pertinent to the license agency.
24 The Secretary shall report evidence or misuse of State property, including license fees, by a
25 license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

26 (b) License agents shall be compensated by adding a surcharge of one dollar (\$1.00) to
27 each license sold and retaining the surcharge. If more than one license is listed on a
28 consolidated license form, the license agent shall be compensated as if a single license were
29 sold. It is unlawful for a license agent to add more than the surcharge authorized by this section
30 to the fee for each license sold."

31 **SECTION 2.(a)** G.S. 113-168.5 reads as rewritten:

32 "(a), (b) Repealed by Session Laws 1998-225, s. 4.14.

33 (c) ~~Menhaden Endorsements. Except as provided in G.S. 113-169, it is unlawful to~~
34 ~~use a vessel to take menhaden by purse seine in coastal fishing waters, to land menhaden taken~~
35 ~~by purse seine, or to sell menhaden taken by purse seine without obtaining a menhaden~~
36 ~~endorsement of a SCFL. The fee for a menhaden endorsement shall be two dollars (\$2.00) per~~



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1 ton, based on gross tonnage as determined by the custom house measurement for the mother
2 ship. The menhaden endorsement shall be required for the mother ship but no separate
3 endorsement shall be required for a purse boat carrying a purse seine. The application for a
4 menhaden endorsement must state the name of the person in command of the vessel. Upon a
5 change in command of a menhaden vessel, the owner must notify the Division in writing within
6 30 days.

7 (d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue a
8 shellfish endorsement of a SCFL to a North Carolina resident at no charge. The holder of a
9 SCFL with a shellfish endorsement is authorized to take and sell shellfish."

10 **SECTION 2.(b)** G.S. 113-169 is repealed.

11 **SECTION 2.(c)** G.S. 113-168.2(a1) reads as rewritten:

12 "(a1) Use of Vessels. – The holder of a SCFL is authorized to use only one vessel in a
13 commercial fishing operation at any given time. The Commission may adopt a rule to exempt
14 from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a
15 pound net operation, long-haul operation, or beach seine operation, or menhaden operation."

16 17 **PART II. AMEND TERMINAL GROIN CONSTRUCTION LAW**

18 **SECTION 3.(a)** G.S. 113A-115.1 reads as rewritten:

19 **"§ 113A-115.1. Limitations on erosion control structures.**

20 (a) As used in this section:

21 (1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty,
22 revetment, seawall, or any similar structure.

23 (1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that
24 border estuarine waters as defined in G.S. 113A-113(b)(2).

25 (2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and
26 frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands
27 adjacent to an ocean inlet but does not include that portion of any inlet and
28 lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

29 (3) "Terminal groin" means ~~a structure that is one or more structures~~
30 on the side of an inlet at the terminus of an island generally perpendicular to
31 the shoreline to limit or control sediment passage into the inlet channel.

32 (b) No person shall construct a permanent erosion control structure in an ocean
33 shoreline. The Commission shall not permit the construction of a temporary erosion control
34 structure that consists of anything other than sandbags in an ocean shoreline. This ~~section~~
35 subsection shall not apply to any of the following:

36 (1) Any permanent erosion control structure that is approved pursuant to an
37 exception set out in a rule adopted by the Commission prior to July 1, 2003.

38 (2) Any permanent erosion control structure that was originally constructed
39 prior to July 1, 1974, and that has since been in continuous use to protect an
40 inlet that is maintained for navigation.

41 (3) Any terminal groin permitted pursuant to this section.

42 (b1) This section shall not be construed to limit the authority of the Commission to adopt
43 rules to designate or protect areas of environmental concern, to govern the use of sandbags, or
44 to govern the use of erosion control structures in estuarine shorelines.

45 (c) The Commission may renew a permit for an erosion control structure issued
46 pursuant to a variance granted by the Commission prior to July 1, 1995. The Commission may
47 authorize the replacement of a permanent erosion control structure that was permitted by the
48 Commission pursuant to a variance granted by the Commission prior to July 1, 1995, if the
49 Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in
50 the original permit; (ii) there is no practical alternative to replacing the structure that will
51 provide the same or similar benefits; and (iii) the replacement structure will comply with all

1 applicable laws and with all rules, other than the rule or rules with respect to which the
2 Commission granted the variance, that are in effect at the time the structure is replaced.

3 (d) Any rule that prohibits permanent erosion control structures shall not apply to
4 terminal groins permitted pursuant to this section.

5 (e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General
6 Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the
7 following to the Commission:

8 (1) Information to demonstrate that structures or infrastructure are ~~imminently~~
9 ~~threatened by erosion, and nonstructural approaches to erosion control,~~
10 ~~including relocation of threatened structures, are impractical.~~ threatened by
11 erosion.

12 (2) An environmental impact statement that satisfies the requirements of
13 G.S. 113A-4. An environmental impact statement prepared pursuant to the
14 National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., for
15 the construction of the terminal groin shall satisfy the requirements of this
16 subdivision.

17 (3) A list of property owners and local governments that may be affected by the
18 construction of the proposed terminal groin and its accompanying beach fill
19 project and proof that the property owners and local governments have been
20 notified of the application for construction of the terminal groin and its
21 accompanying beach fill project.

22 (4) A plan for the construction and maintenance of the terminal groin and its
23 accompanying beach fill project prepared by a professional engineer
24 licensed to practice pursuant to Chapter 89C of the General Statutes.

25 (5) A plan for the management of the inlet and the estuarine and ocean
26 shorelines immediately adjacent to and under the influence of the inlet. The
27 inlet management plan monitoring and mitigation requirements must be
28 reasonable and are not required to address unduly speculative or remote
29 matters or impose requirements whose cost outweigh the benefits. The inlet
30 management plan is not required to address sea level rise. The inlet
31 management plan shall do all of the following relative to the terminal groin
32 and its accompanying beach fill project:

33 a. Describe the post-construction activities that the applicant will
34 undertake to monitor the impacts on coastal resources.

35 b. Define the baseline for assessing any adverse impacts and the
36 thresholds for when the adverse impacts must be mitigated.

37 c. Provide for mitigation measures to be implemented if adverse
38 impacts reach the thresholds defined in the plan.

39 d. Provide for modification or removal of the terminal groin if the
40 adverse impacts cannot be mitigated.

41 (6) Proof of financial assurance in the form of a bond, insurance policy, escrow
42 account, or other financial instrument that is adequate to cover the cost of:

43 a. ~~Long-term maintenance and monitoring of the terminal groin.~~

44 b. ~~Implementation of mitigation measures as provided in the inlet~~
45 ~~management plan.~~

46 c. ~~Modification of modification~~ or removal of the terminal groin as
47 provided in the inlet management plan.

48 d. ~~Restoration of public, private, or public trust property if the groin has~~
49 ~~an adverse impact on the environment or property.~~

1 (f) The Commission shall issue a permit for the construction of a terminal groin if the
2 Commission finds no grounds for denying the permit under G.S. 113A-120 and the
3 Commission finds all of the following:

4 (1) The applicant has complied with all of the requirements of subsection (e) of
5 this section.

6 ~~(2) The applicant has demonstrated that structures or infrastructure are~~
7 ~~imminently threatened by erosion and that nonstructural approaches to~~
8 ~~erosion control, including relocation of threatened structures, are~~
9 ~~impractical.~~

10 (3) The terminal groin will be accompanied by a concurrent beach fill project to
11 prefill the groin.

12 (4) Construction and maintenance of the terminal groin will not result in
13 significant adverse impacts to private property or to the public recreational
14 beach. In making this finding, the Commission shall take into account the
15 potential benefits of the project, including protection of beaches, protective
16 dunes, wildlife habitats, roads, homes, and infrastructure, and mitigation
17 measures, including the accompanying beach fill project, that will be
18 incorporated into the project design and construction and the inlet
19 management plan.

20 ~~(5) The inlet management plan is adequate for purposes of monitoring the~~
21 ~~impacts of the proposed terminal groin and mitigating any adverse impacts~~
22 ~~identified as a result of the monitoring.~~

23 (6) Except to the extent expressly modified by this section, the project complies
24 with State guidelines for coastal development adopted by the Commission
25 pursuant to G.S. 113A-107.

26 ~~(g) The Commission may issue no more than four permits for the construction of a~~
27 ~~terminal groin pursuant to this section.~~

28 ~~(h) No permit may be issued where funds are generated from any of the following~~
29 ~~financing mechanisms and would be used for any activity related to the terminal groin or its~~
30 ~~accompanying beach fill project:~~

31 ~~(1) Special obligation bonds issued pursuant to Chapter 159I of the General~~
32 ~~Statutes.~~

33 ~~(2) Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).~~

34 ~~(3) Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.~~

35 (i) No later than September 1 of each year, the Coastal Resources Commission shall
36 report to the Environmental Review Commission on the implementation of this section. The
37 report shall provide a detailed description of each proposed and permitted terminal groin and its
38 accompanying beach fill project, including the information required to be submitted pursuant to
39 subsection (e) of this section. For each permitted terminal groin and its accompanying beach
40 fill project, the report shall also provide all of the following:

41 (1) The findings of the Commission required pursuant to subsection (f) of this
42 section.

43 (2) The status of construction and maintenance of the terminal groin and its
44 accompanying beach fill project, including the status of the implementation
45 of the plan for construction and maintenance and the inlet management plan.

46 (3) A description and assessment of the benefits of the terminal groin and its
47 accompanying beach fill project, if any.

48 (4) A description and assessment of the adverse impacts of the terminal groin
49 and its accompanying beach fill project, if any, including a description and
50 assessment of any mitigation measures implemented to address adverse
51 impacts."

1 SECTION 3.(b) Sections 3 and 4 of S.L. 2011-387 are repealed.

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3 **PART III. AMEND CAMA PERMITTING LAW**

4 **SECTION 4.** G.S. 113A-120 is amended by adding a new subsection to read:

5 "(d) Review of a permit application submitted pursuant to this Article shall be limited to
6 consideration of areas of environmental concern officially designated as such at the time the
7 application was submitted and shall not include consideration of any areas that have not been
8 designated as areas of environmental concern or for which a designation as an area of
9 environmental concern is pending at the time the application was submitted."

10
11 **PART IV. CLARIFY THAT CITIES MAY ENFORCE ORDINANCES WITHIN THE**
12 **STATE'S PUBLIC TRUST AREAS**

13 **SECTION 5.(a)** Article 8 of Chapter 160A of the General Statutes is amended by
14 adding a new section to read as follows:

15 **"§ 160A-203. Municipalities may enforce ordinances in public trust areas.**

16 (a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a city
17 may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the
18 State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to
19 use the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this
20 section or any other provision of law upon the State's ocean beaches located within or adjacent
21 to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances
22 within the city's jurisdictional boundaries. For purposes of this section, the term "ocean
23 beaches" has the same meaning as in G.S. 77-20(e).

24 (b) The authority of a city under this section includes, but is not limited to, the
25 following:

26 (1) A city may regulate, restrict, or prohibit the placement, development,
27 maintenance, repair, alteration, improvement, location, or use of structures,
28 equipment, personal property, or debris upon the State's ocean beaches
29 located within or adjacent to the city's jurisdictional boundaries.

30 (2) Any ordinance adopted by the city may provide for summary procedures to
31 remove or abate any unreasonable restrictions on the public's rights to use
32 the State's ocean beaches located within or adjacent to the city's
33 jurisdictional boundaries. However, any procedure potentially resulting in
34 the removal or demolition of an otherwise lawful building or structure that is
35 not in imminent danger of collapse shall include provisions that provide the
36 record owner of the building or structure with notice and a hearing and the
37 city with a means to recover costs that are the same as or equivalent to the
38 following: service of complaints and orders as provided in G.S. 160A-445;
39 notice and hearing as provided in G.S. 160A-443(2); findings of fact and
40 order as provided in G.S. 160A-443(3)b. and G.S. 24 160A-443(5); liens as
41 provided in G.S. 160A-443(6); and remedies as provided in G.S. 160A-446.

42 (3) A city may enforce a violation of any ordinance adopted pursuant to this
43 section by any remedy provided for in G.S. 160A-175. A city may, in lieu of
44 any other remedy provided for in this section, seek a court order from a court
45 of competent jurisdiction to remove or abate a building or structure that is in
46 violation of an ordinance adopted under this section.

47 (c) Nothing in this section shall be construed to (i) limit the authority of the State or any
48 State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common
49 law as interpreted and applied by the courts of this State; (ii) limit any other authority granted
50 to cities by the State to regulate the State's ocean beaches; (iii) deny the existence of the
51 authority recognized in this section prior to the date this section becomes effective; or (iv)

1 impair the right of the people of this State to the customary free use and enjoyment of the
2 State's ocean beaches, which rights remain reserved to the people of this State as provided in
3 G.S. 77-20(d). Nothing in this section changes or modifies existing common or statutory law
4 with respect to the riparian, littoral, or other ownership rights of owners of property bounded by
5 the Atlantic Ocean."

6 **SECTION 5.(b)** G.S. 113-131 reads as rewritten:

7 "**§ 113-131. Resources belong to public; stewardship of conservation agencies; grant and**
8 **delegation of powers; injunctive relief.**

9 (a) The marine and estuarine and wildlife resources of the State belong to the people of
10 the State as a whole. The Department and the Wildlife Resources Commission are charged with
11 stewardship of these resources.

12 (b) The following powers are hereby granted to the Department and the Wildlife
13 Resources Commission and may be delegated to the Fisheries Director and the Executive
14 Director:

- 15 (1) Comment on and object to permit applications submitted to State agencies
16 which may affect the public trust resources in the land and water areas
17 subject to their respective management duties so as to conserve and protect
18 the public trust rights in such land and water areas;
- 19 (2) Investigate alleged encroachments upon, usurpations of, or other actions in
20 violation of the public trust rights of the people of the State; and
- 21 (3) Initiate contested case proceedings under Chapter 150B for review of permit
22 decisions by State agencies which will adversely affect the public trust rights
23 of the people of the State or initiate civil actions to remove or restrain any
24 unlawful or unauthorized encroachment upon, usurpation of, or any other
25 violation of the public trust rights of the people of the State or legal rights of
26 access to such public trust areas.

27 (c) Whenever there exists reasonable cause to believe that any person or other legal
28 entity has unlawfully encroached upon, usurped, or otherwise violated the public trust rights of
29 the people of the State or legal rights of access to such public trust areas, a civil action may be
30 instituted by the responsible agency for injunctive relief to restrain the violation and for a
31 mandatory preliminary injunction to restore the resources to an undisturbed condition. The
32 action shall be brought in the superior court of the county in which the violation occurred. The
33 institution of an action for injunctive relief under this section shall not relieve any party to such
34 proceeding from any civil or criminal penalty otherwise prescribed for the violation.

35 (d) The Attorney General shall act as the attorney for the agencies and shall initiate
36 actions in the name of and at the request of the Department or the Wildlife Resources
37 Commission.

38 (e) In this section, the term "public trust resources" means land and water areas, both
39 public and private, subject to public trust rights as that term is defined in G.S. 1-45.1.

40 (f) Notwithstanding the provisions of this section, a city may adopt and enforce
41 ordinances as provided in G.S. 160A-203."

42 43 **PART V. EFFECTIVE DATE**

44 **SECTION 6.** Sections 3 and 4 of this act are effective when the act becomes law
45 and apply to permit applications submitted on or after that date. Section 5 of this act becomes
46 effective July 1, 2013. The remainder of this act is effective when it becomes law.