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SESSION 2013

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SENATE BILL 151
Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/14/13
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S151-PCS35373-SB-29

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 AND AMEND THE LAW
3 GOVERNING THE CONSTRUCTION OF TERMINAL GROINS.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. AMEND MARINE FISHERIES LAW**

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

8 **"§ 113-172. License agents.**

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

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

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

30 **"§ 113-168.5. License endorsements for Standard Commercial Fishing License.**

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

32 (c) ~~Menhaden Endorsements. — Except as provided in G.S. 113-169, it is unlawful to~~
33 ~~use a vessel to take menhaden by purse seine in coastal fishing waters, to land menhaden taken~~
34 ~~by purse seine, or to sell menhaden taken by purse seine without obtaining a menhaden~~



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1 endorsement of a SCFL. The fee for a menhaden endorsement shall be two dollars (\$2.00) per
2 ton, based on gross tonnage as determined by the custom house measurement for the mother
3 ship. The menhaden endorsement shall be required for the mother ship but no separate
4 endorsement shall be required for a purse boat carrying a purse seine. The application for a
5 menhaden endorsement must state the name of the person in command of the vessel. Upon a
6 change in command of a menhaden vessel, the owner must notify the Division in writing within
7 30 days.

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

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

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

13 "(a1) Use of Vessels. – The holder of a SCFL is authorized to use only one vessel in a
14 commercial fishing operation at any given time. The Commission may adopt a rule to exempt
15 from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a
16 pound net operation, long-haul operation, or beach seine operation, or menhaden operation."
17

18 **PART II. AMEND TERMINAL GROIN CONSTRUCTION LAW**

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

20 **"§ 113A-115.1. Limitations on erosion control structures.**

21 (a) As used in this section:

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

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

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

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

33 (3) "Terminal groin" means one or more structures constructed at the terminus
34 of an island or on the side of an inlet, with a main stem generally
35 perpendicular to the beach shoreline, that is primarily intended to protect the
36 terminus of the island from shoreline erosion and inlet migration. A
37 "terminal groin" shall be pre-filled with beach quality sand and allow sand
38 moving in the littoral zone to flow past the structure. A "terminal groin" may
39 include other design features, such as a number of smaller supporting
40 structures, that are consistent with sound engineering practices and as
41 recommended by a professional engineer licensed to practice pursuant to
42 Chapter 89C of the General Statutes. A "terminal groin" is not a jetty.

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

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

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

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

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

5 (c) The Commission may renew a permit for an erosion control structure issued
6 pursuant to a variance granted by the Commission prior to July 1, 1995. The Commission may
7 authorize the replacement of a permanent erosion control structure that was permitted by the
8 Commission pursuant to a variance granted by the Commission prior to July 1, 1995, if the
9 Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in
10 the original permit; (ii) there is no practical alternative to replacing the structure that will
11 provide the same or similar benefits; and (iii) the replacement structure will comply with all
12 applicable laws and with all rules, other than the rule or rules with respect to which the
13 Commission granted the variance, that are in effect at the time the structure is replaced.

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

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

19 (1) Information to demonstrate that structures or infrastructure are ~~imminently~~
20 ~~threatened by erosion, and nonstructural approaches to erosion control,~~
21 ~~including relocation of threatened structures, are impractical.~~ threatened by
22 erosion.

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

28 (3) A list of property owners and local governments that may be affected by the
29 construction of the proposed terminal groin and its accompanying beach fill
30 project and proof that the property owners and local governments have been
31 notified of the application for construction of the terminal groin and its
32 accompanying beach fill project.

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

36 (5) A plan for the management of the inlet and the estuarine and ocean
37 shorelines immediately adjacent to and under the influence of the inlet. The
38 inlet management plan monitoring and mitigation requirements must be
39 reasonable and not impose requirements whose costs outweigh the benefits.
40 The inlet management plan is not required to address sea level rise. The inlet
41 management plan shall do all of the following relative to the terminal groin
42 and its accompanying beach fill project:

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

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

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

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

- 1 (6) Proof of financial assurance verified by the Commission or the Secretary of
2 Environment and Natural Resources in the form of a bond, insurance policy,
3 escrow account, guaranty, local government taxing or assessment authority,
4 a property owner association's approved assessment, or other financial
5 instrument or combination of financial instruments that is adequate to cover
6 the cost ~~of~~ of implementing all of the following components of the inlet
7 management plan:
- 8 a. Long-term maintenance and monitoring of the terminal groin.
9 b. Implementation of mitigation ~~measures as provided in the inlet~~
10 ~~management plan measures.~~
11 c. Modification or removal of the terminal ~~groin as provided in the inlet~~
12 ~~management plan groin.~~
13 d. ~~Restoration of public, private, or public trust property if the groin has~~
14 ~~an adverse impact on the environment or property.~~
- 15 (f) The Commission shall issue a permit for the construction of a terminal groin if the
16 Commission finds no grounds for denying the permit under G.S. 113A-120 and the
17 Commission finds all of the following:
- 18 (1) The applicant has complied with all of the requirements of subsection (e) of
19 this section.
- 20 ~~(2) The applicant has demonstrated that structures or infrastructure are~~
21 ~~imminently threatened by erosion and that nonstructural approaches to~~
22 ~~erosion control, including relocation of threatened structures, are~~
23 ~~impractical.~~
- 24 (3) The terminal groin will be accompanied by a concurrent beach fill project to
25 prefill the groin.
- 26 (4) Construction and maintenance of the terminal groin will not result in
27 significant adverse impacts to private property or to the public recreational
28 beach. In making this finding, the Commission shall take into account the
29 potential benefits of the project, including protection of the terminus of the
30 island from shoreline erosion and inlet migration, beaches, protective dunes,
31 wildlife habitats, roads, homes, and infrastructure, and mitigation measures,
32 including the accompanying beach fill project, that will be incorporated into
33 the project design and construction and the inlet management plan.
- 34 (5) The inlet management plan is adequate for purposes of monitoring the
35 impacts of the proposed terminal groin and mitigating any adverse impacts
36 identified as a result of the monitoring.
- 37 (6) Except to the extent expressly modified by this section, the project complies
38 with State guidelines for coastal development adopted by the Commission
39 pursuant to G.S. 113A-107.
- 40 (g) The Commission may issue no more than four permits for the construction of a
41 terminal groin pursuant to this section.
- 42 (h) ~~No permit may be issued where funds are~~ A local government may not use funds
43 generated from any of the following financing mechanisms and would be used for any activity
44 related to the terminal groin or its accompanying beach fill project:
- 45 (1) Special obligation bonds issued pursuant to Chapter 159I of the General
46 Statutes.
- 47 (2) Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).
- 48 (3) Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.
- 49 (i) No later than September 1 of each year, the Coastal Resources Commission shall
50 report to the Environmental Review Commission on the implementation of this section. The
51 report shall provide a detailed description of each proposed and permitted terminal groin and its

1 accompanying beach fill project, including the information required to be submitted pursuant to
2 subsection (e) of this section. For each permitted terminal groin and its accompanying beach
3 fill project, the report shall also provide all of the following:

- 4 (1) The findings of the Commission required pursuant to subsection (f) of this
5 section.
- 6 (2) The status of construction and maintenance of the terminal groin and its
7 accompanying beach fill project, including the status of the implementation
8 of the plan for construction and maintenance and the inlet management plan.
- 9 (3) A description and assessment of the benefits of the terminal groin and its
10 accompanying beach fill project, if any.
- 11 (4) A description and assessment of the adverse impacts of the terminal groin
12 and its accompanying beach fill project, if any, including a description and
13 assessment of any mitigation measures implemented to address adverse
14 impacts."

15 **SECTION 3.(b)** Section 3 of S.L. 2011-387 is repealed.

16
17 **PART III. EFFECTIVE DATE**

18 **SECTION 4.** Section 3 of this act is effective when the act becomes law and
19 applies to permit applications submitted on or after that date. The remainder of this act is
20 effective when it becomes law.