

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/11/12
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Proposed Conference Committee Substitute H819-PCCS80412-SB-6

Short Title: Coastal Management Policies.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO STUDY AND MODIFY CERTAIN COASTAL MANAGEMENT POLICIES.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 113A-103(2) reads as rewritten:

5 "(2) "Coastal area" means the counties that (in whole or in part) are adjacent to,
6 adjoining, intersected by or bounded by the Atlantic Ocean (extending
7 offshore to the limits of State jurisdiction, as may be identified by rule of the
8 Commission for purposes of this Article, but in no event less than three
9 geographical miles offshore) or any coastal sound. The Governor, in
10 accordance with the standards set forth in this subdivision and in subdivision
11 (3) of this section, shall designate the counties that constitute the "coastal
12 area," as defined by this section, and his designation shall be final and
13 conclusive. On or before May 1, 1974, the Governor shall file copies of a list
14 of said coastal-area counties with the chairmen of the boards of
15 commissioners of each county in the coastal area, with the mayors of each
16 incorporated city within the coastal area (as so defined) having a population
17 of 2,000 or more and of each incorporated city having a population of less
18 than 2,000 whose corporate boundaries are contiguous with the Atlantic
19 Ocean, and with the Secretary of State. By way of illustration, the counties
20 designated as coastal-area counties under this subdivision as of July 1, 2012,
21 are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven,
22 Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico,
23 Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The
24 ~~said~~ coastal-area counties and cities shall ~~thereafter~~ transmit nominations to
25 the Governor of members of the Coastal Resources Commission as provided
26 in G.S. 113A-104(d)."

27 **SECTION 2.(a)** Article 7 of Chapter 113A of the General Statutes is amended by
28 adding a new section to read:

29 "**§ 113A-107.1. Sea-level policy.**



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1 (a) The General Assembly does not intend to mandate the development of sea-level
2 policy or the definition of rates of sea-level change for regulatory purposes.

3 (b) No rule, policy, or planning guideline that defines a rate of sea-level change for
4 regulatory purposes shall be adopted except as provided by this section.

5 (c) Nothing in this section shall be construed to prohibit a county, municipality, or other
6 local government entity from defining rates of sea-level change for regulatory purposes.

7 (d) All policies, rules, regulations, or any other product of the Commission or the
8 Division related to rates of sea-level change shall be subject to the requirements of Chapter
9 150B of the General Statutes.

10 (e) The Commission shall be the only State agency authorized to define rates of
11 sea-level change for regulatory purposes. If the Commission defines rates of sea-level change
12 for regulatory purposes, it shall do so in conjunction with the Division of Coastal Management
13 of the Department. The Commission and Division may collaborate with other State agencies,
14 boards, and commissions; other public entities; and other institutions when defining rates of
15 sea-level change."

16 **SECTION 2.(b)** The Coastal Resources Commission and the Division of Coastal
17 Management of the Department of Environment and Natural Resources shall not define rates of
18 sea-level change for regulatory purposes prior to July 1, 2016.

19 **SECTION 2.(c)** The Coastal Resources Commission shall direct its Science Panel
20 to deliver its five-year updated assessment to its March 2010 report entitled "North Carolina
21 Sea Level Rise Assessment Report" to the Commission no later than March 31, 2015. The
22 Commission shall direct the Science Panel to include in its five-year updated assessment a
23 comprehensive review and summary of peer-reviewed scientific literature that address the full
24 range of global, regional, and North Carolina-specific sea-level change data and hypotheses,
25 including sea-level fall, no movement in sea level, deceleration of sea-level rise, and
26 acceleration of sea-level rise. When summarizing research dealing with sea level, the
27 Commission and the Science Panel shall define the assumptions and limitations of predictive
28 modeling used to predict future sea-level scenarios. The Commission shall make this report
29 available to the general public and allow for submittal of public comments including a public
30 hearing at the first regularly scheduled meeting after March 31, 2015. Prior to and upon receipt
31 of this report, the Commission shall study the economic and environmental costs and benefits
32 to the North Carolina coastal region of developing, or not developing, sea-level regulations and
33 policies. The Commission shall also compare the determination of sea level based on historical
34 calculations versus predictive models. The Commission shall also address the consideration of
35 oceanfront and estuarine shorelines for dealing with sea-level assessment and not use one
36 single sea-level rate for the entire coast. For oceanfront shorelines, the Commission shall use no
37 fewer than the four regions defined in the April 2011 report entitled "North Carolina Beach and
38 Inlet Management Plan" published by the Department of Environment and Natural Resources.
39 In regions that may lack statistically significant data, rates from adjacent regions may be
40 considered and modified using generally accepted scientific and statistical techniques to
41 account for relevant geologic and hydrologic processes. The Commission shall present a draft
42 of this report, which shall also include the Commission's Science Panel five-year assessment
43 update, to the general public and receive comments from interested parties no later than
44 December 31, 2015, and present these reports, including public comments and any policies the
45 Commission has adopted or may be considering that address sea-level policies, to the General
46 Assembly Environmental Review Commission no later than March 1, 2016.

47 **SECTION 3.(a)** Notwithstanding Article 7 of Chapter 113A of the General
48 Statutes and rules adopted pursuant to that Article, the Coastal Resources Commission shall not
49 deny a development permit for the replacement of a single-family or duplex residential
50 dwelling with a total floor area greater than 5,000 square feet based on failure to meet the ocean

1 hazard setback required under 15A NCAC 07H .0306(a)(2) if the structure meets all of the
2 following criteria:

- 3 (1) The structure was originally constructed prior to August 11, 2009.
- 4 (2) The structure as replaced does not exceed the original footprint or square
5 footage.
- 6 (3) The structure as replaced meets the minimum setback required under 15A
7 NCAC 07H .0306(a)(2)(A).
- 8 (4) It is impossible for the structure to be rebuilt in a location that meets the
9 ocean hazard setback criteria required under 15A NCAC 07H .0306(a)(2).
- 10 (5) The structure is rebuilt as far landward on the lot as feasible.

11 **SECTION 3.(b)** No later than October 1, 2012, the Coastal Resources Commission
12 shall adopt temporary rules consistent with the provisions of subsection (a) of this section.
13 Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this
14 section shall be substantively identical to the provisions of subsection (a) of this section. The
15 temporary rules shall remain in effect until permanent rules that replace the temporary rules
16 become effective.

17 **SECTION 4.** The Coastal Resources Commission shall study the feasibility of
18 creating a new Area of Environmental Concern for the lands adjacent to the mouth of the Cape
19 Fear River. In studying this region, which shall at least encompass the Town of Caswell Beach
20 and the Village of Bald Head Island, the Commission shall consider the unique coastal
21 morphologies and hydrographic conditions not found elsewhere along the coast. As part of this
22 study, the Commission shall collaborate with the Town of Caswell Beach, the Village of Bald
23 Head Island, and landowners within and immediately adjacent to these two municipalities to
24 identify regulatory concerns and develop strategies for creating a more efficient regulatory
25 framework. If the Commission deems action is necessary to preserve, protect, and balance the
26 economic and natural resources of this region, the Commission shall work to eliminate
27 overlapping Areas of Environmental Concern in these areas and instead incorporate appropriate
28 development standards into one single Area of Environmental Concern unique to this location.
29 The Commission shall report its findings, including any proposed actions the Commission
30 deems appropriate, to the Secretary of Environment and Natural Resources, the Governor, the
31 President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the
32 Environmental Review Commission on or before December 31, 2013.

33 **SECTION 5.** The Coastal Resources Commission shall study the feasibility of
34 eliminating the Inlet Hazard Area of Environmental Concern and incorporating appropriate
35 development standards adjacent to the State's developed inlets into the Ocean Erodible Area of
36 Environmental Concern. If the Commission deems action is necessary to preserve, protect, and
37 balance the economic and natural resources adjacent to inlets, the Commission shall consider
38 the elimination of the inlet hazard boxes; the development of shoreline management strategies
39 that take into account short- and long-term inlet shoreline oscillation and variation, including
40 erosion rates and setback factors; the development of standards that account for the lateral
41 movement of inlets and their impact on adjacent development and habitat; and consideration of
42 how new and existing development standards, as well as existing and proposed development,
43 are impacted by historical and ongoing beach and inlet management techniques, including
44 dredging, beach fill, and engineered structures such as groins and jetties. As part of this study,
45 the Commission shall collaborate with local governments and landowners affected by the
46 Commission's Inlet Hazard Areas to identify regulatory concerns and develop strategies for
47 creating a more efficient regulatory framework. The Commission shall report its findings,
48 including any proposed actions the Commission deems appropriate, to the Secretary of
49 Environment and Natural Resources, the Governor, the President Pro Tempore of the Senate,
50 the Speaker of the House of Representatives, and the Environmental Review Commission on or
51 before January 31, 2015.

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SECTION 6. This act is effective when it becomes law.