

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 819
Committee Substitute Favorable 4/21/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H819-CSLH-38 [v.18]

4/25/2012 11:05:28 AM

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 said
24 coastal-area counties and cities shall thereafter transmit nominations to the
25 Governor of members of the Coastal Resources Commission as provided in
26 G.S. 113A-104(d)."

27 **SECTION 2.** Article 7 of Chapter 113A of the General Statutes is amended by
28 adding the following new sections:

29 **"§ 113A-107.1. Sea-level policy restrictions; calculation of rate of sea-level rise.**

30 (a) No State agency, board, commission, institution, or other public entity thereof shall
31 adopt any rule, policy, or planning guideline addressing sea-level rise, unless authorized to do
32 so under this Article.



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1 (b) No county, municipality, or other local public body shall adopt any rule, ordinance,
2 policy, or planning guideline addressing sea-level rise, unless it is a coastal-area county or is
3 located within a coastal-area county.

4 (c) No rule, ordinance, policy, or planning guideline that defines the rate of sea-level rise
5 shall be adopted except as provided by this section.

6 (d) The General Assembly does not intend to mandate the development of sea-level rise
7 policy or rates of sea-level rise. If, however, the Coastal Resources Commission decides to
8 develop rates of sea-level rise, the Commission may do so, but only by instructing the Division
9 of Coastal Management to calculate the rates.

10 (e) The Division of Coastal Management shall be the only State agency authorized to
11 develop rates of sea-level rise and shall do so only at the request of the Commission. These
12 rates shall only be determined using historical data, and these data shall be limited to the time
13 period following the year 1900. Rates of sea-level rise may be extrapolated linearly to estimate
14 future rates of rise but shall not include scenarios of accelerated rates of sea-level rise. Rates of
15 sea-level rise shall not be one rate for the entire coast but, rather, the Division shall consider
16 separately oceanfront and estuarine shorelines. For oceanfront shorelines, the Division shall use
17 no fewer than the four regions defined in the April 2011 report entitled "North Carolina Beach
18 and Inlet Management Plan" published by the Department of Environment and Natural
19 Resources. The oceanfront regions are: Region 1 (Brunswick County), Region 2 (New
20 Hanover, Pender, and Onslow Counties and a portion of Carteret County), Region 3 (a portion
21 of Carteret County and Hyde County), and Region 4 (Dare and Currituck Counties). For
22 estuarine shorelines, the Division shall consider no fewer than two separate regions defined as
23 those north of Cape Lookout and those south of Cape Lookout.

24 (f) Any State agency, board, commission, institution, or other public entity thereof and
25 any county, municipality, or other local public body that develops a policy addressing sea-level
26 rise that includes a rate of sea-level rise shall use only the rates of sea-level rise developed by
27 the Division of Coastal Management as approved by the Commission. If the Commission has
28 not approved a sea-level rise rate, then the sea-level rise policy shall not use a rate of sea-level
29 rise.

30 (g) If the Commission chooses to adopt rates of sea-level rise for the coastal area as
31 developed by the Division, all rates shall be adopted as rules that are subject to Chapter 150B
32 of the General Statutes."

33 **SECTION 3.** The Coastal Resources Commission shall study the feasibility of
34 creating an exception to the Commission's rule changes regarding oceanfront setback
35 determinations [15A NCAC 07H.0306(a)(2)] that became effective on August 11, 2009, that
36 may allow certain structures to continue to be regulated under the oceanfront setback
37 determination rules that were in effect prior to August 11, 2009. The exception may apply to
38 single family buildings built prior to August 11, 2009, that are larger than 5000 square feet and
39 to multi-family buildings built prior to August 11, 2009, that are less than four units and larger
40 than 5,000 square feet. In its study the Commission may consider the following limitations and
41 evaluate whether it is appropriate to include any of those limitations as part of the criteria that
42 may be used to determine whether a specific structure may qualify for the exception:
43 replacement of a building or structure destroyed beyond 50% of its value by factors other than
44 coastal erosion, storm surge, and hurricane- and nor'easter-related winds; replacement of a
45 building or structure in areas landward of a static line exception; replacement of a building or
46 structure as far landward on the lot as feasible; replacement of a building or structure with a
47 total floor area and footprint not greater than the pre-existing building or structure; and
48 replacement of a building or structure that is no further oceanward than the landward most
49 adjacent building or structure.

1 The Commission shall use the most recent erosion rates calculated by the Division of
2 Coastal Management and presented to the Commission in 2011 rather than the 1998 rates
3 referenced in the rule [15A NCAC 07H.0304(1)(a)] when assessing setback scenarios and the
4 feasibility of any exception to the current setback rules.

5 The Commission shall report its findings, including any proposed actions the Commission
6 deems appropriate, to the Secretary of the Department of Environment and Natural Resources,
7 the Governor, the President Pro Tempore of the North Carolina Senate, and the Speaker of the
8 North Carolina House of Representatives on or before December 31, 2012.

9 During this study, the Commission shall not delay the movement or progression of the
10 updated 2011 erosion rates through the rulemaking process.

11 **SECTION 4.** The Coastal Resources Commission shall study the feasibility of
12 creating a new Area of Environmental Concern for the lands and waters adjacent to the mouth
13 of the Cape Fear River. In studying this region, which shall at least encompass the public trust
14 waters in the mouth of the Cape Fear River and its associated shoals and ebb tidal deltas, the
15 Town of Caswell Beach, and the Village of Bald Head Island, the Commission shall consider
16 the unique coastal morphologies and hydrographic conditions not found elsewhere along the
17 coast and how these areas are impacted by the US Army Corps of Engineers activities related to
18 the Port of Wilmington and its federally authorized channels. If the Commission deems action
19 is necessary to preserve, protect, and balance the economic and natural resources of this region,
20 the Commission shall work to eliminate overlapping Areas of Environmental Concern in these
21 areas and, instead, incorporate appropriate development standards into one single Area of
22 Environmental Concern unique to this location.

23 The Commission shall report its findings, including any proposed actions the
24 Commission deems appropriate, to the Secretary of the Department of Environment and
25 Natural Resources, the Governor, the President Pro Tempore of the North Carolina Senate, and
26 the Speaker of the North Carolina House of Representatives on or before December 31, 2013.

27 **SECTION 5.** The Coastal Resources Commission shall study the feasibility of
28 eliminating the Inlet Hazard Area of Environmental Concern and incorporating appropriate
29 development standards adjacent to the State's developed inlets into the Ocean Erodible Area of
30 Environmental Concern. If the Commission deems action is necessary to preserve, protect, and
31 balance the economic and natural resources adjacent to inlets, the Commission shall consider
32 the elimination of the inlet hazard boxes; the development of shoreline management strategies
33 that take into account short- and long-term inlet shoreline oscillation and variation, including
34 erosion rates and setback factors; the development of standards that account for the lateral
35 movement of inlets and their impact on adjacent development and habitat; and consideration of
36 how new and existing development standards, as well as existing and proposed development,
37 are impacted by historical and ongoing beach and inlet management techniques including
38 dredging, beach fill, and engineered structures such as groins and jetties, impact both the inlet
39 and adjacent shorelines.

40 The Commission shall report its findings, including any proposed actions the
41 Commission deems appropriate, to the Secretary of the Department of Environment and
42 Natural Resources, the Governor, the President Pro Tempore of the North Carolina Senate, and
43 the Speaker of the North Carolina House of Representatives on or before January 31, 2015.

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