

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1547
Committee Substitute Favorable 6/18/92

Short Title: Public Use of the Beach.

(Public)

Sponsors:

Referred to:

June 3, 1992

A BILL TO BE ENTITLED
AN ACT TO CODIFY THE COMMON-LAW RIGHTS IN NORTH CAROLINA TO
PUBLIC USE OF OCEAN AND ESTUARINE BEACHES AND TO AUTHORIZE
LEGAL ACTIONS TO PROTECT THOSE RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. Part 6 of Article 7 of Chapter 113A of the General Statutes reads
as rewritten:

"Part 6. Coastal and Estuarine Water Beach Access-Open Beaches and Public Access
Protection Program.

"§ 113A-134.1. Legislative findings.

(a) ~~It is determined and declared as a matter of legislative findings that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the estuarine waters in North Carolina that have been and will be adversely affected by the coastal and estuarine waters hazards such as erosion, flooding and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach. The General Assembly finds that the ocean and estuarine beaches are among the most valuable resources of the State.~~ The public has traditionally fully enjoyed the State's ocean and estuarine beaches and public access to and use of the beaches. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the

1 economic well-being of the State. The General Assembly finds that the ocean and
2 estuarine beaches are public trust resources of statewide significance and have been
3 customarily freely used and enjoyed by people throughout the State. State as a part of
4 their common heritage protected under Section 5 of Article XIV of the Constitution of
5 North Carolina.

6 (b) The General Assembly finds that there are privately owned undeveloped lots
7 or tracts of land in close proximity to the Atlantic Ocean, its inlets, or other estuarine
8 waters that have been or will be adversely affected by hazards of coastal waters such as
9 erosion, flooding, and storm damage. Sand dunes on many of these lots provide
10 valuable protection for public and private property and are an integral part of the beach
11 sand supply system. Placement of substantial permanent structures on these lots will
12 increase the risk of injury or death to persons and damage to property, increase various
13 costs to the public, and may lead to encroachment of structures onto the beach itself.
14 When erosion causes oceanfront development to encroach on public trust areas of the
15 ocean beaches, encroachments that interfere with reasonable use and enjoyment of the
16 ocean beaches by the public should be removed or altered to afford reasonable public
17 use.

18 (c) The General Assembly finds that public trust rights to freely use and enjoy
19 ocean and inlet beaches in the area between the first line of stable natural vegetation and
20 the water arise under the Constitution and as a matter of the common law of the State.
21 The General Assembly further finds that public trust rights to freely use and enjoy
22 estuarine beaches that are subject to lunar tides between the ordinary mean high
23 waterline as indicated by vegetation and debris and the water arise under the
24 Constitution and as a matter of the common law of the State. The General Assembly
25 finds that the public trust areas of the ocean, inlet, and estuarine beaches are also subject
26 to the exercise of private property rights commonly known as littoral or riparian rights.
27 The Coastal Area Management Act of 1974, as amended, recognizes public and private
28 rights in the beaches and establishes a means for balancing these rights through the
29 issuance of permits for development in the public trust areas of the beaches.

30 (d) The General Assembly finds that public ~~Public~~-access to ocean and estuarine
31 beaches in North Carolina ~~is, however, is~~ becoming severely limited in some areas.
32 Also, ~~the~~-lack of public parking is increasingly making the use of existing public access
33 difficult or impractical in some areas. ~~Public purposes would~~-The public interest would
34 best be served by providing increased access to ocean and estuarine beaches, public
35 parking facilities, or other related public ~~uses.~~-uses and by protecting the public against
36 interference with the customary free use and enjoyment of the ocean and estuarine
37 beaches.

38 (e) The General Assembly finds that publicly owned bridges, ferry landings, boat
39 ramps, piers, ports, parks, historic sites, and accessways make a valuable contribution to
40 the public use and enjoyment of ocean and estuarine beaches and waters. Public
41 improvements previously made to enhance legitimate public purposes for transportation,
42 navigation, access to navigable waters, commerce at seaports operated by the North
43 Carolina State Ports Authority, protection of State parks and State historic sites, fishing,
44 hunting, and recreation are consistent with the public trust. Construction and

1 maintenance of additional public facilities and improvements of the types listed in this
2 section that are consistent with the planning and regulatory requirements of this Article
3 are also consistent with the public trust. The Coastal Area Management Act of 1974, as
4 amended, establishes a means for balancing the public benefits of facilities and
5 improvements of the type listed in this section and the public trust rights to use and
6 enjoy the beaches through the issuance of permits for development in the public trust
7 areas of the beaches.

8 (f) The General Assembly therefore finds that there is ~~There is therefore,~~
9 pressing need in North Carolina to establish a comprehensive program for the
10 identification, acquisition, ~~improvement~~ improvement, and maintenance of public
11 accessways to the ocean and estuarine ~~beaches.~~ beaches and for the protection of these
12 public trust resources from unlawful encroachments, usurpation, or interference with the
13 customary free use and enjoyment of the ocean and estuarine beaches.

14 **"§ 113A-134.2. Creation of program; administration; ~~purpose.~~ purpose; definitions.**

15 (a) There is created the ~~Coastal and Estuarine Water Beach Access~~ Open Beaches
16 and Public Access Protection Program, to be administered by the ~~Coastal Resources~~
17 Commission and the Department, for the purpose of acquiring, ~~improving~~ improving,
18 and maintaining property along the Atlantic Ocean and estuarine ~~waters, as provided in~~
19 this Article. ~~waters~~ and for the purpose of protecting public trust rights that apply to the
20 ocean and estuarine beaches as public trust resources.

21 (b) ~~The Coastal Resources Commission and the Department shall use the definition~~
22 ~~of "estuarine water" used under this Article to administer this program. As used in this~~
23 Part:

- 24 (1) 'Estuarine water' has the same meaning as in G.S. 113A-113(b)(2).
25 (2) 'Public trust resources' has the same meaning as in G.S. 113-131(e).
26 (3) 'Public trust rights' has the same meaning as in G.S. 1-45.1.

27 **"§ 113A-134.3. Standards for beach access program.**

28 (a) ~~The Coastal Resources Commission, with the support of the Department, shall~~
29 establish and carry out a program to assure the acquisition, ~~improvement~~ improvement,
30 and maintenance of a system of public access to ocean and estuarine water beaches.
31 This beach access program shall include standards to be adopted by the Commission for
32 the acquisition of property and the use and maintenance of said property. The standards
33 shall be written to assure that land acquisition funds shall only be used to purchase
34 interests in property that will be of benefit to the general public. Priority shall be given
35 to acquisition of lands which, due to adverse effects of coastal and estuarine water
36 natural hazards, such as past and potential erosion, ~~flooding~~ flooding, and storm damage,
37 are unsuitable for the placement of permanent structures, including lands for which a
38 permit for improvements has been denied under rules adopted pursuant to State law.
39 The program shall be designed to provide and maintain reasonable public access and
40 necessary parking, within the limitations of the resources available, to all areas of the
41 North Carolina coast and estuarine waters where access is compatible with the natural
42 resources involved and where reasonable access is not ~~already available as of June 30,~~
43 1981. available.

1 (b) To the maximum extent possible, this program shall be coordinated with State
2 and local coastal and estuarine water management and recreational programs and
3 carried out in cooperation with local governments. Prior to the purchase of any interests
4 in property, the Secretary or his designee shall make a written finding of the public
5 purpose to be served by the acquisition. Once property is ~~purchased,~~ purchased or
6 transferred to the Department by another State agency, the Department may allow
7 property, without charge, to be controlled and operated by the county or municipality in
8 which the property is located, subject to an agreement requiring that the local
9 government use and maintain the property for its intended public purpose. These funds
10 may be used to meet matching requirements for federal or other funds.

11 (c) The Department shall make every effort to obtain funds from sources other
12 than the general fund for these purposes. Funds may be used to acquire or develop land
13 for pedestrian access including parking or to make grants to local governments to
14 accomplish the purposes of this ~~Article-Part.~~ All acquisitions or dispositions of property
15 made pursuant to this ~~Article-Part~~ shall be in accordance with the provisions of Chapter
16 146 of the General Statutes. All grants to local governments pursuant to this ~~Article-Part~~
17 for land acquisitions shall be made on the condition that the local government agrees to
18 transfer title to any real property acquired with the grant funds to the State if the local
19 government uses the property for a purpose other than beach access.

20 "**§ 113A-134.4. Injunctive relief and damages.**

21 (a) The Secretary or the Attorney General may bring a civil action against any
22 person, State agency, or other legal entity who has unlawfully encroached upon,
23 usurped, or otherwise violated or interfered with the public trust rights of the people of
24 the State to freely use and enjoy the ocean and estuarine beaches or legal rights of
25 access to such public trust resources. The Secretary or the Attorney General may seek
26 an injunction to restrain the violation or interference, an injunction to prevent future
27 violations or interference, a permanent or mandatory preliminary injunction to restore
28 the resources to an undisturbed condition, and damages. The civil action shall be
29 brought in the superior court of the county in which the violation or interference
30 occurred. If the court finds that an unlawful violation or interference with public trust
31 rights has occurred, the court shall, at a minimum, restrain the violation or interference,
32 order restoration of the resources, and award damages for the violation or interference
33 with the public trust resources or access to the ocean and estuarine beaches. A civil
34 action brought under this section does not relieve any party to the action from any civil
35 or criminal penalty otherwise prescribed for the violation.

36 (b) To order alteration or removal of a structure, a court must make written
37 findings that:

- 38 (1) The structure causes or will cause a significant interference with public
39 trust rights to use and enjoy the beaches;
- 40 (2) The public will be deprived of reasonable use and enjoyment of the
41 beach unless the structure is altered or removed; and
- 42 (3) The benefit to the public of altering or removing the structure
43 outweighs the harm to the owner of the structure."

44 Sec. 2. This act becomes effective 1 October 1992.