

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 1542

Short Title: Beach & Coastal Waterways Conservation Act. (Public)

Sponsors: Representatives Culpepper, Preston (Primary Sponsors); McGee and Stiller.

Referred to: Environment and Natural Resources.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE BEACH AND COASTAL WATERWAYS
CONSERVATION, RESTORATION, AND PUBLIC ACCESS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 29.

"Beach and Coastal Waterways Conservation, Restoration, and Public Access.

"Part 1. General.

"§ 113-420. Short title.

This Article shall be known and may be cited as the North Carolina Beach and Coastal Waterways Conservation, Restoration, and Public Access Act.

"§ 113-421. Findings.

- (1) North Carolina has 320 miles of ocean beach, including some of the most pristine and attractive beaches in the country.
- (2) A good balance between economic development and environmental quality in North Carolina has made our coastal area one of the most desirable along the Atlantic Seaboard.
- (3) North Carolina's beaches and waterways are vital to the State's tourism industry, which is a dominant source of income and employment in many coastal communities.
- (4) North Carolina's beaches and waterways belong to all the State's citizens and provide recreational and economic benefits to our residents statewide.
- (5) Beach erosion can threaten the economic viability of coastal communities and can significantly affect State tax revenues.
- (6) The North Carolina coast is vulnerable to hurricanes and other storms. It is prudent to take precautions, such as beach nourishment, to protect

1 and conserve the State's beaches and reduce property damage and
2 flooding.

3 (7) Beach nourishment is an erosion control method that provides
4 hurricane flood protection, enhances the attractiveness of beaches to
5 tourists, restores habitat for turtles, shorebirds, and plants, and ensures
6 the long-term availability of public access to beaches.

7 (8) Beach nourishment projects have proved successful in greatly reducing
8 damage to property and to public infrastructure during hurricanes,
9 thereby protecting the tax base.

10 (9) The State of North Carolina prohibits seawalls and hardening the
11 shoreline to prevent destroying the beaches and the public's access to
12 beaches.

13 (10) Beach nourishment is encouraged by both the Coastal Resources
14 Commission and the U.S. Army Corps of Engineers as a desirable
15 method to control beach erosion.

16 (11) Beach-quality sand is a critical natural resource that is in limited
17 supply in some North Carolina coastal areas. All possible steps should
18 be taken to make sure that beach-quality sand dredged from navigation
19 channels is used appropriately for beach nourishment.

20 (12) The State recognizes the need to evaluate an acquisition program for
21 property that is subject to continuous severe erosion and where sand
22 sources are unavailable.

23 (13) North Carolina benefits from an extensive network of navigation
24 channels in our public waterways, which have been authorized by
25 Congress and are maintained by the U.S. Army Corps of Engineers.

26 (14) North Carolina's waterway navigation channels provide extensive
27 economic benefits to North Carolina by making possible commercial
28 fishing, ferry travel, industrial barge transportation, and recreational
29 boating.

30 (15) Without periodic maintenance dredging, waterway navigation channels
31 will become unusable, causing serious economic problems for
32 fishermen, ferries, industries, and the tourist industry.

33 (16) Federal funding for both the maintenance of federally authorized
34 navigation channels and for the planning, construction, and
35 maintenance of federally authorized beach nourishment projects is
36 threatened because of severe federal budget pressures.

37 (17) The Department of Environment and Natural Resources has statutory
38 authority to assist local governments in financing beach nourishment
39 and waterway projects and is the sponsor of several federal navigation
40 projects.

41 **"§ 113-422. Definitions.**

42 The following definitions apply in this Article:

43 (1) "Beach" means shorelines along the Atlantic Ocean and inlets that
44 connect to the Atlantic Ocean.

- 1 (2) "Coastal waterways" means waterways of State or national
2 significance, most of which have federally authorized channels.
- 3 (3) "Council" means North Carolina Beach and Waterway established in
4 G.S. 113-430.
- 5 (4) "Fund" means North Carolina Beach, Waterway, and Public Access
6 Fund created in G.S. 113-445.
- 7 (5) "Local government unit" means a county, city, town, incorporated
8 village, or consolidated city-county, as defined by G.S. 160B-2(1).
- 9 (6) "Public beach access" means those ocean, inlet, and estuarine
10 shorelines which provide pedestrian access to the public. Ocean and
11 estuarine shoreline accesses are defined to include the acquisition and
12 improvement of properties situated along the Atlantic Ocean for
13 parking and public passage to the oceanfront. Beach access facilities
14 may include, but are not limited to, parking areas, restrooms, showers,
15 picnic areas, dressing/shower rooms, concession stands, gazebos, litter
16 receptacles, water fountains, dune crossovers, security lighting,
17 emergency and pay telephones, interpretive and public beach access
18 signs, and other appropriate facilities. "Inlet beach access" is defined
19 to include the acquisition and improvement of buildable and
20 unbuildable properties situated along the confluence of estuarine and
21 ocean waters for parking and public passage to the beach area. The
22 construction of facilities other than parking, litter receptacles, and
23 public access signs is not encouraged.
- 24 (7) "Public waterway access" means those accesses that provide boating
25 access to the State's coastal waterways and may include, but are not
26 limited to, boat ramps, boat lifts, parking and storage areas, restrooms,
27 gazebos, informational kiosks, litter receptacles, security lighting and
28 fencing, emergency and pay telephones, and other appropriate
29 facilities.
- 30 (8) "Department" means the Department of Environment and Natural
31 Resources.
- 32 (9) "Secretary" means Secretary of the Department of Environment and
33 Natural Resources.

34 "Part 2. North Carolina Beach and Waterway Council

35 **"§ 113-430. North Carolina Beach and Waterway Council established.**

36 The North Carolina Beach and Waterway Council is established. The Council shall
37 be an advisory body to the Secretary of the Department of Environment and Natural
38 Resources.

39 **"§ 113-431. Appointment and terms of Council members; filling of vacancies; per**
40 **diem.**

41 (a) Membership. – The Council shall be composed of 12 members. Three
42 members shall be appointed by the Governor, three by the General Assembly upon the
43 recommendation of the Speaker of the House of Representatives, and three by the
44 General Assembly upon the recommendation of the President Pro Tempore of the

1 Senate. Three members shall be appointed by the Secretary, one each from the
2 membership within the Coastal Resources Commission, Marine Fisheries Commission,
3 and Environmental Management Commission. Of the members appointed upon the
4 recommendation of the Speaker of the House and upon the recommendation of the
5 President Pro Tempore of the Senate, at least one of each shall be a member of the
6 political party to which the largest minority of the members of the General Assembly
7 belong. The District Engineer of the U.S. Army Corps of Engineers shall appoint one
8 ex officio advisor to the Council from the staff of the Wilmington District.

9 The office of the Council is declared to be an office that may be held concurrently
10 with any other elected, executive, or appointive office, under the authority of Article VI,
11 Section 9, of the North Carolina Constitution.

12 (b) Qualifications for Membership. – Of the nine members appointed to the
13 Council by the Governor and the General Assembly, six persons shall be elected or
14 employed representatives of a local government unit within the 20 Coastal Area
15 Management Act Counties, with no more than two members represented by a single
16 county at any time. One member shall be a representative from a local government unit
17 tourism agency. One member shall also be designated from the N.C. State Ports
18 Authority Board of Directors. The remaining person shall be an at-large member.

19 (c) Per Diem and Travel Expenses. – Members of the Council shall receive per
20 diem and necessary travel and subsistence expenses in accordance with the provisions
21 of G.S. 138-5 or G.S. 138-6 as the case may be, which shall be paid from the North
22 Carolina Beach, Waterway, and Public Access Fund or funds appropriated for this
23 purpose by the General Assembly.

24 (d) Initial Appointments and Terms of Office. – Each appointing officer shall
25 designate one of the officer's initial appointments to serve a two-year term, one to serve
26 a four-year term, and one to serve a six-year term. Thereafter, all appointments shall be
27 for four years, subject to reappointment. The Secretary's appointments shall serve an
28 initial two-year term and thereafter, four-year terms subject to reappointment.

29 (e) Vacancies. – If a vacancy occurs, other than by the expiration of term, of a
30 member subject to appointment by the General Assembly upon the recommendation of
31 the Speaker of the House of Representatives or the President Pro Tempore of the
32 Senate, the vacancy shall be filled in accordance with G.S. 120-122. If a vacancy
33 occurs, other than by the expiration of term, of a member appointed by the Governor,
34 then the Governor shall appoint a new member in the original manner. If a vacancy
35 occurs, other than by the expiration of term, of a member appointed by the Secretary,
36 then the Secretary shall appoint a new member in the original manner. Appointment of
37 a member to fill a vacancy under this subsection shall be for the balance of the
38 unexpired term of office. The Governor shall have the power to remove any member of
39 the Council from office for misfeasance, malfeasance, or nonfeasance.

40 **"§ 113-432. Organization of the Council; election of officers; Robert's Rules of**
41 **Order.**

42 The Council shall hold at least four meetings annually, with at least two meetings
43 prior to July 1 of each year and at least two meetings after July 1. Seven members of
44 the Council shall constitute a quorum for the transaction of business. Additional

1 meetings may be held at any other time as may be deemed necessary for the efficient
2 transaction of the Council's business. The Council may hold additional or special
3 meetings at any time at the call of the chair or on the call of any seven members of the
4 Council. The Council shall determine its own organization and methods of procedure in
5 accordance with the provisions of this Article.

6 At the first scheduled meeting of the Council after January 1, 2006, and on July 1 of
7 each odd-numbered year thereafter, the Council shall select from among its membership
8 a chair and a vice-chair who shall serve for terms of two years or until their successors
9 are elected and qualified. The Secretary, or the Secretary's designee, shall also serve as
10 secretary of the Council.

11 Meetings of the Council shall be conducted pursuant to Robert's Rules of Order.

12 **"§ 113-433. Location of offices; administrative assistances.**

13 The Department of Environment and Natural Resources shall provide staff
14 assistance to the Council including the use of meeting rooms for work, housing its
15 records, and processing per diem and travel expenses of Council members and
16 executive secretary.

17 **"§ 113-434. Powers and duties of Council.**

- 18 (1) To assist the Department in developing a scope of study for a report
19 fully delineating the economic impact of beaches and waterways on
20 the economies of beach counties, the coastal region, and on the State
21 as a whole. The economic impact of beach and waterway
22 conservation, restoration, and public beach and water access projects
23 to these economies shall also be included in the report.
- 24 (2) Review plans and policies for beaches, inlets, and waterways
25 developed by the Department as recommended in the Coastal Habitat
26 Protection Plan. The Council shall review and make specific
27 recommendations on the State plan and strategy for beach and
28 waterway conservation, restoration, and public access as provided in
29 G.S. 113-440.
- 30 (3) To make recommendations on policies and priorities for expenditures
31 from the North Carolina Beach, Waterway, and Public Access Fund
32 created pursuant to G.S. 113-445.
- 33 (4) Review State, federal, and local policies enabling and assisting
34 property owners to move structures that are threatened by imminent
35 erosion damage and recommend policies, legislative changes, and
36 actions to make moving structures more feasible to landowners.
- 37 (5) To evaluate the feasibility of combining G.S. 143-215.73 with this
38 Article.
- 39 (6) To review existing and proposed State laws and administrative rules
40 affecting public beach and waterway access, beach and waterway
41 conservation, beach and waterway restoration, and to recommend to
42 the Secretary whether any modifications of the laws and rules would
43 be in the public interest.

- 1 (7) To review all aspects of public access to North Carolina beaches and
2 waterways, including boat ramps, and to recommend methods to the
3 Secretary to increase the public's ability to access and enjoy North
4 Carolina's beaches and waterways.
- 5 (8) To review and evaluate changes in the federal laws and programs
6 regarding beach and waterway conservation and restoration, advances
7 in available technology, and developing scientific knowledge of
8 coastal natural resources to determine whether the laws of the State
9 and any implementing rules need modification as a result of the
10 changes in federal law or advances in technology.
- 11 (9) The Council shall report the findings described in subdivisions (5)
12 through (8) of this section to the Secretary.

13 "Part 3. Beach and Waterway Conservation, Restoration, and Public Access Plan and
14 Responsibilities of the Department.

15 "§ 113-440. **Beach and waterway conservation, restoration, and public access plan**
16 and responsibilities of the Department.

- 17 (a) Plan. – When funds are appropriated for these purposes, the Department with
18 recommendations from the Council shall develop and implement a multiyear plan and
19 strategy to conserve and restore the beaches and waterways of the State so as to
20 safeguard, perpetuate, and enhance when feasible their aesthetic, biological, and
21 economic values. The plan developed by the Department shall do all of the following,
22 subject to public hearing to receive citizen input, while recognizing guidance provided
23 in the Coastal Habitat Protection Plan that recommends a statewide Beach and Inlet
24 Management Plan:
- 25 (1) Identify the erosion rates (spatial and volumetric) at each beach
26 community and estimate the degree of vulnerability to storm and
27 hurricane damage.
- 28 (2) Identify and characterize the scouring patterns and shoaling rates for
29 each coastal waterway and vulnerability with respect to shallow and
30 deep draft vessels.
- 31 (3) Use the best available geological and geographical information to
32 determine the need for and probable effectiveness of beach
33 nourishment.
- 34 (4) Provide for coordination with the National Oceanographic and
35 Atmospheric Administration, Environmental Protection Agency, North
36 Carolina Department of Transportation, the North Carolina Division of
37 Emergency Management, and other State and federal agencies
38 concerned with beach and waterway conservation, restoration, and
39 public access issues.
- 40 (5) Provide a status report on all U.S. Army Corps of Engineers' beach
41 protection and waterway navigation projects in the planning,
42 construction, and operational stages.
- 43 (6) Develop regional sand management and beneficial use of dredged
44 materials initiatives that utilize sand dredged from navigation channels

- 1 for beach nourishment and habitat creation, thereby avoiding loss of
2 this resource.
- 3 (7) Promote inlet sand bypassing where needed to replicate the natural
4 flow of sand interrupted by inlets.
- 5 (8) Assess navigational patterns for the State's waterways and provide
6 recommendations.
- 7 (9) Provide geological assessments to locate suitable materials for beach
8 nourishment.
- 9 (10) Consider the regional context of beach and coastal communities to
10 determine the most cost-effective approach to beach and waterway
11 conservation and restoration.
- 12 (11) Develop public beach and waterway access guidelines and a plan for
13 additional future public access facilities, including boat ramps, based
14 upon increases in the State's population and in the public's use of
15 beaches and waterways.
- 16 (12) Recommend priorities for State funding for beach nourishment
17 projects, based on factors including, but not limited to, the amount of
18 erosion occurring, the potential damage to property and to the
19 economy, the benefits for recreation and tourism, the adequacy of
20 public access, the availability of local government matching funds, the
21 status of project planning, the adequacy of project engineering, the
22 cost-effectiveness of the project, and the environmental impacts.
- 23 (13) Evaluate the feasibility for a beach and waterway topographic and
24 bathymetric monitoring program encompassing coastal waters,
25 beaches, and the habitat types listed in the Coastal Habitat Protection
26 Plan.
- 27 (14) Include recommendations on obtaining the maximum available federal
28 financial assistance for beach and waterway conservation and
29 restoration.
- 30 (b) Responsibilities. – The Department shall:
- 31 (1) Provide local governments with technical assistance in evaluating
32 beach and waterway access needs and erosion and shoaling problems
33 when developing and implementing public beach and waterway
34 access, conservation, and restoration plans.
- 35 (2) Coordinate the activities of State, federal, and local governments and
36 private organizations in developing and implementing public beach
37 and waterway access, conservation, and restoration projects.
- 38 (3) Enter into cooperative agreements pertaining to the conservation and
39 restoration of the State's beaches and waterways with federal, State,
40 and other agencies or governmental subdivisions.
- 41 (4) Develop criteria for public beach and waterway access that must be
42 met by any local government receiving State funds for beach and
43 waterway conservation, restoration, or public access.

1 (5) Conduct a study of the economic impact of beaches and waterways on
2 the economies of the beach counties, the coastal region, and on the
3 State as a whole and the economic impact of beach and waterway
4 conservation, restoration, and public access on those economies.

5 (6) Coordinate beach, waterway, and public access efforts and plans that
6 minimize impacts to fish habitats to the best practical extent.

7 (7) Provide guidance in plan formulation.

8 (c) Initial Plan Date and Revised Plan Dates. – The intent of the General
9 Assembly is to phase in implementation of this act as funds become available. The
10 Council shall be appointed when funds have been appropriated to cover the per diem
11 and other costs associated with its operation. The Department shall begin work on the
12 Beach and Waterway Conservation, Restoration, and Public Access Plan and on other
13 responsibilities assigned by this statute when funds have been appropriated for this
14 purpose. The intent of the General Assembly is for the Council and the Department to
15 begin with the highest priority and to phase in the additional tasks as resources become
16 available. When funds are appropriated for this purpose, the Department shall submit
17 the initial plan to the General Assembly within three years of the effective date of the
18 appropriation. The Department shall revise the plan every five years and submit an
19 annual progress report to the Environmental Review Commission.

20 "Part 4. North Carolina Beach, Waterway, and Public Access Fund.

21 **§ 113-445. North Carolina Beach, Waterway, and Public Access Fund.**

22 (a) Fund Established. – There is established the North Carolina Beach,
23 Waterway, and Public Access Fund in the State Treasurer's Office that shall be used to
24 provide grants to beach and coastal communities for public beach and waterway
25 conservation, restoration, and access in accordance with this Article. The Fund shall
26 also be utilized to fulfill planning, reports, per diems, and other administrative activities
27 consistent with this Article. The Department of Environment and Natural Resources
28 shall serve as Fund administrator. The Department shall administer grants under this
29 Fund for public beach and waterway access in coordination with G.S. 113A-134.1, et
30 seq.

31 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
32 Fund separate and apart from all other moneys, funds, and accounts. Investment
33 earnings credited to the assets of the Fund shall become part of the Fund. Any balance
34 remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund
35 for the succeeding fiscal year. Payments from the Fund shall be made on the warrant of
36 the Secretary of the Department of Environment and Natural Resources.

37 (c) Eligibility for Grants. – Any local government unit or other political
38 subdivision of the State or a combination of the entities is eligible to apply for a grant
39 from the Fund for the purpose of public beach and waterway protection, conservation,
40 restoration, maintenance, and for public access to beaches and waterways.

41 (d) Grant Matching Requirement. – The Council shall establish matching
42 requirements for grants awarded under this Article of at least twenty-five percent (25%)
43 of the amount of the grant awarded, regardless if the grant application is for a project
44 receiving federal funds or one not receiving federal funds.

1 (e) Allocate Grant Funds. – Notwithstanding administrative expenditures, the
2 Department shall allocate moneys from the Fund as grants. A grant may be awarded
3 only for a project or activity that satisfies the criteria and furthers the purposes of this
4 Article.

5 (f) Develop Grant Criteria. – The Department shall develop criteria for awarding
6 grants under this Article. The criteria developed shall include the following:

7 (1) The economic benefits and cost-effectiveness of the project.

8 (2) The adequacy of public access.

9 (3) The availability of local matching funds.

10 (4) The quality of project planning and engineering.

11 (5) The degree to which environmental impacts have been minimized or
12 mitigated.

13 (g) The application for a beach or waterway conservation, restoration, or public
14 access project shall be submitted with complete planning and design documentation
15 adequate to provide project specifications, cost estimates, review of environmental
16 impacts, and estimation of benefits. The Department may make grants to potential
17 applicants for up to fifty percent (50%) of the cost of the necessary planning and design
18 work to prepare applications.

19 (h) Private Contributions Are Tax Deductible. – Private gifts, grants, and
20 donations to the Fund are tax deductible as provided in Chapter 105 of the General
21 Statutes.

22 (i) Develop Additional Guidelines. – The Department may develop rules and
23 guidelines consistent with and as necessary to implement this Article."

24 **SECTION 2.** Section 13.9 of S.L. 2000-67 is repealed.

25 **SECTION 3.** This act becomes effective July 1, 2005.