

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 791

Short Title: Outer Banks Land Management Act. (Public)

Sponsors: Senator Cook (Primary Sponsor).

Referred to: Agriculture/Environment/Natural Resources.

May 19, 2014

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PURCHASE OF CERTAIN FEDERALLY OWNED REAL PROPERTY FOR THE PURPOSE OF ACQUIRING SUITABLE PROPERTY TO COMPLETE OREGON INLET STATE PARK; TO AUTHORIZE THE CONDEMNATION OF FEDERALLY OWNED REAL PROPERTY NECESSARY TO MANAGE EXISTING AND FUTURE TRANSPORTATION CORRIDORS ON THE OUTER BANKS; AND TO AUTHORIZE THE GOVERNOR TO WAIVE CERTAIN PERMITTING REQUIREMENTS DURING A GUBERNATORIALLY OR LEGISLATIVELY DECLARED STATE OF EMERGENCY.

The General Assembly of North Carolina enacts:

PART I. CREATION OF OREGON INLET STATE PARK

SECTION 1.(a) Creation of Outer Banks Land Management Fund. – Article 36 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 4. Outer Banks Land Management.

"§ 143-345.18A. Outer Banks Land Management Fund.

(a) Creation. – There is created the Outer Banks Land Management Fund as an interest-bearing special revenue fund in the Department of Administration.

(b) Uses. – The Secretary of Administration may use funds in the Oregon Inlet State Park Fund for any of the following purposes:

(1) To purchase land, including submerged land, on behalf of the State for inclusion in a State park on or near Oregon Inlet.

(2) To reimburse the Department of Administration for the costs of any appraisals of real property, studies, surveys, data collection, or analysis conducted in connection with the acquisition of real property for inclusion in a State park on or near Oregon Inlet.

(3) To pay the costs of dredging projects designed to keep the Oregon Inlet shallow draft navigation channel navigable and safe. A dredging project shall not be funded pursuant to this subdivision unless both the Secretary of Administration and the Secretary of the Department of Environment and Natural Resources approve the project. An expenditure of funds pursuant to this subdivision shall be in addition to any expenditure of funds pursuant to Part 8B of Article 21 of Chapter 143 of the General Statutes for Oregon Inlet dredging projects.

(4) To pay the costs of engaging the services of private counsel as authorized by G.S. 143-345.18B and to pay related litigation costs.



1 (c) Inclusion of Land in State Parks System. – Land purchased pursuant to subdivision
2 (b)(1) of this section is authorized to be added to the State Parks System pursuant to
3 G.S. 113-44.14(b).

4 **"§ 143-345.18B. Use of private counsel; payment of litigation costs.**

5 (a) Authority. – Notwithstanding G.S. 114-2.3, the Department of Administration may
6 engage the services of private counsel with the pertinent expertise to timely defend or otherwise
7 resolve legal challenges related to the purchase, condemnation, exchange, or use of real
8 property on the Outer Banks and shall not be required to obtain written permission from the
9 Attorney General.

10 (b) Supervision. – Notwithstanding G.S. 114-2.3, the Department shall supervise and
11 manage the private counsel engaged under this section.

12 (c) Reporting. – The Department shall report the engagement of private counsel under
13 this section within 30 days to all of the following:

14 (1) To the General Assembly, as follows:

15 a. If the General Assembly is in session, to the Chairs of the
16 Appropriations Subcommittee on General Government of the House
17 of Representatives and to the Chairs of the Appropriations
18 Committee on General Government of the Senate.

19 b. If the General Assembly is not in session or adjourns during the
20 30-day period, to the Chairs of the Joint Legislative Commission on
21 Governmental Operations.

22 (2) To the Attorney General.

23 (3) To the Fiscal Research Division."

24 **SECTION 1.(b) Appropriation.** – There is appropriated from the General Fund to
25 the Outer Banks Land Management Fund the sum of fifteen million dollars (\$15,000,000) for
26 the 2014-2015 fiscal year to be used for the purposes set forth in G.S. 143-345.18A.

27 **SECTION 1.(c) Purchase Agreement.** – Notwithstanding Chapter 146 of the
28 General Statutes or any other provision of law, the Department of Administration on behalf of
29 the State shall enter into an agreement to purchase the federally owned property described in
30 Section 1(h) of this act from the federal government (i) with funds in the Outer Banks Land
31 Management Fund created by Section 1(a) of this act; (ii) in exchange for State-owned real
32 property; or (iii) with some combination of funds from the Outer Banks Land Management
33 Fund and exchange of State-owned real property, in the sole discretion of the Secretary of
34 Administration. Only State-owned real property that is adjacent to federally owned real
35 property or within 100 miles of such real property may be exchanged pursuant to this section.

36 **SECTION 1.(d) Terms.** – The Secretary of the Department of Administration shall
37 have the authority to negotiate the terms of the purchase agreement. The agreement (i) shall
38 provide for the purchase of interests in real property described in Section 1(h) of this act and no
39 other; (ii) shall provide that the conveyances described in the agreement become effective as
40 soon as practicable; and (iii) shall incorporate the relevant terms of this act.

41 **SECTION 1.(e) Execution of Deeds.** – Within 30 days of the purchase becoming
42 effective, the Attorney General shall execute any documents or deeds necessary to effectuate
43 the purchase under the exact terms set forth in the purchase agreement. All State agencies and
44 officials shall cooperate to the fullest extent possible in effectuating the purchase agreement.

45 **SECTION 1.(f) Reporting.** – Within 30 days after an agreement is entered into
46 pursuant to this act, the Secretary of the Department of Administration shall report to the Joint
47 Legislative Commission on Governmental Operations on the terms of the agreement.

48 **SECTION 1.(g) Creation of Oregon Inlet State Park.** – If the real property
49 described in Section 1(h) of this act is acquired by the State, then together with any other real
50 property owned by the State within the area described in Section 1(h) of this act, the General
51 Assembly authorizes the Department of Environment and Natural Resources to add Oregon

1 Inlet State Park, which shall consist of at least these properties, to the State Parks System as
 2 provided in G.S. 113-44.14(b).

3 **SECTION 1.(h) Federal Property to Be Conveyed.** – The federally owned
 4 property to be conveyed shall include all of the federal government's right, title, and interest in
 5 (i) some or all of the subaerial real property located within the area described by connecting the
 6 following latitude and longitude points and (ii) all of the submerged real property located
 7 within the area described by connecting the following latitude and longitude points:

	<u>Latitude:</u>	<u>Longitude:</u>
8		
9		
10		
11	35.78867341400	-75.53323291600
12	35.78099563900	-75.52953510600
13	35.78178528500	-75.52513394400
14	35.78141354400	-75.52334019100
15	35.77887390700	-75.52025162500
16	35.77857436500	-75.51969654900
17	35.77781290800	-75.51900873900
18	35.77734893400	-75.51884305500
19	35.77110009400	-75.51641608800
20	35.76633568000	-75.51356516200
21	35.76116258500	-75.51036495800
22	35.75751496100	-75.50801176500
23	35.75608651600	-75.51228522200
24	35.75777480300	-75.51379949200
25	35.75860596900	-75.51451482100
26	35.75960484700	-75.51540263600
27	35.76100041400	-75.51665469900
28	35.76117351400	-75.51681019600
29	35.76212525300	-75.51767780700
30	35.76287562800	-75.51836186100
31	35.76316770200	-75.51862812200
32	35.76381492400	-75.51921814800
33	35.76415098700	-75.51955669900
34	35.76445468400	-75.51995078300
35	35.76485826900	-75.52059025200
36	35.76505577400	-75.52094720300
37	35.76528160600	-75.52142243500
38	35.76548548000	-75.52198988800
39	35.76556574300	-75.52341266800
40	35.76566877400	-75.52523906000
41	35.76454632200	-75.52902085700
42	35.76357138700	-75.53246190700
43	35.76337226200	-75.53339199600
44	35.76333441200	-75.53364756500
45	35.76332909000	-75.53390886900
46	35.76335819500	-75.53458675100
47	35.76341367100	-75.53498008200
48	35.76354478800	-75.53535025300
49	35.76361737400	-75.53547511500
50	35.76383009500	-75.53584104000
51	35.76425804000	-75.53655388200

1	35.76471137600	-75.53740653000
2	35.76502225800	-75.53875413900
3	35.76521060100	-75.54081681300
4	35.76523404100	-75.54194712400
5	35.76525043500	-75.54273769600
6	35.76526768700	-75.54353888100
7	35.76532715800	-75.54394387700
8	35.76541340600	-75.54428520100
9	35.76550080400	-75.54463107400
10	35.76577010000	-75.54534161500
11	35.76597248500	-75.54579049600
12	35.76632062300	-75.54620555000
13	35.76655164400	-75.54635947100
14	35.76725670200	-75.54660003000
15	35.76764041200	-75.54670534600
16	35.76795847900	-75.54670661900
17	35.77077784300	-75.54629895400
18	35.77115918300	-75.54624921300
19	35.77148150500	-75.54619720600
20	35.77234520600	-75.54605784500
21	35.77377517700	-75.54582711000
22	35.77469339200	-75.54566942900
23	35.77590248800	-75.54531166000
24	35.77673545200	-75.54571296000
25	35.77711645600	-75.54582301200
26	35.77742981800	-75.54581293600
27	35.77771608200	-75.54572387500
28	35.77791539100	-75.54559449800
29	35.77810904100	-75.54546879500
30	35.77904847600	-75.54478184500
31	35.77912430900	-75.54486803600
32	35.77981427400	-75.54534862400
33	35.78042966800	-75.54567367500
34	35.78135818100	-75.54600030500
35	35.78175635200	-75.54606539500
36	35.78221194600	-75.54612839200
37	35.78279713100	-75.54636296300
38	35.78378882800	-75.54668308800
39	35.78766932400	-75.54709605000
40	35.79082109200	-75.54691243300
41	35.79820587700	-75.54665906000
42	35.79859286600	-75.54249624600
43	35.80046065100	-75.53877586500
44	35.79408521600	-75.53252823100
45	35.79248815800	-75.53183764800
46	35.79151104100	-75.53197071600
47	35.78867341400	-75.53323291600
48	35.76886839300	-75.52536743000
49	35.76724598100	-75.52438052100
50	35.76805629700	-75.52240411900
51	35.76966632600	-75.52339266000

1 35.76886839300 -75.52536743000.
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3 **PART II. ACQUISITION OF REAL PROPERTY FOR THE OUTER BANKS**
4 **TRANSPORTATION CORRIDOR**

5 **SECTION 2.(a) Condemnation Authority.** – On July 1, 2015, the Department of
6 Administration shall, in accordance with applicable law and terms reserved in any relevant
7 deeds, commence condemnation proceedings on all federally owned property that is necessary
8 to manage existing and future transportation corridors on the Outer Banks, as determined
9 pursuant to Section 2(b) of this act.

10 **SECTION 2.(b) Identification of Outer Banks Transportation Corridor.** – No
11 later than November 30, 2014, the Department of Transportation shall identify federally owned
12 property that is necessary to construct, or to manage, existing and future transportation
13 corridors on the Outer Banks and shall report this information to the chairs of the Joint
14 Legislative Transportation Oversight Committee, to the Secretary of the Department of
15 Administration, and to the Fiscal Research Division.
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17 **PART III. GUBERNATORIAL PERMIT WAIVER AUTHORITY**

18 **SECTION 3.(a)** G.S. 166A-19.30(a) reads as rewritten:

19 **"§ 166A-19.30. Additional powers of the Governor during state of emergency.**

20 (a) In addition to any other powers conferred upon the Governor by law, during a
21 gubernatorially or legislatively declared state of emergency, the Governor shall have the
22 following powers:

- 23 (1) To utilize all available State resources as reasonably necessary to cope with
24 an emergency, including the transfer and direction of personnel or functions
25 of State agencies or units thereof for the purpose of performing or
26 facilitating emergency services.
- 27 (2) To take such action and give such directions to State and local law
28 enforcement officers and agencies as may be reasonable and necessary for
29 the purpose of securing compliance with the provisions of this Article and
30 with the orders, rules, and regulations made pursuant thereto.
- 31 (3) To take steps to assure that measures, including the installation of public
32 utilities, are taken when necessary to qualify for temporary housing
33 assistance from the federal government when that assistance is required to
34 protect the public health, welfare, and safety.
- 35 (4) Subject to the provisions of the State Constitution to relieve any public
36 official having administrative responsibilities under this Article of such
37 responsibilities for willful failure to obey an order, rule, or regulation
38 adopted pursuant to this Article.
- 39 (5) Through issuance of an executive order to waive requirements for an
40 environmental document or permit issued under Articles 1, 4, and 7 of
41 Chapter 113A of the General Statutes for the repair, protection, safety
42 enhancement, or replacement of a component of the State highway system
43 that provides the sole road access to an incorporated municipality or an
44 unincorporated inhabited area bordering the Atlantic Ocean or any coastal
45 sound where bridge or road conditions as a result of the events leading to the
46 declaration of the state of emergency pose a substantial risk to public health,
47 safety, or welfare. The executive order shall list the duration of the waiver
48 and the activities to which the waiver applies. For purposes of this
49 subdivision, "coastal sound" shall have the definition set forth in
50 G.S. 113A-103, and "replacement" shall not be interpreted to exclude a

replacement that increases size or capacity or that is located in a different location than the component that is replaced."

SECTION 3.(b) G.S. 113A-12 is amended by adding a new subdivision to read:

"(7) The issuance of an executive order under G.S. 166A-19.30(a)(5) waiving the requirement for an environmental document."

SECTION 3.(c) G.S. 113A-52.01 reads as rewritten:

"§ 113A-52.01. Applicability of this Article.

This Article shall not apply to the following land-disturbing activities:

...
(4) For the duration of an emergency, activities essential to protect human ~~life-life,~~ including activities specified in an executive order issued under G.S. 166A-19.30(a)(5)."

SECTION 3.(d) G.S. 113A-103(5)b.1. reads as rewritten:

"§ 113A-103. Definitions.

As used in this Article:

- ... (5) a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).
- b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:
 1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing ~~right-of-way;~~right-of-way, or for emergency repairs and safety enhancements of an existing road as described in an executive order issued under G.S. 166A-19.30(a)(5)."

PART IV. MISCELLANEOUS PROVISIONS

SECTION 4.(a) Notwithstanding the provisions of Chapter 146 of the General Statutes, Article 9A of Chapter 113A of the General Statutes, or any other provision of law, neither the Governor nor the Council of State shall be required to approve any conveyance, exchange, or condemnation made pursuant to this act, nor shall consultation with or reporting to the Joint Legislation Commission on Governmental Operations be required prior to the conveyance, exchange, or condemnation.

SECTION 4.(b) This act is effective when it becomes law.