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.24]

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Short Title: Coastal Management Policies. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO STUDY AND MODIFY CERTAIN COASTAL MANAGEMENT POLICIES.

The General Assembly of North Carolina enacts:

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

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

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

"**<u>§ 113A-107.1. Sea-level policy restrictions; calculation of rate of sea-level rise.</u>**

<u>(a) No rule, ordinance, policy, or planning guideline that defines sea level or a rate of sea-level rise within a coastal-area county shall be adopted except as provided by this section.</u>

(b) The General Assembly does not intend to mandate the development of sea-level rise policy or rates of sea-level rise. The Coastal Resources Commission, in conjunction with the Division of Coastal Management, shall have the authority to define sea-level rise and develop rates of sea-level rise for the State.

(c) The Coastal Resources Commission shall be the only State agency authorized to define rates of sea-level rise for regulatory purposes and, if developed, shall do so in conjunction with the Division of Coastal Management. The Commission and the Division of Coastal Management may collaborate with other State agencies, boards, commissions, other public entities, or institutions when defining sea-level rise or developing rates of sea-level rise. These rates shall be determined using statistically significant, peer-reviewed historical data generated using generally accepted scientific and statistical techniques. Historic rates of sea-level rise may be extrapolated to estimate future rates of rise but shall not include scenarios of accelerated rates of sea-level rise unless such rates are from statistically significant, peer-reviewed data and are consistent with historic trends. Rates of sea-level rise shall not be one rate for the entire coast but, rather, the Commission shall consider separately oceanfront and estuarine shorelines. For oceanfront shorelines, the Commission shall use no fewer than the four regions defined in the April 2011 report entitled "North Carolina Beach and Inlet Management Plan" published by the Department of Environment and Natural Resources. The oceanfront regions are: Region 1 (Brunswick County), Region 2 (New Hanover, Pender, and Onslow Counties and a portion of Carteret County), Region 3 (a portion of Carteret County and Hyde County), and Region 4 (Dare and Currituck Counties). For estuarine shorelines, the Commission shall consider no fewer than two separate regions defined as those north of Cape Lookout and those south of Cape Lookout. In regions that may lack statistically significant, peer-reviewed historical data, rates from adjacent regions may be considered and modified using generally accepted scientific and statistical techniques to account for relevant historical geologic and hydrologic processes.

(d) Any State agency, board, commission, or institution that develops a policy addressing sea-level rise that includes a definition or rate of sea-level rise for the coastal-area counties shall use only the definitions and rates of sea-level rise developed by the Division of Coastal Management as approved by the Coastal Resources Commission.

(e) The provisions in this act shall not prohibit other State agencies, boards, commissions, other public entities or institutions, including academic institutions within The University of North Carolina or any county, municipality, or other local public body from engaging in studies and dissemination of studies of sea-level research for non-regulatory purposes. Collaboration between academic institutions including those within The University of North Carolina, the Division of Coastal Management, the Coastal Resources Commission, and other State agencies, boards, commissions, or other public entities or counties, municipalities, or other local public bodies regarding generally accepted, peer-reviewed scientific and statistically significant sea-level research is encouraged.

(f) All policies, rules, regulations or any other product of the Commission or the Division of Coastal Management related to sea-level rise shall be subject to the requirements set forth in Chapter 150B of the General Statutes."

SECTION 3. The Coastal Resources Commission shall study the feasibility of creating an exception to the Commission's rule changes regarding oceanfront setback determinations [15A NCAC 07H.0306(a)(2)] that became effective on August 11, 2009, that may allow certain structures to continue to be regulated under the oceanfront setback determination rules that were in effect prior to August 11, 2009. The exception may apply to single family buildings built prior to August 11, 2009, that are larger than 5000 square feet and to multi-family buildings built prior to August 11, 2009, that are less than four units and larger than 5,000 square feet. In its study the Commission may consider the following limitations and

evaluate whether it is appropriate to include any of those limitations as part of the criteria that may be used to determine whether a specific structure may qualify for the exception: replacement of a building or structure destroyed beyond 50% of its value by factors other than coastal erosion, storm surge, and hurricane- and nor'easter-related winds; replacement of a building or structure in areas landward of a static line exception; replacement of a building or structure as far landward on the lot as feasible; replacement of a building or structure with a total floor area and footprint not greater than the pre-existing building or structure; and replacement of a building or structure that is no further oceanward than the landward most adjacent building or structure.

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

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

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

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

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

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

The Commission shall report its findings, including any proposed actions the Commission deems appropriate, to the Secretary of the Department of Environment and

Natural Resources, the Governor, the President Pro Tempore of the North Carolina Senate, and the Speaker of the North Carolina House of Representatives on or before January 31, 2015.

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