

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1547

Short Title: Public Use of the Beach.

(Public)

Sponsors: Representatives Ethridge, Gottovi; and Luebke.

Referred to: Judiciary II.

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 of the State are among the most valuable resources the State has. 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 economic well-being of the State. The General Assembly finds that the ocean and

1 estuarine beaches are public trust resources of statewide significance and have been  
2 customarily freely used and enjoyed by people throughout the State. ~~State as a part of~~  
3 their common heritage protected under Section 5 of Article XIV of the Constitution of  
4 North Carolina.

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

17 (c) The General Assembly finds that interference with public use of ocean and  
18 inlet beaches between the first line of stable natural vegetation and the water usurps the  
19 public trust rights established under the Constitution and as a matter of the common law  
20 of the State to freely use and enjoy the beaches. The General Assembly further finds  
21 that interference with public use of estuarine beaches that are subject to lunar tides  
22 between the ordinary mean high waterline as indicated by vegetation and debris and the  
23 water usurps the public trust rights established under the Constitution and as a matter of  
24 the common law of the State to freely use and enjoy the beaches.

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

33 (e) The General Assembly therefore finds that there is ~~There is therefore,~~ a  
34 pressing need in North Carolina to establish a comprehensive program for the  
35 identification, acquisition, improvement ~~improvement,~~ and maintenance of public  
36 accessways to the ocean and estuarine beaches. ~~beaches and for the protection of these~~  
37 public trust resources from encroachments, usurpation, or interference with the  
38 customary free use and enjoyment of the ocean and estuarine beaches.

39 **§ 113A-134.2. Creation of program; administration; ~~purpose.~~ purpose; definitions.**

40 (a) There is created the Coastal and Estuarine Water Beach Access ~~Open Beaches~~  
41 and Public Access Protection Program, to be administered by the Coastal Resources  
42 Commission and the Department, for the purpose of acquiring, improving ~~improving,~~  
43 and maintaining property along the Atlantic Ocean and estuarine waters, ~~as provided in~~

1 ~~this Article.~~ waters and for the purpose of protecting public trust rights that apply to the  
2 ocean and estuarine beaches as public trust resources.

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

6 (1) 'Estuarine water' has the same meaning as in G.S. 113A-113(b)(2).

7 (2) 'Public trust resources' has the same meaning as in G.S. 113-131(e).

8 (3) 'Public trust rights' has the same meaning as in G.S. 1-45.1.

9 **§ 113A-134.3. Standards for beach access program.**

10 (a) ~~The Coastal Resources Commission, with the support of the Department, shall~~  
11 ~~establish and carry out a program to assure the acquisition, ~~improvement~~ improvement,~~  
12 ~~and maintenance of a system of public access to ocean and estuarine water beaches.~~  
13 ~~This beach access program shall include standards to be adopted by the Commission for~~  
14 ~~the acquisition of property and the use and maintenance of said property. The standards~~  
15 ~~shall be written to assure that land acquisition funds shall only be used to purchase~~  
16 ~~interests in property that will be of benefit to the general public. Priority shall be given~~  
17 ~~to acquisition of lands which, due to adverse effects of coastal and estuarine water~~  
18 ~~natural hazards, such as past and potential erosion, ~~flooding~~ flooding, and storm damage,~~  
19 ~~are unsuitable for the placement of permanent structures, including lands for which a~~  
20 ~~permit for improvements has been denied under rules adopted pursuant to State law.~~  
21 ~~The program shall be designed to provide and maintain reasonable public access and~~  
22 ~~necessary parking, within the limitations of the resources available, to all areas of the~~  
23 ~~North Carolina coast and estuarine waters where access is compatible with the natural~~  
24 ~~resources involved and where reasonable access is not ~~already available as of June 30,~~~~  
25 ~~1981, available.~~

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

36 (c) The Department shall make every effort to obtain funds from sources other  
37 than the general fund for these purposes. Funds may be used to acquire or develop land  
38 for pedestrian access including parking or to make grants to local governments to  
39 accomplish the purposes of this ~~Article-Part.~~ All acquisitions or dispositions of property  
40 made pursuant to this ~~Article-Part~~ shall be in accordance with the provisions of Chapter  
41 146 of the General Statutes. All grants to local governments pursuant to this ~~Article-Part~~  
42 for land acquisitions shall be made on the condition that the local government agrees to  
43 transfer title to any real property acquired with the grant funds to the State if the local  
44 government uses the property for a purpose other than beach access. Damages awarded

1 under G.S. 113A-134.4 shall be paid to the Department to implement the Open Beaches  
2 and Public Access Protection Program.

3 **§ 113A-134.4. Injunctive relief and damages.**

4 (a) The Secretary or the Attorney General may bring a civil action against any  
5 person, State agency, or other legal entity who has unlawfully encroached upon,  
6 usurped, or otherwise violated or interfered with the public trust rights of the people of  
7 the State to freely use and enjoy the ocean and estuarine beaches or legal rights of  
8 access to such public trust resources. The Secretary or the Attorney General may seek  
9 an injunction to restrain the violation or interference, an injunction to prevent future  
10 violations or interference, a permanent or mandatory preliminary injunction to restore  
11 the resources to an undisturbed condition, and damages. The civil action shall be  
12 brought in the superior court of the county in which the violation or interference  
13 occurred. If the court finds that an unlawful violation or interference with public trust  
14 rights has occurred, the court shall, at a minimum, restrain the violation or interference,  
15 order restoration of the resources to an undisturbed condition, and award damages for  
16 the violation or interference with the public trust resources or access to the ocean and  
17 estuarine beaches. At a minimum, damages are equal to the sum of any value received  
18 or realized by defendant from the unlawful action and one thousand dollars (\$1,000) per  
19 day per acre or fraction thereof affected by the unlawful action. A civil action brought  
20 under this section does not relieve any party to the action from any civil or criminal  
21 penalty otherwise prescribed for the violation.

22 (b) If neither the Secretary nor the Attorney General brings a civil action as  
23 provided in subsection (a) of this section within 60 days after a citizen serves a written  
24 notice and demand on the Secretary and the Attorney General, a citizen may bring a  
25 civil action to restrain an ongoing violation or interference with the public trust rights  
26 protected by this Part. In order for a citizen to bring a civil action under this subsection,  
27 the written notice and demand must state facts sufficient for a preliminary injunction to  
28 issue. Attorneys' fees may be awarded to the prevailing party in a suit brought under  
29 this subsection in an amount to be set by the court."

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