

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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Short Title: CAMA Clarifications.

(Public)

Sponsors: Representatives Gottovi, Ethridge; Culp, DeVane, Flaherty, Luebke, Payne, Privette, and Stamey.

Referred to: Environment.

June 3, 1992

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE DEVELOPMENT, DELEGATION, AND INJUNCTIVE
3 RELIEF PROVISIONS OF THE COASTAL AREA MANAGEMENT ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 113A-103(5)a. reads as rewritten:

6 "a. 'Development' means any activity in a duly designated area of
7 environmental concern (except as provided in paragraph b of
8 this subdivision) involving, requiring, or consisting of the
9 construction or enlargement of a structure; excavation;
10 dredging; filling; dumping; removal of clay, silt, sand, gravel or
11 minerals; bulkheading, driving of pilings; clearing or alteration
12 of land as an adjunct of construction; alteration or removal of
13 sand dunes; alteration of the shore, bank, or bottom of the
14 Atlantic Ocean or any sound, bay, river, creek, stream, lake, or
15 ~~canal~~-canal; or placement of a floating structure in an area of
16 environmental concern identified in G.S. 113A-113(b)(2) or
17 (b)(5)."

18 Sec. 2. G.S. 113A-124(c) reads as rewritten:

19 "(c) The Commission shall have the following additional powers and duties under
20 this Article:

- 1 (1) To recommend to the Secretary the acceptance of donations, gifts,
2 grants, contributions and appropriations from any public or private
3 source to use in carrying out the provisions of this Article.
- 4 (2) To recommend to the Secretary of Administration the acquisition by
5 purchase, gift, condemnation, or otherwise, lands or any interest in any
6 lands within the coastal area.
- 7 (3) To hold such public hearings as the Commission deems appropriate.
- 8 (4) To delegate the power to conduct a hearing, on behalf of the
9 Commission, to any member of the Commission or to any qualified
10 employee of the Department. Any person to whom a delegation of
11 power is made to conduct a hearing shall report his recommendations
12 with the evidence and the record of the hearing to the Commission for
13 decision or action.
- 14 (5) Repealed by Session Laws 1987, c. 827, s. 141.
- 15 (6) To delegate the power to determine whether a contested case hearing is
16 appropriate in accordance with G.S. 113A-121.1(b).
- 17 (7) To delegate the power to grant or deny requests for declaratory rulings
18 under G.S. 150B-4 in accordance with standards adopted by the
19 Commission.
- 20 (8) To adopt rules to implement this Article."

21 Sec. 3. G.S. 113A-126 reads as rewritten:

22 **"§ 113A-126. Injunctive relief and penalties.**

23 (a) Upon violation of any of the provisions of this Article or of any rule or order
24 adopted under the authority of this Article the Secretary may, either before or after the
25 institution of proceedings for the collection of any penalty imposed by this Article for
26 such violation, institute a civil action in the General Court of Justice in the name of the
27 State upon the relation of the Secretary for injunctive relief to restrain the violation ~~and~~
28 ~~for such other or further relief in the premises as said court shall deem proper. and for a~~
29 preliminary and permanent mandatory injunction to restore the resources consistent with
30 this Article and rules of the Commission. If the court finds that a violation is threatened
31 or has occurred, the court shall, at a minimum, order the relief necessary to prevent the
32 threatened violation or to abate the violation consistent with this Article and rules of the
33 Commission. Neither the institution of the action nor any of the proceedings thereon
34 shall relieve any party to such proceedings from any penalty prescribed by this Article
35 for any violation of same.

36 (b) Upon violation of any of the provisions of this Article relating to permits for
37 minor developments issued by a local government, or of any rule or order adopted under
38 the authority of this Article relating to such permits, the designated local official may,
39 either before or after the institution of proceedings for the collection of any penalty
40 imposed by this Article for such violation, institute a civil action in the General Court of
41 Justice in the name of the affected local government upon the relation of the designated
42 local official for injunctive relief to restrain the violation ~~and for such other and further~~
43 ~~relief in the premises as said court shall deem proper. and for a preliminary and permanent~~
44 mandatory injunction to restore the resources consistent with this Article and rules of

1 the Commission. If the court finds that a violation is threatened or has occurred, the
2 court shall, at a minimum, order the relief necessary to prevent the threatened violation
3 or to abate the violation consistent with this Article and rules of the Commission.

4 Neither the institution of the action nor any of the proceedings thereon shall relieve any
5 party to such proceedings from any penalty prescribed by this Article for any violation
6 of same.

7 (c) Any person who shall be adjudged to have knowingly or willfully violated
8 any provision of this Article, or any rule or order adopted pursuant to this Article, shall
9 be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not
10 less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) or
11 shall be imprisoned for not more than 60 days, or both. In addition, if any person
12 continues to violate or further violates, any such provision, rule or order after written
13 notice from the Secretary or (in the case of a permit for a minor development issued by
14 a local government) written notice from the designated local official, the court may
15 determine that each day during which the violation continues or is repeated constitutes a
16 separate violation subject to the foregoing penalties.

17 (d) (1) A civil penalty of not more than two hundred fifty dollars
18 (\$250.00) for a minor development violation and two thousand five
19 hundred dollars (\$2,500) for a major development violation may be
20 assessed by the Commission against any person who:

- 21 a. Is required but fails to apply for or to secure a permit required
22 by G.S. 113A-118, or who violates or fails to act in accordance
23 with the terms, conditions, or requirements of such permit.
- 24 b. Fails to file, submit, or make available, as the case may be, any
25 documents, data or reports required by the Commission
26 pursuant to this Article.
- 27 c. Refuses access to the Commission or its duly designated
28 representative, who has sufficiently identified himself by
29 displaying official credentials, to any premises, not including
30 any occupied dwelling house or curtilage, for the purpose of
31 conducting any investigations provided for in this Article.
- 32 d. Violates a rule of the Commission implementing this Article.

33 (2) For each willful action or failure to act for which a penalty may be
34 assessed under this subsection, the Commission may consider each day
35 the action or inaction continues after notice is given of the violation as
36 a separate violation; a separate penalty may be assessed for each such
37 separate violation.

38 (3) The Commission may assess the penalties provided for in this
39 subsection. The Commission shall notify a person who is assessed a
40 penalty by registered or certified mail. The notice shall state the
41 reasons for the penalty. A person may contest a penalty by filing a
42 petition for a contested case under G.S. 150B-23 within 20 days after
43 receiving the notice of assessment. If a person fails to pay a penalty,
44 the Commission shall refer the matter to the Attorney General for

1 collection. Such civil actions must be filed within three years of the
2 date the final agency decision was served on the violator.

- 3 (4) In determining the amount of the penalty the Commission shall
4 consider the degree and extent of harm caused by the violation and the
5 cost of rectifying the damage."

6 Sec. 4. G.S. 113A-103 is amended by adding two new definitions to read:

7 "(12) 'Boat' means a vessel or watercraft of any type or size specifically
8 designed to be self-propelled, whether by engine, sail, oar, or paddle
9 or other means, which is used to travel from place to place by water.

10 (13) 'Floating structure' means any structure, not a boat, supported by a
11 means of floatation, designed to be used without a permanent
12 foundation, which is used or intended for human habitation or
13 commerce. A structure shall be considered a floating structure when it
14 is inhabited or used for commercial purposes for more than thirty days
15 in any one location. A boat may be considered a floating structure
16 when its means of propulsion has been removed or rendered
17 inoperative."

18 Sec. 5. All civil penalties and interest recovered by the Commission, together
19 with the costs thereof, shall be paid into the General Fund of the State treasury, as
20 nontax revenue.

21 Sec. 6. This act is effective upon ratification.