

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH50355-LH-170A (03/30)

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

Sponsors: Representatives Culpepper and Preston (Primary Sponsors).

Referred to:

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.

- 1           (6)    The North Carolina coast is vulnerable to hurricanes and other storms.  
2           It is prudent to take precautions, such as beach nourishment, to protect  
3           and conserve the State's beaches and reduce property damage and  
4           flooding.
- 5           (7)    Beach nourishment is an erosion control method that provides  
6           hurricane flood protection, enhances the attractiveness of beaches to  
7           tourists, restores habitat for turtles, shorebirds, and plants, and ensures  
8           the long-term availability of public access to beaches.
- 9           (8)    Beach nourishment projects have proved successful in greatly reducing  
10          damage to property and to public infrastructure during hurricanes,  
11          thereby protecting the tax base.
- 12          (9)    The State of North Carolina prohibits seawalls and hardening the  
13          shoreline to prevent destroying the beaches and the public's access to  
14          beaches.
- 15          (10)   Beach nourishment is encouraged by both the Coastal Resources  
16          Commission and the U.S. Army Corps of Engineers as a desirable  
17          method to control beach erosion.
- 18          (11)   Beach-quality sand is a critical natural resource that is in limited  
19          supply in some North Carolina coastal areas. All possible steps should  
20          be taken to make sure that beach-quality sand dredged from navigation  
21          channels is used appropriately for beach nourishment.
- 22          (12)   The State recognizes the need to evaluate an acquisition program for  
23          property that is subject to continuous severe erosion and where sand  
24          sources are unavailable.
- 25          (13)   North Carolina benefits from an extensive network of navigation  
26          channels in our public waterways, which have been authorized by  
27          Congress and are maintained by the U.S. Army Corps of Engineers.
- 28          (14)   North Carolina's waterway navigation channels provide extensive  
29          economic benefits to North Carolina by making possible commercial  
30          fishing, ferry travel, industrial barge transportation, and recreational  
31          boating.
- 32          (15)   Without periodic maintenance dredging, waterway navigation channels  
33          will become unusable, causing serious economic problems for  
34          fishermen, ferries, industries, and the tourist industry.
- 35          (16)   Federal funding for both the maintenance of federally authorized  
36          navigation channels and for the planning, construction, and  
37          maintenance of federally authorized beach nourishment projects is  
38          threatened because of severe federal budget pressures.
- 39          (17)   The Department of Environment and Natural Resources has statutory  
40          authority to assist local governments in financing beach nourishment  
41          and waterway projects and is the sponsor of several federal navigation  
42          projects.

43    **§ 113-422. Definitions.**

44    The following definitions apply in this Article:

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

37 **"§ 113-430. North Carolina Beach and Waterway Council established.**

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

41 **"§ 113-431. Appointment and terms of Council members; filling of vacancies; per**  
42 **diem.**

43 (a) Membership. – The Council shall be composed of 12 members. Three  
44 members shall be appointed by the Governor, three by the General Assembly upon the

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

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

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

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

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

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

42 **§ 113-432. Organization of the Council; election of officers; Robert's Rules of**  
43 **Order.**

1        The Council shall hold at least four meetings annually, with at least two meetings  
2 prior to July 1 of each year and at least two meetings after July 1. Seven members of  
3 the Council shall constitute a quorum for the transaction of business. Additional  
4 meetings may be held at any other time as may be deemed necessary for the efficient  
5 transaction of the Council's business. The Council may hold additional or special  
6 meetings at any time at the call of the chair or on the call of any seven members of the  
7 Council. The Council shall determine its own organization and methods of procedure in  
8 accordance with the provisions of this Article.

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

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

15        **"§ 113-433. Location of offices; administrative assistances.**

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

20        **"§ 113-434. Powers and duties of Council.**

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

1           the Secretary whether any modifications of the laws and rules would  
2           be in the public interest.

3           (7) To review all aspects of public access to North Carolina beaches and  
4           waterways, including boat ramps, and to recommend methods to the  
5           Secretary to increase the public's ability to access and enjoy North  
6           Carolina's beaches and waterways.

7           (8) To review and evaluate changes in the federal laws and programs  
8           regarding beach and waterway conservation and restoration, advances  
9           in available technology, and developing scientific knowledge of  
10           coastal natural resources to determine whether the laws of the State  
11           and any implementing rules need modification as a result of the  
12           changes in federal law or advances in technology.

13           (9) The Council shall report the findings described in subdivisions (5)  
14           through (8) of this section to the Secretary.

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

17           "§ 113-440. Beach and waterway conservation, restoration, and public access plan  
18           and responsibilities of the Department.

19           (a) Plan. – When funds are appropriated for these purposes, the Department with  
20           recommendations from the Council shall develop and implement a multiyear plan and  
21           strategy to conserve and restore the beaches and waterways of the State so as to  
22           safeguard, perpetuate, and enhance when feasible their aesthetic, biological, and  
23           economic values. The plan developed by the Department shall do all of the following,  
24           subject to public hearing to receive citizen input, while recognizing guidance provided  
25           in the Coastal Habitat Protection Plan that recommends a statewide Beach and Inlet  
26           Management Plan:

27           (1) Identify the erosion rates (spatial and volumetric) at each beach  
28           community and estimate the degree of vulnerability to storm and  
29           hurricane damage.

30           (2) Identify and characterize the scouring patterns and shoaling rates for  
31           each coastal waterway and vulnerability with respect to shallow and  
32           deep draft vessels.

33           (3) Use the best available geological and geographical information to  
34           determine the need for and probable effectiveness of beach  
35           nourishment.

36           (4) Provide for coordination with the National Oceanographic and  
37           Atmospheric Administration, Environmental Protection Agency, North  
38           Carolina Department of Transportation, the North Carolina Division of  
39           Emergency Management, and other State and federal agencies  
40           concerned with beach and waterway conservation, restoration, and  
41           public access issues.

42           (5) Provide a status report on all U.S. Army Corps of Engineers' beach  
43           protection and waterway navigation projects in the planning,  
44           construction, and operational stages.

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

- 1           (4)   Develop criteria for public beach and waterway access that must be  
2           met by any local government receiving State funds for beach and  
3           waterway conservation, restoration, or public access.
- 4           (5)   Conduct a study of the economic impact of beaches and waterways on  
5           the economies of the beach counties, the coastal region, and on the  
6           State as a whole and the economic impact of beach and waterway  
7           conservation, restoration, and public access on those economies.
- 8           (6)   Coordinate beach, waterway, and public access efforts and plans that  
9           minimize impacts to fish habitats to the best practical extent.
- 10          (7)   Provide guidance in plan formulation.

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

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

24          "**§ 113-445. North Carolina Beach, Waterway, and Public Access Fund.**"

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

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

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



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

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

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

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

12            (2) The adequacy of public access.

13            (3) The availability of local matching funds.

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

15            (5) The degree to which environmental impacts have been minimized or  
16 mitigated.

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

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

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

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

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