

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH70128-LM-26B (02/04)

Short Title: Cities/Public Trust Rights.

(Public)

Sponsors: Representative McElraft.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT CLARIFYING THAT CITIES MAY ENFORCE ORDINANCES WITHIN THE
3 STATE'S PUBLIC TRUST AREAS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 8 of Chapter 160A of the General Statutes is amended by
6 adding a new section to read as follows:

7 "**§ 160A-203. Municipalities enforce ordinances in public trust areas.**

8 (a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a city
9 may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the
10 State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to
11 use the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this
12 section or any other provision of law upon the State's ocean beaches located within or adjacent
13 to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances
14 within the city's jurisdictional boundaries. For purposes of this section, the term "ocean
15 beaches" has the same meaning as in G.S. 77-20(e).

16 (b) The authority of a city under this section includes, but is not limited to, the
17 following:

18 (1) A city may regulate, restrict, or prohibit the placement, development,
19 maintenance, repair, alteration, improvement, location, or use of structures,
20 equipment, personal property, or debris upon the State's ocean beaches
21 located within or adjacent to the city's jurisdictional boundaries.

22 (2) Any ordinance adopted by the city may provide for summary procedures to
23 remove or abate any unreasonable restrictions on the public's rights to use
24 the State's ocean beaches located within or adjacent to the city's
25 jurisdictional boundaries. However, any procedure potentially resulting in
26 the removal or demolition of an otherwise lawful building or structure that is
27 not in imminent danger of collapse shall include provisions that prove the
28 record owner of the building or structure with notice and a hearing and the
29 city with a means to recover costs that are the same as or equivalent to the
30 following: service of complaints and orders as provided in G.S. 160A-445;
31 notice and hearing as provided in G.S. 160A-443(2); findings of fact and
32 order as provided in G.S. 160A-443(3)b. and G.S. 24 160A-443(5); liens as
33 provided in G.S. 160A-443(6); and remedies as provided in G.S. 160A-446.

34 (3) A city may enforce a violation of any ordinance adopted pursuant to this
35 section by any remedy provided for in G.S. 160A-175. A city may, in lieu of
36 any other remedy provided for in this section, seek a court order from a court



1 of competent jurisdiction to remove or abate a building or structure that is in
2 violation of an ordinance adopted under this section.

3 (c) Nothing in this section shall be construed to (i) limit the authority of the State or any
4 State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common
5 law as interpreted and applied by the courts of this State; (ii) limit any other authority granted
6 to cities by the State to regulate the State's ocean beaches; (iii) deny the existence of the
7 authority recognized in this section prior to the date this section becomes effective; or (iv)
8 impair the right of the people of this State to the customary free use and enjoyment of the
9 State's ocean beaches, which rights remain reserved to the people of this State as provided in
10 G.S. 77-20(d). Nothing in this section changes or modifies existing common or statutory law
11 with respect to the riparian, littoral, or other ownership rights of owners of property bounded by
12 the Atlantic Ocean."

13 **SECTION 2.** G.S. 113-131 reads as rewritten:

14 **"§ 113-131. Resources belong to public; stewardship of conservation agencies; grant and**
15 **delegation of powers; injunctive relief.**

16 (a) The marine and estuarine and wildlife resources of the State belong to the people of
17 the State as a whole. The Department and the Wildlife Resources Commission are charged with
18 stewardship of these resources.

19 (b) The following powers are hereby granted to the Department and the Wildlife
20 Resources Commission and may be delegated to the Fisheries Director and the Executive
21 Director:

- 22 (1) Comment on and object to permit applications submitted to State agencies
23 which may affect the public trust resources in the land and water areas
24 subject to their respective management duties so as to conserve and protect
25 the public trust rights in such land and water areas;
- 26 (2) Investigate alleged encroachments upon, usurpations of, or other actions in
27 violation of the public trust rights of the people of the State; and
- 28 (3) Initiate contested case proceedings under Chapter 150B for review of permit
29 decisions by State agencies which will adversely affect the public trust rights
30 of the people of the State or initiate civil actions to remove or restrain any
31 unlawful or unauthorized encroachment upon, usurpation of, or any other
32 violation of the public trust rights of the people of the State or legal rights of
33 access to such public trust areas.

34 (c) Whenever there exists reasonable cause to believe that any person or other legal
35 entity has unlawfully encroached upon, usurped, or otherwise violated the public trust rights of
36 the people of the State or legal rights of access to such public trust areas, a civil action may be
37 instituted by the responsible agency for injunctive relief to restrain the violation and for a
38 mandatory preliminary injunction to restore the resources to an undisturbed condition. The
39 action shall be brought in the superior court of the county in which the violation occurred. The
40 institution of an action for injunctive relief under this section shall not relieve any party to such
41 proceeding from any civil or criminal penalty otherwise prescribed for the violation.

42 (d) The Attorney General shall act as the attorney for the agencies and shall initiate
43 actions in the name of and at the request of the Department or the Wildlife Resources
44 Commission.

45 (e) In this section, the term "public trust resources" means land and water areas, both
46 public and private, subject to public trust rights as that term is defined in G.S. 1-45.1.

47 (f) Notwithstanding the provisions of this section, a city may adopt and enforce
48 ordinances as provided in G.S. 160A-203."

49 **SECTION 3.** This act becomes effective July 1, 2013.