

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1561

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~~ construction, enlargement, or
10 placement of a structure; excavation; dredging; filling;
11 dumping; removal of clay, silt, sand, gravel or minerals;
12 bulkheading, driving of pilings; clearing or alteration of land as
13 an adjunct of construction; alteration or removal of sand dunes;
14 alteration of the shore, bank, or bottom of the Atlantic Ocean or
15 any sound, bay, river, creek, stream, lake, or canal."

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

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

19 (1) To recommend to the Secretary the acceptance of donations, gifts,
20 grants, contributions and appropriations from any public or private
21 source to use in carrying out the provisions of this Article.

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- 11 (5) Repealed by Session Laws 1987, c. 827, s. 141.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

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

19 **"§ 113A-126. Injunctive relief and penalties.**

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

33 (b) Upon violation of any of the provisions of this Article relating to permits for
34 minor developments issued by a local government, or of any rule or order adopted under
35 the authority of this Article relating to such permits, the designated local official may,
36 either before or after the institution of proceedings for the collection of any penalty
37 imposed by this Article for such violation, institute a civil action in the General Court of
38 Justice in the name of the affected local government upon the relation of the designated
39 local official for injunctive relief to restrain the violation ~~and for such other and further~~
40 ~~relief in the premises as said court shall deem proper. and for a preliminary and permanent~~
41 mandatory injunction to restore the resources to an undisturbed condition. If the court
42 finds that a violation is threatened or has occurred, the court shall, at a minimum, order
43 the relief necessary to prevent the threatened violation or to abate the violation
44 consistent with this Article and rules of the Commission. Neither the institution of the

1 action nor any of the proceedings thereon shall relieve any party to such proceedings
2 from any penalty prescribed by this Article for any violation of same.

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

13 (d) (1) A civil penalty of not more than two hundred fifty dollars
14 (\$250.00) for a minor development violation and two thousand five
15 hundred dollars (\$2,500) for a major development violation may be
16 assessed by the Commission against any person who:

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

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

34 (3) The Commission may assess the penalties provided for in this
35 subsection. The Commission shall notify a person who is assessed a
36 penalty by registered or certified mail. The notice shall state the
37 reasons for the penalty. A person may contest a penalty by filing a
38 petition for a contested case under G.S. 150B-23 within 20 days after
39 receiving the notice of assessment. If a person fails to pay a penalty,
40 the Commission shall refer the matter to the Attorney General for
41 collection. Such civil actions must be filed within three years of the
42 date the final agency decision was served on the violator.

- 1 (4) In determining the amount of the penalty the Commission shall
2 consider the degree and extent of harm caused by the violation and the
3 cost of rectifying the damage."
4 Sec. 4. This act is effective upon ratification.