

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

1

SENATE BILL 854

Short Title: Liability for Erosion Damage.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I/Constitution

April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN OWNER OF AN EROSION OR STORM-DAMAGED STRUCTURE IS LIABLE FOR CERTAIN DAMAGES RESULTING FROM THE HAZARDS POSED BY THOSE STRUCTURES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7B.

"LIABILITY FOR DAMAGE FROM EROSION AND STORM-DAMAGED STRUCTURES.

"§ 113A-134.11. Policy.

The presence of erosion or storm-damaged structures on or in close proximity to the public beaches and waters of the State presents an increased threat of accident, injury, and other hazards to the public health, impedes passage on public trust beaches and waters, and is prejudicial to the public health, safety, and welfare. A clear, efficient, and equitable program is needed to identify those structures in imminent danger, assign responsibility for the resolution and abatement of the hazards posed, and assure financial responsibility for cleanup costs and damages that are incurred.

The principal responsibility for preventing threatened and damaged structures along the public beaches and waters from endangering the public rests with the owner of those

1 structures. It is the policy of the State of North Carolina that the first priority use for
2 insurance coverage payable as the result of the loss of or damage to such structures as the
3 result of flood, storm, or erosion hazard shall be the satisfaction of the reasonable costs of
4 cleanup and damages caused by any debris from the structure.

5 **"§ 113A-134.12. Definitions.**

6 (a) Owner. – The holder of the title in fee simple. The term shall include any part
7 owner, joint owner, tenant in common, joint tenant, or tenant by the entireties of the
8 whole or a part of the property.

9 (b) Public Beach. – The term includes the foreshore and the dry sand beach
10 seaward of the first line of stable natural vegetation or erosion escarpment.

11 **"§ 113A-134.13. Notice of imminent or existing threat to public interests.**

12 (a) A city or county with jurisdiction along public beaches and waters may
13 identify those structures along its shoreline that have suffered or are in imminent danger
14 of suffering erosion or storm damage. Upon such a finding, the city or county shall
15 immediately provide notice by registered or certified mail of the identification to the
16 owner of the property as identified in the county tax records. If after due diligence the
17 owner cannot be identified within a reasonable time by this method, the city or county
18 shall publish the notice in a newspaper of general circulation in the area at least once and
19 shall prominently post a copy of the notice on the property involved and such notice shall
20 constitute adequate and proper notice to the owner.

21 (b) The city or county may by ordinance also provide that upon mailing of this
22 notice, a notice of lis pendens with a copy of this notice attached, may be filed in the
23 office of the clerk of superior court for the county in which the property is located and
24 shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-
25 117.

26 (c) The owner receiving the notice shall, within a reasonable time specified in the
27 notice, file with the city or county providing the notice a remedial plan to resolve and
28 abate the problem. The plan filed by the owner shall include the names and addresses of
29 all parties having an ownership interest in the property involved, a list of all property and
30 flood insurance held on the property involved, and a list of all liens outstanding for the
31 property. The plan shall also indicate the remedial action that will be taken, including the
32 proposed timetable and estimated cost of the remedial action. The city or county may by
33 ordinance require that a bond or other appropriate financial guarantee be submitted as a
34 part of the remedial plan. If the owner does not reside within the county in which the
35 property is located, the city or county may by ordinance require each owner of property
36 receiving a notice of imminent or existing threat to authorize a resident of the county in
37 which the property is located as the owner's agent for the purpose of accepting service of
38 process in an action regarding enforcement of this Article.

39 (d) Within a reasonable time after receipt of a plan from the owner, the city or
40 county shall review the plan. If the remedial plan adequately addresses the hazard posed
41 by the structure involved, the city or county shall approve the plan and so notify the
42 owner and any other parties as may be appropriate. If the city or county finds that the

1 remedial plan is inadequate to prevent or abate harm to public interests, it shall deny the
2 plan and promptly notify the owner of the specific deficiencies in the proposed plan.

3 (e) The notice of imminent or existing threat provided to owners shall include
4 notice of a reasonable local administrative appeals procedure by which the owner can
5 appeal whether the hazard in fact exists. The notice of plan approval or denial shall
6 include notice of a reasonable local administrative appeals procedure by which the owner
7 or another affected party can appeal a decision to approve or deny a remedial plan.

8 **"§ 113A-134.14. Liability.**

9 (a) The owner of a structure that collapses as a result of erosion or storm damage
10 is liable for the cost of cleaning up the site for any damage caused to other public or
11 private property by debris from the collapsed structure. The owner of a structure that
12 interferes with public use and enjoyment of public trust areas is liable for the cost of
13 removing the impediment.

14 (b) If a remedial plan has either not been submitted or submitted and not approved
15 by the city or county within the reasonable time periods specified in G.S. 113A-134.12,
16 the city or county may issue an order for the demolition or removal of the structure,
17 cleanup of the debris involved, and any other remedial action as is necessary to protect
18 the public interest. If the order is not complied with within the time specified, the city or
19 county may have the structure demolished or removed, all necessary cleanup
20 accomplished, and the expenses thereof shall be charged to the owner. If not paid, the
21 expenses become a lien upon the land or premises involved and shall be collected as
22 unpaid taxes. Notice of this lien shall be provided to all insurers and creditors identified
23 in the remedial plan.

24 (c) If the owner fails to implement an approved remedial plan in a timely manner,
25 that owner shall be strictly liable for any damages to public or private property that result
26 from the failure to take remedial action. If cleanup costs and damages are caused by
27 multiple structures, the city or county shall make a reasonable allocation of the costs
28 among all affected owners of structures contributing to those costs.

29 **"§ 113A-134.15. Other authority.**

30 (a) The provisions of this Article are in addition to and supplement any other
31 statute or law by which the State or an affected local government can protect public rights
32 in public trust areas, abate nuisances, and require the remediation of unsafe and
33 hazardous buildings and situations.

34 (b) A city or county may request any assistance as is appropriate from, and
35 assistance may be provided by the Department of Environment, Health, and Natural
36 Resources and the Department of Justice."

37 Sec. 2. This act is effective upon ratification.