

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 1165

Short Title: Beach Preservation & Restoration Act. (Public)

Sponsors: Representative Stiller.

Referred to: Economic Growth and Community Development, if favorable,
Appropriations.

April 10, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO ACKNOWLEDGE STATE POLICY THAT BEACH PRESERVATION
3 AND RESTORATION ARE IN THE PUBLIC INTEREST AND THAT WHERE
4 ECONOMICALLY AND ENVIRONMENTALLY JUSTIFIED BEACH
5 PRESERVATION AND RESTORATION CONSTITUTE A PUBLIC PURPOSE,
6 TO ESTABLISH THE NORTH CAROLINA BEACH PRESERVATION AND
7 RESTORATION COMMISSION, TO ESTABLISH THE BEACH
8 PRESERVATION AND RESTORATION FUND, AND TO APPROPRIATE
9 FUNDS TO THE BEACH PRESERVATION AND RESTORATION FUND.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Chapter 113 of the General Statutes is amended by adding a
12 new Article to read:

"Article 29.

"Beach Preservation and Restoration.

13 **"§ 113-420. Short title.**

14 This Article shall be known and may be cited as the North Carolina Beach
15 Preservation and Restoration Act.

16 **"§ 113-421. Declaration of policy; purposes.**

17 It is the policy of the State, in accordance with Article XIV, Section 5, of the North
18 Carolina Constitution, that the beaches of the State are to be preserved as a part of our
19 common natural heritage. Preservation of the beach enhances the environment of the
20 coastal areas and barrier islands of the State providing habitat for nesting sea turtles and
21 supporting a variety of bird and animal life. Preservation of the beach enhances and
22 supports the tourism industry in the State, in particular the local economies of the
23 coastal region. Preservation of the beach provides significant protection from storm and
24 hurricane damage to property and infrastructure, particularly from storm surge.
25 Preservation of the beach minimizes regulatory conflicts, loss of property value and
26 local tax base, and ensures the long-term availability of public access to the beach.
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1 Therefore, in accordance with the policy and import of preserving the State's sandy
2 beaches, the General Assembly declares that the beaches of the State, and the public's
3 right to access the beaches, must be protected.

4 Furthermore, the General Assembly recognizes that the beaches of the State are part
5 of a dynamic coastal system and are constantly subject to the reshaping forces of wind,
6 waves, and sea level rise. These natural forces have caused, and will continue to cause,
7 serious erosion of the beaches of the State resulting in a grave threat to public property,
8 private property, public infrastructure, the regional economy, public access, and the
9 public's health, safety, and welfare. The General Assembly therefore declares that, in
10 order to preserve the public's interest in the beaches of the State, it is necessary to
11 establish policies and programs that provide for the preservation and restoration of the
12 State's beaches.

13 The General Assembly further finds that it is in the public interest for the State to
14 make provision for beach preservation and restoration projects where such projects are
15 found to be economically, environmentally, and socially justified, and when so justified,
16 beach preservation and restoration projects constitute a public purpose. In particular,
17 beach nourishment, the replacement of sand from another sand source onto the beach,
18 has been determined by coastal geologists, coastal engineers, and coastal managers to
19 provide a reasonable and practicable response to the degradation of the beach and the
20 threatened loss of property, public infrastructure, and public access caused by severe
21 erosion. Other measures include the disposal of beach quality sand and material from
22 inlet management projects and navigation improvement projects on adjacent eroded
23 beaches where such disposal may be accomplished in a cost-effective manner.

24 It is the purpose of the General Assembly in enacting this Article to establish a
25 separate State agency to be known as the North Carolina Beach Preservation and
26 Restoration Commission. The function, purpose, and duty of the Commission shall be to
27 assist local governments with beach assessments and in the development and
28 implementation of beach preservation and beach restoration projects, to coordinate the
29 activities and resources of federal, State, and local governments in the project process,
30 to administer the laws relating to beach preservation and restoration, and to allocate
31 available State funding to the end that there be a comprehensive, continuing, and
32 economical program ensuring that the beaches of the State be preserved and restored.

33 **"§ 113-422. Definitions.**

34 The following definitions apply in this Article:

- 35 (1) Beach. – Ocean beaches.
- 36 (2) Commission. – North Carolina Beach Preservation and Restoration
37 Commission established in G.S. 113-423.
- 38 (3) Fund. – The Beach Preservation and Restoration Fund created in G.S.
39 113-430.
- 40 (4) Local Government Unit. – A county, city, town, incorporated village,
41 or consolidated city-county, as defined by G.S. 160B-2(1).
- 42 (5) Preservation. – Activities that address the conflict between beach
43 movement and structures or infrastructure through the acquisition of
44 land, the relocation of endangered structures, or similar measures that

1 allow for a natural beach that do not require shoreline stabilization
2 measures.

3 (6) Public Beach Access. – The term includes handicapped access,
4 walk-overs to the beach, visitors facilities, parking, including off-site
5 parking with public transportation from the off-site parking location to
6 the beach, and public safety.

7 (7) Restoration. – Activities that address the conflict between beach
8 movement and structures and infrastructure through engineering
9 functions such as beach nourishment or other innovative technologies
10 to create a stabilized shoreline or engineered beach.

11 **"§ 113-423. North Carolina Beach Preservation and Restoration Commission**
12 **established.**

13 The North Carolina Beach Preservation and Restoration Commission is established.
14 The Commission shall be an independent agency, located within the Department of
15 Environment and Natural Resources for administrative purposes only.

16 **"§ 113-424. Appointment and terms of Commission members; filling of vacancies;**
17 **per diem.**

18 (a) Membership. – The Commission shall be composed of nine members. Three
19 members shall be appointed by the Governor, three by the General Assembly upon the
20 recommendation of the Speaker of the House of Representatives, and three by the
21 General Assembly upon the recommendation of the President Pro Tempore of the
22 Senate in accordance with G.S. 120-121. Of the members appointed upon the
23 recommendation of the Speaker of the House and upon the recommendation of the
24 President Pro Tempore of the Senate, at least one of each shall be a member of the
25 political party to which the largest minority of the members of the General Assembly
26 belong.

27 The office of Commission member is declared to be an office that may be held
28 concurrently with any other executive or appointive office, under the authority of
29 Article VI, Section 9, of the North Carolina Constitution.

30 (b) Qualifications for Membership. – Of the nine members appointed to the
31 Commission, four persons shall be knowledgeable in one of each of the areas listed in
32 subdivisions (1) through (4) of this subsection. The remaining five persons shall be
33 at-large members.

34 (1) Beach erosion control and management strategies.

35 (2) Coastal wildlife and fisheries habitats and resources.

36 (3) Environmental management.

37 (4) Travel and tourism economics.

38 (c) Per Diem and Travel Expenses. – Members of the Commission shall receive
39 per diem and necessary travel and subsistence expenses in accordance with the
40 provisions of G.S. 138-5 or G.S. 138-6 as the case may be, which shall be paid from the
41 Beach Preservation and Restoration Fund.

42 (d) Initial Appointments and Terms of Office. – Each appointing officer shall
43 designate one of the officer's initial appointments to serve two-year terms, one to serve
44 four-year terms, and one to serve six-year terms. Thereafter, all appointments shall be

1 for four years, subject to reappointment. All initial appointments shall be made on or
2 before January 1, 2004.

3 All members appointed by the Governor serve at the pleasure of the Governor who
4 appointed them, and they may be removed by that Governor at anytime. A successor to
5 the appointing Governor may remove a Commission member only for cause as provided
6 in G.S. 143B-13. Members appointed by the General Assembly serve at the pleasure of
7 that body and may be removed by law at anytime. In the event that a Commission
8 member is removed, the member appointed to replace the removed member shall serve
9 only for the unexpired term of the removed member.

10 (e) Vacancies. – If a vacancy occurs, other than by the expiration of term, of a
11 member subject to appointment by the General Assembly upon the recommendation of
12 the Speaker of the House of Representatives or the President Pro Tempore of the
13 Senate, the vacancy shall be filled in accordance with G.S. 120-122. If a vacancy
14 occurs, other than by the expiration of term, of a member appointed by the Governor,
15 then the Governor shall appoint a new member in the original manner. Appointment of
16 a member to fill a vacancy under this subsection shall be for the balance of the
17 unexpired term of office.

18 The Governor shall have the power to remove any member of the Commission from
19 office for misfeasance, malfeasance, or nonfeasance.

20 **§ 113-425. Organization of the Commission; election of officers, Robert's Rules of**
21 **Order.**

22 The Commission shall hold at least four meetings annually, with one in January and
23 one in July. Five members of the Commission shall constitute a quorum for the
24 transaction of business. Additional meetings may be held at any other times within the
25 State as may be deemed necessary for the efficient transaction of the business of the
26 Commission. The Commission may hold additional or special meetings at any time at
27 the call of the chair or on call of any five members of the Commission. The
28 Commission shall determine its own organization and methods of procedure in
29 accordance with the provisions of this Article.

30 At the first scheduled meeting of the Commission after January 1, 2004, and on July
31 1 of each odd-numbered year thereafter, the Commission shall select from among its
32 membership a chair and a vice-chair who shall serve for terms of two years or until their
33 successors are elected and qualified. The Secretary of Environment and Natural
34 Resources or the Secretary's designee shall serve as secretary of the Commission.

35 The chair shall guide and coordinate the official actions and official activities of the
36 Board in fulfilling its program responsibility for (i) the appointment and separation of
37 the executive director of the Commission, (ii) organizing the personnel of the
38 Commission, (iii) setting the statewide policy of the Commission, (iv) budgeting and
39 planning the use of the Beach Preservation and Restoration Fund, subject to the
40 approval of the General Assembly, (v) holding public hearings, and (vi) adopting rules
41 as authorized by law.

42 The chair shall report to and advise the Governor on the official actions and work of
43 the Commission and on all beach preservation and restoration matters that affect the
44 interest of the people of the State.

1 Meetings of the Commission shall be conducted pursuant to Robert's Rules of Order.

2 **"§ 113-426. Location of offices.**

3 The Board of Public Buildings and Grounds shall provide the Commission with
4 offices in the city of Raleigh, North Carolina.

5 **"§ 113-427. Executive Director; appointment, qualifications, and duties.**

6 The Commission, as soon as practicable after its organization, shall select and
7 appoint a competent person as Executive Director of the North Carolina Beach
8 Preservation and Restoration Commission. The Executive Director shall be charged
9 with the supervision of all activities under the jurisdiction of the Commission and shall
10 serve as the chief administrative officer of the Commission. Subject to the approval of
11 the Commission and the Director of the Budget, the Executive Director may employ
12 professional, technical, and clerical personnel as deemed necessary.

13 The person selected as Executive Director shall have had training and experience in
14 beach preservation and restoration. The salary of the Executive Director shall be fixed
15 by the Commission, in an amount at least equal to the salary of the Director of the
16 Division of Coastal Management. The Executive Director shall be allowed actual
17 expenses incurred while on official duties away from resident headquarters. The salary
18 and expenses of the Executive Director shall be paid from the North Carolina Beach
19 Preservation and Restoration Fund established by G.S. 113-430, subject to the
20 provisions of the Executive Budget Act. The term of office of the Executive Director
21 shall be at the pleasure of the Commission.

22 **"§ 113-428. Powers and duties of Commission.**

23 The Commission shall have the following powers and duties under this Article:

- 24 (1) To prepare or cause to be prepared a study of the economic impact of
25 the beaches on the economies of the beach counties, the coastal region,
26 and on the State as a whole, and the economic impact of beach
27 restoration and beach nourishment projects on those economies.
- 28 (2) To compile, maintain, and update a compendium of alternative State
29 and local government sources of funding for beach preservation and
30 restoration activities.
- 31 (3) To develop a State plan and strategy for beach preservation and beach
32 restoration as provided in G.S. 113-429.
- 33 (4) To administer the North Carolina Beach Preservation and Restoration
34 Fund created pursuant to G.S. 113-430 and to accept for the Fund any
35 gifts, grants, and donations made for the purposes of this Article.
- 36 (5) To provide local governments with technical assistance in evaluating
37 beach access needs and erosion problems and in developing and
38 implementing public beach access, beach preservation, and beach
39 restoration plans.
- 40 (6) To coordinate the activities of State, federal, and local governments
41 and private organizations in developing and implementing public
42 beach access, beach preservation, and beach restoration projects.

- 1 (7) To enter into cooperative agreements pertaining to the preservation
2 and restoration of the beaches of the State with federal, State, and
3 other agencies, or governmental subdivisions.
- 4 (8) To review existing and proposed State laws and rules affecting public
5 beach access, beach preservation, and beach restoration, and to
6 evaluate whether any modifications of the laws and rules would be in
7 the public interest.
- 8 (9) To review and evaluate changes in the federal laws and programs
9 regarding beach preservation and beach restoration, and advances in
10 available technology affecting beach preservation and beach
11 restoration to determine whether the laws of the State and any
12 implementing rules need modification as a result of the changes in
13 federal law or advances in technology.
- 14 (10) To call on State agencies, local government units, and State
15 educational institutions to provide the Commission with information
16 necessary for it to fulfill its duties under this Article.
- 17 (11) To contract with public agencies or private persons or organizations
18 for consulting and other services as necessary to implement this
19 Article.
- 20 (12) To make reports, including recommended legislation, to the General
21 Assembly from time to time on any matter relating to the powers and
22 duties of the Commission.
- 23 (13) To develop and adopt rules as necessary to implement the provisions
24 of this Article.

25 **§ 113-429. Beach preservation and management plan.**

26 (a) Plan. – The Commission shall develop and implement a multiyear plan and
27 strategy to preserve, restore, and manage the beaches of the State. The plan to be
28 developed by the Commission shall do all of the following:

- 29 (1) Utilize the data and expertise available in the Divisions of Water
30 Resources, Coastal Management, and Land Resources.
- 31 (2) Identify the erosion rate at each beach community and estimate the
32 degree of vulnerability to storm and hurricane damage.
- 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 U.S. Army Corps of Engineers, the
37 North Carolina Department of Transportation, the North Carolina
38 Division of Emergency Management, and other State and federal
39 agencies concerned with beach preservation and beach restoration
40 issues.
- 41 (5) Provide a status report on all U.S. Army Corps of Engineers' beach
42 protection projects in the planning, construction, or operational stages.

- 1 (6) Make maximum feasible use of suitable sand dredged from navigation
2 channels for beach nourishment to avoid the loss of this resource and
3 to reduce equipment mobilization costs.
- 4 (7) Promote inlet sand bypassing where needed to replicate the natural
5 flow of sand interrupted by inlets.
- 6 (8) Provide for geological assessments to locate suitable materials for
7 beach nourishment.
- 8 (9) Consider the regional context of beach communities to determine the
9 most cost-effective approach to beach preservation and beach
10 restoration.
- 11 (10) Provide for and require adequate public beach access and project
12 additional public access needs based on significant increases in the
13 State's population and the increased use of public access.
- 14 (11) Recommend priorities or State funding for beach nourishment projects,
15 based on the amount of erosion occurring, the potential damage to
16 property and to the economy, the benefits for recreation and tourism,
17 the adequacy of public access, the availability of local government
18 matching funds, the status of project planning, the adequacy of project
19 engineering, the cost-effectiveness of the project, and the
20 environmental impacts.
- 21 (12) Include recommendations on obtaining the maximum available federal
22 financial assistance for beach preservation and beach restoration.
- 23 (13) Be subject to a public hearing to receive citizen input.

24 (b) Initial Plan Date and Revised Plan Dates. – The Commission shall submit the
25 initial plan to the General Assembly by July 1, 2005. The Commission shall revise the
26 plan every two years and shall submit the revised plan to the General Assembly no later
27 than March 1 of each odd-numbered year. The Commission may issue a supplement to
28 the plan in even-numbered years if significant new information becomes available.

29 **"§ 113-430. North Carolina Beach Preservation and Restoration Fund.**

30 (a) Fund Established. – There is established the North Carolina Beach
31 Preservation and Restoration Fund in the State Treasurer's Office that shall be used to
32 provide grants to beach communities for public beach access, beach preservation, and
33 beach restoration in accordance with this Article.

34 (b) No Grants for Local Government Portion of Nonfederal Cost-Share of
35 Federally Funded Beach Nourishment Projects. – Notwithstanding subsection (a) of this
36 section, no grant shall be awarded or used for a local government unit's portion of the
37 nonfederal cost-share of a federally funded beach nourishment project.

38 (c) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
39 Fund separate and apart from all other moneys, funds, and accounts. Investment
40 earnings credited to the assets of the Fund shall become part of the Fund. Any balance
41 remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund
42 for the succeeding fiscal year. Payments from the Fund shall be made on the warrant of
43 the chair of the North Carolina Beach Preservation and Restoration Commission.

1 (d) Eligibility for Grants. – Any local government unit or other political
2 subdivision of the State or a combination of the entities is eligible to apply for a grant
3 from the Fund for the purpose of public beach access, beach preservation, or beach
4 restoration.

5 (e) Grant Matching Requirement. – The Commission shall establish matching
6 requirements for grants awarded under this Article. The Commission shall require a
7 match of up to ten percent (10%) of the amount of the grant awarded.

8 (f) Allocate Grant Funds. – The Commission shall allocate moneys from the
9 Fund as grants. A grant may be awarded only for a project or activity that satisfies the
10 criteria and furthers the purposes of this Article.

11 (g) Develop Grant Criteria. – The Commission shall develop criteria for
12 awarding grants under this Article. The criteria developed shall include the following:

13 (1) The significant preservation or restoration of the beaches in the State.

14 (2) The specific areas targeted as being in need of beach preservation or
15 restoration, particularly beach nourishment.

16 (3) The geographic distribution of funds as appropriate.

17 (4) The significant recreational or economic value and uses of the area.

18 (5) The availability of public access.

19 (6) The application for a beach preservation or restoration project shall
20 have complete planning and design work adequate to provide project
21 specification, cost estimates, reviews of environmental impacts, and
22 estimation of benefits. The Board may make grants to potential
23 applicants of up to fifty percent (50%) of the cost of the necessary
24 planning and design work to prepare applications.

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

28 (i) Develop Additional Guidelines. – The Commission may develop guidelines
29 in addition to the grant criteria consistent with and as necessary to implement this
30 Article.

31 **"§ 113-431. Jurisdictional questions.**

32 In the event of any questions arising between the Department of Environment and
33 Natural Resources and the North Carolina Beach Preservation and Restoration
34 Commission as to any duty or responsibility or authority imposed upon either of the
35 bodies by law, or in case of any conflicting rules or administrative practices adopted by
36 the bodies, such questions or matters shall be determined by the Governor and the
37 Governor's determination shall be binding on each of the bodies."

38 **SECTION 2.** There is appropriated from the General Fund to the North
39 Carolina Beach Preservation and Restoration Fund the sum of one million dollars
40 (\$1,000,000) for the 2003-2004 fiscal year and the sum of two million dollars
41 (\$2,000,000) for the 2004-2005 fiscal year to be used in accordance with G.S. 113-430.
42 It is the intent of the General Assembly that funds be appropriated to the North Carolina
43 Beach Preservation and Restoration Fund on a continuing basis and that funds be
44 appropriated as follows in each of the subsequent fiscal years:

	Amount	Fiscal Year			
1					
2	\$ 4,000,000	2004-2005			
3	\$ 8,000,000	2005-2006			
4	\$12,000,000	2006-2007	and	each	fiscal year
5		thereafter.			

6 **SECTION 3.** This act becomes effective July 1, 2003.