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SENATE BILL 110
Agriculture/Environment/Natural Resources Committee Substitute Adopted 3/9/11
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Short Title: Permit Terminal Groins.

(Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF UP TO THREE
TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

Whereas, it has been the policy of the State of North Carolina since 1985, as stated in the Coastal Area Management Act and rules adopted pursuant to the Act, to give preference to nonstructural responses to erosion, including relocation of threatened structures, beach nourishment, inlet relocation, and the temporary use of sandbags for short-term stabilization; and

Whereas, a terminal groin is a permanent erosion control structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel; and

Whereas, a terminal groin may reduce beach erosion, reduce the frequency of beach nourishment projects, and slow the migration of inlets; and

Whereas, the use of terminal groins on inlet beaches may adversely impact the value and enjoyment of adjacent properties, damage the public beach, obstruct public access to the beach and to navigable waters, and result in increased erosion to adjacent and downdrift properties; and

Whereas, due to the uncertainties associated with the costs and benefits of terminal groins, it is reasonable to authorize the Coastal Resources Commission to establish a terminal groin pilot program under which the Commission may permit the construction of up to three terminal groins under certain conditions; and

Whereas, it is reasonable to authorize the Coastal Resources Commission to permit the construction of a terminal groin under the pilot program if the Commission finds that (i) structures or infrastructure are imminently threatened by erosion and that nonstructural approaches to erosion control are impractical; (ii) the terminal groin will be accompanied by a concurrent beach fill project; (iii) construction and maintenance of the terminal groin will not result in significant adverse impacts to private property or to the public recreational beach; (iv) the terminal groin will be managed pursuant to an inlet management plan; and (v) there are sufficient financial resources to cover the costs associated with the terminal groin; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"§ 113A-115.1. Limitations on erosion control structures.

(a) As used in this section:



1 (1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty,
2 revetment, seawall, or any similar structure.

3 (1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that
4 border estuarine waters as defined in G.S. 113A-113(b)(2).

5 (2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and
6 frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands
7 adjacent to an ocean inlet but does not include that portion of any inlet and
8 lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

9 (3) "Terminal groin" means a structure that is constructed on the side of an inlet
10 at the terminus of an island generally perpendicular to the shoreline to limit
11 or control sediment passage into the inlet channel.

12 (b) No person shall construct a permanent erosion control structure in an ocean
13 shoreline. The Commission shall not permit the construction of a temporary erosion control
14 structure that consists of anything other than sandbags in an ocean shoreline. This section shall
15 not apply to ~~(i) any~~ any of the following:

16 (1) Any permanent erosion control structure that is approved pursuant to an
17 exception set out in a rule adopted by the Commission prior to ~~1 July 2003~~
18 or ~~(ii) any~~ July 1, 2003.

19 (2) Any permanent erosion control structure that was originally constructed
20 prior to ~~1 July 1974~~ July 1, 1974, and that has since been in continuous use to
21 protect an inlet that is maintained for navigation.

22 (3) Any terminal groin permitted pursuant to this section.

23 (b1) This section shall not be construed to limit the authority of the Commission to adopt
24 rules to designate or protect areas of environmental concern, to govern the use of sandbags, or
25 to govern the use of erosion control structures in estuarine shorelines.

26 (c) The Commission may renew a permit for an erosion control structure issued
27 pursuant to a variance granted by the Commission prior to ~~1 July~~ July 1, 1995. The Commission
28 may authorize the replacement of a permanent erosion control structure that was permitted by
29 the Commission pursuant to a variance granted by the Commission prior to ~~1 July 1995~~ July 1,
30 1995, if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions
31 set out in the original permit; (ii) there is no practical alternative to replacing the structure that
32 will provide the same or similar benefits; and (iii) the replacement structure will comply with
33 all applicable laws and with all rules, other than the rule or rules with respect to which the
34 Commission granted the variance, that are in effect at the time the structure is replaced.

35 (d) Any rule that prohibits permanent erosion control structures shall not apply to
36 terminal groins permitted pursuant to this section.

37 (e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General
38 Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the
39 following to the Commission:

40 (1) Information to demonstrate that structures or infrastructure are imminently
41 threatened by erosion and nonstructural approaches to erosion control,
42 including relocation of threatened structures, are impractical.

43 (2) An environmental impact statement that satisfies the requirements of
44 G.S. 113A-4.

45 (3) A list of property owners and local governments that may be affected by the
46 construction of the proposed terminal groin and its accompanying beach fill
47 project and proof that the property owners and local governments have been
48 notified of the application for construction of the terminal groin and its
49 accompanying beach fill project.

50 (4) A plan for the construction and maintenance of the terminal groin and its
51 accompanying beach fill project prepared by a professional engineer

- 1 licensed to practice pursuant to Chapter 89C of the General Statutes and
2 reviewed by an independent third-party licensed engineer.
- 3 (5) A plan for the management of the inlet and the estuarine and ocean
4 shorelines immediately adjacent to and under the influence of the inlet. The
5 inlet management plan shall do all of the following relative to the terminal
6 groin and its accompanying beach fill project:
- 7 a. Describe the post-construction activities that the applicant will
8 undertake to monitor the impacts on coastal resources.
- 9 b. Define the baseline for assessing any adverse impacts and the
10 thresholds for when the adverse impacts must be mitigated.
- 11 c. Provide for mitigation measures to be implemented if adverse
12 impacts reach the thresholds defined in the plan.
- 13 d. Provide for modification or removal of the terminal groin if the
14 adverse impacts cannot be mitigated.
- 15 (6) Proof of financial assurance in the form of a bond, insurance policy, escrow
16 account, or other financial instrument that is adequate to cover the cost of:
- 17 a. Long-term maintenance and monitoring of the terminal groin.
- 18 b. Implementation of mitigation measures as provided in the inlet
19 management plan.
- 20 c. Modification or removal of the terminal groin as provided in the inlet
21 management plan.
- 22 d. Restoration of public, private, or public trust property if the groin has
23 an adverse impact on the environment or property.
- 24 (f) The Commission shall issue a permit for the construction of a terminal groin if the
25 Commission finds no grounds for denying the permit under G.S. 113A-120 and the
26 Commission finds all of the following:
- 27 (1) The applicant has complied with all of the requirements of subsection (e) of
28 this section.
- 29 (2) The applicant has demonstrated that structures or infrastructure are
30 imminently threatened by erosion and that nonstructural approaches to
31 erosion control, including relocation of threatened structures, are
32 impractical.
- 33 (3) The terminal groin will be accompanied by a concurrent beach fill project to
34 prefill the groin.
- 35 (4) Construction and maintenance of the terminal groin will not result in
36 significant adverse impacts to private property or to the public recreational
37 beach. In making this finding, the Commission shall take into account
38 mitigation measures, including the accompanying beach fill project, that will
39 be incorporated into the project design and construction and the inlet
40 management plan.
- 41 (5) The inlet management plan is adequate for purposes of monitoring the
42 impacts of the proposed terminal groin and mitigating any adverse impacts
43 identified as a result of the monitoring.
- 44 (6) Except to the extent expressly modified by this section, the project complies
45 with State guidelines for coastal development adopted by the Commission
46 pursuant to G.S. 113A-107.
- 47 (g) The Commission may issue no more than three permits for the construction of a
48 terminal groin pursuant to this section. Issuance of a permit pursuant to this section is subject to
49 all the following conditions:

- 1 (1) No more than two permits may be issued where public funds will be used for
2 any activity related to the terminal groin or its accompanying beach fill
3 project.
- 4 (2) No permit may be issued where funds are generated from any of the
5 following financing mechanisms and would be used for any activity related
6 to the terminal groin or its accompanying beach fill project:
- 7 a. Special obligation bonds issued pursuant to Chapter 159I of the
8 General Statutes.
- 9 b. Nonvoted general obligation bonds issued pursuant to
10 G.S. 159-48(b)(4).
- 11 c. Financing contracts entered into under G.S. 160A-20 or
12 G.S. 159-148."

13 **SECTION 2.** The Department of Environment and Natural Resources shall amend
14 the management program it adopted pursuant to the federal Coastal Zone Management Act, 16
15 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1,
16 as amended by Section 1 of this act, and shall seek approval of the proposed amended
17 management plan by the United States Secretary of Commerce or the Secretary's authorized
18 designee no later than six months after the effective date of this act.

19 **SECTION 3.** The Department shall adopt any rules necessary to implement this
20 act.

21 **SECTION 4.** No State funds may be spent for any activities related to a terminal
22 groin and its accompanying beach fill project permitted pursuant to G.S. 113A-115.1, as
23 amended by Section 1 of this act, unless the General Assembly enacts legislation appropriating
24 funds explicitly for such purpose. This section shall not apply to any beach fill or beach
25 nourishment project initiated prior to the effective date of this act.

26 **SECTION 5.** No later than September 1 of each year, the Coastal Resources
27 Commission shall report to the Environmental Review Commission on the implementation of
28 this act. The report shall provide a detailed description of each proposed and permitted
29 terminal groin and its accompanying beach fill project, including the information required to be
30 submitted pursuant to subsection (e) of G.S. 113A-115.1, as amended by Section 1 of this act.
31 For each permitted terminal groin and its accompanying beach fill project, the report shall also
32 provide all of the following:

- 33 (1) The findings of the Commission required pursuant to subsection (f) of
34 G.S. 113A-115.1, as amended by Section 1 of this act.
- 35 (2) The status of construction and maintenance of the terminal groin and its
36 accompanying beach fill project, including the status of the implementation
37 of the plan for construction and maintenance and the inlet management plan.
- 38 (3) A description and assessment of the benefits of the terminal groin and its
39 accompanying beach fill project, if any.
- 40 (4) A description and assessment of the adverse impacts of the terminal groin
41 and its accompanying beach fill project, if any, including a description and
42 assessment of any mitigation measures implemented to address adverse
43 impacts.

44 **SECTION 6.** This act is effective when it becomes law.