

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH50357-LM-29A (02/02)

Short Title: Oak Island/Erosion Setback Line.

(Local)

Sponsors: Representative Stiller.

Referred to:

A BILL TO BE ENTITLED

AN ACT RELATING TO THE EROSION SETBACK LINE IN THE TOWN OF OAK ISLAND AS A RESULT OF CERTAIN SPOIL DEPOSITION IN THE TOWN.

Whereas, during the course of many years in the Town of Oak Island in Brunswick County, North Carolina, much of the land abutting and fronting on the Atlantic Ocean in the Town, formerly belonging to various property owners, was washed away by successive storms, tides, and winds; and

Whereas, beginning in or around 2001, a spoil deposition project was conducted by the United States Army Corps of Engineers in conjunction with the dredging of the Wilmington Harbor; and

Whereas, beginning in or around 2001, a turtle habitat restoration project was conducted by the United States Army Corps of Engineers; and

Whereas, in January 2000, the United States Army Corps of Engineers determined the mean high-water mark on the Oak Island oceanfront for purposes of construction of the spoil deposition project and the turtle habitat restoration project, and the line is hereinafter referred to as the "January 2000 USACE Line"; and

Whereas, subsequent to the spoil deposition and the turtle habitat restoration projects, the first line of stable natural vegetation, hereinafter referred to as the "Actual Vegetation Line," was established and has remained significantly seaward of the previous line of vegetation that had been affected by successive storms, tides, and winds; and

Whereas, the Town of Oak Island will secure sufficient funds with which to maintain and preserve the areas of beachfront nourished by the spoil deposition and turtle habitat restoration projects and the "Actual Vegetation Line" established following the projects; and

Whereas, it is the desire of the Town of Oak Island and the State of North Carolina to fix and define the line to be used to determine building setback for the

1 purposes of local regulations and to establish the "Actual Vegetation Line" as the line to
2 be utilized in determining erosion setbacks pursuant to the Coastal Area Management
3 Act of 1974, Article 7 of Chapter 113A of the General Statutes, and administrative
4 regulations promulgated pursuant to the Act, in order to ensure sufficient beachfront for
5 public purposes, to preserve the economic vitality of the Town of Oak Island, and to
6 protect the private property rights of the Town's citizens; Now, therefore,
7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** That all land filled in, restored, and made, and all land to be
9 filled in, restored, and made as the result of the recitals in the preamble of this act, that
10 will exist after the work referred to in the preamble is completed, shall be within the
11 corporate limits of the Town of Oak Island, and so much of the lands filled in, restored,
12 and made, that will be north of the "January 2000 USACE," to be defined and
13 determined by the provisions of Section 2 of this act, is hereby granted and conveyed in
14 fee simple to the landowner, to the extent that his land abuts thereon, and the balance of
15 the land lying south of the "January 2000 USACE Line," to be fixed and determined by
16 the provisions of Section 2 of this act, is hereby granted and conveyed in fee simple to
17 the Town of Oak Island. The "January 2000 USACE Line" shall be the line from which
18 building setbacks will be determined pursuant to regulations of the Town of Oak Island.

19 **SECTION 2.** Within 120 days from the date this act becomes law, the Town
20 of Oak Island shall, at its own cost, survey or have surveyed by a duly licensed surveyor
21 the "January 2000 USACE Line" and have monuments installed at reasonable intervals
22 marking reference points on the "January 2000 USACE Line" which shall run the full
23 length of the nourished beachfront referred to in the preamble of this act. The
24 governing body of the Town of Oak Island shall cause to be prepared a map showing,
25 fixing, and defining the "January 2000 USACE Line." The map showing, fixing, and
26 defining the "January 2000 USACE Line" shall be recorded in the Office of the Register
27 of Deeds of Brunswick County in a Map Book kept for recording purposes after the
28 surveyor has appended an oath to the effect that the line has been truly and properly
29 surveyed and laid out and marked on the map. The Register of Deeds shall properly
30 index and cross-index the map, and when the map is recorded in the Map Book or
31 entered or placed therein, instead of inserting a transcript thereof, and indexed, the map
32 shall be competent and prima facie evidence of the facts thereon, without other or
33 further proof of the milking of the map, and the map shall conclusively fix and
34 determine the "January 2000 USACE Line" in perpetuity. All made and constructed
35 land lying south of the "January 2000 USACE Line" shall be at all times kept open for
36 public purposes and, if any property that is granted and conveyed to the Town of Oak
37 Island under this act shall cease to be used for the purposes or in the manner prescribed
38 in this act, it shall revert and become the property of the State of North Carolina.

39 **SECTION 3.** The "Actual Vegetation Line" shall be the line from which the
40 erosion setback is measured for the purposes of the Coastal Area Management Act of
41 1974, Article 7 of Chapter 113A of the General Statutes, and administrative regulations
42 promulgated pursuant to the act. To this end: (i) the erosion setback line for buildings
43 or structures less than 5,000 square feet shall be set at a distance of 60 feet from the
44 "Actual Vegetation Line" so that all the buildings or structures shall be built and erected

1 60 feet landward of the "Actual Vegetation Line"; and (ii) the erosion setback line for
2 buildings or structures greater than 5,000 square feet shall be set a distance of 120 feet
3 from the "Actual Vegetation Line" so that all the buildings or structures shall be built or
4 erected 120 feet landward of the "Actual Vegetation Line."

5 **SECTION 4.** Any property owner who claims that the terms and conditions
6 of this act so restrict the use of his real property so as to constitute a taking without just
7 compensation in violation of the North Carolina Constitution or the United States
8 Constitution, and who does not assert the claim against the State of North Carolina in a
9 court of competent jurisdiction within six months after the monuments are installed as
10 provided in Section 2 of this act shall be conclusively presumed to have acquiesced in
11 and to have accepted the terms and conditions of this act and to have abandoned the
12 claim, and shall be forever bound from maintaining any action for redress upon the
13 claim.

14 **SECTION 5.** All laws and clauses of laws in conflict with the provisions of
15 this act are repealed.

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