

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 346

Short Title: Counties/Public Trust Areas. (Public)

Sponsors: Representative Steinburg (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Local Government.

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT COUNTIES MAY ENFORCE ORDINANCES WITHIN THE
3 STATE'S PUBLIC TRUST AREAS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 6 of Chapter 153A of the General Statutes is amended by
6 adding a new section to read as follows:

7 "**§ 153A-145.3. Counties enforce ordinances within public trust areas.**

8 (a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a
9 county may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions
10 upon the State's ocean beaches and prevent or abate any unreasonable restriction of the public's
11 rights to use the State's ocean beaches. In addition, a county may, in the interest of promoting
12 the health, safety, and welfare of the public, regulate, restrict, or prohibit the placement,
13 maintenance, location, or use of equipment, personal property, or debris upon the State's ocean
14 beaches. A county may enforce any ordinance adopted pursuant to this section or any other
15 provision of law upon the State's ocean beaches located within the county's jurisdictional
16 boundaries to the same extent that a county may enforce ordinances within the county's
17 jurisdictional boundaries. A county may enforce an ordinance adopted pursuant to this section
18 by any remedy provided for in G.S. 153A-123. For purposes of this section, the term "ocean
19 beaches" has the same meaning as in G.S. 77-20(e).

20 (b) Nothing in this section shall be construed to (i) limit the authority of the State or any
21 State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common
22 law as interpreted and applied by the courts of this State; (ii) limit any other authority granted
23 to counties by the State to regulate the State's ocean beaches; (iii) deny the existence of the
24 authority recognized in this section prior to the date this section becomes effective; (iv) impair
25 the right of the people of this State to the customary free use and enjoyment of the State's ocean
26 beaches, which rights remain reserved to the people of this State as provided in G.S. 77-20(d);
27 (v) change or modify the riparian, littoral, or other ownership rights of owners of property
28 bounded by the Atlantic Ocean; or (vi) apply to the removal of permanent residential or
29 commercial structures and appurtenances thereto from the State's ocean beaches."

30 **SECTION 2.** G.S. 113-131 reads as rewritten:

31 "**§ 113-131. Resources belong to public; stewardship of conservation agencies; grant and**
32 **delegation of powers; injunctive relief.**

33 (a) The marine and estuarine and wildlife resources of the State belong to the people of
34 the State as a whole. The Department and the Wildlife Resources Commission are charged with
35 stewardship of these resources.



1 (b) The following powers are hereby granted to the Department and the Wildlife
2 Resources Commission and may be delegated to the Fisheries Director and the Executive
3 Director:

- 4 (1) Comment on and object to permit applications submitted to State agencies
5 which may affect the public trust resources in the land and water areas
6 subject to their respective management duties so as to conserve and protect
7 the public trust rights in such land and water areas;
- 8 (2) Investigate alleged encroachments upon, usurpations of, or other actions in
9 violation of the public trust rights of the people of the State; and
- 10 (3) Initiate contested case proceedings under Chapter 150B for review of permit
11 decisions by State agencies which will adversely affect the public trust rights
12 of the people of the State or initiate civil actions to remove or restrain any
13 unlawful or unauthorized encroachment upon, usurpation of, or any other
14 violation of the public trust rights of the people of the State or legal rights of
15 access to such public trust areas.

16 (c) Whenever there exists reasonable cause to believe that any person or other legal
17 entity has unlawfully encroached upon, usurped, or otherwise violated the public trust rights of
18 the people of the State or legal rights of access to such public trust areas, a civil action may be
19 instituted by the responsible agency for injunctive relief to restrain the violation and for a
20 mandatory preliminary injunction to restore the resources to an undisturbed condition. The
21 action shall be brought in the superior court of the county in which the violation occurred. The
22 institution of an action for injunctive relief under this section shall not relieve any party to such
23 proceeding from any civil or criminal penalty otherwise prescribed for the violation.

24 (d) The Attorney General shall act as the attorney for the agencies and shall initiate
25 actions in the name of and at the request of the Department or the Wildlife Resources
26 Commission.

27 (e) In this section, the term "public trust resources" means land and water areas, both
28 public and private, subject to public trust rights as that term is defined in G.S. 1-45.1.

29 (f) Notwithstanding the provisions of this section, a county or city may adopt and
30 enforce ordinances as provided in ~~G.S. 160A-205~~. G.S. 153A-145.3 or G.S. 160A-205,
31 respectively."

32 **SECTION 3.** This act is effective when it becomes law.