

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE BILL 2065

Short Title: Carolina Beach Harbor. (Local)

Sponsors: Representatives McComas; and Hughes.

Referred to: Marine Resources and Aquaculture, if favorable, Finance.

May 27, 2010

A BILL TO BE ENTITLED

1 AN ACT TO ENABLE THE TOWN OF CAROLINA BEACH TO REGULATE LIMITED
2 MATTERS CONCURRENTLY WITH THE STATE REGARDING THE TOWN'S
3 MUNICIPAL MARINA AND RELATED NAVIGABLE WATERS AND ADJOINING
4 PUBLIC TRUST LANDS.
5

6 Whereas, the Town of Carolina Beach (Town) on Pleasure Island in Federal Point
7 Township of the County of New Hanover in the State of North Carolina has for decades
8 created, maintained, preserved, policed, and managed precious numerous natural and
9 man-made resources to the benefit of generations of North Carolinians; and

10 Whereas, Town actions for more than 70 years have preserved vital natural and
11 related man-made resources which the public and the State have an interest in preserving; have
12 ensured public access to those resources; and have diminished the need for the State of North
13 Carolina [including its relevant agencies, departments, commissions, divisions, boards,
14 corporations, and instrumentalities (the "State")] and New Hanover County to devote personnel
15 and expend other resources on certain matters within their respective delegable jurisdiction,
16 powers, and responsibilities; and

17 Whereas, the resources are uniquely concentrated in a small area – a blessing of
18 nature benefiting the public and State; and

19 Whereas, access to those resources can be improved consistent with the goal of
20 protecting them and the public safety; and

21 Whereas, among those resources are various navigable waters as defined by this act;
22 and

23 Whereas, the Carolina Beach Yacht Basin ("Yacht Basin") was created by a
24 public/private project on behalf of the Town in the late 1930s and early 1940s; and

25 Whereas, the project also created a navigation canal from the Yacht Basin area to
26 the vicinity of Snow's Cut; and

27 Whereas, the Town similarly arranged during that time period construction of its
28 Municipal Marina ("Marina"), as well as the historic Boardwalk – all a mere short walking
29 distance away; and

30 Whereas, consequently, the Town for decades has continuously owned, maintained,
31 leased, and operated facilities at the Marina, Yacht Basin, Carolina Beach Lake, and adjoining
32 lands for public purposes including natural resources creation, preservation, parks, a wide
33 array of recreation activities, waters public access, and public safety protection – all at
34 substantial expense to the Town; and

35 Whereas, the Town has employed a harbormaster, devised and adopted plans to
36 improve the Marina, Yacht Basin, and adjoining lands (including mooring fields), and
37 encouraged interconnectivity among the navigable waters and adjoining lands; Now, therefore,



* H 2 0 6 5 - V - 1 *

1 The General Assembly of North Carolina enacts:

2 **SECTION 1.** Definitions. – The following definitions apply in this act:

- 3 (1) Adjoining lands. – The term includes all the lands within the Town's
4 boundaries and extraterritorial jurisdiction that adjoin the navigable waters
5 as defined in subdivision (2) of this section. The term includes the
6 Boardwalk, Freeman Park, Carolina Beach, and Lake Park.
- 7 (2) Navigable waters. – The term includes all of the following: The Atlantic
8 Ocean as it adjoins the Town's beach front and historic Boardwalk; Carolina
9 Beach Inlet, which links the Atlantic Ocean to the Intracoastal Waterway to
10 its north and to Myrtle Grove Sound to its south. The term also includes
11 those navigable waters in the Sound located between (i) a developed
12 peninsula on which Virginia Avenue is located, and (ii) those lands along the
13 west shore of Canal Drive. The Sound waters are further bounded by the
14 Intracoastal Waterway and its right-of-way to its north, Snow's Cut to its
15 west and the Yacht Basin at its southernmost portion; Snow's Cut (a water
16 passage southwest of Carolina Beach Inlet that separates Pleasure Island
17 from the remainder of New Hanover County), which links the Ocean, the
18 Intracoastal Waterway, and Carolina Beach Inlet to the Cape Fear River;
19 Myrtle Grove Sound, which links numerous water bodies – the Cape Fear
20 River, Snow's Cut, the Intracoastal Waterway, Carolina Beach Inlet, and the
21 Atlantic Ocean along the Town's ocean front southward – to the Town's
22 Yacht Basin and Municipal Marina; and the Town's Yacht Basin which is
23 linked to the drainage system that sustains Carolina Beach Lake. The term
24 further includes "Carolina Beach Lake", which is a park and lake located
25 inland along U.S. Highway 421 (South Lake Park Boulevard). The Lake is
26 fed by and drains to navigable waters of the United States. Thus, the U.S.
27 Army Corps of Engineers deems the Lake to be "waters of the United States"
28 under its jurisdiction. The term does not include the Intracoastal Waterway
29 and all areas within its right-of-way.

30 **SECTION 2.** Purpose. – The purposes of this act are to enable the Town of
31 Carolina Beach to do the following, subject to the limitations set forth in Section 4 of this act,
32 as follows:

- 33 (1) To enable the Town to continue its historic functions.
- 34 (2) To enable the Town to act in certain matters currently entrusted to the State,
35 but in a manner concurrent with the State and not inconsistent with State
36 powers.
- 37 (3) To enable the Town to perform acts in exercise of those powers set forth in
38 Section 3.

39 **SECTION 3.** Navigable waters and adjoining lands powers. – The Town of
40 Carolina Beach is authorized to perform all of the following in connection with the navigable
41 waters and adjoining lands, subject to the limitations in Section 4 of this act:

- 42 (1) Exercise the powers of a body corporate, including the power to sue and be
43 sued, and to make contracts with any public or private person or entity,
44 including all necessary contracts and arrangements with any governmental
45 and private entities and persons.
- 46 (2) Develop and implement plans for navigable waters and adjoining land's
47 purposes and to appoint any commissions or other bodies by the Town
48 Council with responsibility for the same, and to take proper actions to
49 further the same.
- 50 (3) Appoint, designate, and hire a harbor master (with all the qualifications and
51 authority of Town law enforcement personnel, and to have any required

1 training and qualifications the Town Council or its designee may designate)
2 to serve at the pleasure of the Town Council, which is the responsible agent
3 to oversee the operation of the Marina and Yacht Basin and enforce
4 applicable town ordinances and matters delegated to the Town by this act.
5 The Town Council may delegate to the harbormaster or any other
6 appropriate body or official to hire any other such personnel to serve under
7 the harbormaster and perform those same acts delegated to the same. The
8 harbormaster, any Town employees or officials and the Town who by their
9 actions in the performance of their duties cause any damage to property or
10 any injury to a person shall not be liable for such damage or injury, unless
11 such is a direct result of their intentional misconduct.

12 (4) Take actions in connection with acquisition, sale, lease, construction,
13 expansion, improvement, maintenance, regulation, and operation of matters
14 in connection with the Marina, the Yacht Basin, Carolina Beach Lake, and
15 adjoining lands, including related piers, wharves, parks, docks, slips, quays,
16 bulkheads, erosion control devices, drainage, boats/water transportation,
17 moorings and mooring fields, boat safety equipment, dredging and channel
18 maintenance equipment, emergency and lifesaving services, fire protection,
19 law enforcement, warehouses, storage, tackle, waste disposal, fueling,
20 parking, recreational related-retail facilities, boat access, pedestrian/motor
21 vehicle/boating traffic control, elevators, compresses, refrigeration storage
22 plants, streets, access ways, navigational devices and equipment and related
23 structures, transportation over and about the navigable waters and adjoining
24 lands, lighting and signage and other structures, and any and all types of
25 facilities, infrastructure and equipment, streets, and other property (real and
26 personal).

27 (5) Establish offices for the transaction of business as, in the opinion of the
28 Town Council, shall be advisable or necessary.

29 (6) Delineate any pier head lines and channel lines.

30 (7) Pay all costs and expenses regarding the navigable waters and adjoining
31 lands.

32 (8) Apply for and accept loans and grants of money for any and all of the
33 purposes authorized by this act, from any sources, and to expend the same in
34 accordance with the directions and requirements imposed by the sources,
35 and to give such evidences of indebtedness as shall be required, provided,
36 however, that no indebtedness of any kind incurred or created by the Town
37 shall constitute an indebtedness of the State and no such indebtedness shall
38 involve or be secured by the faith, credit, or taxing power of the State or any
39 political subdivision thereof, including the Town.

40 (9) Act as an agent for and designated by (i) the United States of America, the
41 County of New Hanover and their respective applicable departments,
42 commissions, divisions, agencies, corporations, or instrumentalities, and (ii)
43 the State regarding any matter within their delegable jurisdiction in
44 connection with the navigable waters and adjoining lands.

45 (10) Adopt, alter, amend, or repeal its own ordinances, policies, rules, and
46 regulations concerning the manner in which navigable waters and adjoining
47 lands – related business may be transacted and operated.

48 (11) Establish and charge various reasonable fees for use of and access to its
49 services, facilities, and infrastructure related to the Marina, Carolina Beach
50 Lake, Yacht Basin, and adjoining lands. The fees being charged shall relate
51 to the actual cost of providing, preserving, maintaining, expanding, and

1 improving the same. In establishing these fees, the Town Council shall
2 consider the costs of providing the services, facilities, infrastructure, and
3 access, Town taxes and fees paid by Town residents used to defray the said
4 costs, the costs of similar services facilities, infrastructure, and access at
5 other similar marinas and beach parks in the South Atlantic region, revenue
6 requirements, and any other factors it considers relevant.

7 (12) Preserve, protect, and manage public access to the navigable waters and
8 adjoining lands and to issue temporary permits for events on the Marina,
9 Lake, Yacht Basin, and adjoining lands, for which the permittee may charge
10 a reasonable fee for entrance to and participation in the event subject to
11 approval as approved by the Town Council.

12 (13) Enforce State public safety, navigation, and fishing laws in connection with
13 conduct and activities at and on the navigable waters and adjoining lands, in
14 a manner consistent with and to the extent the same can be performed by the
15 State.

16 (14) Enforce public safety and welfare ordinances pertaining to recreation,
17 water-related activities, boating, and navigation.

18 (15) Rent, lease, own, acquire, sell, mortgage, otherwise encumber, and dispose
19 of any form of ownership interest in real, personal, and intangible property
20 in accordance with the procedures set forth in Chapter 160A of the General
21 Statutes.

22 (16) Acquire any form of interest in real property by eminent domain pursuant to
23 those procedures set forth in Chapter 40A of the General Statutes.

24 (17) Do any and all other acts and things required to be done to accomplish the
25 purposes of this act, whether or not included in the general powers in this
26 section.

27 **SECTION 4.** This act does not confer upon the Town any of the following:

28 (1) Any power within any exclusive non-delegable jurisdiction of the United
29 States of America, and its applicable departments, commissions,
30 divisions, agencies, corporations, or instrumentalities, nor authorize any act
31 infringing upon the powers of the same.

32 (2) Any non-delegable powers of the State.

33 (3) Any power to issue, modify, or revoke any State permits or licenses unless
34 otherwise expressly delegated to the Town by other applicable State law or
35 action.

36 (4) Any power to act contrary to State law except to the extent otherwise
37 provided by this act.

38 (5) Any exemption from applicable State law.

39 **SECTION 5.** This act is effective when it becomes law.