

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 836\*  
House Committee Substitute Favorable 8/6/09  
House Committee Substitute #2 Favorable 6/10/10

Short Title: Remove Damage Cap/Review Offshore Oil Spills.

(Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

1 AN ACT TO: (1) REMOVE THE CAP ON THE TOTAL RECOVERY BY THE STATE FOR  
2 DAMAGE TO THE PUBLIC RESOURCES AND FOR THE COST OF ANY OIL OR  
3 OTHER HAZARDOUS SUBSTANCES CLEANUP ARISING FROM A DISCHARGE,  
4 CLARIFY THAT THE LIABILITY FOR ALL CLEANUP AND REMOVAL COSTS  
5 AND ALL DIRECT AND INDIRECT DAMAGES INCURRED WITHIN THE  
6 JURISDICTION OF THE STATE INCLUDES DISCHARGES FROM FACILITIES  
7 LOCATED IN THE STATE'S COASTAL FISHING WATERS, AND CLARIFY THE  
8 EXCEPTIONS FOR LIABILITY TO AN INJURED PARTY FOR SUCH DAMAGES; (2)  
9 PROVIDE FOR A REVIEW OF INFORMATION REQUIRED FOR A PROPOSED  
10 OFFSHORE FOSSIL FUEL FACILITY IN ORDER TO DETERMINE CONSISTENCY  
11 WITH STATE GUIDELINES FOR THE COASTAL AREA; (3) DIRECT THE  
12 COASTAL RESOURCES COMMISSION TO REVIEW EXISTING LAWS AND  
13 REGULATIONS THAT PERTAIN TO OFFSHORE ENERGY EXPLORATION AND  
14 PRODUCTION IN LIGHT OF THE EXPLOSION, SINKING, AND SUBSEQUENT OIL  
15 RELEASES FROM THE BRITISH PETROLEUM DEEPWATER HORIZON  
16 OFFSHORE DRILLING RIG; AND (4) DIRECT THE DEPARTMENT OF CRIME  
17 CONTROL AND PUBLIC SAFETY TO IMMEDIATELY REVIEW AND UPDATE THE  
18 STATE OIL SPILL AND CONTINGENCY PLAN IN ORDER TO PREPARE THE  
19 STATE IN THE EVENT PRODUCT RELEASED FROM THE BRITISH PETROLEUM  
20 DEEPWATER HORIZON OFFSHORE DRILLING RIG IS SWEEPED TO THE NORTH  
21 CAROLINA COAST.  
22

23 The General Assembly of North Carolina enacts:

24 **SECTION 1.(a)** G.S. 143-215.89 reads as rewritten:

25 "**§ 143-215.89. Multiple liability for necessary expenses.**

26 Any person liable for costs of cleanup of oil or other hazardous substances under this Part  
27 shall have a cause of action to recover such costs in part or in whole from any other person  
28 causing or contributing to the discharge of oil or other hazardous substances into the waters of  
29 the State, including any amount recoverable by the State as necessary expenses. ~~The total  
30 recovery by the State for damage to the public resources pursuant to G.S. 143-215.90 and for  
31 the cost of oil or other hazardous substances cleanup, arising from any discharge, shall not  
32 exceed the applicable limits prescribed by federal law with respect to the United States  
33 government on account of such discharge."~~

34 **SECTION 1.(b)** G.S. 143-215.94BB reads as rewritten:

35 "**§ 143-215.94BB. Definitions.**



1 In addition to the definitions set out in G.S. 143-215.77, as used in this Part, the following  
2 definitions shall apply:

3 ...

4 (4) "Exploration" means undersea boring, drilling, ~~and soil sampling~~ soil  
5 sampling, and any other technique employed to assess and evaluate the  
6 presence of subterranean oil and natural gas deposits.

7 ...."

8 **SECTION 1.(c)** G.S. 143-215.94CC reads as rewritten:

9 **"§ 143-215.94CC. Liability under this section; exceptions.**

10 (a) Any responsible person shall be strictly liable, notwithstanding any language of  
11 limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect  
12 damages incurred within the territorial jurisdiction of the State by any injured party, which  
13 arise out of, or are caused by, the discharge or leaking of natural gas, oil, or drilling waste into  
14 or onto "coastal fishing waters" as defined in G.S. 113-129(4), or offshore waters, or by any  
15 exploration in or upon coastal fishing or offshore waters, from any of the following sources:

16 (1) Any ~~offshore~~-well or undersea site located in coastal fishing waters at which  
17 there is exploration for or extraction or recovery of natural gas or oil.

18 (2) Any ~~offshore~~-facility, oil rig, or oil platform located in coastal fishing waters  
19 at which there is exploration for, or extraction, recovery, processing, or  
20 storage of, natural gas or oil.

21 (3) Any vessel ~~offshore~~-located in coastal fishing waters in which natural gas,  
22 oil, or drilling waste is transported, processed or stored other than for  
23 purposes of fuel for the vessel carrying it.

24 (4) Any pipeline ~~located offshore~~-located in coastal fishing waters in which  
25 natural gas, oil, or drilling waste is transported.

26 (b) A responsible person is not liable to an injured party under this section for any of  
27 the following:

28 (1) Damages, other than costs of removal incurred by the State or a local  
29 government, caused solely by any act of war, hostilities, civil war, or  
30 insurrection or by an unanticipated grave natural disaster or other act of God  
31 of an exceptional, inevitable, and irresistible character, which could not have  
32 been prevented or avoided by the exercise of due care or foresight.

33 (2) Damages caused solely by the negligence or intentional malfeasance of that  
34 injured party.

35 (3) Damages caused solely by the criminal act of a third party other than the  
36 defendant or an agent or employee of the defendant. In any action arising  
37 under the provisions of this Article wherein this exception is raised as a  
38 defense to liability, the burden of proving that the alleged third-party  
39 intervention occurred in such a manner as to limit the liability of the person  
40 sought to be held liable shall be upon the person charged.

41 (4) Natural seepage not caused by a responsible person.

42 (5) Discharge or leaking of oil or natural gas from a private pleasure boat or  
43 commercial fishing vessel having a fuel capacity of less than 500 gallons.

44 (6) Damages which arise out of, or are caused by, a discharge which is  
45 authorized ~~by~~ by, and in compliance with, a State or federal permit.

46 (7) Damages that could have been reasonably mitigated by the injured party in  
47 accordance with common law.

48 (c) A court of suitable jurisdiction in any action under this Part may award reasonable  
49 costs of the suit and attorneys' fees, and the costs of any necessary expert witnesses, to any  
50 prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any

1 prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit  
2 under this Part in bad faith or solely for purposes of harassing the defendant."

3 **SECTION 2.** Part 4 of Article 7 of Chapter 113A of the General Statutes is  
4 amended by adding a new section to read:

5 **"§ 113A-119.2. Review of offshore fossil fuel facilities.**

6 (a) In addition to the definitions set out in G.S. 113A-103, as used in this section, the  
7 following definitions shall apply:

8 (1) "Coastal fishing waters" has the same meaning as in G.S. 113-129(4).

9 (2) "Discharge" has the same meaning as in G.S. 143-215.77.

10 (3) "Offshore fossil fuel facility" means those facilities which, because of their  
11 size, magnitude, or scope of impacts, have the potential to affect any land or  
12 water use or natural resource of the coastal area. For purposes of this  
13 definition, offshore fossil fuel facilities shall include, but are not limited to:

14 a. Any equipment, including, but not limited to, pipelines and vessels  
15 that are used to carry, transport, or transfer oil, natural gas, liquid  
16 natural gas, liquid propane gas, or synthetic gas.

17 b. Structures, including drill ships and floating platforms and structures  
18 relocated from other states or countries, located in coastal fishing  
19 waters for the purposes of exploration for, or development or  
20 production of, oil or natural gas.

21 c. Onshore support or staging facilities related to exploration for, or  
22 development or production of, oil or natural gas.

23 (4) "Oil" has the same meaning as in G.S. 143-215.77.

24 (b) In addition to any other information necessary to determine consistency with State  
25 guidelines adopted pursuant to G.S. 113A-107, the following information is required for the  
26 review of an offshore fossil fuel facility located in coastal fishing waters:

27 (1) An assessment of the potential for any unauthorized discharge from any  
28 proposed well, including the estimated flow rate, total volume, and  
29 maximum duration of any unauthorized discharge. This assessment shall  
30 address the likelihood of surface intervention procedures to end the  
31 unauthorized discharge, the availability of equipment to drill a relief well,  
32 rig package constraints, and the estimated time it would take to drill a relief  
33 well.

34 (2) A calculation of the volume of oil for the worst-case unauthorized discharge  
35 scenario as applicable:

36 a. For production platforms, calculation of the worst-case unauthorized  
37 discharge scenario shall include all of the following:

38 1. The maximum capacity of all oil storage tanks and flow lines  
39 on the facility. For purposes of this sub-subdivision, flow line  
40 volume may be estimated.

41 2. The volume of any unauthorized discharge of oil from any  
42 pipeline that is connected to the facility, taking into  
43 consideration shutdown time, the effect of hydrostatic  
44 pressure, gravity, frictional wall forces, and any other factors.

45 3. The daily volume from an unauthorized discharge from the  
46 highest capacity well associated with the facility. In  
47 determining the daily volume under this sub-subdivision,  
48 reservoir characteristics, casing and production tubing sizes,  
49 and historical production and reservoir pressure data shall be  
50 considered.

- 1                    b. For exploratory or development operations, the calculation of a  
2                    worst-case unauthorized discharge scenario shall be based upon the  
3                    estimated flow rate, total volume, and maximum duration as  
4                    calculated in subdivision (1) of this subsection.
- 5                    (3) A description of the proposed spill response in the event of an unauthorized  
6                    discharge, including all of the following:
- 7                    a. The response, containment, recovery, and storage equipment to be  
8                    used to contain and recover the unauthorized discharge to the  
9                    maximum extent practicable. This description shall include the types,  
10                   location, owner, quantity, and capabilities of the equipment,  
11                   including the effective daily recovery capacities, where applicable.  
12                   For operations at a drilling or production facility, describe measures  
13                   to address the initial spill volume and the support operations for an  
14                   unauthorized discharge that continues for 30 days or more.
- 15                   b. A description of the personnel, materials, and support vessels that are  
16                   necessary to ensure that the response, containment, recovery, and  
17                   storage equipment described under sub-subdivision a. of this  
18                   subdivision are deployed and operated promptly and effectively.
- 19                   c. A description of oil storage, transfer, and disposal equipment  
20                   including the type, location, owner, quantity, and capacities of the  
21                   equipment.
- 22                   d. For all of the following, an estimate of the amount of time required  
23                   to:
- 24                   1. Procure the response, containment, recovery, and storage  
25                   equipment described in this subdivision.
- 26                   2. Procure the vessels to transport the response, containment,  
27                   recovery, and storage equipment.
- 28                   3. Procure personnel to load and operate the response,  
29                   containment, recovery, and storage equipment and vessels  
30                   described in this subdivision.
- 31                   4. Transfer the response, containment, recovery, and storage  
32                   equipment described in this subdivision to all of the  
33                   transportation vessels.
- 34                   5. Transfer the response, containment, recovery, and storage  
35                   equipment from the equipment storage area to the deployment  
36                   site.
- 37                   6. Deploy all identified response, containment, recovery, and  
38                   storage equipment described in this subdivision.
- 39                   (4) An assessment of the number of jobs lost in tourism, fishing, and other  
40                   affected industries as a result of a worst-case discharge scenario.
- 41                   (5) An assessment of alternatives to the proposed offshore fossil fuel facility  
42                   that would minimize the likelihood of an unauthorized discharge.
- 43                   (6) An assessment of the potential impacts resulting from a worst-case  
44                   unauthorized discharge scenario to coastal resources, including, at a  
45                   minimum: offshore reefs; rock outcrops or hard bottoms; sea turtle nesting  
46                   areas; freshwater and saltwater wetlands; primary or secondary nursery  
47                   areas; essential fish habitats; submerged aquatic vegetation beds; shellfish  
48                   beds; anadromous fish spawning and nursing areas; bird nests and bird  
49                   habitat areas; and artificial reefs, shipwrecks, and submerged archaeological  
50                   resources.

- 1           (7)    An explanation of measures to be employed to prevent or minimize impacts  
2           to the coastal resources listed in subdivision (6) of this subsection in the  
3           event of an unauthorized discharge.
- 4           (8)    A detailed description of any chemical dispersants that may be employed in  
5           response to an unauthorized discharge, including information on the impact  
6           of employing dispersants on coastal resources listed in subdivision (6) of this  
7           subsection. This description shall include a comparison of the toxicity of  
8           available dispersants.
- 9           (9)    An assessment of the potential for an unauthorized discharge to cause  
10          temporary or permanent violations of the federal and State water quality  
11          standards, including the antidegradation policy adopted pursuant to section  
12          303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d))."

13           **SECTION 3.** In light of the recent events pertaining to the British Petroleum  
14 Deepwater Horizon offshore drilling rig, the Coastal Resources Commission shall review  
15 existing statutes and modify existing rules that pertain to offshore energy exploration and  
16 production and make recommendations, if any, to the Environmental Review Commission on  
17 or before October 1, 2011.

18           **SECTION 4.** The Department of Crime Control and Public Safety shall  
19 immediately review the potential impacts of oil leaking from the British Petroleum Deepwater  
20 Horizon offshore drilling rig on the North Carolina coast and shall update the Oil Spill  
21 Contingency Plan, authorized pursuant to G.S. 143-215.94HH, as necessary to ensure the  
22 State's preparedness in the event the oil leaking from the British Petroleum Deepwater Horizon  
23 offshore drilling rig is swept by currents or other mechanisms to the North Carolina coast or the  
24 State's waters. In updating the plan, the Department shall assess the actions that are being  
25 implemented to manage and mitigate economic and environmental impacts resulting from the  
26 spill, determine which solutions have proven successful, identify the best management  
27 practices available to address the impacts, and identify the resources necessary to carry out the  
28 Oil Spill Contingency Plan.

29           **SECTION 5.** This act is effective when it becomes law. Section 1 of this act  
30 applies to any damages, as defined in G.S. 143-215.94BB, that occur on or after that date.