

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 977

Marine Resources & Wildlife Committee Substitute Adopted 5/11/89

Short Title: Offshore Oil Impact Protection.

(Public)

Sponsors:

Referred to:

April 19, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT NORTH CAROLINA COASTAL RESOURCES FROM
3 POTENTIAL ADVERSE IMPACTS OF OFFSHORE OIL AND GAS
4 ACTIVITIES.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143-215.77 reads as rewritten:

7 "§ 143-215.77. Definitions.

8 As used in this Article, unless the context otherwise requires:

- 9 (1) 'Barrel' shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
- 10 (2) 'Commission' means the North Carolina Environmental
11 Management Commission.
- 12 (3) 'Secretary' shall mean the North Carolina Secretary of Natural
13 Resources and Community Development.
- 14 (4) 'Discharge' shall mean, but shall not be limited to, any emission,
15 spillage, leakage, pumping, pouring, emptying, or dumping of oil or
16 other hazardous substances into ~~waters,~~ waters of the State or into
17 waters outside the territorial limits of the State which affect lands,
18 waters or uses related thereto within the territorial limits of the State,
19 or upon land in such proximity to waters that oil or other hazardous
20 substances is reasonably likely to reach the waters, but shall not
21 include amounts less than quantities which may be harmful to the
22 public health or welfare as determined pursuant to G.S. 143-215.77A;
23 provided, however, that this Article shall not be construed to prohibit

1 the oiling of driveways, roads or streets for reduction of dust or routine
2 maintenance; provided further, that the use of oil or other hazardous
3 substances, oil-based products, or chemicals on the land or waters by
4 any State, county, or municipal government agency in any program of
5 mosquito or other pest control, or their use by any person in accepted
6 agricultural, horticultural, or forestry practices, or in connection with
7 aquatic weed control or structural pest and rodent control, in a manner
8 approved by the State, county, or local agency charged with authority
9 over such uses, shall not constitute a discharge; provided, further, that
10 the use of a pesticide regulated by the North Carolina Pesticide Board
11 in a manner consistent with the labelling required by the North
12 Carolina Pesticide Law shall not constitute a 'discharge' for purposes
13 of this Article. The word 'discharge' shall also include any discharge
14 upon land, whether or not in proximity to waters, which is intentional,
15 knowing or willful.

16 (5) 'Having control over oil or other hazardous substances' shall mean, but
17 shall not be limited to, any person, using, transferring, storing, or
18 transporting oil or other hazardous substances immediately prior to a
19 discharge of such oil or other hazardous substances onto the land or
20 into the waters of the State, and specifically shall include carriers and
21 bailees of such oil or other hazardous substances.

22 (5a) 'Hazardous substance' shall mean any substance, other than oil, which
23 when discharged in any quantity may present an imminent and
24 substantial danger to the public health or welfare, as designated
25 pursuant to G.S. 143-215.77A.

26 (6) Repealed by Session Laws 1979, c. 981, s. 5.

27 (7) 'Department' shall mean the Department of Natural Resources
28 and Community Development.

29 (8) 'Oil' shall mean oil of any kind and in any form, including, but
30 specifically not limited to, petroleum, crude oil, diesel oil, fuel oil,
31 gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil
32 sludge, petroleum related products or by-products, and all other liquid
33 hydrocarbons, regardless of specific gravity, whether singly or in
34 combination with other substances.

35 (9) 'Bailee' shall mean any person who accepts oil or other hazardous
36 substances to hold in trust for another for a special purpose and for a
37 limited period of time.

38 (10) 'Carrier' shall mean any person who engages in the transportation of
39 oil or other hazardous substances for compensation.

40 (11) 'Oil terminal facility' shall mean any facility of any kind and related
41 appurtenances located in, on or under the surface of any land, or water,
42 including submerged lands, which is used or capable of being used for
43 the purpose of transferring, transporting, storing, processing, or
44 refining oil; but shall not include any facility having a storage capacity

1 of less than 500 barrels, nor any retail gasoline dispensing operation
2 serving the motoring public. A vessel shall be considered an oil
3 terminal facility only in the event that it is utilized to transfer oil from
4 another vessel to an oil terminal facility; or to transfer oil between one
5 oil terminal facility and another oil terminal facility; or is used to store
6 oil.

7 (12) 'Operator' shall mean any person owning or operating an oil terminal
8 facility or pipeline, whether by lease, contract, or any other form of
9 agreement.

10 (13) 'Person' shall mean any and all natural persons, firms, partnerships,
11 associations, public or private institutions, municipalities or political
12 subdivisions, governmental agencies, or private or public corporations
13 organized or existing under the laws of this State or any other state or
14 country.

15 (14) 'Pipeline' shall mean any conduit, pipe or system of pipes, and any
16 appurtenances related thereto and used in conjunction therewith, used,
17 or capable of being used, for transporting or transferring oil to, from,
18 or between oil terminal facilities.

19 (15) 'Restoration' or 'restore' shall mean any activity or project undertaken
20 in the public interest or to protect public interest or to protect public
21 property or to promote the public health, safety or welfare for the
22 purpose of restoring any lands or waters affected by an oil or other
23 hazardous substances discharge as nearly as is possible or desirable to
24 the condition which existed prior to the discharge.

25 (16) 'Transfer' shall mean the transportation, on-loading or off-loading of
26 oil or other hazardous substances between or among two or more oil
27 terminal facilities; between or among oil terminal facilities and
28 vessels; and between or among two or more vessels.

29 (17) 'Vessel' shall include every description of watercraft or other
30 contrivance used, or capable of being used, as a means of
31 transportation on water, whether self-propelled or otherwise, and shall
32 include, but shall not be limited to, barges and tugs; provided that the
33 term 'vessel' as used herein shall not apply to any pleasure, sport or
34 commercial fishing vessel which has a fuel capacity of less than 500
35 gallons and is not used to transport petroleum, petroleum products, or
36 general cargo.

37 (18) 'Waters' shall mean any stream, river, creek, brook, run, canal, swamp,
38 lake, sound, tidal estuary, bay, reservoir, ~~waterway~~waterway, ~~wetlands~~,
39 or any other body or accumulation of water, surface or underground,
40 public or private, natural or artificial, which is contained within, flows
41 through, or borders upon this State, or any portion thereof, including
42 those portions of the Atlantic Ocean over which this State has
43 jurisdiction."

44 Sec. 2. G.S. 143-215.84 reads as rewritten:

1 ♦"§ 143-215.84. Removal of prohibited discharges.

2 (a) Person Discharging. – Any person having control over oil or other hazardous
3 substances discharged in violation of this Article shall immediately undertake to collect
4 and remove the discharge and to restore the area affected by the discharge as nearly as
5 may be to the condition existing prior to the discharge. If it is not feasible to collect and
6 remove the discharge, the person responsible shall take all practicable actions to
7 contain, treat and disperse the discharge; but no chemicals or other dispersants or
8 treatment materials which will be detrimental to the environment or natural resources
9 shall be used for such purposes unless they shall have been previously approved by the
10 Commission.

11 (b) Removal by Department. – Notwithstanding the requirements of subsection
12 (a) of this section, the Department is authorized and empowered to utilize any staff,
13 equipment and materials under its control or supplied by other cooperating State or local
14 agencies and to contract with any agent or contractor that it deems appropriate to take
15 such actions as are necessary to collect, investigate, perform surveillance over, remove,
16 contain, treat or disperse oil or other hazardous substances discharged onto the land or
17 into the waters of the State and to perform any necessary restoration. The Secretary
18 shall keep a record of all expenses incurred in carrying out any project or activity
19 authorized under this section, including actual expenses incurred for services performed
20 by the State's personnel and for use of the State's equipment and material. The authority
21 granted by this subsection shall be limited to projects and activities that are designed to
22 protect the public interest or public property, and shall be compatible with the National
23 Contingency Plan established pursuant to the Federal Water Pollution Control Act, as
24 amended, 33 U.S.C. section 1251 **et seq.**

25 ~~(c) The Secretary of the Department of Transportation is authorized and~~
26 ~~empowered, after consultation with the Secretary [of Natural Resources and Community~~
27 ~~Development] to purchase and equip a sufficient number of trucks designed to carry out~~
28 ~~the provisions of subsection (b). These trucks shall be maintained by the Department of~~
29 ~~Transportation and shall be strategically located at various locations throughout the~~
30 ~~State so as to furnish a ready response when word of an oil or other hazardous~~
31 ~~substances discharge has been received. The Secretary [of the Department of Natural~~
32 ~~Resources and Community Development] or his designee will, after consultation, decide~~
33 ~~where the trucks are to be located.~~

34 ~~(d) The Secretary of the Department of Transportation and the Secretary [of the~~
35 ~~Department of Natural Resources and Community Development] or their designees~~
36 ~~shall adopt rules for the placement of these trucks and shall determine the manner and~~
37 ~~way in which they are to be used. The Secretary [of the Department of Natural~~
38 ~~Resources and Community Development] shall reimburse the Department of~~
39 ~~Transportation for expenses incurred by the Department of Transportation during~~
40 ~~cleanups as provided in G.S. 143-215.88."~~

41 Sec. 3. G.S. 143-215.86 reads as rewritten:

42 **"§ 143-215.86. Other State agencies and State-designated local agencies.**

43 (a) ~~Cooperative Effort. — The Board of Transportation, the North Carolina~~
44 ~~Wildlife Resources Commission, and any other agency of this State and any local~~

1 agency designated by the State shall cooperate with and lend assistance to the
2 Commission by assigning to the Commission upon its request personnel, equipment and
3 material to be utilized in any project or activity related to the containment, collection,
4 dispersal or removal of oil or other hazardous substances discharged upon the land or
5 into the waters of this State.

6 (b) Planning. — Subsequent to May 16, 1973, and prior to September 1, 1973, The
7 State Emergency Response Commission shall be responsible for developing a program,
8 including training, for the waters of the State, including offshore marine waters, to
9 enable the State to respond to an emergency oil or other hazardous substances spillage.
10 In carrying out its duties under this section, designated representatives of the
11 Commission, State Emergency Response Commission, the Board of Transportation, and
12 the Wildlife Resources Commission—Commission, the Environmental Management
13 Commission, the Division of Marine Fisheries, the Outer Continental Shelf Lands
14 Office of the Department of Administration, and any other agency or agencies of the
15 State which the Commission—State Emergency Response Commission shall deem
16 necessary and appropriate, shall confer and establish plans and procedures for the
17 assignment and utilization of personnel, equipment and material to be used in carrying
18 out the purposes of this Part. Every State agency involved is authorized to adopt such
19 rules as shall be necessary to effectuate the purposes of this section.

20 (c) Accounts. — ~~Every State agency or other State designated local agency~~
21 ~~participating in the containment, collection, dispersal or removal of an oil or other~~
22 ~~hazardous substances discharge or in restoration necessitated by such discharge, shall~~
23 ~~keep a record of all expenses incurred in carrying out any such project or activity~~
24 ~~including the actual services performed by the agency's personnel and the use of the~~
25 ~~agency's equipment and material. A copy of all records shall be delivered to the~~
26 ~~Commission upon completion of the project or activity.~~

27 (b) Cooperative Effort. — The Board of Transportation, the North Carolina
28 Wildlife Resources Commission, the Division of Marine Fisheries, and any other
29 agency of this State and any local agency designated by the State shall cooperate with
30 and lend assistance to the Commission by assigning to the Commission upon its request
31 personnel, equipment, and material to be utilized in any project or activity related to the
32 containment, collection, dispersal, or removal of oil or other hazardous substances
33 discharged upon the land or discharged into waters affecting this State.

34 (c) Trucks. — The Secretary of the Department of Transportation may, after
35 consultation with the Secretary of Natural Resources and Community Development,
36 purchase and equip a sufficient number of trucks designed to carry out the provisions of
37 subsection (b) of this section. These trucks shall be maintained by the Department of
38 Transportation and shall be strategically located at various locations throughout the
39 State so as to furnish a ready response when word of an oil or other hazardous
40 substances discharge has been received. The Secretary of the Department of Natural
41 Resources and Community Development or his designee will, after consultation, decide
42 where the trucks are to be located.

43 (d) Rules. — The Secretary of the Department of Transportation and the Secretary
44 of the Department of Natural Resources and Community Development or their

1 designees shall adopt rules for the placement of these trucks and shall determine the
2 manner and way in which they are to be used. The Secretary of the Department of
3 Natural Resources and Community Development shall reimburse the Department of
4 Transportation for expenses incurred by the Department of Transportation during
5 cleanups as provided in G.S. 143-215.88.

6 (e) **Accounts.** – Every State agency or other State-designated local agency
7 participating in the containment, collection, dispersal, or removal of an oil or other
8 hazardous substances discharge or in restoration necessitated by such discharge, shall
9 keep a record of all expenses incurred in carrying out any such project or activity
10 including the actual services performed by the agency's personnel and the use of the
11 agency's personnel and the use of the agency's equipment and material. A copy of all
12 records shall be delivered to the Commission upon completion of the project or
13 activity."

14 Sec. 4. G.S. 143-215.87 reads as rewritten:

15 **"§ 143-215.87. Oil or Other Hazardous Substances Pollution Protection Fund.**

16 There is hereby established under the control and direction of the Department an Oil
17 or Other Hazardous Substances Pollution Protection Fund which shall be a nonlapsing,
18 revolving fund consisting of any moneys appropriated for such purpose by the General
19 Assembly or that shall be available to it from any other source. The moneys shall be
20 used to defray the expenses of any project or program for the containment, collection,
21 dispersal or removal of oil or other hazardous substances discharged to the land or
22 waters of this ~~State~~ State, or discharged into waters outside the territorial limits of the
23 State which affect land and waters or related uses within the State, or for restoration
24 necessitated by the discharge. In addition to any moneys that shall be appropriated or
25 otherwise made available to it, the fund shall be maintained by fees, charges, penalties
26 or other moneys paid to or recovered by or on behalf of the Department under the
27 provisions of this Part. Any moneys paid to or recovered by or on behalf of the
28 Department as fees, charges, penalties or other payments as damages authorized by this
29 Part shall be paid to the Oil or Other Hazardous Substances Pollution Protection Fund in
30 an amount equal to the sums expended from the fund for the project or activity. Within
31 the meaning of this section, the word 'penalties' means civil penalties and does not
32 include criminal fines or penalties."

33 Sec. 5. A new Part is added to Article 21A of Chapter 143 of the General
34 Statutes to read as follows:

35 **"PART 2B. OFFSHORE OIL AND GAS ACTIVITIES.**

36 **"ADVERSE ENVIRONMENTAL IMPACT PROTECTION.**

37 **"§ 143-215.94N. Declaration of public policy.**

38 The General Assembly hereby finds and declares as follows:

- 39 (1) The traditional uses of the seacoast of the State are public and private
40 recreation, commercial and sports fishing, and habitat for natural
41 resources;
42 (2) The preservation of these uses is a matter of the highest urgency and
43 priority, and such uses can only be preserved effectively by
44 maintaining and enhancing the existing condition of the coastal waters,

1 estuaries, wetlands, tidal flats, beaches, and public lands adjoining the
2 seacoast;

3 (3) The coastal economy, including access to the coast of the State,
4 depends, either directly or indirectly, upon a ready and continuous
5 reserve of petroleum products and by-products, including that portion
6 of the supply resulting from oil and gas activities on the Outer
7 Continental Shelf;

8 (4) Offshore oil and natural gas exploration, production, processing,
9 recovery, and transportation pose increased potential for damage to the
10 State's coastal environment, to the traditional uses of the area, and to
11 the beauty of the North Carolina coast;

12 (5) Spills, discharges, and escapes of pollutants occurring as a result of
13 procedures involving offshore oil and natural gas related activities
14 have occurred in the past, and future threats of potentially catastrophic
15 proportions from such activities require adoption of this Part as
16 mitigation against such events;

17 (6) The economic burdens imposed by the General Assembly upon those
18 engaged in the offshore exploration, production, processing, recovery,
19 and transportation of oil and natural gas are reasonable and necessary
20 in light of the traditional uses and interests herein protected, which are
21 expressly declared to be of grave public interest and concern to the
22 State in promoting its general interest and welfare promoting the
23 public health, preventing diseases, and providing for the public safety.

24 **"§ 143-215.94O. Definitions.**

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

27 (1) 'Damages' are damages for any of the following:

28 a. Injury or harm to real or personal property, which includes the
29 cost of restoring, repairing, or replacing any real or personal
30 property damaged or destroyed by a discharge under this
31 section, any income lost from the time such property is
32 damaged to the time such property is restored, repaired, or
33 replaced, and any reduction in value of such property caused by
34 such discharge by comparison with its value prior thereto.

35 b. Business loss, including loss of income or impairment of
36 earning capacity due to damage to real or personal property or
37 to damage or destruction of natural resources upon which such
38 income or earning capacity is reasonably dependent.

39 c. Interest on loans obtained or other financial obligations incurred
40 by an injured party for the purpose of ameliorating the adverse
41 effects of a discharge pending the payment of a claim in full as
42 provided by this Article.

43 d. Costs of cleanup, removal, or treatment of natural gas, oil, or
44 drilling waste discharges.

- 1 e. Costs of restoration, rehabilitation, and, where possible,
2 replacement of wildlife or other natural resources damaged as a
3 result of a discharge.
- 4 f. When the injured party is the State or one of its political
5 subdivisions, in addition to any injury described in
6 subparagraphs (a) to (e), inclusive, damages include all of the
7 following:
- 8 1. Injury to natural resources or wildlife, including
9 recreational or commercial fisheries, and loss of use and
10 enjoyment of public beaches and other public resources
11 or facilities within the jurisdiction of the State or one of
12 its political subdivisions.
- 13 2. Costs to assess damages to natural resources, wildlife, or
14 habitat.
- 15 3. Costs incurred to monitor the cleanup of the natural gas,
16 oil, or drilling waste spilled.
- 17 4. Loss of State or local government tax revenues resulting
18 from damages to real or personal property proximately
19 resulting from a discharge.
- 20 (2) For the purposes of this Part, 'oil' and 'drilling wastes' include, but are
21 not limited to: petroleum, refined or processed petroleum, petroleum
22 by-products, oil sludge, oil refuse, oil mixed with wastes and
23 chemicals, or other materials used in the exploration, recovery, or
24 processing of oil. 'Oil' does not include oil carried in a vessel for use
25 as fuel in that vessel.
- 26 (3) 'Natural gas' includes natural gas, liquefied natural gas, and natural gas
27 by-products. 'Natural gas' does not include natural gas carried in a
28 vessel for use as fuel in that vessel.
- 29 (4) 'Exploration' means undersea boring, drilling, and soil sampling.
- 30 (5) 'Injured party' means any person who suffers damages from natural
31 gas, oil, or drilling waste which is discharged or leaks into marine
32 waters, or from offshore exploration. The State, or a county or
33 municipality, may be an injured party.
- 34 (6) 'Responsible person' means any of the following:
- 35 a. The owner or transporter of natural gas, oil, or drilling waste
36 which causes an injury covered by this Part.
- 37 b. The owner, operator, lessee of, or person who charters by
38 demise, any offshore well, undersea site, facility, oil rig, oil
39 platform, vessel, or pipeline which is the source of natural gas,
40 oil, drilling waste, or is the source or location of exploration
41 which causes an injury covered by this Part.
- 42 'Responsible party' does not include the United States, the State,
43 any county, municipality or public governmental agency; however,

1 this exception to the definition of 'responsible person' shall not be read
2 to exempt utilities from the provisions of this Part.

3 (7) 'Offshore waters' shall include both the territorial sea extending
4 seaward from the coastline of North Carolina to the State and federal
5 boundary, and United States jurisdictional waters of the Atlantic
6 Ocean adjacent to the territorial sea of the State.

7 (8) 'Natural resources' shall include 'marine and estuarine resources' and
8 'wildlife resources' as those terms are defined in G.S. 113-129(11) and
9 G.S. 113-129(17), respectively.

10 **"§ 143-215.94P. Liability under this section; exceptions.**

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

18 (1) Any offshore well or undersea site at which there is exploration for or
19 extraction or recovery of natural gas or oil.

20 (2) Any offshore facility, oil rig, or oil platform at which there is
21 exploration for, or extraction, recovery, processing, or storage of,
22 natural gas or oil.

23 (3) Any vessel offshore in which natural gas, oil, or drilling waste is
24 transported, processed or stored other than for purposes of fuel for the
25 vessel carrying it.

26 (4) Any pipeline located offshore in which natural gas, oil, or drilling
27 waste is transported.

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

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

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

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

- 1 (4) Natural seepage not caused by a responsible person.
2 (5) Discharge or leaking of oil or natural gas from a private pleasure boat
3 or commercial fishing vessel having a fuel capacity of less than 5,000
4 gallons.
5 (6) Damages which arise out of, or are caused by, a discharge which is
6 authorized by a State or federal permit.
7 (7) Damages that could have been mitigated by the injured party in
8 accordance with common law.

9 (c) A court of suitable jurisdiction in any action under this Part may award
10 reasonable costs of the suit and attorneys' fees, and the costs of any necessary expert
11 witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit
12 and attorneys' fees to any prevailing defendant only if the court finds that the plaintiff
13 commenced or prosecuted the suit under this Part in bad faith or solely for purposes of
14 harassing the defendant.

15 **"§ 143-215.94Q. Joint and several liability; damages; personal injury.**

16 (a) Liability under this Part shall be joint and several. However, this section does
17 not bar a cause of action that a responsible person has or would have, by reason of
18 subrogation or otherwise, against any person.

19 (b) This section does not prohibit any person from bringing an action for
20 damages caused by natural gas, oil or drilling waste, or by exploration, under any other
21 provisions or principle of law, including, but not limited to, common law. However,
22 damages shall not be awarded pursuant to this section to an injured party for any loss or
23 injury for which the party is or has been awarded damages under any other provisions or
24 principles of law. G.S. 143-215.94P(b) does not create any defense not otherwise
25 available regarding any action brought under any other provision or principle of law,
26 including, but not limited to, common law.

27 (c) This section shall not apply to claims for damages for personal injury or
28 wrongful death, and does not limit the right of any person to bring such an action under
29 any provision or theory of law.

30 **"§ 143-215.94R. Removal of prohibited discharges.**

31 (a) The Department shall be authorized and empowered to proceed with the
32 cleanup of discharges covered under this Part pursuant to the authority granted to the
33 Department in G.S. 143-215.84(b) and G.S. 143-215.94U(b)(2).

34 (b) Any unexplained discharge of oil, natural gas or drilling wastes occurring in
35 waters beyond the jurisdiction of the State that for any reason penetrates within State
36 jurisdiction shall be removed by or under the direction of the Department. Except for
37 any expenses incurred by the responsible person, should such person become known, all
38 expenses incurred in the removal of such discharges shall be paid promptly by the State
39 from the 'Oil and Other Hazardous Substances Pollution Protection Fund' established
40 pursuant to G.S. 143-215.87 or from any other available sources. In the case of
41 unexplained discharges, the matter shall be referred by the Secretary to the North
42 Carolina Attorney General for collection of damages pursuant to G.S. 143-215.94S of
43 this Part. At his discretion, the Attorney General may refer the matter to the State

1 Bureau of Investigation or other appropriate State or federal authority to determine the
2 identity of the responsible person.

3 (c) Nothing in this section is intended to preclude cleanup and removal by any
4 person threatened by such discharges, who, as soon as is reasonably possible,
5 coordinates and obtains approval for such actions with ongoing State or federal
6 operations and appropriate State and federal authorities.

7 (d) No action taken by any person to contain or remove an unlawful discharge
8 shall be construed as an admission of liability for said discharge.

9 **"§ 143-215.94S. Authorization of the Attorney General; citizens' suits.**

10 (a) For any violation of this Part, the Attorney General may, on behalf of the
11 State and on behalf of affected citizens of the State as a class, bring a civil action in the
12 Superior Court of Wake County against the alleged responsible person. The action may
13 seek:

14 (1) Injunctive relief; or

15 (2) Damages caused by the violation; or

16 (3) Both damages and injunctive relief; or

17 (4) Such other and further relief in the premises as the Court shall deem
18 proper.

19 (b) Any injured party under this Part may bring a civil action for damages against
20 the alleged responsible person. Civil actions under this subsection shall be brought in
21 the superior court of the county in which the alleged injury occurred or in which the
22 alleged damaged property is located, or in the county in which the injured party resided.

23 (c) Nothing in this section shall restrict any right which any person (or class of
24 persons) may have under any statute or common law to seek injunctive or other relief.

25 **"§ 143-215.94T. Notification by persons responsible for discharge.**

26 (a) Any person responsible for an offshore discharge under this Part shall
27 immediately notify the Division of Emergency Management pursuant to rules
28 established by the Secretary of Crime Control and Public Safety, if any, but in no case
29 later than two hours after the discharge. Failure to so notify the Division of Emergency
30 Management shall make the responsible person liable to the penalties set out in
31 subsection (b) of this section. No penalty shall be imposed under this section when the
32 owner or operator has promptly reported the discharge to federal authorities designated
33 pursuant to 33 U.S.C. § 1321.

34 (b) The civil penalty for failure to immediately report a discharge under this Part
35 shall be determined by the Commission. In determining the amount of a penalty for
36 failure to report under this section, the Commission shall take into consideration such
37 circumstances as the gravity of the violation, the previous record of the responsible
38 person in complying with the terms of this Article, whether the violator reported the
39 discharge and if so after what period of time following the spill, the size of the business
40 of the responsible person and the effect of the penalty on the violator's ability to
41 continue in business, and other relevant factors; provided that the penalty assessed
42 under this section shall not exceed the following daily maximum amounts, based upon
43 the quantity of oil spilled:

44 (1) Up to 50,000 gallons \$ 50,000

1 (2) More than 50,000 gallons. 250,000
2 For purposes of this section, each day or any part thereof during which a discharge goes
3 unreported by the responsible person shall constitute a separate offense.

4 **"§ 143-215.94U. Oil spill contingency plan.**

5 (a) The State Emergency Response Commission, in consultation with the
6 Secretary of Administration or his designee in the Outer Continental Shelf Lands
7 Office, shall develop a State oil spill contingency plan relating solely to the undersea
8 exploration, extraction, production and transport of oil or natural gas in the marine
9 environment off the North Carolina coast, including any such development on the Outer
10 Continental Shelf seaward of the State's jurisdiction over its territorial waters.

11 (b) The Secretary of Crime Control and Public Safety or his designee shall
12 establish, pursuant to such a plan, an emergency oil spill control network which shall be
13 comprised of available equipment from appropriate State, county and municipal
14 governmental agencies. Such network shall be employed to provide an immediate
15 response to an oil discharge into the offshore marine environment which is reasonably
16 likely to affect the State's coastal waters. Furthermore, such network shall be employed
17 in conjunction with the cleanup operations under this Article or any applicable federal
18 law, required of the owner or operator of the discharging operation, vessel, or facility,
19 the Department of Natural Resources and Community Development, and any federal
20 agency.

21 (1) The Secretary of Crime Control and Public Safety or his designee shall
22 make an inventory, including its location and condition, of all
23 equipment owned by the State, its counties and municipalities, and
24 private equipment that is available to the State for leasing in the case
25 of an oil spill including costs of leasing, that would be capable of
26 participating in discharge cleanup operations.

27 (2) The Secretary of Crime Control and Public Safety shall at his
28 discretion have the power to deploy such equipment in participating in
29 a discharge cleanup operation.

30 (3) The Secretary of Natural Resources and Community Development
31 shall be authorized to reimburse such State agencies, counties, and
32 municipalities for use of such equipment with such funds as may be
33 available from the 'Oil or Other Hazardous Substances Pollution
34 Protection Fund' created pursuant to G.S. 143-215.87 or any other
35 sources.

36 (4) The oil spill contingency plan and oil spill response network
37 developed pursuant to this section shall be reviewed and evaluated for
38 adequacy and continued feasibility every three years, or more often if
39 deemed appropriate by the Secretary of Crime Control and Public
40 Safety.

41 **"§ 143-215.94V. Emergency proclamation; Governor's powers.**

42 (a) Whenever any emergency exists or appears imminent, arising from the
43 discharge of oil or other pollutants within the marine environment, the Governor shall
44 by proclamation declare the fact and that a state of emergency exists in the appropriate

1 sections of the State. Upon such proclamation, the Governor shall have all powers
2 enumerated in G.S. 14-288.15, subject to the provisions of G.S. 14-288.16.

3 (b) If the Governor is unavailable, the Lieutenant Governor shall, by
4 proclamation, declare the fact and that a state of emergency exists in the appropriate
5 sections of the State.

6 (c) In performing his duties under this section, the Governor is authorized and
7 directed to cooperate with all departments and agencies of the federal government, the
8 offices and agencies of other states and foreign countries and the political subdivisions
9 thereof, and private agencies in all matters pertaining to an emergency described herein.

10 (d) In addition to the powers enumerated in G.S. 14-288.15, in the case of such
11 an emergency described in subsection (a) of this section, the Governor is further
12 authorized and empowered to transfer any funds available to him by statute for
13 emergency use into the 'Oil and Other Hazardous Substances Pollution Protection Fund'
14 created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein.

15 **"§ 143-215.94W. Federal law.**

16 Nothing in this Part shall authorize State agencies to impose any duties or
17 obligations in conflict with limitations on State authority established by federal law at
18 the time such agency action is taken. Likewise, no additional liability is established by
19 this Part to the extent that, at the time of the injury, federal law establishes limits on
20 liability which preempt State law."

21 Sec. 6. This act is effective upon ratification.