

## **S10 Implications for the Division of Coastal Management and Federal Funding**

- North Carolina is one of 34 coastal states and territories participating in the National Coastal Zone Management Program in partnership with the National Oceanic and Atmospheric Administration (NOAA) under the federal Coastal Zone Management Act of 1972 (CZMA).
  - This federal program allows each state to develop a management framework and coastal policies that are tailored to its unique resources, issues, and priorities.
  - Participation in the program results in approximately \$2.5 million in federal grants annually under the CZMA, as well as an important provision that all federal activities and permits issued in North Carolina’s 20 coastal counties be consistent with state coastal policies.
- The North Carolina coastal management program is administered by the DENR Division of Coastal Management (DCM).
  - The program was approved by NOAA in 1978 based on an extensive federal review process and Environmental Impact Statement in accordance with the National Environmental Policy Act (NEPA).
  - Subsequent program amendments, modifications, or other changes must be reviewed and approved by NOAA, and are categorized as either “Routine Program Changes” or “Program Amendments,” depending on which aspects of the program are being modified (15 CFR 923; 16 USC §1455(e)).
- Since original program approval, changes to the North Carolina Coastal Area Management Act and administrative rules for coastal development have generally been considered as Routine Program Changes. S10 changes the membership makeup and the conflict of interest standards for the CRC. Based on preliminary consultations with NOAA, the proposed changes to the Coastal Resources Commission in S10 will likely be considered as a “Program Amendment” based on a substantial change to “authorities and organization.”
- Program amendment requests must be submitted to NOAA by the governor of a coastal state or by the head of the designated state coastal management agency. Amendment requests must include the following:
  - A description of the proposed change, including specific pages and text of the management program that are proposed for amendment;
  - An explanation of why the program change is necessary and appropriate, including a detailed analysis of the effects of the change on the approvability of the program.
  - A copy of the public notice(s) announcing the public hearing(s) on the proposed amendment. The state must hold at least one public hearing on the proposed amendment, pursuant to CZMA section 306 (d) (4). The notice must precede the hearing by at least 30 days. The state’s public hearing may be concurrent with NOAA’s review.
  - A summary of the hearing(s).

- Documentation of opportunities provided relevant federal (including appropriate federal regional offices), state, regional, and local agencies, port authorities, and other public and private parties to participate in the development and approval of the amendment at the state level (prior to submission to OCRM as an amendment).
- NOAA reviews amendment requests in accordance with 15 CFR 923.82. This includes:
  - 30-day Preliminary Review to determine whether the coastal management program would still be “approvable.”
  - If not, the state can modify its request.
  - If considered “approvable” on a preliminary basis, NOAA determines whether a new Environmental Impact Statement (EIS) will be necessary.
    - In this case, NOAA works with state to develop and distribute draft EIS in accordance with NEPA
  - If an EIS is not necessary, NOAA will work with the state to prepare an Environmental Assessment (EA) in accordance with NEPA
    - An EA determines either a Finding of No Significant Impact (FONSI) or that an EIS must be prepared.
  - Final NOAA approval must be published in Federal Register.
- **The central questions are whether NOAA would consider S10 as a Routine Program Change or a Program Amendment; and whether NOAA would eventually approve the program amendment.**
  - In any case, the proposed bill will result in a significant level of public review and extensive reviews by a range of state and federal agencies.
  - NOAA could suspend all or part of NC grant funds under the CZMA during its review, but DCM anticipates that this is unlikely to occur.
  - Given the relatively flexible nature of the federal Coastal Zone Management Act, we would not anticipate that the changes proposed in SB 10 would result in eventual NOAA disapproval and NC’s withdrawal from the national program.
    - Still, this is ultimately a federal decision so there is no guarantee that S10 will not jeopardize program approval.