

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

5

SENATE BILL 52*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 2/7/95

House Committee Substitute Favorable 5/3/95

House Committee Substitute #2 Favorable 6/14/95

House Committee Substitute #3 Favorable 6/29/95

Short Title: State-Owned Submerged Lands.

(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS OF CHAPTER 146 CONCERNING
SUBMERGED LANDS OR LANDS COVERED BY NAVIGABLE WATERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-1 reads as rewritten:

"§ 146-1. Intent of Subchapter.

(a) It is the purpose and intent of this Subchapter to vest in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State as hereinafter provided, responsibility for the management, control and disposition of all vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands, title to which is vested in the State or in any State agency, to be exercised subject to the provisions of this Subchapter.

(b) Further, it is the intent of this Subchapter to establish within the Department, a method for obtaining easements for State-owned submerged lands or lands covered by navigable waters that includes compensation, recognizes the common law rights of

1 riparian or littoral property owners, and balances those rights with the State's obligation
2 to protect public trust rights for all of its citizens. The North Carolina General Assembly
3 finds that the State is financially unable to provide the necessary access for its citizens to
4 exercise public trust rights and, therefore, recognizes the role that publicly and privately
5 owned piers, docks, wharves, marinas, and other structures located in or over submerged
6 lands or lands covered by navigable waters generally serve in furthering public trust
7 purposes including:

- 8 (1) Providing citizens with access and ability to exercise public trust
9 boating, fishing, and swimming activities;
- 10 (2) Enhancing the value of appurtenant upland property values with the
11 resulting increased collection of ad valorem taxes;
- 12 (3) Enhancing coastal tourism; and
- 13 (4) Increasing local participation in boating and fishing activities with the
14 resulting increase in taxes paid for fuel, fishing tackle, boat equipment,
15 and imported boats and motors which taxes contribute to the sound
16 economy of the State, and some of which are paid into the federal
17 Wallop-Breaux Fund for redistribution to the State for water resource
18 enhancements and water access improvements."

19 Sec. 2. G.S. 146-12 reads as rewritten:

20 **"§ 146-12. Easements in lands covered by water.**

21 (a) The Department of Administration may grant, to adjoining riparian or littoral
22 owners, easements in lands covered by navigable waters or by the waters of any lake
23 owned by the State for such purposes and upon such conditions as it may deem proper,
24 with the approval of the Governor and Council of State. The Department may, with the
25 approval of the Governor and Council of State, revoke any such easement upon the
26 violation by the grantee or his assigns of the conditions upon which it was granted.

27 Every such easement shall include only the front of the tract owned by the riparian or
28 littoral owner to whom the easement is granted, shall extend no further than the deep
29 water, and shall in no respect obstruct or impair navigation.

30 When any such easement is granted in front of the lands of any incorporated town, the
31 governing body of the town shall regulate the line on deep water to which wharves may
32 be built.

33 (b) Easements Not Requiring Approval by the Governor or Council of State. – In
34 accordance with the provisions in subsections (c) through (l) of this section, the
35 Department of Administration shall grant to adjoining riparian or littoral owners
36 easements in submerged lands or lands covered by navigable waters without the approval
37 of the Governor and the Council of State for:

- 38 (1) Existing structures permitted under Article 7 of Chapter 113A or
39 structures existing prior to the effective date of the permitting
40 requirements of Article 7 of Chapter 113A of the General Statutes.
- 41 (2) New structures permitted under Article 7 of Chapter 113A of the
42 General Statutes.

1 (c) Voluntary Applications for Easements for Existing Structures. – Riparian or
2 littoral property owners of existing structures may voluntarily obtain an easement under
3 subsection (b) of this section in accordance with the procedures set forth in this section.
4 For purposes of this section, the term 'existing structures' means all presently existing
5 piers, docks, marinas, wharves, and other structures located over or upon State-owned
6 submerged lands or lands covered by navigable waters.

7 (d) Easement Application. – An application by a riparian or littoral owner of a new
8 or existing structure for an easement under subsection (b) of this section shall include all
9 of the following and shall:

10 (1) Be made in writing to the Secretary.

11 (2) Be accompanied by a surveyed plat of the footprint and total square
12 footage of all structures located in or over submerged lands or lands
13 covered by navigable waters. The footprint shall include the area of
14 State-owned submerged lands or lands covered by navigable waters that
15 are enclosed on three or more sides by any structure.

16 (3) Be accompanied by a copy of the 'CAMA' permit issued under Article 7
17 of Chapter 113A of the General Statutes if the structure required a
18 permit at the time of construction.

19 (4) Be accompanied by a copy of the deed or other instrument through
20 which the applicant establishes ownership of the adjacent riparian or
21 littoral property.

22 (5) Specify the use or uses associated with the structure to be covered by
23 the easement.

24 (6) Be accompanied by the appropriate easement purchase payment.

25 (e) Terms of Easement. – The terms of each easement granted under subsection
26 (b) of this section shall provide that the easement:

27 (1) Is appurtenant to specifically described, adjacent riparian or littoral
28 property and runs with the land.

29 (2) Specifies that the holder of the easement shall not exclude or prevent the
30 public from exercising public trust rights, including commercial and
31 recreational fishing, shellfishing, seine netting, pound netting, and other
32 fishing rights.

33 (3) Is valid for a term of 50 years from the date of issuance.

34 (4) Is eligible for renewal.

35 (5) Is granted in the public interest for good and valuable consideration
36 received by the State.

37 (6) Specifies by description or attached plat the footprint of the structure for
38 which the easement is issued.

39 (7) Specifies the uses for which the easement is being granted, including:

40 a. The right of reasonable access for all vessels traditionally used in
41 the main watercourse area to deep water or, where present, to a
42 specified navigational channel;

43 b. The right to moor vessels at or adjacent to the structure;

1 c. The right to enhance or improve the adjacent riparian or littoral
2 property; and

3 d. All other reasonable, nonexclusive public trust uses as specified
4 in the easement application, to the extent not otherwise limited
5 by provisions of this Subchapter or any other law.

6 (8) Specifies that rights granted include the right to repair, rebuild, or
7 restore existing structures consistent with Article 7 of Chapter 113A of
8 the General Statutes.

9 (9) Specifies that the exercise of any rights under the easement shall be
10 contingent upon obtaining all required permits.

11 (f) Easement Purchase Payment. – The easement purchase payment shall be
12 computed on the basis of one thousand dollars (\$1,000) per acre of footprint coverage.
13 For footprint coverage less than one acre, the acreage shall be rounded up to the nearest
14 one quarter acre and payment shall equal two hundred and fifty dollars (\$250.00) per
15 quarter acre. The minimum payment shall be five hundred dollars (\$500.00) if any
16 payment is owed after the riparian credit is applied. A riparian credit shall be given
17 against any easement purchase payment in an amount equal to the number of linear feet
18 of shoreline multiplied by a factor of 54 square feet. For purposes of determining the
19 linear feet of shoreline owned, an application submitted by a corporation or other entity
20 whose members include riparian or littoral lot owners, which owners have the right to use
21 the structure for which the easement is sought, and whose lots are restricted from
22 construction thereon of other structures for similar use, shall be considered an application
23 whose easement purchase payment shall be determined by using the entirety of such use
24 restricted shoreline for purposes of determining the applicable riparian credit. Shoreline
25 utilization shall be considered 'use restricted' if riparian or littoral structures are
26 prohibited by either permit condition or by restrictive covenant or similar, enforceable
27 private restriction.

28 (g) Transfer of Easements. – An easement granted under subsection (b) of this
29 section shall be transferred to a subsequent owner of the adjacent riparian or littoral
30 property upon written notification to the Department of Administration. The notification
31 shall be given within 12 months of the transfer of title to the adjacent riparian or littoral
32 property and shall be accompanied by the instrument of transfer and an easement
33 purchase payment as follows:

34 (1) The same easement purchase payment as the initial payment during the
35 first 25 years of the easement term; and

36 (2) Twice the amount of the initial easement purchase payment during the
37 second 25 years of the easement term.

38 (h) Modification of Easements. – Any expansion of the footprint of an existing
39 structure shall require an easement or modification of any existing easement. The
40 application for a modification of an easement shall be as provided in subsection (d) of
41 this section. The easement purchase payment shall be based only on the footprint of the
42 expansion after applying the riparian credit. The minimum easement purchase payment
43 shall be five hundred dollars (\$500.00) if any payment is owed after the riparian credit is

1 applied. No easement purchase payment shall be required for the modification of an
2 existing use that does not expand the footprint of the preexisting structure.

3 (i) Renewal of easements. – Renewal easements shall be issued at the expiration
4 of the initial term for one additional term of 50 years. Renewal easements shall be
5 subject to the conditions and easement purchase payments applicable to initial easements
6 at the time of renewal. Applications for renewal easements shall be submitted within 180
7 days of the notice of expiration by the Department of Administration. Written
8 notification of expiring easements shall be given at least 180 days prior to expiration.

9 (j) Revocation of Easements. – The Department of Administration may, with the
10 prior written approval of the Governor and Council of State, revoke any easement issued
11 under subsection (b) of this section upon the violation by the grantee or his assigns of the
12 conditions upon which it was granted. Any revocation of an easement shall be in writing
13 and shall entitle the easement holder to file a petition for a contested case hearing in
14 accordance with Article 3 of Chapter 150B of the General Statutes. No other actions by
15 the Department under this section shall be subject to the provisions of Article 3 or 4 of
16 Chapter 150B of the General Statutes. No person other than the easement holder shall be
17 entitled to any administrative review.

18 (k) Notification of Availability of Voluntary Easements. – Applications for
19 easements for existing structures shall be received by the Secretary within 36 months of
20 the effective date of this section. The Secretary shall provide public notice of the
21 availability of voluntary easements by placing an advertisement in at least one newspaper
22 of general circulation in each of the counties identified under G.S. 113A-103(2) at least
23 once every six months during the 36-month period.

24 (l) Issuance of Easements. – Within 75 days of receipt of a completed application
25 under subsection (d) of this section, the Secretary shall issue the requested easement in a
26 form sufficient for recording in the register of deeds of the county or counties in which
27 any part of the structure is located. Failure to issue the requested easement within 75
28 days of receipt of a completed application and any applicable easement purchase
29 payments shall be treated as issuance of the requested easement.

30 (m) Exemptions. – The following types of structures shall not require an easement
31 under this section:

32 (1) Piers, docks, or similar structures constructed appurtenant to a
33 residential lot, intended to or permitted for the sole use and benefit of
34 the owners or occupants of such residential lot for nonincome producing
35 purposes;

36 (2) Structures constructed by any public utility that provide or assist in the
37 provision of utility service;

38 (3) Structures constructed or owned by the State of North Carolina, or any
39 political subdivision, agency, or department of the State, for the duration
40 that the structures are owned by the entity;

41 (4) Structures on a privately owned lake;

42 (5) Hydroelectric reservoirs licensed by the Federal Energy Regulatory
43 Commission; or

1 (6) Submerged lands or lands covered by navigable waters not owned by or
2 for the benefit of the public that have been created by dredging or
3 excavating lands."

4 Sec. 3. Article 1 of Chapter 146 of the General Statutes is amended by adding
5 a new section to read:

6 **"§ 146-14.1. Natural Resources Easement Fund.**

7 The Natural Resources Easement Fund is established as a nonreverting fund within
8 the Department of Administration. All easement purchase payment monies collected by
9 the Secretary shall be deposited in the Fund. The Fund may be used for direct costs of
10 administering the program. Fifty percent (50%) of the net proceeds in the Fund shall be
11 transferred annually to the Marine Fisheries Commission, and fifty percent (50%) of the
12 net proceeds in the Fund shall be transferred annually to the Wildlife Resources
13 Commission, to be used for the express purpose of enhancing public trust resources and
14 increasing the public's access to and use of public trust resources, including, but not
15 limited to, meeting the State's cost share obligations for federal Wallop-Breaux projects,
16 enhancing water resources and expanding the number of public boat ramps and other
17 means of public waters access within the counties designated under G.S. 113A-103(2),
18 and any other public trust access purposes."

19 Sec. 4. G.S. 146-64 is amended by adding a new subdivision to read:

20 "(10) For purposes of this Subchapter, 'deep water' means the depth
21 reasonably necessary to provide and allow reasonable access for all
22 vessels traditionally used in the main watercourse area as of the time
23 of the easement application."

24 Sec. 5. This act is effective upon ratification. Nothing in this act shall require
25 the adoption of rules to implement the provisions herein. The authorization established
26 under this act applies only to the Department of Administration and shall not be used by
27 any other agency to administer or regulate activities affecting the public trust.