

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

6

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

House Committee Substitute #4 Favorable 7/11/95

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 STATE-OWNED SUBMERGED LANDS.

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

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

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

21 (c) Nothing in this Subchapter shall be construed to limit the full exercise of
22 common law riparian or littoral rights."

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

24 **"§ 146-12. Easements in lands covered by water.**

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

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

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

37 (b) Easements Not Requiring Approval by the Governor or Council of State. – In
38 accordance with the provisions in subsections (c) through (m) of this section, the
39 Department of Administration shall grant easements in State-owned submerged lands or
40 lands covered by navigable waters without the approval of the Governor and the Council
41 of State for:

1 (1) Existing structures permitted under Article 7 of Chapter 113A or
2 structures existing prior to the effective date of the permitting
3 requirements of Article 7 of Chapter 113A of the General Statutes.

4 (2) New structures permitted under Article 7 of Chapter 113A of the
5 General Statutes after the effective date of this section.

6 (c) Voluntary Easement Applications for Existing Structures. – Riparian or littoral
7 property owners of existing structures may voluntarily obtain an easement under
8 subsection (b) of this section in accordance with the procedures set forth in this section.
9 For purposes of this section, the term 'existing structures' means all presently existing
10 piers, docks, marinas, wharves, and other structures located over or upon State-owned
11 submerged lands or lands covered by navigable waters. Applications for voluntary
12 easements shall be received by the State Property Office within 36 months of the
13 effective date of this section.

14 (d) Notification of Availability of Voluntary Easements. – The State Property
15 Office shall provide public notice of the availability of voluntary easements by placing an
16 advertisement in one newspaper of general circulation in each of the coastal counties
17 identified under G.S. 113A-103(2) at least once every six months during the 36-month
18 period. The final notice shall be placed at least 30 days prior to the expiration of the 36-
19 month period.

20 (e) Mandatory Easement Applications for New Structures. – Riparian or littoral
21 property owners of new structures shall obtain an easement under subsection (b) of this
22 section in accordance with the procedures set forth in this section.

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

26 (1) Be made in writing to the State Property Office and include the full
27 name and address of the easement applicant.

28 (2) Include a plat depicting the footprint and total square footage of all
29 structures located in or over submerged lands or lands covered by
30 navigable waters. The footprint shall include the total square footage of
31 the area of State-owned submerged lands or lands covered by navigable
32 waters that are enclosed on three or more sides by any structure.

33 (3) Include a copy of any 'CAMA' permit required for structures under
34 Article 7 of Chapter 113A of the General Statutes.

35 (4) Include a copy of the deed or other instrument through which the
36 applicant establishes ownership of the adjacent riparian or littoral
37 property.

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

40 (6) Include the appropriate easement purchase payment.

41 (g) Easement Terms. – Any easement granted under subsection (b) of this section
42 shall be in a form suitable for recordation and shall be executed by either the Director or

1 Deputy Director of the State Property Office. The terms of each easement shall provide
2 that the easement:

- 3 (1) Is appurtenant to specifically described, adjacent riparian or littoral
4 property and runs with the land.
- 5 (2) Specifies that the holder of the easement shall not exclude or prevent the
6 public from exercising public trust rights, including commercial and
7 recreational fishing, shellfishing, shellfish leases and franchises, seine
8 netting, pound netting, and other fishing rights.
- 9 (3) Is valid for a term of 50 years from the date of issuance.
- 10 (4) Is eligible for one renewal term of 50 years.
- 11 (5) Is granted in the public interest for good and valuable consideration
12 received by the State.
- 13 (6) Specifies by metes and bounds description or attached plat the footprint
14 of the structure for which the easement is issued.
- 15 (7) Describes the uses for which the easement is being granted, including:
16 a. The right of reasonable access for all vessels traditionally used in
17 the main watercourse area to deep water or, where present, to a
18 specified navigational channel;
19 b. The right to moor vessels at or adjacent to the structure;
20 c. The right to enhance or improve the adjacent riparian or littoral
21 property; and
22 d. All other reasonable, nonexclusive public trust uses as specified
23 in the easement application, to the extent not otherwise limited
24 by provisions of this Subchapter or any other law.
- 25 (8) Specifies that rights granted include the right to repair, rebuild, or
26 restore existing structures to the original structure dimensions consistent
27 with all applicable provisions in this Subchapter or other law.
- 28 (9) Specifies that the exercise of any rights under the easement shall be
29 contingent upon obtaining all required permits.

30 (h) Easement Purchase Payment. – The annual rental for an easement under this
31 section shall be fair market value on a per acre of footprint coverage rounded up to the
32 nearest quarter acre.

33 (i) Easement Issuance. – Within 75 days of receipt of a completed application
34 under subsection (f) of this section, the Director or Deputy Director of the State Property
35 Office shall issue the requested easement in a form sufficient for recording in the register
36 of deeds of the county or counties in which any part of the structure is located. The act of
37 easement issuance under subsection (b) of this section shall be exempt from the
38 provisions in Chapter 150B of the General Statutes. Failure to issue the requested
39 easement within 75 days of receipt of a completed application and any applicable
40 easement purchase payments shall be treated as issuance of the requested easement and
41 shall entitle the applicant to execution and issuance of the easement.

42 (j) Easement Renewal. – Upon written request from the current easement holder,
43 easements shall be renewed for one additional term of 50 years. Renewal easements shall

1 be subject to the terms, conditions, and purchase payments applicable to initial easements
2 at the time of renewal. Written notification of expiring easements shall be provided by
3 the State Property Office at least 180 days prior to expiration of the initial easement term.
4 Letter applications for renewal easements shall be submitted within 180 days of the
5 notice of expiration by the State Property Office.

6 (k) Easement Modification. – Any expansion of the footprint of an existing
7 structure shall require an easement or modification of any existing easement. The
8 application for a modification of an easement shall be as provided in subsection (f) of this
9 section. The easement purchase payment shall be based only on the footprint of the
10 expansion after applying the riparian credit. The minimum easement purchase payment
11 shall be five hundred dollars (\$500.00) if any payment is owed after the riparian credit is
12 applied. Easement holders may voluntarily apply for modification of an easement to
13 correct any material errors or omissions. No easement purchase payment shall be
14 required for the modification of an existing use that does not expand the footprint of the
15 existing structure. No refunds shall be provided for any modification that reduces the
16 footprint.

17 (l) Easement Transfers. – An easement granted under subsection (b) of this
18 section shall be transferred to a subsequent owner of the adjacent riparian or littoral
19 property upon written notification to the State Property Office. The notification shall be
20 given within 12 months of the transfer of title to the adjacent riparian or littoral property
21 and shall be accompanied by the instrument of transfer and an easement purchase
22 payment as follows:

23 (1) During the first 25 years of the easement term, the easement purchase
24 payment shall be the same as the initial payment; and

25 (2) During the second 25 years of the easement term, the easement purchase
26 payment shall be twice the amount of the initial payment.

27 (m) Easement Revocation. – Easements issued under subsection (b) of this section
28 may be revoked in accordance with the provisions of G.S. 146-12(a). Any revocation
29 shall entitle the easement holder to seek administrative review in accordance with the
30 provisions of Article 3 of Chapter 150B of the General Statutes.

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

33 (1) Piers, docks, or similar structures constructed appurtenant to residential
34 lots, intended to or permitted for the sole use and benefit of the owners
35 or occupants of the lots for nonincome producing 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 by both Commissions for the sole purpose of enhancing public
14 trust resources and increasing the public's access to and use of public trust resources,
15 including, but not limited to, meeting the State's cost share obligations for federal
16 Wallop-Breaux Fund projects, enhancing water resources and expanding the number of
17 public boat ramps and other means of public waters access within the counties designated
18 under G.S. 113A-103(2), and 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 becomes effective October 1, 1995. Nothing in this act shall
25 require the adoption of rules to implement the provisions herein. The authorization
26 established under this act applies only to the Department of Administration and shall not
27 be used by any other agency to administer or regulate activities affecting the public trust.