

NORTH CAROLINA GENERAL ASSEMBLY  
1969 SESSION

CHAPTER 791  
SENATE BILL 311

1 AN ACT TO AUTHORIZE THE NORTH CAROLINA DEPARTMENT OF  
2 CONSERVATION AND DEVELOPMENT TO ISSUE PERMITS TO RIPARIAN  
3 OWNERS ADJOINING ESTUARINE WATERS OR STATE-OWNED LAKES TO  
4 DREDGE OR FILL IN SUCH WATERS.

5  
6 The General Assembly of North Carolina do enact:

7  
8 **Section 1.** Chapter 113 of the General Statutes of North Carolina is hereby  
9 amended by adding immediately following G.S. 113-228 a new Section to be designated G.S.  
10 113-229 to read as follows:

11 **"G.S. 113-229. Permits to dredge or fill in or about estuarine waters or State-owned**  
12 **lakes.** (a) Before any excavation or filling project is begun in any estuarine waters, tidelands,  
13 marshlands, or State-owned lakes, the party or parties desiring to do such shall first obtain a  
14 permit from the North Carolina Department of Conservation and Development. The North  
15 Carolina Department of Water and Air Resources shall continue to coordinate projects  
16 pertaining to navigation with the United States Army Corps of Engineers.

17 "(b) All applications for such permits shall include a plat of the areas in which the  
18 proposed work will take place, indicating the location, width, depth and length of any proposed  
19 channel, the disposal area, and a copy of the deed or other instrument under which the applicant  
20 claims title to the property adjoining the waters in question, (or any land covered by waters),  
21 tidelands, or marshlands, or if the applicant is not the owner, then a copy of the deed or other  
22 instrument under which the owner claims title plus written permission from the owner to carry  
23 out the project on his land.

24 "(c) In lieu of a deed or other instrument referred to in subsection (b) of this Section, the  
25 agency authorized to issue such permits may accept some other reasonable evidence of  
26 ownership of the property in question or other lawful authority to make use of the property.

27 "(d) The applicant shall cause to be served in the manner provided by paragraph (g)(9) of  
28 this Section upon an owner of each tract of riparian property adjoining that of the applicant a  
29 copy of the application filed with the State of North Carolina and each such adjacent riparian  
30 owner shall have thirty days from the date of such service to file with the Department of  
31 Conservation and Development written objections to the granting of the permit to dredge or fill.  
32 An owner may be served by publication, in the manner provided by paragraph (g)(10) of this  
33 Section, whenever the owner's address, whereabouts, dwelling house or usual place of abode is  
34 unknown and cannot with due diligence be ascertained, or there has been a diligent but  
35 unsuccessful attempt to serve the owner under paragraph (g)(9) of this Section.

36 "(e) Applications for permits shall be circulated by the Department of Conservation and  
37 Development among all State and Federal agencies having jurisdiction over the subject matter  
38 which might be affected by the project so that such agencies will have an opportunity to raise  
39 any objections they might have. In passing upon the application for permit, the Department  
40 shall consider, among other things, (i) the value and usefulness of the project to be served by  
41 the dredging, (ii) the effect of the proposed dredging and filling on the use of the water by the  
42 public, (iii) the value and enjoyment of the property of any riparian owner, (iv) public health,  
43 safety and welfare, (v) the conservation of public and private water supply, (vi) wildlife or

1 fresh water, estuarine, or marine fisheries. If the Department finds that the application is not  
2 contrary to the public interest, the Department shall issue to the applicant a permit to dredge or  
3 fill, or both. Such permit may be conditioned upon the applicant amending his proposal to take  
4 whatever measures are reasonably necessary to protect the public interest. The Department  
5 shall act upon an application for permit within ninety days after the application is filed.

6 "(f) If any State agency or the applicant raises an objection to the action of the  
7 Department of Conservation and Development regarding the permit application within twenty  
8 days after said action was taken, the Department shall call a meeting of a Review Board  
9 composed of the directors or their designees of the following State agencies: the Department of  
10 Administration, the Department of Conservation and Development, the Department of Water  
11 and Air Resources, the Wildlife Resources Commission, the Board of Health, and any other  
12 agency that may be designated by the Governor. The Review Board shall set a date for a  
13 hearing not more than sixty days from the date of the Departmental action. At said hearing,  
14 evidence shall be taken by the Review Board from all interested persons, who shall have a right  
15 to be represented by counsel. After hearing the evidence, the Review Board may affirm, modify  
16 or overrule the action of the Department concerning the permit application. The applicant, if  
17 aggrieved, may appeal from the ruling of the Review Board to the superior court of the county  
18 where the land or any part thereof is located, pursuant to the provisions of Article 33 of Chapter  
19 143 of the General Statutes.

20 "(g) The following provisions, together with any additional provisions not inconsistent  
21 herewith which the Review Board may prescribe, shall be applicable in connection with  
22 hearings pursuant to this Article:

- 23 (1) All hearings shall be open to the public. The Review Board, or its authorized  
24 agents, shall have the authority to administer oaths.
- 25 (2) A full and complete record of all proceedings at any hearing shall be taken  
26 by a reporter appointed by the Review Board or by some other method  
27 approved by the Attorney General. Any party to a proceeding shall be  
28 entitled to a copy of such record upon the payment of the reasonable cost  
29 thereof as determined by the Review Board.
- 30 (3) The Review Board shall follow generally the procedures applicable in civil  
31 actions in the superior court insofar as practicable, including rules and  
32 procedures with regard to the taking and use of depositions, the making and  
33 use of stipulations, and the entering into of agreed settlements and consent  
34 orders.
- 35 (4) Subpoenas or subpoenas duces tecum issued by the Review Board, in  
36 connection with any hearing, shall be directed to any officer authorized by  
37 law to serve process, and the further procedures and rules of law applicable  
38 with respect thereto shall be prescribed in connection with subpoenas to the  
39 same extent as if issued by a court of record. In case of a refusal to obey a  
40 notice of hearing or subpoena issued by the board, application may be made  
41 to the superior court of the appropriate county for enforcement thereof.
- 42 (5) The burden of proof at any hearing shall be upon the person or agency, as  
43 the case may be, at whose instance the hearing is being held.
- 44 (6) No decision or order of the Review Board shall be made in any proceeding  
45 unless the same is supported by competent, material and substantial evidence  
46 upon consideration of the whole record.
- 47 (7) Following any hearing, the Review Board shall afford the parties thereto  
48 twenty days to submit proposed findings of fact and conclusions of law and  
49 any brief in connection therewith. The record in the proceeding shall show  
50 the Board's ruling with respect to each such requested finding of fact and  
51 conclusion of law.

- (8) The Department and the Review Board shall give notice to all interested parties of their formal actions taken under this Section, including Departmental findings upon applications and calling of Review Board meetings by the Department, and announcement of decisions and setting of hearing dates by the Review Board.
- (9) All notices which are required to be given or to be served by the Department, the Review Board or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Department or Review Board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Review Board by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices. Within the meaning of this paragraph, a "notice" includes a copy of an application for a permit required to be served on adjoining riparian owners, pursuant to subsection (d) of this Section.
- (10) For purposes of this Section, service by publication shall consist of publishing a notice of service by publication in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598, and published in a county where any part of the land affected by a proposed project is located or, if no qualified newspaper is published in such county, then in a qualified newspaper published in an adjoining county, or in a county in the same judicial district, once a week for three successive weeks. If the owner's post office address is known or can with reasonable diligence be ascertained, there shall be mailed to the owner at or immediately prior to the first publication a copy of the notice of service by publication. The mailing may be omitted if the post office address cannot be ascertained with reasonable diligence. The notice of service by publication shall (i) designate the Department of State Government having jurisdiction to initially grant or deny dredge and fill permits hereunder, and identify the General Statutes Section under which the permit has been sought; (ii) be directed to the owner sought to be served; (iii) identify the name and post office address of the permit applicant; (iv) indicate whether the proposed project will involve dredging or filling or both; (v) indicate the county(ies) and township(s) in which the proposed project will be located, together with any further information descriptive of the location which the Department may wish to include; (vi) state where and at what hours a copy of the application may be obtained or inspected; and (vii) indicate the time limit for filing of objections with the Department by the owner, pursuant to subsection (d) of this Section.
- "(h) The granting of a permit to dredge or fill shall be deemed conclusive evidence that the applicant has complied with all requisite conditions precedent to the issuance of such permit, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part.
- "(i) All materials excavated pursuant to such permit, regardless of where placed, shall be encased or entrapped in such a manner as to minimize their moving back into the affected water.
- "(j) None of the provisions of this Section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States.

"(k) Any person, firm, or corporation violating the provisions of this Section shall be guilty of a misdemeanor.

"(l) The Director may, either before or after the institution of proceedings under subsection (k) of this Section, institute a civil action in the superior court in the name of the State upon the relation of the Director to restrain any violation of this Section or of any provision of a dredging or filling permit issued under this Section, for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Section for any violation of same.

"(m) This Act shall apply to all persons, firms, or corporations proposing excavation or filling work in the estuarine waters, tidelands, marshlands and state-owned lakes within the State, and to work to be performed by the State Government or local governments. Provided, however, the provisions of this Act shall not apply to the activities and functions of the North Carolina State Board of Health and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 thru 130-209.

"(n) Within the meaning of this Section:

(1) 'State-owned lakes' include man-made as well as natural lakes.

(2) 'Estuarine waters' include all estuarine waters of the State up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department of Conservation and Development and the Wildlife Resources Commission, within the meaning of G.S. 113-129.

(3) 'Marshlands' means marshes or swamps in or adjacent to estuarine waters, which marshes or swamps are regularly or periodically flooded by the tides."

**Sec. 2.** All laws and clauses of laws in conflict with this Act are hereby repealed.

**Sec. 3.** This Act shall be effective January 1, 1970.

In the General Assembly read three times and ratified, this the 11th day of June,

1969.