

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 275
SENATE BILL 304

AN ACT TO REWRITE THE PROCEDURES UNDER WHICH SHELLFISH LEASE
APPLICATIONS ARE DETERMINED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-202(f), (g), and (h) are rewritten to read:

"(f) Within a reasonable time after receipt of an application that complies with subsection (d), the Secretary shall notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Secretary recommends approval or a modification to which the applicant agrees, the Secretary shall conduct a public hearing in the county where the proposed leasehold lies. The Secretary must publish at least two notices of the intention to lease in a newspaper of general circulation in the county in which the proposed leasehold lies. The first publication must precede the public hearing by more than 20 days; the second publication must follow the first by seven to 11 days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date, hour and place of the hearing. The Secretary's recommendation of disapproval shall become the final agency decision of the application unless the applicant requests in writing within 20 days of notice of such action an administrative hearing before the Marine Fisheries Commission.

"(g) Protests to the granting of a proposed lease shall be made either in writing under oath prior to the public hearing held by the Secretary or by testimony under oath during the public hearing. After consideration of the protests and any additional investigations he orders to evaluate the protests, the Secretary shall send to the applicant and protesting parties his final recommendation on the lease application. In the event the Secretary's final recommendation is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the Secretary's final recommendation can be presented to the Marine Fisheries Commission. In the event the Secretary's final recommendation is inconsistent with a protest, the person filing the protest may request in writing within 20 days of notice of such action an administrative hearing before the Marine Fisheries Commission. The Secretary's final recommendation of disapproval shall become the final agency decision of the application unless the applicant requests in writing within 20 days of notice of such action an administrative hearing before the Marine Fisheries Commission.

"(h) The Secretary shall present all lease applications recommended for approval to the Marine Fisheries Commission for final determination. In addition to his final

recommendation, the Secretary shall present the official record of the application as developed pursuant to the requirements of this action. The applicants and persons who protested the application shall be given an opportunity to present oral and written arguments based on the official record. Unless the Marine Fisheries Commission, in its discretion, refers the matter for an administrative hearing, the Marine Fisheries Commission shall determine all lease applications presented by the Secretary during the public meetings when the matter is presented. The Marine Fisheries Commission, in its discretion, may lease or decline to lease public bottoms in accordance with its duty to conserve the marine and estuarine resources of the State.

More than 20 days prior to an administrative hearing conducted pursuant to this section, the Secretary must publish notice of the hearing in a newspaper of general circulation in the county where the proposed leasehold lies. The hearing shall be conducted in the county where the proposed leasehold lies. Protests to the granting of the proposed lease may be made during the administrative hearing by parties to the hearing, intervening parties, and witnesses for parties. When administrative hearings have been conducted pursuant to this section, the Marine Fisheries Commission shall determine the lease applications during the public meeting when the proposal for decision is presented by the hearing officer(s)."

Sec. 2. G.S. 113-202(j) is amended by rewriting the third sentence to read:

"At the time of making application for renewal of a lease, the applicant must pay a filing fee of fifty dollars (\$50.00)."

Sec. 3. G.S. 113-202(b) is amended by adding a new sentence at the end to read:

"The Marine Fisheries Commission may not grant a new lease in an area heavily used for recreational purposes."

Sec. 4. This act shall become effective July 1, 1985.

In the General Assembly read three times and ratified, this the 30th day of May, 1985.