

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 766*

Short Title: Clarify Governor Part of Council of State.

(Public)

Sponsors: Senators Sherron, Martin of Pitt; and Carpenter.

Referred to: Rules and Operation of the Senate.

April 8, 1993

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CHAPTER 146 - STATE LANDS, TO MODIFY
2 REFERENCES TO GOVERNOR AND COUNCIL OF STATE TO READ
3 COUNCIL OF STATE, CONSISTENT WITH ARTICLE III OF THE NORTH
4 CAROLINA CONSTITUTION.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 146-2 reads as rewritten:

8 **"§ 146-2. Department of Administration given control of certain State lands;
9 general powers.**

10 The power to manage, control, and dispose of the vacant and unappropriated lands,
11 swamplands, lands acquired by the State by virtue of being sold for taxes, and
12 submerged lands is hereby vested in the Department of Administration, subject to rules
13 and regulations adopted by the Governor and approved by the Council of State, and
14 subject to the provisions of this Subchapter. The Department of Administration shall
15 have the following general powers and duties with respect to those lands:

- 16 (1) To take such measures as it deems necessary to establish, protect,
17 preserve, and enhance the interest of the State in those lands, and to
18 call upon the Attorney General for legal assistance in performing this
19 duty.
20 (2) Subject to the approval of the ~~Governor and~~ Council of State, to adopt
21 such rules and regulations at it may deem necessary to carry out its
22 duties under the provisions of this Subchapter."

23 Sec. 2. G.S. 146-4 reads as rewritten:

24 **"§ 146-4. Sales of certain lands; procedure; deeds; disposition of proceeds.**

1 The Department of Administration may sell the vacant and unappropriated lands,
2 swamplands, and lands acquired by the State by virtue of being sold for taxes, at public
3 or private sale, at such times, upon such consideration, in such portions, and upon such
4 terms as are deemed proper by the Department and approved by the ~~Governor and~~
5 Council of State. Every deed conveying any part of those lands in fee shall be executed
6 in the manner required by G.S. 146-74 through 146-78, and shall be approved by the
7 ~~Governor and~~ Council of State as therein required. The net proceeds of all such sales of
8 those lands shall be paid into the State Literary Fund. Whenever negotiations are begun
9 by the Department for the purpose of selling swampland or the timber thereon, the
10 Department shall promptly notify the State Board of Education of that fact. If the Board
11 deems the proposed sale inadvisable, it may so inform the ~~Governor and~~ Council of
12 State, who may give due consideration to the representations of the Board in
13 determining whether to approve or disapprove the proposed transaction."

14 Sec. 3. G.S. 146-6 reads as rewritten:

15 **"§ 146-6. Title to land raised from navigable water.**

16 (a) If any land is, by any process of nature or as a result of the erection of any
17 pier, jetty or breakwater, raised above the high watermark of any navigable water, title
18 thereto shall vest in the owner of that land which, immediately prior to the raising of the
19 land in question, directly adjoined the navigable water. The tract, title to which is thus
20 vested in a riparian owner, shall include only the front of his formerly riparian tract and
21 shall be confined within extensions of his property lines, which extensions shall be
22 perpendicular to the channel, or main watercourses.

23 (b) If any land is, by act of man, raised above the high watermark of any
24 navigable water by filling, except such filling be to reclaim lands theretofore lost to the
25 owner by natural causes or as otherwise provided under the proviso of subsection (d),
26 title thereto shall vest in the State and the land so raised shall become a part of the
27 vacant and unappropriated lands of the State, unless the commission of the act which
28 caused the raising of the land in question shall have been previously approved in the
29 manner provided in subsection (c) of this section. Title to land so raised, however, does
30 not vest in the State if the land was raised within the bounds of a conveyance made by
31 the State Board of Education, which included regularly flooded estuarine marshlands or
32 lands beneath navigable waters, or if the land was raised under permits issued to private
33 individuals pursuant to G.S. 113-229, G.S. 113A-100 through 113A-128, or both.

34 (c) If any owner of land adjoining any navigable water desires to fill in the area
35 immediately in front of his land, he may apply to the Department of Administration for
36 an easement to make such fill. The applicant shall deliver to each owner of riparian
37 property adjoining that of the applicant, a copy of the application filed with the
38 Department of Administration, and each such person shall have 30 days from the date of
39 such service to file with the Department of Administration written objections to the
40 granting of the proposed easement. If the Department of Administration finds that the
41 purpose of the proposed fill is to reclaim lands theretofore lost to the owner by natural
42 causes, no easement to fill shall be required. In such a case the Department shall give
43 the applicant written permission to proceed with the project. If the purpose of the
44 proposed fill is not to reclaim lands lost by natural causes and the Department finds that

1 the proposed fill will not impede navigation or otherwise interfere with the use of the
2 navigable water by the public or injure any adjoining riparian owner, it shall issue to
3 such applicant an easement to fill and shall fix the consideration to be paid for the
4 easement, subject to the approval of the ~~Governor and~~ Council of State in each instance.
5 The granting by the State of the written permission or easement so to fill shall be
6 deemed conclusive evidence and proof that the applicant has complied with all requisite
7 conditions precedent to the issuance of such written permission or easement, and his
8 right shall not thereafter be subject to challenge by reason of any alleged omission on
9 his part. None of the provisions of this section shall relieve any riparian owner of the
10 requirements imposed by the applicable laws and regulations of the United States. Upon
11 completion of such filling, the ~~Governor and~~ Council of State may, upon request, direct
12 the execution of a quitclaim deed therefor to the owner to whom the easement was
13 granted, conveying the land so raised, upon such terms as are deemed proper by the
14 Department and approved by the ~~Governor and~~ Council of State.

15 (d) If an island is, by any process of nature or by act of man, formed in any
16 navigable water, title to such island shall vest in the State and the island shall become a
17 part of the vacant and unappropriated lands of the State. Provided, however, that if in
18 any process of dredging, by either the State or federal government, for the purpose of
19 deepening any harbor or inland waterway, or clearing out or creating the same, a deposit
20 of the excavated material is made upon the lands of any owner, and title to which at the
21 time is not vested in either the State or federal government, or any other person, whether
22 such excavation be deposited with or without the approval of the owner or owners of
23 such lands, all such additions to lands shall accrue to the use and benefit of the owner or
24 owners of the land or lands on which such deposit shall have been made, and such
25 owner or owners shall be deemed vested in fee simple with the title to the same.

26 (e) The ~~Governor and~~ Council of State may, upon proof satisfactory to them that
27 any land has been raised above the high watermark of any navigable water by any
28 process of nature or by the erection of any pier, jetty or breakwater, and that this, or any
29 other provision of this section vests title in the riparian owner thereof, whenever it may
30 be necessary to do so in order to establish clear title to such land in the riparian owner,
31 direct execution of a quitclaim deed thereto, conveying to such owner all of the State's
32 right, title, and interest in such raised land.

33 (f) Notwithstanding the other provisions of this section, the title to land in or
34 immediately along the Atlantic Ocean raised above the mean high water mark by
35 publicly financed projects which involve hydraulic dredging or other deposition of spoil
36 materials or sand vests in the State. Title to such lands raised through projects that
37 received no public funding vests in the adjacent littoral proprietor. All such raised lands
38 shall remain open to the free use and enjoyment of the people of the State, consistent
39 with the public trust rights in ocean beaches, which rights are part of the common
40 heritage of the people of this State."

41 Sec. 4. G.S. 146-7 reads as rewritten:

42 "**§ 146-7. Sale of timber rights; procedure; instruments conveying rights;**
43 **disposition of proceeds.**

1 The Department of Administration may sell timber rights in the vacant and
2 unappropriated lands, swamplands, and lands acquired by the State by virtue of being
3 sold for taxes, at public or private sale, at such times, upon such consideration, in such
4 portions, and upon such terms as are deemed proper by the Department and approved by
5 the ~~Governor and~~ Council of State. Every instrument conveying timber rights shall be
6 executed in the manner required of deeds by G.S. 146-74 through 146-78, and shall be
7 approved by the ~~Governor and~~ Council of State as therein required, or by the agency
8 designated by the ~~Governor and~~ Council of State to approve conveyances of such rights.
9 The net proceeds of all sales of timber from those lands shall be paid into the State
10 Literary Fund."

11 Sec. 5. G.S. 146-8 reads as rewritten:

12 **"§ 146-8. Disposition of mineral deposits in State lands under water.**

13 The State, acting at the request of the Department of Environment, Health and
14 Natural Resources, is fully authorized and empowered to sell, lease, or otherwise
15 dispose of any and all mineral deposits belonging to the State which may be found in
16 the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting
17 at the request of the Department of Environment, Health and Natural Resources, is
18 authorized and empowered to convey or lease to such person or persons as it may, in its
19 discretion, determine, the right to take, dig, and remove from such bottoms such mineral
20 deposits found therein belonging to the State as may be sold, leased, or otherwise
21 disposed of to them by the State. The State, acting at the request of the Department of
22 Environment, Health, and Natural Resources, is authorized to grant to any person, firm,
23 or corporation, within designated boundaries for definite periods of time, the right to
24 such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other
25 terms and conditions as may be deemed wise and expedient by the State and to the best
26 interest of the State. Before any such sale, lease, or contract is made, it shall be
27 approved by the Department of Administration and by the ~~Governor and~~ Council of
28 State.

29 Any sale, lease, or other disposition of such mineral deposits shall be made subject
30 to all rights of navigation and subject to such other terms and conditions as may be
31 imposed by the State.

32 The net proceeds derived from the sale, lease, or other disposition of such mineral
33 deposits shall be paid into the treasury of the State, but the same shall be used
34 exclusively by the Department of Environment, Health, and Natural Resources in
35 paying the costs of administration of this section and for the development and
36 conservation of the natural resources of the State, including any advertising program
37 which may be adopted for such purpose, all of which shall be subject to the approval of
38 the Governor, acting by and with the advice of the Council of State."

39 Sec. 6. G.S. 146-9 reads as rewritten:

40 **"§ 146-9. Disposition of mineral deposits in State lands not under water.**

41 The Department of Administration may sell, lease, or otherwise dispose of mineral
42 rights or deposits in the vacant and unappropriated lands, swamplands, and lands
43 acquired by the State by virtue of being sold for taxes, not lying beneath the waters of
44 the State, at such times, upon such consideration, in such portions, and upon such terms

1 as are deemed proper by the Department and approved by the ~~Governor and~~ Council of
2 State. Every instrument conveying such rights shall be executed in the manner required
3 of deeds by G.S. 146-74 through 146-78, and shall be approved by the ~~Governor and~~
4 Council of State as therein provided, or by the agency designated by the ~~Governor and~~
5 Council of State to approve conveyances of such rights. The net proceeds of
6 dispositions of all such mineral rights or deposits shall be paid into the State Literary
7 Fund."

8 Sec. 7. G.S. 146-10 reads as rewritten:

9 **"§ 146-10. Leases.**

10 The Department of Administration may lease or rent the vacant and unappropriated
11 lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, at
12 such times, upon such consideration, in such portions, and upon such terms as it may
13 deem proper. Every lease or rental of such lands by the Department shall be approved
14 by the ~~Governor and~~ Council of State, or by the agency designated by the ~~Governor and~~
15 Council of State to approve such leases and rentals."

16 Sec. 8. G.S. 146-11 reads as rewritten:

17 **"§ 146-11. Easements, rights-of-way, etc.**

18 The Department of Administration may grant easements, rights-of-way, dumping
19 rights and other interests in State lands, for the purpose of

- 20 (1) Cooperating with the federal government,
- 21 (2) Utilizing the natural resources of the State, or
- 22 (3) Otherwise serving the public interest.

23 The Department shall fix the terms and consideration upon which such rights may be
24 granted. Every instrument conveying such interests shall be executed in the manner
25 required of deeds by G.S. 146-74 through 146-78, and shall be approved by the
26 ~~Governor and~~ Council of State as therein provided, or by the agency designated by the
27 ~~Governor and~~ Council of State to approve conveyances of such interests."

28 Sec. 9. G.S. 146-12 reads as rewritten:

29 **"§ 146-12. Easements in lands covered by water.**

30 The Department of Administration may grant, to adjoining riparian owners,
31 easements in lands covered by navigable waters or by the waters of any lake owned by
32 the State for such purposes and upon such conditions as it may deem proper, with the
33 approval of the ~~Governor and~~ Council of State. The Department may, with the approval
34 of the ~~Governor and~~ Council of State, revoke any such easement upon the violation by
35 the grantee or his assigns of the conditions upon which it was granted.

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

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

42 Sec. 10. G.S. 146-17 reads as rewritten:

43 **"§ 146-17. Mapping and discovery agreements.**

1 The Department of Administration, acting on behalf of the State, for the purpose of
2 discovering State lands, may, with the approval of the ~~Governor and~~ Council of State,
3 enter into agreements with counties, municipalities, persons, firms, and corporations
4 providing for the discovery of State land by the systematic mapping of the counties of
5 the State and by other appropriate means. All expenses incurred by the Department
6 incident to such mapping and discovery agreements shall be paid from the State Land
7 Fund, unless otherwise provided by the General Assembly."

8 Sec. 11. G.S. 146-17.1 reads as rewritten:

9 **"§ 146-17.1. Rewards; reclamation of certain State lands; wrongful removal of**
10 **timber from State lands.**

11 (a) The Department of Administration, acting on behalf of the State, for the
12 purpose of discovering State lands, may, with the approval of the ~~Governor and~~ Council
13 of State, pay any person, firm or corporation who shall provide information that leads to
14 the successful reclamation of any swamplands or vacant and unappropriated lands of the
15 State, a reward equal to one percent (1%) of the appraised value of the reclaimed land,
16 or one thousand dollars (\$1,000), whichever sum is less. All expenses incurred by the
17 Department pursuant to this subsection shall be paid from the State Land Fund, unless
18 otherwise provided by the General Assembly.

19 (b) The Department of Administration, acting on behalf of the State, may, with
20 the approval of the ~~Governor and~~ Council of State, pay any person, firm or corporation
21 who shall provide information that leads to a successful monetary recovery by the State
22 from any person, firm or corporation who wrongfully cuts or removes timber from State
23 lands, a reward equal to one percent (1%) of the amount of said monetary recovery, or
24 one thousand dollars (\$1,000), whichever sum is less. All expenses incurred by the
25 Department pursuant to this subsection shall be paid from said monetary recovery,
26 unless otherwise provided by the General Assembly.

27 (c) No State employee or official, or other public employee or official, shall be
28 eligible for a reward pursuant to subsections (a) or (b) of this section for providing any
29 information obtained in the normal course of his or her official duties."

30 Sec. 12. G.S. 146-22 reads as rewritten:

31 **"§ 146-22. All acquisitions to be made by Department of Administration.**

32 Every acquisition of land on behalf of the State or any State agency, whether by
33 purchase, condemnation, lease, or rental, shall be made by the Department of
34 Administration and approved by the ~~Governor and~~ Council of State; provided that if the
35 proposed acquisition is a purchase of land with an appraised value of at least twenty-
36 five thousand dollars (\$25,000), and the acquisition is for other than a transportation
37 purpose, the acquisition may only be made after consultation with the Joint Legislative
38 Commission on Governmental Operations. In determining whether the appraised value
39 is at least twenty-five thousand dollars (\$25,000), the value of the property in fee simple
40 shall be used. The State may not purchase land as a tenant-in-common without
41 consultation with the Joint Legislative Commission on Governmental Operations if the
42 appraised value of the property in fee simple is at least twenty-five thousand dollars
43 (\$25,000)."

44 Sec. 13. G.S. 146-23 reads as rewritten:

1 **"§ 146-23. Agency must file statement of needs; Department must investigate.**

2 Any State agency desiring to acquire land, whether by purchase, condemnation,
3 lease, or rental, shall file with the Department of Administration an application setting
4 forth its needs, and shall furnish such additional information as the Department may
5 request relating thereto. Upon receipt of such application, the Department of
6 Administration shall promptly investigate all aspects of the requested acquisition,
7 including the existence of actual need for the requested property on the part of the
8 requesting agency; the availability of land already owned by the State or by any State
9 agency which might meet the requirements of the requesting agency; the availability,
10 value, and status of title of other land, whether for purchase, condemnation, lease, or
11 rental, which might meet the requirements of the requesting agency; and the availability
12 of funds to pay for land if purchased, condemned, leased, or rented. The Department of
13 Administration may make acquisitions at the request of the ~~Governor and~~ Council of
14 State upon compliance with the investigation herein required."

15 Sec. 14. G.S. 146-24 reads as rewritten:

16 **"§ 146-24. Procedure for purchase or condemnation.**

17 (a) If, after investigation, the Department determines that it is in the best interest
18 of the State that land be acquired, the Department shall proceed to negotiate with the
19 owners of the desired land for its purchase.

20 (b) If the purchase price and other terms are agreed upon, the Department shall
21 then submit to the ~~Governor and~~ Council of State the proposed purchase, together with a
22 copy of the deed, for their approval or disapproval. If the ~~Governor and~~ Council of State
23 approve the proposed purchase, the Department shall pay for the land and accept
24 delivery of a deed thereto. All conveyances of purchased real property shall be made to
25 'the State of North Carolina,' and no such conveyance shall be made to a particular
26 agency, or to the State for the use or benefit of a particular agency.

27 (c) If negotiations for the purchase of the land are unsuccessful, or if the State
28 cannot obtain a good and sufficient title thereto by purchase from the owners, then the
29 Department of Administration may request permission of the ~~Governor and~~ Council of
30 State to exercise the right of eminent domain and acquire any such land by
31 condemnation in the same manner as is provided for the Board of Transportation by
32 Article 9 of Chapter 136 of the General Statutes. Upon approval by the ~~Governor and~~
33 Council of State, the Department may proceed to exercise the right of eminent domain.
34 Approval by no other State agency shall be required as a prerequisite to the exercise of
35 the power of eminent domain by the Department. Provided that when the procedures of
36 Article 9 of Chapter 136 are employed by the Department, any person named in or
37 served with a complaint and declaration of taking shall have 120 days from the date of
38 service thereof within which to file answer."

39 Sec. 15. G.S. 146-24.1 reads as rewritten:

40 **"§ 146-24.1. The power of eminent domain.**

41 In carrying out the duties and purposes set forth in Chapters 143 and 146 of the
42 General Statutes, the Department of Administration is vested with the power of eminent
43 domain and shall have the right and power to acquire such lands, easements, rights-of-
44 way or estates for years by condemnation in the manner prescribed by G.S. 146-24 of

1 the General Statutes. The power of eminent domain herein granted is supplemental to
2 and in addition to the power of eminent domain which may be now or hereafter vested
3 in any State agency as defined by G.S. 146-64 and the Department of Administration
4 may exercise on behalf of such agency the power vested in said agency or the power
5 vested in the Department of Administration herein; and the Department of
6 Administration may follow the procedure set forth in G.S. 146-24 or the procedure of
7 such agency, at the option of the Department of Administration. Where such acquisition
8 is made at the request of an agency, such agency shall make a determination of the
9 necessity therefor; where such acquisition is on behalf of the State or at the request of
10 the Department of Administration, such findings shall be made by the Director of
11 Administration. Provided, however, that all such acquisitions shall have the approval of
12 the ~~Governor and~~ Council of State as provided in G.S. 146-24.

13 This section shall not apply to public projects and condemnations for which specific
14 statutory condemnation authority and procedures are otherwise provided."

15 Sec. 16. G.S. 146-25 reads as rewritten:

16 **"§ 146-25. Leases and rentals.**

17 If, after investigation, the Department of Administration determines that it is in the
18 best interest of the State that land be leased or rented for the use of the State or of any
19 State agency, the Department shall proceed to negotiate with the owners for the lease or
20 rental of such property. All lease and rental agreements entered into by the Department
21 shall be promptly submitted to the ~~Governor and~~ Council of State for approval or
22 disapproval."

23 Sec. 17. G.S. 146-26 reads as rewritten:

24 **"§ 146-26. Donations and devises to State.**

25 No devise or donation of land or any interest therein to the State or to any State
26 agency shall be effective to vest title to the said land or any interest therein in the State
27 or in any State agency until the devise or donation is accepted by the ~~Governor and~~
28 Council of State. Upon acceptance by the ~~Governor and~~ Council of State, title to the said
29 land or interest therein shall immediately vest as of the time title would have vested but
30 for the above requirement of acceptance by the ~~Governor and~~ Council of State."

31 Sec. 18. G.S. 146-27 reads as rewritten:

32 **"§ 146-27. The role of the Department of Administration in sales, leases, and
33 rentals.**

34 Every sale, lease, or rental of land owned by the State or by any State agency shall
35 be made by the Department of Administration and approved by the ~~Governor and~~
36 Council of State; provided that if the proposed disposition is a sale of land with an
37 appraised value of at least twenty-five thousand dollars (\$25,000), the sale may only be
38 made after consultation with the Joint Legislative Commission on Governmental
39 Operations. The Department of Administration may initiate proceedings for sales,
40 leases, and rentals of land owned by the State or by any State agency."

41 Sec. 19. G.S. 146-29 reads as rewritten:

42 **"§ 146-29. Procedure for sale, lease, or rental.**

43 If, after investigation, the Department of Administration determines that it is in the
44 best interest of the State that land be sold, leased, or rented, the Department shall

1 proceed with its sale, lease, or rental, as the case may be, in accordance with rules
2 adopted by the Governor and approved by the Council of State. If an agreement of sale,
3 lease, or rental is reached, the proposed transaction shall then be submitted to the
4 ~~Governor and~~ Council of State for their approval or disapproval. Every conveyance in
5 fee of land owned by the State or by any State agency shall be made and executed in
6 the manner prescribed in G.S. 146-74 through 146-78."

7 Sec. 20. G.S. 146-31 reads as rewritten:

8 **"§ 146-31. Right of appeal to ~~Governor and~~ Council of State.**

9 The requesting agency, in the event of disagreement with a decision of the
10 Department of Administration regarding the acquisition or disposition of land pursuant
11 to the provisions of this Subchapter, shall have the right of appeal to the ~~Governor and~~
12 Council of State."

13 Sec. 21. G.S. 146-34 reads as rewritten:

14 **"§ 146-34. Agencies may establish agreed boundaries.**

15 Every State agency may establish agreed boundaries between lands allocated to it or
16 under its control, and the lands of any other owner, subject to the approval of the
17 ~~Governor and~~ Council of State. The Department of Administration is authorized to
18 establish agreed boundaries between State lands not allocated to or under the control of
19 any other State agency and the lands of any other owner, subject to the approval of the
20 ~~Governor and~~ Council of State. The Attorney General shall represent the State in all
21 proceedings to establish boundaries which cannot be established by agreement."

22 Sec. 22. G.S. 146-36 reads as rewritten:

23 **"§ 146-36. Acquisitions for and conveyances to federal government.**

24 The ~~Governor and~~ Council of State may, whenever they find that it is in the best
25 interest of the State to do so, enter into any contract or other agreement which will be
26 sufficient to comply with federal laws or regulations, binding the State to acquire for
27 and to convey to the United States government land or any interest in land, and to do
28 such other acts and things as may be necessary for such compliance.

29 The ~~Governor and~~ Council of State may authorize any conveyance to the United
30 States government to be made upon nominal consideration whenever they deem it to be
31 in the best interest of the State to do so."

32 Sec. 23. G.S. 146-74 reads as rewritten:

33 **"§ 146-74. Approval of conveyances.**

34 Every proposed conveyance in fee of State lands shall be submitted to the ~~Governor~~
35 ~~and~~ Council of State for their approval. If the proposed conveyance is of State lands
36 with an appraised value of at least twenty-five thousand dollars (\$25,000), and it is for
37 other than a transportation purpose, the Council of State shall consult with the Joint
38 Legislative Commission on Governmental Operations before making a final decision on
39 the proposed conveyance. Upon approval of the proposed conveyance in fee by the
40 ~~Governor and~~ Council of State, a deed for the land being conveyed shall be executed in
41 the manner prescribed in this Article."

42 Sec. 24. This act is effective upon ratification.