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SENATE BILL 52*

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

House Committee Substitute Favorable 5/3/95

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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.

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

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

22 (c) Nothing in this Subchapter shall apply to a privately owned lake or any
23 hydroelectric reservoir licensed by the Federal Energy Regulatory Commission.

24 (d) Nothing in this Subchapter shall be construed to limit or expand the full
25 exercise of common law riparian or littoral rights."

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

27 **"§ 146-12. Easements in lands covered by water.**

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

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

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

40 (b) Easements Not Requiring Approval by the Governor or Council of State. – In
41 accordance with the provisions in subsections (c) through (m) of this section, the
42 Department of Administration shall grant easements to adjoining riparian or littoral

1 owners in State-owned lands covered by navigable waters without the approval of the
2 Governor and the Council of State for:

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

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

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

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

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

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

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

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

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

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

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

42 (6) Include the appropriate easement purchase payment.

1 (g) Easement Terms. – Any easement granted under subsection (b) of this section
2 shall be in a form suitable for recordation and shall be executed by either the Director or
3 Deputy Director of the State Property Office. The State-owned lands covered by
4 navigable waters included within the easement shall be limited to the footprint of the
5 structure. The terms of each easement shall provide that the easement:

- 6 (1) Is appurtenant to specifically described, adjacent riparian or littoral
7 property and runs with the land.
8 (2) Specifies that the holder of the easement shall not exclude or prevent the
9 public from exercising public trust rights, including commercial and
10 recreational fishing, shellfishing, seine netting, pound netting, and other
11 fishing rights.
12 (3) Specifies that the holder of the easement obtains no additional rights to
13 interfere with the approval, issuance, or renewal of shellfish or water
14 column leases or to interfere with the use or cultivation of existing
15 shellfish leases, water column leases, or shellfish franchises.
16 (4) Specifies that any rights conveyed to the holder of the easement are not
17 inconsistent with the rights conferred by previous conveyances made by
18 the State for the same property.
19 (5) Is valid for a term of 50 years from the date of issuance.
20 (6) Is eligible for one renewal term of 50 years.
21 (7) Is granted in the public interest for good and valuable consideration
22 received by the State.
23 (8) Specifies by metes and bounds description or attached plat the footprint
24 of the structure for which the easement is issued.
25 (9) Describes the uses of the structure for which the easement is being
26 granted, which may include:
27 a. Providing reasonable access for all vessels traditionally used in
28 the main watercourse area to deep water or, where present, to a
29 specified navigational channel;
30 b. Mooring vessels at or adjacent to the structure;
31 c. Enhancing or improving the value of the adjacent riparian or
32 littoral property; and
33 d. All other reasonable, nonexclusive public trust uses as specified
34 in the easement application, to the extent not otherwise limited
35 by provisions of this Subchapter or any other law.
36 (10) Specifies that rights granted include the right to repair, rebuild, or
37 restore existing structures consistent with Article 7 of Chapter 113A of
38 the General Statutes.
39 (11) Specifies that the exercise of any rights under the easement shall be
40 contingent upon obtaining all required permits.

41 (h) Easement Purchase Payment. – The easement purchase payment for easements
42 issued under subsection (b) of this section shall be computed on the basis of one thousand
43 dollars (\$1,000) per acre of footprint coverage prorated in increments of two hundred

1 fifty dollars (\$250.00) rounded up to the nearest quarter acre. The minimum payment
2 shall be five hundred dollars (\$500.00) if any payment is owed after the riparian credit is
3 applied. In recognition of common law riparian and littoral rights and a declared public
4 policy concern that easements provided under this section be available to all citizens, a
5 credit shall be given against any easement purchase payment in an amount equal to the
6 number of linear feet of shoreline multiplied by a factor of 54 feet. No linear feet of
7 shoreline may be used in computing the credit if that area of shoreline has been the basis
8 of a previous credit. For purposes of determining the linear feet of shoreline owned, an
9 application submitted by a corporation or other entity whose members include riparian or
10 littoral lot owners, which owners have the right to use the structure for which the
11 easement is sought, and whose lots are restricted from construction thereon of other
12 structures for similar use, shall be considered an application whose easement purchase
13 payment shall be determined by using the entirety of such use restricted shoreline for
14 purposes of determining the applicable riparian credit. Shoreline utilization shall be
15 considered 'use restricted' if riparian or littoral structures are prohibited by either permit
16 condition or by restrictive covenant or similar, enforceable private restriction.

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

26 (j) Easement Renewal. – Upon written request from the current easement holder,
27 easements shall be renewed for one additional term of 50 years. Renewal easements shall
28 be subject to the terms, conditions, and purchase payments applicable to initial easements
29 at the time of renewal. Written notification of expiring easements shall be provided by
30 the State Property Office at least 180 days prior to expiration of the initial easement term.
31 Letter applications for renewal easements shall be submitted within 180 days of the
32 notice of expiration by the State Property Office.

33 (k) Easement Modification. – Any expansion of the footprint of an existing
34 structure shall require an easement or modification of any existing easement. The
35 application for a modification of an easement shall be as provided in subsection (f) of this
36 section. The easement purchase payment shall be based only on the footprint of the
37 expansion after applying the riparian credit. The minimum easement purchase payment
38 shall be five hundred dollars (\$500.00) if any payment is owed after the riparian credit is
39 applied. Easement holders may voluntarily apply for modification of an easement to
40 correct any material errors or omissions. No easement purchase payment shall be
41 required for the modification of an existing use that does not expand the footprint of the
42 existing structure. No refunds shall be provided for any modification that reduces the
43 footprint.

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

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

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

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

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

17 (1) Piers, docks, or similar structures for the exclusive use of the owner or
18 occupant of the adjacent riparian or littoral property, which generate no
19 revenue directly related to the structure and which accommodate no
20 more than ten vessels;

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

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

26 (4) Structures on submerged lands or lands covered by navigable waters not
27 owned by or for the benefit of the public that have been created by
28 dredging or excavating lands."

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

31 **"§ 146-14.1. Natural Resources Easement Fund.**

32 The Natural Resources Easement Fund is established as a nonreverting fund within
33 the Department of Administration. All easement purchase payment monies collected by
34 the Secretary shall be deposited in the Fund. The Fund may be used for direct costs of
35 administering the program. Fifty percent (50%) of the net proceeds in the Fund shall be
36 transferred annually to the Marine Fisheries Commission, and fifty percent (50%) of the
37 net proceeds in the Fund shall be transferred annually to the Wildlife Resources
38 Commission, to be used by both Commissions for the sole purpose of enhancing public
39 trust resources and increasing the public's access to and use of public trust resources,
40 including, but not limited to, meeting the State's cost share obligations for federal
41 Wallop-Breaux Fund projects, enhancing water resources and expanding the number of
42 public boat ramps and other means of public waters access within the counties designated
43 under G.S. 113A-103(2), and other public trust access purposes."

1 Sec. 4. G.S. 146-64 is amended by adding a new subdivision to read:
2 "(10) For purposes of this Subchapter, 'deep water' means the depth
3 reasonably necessary to provide and allow reasonable access for all
4 vessels traditionally used in the main watercourse area as of the time
5 of the initial easement application."

6 Sec. 5. This act becomes effective October 1, 1995. Nothing in this act shall
7 require the adoption of rules to implement the provisions herein. The authorization
8 established under this act applies only to the Department of Administration and shall not
9 be used by any other agency to administer or regulate activities affecting the public trust.