

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 52

SHORT TITLE: State-Owned Submerged Lands

SPONSOR(S): Committee Substitute (7/13/95 replaces 6th edition)

FISCAL IMPACT: **Expenditures:** **Increase ()** **Decrease ()**
 Revenues: **Increase ()** **Decrease ()**
 No Impact ()
 No Estimate Available (x)

FUND AFFECTED: **General Fund (x)** **Highway Fund ()** **Local Fund ()**
 Other Funds ()

BILL SUMMARY: STATE-OWNED SUBMERGED LANDS STUDY. TO CREATE THE STATE-OWNED SUBMERGED LANDS ADVISORY COMMITTEE AND TO REQUIRE THAT THE ADVISORY COMMITTEE MAKE ITS FINAL REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE MAY 1, 1995. Creates committee named in title, with 20 members, 10 each appointed by Speaker and Senate President Pro Tempore. Directs committee to study management of private use of state-owned submerged lands, with report due by May 1, 1995. Prohibits Department of Administration from adopting permanent schedule of terms and consideration for granting easements in such lands before December 1, 1995.

AMENDMENTS/COMMITTEE SUBSTITUTES-Feb. 7, 1995

S 52. STATE-OWNED SUBMERGED LANDS STUDY. Intro. 1/26/95. Senate committee substitute replaces 1st edition. Requires that Department of Administration provide clerical staffing and other funding for the study (was, Department of Environment, Health, and Natural Resources). Deletes explicit bar against adoption of permanent schedule of terms and consideration for granting easements in lands "by the waters of any lake" owned by the State prior to December 1, 1995. An easement is defined as an interest in land owned by another that entitles its holder to a specific use.

AMENDMENTS/COMMITTEE SUBSTITUTES-May 3, 1995

S 52. STATE-OWNED SUBMERGED LANDS. Intro. 1/26/95. House committee substitute completely replaces original bill. Title now reads TO IMPLEMENT THE RECOMMENDATIONS FROM THE STATE-OWNED SUBMERGED LANDS ADVISORY COMMITTEE AND TO AMEND CHAPTER 146 OF THE GENERAL STATUTES CONCERNING SUBMERGED LANDS. Amends GS 146-12 to make clear that riparian and littoral rights of riparian and littoral landowners include the right, subject to state regulation, to erect, improve, and maintain docks, piers, and wharves, and related equipment, between their uplands and deep water (defined by bill's amendment to GS 146-64 as water deep enough to allow vessels of all sizes and drafts that frequent the

area to navigate freely) without the necessity of obtaining any additional easement. A riparian right is a right of access or of use of a body water. A littoral right is similar to a riparian right, but it applies specifically to seas or oceans. Provides also that no easement is necessary to maintain, replace, or improve any structure on, under, over, or in the waters of the state, otherwise legal at the time of its construction, and in existence on July 1, 1995.

AMENDMENTS/COMMITTEE SUBSTITUTES-June 14, 1995

S 52. STATE-OWNED SUBMERGED LANDS. Intro. 1/26/95. House committee substitute replaces 1st edition. Adds provision clarifying that the intent of this act is to establish a compensation structure for utilization of public trust submerged lands covered by navigable water and not to limit in any way a riparian or littoral owner from procuring permits, otherwise consistent with the laws of this State. Authorizes the Department of Administration to grant to adjoining riparian and littoral property owners, easements (for purposes of facilitating public use of public trust waters that are accessible through privately owned piers, wharves, docks, marinas etc.) in lands covered by navigable waters or by the waters of any lake owned by the State. Specifies the procedures for applying for such easements from the Department. Establishes one-time fee of \$1,000 per acre of footprint coverage with a minimum charge of \$500. Establishes the Natural Resources Easement Fund (nonreverting) for deposit of all easement purchase monies collected by the Department. Directs the net proceeds to be transferred annually to the Wildlife Resources Commission for the express purpose of enhancing public trust resources. Specifies that the Department may, with the prior written approval of the Governor and Council of State, revoke any such easement upon the violation by the grantee or his assigns of the conditions upon which it was granted. Specifies that any such revocation entitles the easement holder to file a contested case hearing petition under GS Ch. 150B, Art. 3.

AMENDMENTS/COMMITTEE SUBSTITUTES-June 29, 1995

S 52. STATE-OWNED SUBMERGED LANDS STUDY. Intro. 1/26/95. House committee substitute replaces 4th edition. Changes title to: "TO AMEND THE PROVISIONS OF CHAPTER 146 CONCERNING SUBMERGED LANDS OR LANDS COVERED BY NAVIGABLE WATERS." Amends GS 146-1 to exempt from approval by Governor or Council of State easements for existing and new structures allowed under GS Ch. 113A, Art. 7 and structures existing before effective date of those provisions. Amends GS 146-12(e) to forbid holder of easement to exclude public from exercising public trust rights, such as fishing, on area covered by easement, and to require easement to specify that the exercise of any rights under easement are contingent on obtaining all required permits. Adds to GS 146-12(m) exemptions from easement requirements: submerged lands or

lands covered by navigable waters that are not owned by or for benefit of public and have been created by dredging or excavation.

AMENDMENTS/COMMITTEE SUBSTITUTES-July 11, 1995

S 52. STATE-OWNED SUBMERGED LANDS. Intro. 1/26/95. House committee substitute replaces 5th edition. Rewrites title of act to read, "AN ACT TO AMEND THE PROVISIONS OF CHAPTER 146 CONCERNING STATE-OWNED SUBMERGED LANDS." Adds provision specifying that nothing in the affected Subchapter shall be construed to limit the full exercise of common law riparian or littoral rights. Provides that applications for voluntary easements shall be received by the State Property Office within 36 months of the effective date of the act. Requires that office to provide public notice of the availability of voluntary easements during that 36-month period. Requires riparian or littoral property owners of new structures to obtain an easement in accordance with procedures set out in the act. Modifies some easements during that 36-month period. Requires riparian or littoral property owners of new structures to obtain an easement in accordance with procedures set out in the act. Modifies some of the required terms of the easement. Provides that the annual rental for an easement shall be fair market value on a per acre of footprint coverage rounded to the nearest quarter acre. Provides that the act of easement issuance is exempt from the provisions of the Administrative Procedure Act. Provides that easements may be revoked in accordance with G.S. 146-12(a), and administrative review under Article 3 or G.S. Chapter 150B. Makes variety of other wording changes. Changes effective date to October 1, 1995.

AMENDMENTS/COMMITTEE SUBSTITUTES-July 13

S 52. STATE-OWNED SUBMERGED LANDS STUDY. Intro. 2/7/95. House committee substitute replaces 6th edition. Generally limits coverage of bill to state-owned lands covered by navigable waters (previously covered state-owned submerged lands and lands covered by navigable waters). Exempts from all provisions (1) privately covered lands covered by navigable waters (previously covered state-owned submerged lands and lands covered by navigable waters). Exempts from all provisions (1) privately owned lakes and (2) hydroelectric reservoirs licensed by Federal Energy Regulatory Comm'n. In revisions to G.S. 146-12(g), limits coverage of easement concerning structure on state-owned lands covered by navigable waters to footprint of the structure. Provides that holder of easement obtains no additional rights to interfere with issuance of shellfish or water column leases or use of cultivation of such leases or shellfish franchises. Rights granted to holder to be not inconsistent with rights conferred by previous conveyances made by state for same property. Rights in easement include right to repair, rebuild, or restore existing structures consistent with G.S. Ch. 113A, Art. 7.

Revises formula for easement purchase payment in G.S. 146-12(h) (previously, fair market value): \$1,000 per acre of footprint coverage, with minimum \$500 payment if any payment is owed after the riparian credit is applied. Credit is for number of linear feet of shoreline multiplied by 54.

EFFECTIVE DATE: October 1, 1995

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Department of Administration State Property Office

FISCAL IMPACT

<u>FY</u>	<u>FY</u>	<u>FY</u>	<u>FY</u>
<u>FY</u>			
95-96	96-97	97-98	98-99
99-2000			

REVENUES: No estimate available

EXPENDITURES: No estimate available

ASSUMPTIONS AND METHODOLOGY: Although some information upon which a fiscal estimate could be based is available, certain critical pieces of information are lacking. The available information as well as the information that is lacking is discussed below.

Receipts from Utilities

Exempting public utilities from easement charges they now pay would result in a decrease in fees to the General Fund. Over the past three years, these easement charges generated approximately \$3,600 per year.

Commercial Structures

The Division of Coastal Management estimates that North Carolina has approximately 560 commercial marinas, docks, piers and other structures, with a total footprint size of around 200 acres. However, the lengths of the shorelines on the properties that each of these structures abut are unknown. The length of each of these waterfront properties is essential for calculating the credit each owner of a structure would receive under the bill. Estimating the credit owners would receive is further complicated by uncertainty as to how shoreline length should be measured. If a shoreline's irregularities were incorporated, the measurement would be longer than if the shoreline were measured on the basis of a straight line from one side of the property to the other.

Based on anecdotal data, the State Property Office believes that in most cases, the credit to property owners would exceed any easement

charges. Therefore, State Property believes any revenue this bill would generate from commercial owners would be relatively small.

Exempted Structures

Owners of structures exempted from this bill may nevertheless apply for easements. How many, if any, would apply is unclear. Applications for these exempted structures could potentially place a great paperwork burden on the State Property Office.

An example of how this bill could generate paperwork is provided by the 1965 enactment of G.S. 113-205, which required that commercial claims to submerged lands be registered. Although the law was concerned only with commercial claims to submerged lands, over 90% of the applications submitted were from owners of non-commercial property exempted from the legislation. How closely this experience would be repeated with respect to easement applications at the State Property Office is unknown. However, in one year (fiscal year 1993-94), the quantity of permits issued by Coastal Management for structures that would be exempted from this legislation numbered approximately 1,500.

Also unknown are the sizes of these exempted structures and the shoreline lengths of the properties they abut. Thus, estimating the amount of money, if any, that would be collected from those exempted from this legislation is virtually impossible.

SOURCES OF DATA: DOA State Property Office, Attorney General, DOA Office of Fiscal Management, DEHNR Divisions of Coastal Management and Marine Fisheries.

TECHNICAL CONSIDERATIONS:

As discussed above, how the shoreline length is to be measured is ambiguous.

FISCAL RESEARCH DIVISION

733-4910

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DATE: July 18, 1995



Signed Copy Located in the NCGA Principal Clerk's Offices