

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1509
Second Edition Engrossed 6/19/90

Short Title: Aquaculture Shellfish Franchises.

(Public)

Sponsors: Senator Basnight.

Referred to: Marine Resources.

June 4, 1990

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE WATER COLUMN LEASES FOR AQUACULTURE
3 WITHIN RECOGNIZED SHELLFISH FRANCHISES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 16 of Chapter 113 of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 113-202.2. Water column leases for aquaculture for perpetual franchises.**

8 (a) To increase the productivity of shellfish grants and perpetual franchises for
9 shellfish culture recognized under G.S. 113-206, the Marine Fisheries Commission may
10 lease the water column superjacent to such grants or perpetual franchises (hereinafter
11 'perpetual franchises') under the terms of this section when it determines the public
12 interest will benefit from the lease. Perpetual franchises with water column leases must
13 produce shellfish in commercial quantities at four times the minimum production rate of
14 leases issued under G.S. 113-202, or any higher quantity required by the Commission
15 by rule.

16 (b) Suitable areas for the authorization of water column use shall meet the
17 following minimum standards:

- 18 (1) Aquaculture use of the leased water column area must not significantly
19 impair navigation;
20 (2) The leased water column area must not be within a navigation channel
21 marked or maintained by a State or federal agency;
22 (3) The leased water column area must not be within an area traditionally
23 used and available for fishing or hunting activities incompatible with

- 1 the activities proposed by the perpetual franchise holder, such as
2 trawling or seining;
- 3 (4) Aquaculture use of the leased water column area must not significantly
4 interfere with the exercise of riparian rights by adjacent property
5 owners including access to navigation channels from piers or other
6 means of access;
- 7 (5) The leased water column area may not exceed 10 acres for grants or
8 perpetual franchises recognized pursuant to G.S. 113-206;
- 9 (6) The leased water column area must not extend more than one-third of
10 the distance across any body of water or into the channel third of any
11 body of water for grants or perpetual franchises recognized pursuant to
12 G.S. 113-206; and
- 13 (7) Any additional rules to protect the public interest in coastal fishing
14 waters adopted by the Commission.
- 15 (c) The Commission shall not lease the water column superjacent to oyster or
16 other shellfish grants or perpetual franchises unless:
- 17 (1) The perpetual franchise holder submits an application, accompanied by
18 a nonrefundable application fee of one hundred dollars (\$100.00),
19 which conforms to the standards for lease applications in G.S. 113-
20 202(d) and rules adopted by the Commission;
- 21 (2) Notice of the proposed lease has been given consistent with G.S. 113-
22 202(f);
- 23 (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- 24 (4) The aspects of the proposals which require use and dedication of the
25 water column have been documented and are recognized by the
26 Commission as commercially feasible forms of aquaculture which will
27 enhance shellfish production;
- 28 (5) It is not feasible to undertake the aquaculture activity outside of coastal
29 fishing waters; and
- 30 (6) The authorized water column use has the least disruptive effect on
31 other public trust uses of the waters of any available technology to
32 produce the shellfish identified in the proposal.
- 33 (d) Water column leases to perpetual franchises shall be issued for a period of
34 five years and may be renewed pursuant to subsection (g) of this section. The annual
35 rental for water column leases shall be five hundred dollars (\$500.00) per acre, prorated,
36 or the then current renewal rate, whichever is greater.
- 37 (e) Water column leases to perpetual franchises may be terminated for
38 unauthorized or unlawful interference with the exercise of public trust rights by the
39 leaseholder or his agents or employees.
- 40 (f) Water column leases to perpetual franchises are not transferrable except when
41 the Commission approves the transfer after public notice and hearing consistent with
42 G.S. 113-202(f) and (g).
- 43 (g) After public notice and hearing consistent with G.S. 113-202(f) and (g), the
44 Commission may renew a water column lease, in whole or in part, if the leaseholder has

1 produced commercial quantities of shellfish and has otherwise complied with this
2 section and the rules of the Commission. Renewals may be denied or reduced in scope
3 when the public interest so requires. Appeal of renewal decisions shall be conducted in
4 accordance with G.S. 113-202(p). Renewals are subject to the lease terms and rates set
5 out in subsection (d) of this section.

6 (h) The procedures and requirements of G.S. 113-202 shall apply to proposed
7 water column leases or water column leases to perpetual franchises considered under
8 this section except that more specific provisions of this section control conflicts between
9 the two sections.

10 (i) Demonstration or research aquaculture development projects may be
11 authorized for two years with no more than one renewal and when the project is
12 proposed or formally sponsored by an educational institution which conducts
13 aquaculture research or demonstration projects. Production of shellfish with a sales
14 value in excess of one thousand dollars (\$1,000) per acre per year shall constitute
15 commercial production. Demonstration or research aquaculture development projects
16 shall be exempt from the rental rate in subsection (d) of this section unless commercial
17 production occurs as a result of the project."

18 Sec. 2. This act is effective upon ratification.