

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

4

SENATE BILL 52*

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

House Committee Substitute Favorable 5/3/95

House Committee Substitute #2 Favorable 6/14/95

Short Title: State-Owned Submerged Lands.

(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PUBLIC TRUST PURPOSES ASSOCIATED WITH WHARVES, DOCKS, PIERS, MARINAS, AND OTHER STRUCTURES THAT MAY BE LOCATED IN WHOLE OR PART OVER SUBMERGED LANDS OWNED BY THE STATE, TO IMPLEMENT RECOMMENDATIONS FROM THE STATE-OWNED SUBMERGED LANDS ADVISORY COMMITTEE, AND TO AMEND THE PROVISIONS OF CHAPTER 146 CONCERNING SUBMERGED LANDS.

The General Assembly of North Carolina enacts:

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

"§ 146-1. Intent of Subchapter.

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

1 which is vested in the State or in any State agency, to be exercised subject to the
2 provisions of this Subchapter.

3 Further, it is the intent of this Subchapter to establish a compensation structure for
4 utilization of public trust submerged lands covered by navigable water, not to limit in any
5 way a riparian or littoral owner from procuring permits, otherwise consistent with the
6 laws of this State."

7 Sec. 2. G.S. 146-3(1) reads as rewritten:

8 "(1) No submerged lands covered by navigable waters may be conveyed in
9 fee, but easements therein may be granted, as provided in this
10 Subchapter. Nothing in this Subchapter shall be construed to limit,
11 extinguish, or abridge common law riparian or littoral rights or prevent
12 the reasonable exercise thereof in accordance with all other provisions
13 of law. Nothing in this Subchapter shall be construed to require an
14 easement for utilization of any waters which have been created by
15 dredging or excavating lands not owned by or for the benefit of the
16 public. The provisions set forth in this Subchapter shall be utilized only
17 by the Department of Administration."

18 Sec. 3. G.S. 146-12 reads as rewritten:

19 "**§ 146-12. Easements in lands covered by water.**

20 (a) The Department of Administration may grant, to adjoining riparian and littoral
21 property owners, easements in lands covered by navigable waters or by the waters of any
22 lake owned by the State for such purposes and upon such conditions as it may deem
23 proper, with the approval of the Governor and Council of State. ~~State, except where the~~
24 approval expressly is not required hereinafter. The Department may, with the prior,
25 written approval of the Governor and Council of State, revoke any such easement upon
26 the violation by the grantee or his assigns of the conditio*ns upon which it was granted.
27 Any such revocation shall entitle the easement holder to file a petition for a contested
28 case hearing in accordance with Article 3 of Chapter 150B of the General Statutes. No
29 other actions by the Department under this Article shall be subject to the provisions of
30 Article 3 or 4 of Chapter 150B of the General Statutes. No person other than the
31 easement holder shall be entitled to any administrative review thereunder.

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

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

38 (b) It is the declared public policy of this State to promote the ability of all citizens
39 of the State to use and enjoy public trust rights, including, but not limited to, the right to
40 conduct recreational and commercial boating and fishing activities in and over State-
41 owned submerged lands covered by navigable waters, and to manage and protect such
42 rights for the benefit of all. It is the further declared public policy of this State to manage
43 and balance potentially competing interests in the great public trust commons so that all

1 citizens, including the vast majority who do not own riparian or littoral property, have
2 reasonable access and means through which to use and enjoy public trust activities,
3 including boating, swimming, and fishing.

4 (c) It is determined and declared as a matter of legislative finding that piers, docks,
5 wharves, marinas, and other structures, publicly or privately owned, which structures are
6 located in whole or part in or over State-owned submerged lands covered by navigable
7 waters, generally serve public trust purposes consistent with the public interest, including,
8 but not limited to:

9 (1) Providing citizens with access and ability to exercise public trust
10 boating, fishing, and swimming rights;

11 (2) Enhancing the value of appurtenant upland property values with the
12 resulting increased collection of ad valorem taxes; and

13 (3) Increasing local participation in boating and fishing activities with the
14 resulting increase in federal taxes paid for fuel, fishing tackle, boat
15 equipment, and imported boats and motors, which taxes are paid into the
16 Wallop-Breaux Fund for redistribution to the State for water resource
17 access improvements.

18 (d) It is further determined and declared as a matter of legislative finding that the
19 tourism industry is essential to the economy of the State of North Carolina, and is
20 particularly essential to the coastal plain of the State, and that the State expends
21 significant monies annually to promote tourism. It is further determined and declared
22 that the continued utilization and future construction of piers, docks, wharves, marinas,
23 and other structures, publicly or privately owned, which structures are located in whole or
24 in part on or over State-owned submerged lands covered by navigable waters, promote
25 this interest of the State of North Carolina. It is further determined and declared as a
26 matter of legislative finding that a high charge for continued utilization or future
27 construction of such structures would be counterproductive to the intent of the State to
28 provide an opportunity for the construction of such structures, to the extent consistent
29 with the laws of the State relating to the protection of the environment, and it is further a
30 legislative finding that the imposition of a significant annual charge for such utilization
31 would place North Carolina at a competitive disadvantage in attracting tourism to the
32 State or, at a minimum, would remove competitive advantages currently held by the
33 State.

34 (e) It is further determined and declared as a matter of legislative finding that the
35 State does not now, and likely cannot in the foreseeable future, provide all citizens
36 adequate access to allow for reasonable use and enjoyment of its public trust waters and,
37 therefore, that much of the public's access necessarily is, and will continue to be,
38 provided by privately owned and operated piers, wharves, docks, marinas, and other
39 similar structures. It is further determined and declared as a matter of legislative finding
40 that the vast majority of such structures presently existing in whole or in part on and over
41 State-owned submerged lands covered by navigable waters have not substantially
42 impaired the public's use of the State's public trust lands and waters.

1 (f) It is further determined and declared as a matter of legislative finding that the
2 public interest will be served by offering riparian and littoral owners of existing
3 structures a voluntary opportunity to apply for, purchase, and receive easements that
4 authorize continued use of said structures located in or over State-owned submerged
5 lands covered by navigable waters. For purposes of this section, the term 'existing
6 structures' includes all presently existing piers, docks, marinas, wharves, and other
7 structures located in whole or in part over State-owned submerged lands covered by
8 navigable waters and, in addition, all proposed structures which have, as of the effective
9 date of this section: (i) received a Coastal Area Management Act (CAMA) permit
10 pursuant to Article 7 of Chapter 113A of the General Statutes conditioned upon obtaining
11 a proper easement under this subsection; or (ii) not received a final CAMA permit solely
12 because of uncertainty over the need for or terms of any easement that might be
13 obtainable or required under this subsection. Such easements shall be purchased for good
14 and valuable consideration, including a purchase price to be paid at the time of
15 application as specified in subdivision (5) of subsection (h), with such good and valuable
16 consideration also including the public trust interests identified hereinabove in subsection
17 (c) of this section. It further is determined and declared as a matter of legislative finding
18 that the public interest is served by requiring all future structures (i.e., all structures other
19 than existing structures) located in or over State-owned submerged lands covered by
20 navigable waters, other than structures specifically herein exempted, to apply for,
21 purchase, and receive an easement in accordance with subsection (m) of this section.

22 (g) Riparian or littoral property owners who own any existing structures as defined
23 in subsection (f) of this section shall not be required to apply for, purchase, or receive any
24 easement under this Subchapter. Owners of existing structures may voluntarily apply for,
25 purchase, and receive easements in accordance with the provisions of subsections (h)
26 through (l) of this section.

27 (h) Riparian and littoral property owners of existing structures may apply to the
28 Secretary of the Department of Administration for an easement authorizing continued use
29 of the structures. All applications shall:

- 30 (1) Be made in writing to the Secretary.
- 31 (2) Be accompanied by a plat depicting the footprint and total square
32 footage of all structures located in or over submerged lands covered by
33 navigable waters (which plat may be a copy of any existing CAMA
34 permit plat).
- 35 (3) Contain a copy of the deed or other instrument through which the
36 applicant establishes ownership of the adjacent riparian or littoral
37 property.
- 38 (4) Specify the use or uses associated with such structure(s) and the
39 approximate date of installation of the structure(s) to be covered by the
40 easement.
- 41 (5) Be accompanied by the appropriate easement purchase payment, to be
42 computed on the same basis as computations for newly constructed
43 structures as set out in subsection (m) of this section. For purposes of

1 computing total acreage, areas of State-owned submerged lands covered
2 by navigable waters enclosed on three or more sides by any structure
3 (i.e., 'U'-shaped boat slips) shall be included.

4 (i) All applications for easement for existing structures shall be received by the
5 Secretary within 36 months of the effective date of this section. The Secretary shall make
6 reasonable efforts to apprise the public of the opportunity to obtain such easements by, at
7 a minimum, placement of an appropriate advertisement in at least one newspaper of
8 general circulation in each of the 20 coastal counties identified pursuant to G.S. 113A-
9 103(2) at least once every six months during the 36 month period.

10 (j) Within 75 days of receipt of a complete application as defined in subsection
11 (h), the Secretary shall issue the requested easement in form sufficient for recording in
12 the register of deeds of the county or counties in which any structure is located. This
13 ministerial act by the Secretary shall not require approval by the Governor or the Council
14 of State, shall not require rule making by the Secretary to execute, and shall be exempted
15 from all provisions of Chapter 150B of the General Statutes.

16 (k) The terms of each easement shall provide that the easement:

17 (1) Is appurtenant to specifically described, adjacent riparian or littoral
18 property and runs with the land.

19 (2) Is nonexclusive in that the easement does not exclude or prevent the
20 public from continuing to exercise public trust rights reasonably
21 consistent with the specified easement uses.

22 (3) Is valid for a term of 50 years in duration from the time of issuance.

23 (4) To the extent not inconsistent with the then established laws of the
24 State, shall be reissued for an additional term of 50 years upon
25 expiration, if, within 180 days following written notification given by
26 the State specifying the date of expiration of the term of the easement,
27 which notice shall be issued by the Secretary during the sixth month of
28 the fiftieth year of the initial term, the then holder of the easement
29 makes written application for renewal. Any renewal shall be subject to
30 the imposition of charges then applicable to the issuance of new
31 easements to the extent such charges have been adopted specifically by
32 the North Carolina General Assembly, and providing that any
33 provisions or conditions then applicable to the issuance of new
34 easements, to the extent the same have been adopted by the North
35 Carolina General Assembly, may be imposed as additional conditions
36 applicable to said renewal term.

37 (5) Is granted in the public interest for good and valuable consideration
38 received by the State.

39 (6) Specifies by description or attached plat the footprint over which the
40 easement is issued.

41 (7) Specifies the uses for which the easement is being granted, which uses
42 shall include, but not be limited to:

- 1 a. The right of reasonable access for all vessels traditionally used in
2 the main watercourse area to deep water or to a specified
3 navigational channel;
4 b. The right to moor vessels at or adjacent to the structure(s);
5 c. The right to enhance or improve the adjacent riparian or littoral
6 property; and
7 d. All other reasonable uses as specified in the easement
8 application.

9 (8) Specifies that rights granted thereunder include the right to repair,
10 rebuild, or restore all covered structures to original footprint
11 dimensions, but no further.

12 (l) If the Secretary fails to issue the requested easement within 75 days of receipt
13 of a complete application and the appropriate easement purchase payment, the applicant
14 shall have the right to immediate judicial redress in the form of mandamus in the superior
15 court of the county in which the covered structures are located. Upon establishment of
16 the predicate facts of a completed application and tender of the appropriate purchase
17 payment, the applicant shall be entitled to expeditious injunctive relief requiring issuance
18 of the required easement and recovery of reasonable attorneys' fees.

19 (m) Riparian and littoral property owners desiring to construct new piers, docks,
20 wharves, marinas, or other similar structures in whole or part in or over State-owned
21 submerged lands covered by navigable waters, on or after the effective date of this
22 section, shall apply to the Secretary for an easement authorizing the placement and use of
23 the structure(s) in and over such submerged lands. The procedures for obtaining the
24 easement shall be the same as those set forth in subsections (j) - (l) of this section. The
25 issuance of an easement for any existing structure or for any new structure shall be
26 computed on the basis of one thousand dollars (\$1,000) per acre of footprint coverage.
27 As used herein, all computations shall be rounded upward to the nearest one-quarter acre.
28 Notwithstanding this method of computation, to the extent that any compensation is owed
29 to the State, after giving consideration to the riparian credit described hereinbelow, the
30 minimum charge, if any payment is owed, shall be five hundred dollars (\$500.00).

31 It is recognized and declared as a matter of legislative finding that under common
32 law, riparian and littoral owners have been, and continue to be, entitled to reasonable
33 utilization of riparian and littoral rights without the payment of compensation to the State
34 and without the necessity of procurement of an easement from the State. In recognition
35 of this fact, a credit shall be given against any easement charge owed, an amount which
36 shall be determined by multiplying the number of linear feet of shoreline owned by an
37 easement applicant times 54. The resultant figure, which shall be considered as a square
38 footage figure, shall be subtracted from the square footage of footprint coverage for
39 which an easement charge is required to be paid. For purposes of determining the linear
40 feet of shoreline owned, an application submitted by a corporation or other entity whose
41 members include riparian or littoral lot owners, which owners have the right to use the
42 structure for which the easement is sought, and whose lots are restricted from
43 construction thereon of other structures for similar use, shall be considered an application

1 which fee shall be determined by using the entirety of such use-restricted shoreline for
2 purposes of determining the applicable riparian credit. Shoreline utilization shall be
3 considered 'use-restricted' if riparian structures are prohibited by either permit condition
4 or by restrictive covenant or similar, enforceable private restriction.

5 (n) Notwithstanding the duration of the term of the easement purchased, there shall
6 be an additional easement charge to be paid by each subsequent owner of the structure for
7 which an easement is issued. For the first 25 years of the initial term of the easement, the
8 charge shall be identical to that charge paid at time of issuance of the initial easement.
9 For the second 25 years of the initial term, the charge paid shall be twice that paid upon
10 issuance of the initial easement. The transferee of such easement shall notify in writing
11 the Secretary of the Department of Administration within 12 months following
12 acquisition of the rights of the easement holder to the easement of such acquisition,
13 which notification shall contain the name of the owner of record of the structure. Within
14 75 days following receipt of such notice, the Secretary shall inform, in writing, the
15 transferee of the easement charge required. The transferee, in order to maintain the
16 easement in good standing, shall remit said charge within 60 days following receipt of the
17 notification from the Secretary of the amount of the charge owed.

18 (o) Any expansion of a use of an existing structure or a new structure shall require
19 the purchase of an easement in accordance with the provisions set forth in this section for
20 issuance of a new easement, unless the structure is exempt pursuant to subsection (q) of
21 this section. The easement charge shall be based only on the square footage coverage of
22 the footprint of the expansion, but, in computing the riparian credit, the riparian credit
23 shall be determined based upon all uses, whether an easement has previously been
24 granted or not. If in fact any charge is to be levied, after giving credit to the riparian
25 credit, the minimum charge shall be five hundred dollars (\$500.00) for the issuance of
26 such easement. There shall be no easement required nor any payment required for the
27 modification of existing uses that do not expand the utilized footprint of the preexisting
28 structure.

29 (p) It is the express intent and purpose of this Subchapter that the Department of
30 Administration conduct no independent study relating to the environmental impacts of
31 any proposed or existing structure, and it is the express intent of this Subchapter that the
32 Department of Administration not deny the issuance of an easement based solely upon
33 public trust impacts, unless a specific rule or regulation enacted under the Coastal Area
34 Management Act pursuant to Article 7 of Chapter 113A of the General Statutes has been
35 specifically contravened by a proposed structure.

36 (q) The provisions of this subsection shall not be applicable to the following:

- 37 (1) Piers, docks, or similar structures constructed appurtenant to a
38 residential lot, which structure is intended to, or permitted for, the sole
39 use and benefit of the owners or occupants of such residential lot for
40 nonincome producing purposes;
- 41 (2) Structures constructed by any public utility, the purpose of which
42 structure is to provide or assist in the provision of utility service;

1 (3) Any structures constructed or owned by the State of North Carolina, or
2 any political subdivision, agency, or department of the State, for the
3 duration that the structure is owned by such entity;

4 (4) Any structure on a privately owned lake; or

5 (5) Any hydroelectric reservoir licensed by the Federal Energy Regulatory
6 Commission."

7 Sec. 4. Article 1 of Chapter 146 of the General Statutes is amended by adding
8 a new section to read:

9 **"§ 146-14.1. Natural Resources Easement Fund.**

10 The Natural Resources Easement Fund is established as a nonreverting fund within
11 the Department of Administration. All easement purchase payment monies collected by
12 the Secretary shall be deposited in the Fund. The Fund may be used for direct costs of
13 administering the program. The net proceeds in the Fund shall be transferred annually to
14 the Wildlife Resources Commission, to be used by the Commission for the express
15 purpose of enhancing public trust resources and increasing the public's access to and use
16 of public trust resources, including, but not limited to, meeting the State's cost share
17 obligations for the Wallop-Breaux Fund projects, enhancing and expanding the number
18 of public boat ramps and other means of public waters access within the 20 coastal
19 counties as designated pursuant to G.S. 113A-103(2), and any other public trust access
20 purposes."

21 Sec. 5. G.S. 146-64 is amended by adding a new subdivision to read:

22 "(10) 'Deep water' means the depth reasonably necessary to provide and
23 allow reasonable access for all vessels traditionally used in the main
24 watercourse area as of the time of easement application."

25 Sec. 6. This act is effective upon ratification. Nothing in this act shall require
26 the adoption of rules to implement the provisions herein. The authorization established
27 under this act applies only to the Department of Administration and shall not be used by
28 any other agency to administer or regulate activities affecting the public trust.