

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 160
Corrected Copy 3/5/15

Short Title: Enhance Safety & Commerce for Ports/Inlets. (Public)

Sponsors: Senators Lee, Brown, Cook (Primary Sponsors); Pate and Sanderson.

Referred to: Rules and Operations of the Senate.

March 4, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO WAIVE THE NON-STATE COST-SHARE REQUIREMENT FOR DREDGING PROJECTS INTENDED TO ALLEVIATE NAVIGATIONAL EMERGENCIES; TO MAKE OTHER CLARIFYING CHANGES TO THE SHALLOW DRAFT NAVIGATION CHANNEL DREDGING AND LAKE MAINTENANCE FUND; TO CREATE AND PROVIDE FUNDING FOR THE DEEP DRAFT NAVIGATION CHANNEL DREDGING AND MAINTENANCE FUND; AND TO AUTHORIZE THE SECRETARY OF ADMINISTRATION TO ACQUIRE FEDERAL LAND FOR THE MAINTENANCE OF DEEP DRAFT NAVIGATIONAL ACCESS TO THE PORT OF MOREHEAD CITY.

The General Assembly of North Carolina enacts:

SHALLOW DRAFT NAVIGATION FUND AMENDMENTS

SECTION 1.(a) G.S. 143-215.73F reads as rewritten:

"§ 143-215.73F. Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund.

(a) Fund Established. – The Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund is established as a special revenue fund. Interest and other investment income earned by the Fund accrues to it. The Fund consists of fees credited to it under G.S. 75A-3, 75A-38, and ~~105-449.126.~~105-449.126, and monies contributed by a non-State entity designated for a particular dredging project or group of projects.

(b) Uses of the Fund. – Revenue ~~in~~ credited to the Fund may only be used for the following purposes:

(1) ~~to~~ To provide the State's share of the costs associated with ~~any~~ a dredging project designed to keep shallow draft navigation channels located in State waters or waters of the ~~state~~ State located within lakes navigable and safe.

(2) ~~or for~~ For aquatic weed control projects in waters of the State located within lakes under Article 15 of Chapter 113A of the General Statutes. Funding for aquatic weed control projects is limited to five hundred thousand dollars (\$500,000) in each fiscal year.

(c) Conditions on Funding. – ~~Any~~ Unless otherwise provided in this subsection, any project funded by revenue from credited to the Fund from the fees described in subsection (a) of this section must be cost-shared with non-State dollars on a one-to-one ~~basis, provided that~~ basis.



- 1 (1) The non-State cost-share required by this subsection may also be provided
2 by monies contributed to the Fund by a non-State entity.
- 3 (2) The cost-share for a lake located within a component of the State Parks
4 System shall be provided by the Division of Parks and Recreation of the
5 Department of Environment and Natural Resources. The Division of Parks
6 and Recreation may use funds allocated to the State Parks System for capital
7 projects under G.S. 113-44.15 for the cost-share.
- 8 (d) Waiver of Cost-share. – The Secretary may waive or modify the non-State
9 cost-share requirement for dredging projects that (i) alleviate a navigational emergency; or (ii)
10 represent an opportunity to supplement or leverage Corps funding.
- 11 (e) Return of Non-State Entity Funds. – Non-State entities that contribute to the Fund
12 for a particular project or group of projects may make a written request to the Secretary that the
13 contribution be returned if the contribution has not been spent or encumbered within two years
14 of receipt of the contribution by the Fund. If the written request is made prior to the funds being
15 spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the
16 later of (i) receiving the request, or (ii) the expiration of the two-year period described by this
17 subsection.
- 18 (f) Reporting. – The Secretary shall report any waivers or modifications of the
19 cost-share requirement made under subsection (d) of this section within 30 days of issuing the
20 waiver or modification to the Joint Legislative Commission on Governmental Operations and
21 the Fiscal Research Division of the General Assembly. The report shall include an explanation
22 of the factors in subsection (d) of this section that are the basis for the waiver or modification
23 decision.
- 24 (g) Definitions. – For purposes of this section, "~~shallow draft navigation channel~~"
25 meansThe following definitions apply in this section:
- 26 (1) Corps. – The United States Army Corps of Engineers.
- 27 (2) Costs associated with a dredging project. – Includes the cost of the dredging
28 operation, surveys or studies directly attributable to the project, and the costs
29 of disposal of dredged material.
- 30 (3) Navigational emergency. – With respect to a shallow draft navigation
31 channel, the removal of or statement of intent to remove one or more
32 navigational buoys by the United States Coast Guard from the channel due
33 to shoaling.
- 34 (4) Shallow draft navigation channel. – (i) a waterway connection with a
35 maximum depth of 16 feet between the Atlantic Ocean and a bay or the
36 Atlantic Intracoastal Waterway, (ii) a river entrance to the Atlantic Ocean
37 through which tidal and other currents flow, or (iii) other interior coastal
38 waterways. "~~Shallow draft navigation channel~~"The term includes the
39 Atlantic Intracoastal Waterway and its side channels, Beaufort Harbor,
40 Bogue Inlet, Carolina Beach Inlet, the channel from Back Sound to Lookout
41 Back, channels connected to federal navigation channels, Lockwoods Folly
42 River, Manteo/Shallowbag Bay, including Oregon Inlet, Masonboro Inlet,
43 New River, New Topsail Inlet, Rodanthe, Rollinson, Shallotte River, Silver
44 Lake Harbor, and the waterway connecting Pamlico Sound and Beaufort
45 Harbor."

46 **SECTION 1.(b)** Chapter 449 of the 1985 Session Laws, as amended by Chapters
47 177 and 906 of the 1991 Session Laws, Part VII of S.L. 2001-439 and Section 7 of S.L.
48 2010-78, is amended by adding a new section to read:

49 "Sec. 3.3. Additional Use of Occupancy Taxes. – Notwithstanding any other use
50 requirement contained in this Session Law, as amended, the Dare County Board of
51 Commissioners may by resolution designate the use of some or all of the proceeds from the

1 occupancy taxes authorized by this Session Law, as amended, for contributions to the Shallow
2 Draft Navigation Channel Dredging and Lake Maintenance Fund, to be used for the non-State
3 share of costs associated with the dredging of shallow draft navigation channels, as defined in
4 G.S. 143-215.73F(g), that are located fully or partially in Dare County."

6 **DEEP DRAFT NAVIGATION CHANNEL DREDGING AND MAINTENANCE FUND**

7 **SECTION 2.(a)** Article 21 of Chapter 143 of the General Statutes is amended by
8 adding a new Part to read:

9 "Part 8C.

10 **"Deep Draft Navigation Channel Dredging and Maintenance Fund.**

11 **"§ 143-215.73G Deep Draft Navigation Channel Dredging and Maintenance Fund.**

12 (a) Fund Established. – The Deep Draft Navigation Channel Dredging and Maintenance
13 Fund is established as a special revenue fund. Interest and other investment income earned by
14 the Fund accrues to it. The Fund consists of General Fund appropriations, gifts or grants,
15 including monies contributed by a non-State entity for a particular dredging project or group of
16 projects, and any other revenues specifically allocated to the Fund by an act of the General
17 Assembly.

18 (b) Uses of the Fund. – Revenue credited to the Fund may only be used for costs
19 associated with projects providing safe and efficient navigational access to a State Port,
20 including the design, construction, expansion, modification, or maintenance of deep draft
21 navigation channels, turning basins, berths and related structures, as well as surveys or studies
22 related to any of the foregoing and the costs of disposal of dredged material.

23 (c) Conditions on Funding. – State funds credited to the Fund from the sources
24 described in subsection (a) of this section must be cost-shared on a one-to-one basis with funds
25 provided by the State Ports Authority, provided that:

26 (1) Funds contributed to the Fund by a non-State entity are not considered State
27 funds, and may be used to provide the cost-share required by this subsection.

28 (2) The Secretary may waive or modify the cost-share requirement for any
29 project that supplements Corps funding for a study authorized by the Corps
30 related to navigational access to a State Port, based on availability of
31 alternate funding sources.

32 (d) Waiver of Cost-share. – The Secretary may waive or modify the non-State
33 cost-share requirement for dredging projects or federally authorized studies of deep draft access
34 to State Ports that (i) represent an opportunity to supplement or leverage Corps funding that
35 would be lost if a cost-share was required, or (ii) alleviate shoaling or other navigational
36 hazards that pose a negative impact on safety or commerce within, or channels providing
37 access to, a State Port.

38 (e) Return of Non-State Entity Funds. – Non-State entities that contribute to the Fund
39 for a particular project or group of projects may make a written request to the Secretary that the
40 contribution be returned if the contribution has not been spent or encumbered within two years
41 of receipt of the contribution by the Fund. If the written request is made prior to the funds being
42 spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the
43 later of (i) receiving the request, or (ii) the expiration of the two-year period described by this
44 subsection.

45 (f) Reporting. – The Secretary shall report any waivers or modifications of the
46 cost-share requirement made under subsection (d) of this section within 30 days of issuing the
47 waiver or modification to the Joint Legislative Commission on Governmental Operations and
48 the Fiscal Research Division of the General Assembly. The report shall include an explanation
49 of the factors in subsection (d) of this section that are the basis for the waiver or modification
50 decision.

51 (g) Definitions. – The following definitions apply in this Part:

1 (1) Corps. – The United States Army Corps of Engineers.

2 (2) State Port. – Facilities at Wilmington or Morehead City managed or operated
3 by the State Ports Authority.

4 **SECTION 2.(b)** Section 6.1 of S.L. 2013-360, as amended by Section 1.4 of S.L.
5 2013-363 and Section 6.12 of S.L. 2014-100, reads as rewritten:

6 **"SECTION 6.1.** Notwithstanding the provisions of subsections (b) and (c) of
7 G.S. 143C-4-4, of the funds appropriated to the Contingency and Emergency Fund for the
8 2014-2015 fiscal year, the sum of one million seven hundred thousand dollars (\$1,700,000) is
9 transferred to the Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund to
10 be used for the purposes set forth in G.S. 143-215.73F, and the sum of eight hundred thousand
11 dollars (\$800,000) is transferred to the Deep Draft Navigation Channel Dredging and
12 Maintenance Fund to be used for the purposes set forth in G.S. 143-215.73G. For the
13 2013-2015 fiscal biennium and notwithstanding the provisions of G.S. 143C-4-4(b), the
14 remaining funds appropriated to the Contingency and Emergency Fund may be used only for
15 expenditures required (i) by a court or Industrial Commission order, (ii) to respond to events as
16 authorized under G.S. 166A-19.40(a) of the North Carolina Emergency Management Act, (iii)
17 by the State Treasurer to pay death benefits as authorized under Article 12A of Chapter 143 of
18 the General Statutes, (iv) by the Office of the Governor for crime rewards in accordance with
19 G.S. 15-53 and G.S. 15-53.1, (v) by the Industrial Commission for supplemental awards of
20 compensation, (vi) by the Department of Justice for legal fees, or (vii) for litigation expenses
21 incurred by State agencies in defense of the State during the 2014-2015 fiscal year, in an
22 amount not to exceed seven hundred fifty thousand dollars (\$750,000), as approved by the
23 Office of State Budget and Management.

24 These funds shall not be used for other statutorily authorized purposes or for any other
25 contingencies and emergencies. The Office of State Budget and Management shall transfer any
26 funds remaining in the Fund at the end of the 2013-2015 biennium to the Deep Draft
27 Navigation Channel Dredging and Maintenance Fund to be used for the purposes set forth in
28 G.S. 143-215.73G."

29 **SECTION 2.(c)** G.S. 143C-4-4 is amended by adding a new subsection to read:

30 "(d) Reversion. – At the end of each biennium, the Office of State Budget and
31 Management shall transfer any funds remaining in the Fund to the Deep Draft Navigation
32 Channel Dredging and Maintenance Fund to be used for the purposes set forth in
33 G.S. 143-215.73G."

34 35 **MEMORANDA OF UNDERSTANDING**

36 **SECTION 3.(a)** SPA Memorandum of Agreement. – The State Ports Authority
37 shall negotiate with the United States Army Corps of Engineers (hereafter, "Corps") a
38 memorandum of agreement allowing for nonfederal funding of dredging and related studies or
39 maintenance at the State Ports located at Wilmington and Morehead City. The memorandum
40 required by this section shall be for as long a term as possible.

41 **SECTION 3.(b)** DENR Memorandum of Agreement. – The Division of Water
42 Resources of the Department of Environment and Natural Resources shall negotiate with the
43 Corps a memorandum of agreement allowing for nonfederal funding of dredging of Oregon
44 Inlet. The memorandum required by this section shall be for as long a term as possible.
45

46 **ACQUISITION OF FEDERAL LAND FOR PROTECTION OF NAVIGATIONAL** 47 **SAFETY AND COMMERCE**

48 **SECTION 4.(a)** Acquisition Agreement. – Notwithstanding Chapter 146 of the
49 General Statutes or any other provision of law, the Department of Administration, on behalf of
50 the State, shall seek to initiate negotiations with the appropriate agency of the federal
51 government for an agreement to acquire the federally owned property necessary for

1 management of deep draft navigation channels providing access to State Port facilities at
2 Morehead City from the federal government in exchange for State-owned real property.

3 **SECTION 4.(b)** Terms. – The Secretary of the Department of Administration shall
4 have the authority to negotiate the terms of the acquisition agreement. The agreement (i) shall
5 provide for the acquisition of interests in real property described in subsection (a) of this
6 section and no other; (ii) shall provide that the conveyances described in the agreement become
7 effective as soon as practicable; and (iii) shall incorporate the relevant terms of this section.

8 **SECTION 4.(c)** Execution of Deeds. – Within 30 days of the acquisition becoming
9 effective, the Attorney General shall execute any documents or deeds necessary to effectuate
10 the acquisition under the exact terms set forth in the acquisition agreement. All State agencies
11 and officials shall cooperate to the fullest extent possible in effectuating the acquisition
12 agreement.

13 **SECTION 4.(d)** Reporting. – Within 30 days after an agreement is entered into
14 pursuant to this section, the Secretary of the Department of Administration shall report to the
15 Joint Legislative Commission on Governmental Operations on the terms of the agreement.

16
17 **EFFECTIVE DATE**

18 **SECTION 5.** This act is effective when it becomes law.