

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

3

SENATE BILL 160
Corrected Copy 3/5/15
Appropriations/Base Budget Committee Substitute Adopted 4/1/15

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

(Public)

Sponsors:

Referred to:

March 4, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE DREDGING AND MAINTENANCE OF THE STATE'S
3 WATERWAYS IN ORDER TO ENHANCE SAFETY AND COMMERCE.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. SHALLOW DRAFT NAVIGATION FUND AMENDMENTS**

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

8 "**§ 143-215.73F. Shallow Draft Navigation Channel Dredging and Lake Maintenance**
9 **Fund.**

10 (a) Fund Established. – The Shallow Draft Navigation Channel Dredging and Lake
11 Maintenance Fund is established as a special revenue fund. The Fund consists of fees credited
12 to it under G.S. 75A-3, 75A-38, and ~~405-449.126.~~105-449.126, and monies contributed by a
13 non-State entity designated for a particular dredging project or group of projects.

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

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

20 (2) ~~or for~~ For aquatic weed control projects in waters of the State located within
21 lakes under Article 15 of Chapter 113A of the General Statutes. Funding for
22 aquatic weed control projects is limited to five hundred thousand dollars
23 (\$500,000) in each fiscal year.

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

28 (1) The non-State cost-share required by this subsection may also be provided
29 by monies contributed to the Fund by a non-State entity.

30 (2) The cost-share for a lake located within a component of the State Parks
31 System shall be provided by the Division of Parks and Recreation of the
32 Department of Environment and Natural Resources. The Division of Parks
33 and Recreation may use funds allocated to the State Parks System for capital
34 projects under G.S. 113-44.15 for the cost-share.



1 (d) Waiver of Cost-Share. – The Secretary may waive or modify the non-State
2 cost-share requirement for dredging projects that (i) alleviate a navigational emergency; or (ii)
3 represent an opportunity to supplement or leverage Corps funding.

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

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

17 (g) Definitions. – ~~For purposes of this section, "shallow draft navigation channel"~~
18 ~~means~~The following definitions apply in this section:

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

20 (2) Costs associated with a dredging project. – Includes the cost of the dredging
21 operation, surveys or studies directly attributable to the project, and the costs
22 of disposal of dredged material.

23 (3) Navigational emergency. – With respect to a shallow draft navigation
24 channel, the removal of or statement of intent to remove one or more
25 navigational buoys by the United States Coast Guard from the channel due
26 to shoaling.

27 (4) Shallow draft navigation channel. – (i) a waterway connection with a
28 maximum depth of 16 feet between the Atlantic Ocean and a bay or the
29 Atlantic Intracoastal Waterway, (ii) a river entrance to the Atlantic Ocean
30 through which tidal and other currents flow, or (iii) other interior coastal
31 waterways. "~~Shallow draft navigation channel~~"The term includes the
32 Atlantic Intracoastal Waterway and its side channels, Beaufort Harbor,
33 Bogue Inlet, Carolina Beach Inlet, the channel from Back Sound to Lookout
34 Back, channels connected to federal navigation channels, Lockwoods Folly
35 River, Manteo/Shallowbag Bay, including Oregon Inlet, Masonboro Inlet,
36 New River, New Topsail Inlet, Rodanthe, Rollinson, Shallotte River, Silver
37 Lake Harbor, and the waterway connecting Pamlico Sound and Beaufort
38 Harbor."

39 **SECTION 1.(b)** Of the funds appropriated to the Department of Commerce Job
40 Catalyst Fund (Budget Code 14600-1912) for the 2014-2015 fiscal year, the sum of six million
41 dollars (\$6,000,000) shall be transferred to the Shallow Draft Navigation Channel Dredging
42 and Lake Maintenance Fund established pursuant to G.S. 143-215.73F within 10 days of the
43 effective date of this act.

44 **SECTION 1.(c)** Notwithstanding G.S. 143-215.73F, the funds available in the
45 Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund shall be reserved for
46 all of the following purposes:

47 (1) The sum of four million dollars (\$4,000,000) shall be reserved for Oregon
48 Inlet dredging needs.

49 (2) The sum of one hundred fifty thousand dollars (\$150,000) shall be reserved
50 to reimburse the Department of Administration for its costs associated with
51 exploring options for acquiring Oregon Inlet and the adjacent real property,

1 including, but not limited to, surveys and appraisals, legal research, and
2 studies related to sand management, engineering proposals, and larval
3 transport.

- 4 (3) The sum of one million dollars (\$1,000,000) shall be reserved to reimburse
5 the Department of Administration for its costs associated with the
6 implementation of Section 14.7(g) of S.L. 2014-100.

7 The conditions on funding set out in G.S. 143-215.73F(c) may not be waived pursuant to
8 G.S. 143-215.73F(d) for funds reserved for the Oregon Inlet dredging needs set out in
9 subdivision (1) of this section. If State funds reserved for the purposes listed above are not
10 spent or encumbered by June 30, 2016, the State funds shall be unreserved and made available
11 for any of the uses set out in G.S. 143-215.73F.

12 13 **PART II. DEEP DRAFT NAVIGATION CHANNEL DREDGING AND** 14 **MAINTENANCE FUND**

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

17 "Part 8C. Deep Draft Navigation Channel Dredging and Maintenance Fund.

18 **"§ 143-215.73G. Deep Draft Navigation Channel Dredging and Maintenance Fund.**

19 (a) Fund Established. – The Deep Draft Navigation Channel Dredging and Maintenance
20 Fund is established as a special revenue fund. The Fund consists of General Fund
21 appropriations, gifts or grants, including monies contributed by a non-State entity for a
22 particular dredging project or group of projects, and any other revenues specifically allocated to
23 the Fund by an act of the General Assembly.

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

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

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

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

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

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

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

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

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

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

11 **SECTION 2.(b)** Of the funds appropriated to the Department of Commerce Job
12 Catalyst Fund (Budget Code 14600-1912) for the 2014-2015 fiscal year, the sum of one million
13 dollars (\$1,000,000) shall be transferred to the Deep Draft Navigation Channel Dredging and
14 Maintenance Fund established pursuant to G.S. 143-215.73G, as enacted by Section 2 of this
15 act, within 10 days of the effective date of this act.

17 **PART III. MEMORANDA OF AGREEMENT**

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

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

28 **PART IV. ACQUISITION OF FEDERAL LAND FOR PROTECTION OF** 29 **NAVIGATIONAL SAFETY AND COMMERCE**

30 **SECTION 4.(a)** Acquisition Agreement. – Notwithstanding Chapter 146 of the
31 General Statutes or any other provision of law, the Department of Administration, on behalf of
32 the State, shall seek to initiate negotiations with the appropriate agency of the federal
33 government for an agreement to acquire the federally owned property necessary for
34 management of deep draft navigation channels providing access to State Port facilities at
35 Morehead City from the federal government in exchange for State-owned real property.

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

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

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

50 **PART V. REMOVAL OF NAVIGATIONAL OBSTRUCTIONS FOR ECOSYSTEM** 51 **RESTORATION AND PROTECTION OF NAVIGATIONAL SAFETY**

1 **SECTION 5.1.(a)** Definitions. – "Reserve Components Rule" means 15A NCAC
2 07O .0105 (North Carolina Coastal Reserve: Reserve Components) for purposes of this section
3 and its implementation.

4 **SECTION 5.1.(b)** Reserve Components Rule. – Until the effective date of the
5 revised permanent rule that the Coastal Resources Commission is required to adopt pursuant to
6 Section 5.1(c) of this act, the Commission and the Department of Environment and Natural
7 Resources shall implement the Reserve Components Rule, as provided in Section 5.1(c) of this
8 act.

9 **SECTION 5.1.(c)** Implementation. – Notwithstanding the Reserve Components
10 Rule, the Commission shall adjust the boundary established for Zeke's Island by moving the
11 current western boundary 200 feet seaward, and removing the area that lies between the current
12 boundary and the new boundary from the North Carolina Coastal Reserve.

13 **SECTION 5.1.(d)** Additional Rule-Making Authority. – The Commission shall
14 adopt a rule to replace the Reserve Components Rule. Notwithstanding G.S. 150B-19(4), the
15 rule adopted by the Commission pursuant to this section shall be substantively identical to the
16 provisions of Section 5.1(c) of this act. Rules adopted pursuant to this section are not subject to
17 Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this
18 section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written
19 objections had been received as provided by G.S. 150B-21.3(b2).

20 **SECTION 5.1.(e)** Effective Date. – Subsection (b) of this section expires when
21 permanent rules to replace subsection (b) of this section have become effective, as provided by
22 subsection (c) of this section.

23 **SECTION 5.2.(a)** The General Assembly finds that the New Inlet Dam or "The
24 Rocks" is a breakwater established by the United States Army Corps of Engineers in the late
25 1800s. The New Inlet Dam is composed of two components, a Northern Component that
26 extends from Federal Point to Zeke's Island and a Southern Component that extends
27 southwestward from Zeke's Island and separates the New Inlet from the main channel of the
28 Cape Fear River.

29 **SECTION 5.2.(b)** The General Assembly finds that the Southern Component of
30 the New Inlet Dam impedes the natural flow of water between the Cape Fear River and the
31 Atlantic Ocean that occurred prior to emplacement of the dam.

32 **SECTION 5.2.(c)** The General Assembly finds that it is necessary to remove the
33 Southern Component of the New Inlet Dam in order to reestablish the natural ecosystem of the
34 mouth of the Cape Fear River and its environs.

35 **SECTION 5.2.(d)** To this end, the Department of Environment and Natural
36 Resources shall do all of the following:

- 37 (1) Notify the United States Army Corps of Engineers of the State's intent to
38 remove the Southern Component of the New Inlet Dam.
- 39 (2) Issue a Request for Proposals for a firm capable of conducting all aspects of
40 removal of the Southern Component of New Inlet, including securing all
41 necessary State and federal permits and developing and implementing a
42 removal plan.
- 43 (3) Execute a contract with the firm chosen to implement subdivision (2) of this
44 section and exercise oversight of the fulfillment of the contract.

45 **SECTION 5.2.(e)** Notwithstanding any other provision of law, the Department of
46 Environment and Natural Resources may use funds from the Deep Draft Navigation Channel
47 Dredging and Maintenance Fund, established pursuant to G.S. 143-215.73G, as enacted by
48 Section 2 of this act, to implement this section.

49 **PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

1 **SECTION 6.** If any provision of this act or its application is held invalid, the
2 invalidity does not affect other provisions or applications of this act that can be given effect
3 without the invalid provisions or application, and to this end the provisions of this act are
4 severable.

5 **SECTION 7.** This act is effective when it becomes law.