

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

4

HOUSE BILL 770
Committee Substitute Favorable 4/20/17
Third Edition Engrossed 4/26/17
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/22/17

Short Title: Amend Environmental Laws 3.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **REPORT ON RULES FOR REMEDIATION OF CERTAIN UNDERGROUND**
6 **STORAGE TANKS**

7 **SECTION 1.(a)** The Environmental Management Commission shall adopt
8 temporary rules implementing Section 14.16B of S.L. 2015-241 no later than October 1, 2017.
9 Notwithstanding G.S. 150B-21.1(d), the temporary rules shall remain in effect until the
10 effective date of the permanent rule adopted to replace the temporary rule.

11 **SECTION 1.(b)** The Commission shall report regarding the status of the rule
12 making required by this act and by Section 14.16B of S.L. 2015-241 to the Fiscal Research
13 Division and the chairs of the Joint Legislative Oversight Committee on Agriculture and
14 Natural and Economic Resources no later than December 31, 2017.

15
16 **SHELLFISH ENTERPRISE AREAS**

17 **SECTION 2.(a)** G.S. 113-201 is amended by adding a new subsection to read:

18 "(d) The Marine Fisheries Commission may adopt rules to establish Shellfish
19 Aquaculture Enterprise Areas to facilitate shellfish aquaculture opportunities through advanced
20 siting and preapprovals from relevant federal and State agencies. The Secretary shall only issue
21 nontransferrable leases within designated Shellfish Aquaculture Enterprise Areas. Any leased
22 parcel within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall
23 revert to the State and be made available to other applicants."

24 **SECTION 2.(b)** G.S. 113-201.1 is amended by adding a new subdivision to read:

25 "(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and
26 permitted by the Department that is subdivided into parcels and made
27 available for shellfish aquaculture leasing."

28
29 **MARINE FISHERIES CLARIFYING CHANGES**

30 **SECTION 3.(a)** G.S. 113-203 reads as rewritten:

31 **"§ 113-203. Transplanting of oysters and clams.**

32 ...

33 (a2) It is unlawful to do any of the following:



* H 7 7 0 - V - 4 *

- 1 (1) Transplant oysters or clams taken from public grounds to private beds except
 2 when lawfully taken during open season and transported directly to a private
 3 bed in accordance with rules of the Marine Fisheries Commission.
 4 (2) Transplant oysters or clams taken from permitted aquaculture operations to
 5 private beds except from waters in the approved classification.
 6 (3) Transplant oysters or clams from public grounds or permitted aquaculture
 7 operations utilizing waters in the prohibited, restricted or conditionally
 8 approved classification to private beds except when the transplanting is done
 9 in accordance with the provisions of this section and implementing rules.
- 10 (a3) ~~It~~ Unless the Secretary determines that the nursery of shellfish in an area will
 11 present a risk to public health, it is lawful to transplant seed oysters or seed clams taken from
 12 permitted aquaculture operations that use waters in the prohibited, restricted or conditionally
 13 approved classification to private beds pursuant to an Aquaculture Seed Transplant Permit
 14 issued by the Secretary that sets times during which transplant is permissible and other
 15 reasonable restrictions imposed by the Secretary under either of the following circumstances:
- 16 (1) When transplanting seed clams less than 12 millimeters in their largest
 17 dimension.
 18 (2) When transplanting seed oysters less than 25 millimeters in their largest
 19 dimension.

20"

21 **SECTION 3.(b)** G.S. 113-168.4(b) reads as rewritten:

22 "(b) Except as otherwise provided in this section, it is unlawful for any person licensed
 23 under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken
 24 from coastal fishing waters. A person licensed under this Article may sell fish taken outside the
 25 territorial waters of the State or sell fish taken from coastal fishing waters under any of the
 26 following circumstances:

- 27 (1) The sale is to a fish dealer licensed under G.S. 113-169.3.
 28 (2) The sale is to the public and the seller is a licensed fish dealer under
 29 G.S. 113-169.3.
 30 (3) The sale is of ~~oysters or clams from~~ fish reared in a hatchery or aquaculture
 31 operation to the holder of an Aquaculture Operation Permit, an Under Dock
 32 Culture Permit, or a shellfish cultivation lease for further grow out."

34 RIVER HERRING FISHERIES MANAGEMENT

35 **SECTION 4.** The Division of Marine Fisheries shall review its Fishery
 36 Management Plan for river herring (blueback herring, *Alosa aestivalis*, and alewife, *Alosa*
 37 *pseudoharengus*) and report no later than December 15, 2017, to the Joint Legislative Oversight
 38 Committee on Agriculture and Natural and Economic Resources regarding the continuing
 39 validity and scientific basis for the continued status of both species as "overfished." If the
 40 Division does not have an adequate scientific basis to review the status of both species, then the
 41 report should include cost estimates for the restoration of spawning and nursery area surveys
 42 and age composition work for all coastal streams within the State that historically contained
 43 significant river herring fisheries.

45 STATE PARTICIPATION IN SITING OF ATLANTIC INTRACOASTAL 46 WATERWAY DREDGED MATERIAL DISPOSAL EASEMENTS

47 **SECTION 5.(a)** The Division of Water Resources of the Department of
 48 Environmental Quality and the State Property Office are authorized to negotiate with
 49 appropriate agencies of the federal government an agreement for the State to assume
 50 responsibility for acquiring dredged material easement sites appropriate for maintenance
 51 dredging of the Atlantic Intracoastal Waterway between Beaufort Inlet and the border with the

1 Commonwealth of Virginia in exchange for the reduction in size and possible change in
2 location of dredged material disposal easement sites currently held by the federal government.
3 The agreement shall provide for the federal government to relinquish certain dredged material
4 disposal easements that are excess to maintenance project needs in exchange for the acquisition
5 and furnishing to the federal government other easements that are sited and permitted by the
6 Division of Coastal Management and acquired by the State Property Office under its powers of
7 condemnation or otherwise using such funds as may be appropriated by the General Assembly
8 from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund established
9 under Part 8B of Article 21 of Chapter 143 of the General Statutes for that purpose.

10 **SECTION 5.(b)** G.S. 143-215.73F(b) is amended by adding a new subdivision to
11 read:

12 "(4) To provide funding for siting and acquisition of dredged disposal easement
13 sites associated with the maintenance of the Atlantic Intracoastal Waterway
14 north of Beaufort Inlet and south of the border with the Commonwealth of
15 Virginia, under a Memorandum of Agreement between the State and the
16 federal government."

17 18 **PRESERVE MUNICIPAL SOLID WASTE CAPACITY**

19 **SECTION 6.** G.S. 130A-309.09B(a) reads as rewritten:

20 "(a) Each unit of local government shall establish and maintain a solid waste reduction
21 program. The following requirements shall apply:

- 22 (1) Demolition debris consisting of used asphalt or used asphalt mixed with dirt,
23 sand, gravel, rock, concrete, or similar nonhazardous material may be used
24 as fill and need not be disposed of in a permitted landfill or solid waste
25 disposal facility, provided that demolition debris may not be placed in the
26 waters of the State or at or below the seasonal high water table.
- 27 (2) Repealed by Session Laws 1991, c. 621, s. 8.
- 28 (3) Units of local government are encouraged to separate marketable plastics,
29 glass, metal, and all grades of paper for recycling prior to final disposal and
30 are further encouraged to recycle yard trash and other organic solid waste
31 into compost available for agricultural and other acceptable uses.
- 32 (4) Notwithstanding G.S. 130A-291(b), units of local government shall not, by
33 ordinance or otherwise, prohibit the disposal of construction and demolition
34 debris in any sanitary landfill permitted for the disposal of construction and
35 demolition debris, which landfill has a valid and operative franchise
36 agreement and is otherwise properly permitted pursuant to G.S. 130A-294."

37 38 **ESTABLISH COASTAL STORM DAMAGE MITIGATION FUND**

39 **SECTION 7.** Article 21 of Chapter 143 of the General Statutes is amended by
40 adding a new Part to read:

41 "Part 8D. Coastal Storm Damage Mitigation Fund.

42 "§ 143-215.73M. Coastal Storm Damage Mitigation Fund.

43 (a) Fund Established. – The Coastal Storm Damage Mitigation Fund is established as a
44 special revenue fund. The Fund consists of General Fund appropriations, gifts, grants, devises,
45 monies contributed by a non-State entity for a particular beach nourishment or damage
46 mitigation project or group of projects, and any other revenues specifically allocated to the
47 Fund by an act of the General Assembly.

48 (b) Uses of the Fund. – Revenue credited to the Fund may only be used for costs
49 associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate
50 coastal storm damage to the ocean beaches and dune systems of the State.

1 (c) Conditions on Funding. – Any project funded by revenue from the Fund must be
2 cost-shared with non-State dollars as follows:

3 (1) The cost share for dredging projects located, in whole or part, in a
4 development tier one area, as defined in G.S. 143B-437.08, shall be at least
5 one non-State dollar for every three dollars from the Fund.

6 (2) The cost share for dredging projects not located, in whole or part, in a
7 development tier one area shall be at least one non-State dollar for every two
8 dollars from the Fund.

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

16
17 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

18 **SECTION 8.(a)** If any section or provision of this act is declared unconstitutional
19 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
20 than the part declared to be unconstitutional or invalid.

21 **SECTION 8.(b)** Except as otherwise provided, this act is effective when it
22 becomes law.