

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1274\*

Short Title: Extend Submerged Lands Claims.

(Public)

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Sponsors: Senator Albertson.

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Referred to: Agriculture/Environment/Natural Resources.

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May 27, 1998

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND  
2 UNDER NAVIGABLE WATERS, AS RECOMMENDED BY THE  
3 ENVIRONMENTAL REVIEW COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 113-206 reads as rewritten:

6 **"§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights;  
7 contest or condemnation of claims; damages for taking of property.**

8 (a) The Secretary must commence to prepare as expeditiously as possible charts of  
9 the waters of North Carolina containing the locations of all oyster and clam leaseholds  
10 made by the Department under the provisions of this Article and of all existing leaseholds  
11 as they are renewed under the provisions of this Article, the locations of all claims of  
12 grant of title to portions of the bed under navigable waters registered with him, and the  
13 locations of all areas in navigable waters to which a right of private fishery is claimed and  
14 registered with him. Charting or registering any claim by the Secretary in no way implies  
15 recognition by the State of the validity of the claim.

16 (a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise  
17 for shellfish cultivation, the Secretary may, to resolve the claim, grant a shellfish lease to  
18 the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights  
19 was registered based upon a conveyance by the Literary Fund, the North Carolina  
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1 Literary Board or the State Board of Education, and the claimant shows that the area had  
2 been cultivated by the claimant or his predecessor in title for the seven-year period prior  
3 to registration of the claim, the Secretary may, to resolve the claim, grant a shellfish lease  
4 to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish  
5 lease granted under this subsection is subject to the restrictions imposed on shellfish  
6 leases in G.S. 113-202, except the prohibition against leasing an area that contains a  
7 natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the  
8 cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed.

9 (b) In the event of any overlapping of areas leased by the Department, the  
10 Secretary shall recommend modification of the areas leased as he deems equitable to all  
11 parties. Appeal from the recommendation of the Secretary lies for either party in the same  
12 manner as for a lease applicant as to which there is a recommendation of denial or  
13 modification of lease. If there is no appeal, or upon settlement of the issue upon appeal,  
14 the modified leases must be approved by the Marine Fisheries Commission and reissued  
15 by the Secretary in the same manner as initial or renewal leases. Leaseholders must  
16 furnish the Secretary surveys of the modified leasehold areas, meeting the requisite  
17 criteria for surveys established by the Secretary.

18 (c) In the event of any overlapping of areas leased by the Department and of areas  
19 in which title or conflicting private right of fishery is claimed and registered under the  
20 provisions of this Article, the Secretary must give preference to the leaseholder engaged  
21 in the production of oysters or clams in commercial quantities who received the lease  
22 with no notice of the existence of any claimed grant or right of fishery. To this end, the  
23 Secretary shall cause a modification of the claim registered with him and its  
24 accompanying survey to exclude the leasehold area. Such modification effected by the  
25 Secretary has the effect of voiding the grant of title or right of fishing to the extent  
26 indicated.

27 (d) In the interest of conservation of the marine and estuarine resources of North  
28 Carolina, the Department may institute an action in the superior court to contest the claim  
29 of title or claimed right of fishery in any navigable waters of North Carolina registered  
30 with the Secretary. In such proceeding, the burden of showing title or right of fishery, by  
31 the preponderance of the evidence, shall be upon the claiming title or right holder. In the  
32 event the claiming title or right holder prevails, the trier of fact shall fix the monetary  
33 worth of the claim. The Department may elect to condemn the claim upon payment of the  
34 established owners or right holders their pro rata shares of the amount so fixed. The  
35 Department may make such payments from such funds as may be available to it. An  
36 appeal lies to the appellate division by either party both as to the validity of the claim and  
37 as to the fairness of the amount fixed. The Department in such actions may be  
38 represented by the Attorney General. In determining the availability of funds to the  
39 Department to underwrite the costs of litigation or make condemnation payments, the use  
40 which the Department proposes to make of the area in question may be considered; such  
41 payments are to be deemed necessary expenses in the course of operations attending such  
42 use or of developing or attempting to develop the area in the proposed manner.

1 (e) A person who claims that the application of G.S. 113-205 or this section has  
2 deprived him of his private property rights in land under navigable waters or his right of  
3 fishery in navigable waters without just compensation may file a complaint in the  
4 superior court of the county in which the property is located to contest the application of  
5 G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the  
6 monetary worth of the claim, and the Department may condemn the claim upon payment  
7 of this amount to him if the Secretary considers condemnation appropriate and necessary  
8 to conserve the marine and estuarine resources of the State. The Department may pay for  
9 a condemned claim from available funds. An action under this subsection is considered a  
10 condemnation action and is therefore subject to G.S. 7A-248.

11 The limitation period for an action brought under this subsection is three years. This  
12 period is tolled during the disability of the plaintiff. No action, however, may be  
13 instituted under this subsection after ~~December 31, 2001.~~ 31 December 2006.

14 (f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall  
15 favor public ownership of submerged lands and public trust rights. The Secretary's action  
16 does not alter or affect in any way the rights of a claimant or the State.

17 To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in  
18 cooperation with the Secretary of Administration and the Attorney General, shall  
19 establish a plan to resolve these claims by ~~December 31, 1998.~~ 31 December 2003. The  
20 Secretary shall notify the Secretary of Administration and the Attorney General of the  
21 resolution of each claim. In addition, on or before October 1 of each year, the Secretary  
22 shall submit a report to the Joint Legislative Commission on Governmental Operations  
23 stating the following:

- 24 (1) The number of claims registered pursuant to G.S. 113-205 that were
- 25 resolved during the preceding year;
- 26 (2) The cost of resolving these claims;
- 27 (3) The number of unresolved claims; and
- 28 (4) Payments made to acquire claims by condemnation."

29 Section 2. G.S. 105-151.12(e) reads as rewritten:

30 "(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-  
31 205, the offer of donation must be made before ~~December 31, 1998.~~ 31 December 2003 to  
32 qualify for the credit allowed by this section."

33 Section 3. This act is effective when it becomes law.