

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 573

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/20/15

Short Title: Strengthen Oyster Industry.

(Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE AND PROMOTE THE AQUACULTURE AND OYSTER CULTIVATION INDUSTRIES.

The General Assembly of North Carolina enacts:

PART I. CREATE SHELLFISH PLANNING AND PROMOTION ENTITY WITHIN NC ECONOMIC DEVELOPMENT PARTNERSHIP

SECTION 1.1. G.S. 143B-431.01 reads as rewritten:

"§ 143B-431.01. Department of Commerce – contracting of functions.

...

(d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation pursuant to this section and in order for the North Carolina nonprofit corporation to receive State funds, the following conditions shall be met:

...

(2) The nonprofit corporation adheres to the following governance provisions related to its governing board:

a. The board shall be composed of 17 voting members as follows: eight members and the chair appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tempore of the Senate. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each use best efforts to select members so as to reflect the diversity of the State's geography. The Speaker of the House and the President Pro Tempore shall each select their appointed members so that one-fourth come from a development tier one area, one-fourth come from a development tier two area, and no two members come from the same Collaboration for Prosperity Zone. The Governor shall select appointed members so that two-ninths come from a development tier one area, two-ninths come from a development tier two area, and no more than two members come from the same Collaboration for Prosperity Zone. The Governor shall use best efforts to ensure that each member appointed by the Governor has expertise in one or more of the following areas:

1. Agribusiness, as recommended by the Commissioner of Agriculture.



* S 5 7 3 - V - 2 *

- 1 1a. Shellfish or other aquaculture.
- 2 2. Financial services.
- 3 3. Information technology.
- 4 4. Biotechnology or life sciences.
- 5 5. Energy.
- 6 6. Manufacturing.
- 7 7. Military or defense.
- 8 8. Tourism, as recommended by the North Carolina Travel and
- 9 Tourism Coalition.
- 10 9. Tourism, as recommended by the North Carolina Travel
- 11 Industry Association.

12 ...

13 (e) Mandatory Contract Terms. – Any contract entered into under this section must

14 include all of the following:

- 15 ...
- 16 (17) A provision requiring the nonprofit corporation to create an entity within the
- 17 corporation responsible for developing a strategic plan to further economic
- 18 development of and otherwise providing continuing assistance to the
- 19 shellfish and other aquaculture industries in the State.

20 "

21 **SECTION 1.2.** The Department of Commerce shall take all necessary steps to

22 ensure the contract required under G.S. 143B-431.01(e) is amended to comply with the

23 requirements of Section 1.1 of this act.

24

25 **PART II. REGULATORY REFORM FOR SHELLFISH CULTIVATION LEASES**

26 **SECTION 2.1.** G.S. 113-201.1(5) reads as rewritten:

27 (5) "Water column" means the vertical extent of water, including the surface

28 thereof, above a designated area of submerged bottom land."

29 **SECTION 2.2.** G.S. 113-202 reads as rewritten:

30 **"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**

31 **prior to January 1, 1966.**

32 ...

33 (i) After a lease application is approved by the Secretary, the applicant shall submit to

34 the Secretary ~~a survey of the area approved for leasing and~~ information sufficient to define the

35 bounds of the area approved for leasing with markers in accordance with the rules of the

36 Commission. The ~~survey information~~ shall conform to standards prescribed by the Secretary

37 concerning accuracy of ~~survey~~ and the amount of detail to be shown. When ~~an acceptable~~

38 ~~survey information~~ is submitted, the boundaries are marked and all fees and rents due in

39 advance are paid, the Secretary shall execute the lease on forms approved by the Attorney

40 General. The Secretary is authorized, with the approval of the lessee, to amend an existing lease

1 ~~date, the rental is ten dollars (\$10.00) per acre per year. fifty dollars (\$50.00). The rental for~~
2 ~~initial leases is fifty cents (\$0.50) per acre until the first day of July following the first~~
3 ~~anniversary of the lease, and five dollars (\$5.00) per acre thereafter. Rental must be paid~~
4 ~~annually in advance prior to the first day of April each year. Upon initial granting of a lease, the~~
5 ~~pro rata amount for the portion of the year left until the first day of July must be paid in~~
6 ~~advance at the rate of one dollar (\$1.00) five dollars (\$5.00) per acre per year; then, on or~~
7 ~~before the first day of April next, the lessee must pay the rental for the next full year-year at the~~
8 ~~rate specified in this subsection.~~

9 ...
10 (r) A lease under this section shall include the right to place devices or equipment
11 related to the cultivation or harvesting of marine resources on or within 18 inches of the leased
12 bottom. Devices or equipment not resting on the bottom or extending more than 18 inches
13 above the bottom will require a water column lease under G.S. 113-202.1."

14 **SECTION 2.3.** G.S. 113-202.1 reads as rewritten:

15 "**§ 113-202.1. Water column leases for aquaculture.**

16 ...
17 (c) The Secretary shall not amend shellfish cultivation leases to authorize ~~use~~-uses of
18 the water column involving devices or equipment not resting on the bottom or that extend more
19 than 18 inches above the bottom unless:

- 20 (1) The leaseholder submits an application, accompanied by a nonrefundable
21 application fee of ~~one hundred dollars (\$100.00), fifty dollars (\$50.00),~~
22 which conforms to the standards for lease applications in G.S. 113-202(d)
23 and the duly adopted rules of the Commission;
- 24 (2) The proposed amendment has been noticed consistent with G.S. 113-202(f);
- 25 (3) Public hearings have been conducted consistent with G.S. 113-202(g);
- 26 (4) The aspects of the proposals which require use and dedication of the water
27 column have been documented and are recognized by the Secretary as
28 commercially feasible forms of aquaculture which will enhance shellfish
29 production on the leased area;
- 30 (5) It is not feasible to undertake the aquaculture activity outside of coastal
31 fishing waters; and
- 32 (6) The authorized water column use has the least disruptive effect on other
33 public trust uses of the waters of any available technology to produce the
34 shellfish identified in the proposal.

35 (d) Amendments of shellfish cultivation leases to authorize use of the water column are
36 issued for a period of five years or the remainder of the term of the lease, whichever is shorter.
37 The annual rental for a new or renewal water column amendment is ~~one hundred dollars~~
38 ~~(\$100.00) fifty dollars (\$50.00)~~ an acre. If a water column amendment is issued for less than a
39 12-month period, the rental shall be prorated based on the number of months remaining in the
40 year. The annual rental for an amendment is payable at the beginning of the year. The rental is
41 in addition to that required in G.S. 113-202.

42"

43 **SECTION 2.4.** Sections 2.1, 2.2, and 2.3 of this act are effective July 1, 2015, and
44 apply to applications for shellfish lease applications received by the Department of
45 Environment and Natural Resources on or after that date.

47 **PART III. DEVELOP PROPOSAL TO END CORE SOUND SHELLFISH LEASING** 48 **MORATORIUM**

49 **SECTION 3.** The Division of Marine Fisheries of the Department of Environment
50 and Natural Resources shall, in consultation with representatives of the commercial fishing
51 industry, representatives of the shellfish aquaculture industry, and relevant federal agencies,

1 create a proposal to open to shellfish cultivation leasing certain areas of Core Sound that are
2 currently subject to a moratorium on shellfish leasing. The Division will report regarding the
3 plan no later than May 1, 2016, to the Joint Legislative Commission on Governmental
4 Operations.

5
6 **PART IV. AMEND SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY**
7 **LEGISLATION**

8 **SECTION 4.** Section 44 of S.L. 2014-120 reads as rewritten:

9 **"SENATOR JEAN PRESTON MARINE ~~SHELLFISH~~ OYSTER SANCTUARY**
10 **PROGRAM**

11 **"SECTION 44.(a)** It is the intent of the General Assembly ~~to establish a marine shellfish~~
12 ~~sanctuary in the Pamlico Sound to be named in honor of former Senator Jean Preston, to be~~
13 ~~called the "Senator Jean Preston Marine Shellfish Sanctuary."~~to enhance shellfish habitat
14 within the Albemarle and Pamlico Sounds and their tributaries to benefit fisheries, water
15 quality, and the economy. This will be achieved through the establishment of a network of
16 oyster sanctuaries, harvestable enhancement sites, and coordinated support for the development
17 of shellfish aquaculture. The network of oyster sanctuaries is to be named in honor of
18 Senator Jean Preston and will be called the "Senator Jean Preston Oyster Sanctuary
19 Network."

20 **"SECTION 44.(b)** The Division of Marine Fisheries of the Department of Environment
21 and Natural Resources shall ~~designate an area of appropriate acreage within the Pamlico Sound~~
22 ~~as a recommendation to the Environmental Review Commission for establishment of the~~
23 ~~"Senator Jean Preston Marine Shellfish Sanctuary" and create a plan for managing the~~
24 ~~sanctuary that includes develop a plan to construct and manage additional oyster habitat. The~~
25 new sanctuaries, along with selected existing oyster sanctuaries, will be included in the Senator
26 Jean Preston Oyster Sanctuary Network. The plan will include the following components:

- 27 (1) Location and delineation of ~~the sanctuary.~~ oyster sanctuaries. ~~— The plan~~
28 ~~should include a location~~ locations for the sanctuary ~~sanctuary network~~
29 ~~components that minimizes minimize the impact on commercial trawling. In~~
30 ~~addition, the sanctuary should be gridded into areas leased to private parties~~
31 ~~for restoration and harvest and areas operated and maintained by the State~~
32 ~~for restoration that are not open for harvest. The leased and unleased areas~~
33 ~~should be arranged in a pattern where leased squares are surrounded on four~~
34 ~~sides by unleased squares.~~The location of sanctuaries shall take into account
35 connectivity to existing oyster sanctuaries and proposed oyster enhancement
36 sites. New oyster sanctuaries shall be designed to provide hook-and-line
37 fishing while allowing the development of complex fish habitat and
38 brood-stock oysters that will enhance recruitment in the surrounding reefs.
39 The plan should outline a 10-year development project to accomplish the
40 expansion.
- 41 (2) Administration. ~~— The plan should include the prices to be charged for the~~
42 ~~leased portions of the sanctuary, including an administration fee to be~~
43 ~~retained by the Division to support the leasing and monitoring program. The~~
44 ~~plan shall also provide that the balance of lease payments collected by the~~
45 ~~Division be transferred to the General Fund with a recommendation that~~
46 ~~some or all of the proceeds be used for the support of the State's special~~
47 ~~education programs in memory of Senator Jean Preston.~~
- 48 (3) Enhancement of oyster habitat restoration. ~~— The General Assembly finds~~
49 ~~that the lack of a reliable State-based supply of oyster seed and inadequate~~
50 ~~funding for cultch planting are limitations to the expansion of oyster~~

1 harvesting and the restoration of wild oyster habitat in North Carolina.

2 Therefore, the plan should include the following:

3 a. Provisions and recommendations to facilitate the availability of
4 oyster seed produced in North Carolina for wild oyster habitat
5 restoration projects as well as oyster aquaculture and to reduce
6 potential negative impacts from importation of nonnative oyster seed.

7 b. Plans, where feasible, for public-private partnerships for State-based
8 production of viable oyster seed through the creation of one or more
9 production hatcheries and recommendations for increased support of
10 the existing research hatchery at UNC-Wilmington.

11 c. Plans and cost estimates for an expansion of cultch planting in
12 suitable areas of the State's coastal waters in order to expand areas
13 suitable for development of wild oyster habitat.

14 (4) Economic relief. – The plan should consider a waiver of application fees and
15 yearly rental fees for new shellfish leases for an established period of time to
16 further promote and support shellfish aquaculture in North Carolina. The
17 new leasing fee waiver program should include measures to discourage
18 speculation and target persons with a genuine interest in starting a shellfish
19 aquaculture business, such as a requirement that the lease be nontransferable
20 for a five-year period.

21 (5) Outreach. – The plan should include outreach and education that promotes,
22 whenever possible, public-private partnerships utilizing the Sea Grant
23 College Program, local colleges, and other nongovernmental organizations
24 to (i) encourage shellfish aquaculture and provide technical assistance to
25 broaden cost-effective technologies available to leaseholders; (ii) encourage
26 best management practices to leaseholders; and (iii) inform fishermen and
27 the public on the benefits provided by the Senator Jean Preston Oyster
28 Sanctuary Network.

29 (6) Monitoring. – The plan should include a monitoring plan designed to (i)
30 determine the success of oyster reef construction and (ii) evaluate the cost
31 benefit of the oyster sanctuary network and harvestable enhancement sites.

32 ~~(3)(7)~~ Funding. – The plan should include a request for appropriations sufficient to
33 provide funds for the construction of appropriate bottom habitat and shellfish
34 seeding and for Division staff necessary to conduct oyster restoration and
35 monitoring activities. The plan should provide that, whenever possible,
36 construction and shellfish seeding be carried out by contract with private
37 entities for Division staff to expand oyster restoration and monitoring
38 activities for 10 years. The plan should provide that, whenever possible,
39 public-private partnerships are employed to meet the construction, seeding,
40 and outreach requirements of the plan.

41 ~~(4)~~ Commercial fisherman relief. – To promote the diversification of
42 commercial fishing opportunities, the plan should include a program to
43 award free or discounted leases under this section to commercial fishermen
44 who (i) have held one or more commercial fishing licenses continually for a
45 period of 10 or more years and (ii) receive at least fifty percent (50%) of
46 their income from commercial fishing with those licenses.

47 ~~(5)(8)~~ Recommendations. – The plan should shall include recommendations for
48 statutory or regulatory changes needed to expedite the expansion of shellfish
49 restoration and harvesting in order to improve water quality, restore
50 ecological habitats, provide enhanced recreational and commercial fishing
51 opportunities, and expand the coastal economy.

1 (9) No Funding for sanctuaries in closed areas. – The plan shall provide that no
2 funding or other resources shall be available in water bodies where a
3 moratorium or other legal prohibition on shellfish leasing under Article 16 of
4 Chapter 113 of the General Statutes is currently in effect. This subdivision
5 does not apply to leasing moratoria imposed because the area is closed to
6 shellfish harvesting or recommended for closure by the State Health Director
7 due to pollution.

8 ~~"SECTION 44.(c) No later than December 1, 2014, and quarterly thereafter until~~
9 ~~submission of a final plan to the Environmental Review Commission, the Department of~~
10 ~~Environment and Natural Resources shall report to the Environmental Review Commission~~
11 ~~regarding its implementation of this section and its recommended plan."~~

13 **PART V. SIMPLIFY OYSTER RESTORATION PROJECT PERMITTING**

14 **SECTION 5.(a)** The Division of Marine Fisheries and Division of Coastal
15 Management of the Department of Environment and Natural Resources shall, in consultation
16 with representatives of nongovernmental conservation organizations working on oyster
17 restoration, create a new permitting process specifically designed for oyster restoration projects
18 that would apply to oyster restoration projects instead of a major development permit under
19 G.S. 113A-118. The Department will submit its report, including recommended legislation, to
20 the Environmental Review Commission no later than May 1, 2016.

21 **SECTION 5.(b)** Until the effective date of the revised permanent rule that the
22 Coastal Resources Commission is required to adopt pursuant to Section 5(d) of this act, the
23 Commission and the Department of Environment and Natural Resources shall implement 15A
24 NCAC 03O .0503(g) (Scientific or Educational Activity Permit) as provided in Section 5(c) of
25 this act.

26 **SECTION 5.(c)** Notwithstanding 15A NCAC 03O .0503(g) (Scientific or
27 Educational Activity Permit), the Division of Marine Fisheries may issue a scientific or
28 educational activity permit for approved activities conducted by or under the direction of a
29 nongovernmental conservation organization in addition to a scientific or educational institution.
30 For purposes of this section, a nongovernmental conservation organization is defined as an
31 organization whose primary mission is the conservation of natural resources.

32 **SECTION 5.(d)** The Environmental Management Commission shall adopt rules to
33 amend 15A NCAC 03O .0503(g) and any other cross-referenced rules consistent with Section
34 5(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission
35 pursuant to this subsection shall be substantively identical to the provisions of Section 5(c) of
36 this act. Rules adopted pursuant to this subsection are not subject to Part 3 of Article 2A of
37 Chapter 150B of the General Statutes. Rules adopted pursuant to this subsection shall become
38 effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been
39 received as provided by G.S. 150B-21.3(b2).

40 **SECTION 5.(e)** This section is effective when it becomes law. Section 5(c) of this
41 act expires on the date that rules adopted pursuant to Section 5(d) of this act become effective.

43 **PART VI. SCFL EXEMPTION FOR EMPLOYEES OF LEASEHOLDER**

44 **SECTION 6.** G.S. 113-169.2 reads as rewritten:

45 "**§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.**

46 (a) License or Endorsement Necessary to Take or Sell Shellfish Taken by Hand
47 Methods. – It is unlawful for an individual to take shellfish from the public or private grounds
48 of the State as part of a commercial fishing operation by hand methods without holding either a
49 shellfish license or a shellfish endorsement of a SCFL. A North Carolina resident who seeks
50 only to take shellfish by hand methods and sell such shellfish shall be eligible to obtain a

1 shellfish license without holding a SCFL. The shellfish license authorizes the licensee to sell
2 shellfish.

3 (a1) License Necessary to Take or Sell Shellfish Taken by Mechanical Means. – ~~Subject~~
4 ~~to~~ With the exceptions set forth in subsection (i) of this section, an individual who takes
5 shellfish from the public or private grounds of the State by mechanical means must obtain an
6 SCFL under the provisions of G.S. 113-168.2.

7 ...
8 (i) Taking Shellfish Without a License for Personal Use. ~~Use or as Employee of Certain~~
9 License Holders. – Shellfish may be taken without a license ~~for~~ under the following
10 circumstances:

11 (1) For personal use in quantities established by rules of the Marine Fisheries
12 Commission.

13 (2) When the taking is from an area leased for the cultivation of shellfish under
14 Article 16 of this Chapter by a person who is an employee of a leaseholder
15 holding a valid SCFL issued under the provisions of G.S. 113-168.2."

17 PART VII. EFFECTIVE DATE

18 SECTION 7. Except as otherwise noted, the remainder of this act is effective when
19 it becomes law.