

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 738

Short Title: Support Shellfish Industry. (Public)

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

Referred to: Rules and Operations of the Senate

May 24, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE ADDITIONAL SUPPORT FOR THE STATE'S SHELLFISH
3 INDUSTRY BY REFORMING AND MODERNIZING THE STATUTES GOVERNING
4 SHELLFISH AND AQUACULTURE BOTTOMLAND LEASING AND BY
5 APPROPRIATING FUNDS TO STUDY THE IMPACT OF OYSTER RESTORATION ON
6 NUTRIENT REDUCTION LEVELS.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. SHELLFISH AQUACULTURE REFORMS**

10
11 **SHELLFISH BOTTOM LEASING AMENDMENTS**

12 **SECTION 1.1.(a)** G.S. 113-202 reads as rewritten:

13 **"§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued**
14 **prior to January 1, 1966.**

15 (a) To increase the use of suitable areas underlying coastal fishing waters for the
16 production of shellfish, the Secretary ~~may~~ shall have the discretionary authority to grant shellfish
17 cultivation leases to persons ~~who reside in North Carolina~~ under the terms of this section when
18 the Secretary determines, in accordance with his duty to conserve the marine and estuarine
19 resources of the State, that the public interest will benefit from issuance of the lease. Suitable
20 areas for the production of shellfish shall meet the following minimum standards:

21 (1) The area leased must be suitable for the cultivation and harvesting of shellfish
22 in commercial quantities.

23 (2) The area leased must not contain a natural shellfish bed. For purposes of this
24 subdivision, a "natural shellfish bed" is an area containing at least 10 bushels
25 of shellfish per acre that does not include a previously leased area terminated
26 by the Secretary for failure to meet the requirements of this section within the
27 12 months directly preceding the date of the lease application.

28 (3) Cultivation of shellfish in the leased area will be compatible with lawful
29 utilization by the public of other marine and estuarine ~~resources~~ resources near
30 the leased area. Other public uses which may be considered include, but are
31 not limited to, navigation, fishing and recreation.

32 (4) Cultivation of shellfish in the leased area will not ~~impinge upon the rights of~~
33 ~~riparian owners~~ unreasonably conflict with the riparian rights of adjacent
34 property owners.

35 (4a) The leased area must be located a minimum of 100 feet from the shoreline of
36 any private property. The 100-foot minimum shall not apply when (i) the



1 adjacent private property is owned by the lease applicant or (ii) the owner of
2 the private property have provided consent in the form of a written and
3 notarized statement.

4 (5) The area leased must not include an area designated for inclusion in the
5 Department's Shellfish Management Program.

6 (6) The area leased must not include ~~an area which the State Health Director has~~
7 ~~recommended be closed to shellfish harvest by reason of pollution waters that~~
8 have been classified as prohibited, restricted, or conditionally approved closed
9 with respect to shellfish harvesting at the time of filing of the lease application.

10 (7) The area leased under a single lease shall not be less than one-half acre or
11 exceed 10 acres, except in areas designated by the Department as Shellfish
12 Aquaculture Enterprise Areas under subsection (s) of this section.

13 ...
14 (c) No person, including a corporate entity, or single family unit may acquire and hold
15 by lease, lease renewal, or purchase shellfish cultivation leases covering more than 50 acres of
16 ~~public bottoms under shellfish cultivation leases. the acreage of public bottoms set forth in this~~
17 subsection. For purposes of this subsection, the number of acres of leases held by a person
18 includes acres held by a corporation in which the person holds an interest. The Marine Fisheries
19 Commission may adopt rules to require the submission of information necessary to ensure
20 compliance with this subsection.

21 (1) With respect to coastal fishing waters located in and south of Core Sound, the
22 limit is 50 acres. For purposes of this subdivision, Core Sound shall have the
23 definition set forth in Section 1(b) of Chapter 44 of the 1993 Session Laws.

24 (2) With respect to other coastal fishing waters, the limit is 300 acres.

25 For purposes of this subsection, the number of acres of leases held by a person includes acres
26 held by a corporation in which the person holds an interest. The Marine Fisheries Commission
27 may adopt rules to require the submission of information necessary to ensure compliance with
28 this subsection.

29 (d) Any person desiring to apply for a lease must make written application to the
30 Secretary on forms prepared by the Department containing such information as deemed
31 necessary to determine the desirability of granting or not granting the lease requested. Except in
32 the case of renewal leases, the application must be accompanied by a map or diagram made at
33 the expense of the applicant, showing the area proposed to be leased.

34 ...
35 (k) Except as restricted by this Subchapter, leaseholds granted under this section are to
36 be treated as if they were real property and are subject to all laws relating to taxation, sale, devise,
37 inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases
38 properly acknowledged and probated are eligible for recordation in the same manner as
39 instruments conveying an estate in real property. Within 30 days after transfer of beneficial
40 ownership of all or any portion of or interest in a leasehold to another, the new owner must notify
41 the Secretary of such fact. Such transfer is not valid until notice is furnished the Secretary. ~~In the~~
42 ~~event such transferee is a nonresident, the Secretary must initiate proceedings to terminate the~~
43 ~~lease.~~

44 (l) Upon receipt of notice by the Secretary of any of the following occurrences, he must
45 commence action to terminate the leasehold:

46 (1) Failure to pay the annual rent in advance.

47 (2) Failure to file information required by the Secretary upon annual remittance
48 of rental or filing false information on the form required to accompany the
49 annual remittance of rental.

50 (3) Failure by new owner to report a transfer of beneficial ownership of all or any
51 portion of or interest in the leasehold.

- 1 (4) Failure to mark the boundaries in the leasehold and to keep them marked as
2 required in the rules of the Marine Fisheries Commission.
3 (5) Failure to utilize the leasehold on a continuing basis for the commercial
4 production of shellfish.
5 ~~(6) Transfer of all or part of the beneficial ownership of a leasehold to a~~
6 ~~nonresident.~~
7 (7) Substantial breach of compliance with the provisions of this Article or of rules
8 of the Marine Fisheries Commission governing use of the leasehold.
9 (8) Failure to comply with the training requirements established by the Marine
10 Fisheries Commission pursuant to G.S. 113-201(c).

11 ...
12 (n) Upon final termination of any leasehold, ~~the bottom in question is thrown open to the~~
13 ~~public for use in accordance with laws and rules governing use of public grounds generally.~~ the
14 Secretary may either (i) re-lease the area to the first qualified applicant to file an application
15 following the procedures set forth in this Article for renewal of a lease or (ii) designate the area
16 as a Shellfish Aquaculture Enterprise Area under subsection (s) of this section. Within 30 days
17 of final termination of the leasehold, the former leaseholder shall remove all abandoned markers
18 and gear denominating the area of the leasehold as a private bottom. The State may, after 10 days'
19 notice to the owner of the abandoned markers thereof, ~~remove the abandoned structure and~~
20 markers and gears have the area cleaned up. The cost of such removal and cleanup shall be
21 payable by the owner of the abandoned markers and the State may bring suit to recover the ~~costs~~
22 thereof, costs, including legal fees.

23"
24 **SECTION 1.1.(b)** As part of the Shellfish Mariculture Plan required by Section
25 13.13 of S.L. 2017-57, the North Carolina Policy Collaboratory and the Division of Marine
26 Fisheries shall study and recommend whether the establishment of a Shellfish Mariculture
27 Commission to oversee shellfish bottom leasing and other aspects of shellfish aquaculture would
28 substantially advance and promote the State's shellfish aquaculture industry. The
29 recommendation shall include proposals for additional or reallocated funding as well as proposed
30 legislation necessary to implement the recommendation.

31 **SECTION 1.1.(c)** This section becomes effective July 1, 2018.

32 **ADMINISTRATIVE REMEDY FOR SHELLFISH BOTTOM LEASING APPEALS**

33 **SECTION 1.2.(a)** G.S. 113-202(g) reads as rewritten:

34 "(g) After consideration of the public comment received and any additional investigations
35 the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person
36 or by certified or registered mail of the decision on the lease application. The Secretary shall also
37 notify persons who submitted comments at the public hearing and requested notice of the lease
38 decision. An applicant who is dissatisfied with the Secretary's decision or another person
39 aggrieved by the decision may appeal the decision to the Shellfish Cultivation Lease Review
40 Committee established under G.S. 143B-289.57(f). A party to an appeal to the Review
41 Committee who is dissatisfied with the Review Committee's decision may commence a contested
42 case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the
43 Secretary's Committee's decision. In the event the ~~Secretary's decision~~ decision of the Secretary
44 or the Review Committee is a modification to which the applicant agrees, the lease applicant
45 must furnish an amended map or diagram before the lease can be issued by the Secretary."

46 **SECTION 1.2.(b)** G.S. 143B-289.57 is amended by adding a new subsection to read:

47 "(f) The Chair of the Commission shall appoint a three-member Shellfish Cultivation
48 Lease Review Committee to hear appeals of decisions of the Secretary regarding shellfish
49 cultivation leases issued under G.S. 113-202. The Committee shall include one Commission
50 member who shall serve as the hearing officer and two public members. One public member
51

1 shall have expertise or other relevant experience in shellfish aquaculture, and the other public
2 member shall have expertise or other relevant experience with respect to coastal property or
3 property assessment. The Commission shall adopt rules to establish procedures for the appeals
4 and may adopt temporary rules."

6 **EXPAND SHELLFISH NURSERY AREAS AND UNDER DOCK OYSTER CULTURE** 7 **SITING**

8 **SECTION 1.3.(a)** G.S. 113-203 reads as rewritten:

9 "**§ 113-203. Transplanting of oysters and clams.**

10 ...

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

- 12 (1) Transplant oysters or clams taken from public grounds to private beds except
13 when lawfully taken during open season and transported directly to a private
14 bed in accordance with rules of the Marine Fisheries Commission.
- 15 (2) Transplant oysters or clams taken from permitted aquaculture operations to
16 private beds except from waters in the approved classification.
- 17 (3) Transplant oysters or clams from public grounds or permitted aquaculture
18 operations utilizing waters in the prohibited, restricted or conditionally
19 approved classification to private beds except when the transplanting is done
20 in accordance with the provisions of this section and implementing rules.

21 (a3) ~~Unless the Secretary determines that the nursery of shellfish in an area will present~~
22 a risk to public health, it is lawful to transplant seed oysters or seed clams taken from permitted
23 aquaculture operations that use waters in the prohibited, restricted or conditionally approved
24 classification to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the
25 Secretary that sets times during which transplant is permissible and other reasonable restrictions
26 imposed by the Secretary under either of the following circumstances:

- 27 (1) When transplanting seed clams less than 12 millimeters in their largest
28 dimension.
- 29 (2) When transplanting seed oysters less than 25 millimeters in their largest
30 dimension.

31"

32 **SECTION 1.3.(b)** G.S. 113-210(c) reads as rewritten:

33 "(c) Issuance. – The Director of the Division of Marine Fisheries shall issue an Under
34 Dock Oyster Culture Permit only if the Director determines all of the following:

- 35 (1) ~~That~~If the dock or pier is not located in an area that the State Health Director
36 has recommended be closed to shellfish harvest due to pollution or that has
37 been closed to harvest by statute, rule, or proclamation due to suspected
38 pollution-pollution, the owner of the dock or pier has signed a written
39 acknowledgement that oysters produced under the permit are intended for
40 restoration purposes and not for consumption.

41"

42 **SECTION 1.3.(c)** This section becomes effective July 1, 2018.

44 **SHELLFISH AQUACULTURE ENTERPRISE AREAS**

45 **SECTION 1.4.(a)** G.S. 113-202 is amended by adding a new subsection to read:

46 "(s) To facilitate shellfish aquaculture opportunities through advanced siting and
47 preapprovals from relevant federal and State agencies, the Secretary may establish Shellfish
48 Aquaculture Enterprise Areas. The Secretary shall only issue nontransferrable leases to residents
49 of North Carolina within designated Shellfish Aquaculture Enterprise Areas. Any leased parcel
50 within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall revert to
51 the State and be made available to other applicants. The geographical restrictions on leasing set

1 forth in Section 2 of Chapter 876 of the 1967 Session Laws and Section 1(c) of S.L. 2003-64
2 shall not apply to Shellfish Aquaculture Enterprise Areas established under this subsection."

3 **SECTION 1.4.(b)** G.S. 113-201.1 is amended by adding a new subdivision to read:

4 "(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and
5 permitted by the Department that is subdivided into parcels and made
6 available for shellfish aquaculture leasing."

8 **PART II. REVISE OYSTER STUDIES REPORTING DATES**

9 **SECTION 2.1.(a)** Section 14.11(f) of S.L. 2016-94 reads as rewritten:

10 "**SECTION 14.11.(f)** The University of North Carolina at Chapel Hill shall report the results
11 of its study, including any recommendations and suggested legislation needed to implement the
12 recommendations, to the Fiscal Research Division, the Environmental Review Commission, and
13 the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources
14 no later than ~~December 31, 2018.~~December 31, 2018, which may be extended to June 30, 2019,
15 by written notice to the Fiscal Research Division if the University determines additional time is
16 needed to complete the study."

17 **SECTION 2.1.(b)** Section 13.13(b) of S.L. 2017-57 reads as rewritten:

18 "**SECTION 13.13.(b)** In addition to the study required by Section 14.11(d) of S.L. 2016-94,
19 as amended by subsection (a) of this section, the North Carolina Policy Collaboratory shall also
20 prepare and deliver a Shellfish Mariculture Plan by ~~December 31, 2018.~~December 31, 2018,
21 which may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the
22 Collaboratory determines additional time is needed to complete the study. Except as otherwise
23 prohibited by State or federal law, all State entities shall provide all information, resources, and
24 support deemed relevant by the Collaboratory for the creation of the Shellfish Mariculture Plan.
25 The plan shall be submitted to the Joint Legislative Oversight Committee on Agriculture and
26 Natural and Economic Resources, the chairs of the House of Representatives Appropriations
27 Committee on Agriculture and Natural and Economic Resources, the chairs of the Senate
28 Appropriations Committee on Agriculture, Natural, and Economic Resources, and the Fiscal
29 Research Division and shall consider the following:

30 "...."

31 **SECTION 2.1.(c)** Section 13.13(d) of S.L. 2017-57, as amended by Section 4.1 of
32 S.L. 2017-197, reads as rewritten:

33 "**SECTION 13.13.(d)** The North Carolina Policy Collaboratory, in consultation with the
34 Economic Development Partnership of North Carolina, the Department of Commerce, and the
35 Department of Natural and Cultural Resources, and any other stakeholders the Partnership deems
36 relevant, including the North Carolina Tourism Advisory Board, the North Carolina Restaurant
37 and Lodging Association, the North Carolina Shellfish Growers Association, North Carolina Sea
38 Grant, and the North Carolina Fisheries Association, shall develop conceptual plans and
39 recommendations for economic development related to promotion of the State's shellfish
40 harvesting heritage. The plans and recommendations shall include the creation of a North
41 Carolina Oyster Trail and a ~~North Carolina Oyster Festival~~other public engagement events. Plan
42 development shall be congruent with the ongoing work of the North Carolina Policy
43 Collaboratory and its stakeholder group as described in this section and shall include
44 recommendations of locations, oversight, governmental support, cost, and timing of when such
45 initiatives should be launched in the future, including, but not limited to, achieving production
46 and acreage benchmarks, in addition to any other information deemed relevant for inclusion. The
47 Collaboratory's recommendations shall be provided no later than December 31, 2018, to the Joint
48 Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the
49 chairs of the House of Representatives Appropriations Committee on Agriculture and Natural
50 and Economic Resources, the chairs of the Senate Appropriations Committee on Agriculture,
51 Natural, and Economic Resources, and the Fiscal Research Division. The due date for the report

1 may be extended to June 30, 2019, by written notice to the Fiscal Research Division if the
2 Collaboratory and stakeholders determine that additional time is needed to complete the study.
3 This study, as it may be subsequently amended after submission, shall be included as an appendix
4 to the Shellfish Mariculture Plan required by subsection (b) of this section."
5

6 **PART III. STUDIES**

7 **SECTION 3.1.** There is appropriated from the General Fund to the University of
8 North Carolina at Chapel Hill the sum of one hundred thousand dollars (\$100,000) in
9 nonrecurring funds for the 2018-2019 fiscal year for the University's North Carolina Policy
10 Collaboratory to study the impact of oyster restoration and shellfish mariculture on nitrogen and
11 phosphorus levels in the Pamlico Sound and whether the use of oyster restoration and shellfish
12 mariculture as mitigation or offsets for nutrient input to the Pamlico Sound from the Neuse and
13 Tar-Pamlico river basins could contribute to achievement of the policy and water quality goals
14 of the nutrient strategies for those basins. The Collaboratory's report shall be provided no later
15 than March 1, 2020, to the Joint Legislative Oversight Committee on Agriculture and Natural
16 and Economic Resources, the chairs of the House of Representatives Appropriations Committee
17 on Agriculture and Natural and Economic Resources, the chairs of the Senate Appropriations
18 Committee on Agriculture, Natural, and Economic Resources, and the Fiscal Research Division.

19 **SECTION 3.2.** The Division of Marine Fisheries of the Department of
20 Environmental Quality shall review real estate owned by the State and allocated to the Division
21 in Carteret, Hyde, and Dare Counties that were acquired with funding from the Waterfront Access
22 and Marine Industry Fund and develop an inventory of sites suitable to be used for commercial
23 aquaculture, hatcheries, or other aquaculture support operations. The Division will also develop
24 (i) a plan to publicize the availability of the sites and (ii) a streamlined process for lease of the
25 sites to potential commercial aquaculture or aquaculture support ventures. The Division shall
26 report on its implementation of this section to the Joint Legislative Oversight Committee on
27 Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than
28 February 1, 2019.
29

30 **PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

31 **SECTION 4.1.** If any section or provision of this act is declared unconstitutional or
32 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
33 the part declared to be unconstitutional or invalid.

34 **SECTION 4.2.** Except as otherwise provided, this act is effective when it becomes
35 law.