

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1274*
House Committee Substitute Favorable 9/16/98

Short Title: Submerged Lands/Lead Exposure Amends.

(Public)

Sponsors:

Referred to:

May 27, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND
3 UNDER NAVIGABLE WATERS AND TO AMEND THE CURRENT LAW
4 REGARDING THE CONTROL OF CHILDHOOD LEAD EXPOSURE.

5 The General Assembly of North Carolina enacts:

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

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

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

17 (a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise
18 for shellfish cultivation, the Secretary may, to resolve the claim, grant a shellfish lease to
19 the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights

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

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

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

28 (d) In the interest of conservation of the marine and estuarine resources of North
29 Carolina, the Department may institute an action in the superior court to contest the claim
30 of title or claimed right of fishery in any navigable waters of North Carolina registered
31 with the Secretary. In such proceeding, the burden of showing title or right of fishery, by
32 the preponderance of the evidence, shall be upon the claiming title or right holder. In the
33 event the claiming title or right holder prevails, the trier of fact shall fix the monetary
34 worth of the claim. The Department may elect to condemn the claim upon payment of the
35 established owners or right holders their pro rata shares of the amount so fixed. The
36 Department may make such payments from such funds as may be available to it. An
37 appeal lies to the appellate division by either party both as to the validity of the claim and
38 as to the fairness of the amount fixed. The Department in such actions may be
39 represented by the Attorney General. In determining the availability of funds to the
40 Department to underwrite the costs of litigation or make condemnation payments, the use
41 which the Department proposes to make of the area in question may be considered; such
42 payments are to be deemed necessary expenses in the course of operations attending such
43 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. G.S. 130A-131.5 reads as rewritten:

34 **"§ 130A-131.5. Commission to adopt rules.**

35 (a) For the protection of the public health, the Commission shall adopt rules for
36 the prevention and control of lead poisoning in children in accordance with this Part.
37 ~~children. The rules shall include provisions for:~~

- 38 (1) ~~Reporting by laboratories of elevated blood lead levels in children less~~
39 ~~than six years of age; the rules shall specify the public health agency to~~
40 ~~which reports shall be made, and shall establish when a blood lead level~~
41 ~~is considered to be elevated. The rules shall further provide the specific~~
42 ~~information to be included in the reports, the time limits for reporting,~~
43 ~~and the form in which reports shall be submitted;~~

- 1 (2) ~~Investigation by the Department to determine the source of elevated~~
2 ~~blood lead levels;~~
3 (3) ~~Identification of lead poisoning hazards;~~
4 (4) ~~Examination and testing of children less than six years of age who are~~
5 ~~reasonably suspected of having elevated blood lead levels; and~~
6 (5) ~~Abatement of lead poisoning hazards in dwellings, schools and child~~
7 ~~care centers determined by the Department to be a potential source of an~~
8 ~~elevated blood lead level in a child less than six years of age.~~

9 (b) ~~Abatement orders issued by the Department pursuant to this section shall~~
10 ~~require elimination of the lead poisoning hazard. Removal of children from the dwelling,~~
11 ~~school, or child care center shall not constitute abatement if the property continues to be~~
12 ~~used for a dwelling, school, or child care center."~~

13 Section 4. G.S. 130A-131.7(1) reads as rewritten:

14 "(1) 'Abatement' means ~~identifying lead-based paint, identifying or assessing a~~
15 ~~lead-based paint hazard, or undertaking any of the following measures to~~
16 ~~eliminate a lead-based paint hazard:~~

- 17 a. ~~Removing lead-based paint from a surface and repainting the~~
18 ~~surface.~~
19 b. ~~Removing a component, such as a windowsill, painted with lead-~~
20 ~~based paint and replacing the component.~~
21 c. ~~Enclosing a surface painted with lead-based paint with paneling,~~
22 ~~vinyl siding, or another approved material.~~
23 d. ~~Encapsulating a surface painted with lead-based paint with a~~
24 ~~sealant.~~
25 e. ~~Any other measure approved by the Commission.~~

26 ~~The term includes an inspection and a risk assessment."~~

27 Section 5. G.S. 130A-131.9C(j) reads as rewritten:

28 "(j) The Department shall verify by visual inspection that the approved remediation
29 plan has been completed. The Department may also verify plan completion by residual
30 lead dust monitoring and soil or drinking water lead level measurement.

31 (j1) Compliance with the maintenance standard shall be deemed equivalent to meeting
32 satisfies the remediation plan requirements as long as exterior surfaces are also addressed.
33 requirements for confirmed lead poisoning cases identified on or after 1 October 1990 as
34 long as all lead poisoning hazards identified on interior and exterior surfaces are
35 addressed by remediation. Except for owner-occupied residential housing units,
36 continued compliance shall be verified by means of an annual monitoring inspection
37 conducted by the Department. For owner-occupied residential housing units, continued
38 compliance shall be verified (i) by means of an annual monitoring inspection, (ii) by
39 documentation that no child less than six years of age has resided in or regularly visited
40 the residential housing unit within the past year, or (iii) by documentation that no child
41 less than six years of age residing in or regularly visiting the unit has an elevated blood
42 lead level."

43 Section 6. G.S. 130A-131.9D reads as rewritten:

1 **"§ 130A-131.9D. Effect of compliance with maintenance standard.**

2 Any owner of a residential housing unit constructed prior to 1978 who is sued by a
3 current or former occupant seeking damages for injuries allegedly arising from exposure
4 to lead-based paint or lead-contaminated dust, shall not be deemed liable (i) for any
5 injuries sustained by that occupant after the owner first complied with the maintenance
6 standard defined under G.S. ~~130A-131.7(10)~~ 130A-131.7 provided the owner has repeated
7 the steps provided for in the maintenance standard annually for units in which children of
8 less than six years of age have resided or regularly visited within the past year and
9 obtained a certificate of compliance under G.S. 130A-131.9E annually during such
10 occupancy; or (ii) if the owner is able to show by other documentation that compliance
11 with the maintenance standard has been maintained during the period when the injuries
12 were sustained; or (iii) if the owner is able to show that the unit was lead-safe housing
13 containing no lead-based paint hazards during the period when the injuries were
14 sustained."

15 Section 7. Part 4 of Article 5 of Chapter 130A of the General Statutes is
16 amended by adding a new section to read:

17 **"§ 130A-131.9H. Application fees for certificates of compliance.**

18 The Department shall collect an application fee of ten dollars (\$10.00) for each
19 certificate of compliance. Fee receipts shall be used to support the program that is
20 developed to implement this Part. Fee receipts also may be used to provide for relocation
21 and medical expenses incurred by children with confirmed lead poisoning."

22 Section 8. This act is effective when it becomes law.