

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE DRS15059-MHa-42 (02/02)

Short Title: Enhance Safety & Commerce for Ports/Inlets. (Public)

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

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT  
3 AND NATURAL RESOURCES TO WAIVE THE NON-STATE COST-SHARE  
4 REQUIREMENT FOR DREDGING PROJECTS INTENDED TO ALLEVIATE  
5 NAVIGATIONAL EMERGENCIES; TO MAKE OTHER CLARIFYING CHANGES TO  
6 THE SHALLOW DRAFT NAVIGATION CHANNEL DREDGING AND LAKE  
7 MAINTENANCE FUND; TO CREATE AND PROVIDE FUNDING FOR THE DEEP  
8 DRAFT NAVIGATION CHANNEL DREDGING AND MAINTENANCE FUND; AND  
9 TO AUTHORIZE THE SECRETARY OF ADMINISTRATION TO ACQUIRE  
10 FEDERAL LAND FOR THE MAINTENANCE OF DEEP DRAFT NAVIGATIONAL  
11 ACCESS TO THE PORT OF MOREHEAD CITY.

12 The General Assembly of North Carolina enacts:

13  
14 **SHALLOW DRAFT NAVIGATION FUND AMENDMENTS**

15 **SECTION 1.(a)** G.S. 143-215.73F reads as rewritten:

16 **"§ 143-215.73F. Shallow Draft Navigation Channel Dredging and Lake Maintenance**  
17 **Fund.**

18 (a) Fund Established. – The Shallow Draft Navigation Channel Dredging and Lake  
19 Maintenance Fund is established as a special revenue fund. Interest and other investment  
20 income earned by the Fund accrues to it. The Fund consists of fees credited to it under  
21 G.S. 75A-3, 75A-38, and ~~105-449.126.~~105-449.126, and monies contributed by a non-State  
22 entity designated for a particular dredging project or group of projects.

23 (b) Uses of the Fund. – Revenue ~~in~~-credited to the Fund may only be used for the  
24 following purposes:

25 (1) ~~to~~To provide the State's share of the costs associated with ~~any~~a dredging  
26 project designed to keep shallow draft navigation channels located in State  
27 waters or waters of the ~~state~~State located within lakes navigable and safe.

28 (2) ~~or for~~For aquatic weed control projects in waters of the State located within  
29 lakes under Article 15 of Chapter 113A of the General Statutes. Funding for  
30 aquatic weed control projects is limited to five hundred thousand dollars  
31 (\$500,000) in each fiscal year.

32 (c) Conditions on Funding. – ~~Any~~Unless otherwise provided in this subsection, any  
33 project funded by revenue ~~from~~-credited to the Fund from the fees described in subsection (a)  
34 of this section must be cost-shared with non-State dollars on a one-to-one ~~basis,~~provided that  
35 thebasis.



- 1           (1) The non-State cost-share required by this subsection may also be provided  
2           by monies contributed to the Fund by a non-State entity.
- 3           (2) The cost-share for a lake located within a component of the State Parks  
4           System shall be provided by the Division of Parks and Recreation of the  
5           Department of Environment and Natural Resources. The Division of Parks  
6           and Recreation may use funds allocated to the State Parks System for capital  
7           projects under G.S. 113-44.15 for the cost-share.
- 8           (d) Waiver of Cost-share. – The Secretary may waive or modify the non-State  
9           cost-share requirement for dredging projects that (i) alleviate a navigational emergency; or (ii)  
10          represent an opportunity to supplement or leverage Corps funding.
- 11          (e) Return of Non-State Entity Funds. – Non-State entities that contribute to the Fund  
12          for a particular project or group of projects may make a written request to the Secretary that the  
13          contribution be returned if the contribution has not been spent or encumbered within two years  
14          of receipt of the contribution by the Fund. If the written request is made prior to the funds being  
15          spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the  
16          later of (i) receiving the request, or (ii) the expiration of the two-year period described by this  
17          subsection.
- 18          (f) Reporting. – The Secretary shall report any waivers or modifications of the  
19          cost-share requirement made under subsection (d) of this section within 30 days of issuing the  
20          waiver or modification to the Joint Legislative Commission on Governmental Operations and  
21          the Fiscal Research Division of the General Assembly. The report shall include an explanation  
22          of the factors in subsection (d) of this section that are the basis for the waiver or modification  
23          decision.
- 24          (g) Definitions. – For purposes of this section, "~~shallow draft navigation channel~~"  
25          meansThe following definitions apply in this section:
- 26               (1) Corps. – The United States Army Corps of Engineers.
- 27               (2) Costs associated with a dredging project. – Includes the cost of the dredging  
28               operation, surveys or studies directly attributable to the project, and the costs  
29               of disposal of dredged material.
- 30               (3) Navigational emergency. – With respect to a shallow draft navigation  
31               channel, the removal of or statement of intent to remove one or more  
32               navigational buoys by the United States Coast Guard from the channel due  
33               to shoaling.
- 34               (4) Shallow draft navigation channel. – (i) a waterway connection with a  
35               maximum depth of 16 feet between the Atlantic Ocean and a bay or the  
36               Atlantic Intracoastal Waterway, (ii) a river entrance to the Atlantic Ocean  
37               through which tidal and other currents flow, or (iii) other interior coastal  
38               waterways. "~~Shallow draft navigation channel~~"The term includes the  
39               Atlantic Intracoastal Waterway and its side channels, Beaufort Harbor,  
40               Bogue Inlet, Carolina Beach Inlet, the channel from Back Sound to Lookout  
41               Back, channels connected to federal navigation channels, Lockwoods Folly  
42               River, Manteo/Shallowbag Bay, including Oregon Inlet, Masonboro Inlet,  
43               New River, New Topsail Inlet, Rodanthe, Rollinson, Shallotte River, Silver  
44               Lake Harbor, and the waterway connecting Pamlico Sound and Beaufort  
45               Harbor."

46           **SECTION 1.(b)** Chapter 449 of the 1985 Session Laws, as amended by Chapters  
47           177 and 906 of the 1991 Session Laws, Part VII of S.L. 2001-439 and Section 7 of S.L.  
48           2010-78, is amended by adding a new section to read:

49           "Sec. 3.3. Additional Use of Occupancy Taxes. – Notwithstanding any other use  
50           requirement contained in this Session Law, as amended, the Dare County Board of  
51           Commissioners may by resolution designate the use of some or all of the proceeds from the

1 occupancy taxes authorized by this Session Law, as amended, for contributions to the Shallow  
2 Draft Navigation Channel Dredging and Lake Maintenance Fund, to be used for the non-State  
3 share of costs associated with the dredging of shallow draft navigation channels, as defined in  
4 G.S. 143-215.73F(g), that are located fully or partially in Dare County."

5  
6 **DEEP DRAFT NAVIGATION CHANNEL DREDGING AND MAINTENANCE FUND**

7 **SECTION 2.(a)** Article 21 of Chapter 143 of the General Statutes is amended by  
8 adding a new Part to read:

9 "Part 8C.

10 **"Deep Draft Navigation Channel Dredging and Maintenance Fund.**

11 **"§ 143-215.73G Deep Draft Navigation Channel Dredging and Maintenance Fund.**

12 (a) Fund Established. – The Deep Draft Navigation Channel Dredging and Maintenance  
13 Fund is established as a special revenue fund. Interest and other investment income earned by  
14 the Fund accrues to it. The Fund consists of General Fund appropriations, gifts or grants,  
15 including monies contributed by a non-State entity for a particular dredging project or group of  
16 projects, and any other revenues specifically allocated to the Fund by an act of the General  
17 Assembly.

18 (b) Uses of the Fund. – Revenue credited to the Fund may only be used for costs  
19 associated with projects providing safe and efficient navigational access to a State Port,  
20 including the design, construction, expansion, modification, or maintenance of deep draft  
21 navigation channels, turning basins, berths and related structures, as well as surveys or studies  
22 related to any of the foregoing and the costs of disposal of dredged material.

23 (c) Conditions on Funding. – State funds credited to the Fund from the sources  
24 described in subsection (a) of this section must be cost-shared on a one-to-one basis with funds  
25 provided by the State Ports Authority, provided that:

26 (1) Funds contributed to the Fund by a non-State entity are not considered State  
27 funds, and may be used to provide the cost-share required by this subsection.

28 (2) The Secretary may waive or modify the cost-share requirement for any  
29 project that supplements Corps funding for a study authorized by the Corps  
30 related to navigational access to a State Port, based on availability of  
31 alternate funding sources.

32 (d) Waiver of Cost-share. – The Secretary may waive or modify the non-State  
33 cost-share requirement for dredging projects or federally authorized studies of deep draft access  
34 to State Ports that (i) represent an opportunity to supplement or leverage Corps funding that  
35 would be lost if a cost-share was required, or (ii) alleviate shoaling or other navigational  
36 hazards that pose a negative impact on safety or commerce within, or channels providing  
37 access to, a State Port.

38 (e) Return of Non-State Entity Funds. – Non-State entities that contribute to the Fund  
39 for a particular project or group of projects may make a written request to the Secretary that the  
40 contribution be returned if the contribution has not been spent or encumbered within two years  
41 of receipt of the contribution by the Fund. If the written request is made prior to the funds being  
42 spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the  
43 later of (i) receiving the request, or (ii) the expiration of the two-year period described by this  
44 subsection.

45 (f) Reporting. – The Secretary shall report any waivers or modifications of the  
46 cost-share requirement made under subsection (d) of this section within 30 days of issuing the  
47 waiver or modification to the Joint Legislative Commission on Governmental Operations and  
48 the Fiscal Research Division of the General Assembly. The report shall include an explanation  
49 of the factors in subsection (d) of this section that are the basis for the waiver or modification  
50 decision.

51 (g) Definitions. – The following definitions apply in this Part:

1           (1)    Corps. – The United States Army Corps of Engineers.

2           (2)    State Port. – Facilities at Wilmington or Morehead City managed or operated  
3           by the State Ports Authority.

4           **SECTION 2.(b)** Section 6.1 of S.L. 2013-360, as amended by Section 1.4 of S.L.  
5 2013-363 and Section 6.12 of S.L. 2014-100, reads as rewritten:

6           **"SECTION 6.1.** Notwithstanding the provisions of subsections (b) and (c) of  
7 G.S. 143C-4-4, of the funds appropriated to the Contingency and Emergency Fund for the  
8 2014-2015 fiscal year, the sum of one million seven hundred thousand dollars (\$1,700,000) is  
9 transferred to the Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund to  
10 be used for the purposes set forth in G.S. 143-215.73F, and the sum of eight hundred thousand  
11 dollars (\$800,000) is transferred to the Deep Draft Navigation Channel Dredging and  
12 Maintenance Fund to be used for the purposes set forth in G.S. 143-215.73G. For the  
13 2013-2015 fiscal biennium and notwithstanding the provisions of G.S. 143C-4-4(b), the  
14 remaining funds appropriated to the Contingency and Emergency Fund may be used only for  
15 expenditures required (i) by a court or Industrial Commission order, (ii) to respond to events as  
16 authorized under G.S. 166A-19.40(a) of the North Carolina Emergency Management Act, (iii)  
17 by the State Treasurer to pay death benefits as authorized under Article 12A of Chapter 143 of  
18 the General Statutes, (iv) by the Office of the Governor for crime rewards in accordance with  
19 G.S. 15-53 and G.S. 15-53.1, (v) by the Industrial Commission for supplemental awards of  
20 compensation, (vi) by the Department of Justice for legal fees, or (vii) for litigation expenses  
21 incurred by State agencies in defense of the State during the 2014-2015 fiscal year, in an  
22 amount not to exceed seven hundred fifty thousand dollars (\$750,000), as approved by the  
23 Office of State Budget and Management.

24           These funds shall not be used for other statutorily authorized purposes or for any other  
25 contingencies and emergencies. The Office of State Budget and Management shall transfer any  
26 funds remaining in the Fund at the end of the 2013-2015 biennium to the Deep Draft  
27 Navigation Channel Dredging and Maintenance Fund to be used for the purposes set forth in  
28 G.S. 143-215.73G."

29           **SECTION 2.(c)** G.S. 143C-4-4 is amended by adding a new subsection to read:

30           "(d) Reversion. – At the end of each biennium, the Office of State Budget and  
31 Management shall transfer any funds remaining in the Fund to the Deep Draft Navigation  
32 Channel Dredging and Maintenance Fund to be used for the purposes set forth in  
33 G.S. 143-215.73G."

#### 34 35 **MEMORANDA OF UNDERSTANDING**

36           **SECTION 3.(a)** SPA Memorandum of Agreement. – The State Ports Authority  
37 shall negotiate with the United States Army Corps of Engineers (hereafter, "Corps") a  
38 memorandum of agreement allowing for nonfederal funding of dredging and related studies or  
39 maintenance at the State Ports located at Wilmington and Morehead City. The memorandum  
40 required by this section shall be for as long a term as possible.

41           **SECTION 3.(b)** DENR Memorandum of Agreement. – The Division of Water  
42 Resources of the Department of Environment and Natural Resources shall negotiate with the  
43 Corps a memorandum of agreement allowing for nonfederal funding of dredging of Oregon  
44 Inlet. The memorandum required by this section shall be for as long a term as possible.

#### 45 46 **ACQUISITION OF FEDERAL LAND FOR PROTECTION OF NAVIGATIONAL** 47 **SAFETY AND COMMERCE**

48           **SECTION 4.(a)** Acquisition Agreement. – Notwithstanding Chapter 146 of the  
49 General Statutes or any other provision of law, the Department of Administration, on behalf of  
50 the State, shall seek to initiate negotiations with the appropriate agency of the federal  
51 government for an agreement to acquire the federally owned property necessary for

1 management of deep draft navigation channels providing access to State Port facilities at  
2 Morehead City from the federal government in exchange for State-owned real property.

3 **SECTION 4.(b)** Terms. – The Secretary of the Department of Administration shall  
4 have the authority to negotiate the terms of the acquisition agreement. The agreement (i) shall  
5 provide for the acquisition of interests in real property described in subsection (a) of this  
6 section and no other; (ii) shall provide that the conveyances described in the agreement become  
7 effective as soon as practicable; and (iii) shall incorporate the relevant terms of this section.

8 **SECTION 4.(c)** Execution of Deeds. – Within 30 days of the acquisition becoming  
9 effective, the Attorney General shall execute any documents or deeds necessary to effectuate  
10 the acquisition under the exact terms set forth in the acquisition agreement. All State agencies  
11 and officials shall cooperate to the fullest extent possible in effectuating the acquisition  
12 agreement.

13 **SECTION 4.(d)** Reporting. – Within 30 days after an agreement is entered into  
14 pursuant to this section, the Secretary of the Department of Administration shall report to the  
15 Joint Legislative Commission on Governmental Operations on the terms of the agreement.  
16

17 **EFFECTIVE DATE**

18 **SECTION 5.** This act is effective when it becomes law.