



**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

SENATE BILL 160: Enhance Safety & Commerce for Ports/Inlets

2015-2016 General Assembly

Committee:	Senate Finance	Date:	April 1, 2015
Introduced by:	Sens. Lee, Brown, Cook	Prepared by:	Jeff Hudson and Jennifer McGinnis
Analysis of:	Third Edition		Staff Attorneys

SUMMARY: *Senate Bill S160 would amend and establish several laws related to the dredging and maintenance of State waterways.*

BILL ANALYSIS:

PART I. SHALLOW DRAFT NAVIGATION FUND AMENDMENTS

Section 1(a) would amend the Shallow Draft Navigation Channel Dredging and Lake Maintenance Fund (Shallow Fund) in the following ways:

- Provide that, in addition to other current sources, the Shallow Fund also consists of monies contributed by a non-State entity designated for a particular dredging project or group of projects.
- Modify a cost-share requirement applicable to projects to be funded by revenues credited to the Shallow Fund, to provide that the non-State cost share may be provided by monies contributed to the Shallow Fund by a non-State entity.
- Authorize the Secretary of Environment and Natural Resources to waive or modify the non-State cost-share requirement for dredging projects that (i) alleviate a navigational emergency; or (ii) represent an opportunity to supplement or leverage Corps funding.
- Allow for return of moneys contributed by non-State entities upon written request if the contribution has not been spent or encumbered within two years of receipt of the contribution by the Shallow Fund.

Section 1(b) would require transfer of \$6,000,000 to the Shallow Fund from funds appropriated to the Department of Commerce (from the unencumbered cash balance of the Job Catalyst Fund) for the 2014-2015 fiscal year.

Section 1(c) would reserve moneys in the Shallow Fund for the following purposes:

- (1) \$4,000,000 for Oregon Inlet dredging needs.
- (2) \$150,000 to reimburse the Department of Administration for its costs associated with exploring options for acquiring Oregon Inlet and the adjacent real property, including, but not limited to, surveys and appraisals, legal research, and studies related to sand management, engineering proposals, and larval transport.
- (3) \$1,000,000 to reimburse the Department of Administration for its costs associated with the implementation of Section 14.7(g) of S.L. 2014-100, which required the Department to commence condemnation proceedings on all federally owned property



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deemed necessary to manage existing and future transportation corridors on the Outer Banks.

If State funds reserved for these purposes are not spent or encumbered by June 30, 2016, however, the State funds would be unreserved and made available for any of the uses allowed under existing law (including to provide the State's share of the costs associated with a dredging project designed to keep shallow draft navigation channels located in State waters or waters of the State located within lakes navigable and safe, and for aquatic weed control projects in waters of the State located within certain lakes).

The section would also negate the Secretary's authority to waive or modify the non-State cost-share requirement for dredging projects with regard to funds reserved for Oregon Inlet dredging needs.

PART II. DEEP DRAFT NAVIGATION CHANNEL DREDGING AND MAINTENANCE FUND

Section 2(a) would create the Deep Draft Navigation Channel Dredging and Maintenance Fund (Deep Fund) as a special revenue fund. The Deep Fund:

- Would consist of General Fund appropriations, gifts or grants, including monies contributed by a non-State entity for a particular dredging project or group of projects, and any other revenues specifically allocated to the Deep Fund by an act of the General Assembly.
- Could only be used for costs associated with projects providing safe and efficient navigational access to a State Port, including the design, construction, expansion, modification, or maintenance of deep draft navigation channels, turning basins, berths and related structures, as well as surveys or studies related to any of the foregoing and the costs of disposal of dredged material.

In addition, the bill would:

- Require that State funds credited to the Deep Fund must be cost-shared on a one-to-one basis with funds provided by the State Ports Authority, but specify that funds contributed to the Deep Fund by a non-State entity are not considered State funds, and may be used to provide the cost-share. The bill does, however, allow the Secretary to:
 - Waive or modify the cost-share requirement for any project that supplements Corps funding for a study authorized by the Corps related to navigational access to a State Port, based on availability of alternate funding sources, or
 - Waive or modify the non-State cost-share requirement for dredging projects or federally authorized studies of deep draft access to State Ports that (i) represent an opportunity to supplement or leverage Corps funding that would be lost if a cost-share was required, or (ii) alleviate shoaling or other navigational hazards that pose a negative impact on safety or commerce within, or channels providing access to, a State Port.
- Allow for return of moneys contributed by non-State entities upon written request if the contribution has not been spent or encumbered within two years of receipt of the contribution by the Fund.

Section 2(b) would require transfer of \$1,000,000 to the Deep Fund from funds appropriated to the Department of Commerce (from the unencumbered cash balance of the Job Catalyst Fund) for the 2014-2015 fiscal year.

PART III. MEMORANDA OF AGREEMENT

Section 3(a) would require the State Ports Authority to negotiate a memorandum of agreement (MOA) with the United States Army Corps of Engineers (Corps) to allow for nonfederal funding of dredging and related studies or maintenance at the State Ports located at Wilmington and Morehead City.

Section 3(b) would require the Division of Water Resources of the Department of Environment and Natural Resources to negotiate a MOA with the Corps to allow for nonfederal funding of dredging at Oregon Inlet.

PART IV. ACQUISITION OF FEDERAL LAND FOR PROTECTION OF NAVIGATIONAL SAFETY AND COMMERCE

Section 4 would:

- Direct the Department of Administration, on behalf of the State, to initiate negotiations with the appropriate agency of the federal government for an agreement to acquire the federally owned property necessary for management of deep draft navigation channels providing access to State Port facilities at Morehead City from the federal government in exchange for State-owned real property.
- Require the Attorney General to execute any documents or deeds necessary to effectuate such an acquisition under the exact terms set forth in the acquisition agreement, within 30 days of an acquisition becoming effective.
- Require all State agencies and officials to cooperate to the fullest extent possible in effectuating an acquisition agreement.

PART V. REMOVAL OF NAVIGATIONAL OBSTRUCTIONS FOR ECOSYSTEM RESTORATION AND PROTECTION OF NAVIGATIONAL SAFETY

Section 5.1 would require the Coastal Resources Commission to revise a rule establishing components of the North Carolina Coastal Reserve to adjust the boundary established for Zeke's Island by moving the current western boundary 200 feet seaward, and removing the area that lies between the current boundary and the new boundary from the North Carolina Coastal Reserve.

The General Statutes provide that the purpose of the Reserve is to acquire, improve, and maintain undeveloped coastal land and water areas in a natural state. All lands and waters within the Reserve must be used primarily for research and education. In addition, other public uses, such as hunting, fishing, navigation, and recreation, are allowed to the extent consistent with these primary uses. Improvements and alterations to the lands are limited to those consistent with these uses.

Section 5.2 would enact provisions related to the New Inlet Dam or "The Rocks," which is a breakwater established by the United States Army Corps of Engineers in the late 1800's. The New Inlet Dam is composed of two components, a Northern Component that extends from Federal Point to Zeke's Island and a Southern Component that extends southwestward from Zeke's Island and separates the New Inlet from the main channel of the Cape Fear River.

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The bill would establish certain findings with respect to the New Inlet Dam as follows:

- The Southern Component of the New Inlet Dam impedes the natural flow of water between the Cape Fear River and the Atlantic Ocean that occurred prior to emplacement of the Dam.
- It is necessary to remove the Southern Component of the New Inlet Dam in order to reestablish the natural ecosystem of the mouth of the Cape Fear River and its environs.

The bill would direct the Department of Environment and Natural Resources (DENR) to:

- Notify the Corps of the State's intent to remove the Southern Component of the New Inlet Dam.
- Issue a Request for Proposals for a firm capable of conducting all aspects of removal of the Southern Component of New Inlet, including securing all necessary State and federal permits and developing and implementing a removal plan.
- Execute a contract with the firm to remove the Southern Component of the New Inlet Dam and exercise oversight of the fulfillment of the contract.

The bill would also authorize DENR to use funds from the Deep Fund, established pursuant to implement this section.

PART VI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

Section 6 would add a severability clause to the bill.

Section 7 would provide that the bill would be effective when it becomes law.