

CHAPTER 40

AN ACT changing the grant and lease process for riparian lands and amending various parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.12:3-5 is amended to read as follows:

Conveyances or leases to grantee or licensee under legislative act; amount of rental or purchase price; conversion of lease into conveyance; rights of grantee or licensee.

12:3-5. In case any person or corporation who by any legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns shall desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land mentioned in the proviso to the third section of an act entitled "Supplement to an act entitled 'An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March thirty-first, one thousand eight hundred and sixty-nine (R.S.12:3-4), whether under water now or not, and the benefit of an express covenant, that the State will not make or give any grant or license power, or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her or their representatives or assigns on producing a duly certified copy of such legislative act to the Tidelands Resource Council in the Department of Environmental Protection, and in case of a representative or assignee also satisfactory evidence of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the Tidelands Resource Council, Commissioner of Environmental Protection and the Attorney General shall and may execute and deliver and acknowledge in the name and on behalf of the State, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing to be paid to the State an annual rental of such reasonable sum as the Tidelands Resource Council may fix with the approval of the Commissioner of Environmental Protection for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation in fee, upon his, her, or their paying to the State such reasonable sum as the Tidelands Resource Council may fix with the approval of the Commissioner of Environmental Protection for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance; provided, that no corporation to whom any such grant, license, power or authority was given by legislative act as aforesaid, in which provision was made for the payment of money to the Treasurer of the State for each and every foot of the shore embraced and contained in the act; nor the assigns of such corporation shall be entitled to the benefits of this section; and provided further, that the council shall in no case grant lands under water beyond the exterior lines hereby established, or that may be hereafter established, but the said conveyance shall be construed to extend to any bulkhead or pier line further out on said river and bay that may hereafter be established by legislative authority; in case any person or corporation taking a lease under this section,

shall desire afterwards a conveyance of all or any part of the land so leased, the same shall be made upon payment of such reasonable sum for every such lineal foot, as the Tidelands Resource Council may fix, with the approval of the Commissioner of Environmental Protection, the conveyance or lease of the council under this section or R.S.12:3-2 to R.S.12:3-9, shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, to exclude to the exterior bulkhead line, the tidewater by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and so far as the upland from time to time made shall adjoin the navigable water, the said conveyance or lease shall vest in the grantee or licensee, individual or corporation, and their heirs and assigns, the rights to the perquisites of wharfage, and other like profits, tolls and charges.

2. R.S.12:3-7 is amended to read as follows:

Grant of riparian land not improved; notice to riparian owner.

12:3-7. If any person or persons, corporation or corporations, or associations, shall desire to obtain a grant for lands under water which have not been improved, and are not authorized to be improved, under any grant or license protected by the provisions of R.S.12:3-2 to R.S.12:3-9, it shall be lawful for the Tidelands Resource Council, together with the Commissioner of Environmental Protection and Attorney General of the State, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines, and to fix such price, reasonable compensation, or annual rentals for so much of said lands as lie below high-water mark, as are to be included in the grant or lease for which such application shall be made, and to certify the boundaries, and the price, compensation or annual rentals to be paid for the same, under their hands, which shall be filed in the Office of the Secretary of State; and upon the payment of such price or compensation or annual rentals, or securing the same to be paid to the Treasurer of this State, by such applicant, it shall be lawful for such applicant to apply to the council for a conveyance, assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors and assigns, if to a corporation, the land under water so described in said certificate; and the council shall, in the name of the State, and under the great seal of the State, grant the said lands in manner last aforesaid, and said conveyance shall be subscribed by the commissioner and the Attorney General and attested by the Secretary of State, and shall be prepared under the direction of the Attorney General, to whom the grantee shall pay the expense of such preparation, and upon the delivery of such conveyance, the grantee may reclaim, improve, and appropriate to his and their own use, the lands contained and described in the said certificate; subject, however, to the regulations and provisions of R.S.12:3-2 and R.S.12:3-3, and such lands shall thereupon vest in said applicant; provided, that no grant or license shall be granted to any other than a riparian proprietor, until six calendar months after the riparian proprietors shall have been personally notified in writing by the applicant for such grant or license, and shall have neglected to apply for the grant or license, and neglected to pay, or secured to be paid, the price that the council shall have fixed; the notice in the case of a minor shall be given to the guardian, and in case of a corporation to any officer doing the duties incumbent upon president, secretary, treasurer or director, and in case of a nonresident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson county, and in a daily newspaper published in New York city.

3. R.S.12:3-12 is amended to read as follows:

Covenants, clauses and conditions in grants or leases whether land under water or not.

12:3-12. The council with the concurrence of the Commissioner of Environmental Protection and Attorney General, in all cases of application for grants or leases of land now, or at the time of the application, or at the time of the lease or grant, under tidewater; and in all cases of application for grants or leases of lands which are not now, or shall not at the time of the application, or at the time of the lease or grant be under tidewater, and in all cases of applications for leases or grants for all or any of such lands may, notwithstanding the first proviso in R.S.12:3-5, or any other provisions contained in R.S.12:3-2 to R.S.12:3-9, grant or lease, or lease first with a covenant to grant, and grant afterwards, for such principal sum that the interest thereof at 7% will produce the rental, such lands, or any part thereof lying between what was, at any time heretofore, the original high-water line and the seaward territorial jurisdiction of the State, and grant or lease in all cases in which, in their discretion, they shall think such grant or lease should be made, such rights, privileges and franchises as they are authorized to grant in cases coming directly within R.S.12:3-5, and enter into the same covenants in the name of the State, in all cases of grants or leases where they deem such covenants proper, as are authorized in grants or leases under R.S.12:3-5 and insert such other covenants, clauses and conditions in said grants or leases as they shall think proper to require from the grantee or lessee, or ought to be made by the State; provided, that nothing herein contained shall authorize grants or leases in front of a riparian owner to any other than such riparian owner, except upon the proceedings and conditions provided in R.S.12:3-2 to R.S.12:3-9; and provided also, that the applications for grants or leases, and the certificates of the council, commissioner and Attorney General, may in the cases hereby provided for, vary from the provisions of R.S.12:3-2 to R.S.12:3-9 in such manner as to conform to this section, and any party who has already asked for or accepted a lease or conveyance may apply for and have the benefits of this section, notwithstanding such former application or former acceptance of a lease or conveyance.

4. R.S.12:3-16 is amended to read as follows:

Fixing of purchase price or rentals for lands below high-water mark or formerly under tidewater; lease or conveyance.

12:3-16. It shall be lawful for the Tidelands Resource Council, together with the Commissioner of Environmental Protection, to fix and determine within the limits prescribed by law, the price or purchase money or annual rental to be paid by any applicant for so much of lands below high-water mark, or lands formerly under tidewater belonging to the State, as may be described in any application therefor duly made according to law, and the council, with the approval of the commissioner, shall, in the name and under the great seal of the State, grant or lease said lands to such applicant accordingly, and all such conveyances or leases shall be prepared by the council or its agents at the cost and expense of the grantee or lessee therein and shall be subscribed by the commissioner and the Attorney General and the council and attested by the Secretary of State.

5. R.S.12:3-19 is amended to read as follows:

Establishment of bulkhead and pier lines around islands in tidewaters.

12:3-19. The Tidelands Resource Council, with the approval of the Commissioner of Environmental Protection and after consultation with the Army Corps of Engineers, shall, from time to time, fix and establish, around or in front of all islands, reefs and shoals situate in the tidal waters of this State, exterior lines in said waters, beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind shall be made or maintained, and also the interior lines for solid filling in said waters, beyond which no permanent obstruction shall be made or maintained other than wharves and piers and erections thereon for commercial uses; provided, however, that no exterior line around or in front of any such island, reef or shoal shall be fixed and established in front of any riparian grant which was made prior to February tenth, one thousand eight hundred and ninety-one, unless such exterior line shall be fixed and established, after consultation with the Army Corps of Engineers, at such distance as will, in the judgment of the Tidelands Resource Council, leave sufficient waterway in front of said grants for navigation, and when the council shall have so fixed and established said lines after consultation as aforesaid, it shall file a survey and map thereof in the Office of the Secretary of State, showing the lines for piers and solid filling so fixed and established.

6. R.S.12:3-20 is amended to read as follows:

Sale or lease of riparian lands around islands, reefs or shoals.

12:3-20. The Tidelands Resource Council, together with the Commissioner of Environmental Protection, may sell or let to any applicant therefor any of the lands under water and below mean high-water mark, embraced within the lines fixed and established pursuant to R.S.12:3-19, upon such terms as to purchase money or rental, and under such conditions and restrictions as to time and manner of payment, the duration and renewal of any lease, the occupation and use of the land sold or leased, and such other conditions and restrictions as the interest of the State may require, and as may be fixed and determined by the council together with the commissioner.

7. R.S.12:3-22 is amended to read as follows:

License to remove sand or other materials from lands under tidewaters.

12:3-22. The Tidelands Resource Council, with the approval of the Commissioner of Environmental Protection, may, under such terms and restrictions as to duration, compensation to be paid and such other conditions and restrictions as the interests of the State may require, license by an instrument in writing, executed in the same manner as grants of land under water are required to be executed, any person or corporation to dig, dredge or remove any deposits of sand or other material from lands of the State under tidewaters.

8. R.S.12:3-23 is amended to read as follows:

Lease or grant to persons other than riparian owners; notice to riparian owners.

12:3-23. The Tidelands Resource Council, with the approval of the Commissioner of Environmental Protection, may lease or grant the lands of the State below mean high-water mark and immediately adjoining the shore, to any applicant or applicants therefor other than the riparian or shore-owner or owners, provided the riparian or shore-owner or owners shall have received six months' previous notice of the intention to take said lease or grant such notice given by the applicant or applicants therefor, and the riparian or shore-owner or

owners shall have failed or neglected within said period of six months to apply for and complete such lease or grant; the notice herein required shall be in writing and shall describe the lands for which such lease or grant is desired, and it shall be served upon the riparian or shore-owner or owners personally; and in the case of a minor it shall be served upon the guardian; in case of a corporation upon any officer performing the duties of president, secretary, treasurer or director, and in the case of a nonresident owner the notice may be by publication for four weeks successively at least once a week in a newspaper or newspapers published in the county or counties wherein the lands are situate, and in case of such publication, a copy of such notice shall be mailed to such nonresident owner (or in case such nonresident owner be a corporation, then to the president of such corporation, directed to him at his post-office address, if the same can be ascertained, with the postage prepaid); but nothing contained in R.S.12:3-21 to R.S.12:3-25 shall be construed as repealing, altering, abridging, or in any manner limiting the provisions and power conferred upon the Tidelands Resource Council and the Commissioner of Environmental Protection by R.S.12:3-19 and R.S.12:3-20.

9. R.S.12:3-24 is amended to read as follows:

Sale or lease of lands below high-water mark; lease convertible into grant not required.

12:3-24. The Tidelands Resource Council, together with the Commissioner of Environmental Protection, shall not be required to give leases for lands of the State under water, convertible into grants upon payment of the principal sum mentioned therein, but may sell or let any of the lands of the State below mean high-water mark upon such terms as to purchase money or rental, and under such conditions and restrictions as to time and manner of payment, the duration and renewal of any lease, the occupation and use of the lands sold or leased, and such other conditions and restrictions as the interest of the State may require, as may be fixed and determined by the council, together with the commissioner.

10. R.S.12:3-25 is amended to read as follows:

Renewals of leases; provision for determining annual rentals.

12:3-25. The Tidelands Resource Council, together with the Commissioner of Environmental Protection, may, in any lease of lands of the State below mean high-water mark, provide for a renewal or renewals of the lease for a subsequent term or terms to be expressed in the lease, and therein provide that the annual rentals to be paid for each renewal shall, in case the amount cannot be agreed upon, be fixed and determined before the commencement of the renewal term by three arbitrators, one to be appointed by the State, one by the then lessee, and the third by their joint agreement, or should they fail to agree, then by the Superior Court.

11. R.S.12:3-26 is amended to read as follows:

License required to lay pipes under State lands under tidewaters.

12:3-26. The council, with the approval of the Commissioner of Environmental Protection, may license any person or corporation to lay any pipe or pipes on or under the lands of the State under tidewaters under such terms and restrictions as to duration, compensation to be paid, and such other conditions and restrictions as the interests of the

State may require. Such license shall be granted by a written instrument and executed in the same manner as grants of land under tidewaters are required to be executed.

12. Section 13 of P.L.1948, c.488 (C.13:1B-13) is amended to read as follows:

C.13:1B-13 Approval of riparian leases, grants.

13. No action shall be taken by the council except upon the approval of the Commissioner of Environmental Protection. No riparian leases or grants shall hereafter be allowed except when approved by at least a majority of the council and signed by the chairperson of the council; and no such leases or grants shall hereafter in any case be allowed except when approved and signed by the Commissioner of Environmental Protection and the Attorney General.

13. This act shall take effect on the first day of the fourth month next following the date of enactment.

Approved April 15, 2009.