

N J L R C

New Jersey Law Revision Commission

FINAL REPORT AND RECOMMENDATIONS ENVIRONMENTAL STATUTES - TIDELANDS

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Environmental Statutes - Tidelands

The statutes included in this project concern the State's ownership interest in its tidelands, often referred to in the statutes and elsewhere as "riparian lands." Tidelands are those lands along the shore of the State which are tide-flowed; they extend from the mean high water mark to the seaward territorial jurisdiction of the State, i.e., "the three-mile limit." The term includes tidal swamps, or "meadowlands."

The State may convey its interest in tidelands, either by outright deed of a fee interest (called in the statutes a "grant"), or by transferring a lesser interest, such as a lease or a license. The statutes in chapter 3 of Title 12 govern many aspects of how the State may alienate these interests, but they do not govern the nature and extent of the State's ownership interest itself, which is an incident of its sovereignty.

These statutes were not in all respects revised and recodified in the 1937 Revised Statutes. The first 28 sections of the chapter consist of the provisions of prior enactments extending as far back as 1864, retained in the order in which they were enacted and without the deletion of overlapping or even superseded provisions. This makes these provisions, and thus the current, applicable law, difficult to decipher.¹ It is important that all of these provisions be rendered accurately and comprehensibly, as they have an effect on the ownership interests of the State and private property owners.

Assertion of the State's ownership interest in tide-flowed lands

The State's proprietary interest in tidelands derives from its sovereign status as successor to the British Crown. See Bailey v. Driscoll, 19 N.J. 363, 367 (1955). The nature of the State's proprietary interest has been established and defined in numerous judicial opinions, as well as being limited in relatively recent years by constitutional amendment. See, e.g., O'Neill v. State Highway Department, 50 N.J. 307, 323 (1967) and Cobb v. Davenport, 32 N.J.L. 369 (Sup. Ct. 1867) and see N.J. Const. (1947), Art. VIII, sec. V, Par. 1 (approved Nov. 3, 1981)(limiting the State's right to claim dry land that was formerly tide-flowed). The federal government has ceded to the states any ownership rights it may have in such lands from the shore line out to three geographical miles off shore. See the Submerged Lands Act, 67 Stat. 29 (1953), 43 U.S.C. §1301 et seq., and see id. at 367-39. The federal government retains significant regulatory rights over much of the state's tidelands, however, under its authority to regulate navigation and interstate commerce.²

Despite its recognized proprietary interest in tidelands, the State did not systematically assert its interest until the mid-nineteenth century. The State's assertion of its ownership interest in tidelands in the mid-nineteenth century was fraught with political controversy, as commercial interests disputed the State's ownership claims at the same time they aggressively sought to obtain legislative grants of the State's rights. Railroad and canal companies also battled one another over claims to tidelands, particularly in the commercially important Hudson River-Jersey City area. The story of these battles is told in great detail in a series of articles which provide important historical background to the record of legislative activity involving tidelands. See Hermann K. Platt, "Jersey City and the United Railroad Companies, 1868: A Case Study of Municipal Weakness," 91 New Jersey History 249-65 (Winter

¹ These difficulties have been recognized by others. See Attorney-General Goetchius, 142 N.J. Eq. 636, 640 (Ch. 1948), where Vice Chancellor Kays was faced with a case which required him to determine a narrow issue, i.e., whether a price-setting provision of the General Riparian Act of 1869 had been superseded by later enactments. He commented in passing that he was able to decide the issue "after a thorough study of the pertinent statutes and the cases construing them, which I might state required several months of research...."

² As stated above, the State owns its "tidelands," that is, lands that are subject to the ebb and flow of the tide. See Bailey v. Driscoll, 19 N.J. 363, 367-69 (1955); Cobb v. Davenport, 32 N.J.L. 369 (Sup.Ct. 1867); Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957). The federal government has regulatory authority over navigable waters as an incident of its power to regulate commerce. See id. Note, however, that the terms "tide-flowed lands" and tidelands, and the term "navigable waters" are not synonymous in terms of their geographic extent. Although in point of fact there is a substantial overlap, as vast areas of tide-flowed lands are situated beneath navigable waters, it should be kept in mind that not all tide-flowed lands are situated beneath navigable waters within the meaning of that term under federal law.

	TIDE-FLOWED	NON-TIDE FLOWED
NAVIGABLE	State-owned: tide-flowed, navigable land, e.g., shoring up to the mean high water line, the ocean floor out to the three mile limit, the bed of a tide-flowed navigable stream	Privately-owned: non-tide-flowed, navigable, e.g., a land-locked lake
NON-NAVIGABLE	State-owned: tide-flowed, non-navigable, e.g., tide-flowed swampland	Privately-owned: non-tide-flowed, non-navigable, e.g., freshwater wetlands, "dry land"

1973); Hermann K. Platt, "'With Rivers and Harbors Unsurpassed'; New Jersey and Her Tidelands, 1860-1970," 99 New Jersey History 145-59 (Fall/Winter 1981); Hermann K. Platt, "Railroad Rights and Tideland Policy: A Tug of War in Nineteenth-Century New Jersey," 108 New Jersey History (1990). In considering the individual legislative enactments concerning tidelands, it is important to have in mind the backdrop of competing interests which influenced legislative policy.

By the mid-nineteenth century, a form of local common law custom had developed which permitted the appropriation of land up to ordinary low water. Owners of land along the shore line were regarded as having a license to appropriate land between the high water mark and the low water mark to make improvements such as wharves, bulkheads and piers, provided they did not interfere with navigation. Upon the completion of these kinds of improvements, they were regarded as having acquired a fee interest in the appropriated lands. Gough v. Bell, 22 N.J.L. 441 (Sup. Ct. 1850), aff'd, 23 N.J.L. 624 (E & A 1852).

The state's first attempt to assert its proprietary interest in tidelands in a systematic way was the adoption of The Wharf Act of 1851, L.1851, p.335. The Wharf Act acknowledged the local custom of permitting the appropriation of land up to ordinary low water, indeed the Act codified this custom. However, it imposed a requirement on the shore owner to apply to county freeholders for a license to make these kinds of improvements on tidelands beyond "the limits of ordinary low water." See generally Report of Riparian Commissioners to the Legislature of New Jersey, February 1, 1865 1-22 (hereinafter 1865 Report), reprinted in Acts and Supplements Appointing Riparian Commissioners, with Their Reports to 1873, etc. (1873)(hereinafter 1873 Collection).

Prior to 1851, the State had also disposed of certain of its tidelands from time to time in the form of legislative grants to individuals and corporations, often for the purpose of facilitating their commercial enterprises. See, e.g., L.1802, c.154 (authorizing Nathaniel Budd to maintain a dock and ferry stairs on the Hudson River in order to operate a ferry). Some of these grants were included in corporate charters. See, e.g., L.1804, c.367 (an act to incorporate the Jersey Company, authorizing the Company to hold certain "rights of ferry" on Communipaw Bay in the Hudson River). See 1865 Report 43-74, Appendix D and E (reprinted in 1873 Collection). These legislative grants created problems stemming from the fact that often they were stated in general language and without reference to maps and surveys that would establish the precise extent of the lands or interests granted. As a result, questions of title impaired the value of many shore properties adjacent to the areas in which these grants were made, as well as these properties themselves, and title questions impeded commercial development.

The Board of Riparian Commissioners and the General Riparian Act of 1869

The adoption of The Wharf Act of 1851, which provided a formal mechanism for appropriation of tidelands, did not ameliorate the problems that had developed over title to tidelands, and 13 years later further attention was paid to the subject in the form of an act which provided for the appointment of a Riparian Commission to study the subject and make recommendations for change. The immediate impetus for this legislative action appears to have been the assertion of claims by the State of New York to tidelands in the Hudson River and New York Bay areas, as well as pressure from commercial interests seeking to develop facilities on the shore. See 1865 Report at 9-22 (reprinted in 1873 Collection); Platt, "With Rivers and Harbors Unsurpassed," supra, 99 New Jersey History 145-49.

The Act of 1864 provided for the appointment of a board of commissioners to study the Hudson River-Newark Bay-Kill Von Kull areas, as well as the tidelands in the Delaware River opposite Philadelphia. L.1864, c.391 (saved from repeal, see R.S. 12:3-1). In their first Report to the Legislature in 1865, the Commissioners detailed the surveys they had commissioned and completed in the Hudson River-Newark Bay-Kill Von Kull areas. In accordance with their legislative charge, the Commissioners made recommendations for the establishment of exterior bulkhead and pier lines, beyond which no building or filling in should be allowed. The Commissioners' Report included an abstract of all the legislative grants of tidelands made to that point in time. See 1865 Report, at 43-74 (reprinted in 1873 Collection).

In addition to the recommendations for exterior bulkhead and pier lines, the Commissioners suggested that both the shore property owners and the State would benefit by a system in which grants and leases of tidelands would be undertaken in a more formal and systematic manner, with grantees of lands benefitting by receiving a more secure title, and the State benefitting from the income from purchases and leases of tidelands.

Many of the recommendations of the Commissioners were adopted in the General Riparian Act of 1869, L.1869, c.383. However, the provisions of this Act applied only to the tidelands in the Hudson River-Newark Bay-Kill Von Kull area (hereinafter "Hudson River area") which had been surveyed by the Commissioners. The Act adopted the exterior bulkhead and pier lines recommended by the Commissioners (L.1869, c.383, §1, see R.S. 12:3-2); prohibited any building upon or filling in beyond the established lines (*id.* §2, see R.S. 12:3-3); repealed The Wharf Act of 1851 as it might apply to the lands covered by the new Act (*id.* §3, see R.S. 12:3-4); provided a mechanism by which prior grantees of tidelands under legislative acts could obtain new grants and leases to clear the title to previously granted lands (*id.* §4, see R.S. 12:3-5); conditioned the effectiveness of grants and leases upon the payment of the compensation or rentals (*id.* §5, see R.S. 12:3-6); empowered the Commissioners to hear applications for additional grants or leases of tidelands and to make such grants or leases with the approval of the Governor and the Attorney General (*id.* §§6, 7, 8, 9, 11; see R.S. 12:3-7); authorized the Commissioners to bring actions to eject trespassers on state-owned tidelands (*id.* §12, see R.S. 12:3-8); and required the interests of upland owner to be extinguished in the case of leases or grants to non-upland owners *id.* §13, see R.S. 12:3-9).

As noted above, the provisions of The Wharf Act of 1851 were repealed only with respect to the tidelands in the Hudson River area covered by the 1869 Act, and thus The Wharf Act continued in effect as to tidelands in the remainder of the State until its complete repeal in 1891.

Tidelands enactments after the General Riparian Act of 1869

In a series of enactments subsequent to the General Riparian Act of 1869, the Legislature refined the system for the control and disposal of tidelands, first in the Hudson River area, then throughout the entire State. The most significant legislative activity took place between 1871 and 1891. (See Appendix at the end of this introductory material for a chronological analysis of all of the tidelands enactments after 1869). By 1891, the Board of Riparian Commissioners had the authority to define the State's interest in tidelands throughout the State and to lease or convey those lands both to upland and non-upland owners, with the approval of the Governor.

In 1871, the Legislature expanded the jurisdiction of the commissioners to consider applications for grants and leases of tidelands in the remainder of the State outside the Hudson River area covered by the 1869 act, but only to upland owners. 1871, c.256, p.44 (see now R.S. 12:3-10 and -11). Left intact at that time, however, was The Wharf Act of 1851, which continued to apply outside the Hudson River area. Therefore, as of 1871, an upland owner outside the Hudson River area could obtain rights to State-owned tidelands either by wharfing out to the low-water mark without any grant, lease or license, or by obtaining a license from the county freeholders to appropriate tidelands beyond the low-water mark, both of these methods being authorized under The Wharf Act of 1851. An upland owner outside the Hudson River area could also apply to the riparian commissioners for a grant or lease from the State under the 1871 act. This dual system remained in place until 1891, when The Wharf Act was completely repealed.

Also in 1871, the authority of the commissioners to make grants and leases of former tidelands (generally artificially filled tidelands) was confirmed. L.1871, c.605, p.113 (see now R.S. 12:3-12). This enactment clarified the authority of the commissioners to give grants and leases to confirm the title of owners who had previously acquired tidelands under the common law right to wharf out or pursuant to The Wharf Act of 1851.

In 1872 and 1875, the authority of the commissioners with respect to establishing exterior bulkhead and pier lines was extended, first by the authority to change previously-established bulkhead and pier lines in the Hudson River area, L.1872, c.548, p.99 (see now R.S. 12:3-13, -14 and -15), then to survey tidelands, and establish exterior bulkhead and pier lines in the remainder of the State, L.1875, c.308, p.53 (see 12:3-17, repealed, L.1979, c.311).

In 1891, the Legislature finally repealed The Wharf Act of 1851 completely. The repealer legislation included a provision eliminating any implication that the common law right to wharf out was intended to be restored. L.1891, c.124. A separate 1891 act also authorized the commissioners to make grants and leases of tidelands to non-upland owners. Thus, as of 1891, the Riparian Commissioners had exclusive jurisdiction to approve grants and leases of tidelands throughout the state, both to upland and non-upland owners. See L.1891, c.123 (see now R.S. 12:3-21, -22, -23, -24, -25).

Although there were numerous enactments after 1891 respecting the State's tidelands, the 1891 legislation marked the last major change in the authority of the riparian commissioners to grant or lease tidelands, with the exception of a single enactment in 1979. The 1979 legislation extended the authority of the riparian commissioners to grant or lease tidelands "to the seaward territorial jurisdiction of the State." L.1979, c.311 (amending R.S. 12:3-12 and -13, repealing 12:3-17 and replacing 12:3-26). The Legislature, once having given complete jurisdiction to the Riparian Commissioners over tidelands in progressive stages from 1864 to 1891, has never retreated from that position in over 100 years. The legislative discretion of the Tidelands Resource Council over state-owned tidelands remains one of the broadest in New Jersey government. See Atlantic City Electric Co., v. Bardin, 145 N.J. Super. 438, 442-46 (App. Div. 1976).

Constitutional limitations on state tidelands claims

Despite the work of the Riparian Commissioners and its successor entities over the years in systematizing grants and leases of tidelands, title problems persisted into the twentieth century with respect to property along New Jersey's shore line. Although the Riparian Commissioners obtained the authority to survey and map tidelands throughout the State by an act of 1875, see L.1875, c.308, surveys were done on an ad hoc basis, as this authority was exercisable on request of a shore owner who wished to acquire an interest in particular tidelands (see R.S. 12:3-17). The legislature authorized no general plan or procedure adopted to survey all tidelands in order to establish the complete extent of the State's tidelands interests.

A series of judicial opinions beginning in the 1950's began to focus attention on the extent and nature of the State's tidelands interests, and the relationship of those interests to private property owners. In Bailey v. Driscoll, 19 N.J. 363 (1955), the Supreme Court reviewed and reiterated many fundamental concepts, including the absolute proprietorship of the State in tidelands, and the recent cession of federal ownership interest in those lands, up to the three-mile limit, pursuant to the Submerged Lands Act. Concern over the State's assertion of its property interest in tidelands against private property owners came to a head first in recent times as the development of the vast area known as the Hackensack Meadowlands began. It continued following the New Jersey Supreme Court's decision in O'Neill v. State Highway Department, 50 N.J. 307 (1967), a case involving these same meadowlands, or tidal swamps, in Bergen County. In this case the Court applied the principle that the State's title to tidelands, even former tidelands, could not be lost by adverse possession or by prescription. The import of the decision was that the State's claim to tidelands persisted even after former tidelands became upland due to filling which took place many years earlier, even if the property had subsequently been built upon, or taxes had been paid on it, or it was conveyed to good faith purchasers. This decision meant that title holders of property that may have been tidelands at one time in the past could not be secure in their title unless they could show a deed from the State, or could conclusively prove that their predecessors in title validly appropriated tidelands under local custom prior to the adoption of The Wharf Act of 1851 or pursuant to the provisions of that Act before 1892. The decision effectively raised a cloud on the title to extensive areas of the shore as well as the tidal swamps referred to as meadowlands.

In its opinion in O'Neill, the Supreme Court recommended that the State should catalog its tidelands holdings "as a matter of good housekeeping." Id. at 320. The legislative response to this suggestion was the enactment of statutory provisions which required the State to survey and map the State's meadowlands, and to publish the maps with notations delineating the State's claimed interest in those meadowlands. L.1968, c.404 codified at N.J.S. 13:1B-13.1 to -13.9. As enacted, the statute imposed a deadline of December 31, 1974, for the completion of the surveying and map filing, later extended to 1977, see L.1975, c.288, then to 1980, see L.1978, c.44.

Although questions were raised as to the procedures used by the State in the mapping process, eventually a revised mapping process received judicial sanction. County and Municipal Government Study Commission, The New Jersey Riparian Rights Handbook (2d ed. 1979, Lewis P. Goldshore, Esq., Counsel) 34-36; see Dickinson v. Fund for Support of Free Public Schools, 95 N.J. 65, 75-75 (1983). The litigation over the mapping procedure and the development of new procedures resulted in delay, and the lapse of the extended deadline without the completion of the entire mapping process as to all meadowlands.

Again, the development of a New Jersey tidal area spurred interest in State tidelands claims. The State approved casino gambling in Atlantic City by constitutional amendment in 1976. See N.J. Const. Art. IV, sec. 7,

par. 2. Casinos were interested in boardwalk sites, but the State had not yet published the claims maps which would show whether it would make claims there. The Legislature responded by passing a constitutional amendment requiring the State to stake its claims to formerly tide-flowed lands State-wide within one year or forfeit the old claims not made.

The constitutional provision, adopted on November 3, 1981, provides as follows:

N.J. Const. Art. VIII, sec.5, par. 1

No lands that were formerly tidal flowed, but which have not been tidal flowed at any time for a period of 40 years, shall be deemed riparian lands, or lands subject to a riparian claim, and the passage of that period shall be a good and sufficient bar to any such claim, unless during that period the State has specifically defined and asserted such a claim pursuant to law. This section shall apply to lands which have not been tidal flowed at any time during the 40 years immediately preceding adoption of this amendment with respect to any claim not specifically defined and asserted by the State within 1 year of the adoption of this amendment.

The legal effect of this provision is to limit the State's right to assert an ownership interest in tidelands that have not been tide-flowed for more than 40 years, unless the claim was asserted within 1 year after the adoption of the constitutional amendment. The practical effect sought was accomplished. Between May 1982 and November 1982, the State published maps showing most of its claims on the Atlantic Coast and inland. The State decided to claim inland tidelands title in Atlantic City, as the casino interests anticipated. The claim was litigated and did not prevail. Housing Authority of Atlantic City v. State, 193 N.J. Super. 176 (App. Div. 1984), *affing*, 186 N.J. Super. 145 (Ch. Div. 1983).

Public trust doctrine

The public trust doctrine is a principle developed in judicial decisions that the general public has an essentially non-defeasable interest in access to navigable waterways in the interest of navigation and commerce, and in the use of dry sand adjoining tidelands for recreational purposes, as well as some degree of access to the shore in connection with these purposes. See Borough of Neptune City v. Borough of Avon-By-The-Sea, 61 N.J. 296 (1972); Matthews v. Bay Head Improvement Association, 95 N.J. 306 (1984). As recognized in Bay Head, the nature and extent of the public right is uncertain and subject to future case law development. Note that in New Jersey the "public trust doctrine" is a creature of common law, not statutory law. Accordingly, this project does not deal with any rights that may arise by virtue of the "public trust doctrine."

Appendix - Tidelands statutes after 1869 in order of enactment

The post-1869 tidelands enactments reflect a nineteenth century view of statutes empowering governmental entities--they are very specific, complex and formalistic, in keeping with contemporary standards for delegations of legislative authority (and indeed, for statutory drafting in general). Virtually all of the provisions of the 1864 through 1877 enactments were continued in the 1877 Revision. See Riparian Rights, Rev. 1877, p. 980-988. Set forth below are the acts passed after 1869 and still included in the current codified law, taken in order of their enactment. They are set forth and analyzed chronologically as a reference point for the discussion of their current validity in the notes to the proposed new sections.

1871, c.256, p.44 (see now R.S. 12:3-10 and -11).

This supplementary act expanded the authority of the Board of Riparian Commissioners to consider applications for leases, grants or conveyances of tidelands to owners of the adjacent upland, in any areas of the State other than the Hudson River area covered by the 1869 Act. It provided for the commissioners to entertain applications from "any riparian owner on tide waters of this State," for a lease, grant or conveyance "of any lands under water in front of his lands..." Thus, the operation of this provision was expressly limited to owners of adjacent upland. In contrast, the 1869 Act applicable to the Hudson River area permitted a non-upland owner to apply for a grant or lease of tidelands, provided that the adjacent upland owner was given notice and a six-month period of time in which to exercise the right to apply for a grant or lease of the same lands. See L. 1869, c.383, sec. 8. R.S. 12:3-10 gives the Board the authority to make grants and leases of tidelands, provided that the

adoption of the act "shall not interfere with" the operation of the original act in the Hudson River-Newark Bay-Kill von Kull area, R.S. 12:3-11.

L.1871, c.605, p.113 (see now R.S. 12:3-12).

This was a separate, remedial act empowering the Board of Riparian Commissioners to make curative grants and leases of former tidelands which had been reclaimed. In its April 1871 Report to the Legislature the commissioners stated that they believed it was the intent of the Legislature in enacting the 1869 legislation to permit it to make such grants and leases, but that further legislative action was necessary to effectuate that purpose. 1871 Report of the Riparian Commissioners 4 (reprinted in 1873 Collection). The preamble to the Act recites that "applications are frequently made to [the] commission for grants and leases of lands which were heretofore, but are not now, under tidewater, and it is desirable to quiet possession of those who so apply, but doubts have arisen whether such cases are now provided by law...." In grammatically complex and cross-referential language, the act reiterates the power of the commissioners to make grants and leases of land "now ... under tidewater" and extends that authority to "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." The conveyancing and other procedures of the 1869 act were incorporated by reference. It was expressly provided in this act that grants to other than adjacent upland owners could only be made if the notice provisions in the 1869 act were followed.

This provision was amended by L.1979, c.311, which amended several provisions of this chapter in order to extend the jurisdiction of the Tidelands Resource Council, the current successor to the Riparian Commissioners, to make grants and leases of tidelands up to the three-mile limit. The 1979 enactment modified R.S. 12:3-12 and 13, repealed R.S. 12:3-17 (see below) and completely replaced the language of R.S. 12:3-26. This amendment is discussed below in chronological order of its enactment.

L.1872, c.548, p.99 (see now R.S. 12:3-13, -14 and -15).

This enactment gave the commissioners the authority to change the bulkhead and pier lines previously established in the Hudson River area, as well as the lines of any previously established basins, by filing new maps in the office of the Secretary of State (see R.S. 12:3-13) and provided that upon the filing of the maps and surveys no encroachment was permitted beyond the new lines (see R.S. 12:3-14). This act also gave the commissioners the authority to lease the tidelands in any established basins to adjacent property owners, and to give to them exclusive rights of wharfage and dockage (see R.S. 12:3-15). This series of provisions was part of a legislative effort to encourage the development of wharfage and dockage facilities in Jersey City. This enactment was also amended by L.1979, c.311. See a fuller discussion of this amendment below in chronological order.

L.1874, c.427, p.103 (see R.S. 12:3-16).

This act is a supplement to the General Riparian Act of 1869. It increased the number of Riparian Commissioners who had to agree upon the consideration to be charged for a riparian grant or lease from two (see L.1869, c.363, sec. 8) to three. It also reiterated the requirements for riparian grants and leases to be concurred in and signed by the Governor and Attorney General, and for the costs of preparing the documents to be borne by the applicant for the grant or lease. Note that in the 1877 Revision, the requirement that the Attorney General approve and sign riparian grants and leases was eliminated, see Rev. 1877, p. 986, sec. 25), and in the 1937 Revision the reference to a particular number of commissioners was replaced with a reference to "the Board" (at that time the Board of Commerce and Navigation) see R.S. 12:3-16.

L.1875, c.308, p.53 (see 12:3-17, repealed, L.1979, c.311).

This supplement to the General Riparian Act of 1869 imposed upon the Board the requirement to undertake surveys and prepare and file maps of the state's tidelands upon the request of an upland owner. A fund to pay the expenses of this undertaking was provided from the proceeds of riparian grants and leases, up to 5% of the total annual income from those transactions.

Note that as enacted, there was no limitation on the directive to the commissioners to extend their surveys "over the tidewaters of this state...." This provision was carried forward in the 1877 Revision and was amended in 1888 to add more detailed language providing for the payment of salaries to the Riparian Commissioners and other expenses from the proceeds of riparian grants and leases. See L.1888, c.291, p.437.

Inexplicably, the language of this provision was further changed in the 1937 Revision to expressly refer to the extension of surveys and the filing of maps "showing what lines have been fixed and established for the exterior lines for solid filling and pier lines." This language may have been implied in the original enactment, considering that it contained a reference to the preparation and filing of maps "as now provided by the act to which this act is a supplement and the supplements thereto...." Presumably this is a reference to L.1864, c.391, sec. 1 (commissioners appointed to survey tidelands and established an exterior line for piers, wharves and bulkheads) and L.1869, c.____, sec. 1 (adopting the bulkhead lines or lines of solid filling and pier lines adopted by the commissioners appointed in the 1864 act). This point, i.e., the establishment of exterior lines as a limitation on the power to make grants and leases, is an important one because the language added in the 1937 Revision was interpreted as a limitation on the making of grants and leases by the commissioners. See Bailey v. Driscoll, 19 N.J. 363, 371-75 (1955) (holding that a valid grant or lease could only be made with reference to filed maps establishing exterior bulkhead and pier lines on the tidelands being granted or leased; and a grant or lease could not extend further than the lines so established).³

In 1979, the geographic limitation on the power of the commissioners to make grants and leases was eliminated. L.1979, c.311, sec. 1, repealed R.S. 12:3-17 in its entirety and R.S. 12:3-12 was amended to permit the making of grants and leases from the original high-water line to the "seaward territorial jurisdiction of the state." See a fuller discussion of this amendment below in chronological order.

L.1877, c.77 (see now R.S. 12:3-18)

This provision expressly protects the rights of upland owners when a right of way along the shore is granted for a railway, highway or other public thoroughfare. Under this section, the owner of the upland retains the preemptive rights of an adjacent upland owner (here, a "riparian owner"), even though the intervening right of way separates the upland from the tidelands. This enactment has been regarded as being declarative of the common law rule, rather than as establishing a new right. See New Jersey Zinc and Iron Co. v. Morris Canal and Banking Co., 44 N.J. Eq. 398, 407-08 (Ch. 1888). If this were not done, then condemnors, who only need the right of way, would be forced to purchase the much higher-valued riparian rights of the upland owner as well, thereby greatly increasing the cost of the project.

L.1891, c.5 (see now R.S. 12:3-19, -20); c.123 (see now R.S. 12:3-21, -22, -23, -24, -25); c.124.

Three separate sets of acts affecting tidelands were enacted in 1891 in response to both internal and external events. Some of these enactments were adopted at the urging of Governor Abbett, who had pressed for a review of the state's tidelands grants and leases as a fiscal measure. In his 1891 Message to the Legislature, he made numerous suggestions for new tidelands legislation, including legislation which would give the Riparian Commissioners the power to give grants and leases of land around islands, reefs and shoals. Governor's Message (1891) 19, I 1890-91 Legislative Documents. This suggestion appears to have been motivated by then-pending plans to develop tidelands in the New York Bay between Liberty Island and Ellis Island. The Message recites the reason for the new legislation as resolving any question that might exist as to the power of the commissioners to convey such lands. The Message also refers to the then on-going federal project to establish bulkhead and pier lines throughout the New York Bay area. *Id.* at 18. The nature and extent of the federal project, authorized by an Act of Congress, is dealt with in great detail in the 1891 Report of the Riparian Commissioners, I 1890-91 Legislative Documents. This Report details the work of the federal "Harbor Line Board" in determining the exterior bulkhead and pier lines in New York Bay pursuant to the federal power over interstate commerce and navigation. See Letter of L.A. Grant, Acting Secretary of War (dated August 19, 1891) to R.C. Bacot, Esq., Secretary and Engineer, Board of Riparian Commissioners, *Id.* at 110.

The Governor's suggestion that the commissioners be given authority over islands, reefs and shoals was carried out by the adoption of L.1891, c.5, p.15 (see now R.S. 12:3-19, -20), which gave the commissioners authority to establish bulkhead and pier lines and lines of solid filling around "islands, reefs and shoals." This authority was qualified by the requirement that the lines be set "after consultation with the board of engineers acting under the authority of the secretary of war," which is a generic reference to the New York Harbor Line

³ A subsequent Appellate Division case held that the establishment of bulkhead and pier lines could be made either simultaneously with the grant or lease or even subsequent to it. Schultz v. Wilson, 44 N.J. Super. 591, 605-06 (App. Div. 1957).

Board, discussed above, which was then engaged in setting the exterior bulkhead and pier lines for purposes of facilitating navigation in New York Bay.

This enactment also gave the commissioners the authority to make grants and leases of "any of the lands under water and below mean high-water mark within the lines fixed and established" pursuant to the same act (see now R.S. 12:3-20). Significantly, this section recites that the term of lease or purchase, including duration and renewal of any leases," and such other conditions and restrictions as the interest of the state may require" shall be set by the board with the concurrence of the governor. This particular language reflects another position taken in Governor Abbett's Message, and a separate legislative proposal that also became law, that the commissioners should not be required to lease tidelands with a right to convert the lease into an absolute grant upon the payment of a stipulated price. This was the system that had obtained pursuant to Joint Resolution of 1870, L.1870, p.69 (approved March 17, 1870) which directed the commissioners to include in all leases a covenant that the State will grant a fee interest in the leased lands upon payment of "a capital sum of which the annual payment is the interest, at the rate of seven percentum per annum." This directive was embodied in a statute enacted the following year. L.1871, c.605, p.113 (see now R.S. 12:3-12, discussed above). The Governor's Message denounced this system as a giveaway of valuable lands for far less than real value: "The result has been that the lands of the State under water which are now worth millions of money have been granted away for sums which at the time seemed large, but which, in view of the present demand for these lands under water, are insignificant." Governor's Message (1891) 20, I 1890-91 Legislative Documents.

The subsequent legislative enactments which generalized this principle, i.e., that the commissioners should set the terms of tidelands grants and leases according to the interest of the state, was L.1891, c.123, in particular section 4 (see now R.S. 12:3-24) which provides that the commissioners "shall not be required to give leases [of tidelands] convertible into grants upon payment of the principal sum mentioned therein." This provision goes on to vest in the commissioners, acting in concert with the Governor, wide discretion in determining the price and other terms in tidelands transactions. The adoption of this provision had the effect of impliedly repealing prior inconsistent provisions such as L.1869, c.383, p.1020, sec. 4 (imposing a mandatory duty on riparian commissioners and the Governor to charge \$50 per lineal foot of land conveyed), *Attorney-General v. Goetchius*, 142 N.J. Eq. 636 (Ch. 1948) and thus, one may conclude, such other inconsistent provisions as L.1871, c.605, p.113 (see now R.S. 12:3-12, discussed above, requiring leases to include a covenant permitting the lessee to convert the lease into a grant at a specified capital sum). Another provision of the same act provided that the commissioners together with the Governor could make leases for a renewable term, and include a provision for arbitration in the event that the subsequent renewals could not be agreed upon between the commissioners and the lessee.

Also significant was the provision in L.1891, c.123, sec.3 (see now R.S. 12:3-9) which gave the commissioners the right to make grants and leases of tidelands to non-upland owners, provided that upland owners were given six-months notice of their preemptive right to undertake the grant or lease on the same terms.

The balance of the provisions enacted in 1891 which remain a part of the current codified law include the provisions of L.1891, c.123 which prohibited digging, dredging and removal of sand or other materials from tidelands without a license (see now R.S. 12:3-21) and authorized the commissioners to sell limited licenses to dig, dredge or remove sand or other materials (see now R.S. 12:3-22). These provisions had been suggested by the commissioners and were supported by Governor Abbett as a revenue raising measure. See Governor's Message (1891) 18-19, I 1890-91 Legislative Documents.

The adoption of the 1891 acts mark the last major statutory change in the jurisdiction and authority of the Riparian Commissioners to convey interests in tidelands, with one recent exception. See discussion of L.1979, c.311, below, in chronological order of enactment. Subsequent enactments, discussed below, merely refined the system of conveyancing and gave the commissioners various miscellaneous powers.⁴

L.1910, c.103, p.154, amended 1979, c.311 (see now R.S. 12:3-26)

⁴ Note should also be made of the enactment of L.1903, c.1, §§168 to 170 (see now N.J.S. 18A:56-1 et seq.) i.e., "the School Fund Law," which concerns the establishment and management of the constitutionally-mandated school fund which receives the proceeds of the sales of tidelands.

This provision was originally enacted in 1910 to give the Board of Riparian Commissioners authority to grant permission to utility companies to lay pipes on State-owned tidelands. Expressly excluded in the proviso was "lands under the waters of the Atlantic Ocean." This entire section was replaced in 1979, expressly to eliminate this limitation. See discussion of L.1979, c.311, below, in chronological order of enactment. In its current form this section permits the Tidelands Resource Council to give licenses for laying pipes in the same manner as other grants of tidelands are made, i.e., only where in New Jersey tidal waters and for fair market value.

L.1918, c.176, p.509 (see now R.S. 12:3-27)

This 1918 enactment permitted the Board of Commerce and Navigation to adjust the size of previously-established basins, with the consent of all adjacent upland owners, and to permit additional filling and reclaiming of tidelands in the re-established basin. Section 2 of the enactment, now the second paragraph of R.S. 12:3-27, excepted from the provision the lands of the Morris Canal and Banking Company, apparently those in the Hudson River area adjacent to Jersey City (see R.S. 13:12-2, describing tidelands owned by the Canal Company "in Jersey City, fronting on the Hudson River, known as the 'Little Basin' and the 'Big Basin.'") The former Morris Canal Company and its properties subsequently were acquired by the State. See Revised Statutes of 1937, Title 13, chapter 12.

L.1927, c.336 (see now R.S. 12:3-28)

This provision imposes a requirement on state agencies to obtain approval from the Board of Commerce and Navigation (the successor to the Board of Riparian Commissioners) for any building or change in any bridges on tidelands. It includes an unusual express provision against repeal by implication, evidencing an apparent legislative concern that subsequent legislation approving a particular bridge project might be regarded as impliedly superseding the requirement that the Board approve any such project.

L.1979, c.311 (amending R.S. 12:3-12 and -13, repealing 12:3-17 and replacing 12:3-26).

In 1979, in response to a U.S. Government auction of exploratory oil leases on the continental shelf off the New Jersey coast, the State faced the issue of how to handle the demands that oil drilling activities might put on the State's adjacent tidelands. It was anticipated that applications might be made for grants or leases of tidelands for drilling rigs, pipelines and other shore and near shore facilities. An informal Attorney General's opinion raised questions whether the Natural Resource Council (the predecessor to the Tidelands Resource Council) had jurisdiction over tidelands beyond any established bulkhead or pier line, up to the three-mile limit ceded to the States by the United States under the Submerged Lands Act in 1953. See Report to the General Assembly on the Outer Continental Shelf Drilling Seminar (1977) at 39. As a result of this uncertainty, the Legislature passed this bill amending several provisions in chapter 3 of Title 12 to extend the jurisdiction of the Tidelands Resource Council "from the 'bulkhead' line to the 3 mile seaward jurisdiction of the State." Assembly Agricultural and Environment Committee Statement to A3448 (2d Sess. 1979). The effect of the 1979 enactment was to give the Tidelands Resource Council the power to convey interests in the State's tidelands to the full extent of the State's territorial jurisdiction without regard to exterior bulkhead and pier lines in filed maps.

Specifically, section 1 of the 1979 act amended R.S. 12:3-12, which empowers the Council to make curative grants and leases of former tidelands, to change the reference to grants and leases from the original high-water line to "the exterior lines established or to be established" to "the seaward territorial jurisdiction of the state." Section 2 of the act amended R.S. 12:3-13, which permits the Council to make changes in the exterior bulkhead and pier lines in the Hudson River area, to delete that limiting language and change it to the "tidewaters of the State," thus empowering the Council to make changes in the exterior bulkhead and pier lines throughout the state. Section 3 of the act deleted all of the language of R.S. 12:3-26, concerning leases and licenses to lay pipelines on state lands under tidewaters, completely restating it and eliminating the limitation that the statute shall not be "construed to apply to lands under the waters of the Atlantic ocean." Finally, section 4 of the act repealed R.S. 12:3-17, which provided that surveys should be made of tidelands at the request of shore owners.

L.1997, c.239 (adding N.J.S. 12:3-12.1, -12.2 and -12.3 and amending N.J.S. 13:1B-10 and N.J.S. 13:1B-13).

This legislation requires the Tidelands Resource Council to adopt regulations setting forth its fees, and requires it to give licenses for a minimum of seven years. It also requires a specified number of Council members to be residents of counties which contain tidelands.

Chapter - Tidelands Resource Council

The Tidelands Resource Council is the state governmental entity currently charged with the authority to determine whether requests for conveyances of tidelands from the State should be granted. See L.1979, c.386, sec.1 (13:1D-18.2).⁵ This power is exercised with the concurrence of the Commissioner of Environmental Protection and the Governor. 13:1B-13. Because the Council exercises the State's proprietary authority it has been held that the Council has wide discretion in deciding whether grants of the State's tidelands should be made, the amount to be charged for a conveyance, and the exact nature of the rights to be conveyed. LeCompte v. State, 65 N.J. 447 (1947).

The workings of the Council are only nominally reflected in the statutes, and the Council has not promulgated regulations setting forth the manner in which it operates or the standards which it applies. Therefore, it is not possible to ascertain from the statutes in chapter 3 of Title 12, or elsewhere in the statutes or in published regulations, how the Council goes about its work; this information is available only in secondary sources.⁶ However, recent legislation requires the Council to promulgate regulations concerning the fees it charges and to publish a "Guide to the Tidelands," see TA-4. See, L.1997, c.239. It is beyond the scope of this project, however, to codify the procedures of the Tidelands Resource Council.

TA-1. Legislative findings

The Legislature finds and declares that the Tidelands Resource Council is the public body responsible for the stewardship of the State's riparian lands; that it is the responsibility of the council to determine whether applications for the lease, license, or grant of riparian lands are in the public interest; that it is the responsibility of the council to determine, in assessing applications for the lease, license, or grant of riparian lands, whether the State may have a future use for such lands; that the council must obtain the fair market value for the lease, license or grant of riparian lands in accordance with court decisions and legal opinions of the Attorney General; and that the substantive policies adopted by the council and information about the roles of the council and the tidelands management program within the Department of Environmental Protection in requiring, reviewing, and processing applications for the lease, license, and grant of riparian lands should be made readily available to the general public and should be provided to those who apply for permission to use riparian lands.

Source: 12:3-12.1⁷

COMMENT

The source provision of this proposed provision was enacted as the legislative findings provision of P.L.1997, c.239.

⁵ The cited statute, adopted as part of the 1979 legislation establishing the Department of Environmental Protection, provides that references in the statutes to the former Resource Development council, Planning and Development Council and Natural Resource Council are deemed references to the Tidelands Resource Council. L.1979, c.386. The Board of Commerce and Navigation succeeded to the authority of the Riparian Commissioners in 1915, see L.1915, c.242, §5. The Navigation Council succeeded to the authority of the Board of Commerce and Navigation over tidelands when the Board was abolished in 1945. L. 1945, c.22, §§28 & 29. Thereafter, the following entities succeeded one another with respect to responsibility for leases and grants of tidelands: Planning and Development Council. L.1948, c.448, §13.; Resource Development Council. L.1961, c.47, §6; Natural Resource Council. L.1970, c.33, §.21; Tidelands Resource Council, L.1979, c.386, §1.

⁶ There are a number of secondary sources that describe the workings of the Tidelands Resource Council. See W.E. Andersen, "Resolving State Title Claims to Tidelands: Practice and Procedure," 168 New Jersey Lawyer 8 (April 1995)(written by the Deputy Attorney General who advises the Tidelands Resource Council); J.RWeigel and J.M.Clayton, Jr., "Special Problems Related to Lands Located Along or Near Tidal Waterways," reprinted in A.Horn, Residential Real Estate § 5.5(1) (1989); County and Municipal Government Study Commission, The New Jersey Riparian Rights Handbook (2d ed. 1979, Lewis PGoldshore, Esq., Counsel).

⁷ C.12:3-12.1 Findings, declarations relative to conveyance of riparian lands.

1. The Legislature finds and declares that the Tidelands Resource Council is the public body responsible for the stewardship of the State's riparian lands; that it is the responsibility of the council to determine whether applications for the lease, license, or grant of riparian lands are in the public interest; that it is the responsibility of the council to determine, in assessing applications for the lease, license, or grant of riparian lands, whether the State may have a future use for such lands; that the council must obtain the fair market value for the lease, license or grant of riparian lands in accordance with court decisions and legal opinions of the Attorney General; and that the substantive policies adopted by the council and information about the roles of the council and the tidelands management program within the Department of Environmental Protection in requiring, reviewing, and processing applications for the lease, license, and grant of riparian lands should be made readily available to the general public and should be provided to those who apply for permission to use riparian lands.

TA-2. Establishment of Tidelands Resource Council

a. There shall be within the department a Tidelands Resource Council which shall consist of 12 members. Each member of the Council shall be appointed by the Governor, with the advice and consent of the Senate, for a term of four years and shall serve until a successor has been appointed and has qualified. At least 9 of the council members shall be residents of counties wherein riparian lands are located and have been mapped. A person who is a member of the council on the effective date of P.L.1997, c.288 (C.12:3-12.1 et seq.) shall not be removed from the council for failing to meet the aforementioned residency requirements, but may be reappointed by the Governor at the expiration of that term only if that reappointment would comply with the residency requirement for the council set forth in this section.

b. Each Governor shall designate one of the members of the Council as chairperson and one of the members as vice-chairperson. The chairperson or vice-chairperson shall serve at the pleasure of the Governor designating that member until a successor has been designated. The chairperson of the Council shall be its presiding officer and the vice-chairperson shall act as chairperson in the chairperson's absence.

c. Any vacancies in the membership of the Council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term only. Any member of the Council may be removed from office by the Governor, for cause, upon notice and opportunity to be heard. A member of the Council may be removed from office by a majority vote of the membership of the council upon failure of that member to attend three consecutive meetings of the Council without good cause.

d. The members of the Council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

e. The Tidelands Resource Council shall succeed to the powers and duties of the former Board of Riparian Commissioners and its successor entities, the Board of Commerce and Navigation, the Navigation Council, the Planning and Development Council, the Natural Resource Council and the Resource Development Council, with respect to the State's tidelands.

Source: 13:1B-10⁸; 13:1D-3⁹; 13:1D-18.1¹⁰; 13:1D-18.2¹¹

⁸ 13:1B-10 Tidelands Resource Council.

10. There shall be within the Department of Environmental Protection a Tidelands Resource Council, which shall consist of 12 members. Each member of the council shall be appointed by the Governor, with the advice and consent of the Senate, for a term of four years and shall serve until a successor has been appointed and has qualified.

At least nine of the council members shall be residents of counties wherein riparian lands are located and have been mapped. A person who is a member of the council on the effective date of P.L.1997, c.239 (C.12:3-12.1 et al.) shall not be removed from the council for failing to meet the aforementioned residency requirements, but may be reappointed by the Governor at the expiration of that term only if that reappointment would comply with the residency requirement for the council set forth in this section.

Each Governor shall designate one of the members of the council as chairperson and one of the members as vice-chairperson. Any member of the council so designated shall serve as chairperson or vice-chairperson at the pleasure of the Governor designating that member and until a successor has been designated. The chairperson of the council shall be its presiding officer and the vice-chairperson shall act as chairperson in the chairperson's absence.

Any vacancies in the membership of the council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term only. Any member of the council may be removed from office by the Governor for cause, upon notice and opportunity to be heard. A member of the council may be removed from office by a majority vote of the membership of the council upon failure of that member to attend three consecutive meetings of the council without good cause.

The members of the council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

⁹ 13:1D-3. Division of marine services; natural resource council

a. The Division of Marine Services, together with all of its functions, powers and duties is continued as the Division of Coastal Resources in the Department of Environmental Protection.

b. The Natural Resource Council, together with all of its functions, powers and duties, is continued as the Tidelands Resource Council in the Department of Environmental Protection. This act shall not affect the terms of office of the present members of the council. The members of the council shall continue to be appointed as provided by existing law.

L.1970, c. 33, s. 4, eff. April 22, 1970. Amended by L.1971, c. 133, s. 2, eff. May 6, 1971; L.1979, c. 386, s. 1, eff. Feb. 5, 1980.

COMMENT

This proposed section continues the source section, which establishes the Tidelands Resource Council. Proposed subsection (e) is new; it catalogues the numerous predecessor entities to the Tidelands Resource Council for convenient reference. It incorporates legislation enacted in 1997 which requires a certain number of Council members to be from counties containing mapped tidelands.

In proposed subsection (e), the phrase "riparian lands" has been changed to "leases or grants of tidelands." Note that the term "tidelands" has been adopted throughout this project in lieu of the phrases "riparian lands," "tide-flowed lands," and "lands under water," and the like. Judicial opinions have defined tidelands as those lands which extend from the mean high water line to the seaward territorial jurisdiction of the State. In this project, dry land adjacent to tidelands is referred to as "upland," and the owner of such land is referred to as an "upland owner." Although the terms "upland" and "upland owner" are not used in this proposed provision, they are important words of art in subsequent proposed provisions.

TA-3. Actions by the Council

No action shall be taken by the Council except upon the approval of the Commissioner of Environmental Protection. No leases or grants of tidelands shall be made except when approved by at least a majority of the Council and signed by the chairperson, and when approved and signed by the Governor and the Commissioner of Environmental Protection.

Source: 13:1B-13²

COMMENT

The language of the source section has been simplified.

Note that the source section is concerned with the operation of the Tidelands Resource Council, and specifies how grants and leases of tidelands are approved. The substantive authority of the Council to make grants and leases of tidelands is contained in various provisions of chapter 3 of Title 12 Navigation. Most of those

¹⁰ 13:1D-18.1. Use of terms

Whenever the term "Division of Natural Resources" or "Director of the Division of Natural Resources" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Marine Services and the director thereof, respectively.

Whenever the term "Division of Parks, Forestry and Recreation" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Parks and Forestry in the Department of Environmental Protection.

Whenever the term "Division of Water Policy and Supply" or "Director of the Division of Water Policy and Supply" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Water Resources and the director thereof, respectively, in the Department of Environmental Protection.

Whenever the term "Water Policy and Supply Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Water Policy and Supply Council in the Department of Environmental Protection.
L.1971, c. 133, s. 3, eff. May 6, 1971.

¹¹ 13:1D-18.2. References deemed to refer to Tidelands Resource Council

a. Whenever the term "Division of Resource Development", "Division of Natural Resources", or "Division of Marine Services" or the terms "Director of the Division of Resource Development", "Director of the Division of Natural Resources", or "Director of the Division of Marine Services" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Coastal Resources and director thereof, respectively.

b. Whenever the term "Resource Development Council", "Planning and Development Council" or "Natural Resource Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Tidelands Resource Council.

L.1979, c. 386, s. 3, eff. Feb. 5, 1980.

¹² 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 Governor and the Commissioner of Environmental Protection.

6. This act shall take effect 180 days following enactment.
Approved September 5, 1997.

substantive provisions have been collected and expressed in a single proposed provision in this project entitled "Grants and leases of tidelands," TC-1.

The term "grants and leases of tidelands" has been retained in this section, and adopted throughout this subtitle, in lieu of the inconsistent terms used in the source statutes. In the source statutes, the phrase "conveyances of tidelands" was often used, as was the phrase "grants, conveyances and leases." In its earliest usage, the term "grant" may have been reserved for legislative grants, while the term "conveyance" referred to transactions involving a consideration. In this subtitle, the term "grant" is used to refer to any conveyance of tidelands, whether or not for consideration (as in a confirmatory grant), and the term "lease" is used for a conveyance of tidelands for a period of time. Note that currently the Tidelands Resource Council gives relatively few grants or leases of natural, presently-flowed tidelands; most applicants receive short-term licenses for periods of ten years or less.

TA-4. Guide to the Tidelands

The Tidelands Resource Council shall develop an informational guide entitled "Guide to the Tidelands," which shall be written in clear and plain language such that a person possessing a high school degree or its equivalent can understand any information provided in the guide. The council shall provide a copy of the guide to any person expressing an interest in applying for a lease, license or grant of any riparian land and to any other person who requests a copy of the guide. The guide shall contain the following information:

- a. A brief history of the designation of riparian lands in New Jersey as property of the State to be held in the public trust;
- b. The purpose of the Tidelands Resource Council and the tidelands management program within the Department of Environmental Protection, emphasizing the status of mapped riparian lands as property of the State under the stewardship of the Tidelands Resource Council;
- c. A complete listing and explanation of application fees adopted by the council pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);
- d. An explanation of the process involved in submitting an application to the council, and an explanation of the method by which the council establishes the fair market value of riparian lands, and the consequent price of a lease, license, or grant of such lands;
- e. An explanation of the process by which an applicant for a lease, license, or grant of riparian lands may appeal to the council for a reduction in the price of such lease, license, or grant as established by the council; and
- f. Any information not specified in subsections a. through e. of this section that the council determines will help applicants obtain a clear understanding of the council's role as steward of State-owned riparian lands.

Source: 12:3-12.2³

COMMENT

The source section was added by L.1997, c.239.

¹³ **C.12:3-12.2 Development of "Guide to the Tidelands."**

2. The Tidelands Resource Council shall develop an informational guide entitled "Guide to the Tidelands," which shall be written in clear and plain language such that a person possessing a high school degree or its equivalent can understand any information provided in the guide. The council shall provide a copy of the guide to any person expressing an interest in applying for a lease, license or grant of any riparian land and to any other person who requests a copy of the guide. The guide shall contain the following information:

a. A brief history of the designation of riparian lands in New Jersey as property of the State to be held in the public trust; b. The purpose of the Tidelands Resource Council and the tidelands management program within the Department of Environmental Protection, emphasizing the status of mapped riparian lands as property of the State under the stewardship of the Tidelands Resource Council; c. A complete listing and explanation of application fees adopted by the council pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); d. An explanation of the process involved in submitting an application to the council, and an explanation of the method by which the council establishes the fair market value of riparian lands, and the consequent price of a lease, license, or grant of such lands; e. An explanation of the process by which an applicant for a lease, license, or grant of riparian lands may appeal to the council for a reduction in the price of such lease, license, or grant as established by the council; and f. Any information not specified in subsections a. through e. of this section that the council determines will help applicants obtain a clear understanding of the council's role as steward of State-owned riparian lands.

TA-5. Regulations

The Tidelands Resource Council shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt regulations setting forth all fees imposed by the council, but shall not be required to publish as a regulation any formula or method used to determine the fair market value of a lease, license or grant. All leases and licenses shall be conveyed for a minimum of seven years.

Source: 13:3-12.3⁴

COMMENT

The source section was added by L.1997, c.239.

¹⁴ **C.12:3-12.3 Rules, regulations setting forth fees; minimum term of conveyance.**

3. The Tidelands Resource Council shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations setting forth all fees imposed by the council, but shall not be required to publish as a rule or regulation any formula or method used to determine the fair market value of a lease, license or grant. All leases and licenses shall be conveyed for a minimum of seven years.

Chapter - Tidelands generally

This chapter contains two provisions which prohibit encroachments or trespass on tidelands.

TB-1. Building on or reclaiming tidelands

a. No person shall, without a grant, lease or license from the Tidelands Resource Council, either fill in, build any structure upon, occupy, or otherwise trespass upon any tidelands of this State, whether or not the tidelands are under water or not.

b. No person shall dig, dredge or remove any deposits of sand or other material from the tidelands of the State without obtaining a license pursuant to this subtitle. Nothing in this section shall prohibit the owner of any grant or lease from the State, or any assignee or lessee of the owner, from digging, dredging, removing, and taking sand and other material within the lines of, or in front of, such grant or lease, for the purpose of improving the lands granted or leased, or from digging, dredging, or removing the sand or other materials from a channel or channels to the main channels.

c. The delivery of a grant, lease or license by the Council shall neither fulfill nor excuse any permit requirement which may be applicable under other law for any activity to be undertaken with respect to the granted, leased or licensed tidelands.

d. The department may commence a civil action for damages or injunctive relief, including the costs of abatement, against any person who violates this section.

Source: 12:3-4¹⁵ 12:3-8¹⁶ 12:3-21¹⁷

¹⁵ **12:3-4. Repeal of Wharf Act of 1851; reclaiming or building upon lands under tidewaters; consent of department; prior grants and licenses**

The repeal of the act entitled "An act to authorize the owners of lands under tidewaters to build wharves in front of the same," approved March eighteenth, one thousand eight hundred and fiftyone (L.1851, p. 335), as to the tidewaters of this State below the line of mean high tide, by section three of the 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 sixtyfour," approved March thirtyfirst, one thousand eight hundred and sixty-nine (L.1869, c. 383, p. 1017), as amended by the act approved March twentieth, one thousand eight hundred and ninety-one (L.1891, c. 124, p. 216), shall not be construed to restore any supposed rights, usage or local common law, founded upon the tacit consent of the State or otherwise to fill in any land under water below mean high tide.

Without the grant or permission of the Department of Conservation and Economic Development no person or corporation shall fill in, build upon or make any erection on or reclaim any of the lands under the tidewaters of this State; and in case any person or corporation so offending shall be guilty of purpresture, which shall be abated at the cost and expense of such person or corporation, on application of the Attorney General, under judgment of the Superior Court or by indictment in the county in which the same may be, or opposite to or adjoining which purpresture may be; provided, however, that neither this section nor any provision contained in sections 12:3-3 to 12:3-9 of this Title, shall in anywise repeal or impair any grant of land under water, or right to reclaim made directly by legislative act, or grant or license, power or authority, so made or given, to purchase, fill up, occupy, possess and enjoy lands covered with water fronting and adjoining lands owned or authorized to be owned by the corporation, or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns, or to repeal or impair any grant or license, power or authority to erect or build docks, wharves and piers opposite and adjoining lands owned, or authorized to be owned by the corporation, or grantee or licensee in the legislative act mentioned, its, his or their representatives, grantees or assigns made prior to July first, one thousand eight hundred and ninety-one, or given directly by legislative acts, whether said acts are or are not repealable, and as to any revocable license given by the board of chosen freeholders of a county prior to July first, one thousand eight hundred and ninetyone, to build docks, wharves or piers, or to fill in or reclaim any lands under water in this State, the same shall be irrevocable so far as the land under water has been or shall be lawfully reclaimed or built upon under any such license issued prior to July first, one thousand eight hundred and ninetyone, provided such reclamation or building under such license shall be completed prior to January first, one thousand eight hundred and ninetytwo; but as to the future such revocable license, if the said lands covered by the license have not been wholly or in part lawfully reclaimed or built upon, is hereby revoked, and no occupation or reclamation of land under water without such legislative act or revocable license shall divest the title of the State, or confer any rights upon the party who has reclaimed or who is in possession of the same. Amended by L.1953, c. 12, p. 97, §1, eff. March 19, 1953.

¹⁶ **12:3-8. Trespass on lands of state under water; proceedings by attorney general; expenses**

The department may commence a civil action in the name of the State of New Jersey against any person trespassing upon or occupying tidelands of the State, whether under water now or not. The Attorney General shall commence and prosecute such actions as may be instituted or directed by the department.

12:3-21. Removal of sand and other material without license; penalty; exception

No person or corporation shall dig, dredge or remove any deposits of sand or other material from the lands of the State lying under tidal waters without a license so to do first obtained as provided in section 12:22 of this Title, and any person or corporation who shall so unlawfully dig, dredge or remove any deposit of sand or other material as aforesaid shall forfeit and pay for each and every such offense the sum of one hundred dollars (\$100.00), to be prosecuted for and recovered by a civil action by any person or persons in any court of competent jurisdiction with costs of suit, the one-half the amount so recovered to be for the use of the State, and the other half to the use of the person or persons who shall sue for and prosecute the same to effect; provided, however, that nothing in this section contained shall prevent the owner of any grant or lease from the State, or the assignee or lessee thereof, from digging, dredging, removing, and taking sand and other material within the lines of, or in front of, such grant or lease, for the purpose of improving lands granted or leased to them, or their grantors or lessors, by the State, nor prevent such owner, assignee or lessee from digging or dredging a channel or channels to the main channels, and removing and taking the material therefrom. Amended by L.1953, c. 12, p. 100, §4, eff. March 19, 1953.

COMMENT

Proposes subsection a. combines two source sections, both of which deal with trespass upon State tidelands. The archaic term "purpresture," used in source section 12:3-4, has been abandoned, and the broader and more general term "trespass," used in 12:3-8, has been substituted in the proposed section.

The original source of source section 12:3-4 was L.1869, p.1017, (the "Riparian Act of 1869") the provisions of which applied only to "the tidewaters of the Hudson River, New York Bay, and Kill Von Kull, lying between Enyard's Dock, on the Kill Von Kull, and the New York State line." The original provisions of that Act adopted exterior bulkhead and pier lines in the Hudson River-Newark Bay-Kill von Kull area (hereafter "Hudson River area"), and provided a means by which parties could apply for and purchase the State's tidelands in the delineated area. Prior to 1869, parties could appropriate tidelands pursuant to the provisions of The Wharf Act of 1851, and prior to the adoption of that act, they could appropriate tidelands pursuant to the common law right to "wharf out." This section of the 1869 act, as originally enacted, established the principle that no appropriation of tidelands, either by common law or pursuant to The Wharf Act of 1851 was thereafter permitted in the Hudson River area covered by the 1869 Act, and that any such unauthorized appropriation constituted a "purpresture," i.e., a wrongful appropriation of land subject to the rights of others, the abatement of which the State had the right to compel. Note that the 12:3-4 is recommended for repeal with respect to its first paragraph, concerning the construction of the repeal of The Wharf Act. See the section below entitled "Statutes recommended for repeal."

Source section 12:3-8 authorized the Board of Riparian Commissioners to bring a civil action against persons trespassing upon any State tidelands. As originally enacted in 1869 (L.1869, p.1107, sec. 12), and as continued in 1937, provision was made for the payment of the expenses of such an action by the State Treasurer. Those provisions have been eliminated from this proposed section as unnecessary under given more recent enactments concerning the duties of the Attorney General. See 52:17A-1 et seq. (standardizing legal representation of state entities in the office of the Attorney General).

This proposed section continues the principle of the source section that an affirmative grant from the State, either an outright grant, a lease or a license, is required in order make any use whatsoever of State tidelands. The language of source section 12:3-8, which refers to "tidelands of the State, whether under water now or not" has been retained in the proposed section. This proviso was included in the source statute to make clear that State tidelands that had been filled in or reclaimed without the consent of the State continued to be "tidelands" regardless of the fact that the formerly tide-flowed lands had become dry land due to artificial processes. Please note, however, the effect of the 1981 constitutional amendment on State claims to formerly tide-flowed lands, discussed in the Introduction to this subtitle.

A third source section, prohibiting the removal of sand or other deposits from State tidelands, has been included in this section as proposed subsection b. Source section 12:3-21 was originally enacted as section 1 of L.1891, c.123. It prohibits the removal of sand or other material from tidelands without a license from the Tidelands Resource Council. Section 2 of the same act, which was included in the 1937 Revision as R.S. 12:3-22, is continued in the proposed chapter below on "Licenses."

TB-2. Construction or alteration of bridges over tidelands

a. Whenever a state board or agency is authorized or directed by any law of this State to build a bridge or other structure, or to alter or change any existing bridge or other structure on or over any tidelands of this State, the board or agency, before proceeding with the work, shall first submit to and obtain the approval of the plans or work from the Tidelands Resource Council.

b. This section shall not be taken to be or have been repealed by any act passed subsequent to April first, one thousand nine hundred and twenty-seven, authorizing the building of bridges or structures, or the

alteration or changing of existing bridges or other structures by any state board or agency unless such subsequent act authorizing the work contains an express repealer of this section.

Source: 12:3-28¹⁸

COMMENT

Minor conforming changes have been made in the language of the source section. The effect of these provisions is to require the approval of the Tidelands Resource Council for any bridge project on or over State tidelands. Subsection b. seeks to insulate this requirement from repeal by any subsequent general repealer provision or by implied repeal in the enactment of a statute authorizing such a bridge contract.

¹⁸

12:3-28. Construction or alteration of bridges over tidal waters; approval of board; repeal by subsequent act

Whenever a state board or agency has been or may hereafter be authorized or directed by any law of this state to build a bridge or other structure, or to alter or change any existing bridge or other structure on or over any lands of this state flowed by the tidal waters thereof, such board or agency, before proceeding with the work, shall first submit to and obtain the approval of such plans or work by and from the board of commerce and navigation.

This section shall not be taken to be or have been repealed by any act passed subsequent to April first, one thousand nine hundred and twenty-seven, authorizing the building of bridges or structures, or the alteration or changing of existing bridges or other structures by any state board or agency as aforesaid unless such subsequent act authorizing the same contains an express repealer of this section.

Chapter - Grants and leases of tidelands

This chapter contains the general provisions which authorize the Tidelands Resource Council to make grants and leases of tidelands and specifies the circumstances under which various types of grants and leases may be made. Note that there are separate proposed chapters in this proposed subtitle which permit the Council to make confirmatory grants and leases, and which permit the making of grants and leases for certain commercial purposes. Yet another separate proposed chapter concerns the consequences of erroneous grants and leases.

TC-1. Grants and leases of tidelands

a. Any person may apply to the Tidelands Resource Council for a grant or lease of any tidelands of the State or any interest in tidelands, whether or not the tidelands are, at the time of the application or at the time of the grant or lease, under water.

b. The Tidelands Resource Council may, with the concurrence of the Governor, the Commissioner of Environmental Protection, and the Attorney General, make grants and leases of any tidelands of the State lying between the original high-water mark and the seaward territorial jurisdiction of the State, or any interest in such tidelands, with due regard to the interests of navigation.

c. A grant or lease may contain any covenants or conditions that the Council, together with the Governor, the Commissioner of Environmental Protection, and the Attorney General, may deem proper.

d. A grant or lease may include the right to exclude the tidewater to the exterior bulkhead line by filling in or otherwise improving the land, and to appropriate the land to exclusive private uses, and, to the extent that the upland created adjoins navigable water, the right to perquisites of wharfage and similar profits, tolls and charges. A grant or lease may include any additional rights or interests that the Tidelands Resource Council, together with the Governor, the Commissioner of Environmental Protection and the Attorney General, may deem proper.

e. A grant or lease shall only be made to a person other than the owner of upland adjacent to the tidelands to be granted or leased if the applicant has given notice to the owner of adjacent upland as provided in this subtitle.

Source: 12:3-10¹⁹, 12:3-12²⁰, 12:3-15²¹, 12:3-19²², 12:3-20²³, 12:3-33²⁴, 12:3-34²⁵, 12:3-35²⁶

¹⁹ **12:3-10. Lease or conveyance to riparian owner on application to board**

Any riparian owner on tidewaters in this State who is desirous to obtain a lease, grant or conveyance from the State of New Jersey of any lands under water in front of his lands, may apply to the board, which may make such lease, grant or conveyance with due regard to the interests of navigation, upon such compensation therefor, to be paid to the State of New Jersey, as shall be determined by the board, which lease, conveyance or grant shall be executed as directed in sections 12:3-2 to 12:3-9 of this Title, and shall vest all the rights of the State in said lands in said lessee or grantee.

The board in its discretion, upon application in writing from any riparian owner, may cancel and annul any lease, grant or conveyance made to such riparian owner, and thereupon such lands, and rights therein, so leased, granted or conveyed shall revert to the State.
Amended by L.1938, c. 418, p. 1207, §1, eff. Dec. 13, 1938.

²⁰ **12:3-12. Covenants, clauses and conditions in grants or leases whether land under water or not**

The council with the concurrence of the Governor 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 section 12:3-3 of this Title, or any other clause or matter contained in sections 12:3-2 to 12:3-9 of this Title, 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 said section 12:3-3 of this Title, 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 said section 12:3-3 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 sections 12:3-2 to 12:3-9 of this Title; and provided also, that the applications for grants or leases, and the certificates of said council, Governor and Attorney General, may in the cases hereby provided for, vary from the provisions of said sections 12:3-2 to 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.

²¹ **12:3-15. Lease or sale of basins; dedication as public basins**

The board may make, for a satisfactory consideration, any lease or sale to the owners of the lands fronting on the said basin, of the right to have the exclusive use of the said basin or basins, for the purpose of wharfage and docking, and to charge a reasonable sum for the use of the same on

COMMENT

This provision generalizes the broad authority of the Tidelands Resource Council to approve grants and leases of State tidelands and interests in such tidelands, and to condition the making of grants and leases as the Council, together with the Governor, Commissioner of Environmental Protection and Attorney General "shall deem proper." This language expresses the principle that the authority of the Council under these statutes is proprietary in nature. That is, in determining whether to convey interests in the State's tidelands, the Council, subject to the required approvals, acts with the same broad discretion as a private landowner. See, e.g., LeCompte v. State, 65 N.J. 447 (1974).

Numerous current provisions are shown as sources for this section, as the authority of the Council and its predecessor entities was granted in a series of enactments commencing in 1869. These enactments broadened the authority of the Council's predecessors in a piecemeal fashion. For example, the authority was broadened geographically, in the form of the 1871 extension of the Board of Riparian Commissioner's authority to the conveyance of tidelands outside the Hudson River area to adjacent upland owners (L.1871, c.605 (see now 12:3-12); then to the conveyance of tidelands outside that area to non-upland owners (L.1891, c.123).

Source section 12:3-10 was amended in 1979, to eliminate the limitation on the Council's power to grant or lease tidelands only from the high water mark to any exterior bulkhead or pier line established or to be established. As amended, the section permits such grants or leases to extend as far as "the seaward territorial jurisdiction of the State." Note that recent legislation requires all leases and licenses to be conveyed for a minimum of 7 years. See L.1997, c.239 (C.12:3-12.3), included in this project as TA-5.

In this proposed section, the source sections have been entirely rewritten, to consolidate the authority of the Council to convey interests in tidelands throughout the State. The language is primarily based upon 12:3-10, rewritten to eliminate superfluous cross-references and for clarity and simplicity.

the line of bulkhead owned by them respectively; and that from and after the filing of said map and survey, the same shall remain as a public basin or basins, and they are hereby dedicated for that purpose.

²²
12:3-19. Establishment of bulkhead and pier lines around islands in tidewaters

The board, with the approval of the governor and after consultation with the board of engineers acting under the authority of the secretary of war, 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 said board of engineers, at such distance as will, in the judgment of the board of commerce and navigation, leave sufficient waterway in front of said grants for navigation, and when the board 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.

²³
12:3-20. Sale or lease of riparian lands around islands, reefs or shoals

The board, together with the governor, may sell or let to any applicant therefor any of the lands under water and below mean higher mark, embraced within the lines fixed and established pursuant to section 12:3-19 of this title, 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 board together with the governor.

²⁴
12:3-33. Grant of riparian lands for public park, place, street or highway

Whenever a public park, place, street or highway has been or shall hereafter be laid out or provided for, either by or on behalf of the state or any municipal or other subdivision thereof, along, over, including or fronting upon any of the lands of the state now or formerly under tidewater, or whenever a public park, place, street or highway shall extend to such lands, the board of commerce and navigation, upon application of the proper authority of the state, or the municipal or other subdivision thereof, may grant to such proper authority the lands of the state now or formerly under tidewater, within the limits of or in front of said public park, place, street or highway.

²⁵
12:3-34. Conditions in grant

The grant shall contain a provision that any land so granted shall be maintained as a public park, place, street or highway, or dock for public use, resort and recreation, and that no structures shall be erected on the land so granted inconsistent with such public use.

²⁶
12:3-35. Authority of bridge companies to construct bridges over lands granted

When a grant shall be made to the proper authority of the state, or a municipal or other subdivision thereof, of lands of the state now or formerly under tidewater fronting on or within the extended lines of any street or highway heretofore or hereafter laid out or provided for, and said authority shall have or may hereafter grant or lease the lands so granted, or the right to use the lands for the purpose of constructing a bridge over or along the same, to a corporation organized under sections 48:5-25 of the title Public Utilities, the board of commerce and navigation may insert an express provision in the grant that the lands may be used for such purpose.

The language of the second part of 12:3-10, authorizing the Council to cancel or annul any grant or lease previously made, is not included in the proposed provision. This language was included in the source section in the 1869 act, as it was anticipated that many applicants for grants would be prior grantees who wished to perfect their title to tidelands under the newer statutes, which were regarded as conveying a more secure title. In the proposed provision, the power to cancel or annul is not specifically granted, as it is assumed to be included in the power to make a grant or lease.

TC-2. Fixing of consideration

The Tidelands Resource Council, with the concurrence of the Governor, the Commissioner of Environmental Protection and the Attorney General, shall fix the purchase price or annual rental to be paid by any applicant for State tidelands.

Source: 12:3-16²⁷

COMMENT

The source section has been divided into two proposed sections. In this proposed section, minor changes in language have been made. The Commissioner of Environmental Protection and the Attorney General have been added, to conform this section to other provisions in this chapter. In addition, the phrase "within the limits prescribed by law" has been eliminated. When the source provision was originally enacted (see L.1874, c.427, p. 103) there were in force other acts which set specific amounts for certain transactions. See, e.g., L.1871, c.605 (setting the required ratio between the price of a grant and the annual rental for a lease of tidelands). Those provisions have either been amended or superseded, making the deleted phrase unnecessary and misleading. Note that it has been held that the Tidelands Resource Council has broad discretion to determine the consideration for transactions involving tidelands. See LeCompte v. State, 65 N.J. 447 (1974). Note also, however, that the consideration must reflect the fair market value of the interest conveyed. See Attorney General Formal Opinion No. 3 (1983).

TC-3. Execution of grants and leases

The Tidelands Resource Council, with the approval of the Governor, the Commissioner of Environmental Protection and the Attorney General, shall grant or lease tidelands in the name and under the Great Seal of the State. All grants or leases shall be prepared by the Council or its agents at the expense of the applicant and shall be subscribed by the Governor and the Chair of the Council and attested to by the Secretary of State.

Source: 12:3-16 [see above]

COMMENT

This is the second of two proposed sections which derive from the same source section. See "Fixing of consideration," supra, in this proposed chapter. Note that a separate provision derived from source section 13:1B-13 is continued in this proposed subtitle as the proposed chapter "Tidelands Resource Council." That section provides that the Tidelands Resource Council may take no action except upon the approval of the Commissioner of the Department of Environmental Protection, and further provides that no leases and grants of tidelands may be made except when approved and signed both by the Governor and the Commissioner of Environmental Protection.

²⁷**12:3-16. Fixing of purchase price or rentals for lands below highwater mark or formerly under tidewater; lease or conveyance**
It shall be lawful for the board, together with the governor, 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 highwater mark, or lands formerly under tidewater belonging to this state, as may be described in any application therefor duly made according to law, and the board, with the approval of the governor, 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 board or its agents at the cost and expense of the grantee or lessee therein and shall be subscribed by the governor and the board and attested by the secretary of state.

TC-4. Payment of or security for purchase or rental of tidelands

No grant or lease of tidelands shall be delivered until the grantee or lessee pays or secures payment of the compensation or rentals provided in the grant or lease.

Source: 12:3-6²⁸

COMMENT

The section has been rewritten for clarity.

TC-5. Notice to upland owner of grant or lease of tidelands

a. If a person other than the owner of adjacent upland applies to the Tidelands Resource Council and is approved to receive a grant or lease of tidelands, no grant or lease shall be made until the applicant gives six months' written notice of the pending transaction to the owner of the adjacent upland in front of which the tidelands being granted or leased are located.

b. The notice shall state the location of the tidelands, the nature of the interest to be conveyed, and the amount set by the Tidelands Resource Council as consideration for the transaction. The notice shall also state that the specified interest in tidelands shall be conveyed to the applicant unless the adjacent owner applies to the Tidelands Resource Council to receive the grant, lease or conveyance within six months after the notice is served and either pays, or secures payment of, the consideration set by the Council for the transaction.

c. The notice shall be served personally upon either the owner of the adjacent upland; or the guardian of the adjacent upland owner if the adjacent upland owner is a minor; or on the registered agent or any officer performing the duties of president, secretary, treasurer or director, if the adjacent upland owner is a corporation. If the adjacent upland owner is not a resident of this State, the notice may be served by certified or registered mail, to the actual address of the owner, if reasonably ascertainable, or to the last address shown on the tax records of the municipality in which the tidelands are located.

Source: 12:3-7²⁹ 12:3-23³⁰

²⁸ **12:3-6. Payment of or security for purchase money or rentals for lands below highwater mark**

No grant hereafter made, extending beyond the line of highwater mark, shall be in force or operation as to so much thereof as extends below said line of highwater mark, until the grantee or grantees shall have paid into the treasury of the state such compensation or rentals, or secured to the state such payment or rentals for the estate in the lands lying below the said line of mean highwater mark, contained in and conveyed by such grant or lease as provided in section 12:37 of this title.

²⁹ **12:3-7. Grant of riparian land not improved; notice to riparian owner**

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 sections 12:3-9 of this title, it shall be lawful for the board, together with the governor 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 highwater 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 commissioners 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 board 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 governor and attested by the attorney general and 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 sections 12:3-3 of this title, 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 board 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.

12:3-23. Lease or grant to persons other than riparian owners; notice to riparian owners

The board, with the approval of the governor, may lease or grant the lands of the state below mean highwater mark and immediately adjoining the shore, to any applicant or applicants therefor other than the riparian or shoreowner or owners, provided the riparian or shoreowner 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 shoreowner 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

COMMENT

The source sections reflect the legislative recognition of "the natural equity of the upland owner," that is, the preference of the State to make grants of tidelands to owners of adjacent upland. See Stevens v. Paterson and Newark Railroad Company, 34 N.J.L. 532, 537-45 (1870); American Dock and Improvement Co. v. Trustees For the Support of Public Schools, 39 Eq. 409, 443-44 (Ch. 1885). This preference is one of legislative grace and not of right, however, and may be legislatively limited or even abolished. *Id.* Thus, this statute authorizes the making of grants, conveyances and leases to persons other than owners of adjacent upland, but gives to the adjacent owners a statutory right of preemption with respect to any proposed transaction.

Source section 12:3-7 was first enacted as section eight of the General Riparian Act of 1869, and was applicable only in the Hudson River-Newark Bay-Kill von Kull area covered by that act. See L.1869, c.383, sec. 8. Source section 12:3-23 was enacted in 1891 as part of the same legislation which repealed The Wharf Act of 1851 in its entirety, and conferred authority on the Board of Riparian Commissioners over tidelands throughout the entire State. See L.1891, c.123 and 124. Source section 12:3-23 parallels source section 12:3-7, giving the commissioners the same authority to make grants, conveyances and leases of tidelands to non-upland owners as in the 1869 act, conditioned by the right of preemption given to owners of adjacent upland.

The language of the source sections has been simplified, and duplicative material eliminated (e.g., provisions specifying who must sign a conveyance on behalf of the State, which have been generalized in other proposed sections of the project). In addition, the notice requirements have been modified to meet current constitutional due process standards for giving notice to absent property owners. See also the proposed section below, which continues source section 12:3-7.1, providing a means for giving newspaper notice when difficulties arise in determining what constitutes adjacent upland. Note that another source provision concerning the rights of upland owners, R.S. 12:3-9, is recommended for repeal in this project. See the chapter "Acts repealed and saved from repeal," infra, for an explanation of that recommendation.

TC-6. Right of way separating upland owner's lands from tidewater

When tidelands are taken or granted for a right of way located along or on the shore line, thereby separating the upland from adjacent tidelands, the owner of the separated upland shall be held to be an upland owner for the purpose of applying for and receiving a grant or lease of tidelands, or for the purpose of receiving any notice to upland owners, pursuant to the provisions of this subtitle.

Source: 12:3-18³¹

COMMENT

The source section was first enacted in 1877; it preserves the rights of upland owners where a right of way is granted along the shore line. Preserving the riparian rights of the upland owners in this fashion had the effect of saving the condemners of the right of way from being forced to purchase the riparian rights at a much greater cost to the right of way project. Statutory changes have been made in the terminology to be consistent with other provisions.

the riparian or shoreowner 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 postoffice address, if the same can be ascertained, with the postage prepaid); but nothing contained in sections 12:3-21 to 12:3-25 of this title shall be construed as repealing, altering, abridging, or in any manner limiting the provisions and power conferred upon the riparian commissioners and governor by sections 12:3-19 and 12:3-20 of this title.

³¹

12:3-18. Right of way separating riparian owner's lands from tidewater; effect on leases and grants

When lands have been or shall be taken or granted for a right of way and such right of way has been or shall be so located on land of a riparian owner as to occupy the same along or on the shore line, thereby separating the upland of the riparian owner adjoining that used for the right of way from tidewater, such owner of the land so subject to such right of way shall be held to be a riparian owner for the purpose of receiving any grant or lease heretofore or hereafter made of the lands of the state under water, or for the purpose of receiving any notice under sections 12:3-17 of this title; provided, that nothing in this section shall affect the rights of the state to the lands lying under water.

TC-7. Grants and leases of tidelands adjacent to the Palisades

a. Every grant or lease by the Tidelands Resource Council of tidelands adjacent to or in front of the Palisades, or adjacent to or in front of the strip of land between the base of the Palisades and the tidelands, shall contain terms and conditions that will, so far as possible, forever thereafter preserve unbroken the uniformity and continuity of the Palisades, and prevent the lands granted or leased from being used for injurious or destructive work or operations against the Palisades, or in connection with such work or operations.

b. No terms, conditions, restrictions or limitations shall be inserted in any such grant or lease which shall prevent or interfere with any work or operations, whether by blasting and removing rock or otherwise, on any part of land lying between the base of the vertical line of the Palisades and the high -water mark on the Hudson river, for the purpose of preparing the ground for the construction of buildings or for commercial purposes.

c. As used in this section, "Palisades" means that portion of the west shore of the Hudson river, lying between the high -water line and the top or edge of the steep cliffs or the crest of the slope in places where the steep cliffs are absent, from the road leading from the old Fort Lee dock or landing to Fort Lee in Bergen county on the south to the northerly boundary line of the state of New Jersey. The tidelands lying under the water of the Hudson river to the southward of the road, leading from the Fort Lee dock or landing to Fort Lee in Bergen county, shall not be subject to the provisions of this section.

Source: 12:3-29³² 12:3-30³³ 12:3-31³⁴

COMMENT

The source provisions have been combined into a single section which applies only to a specific area on the Hudson River below the cliffs known as the "Palisades."

³² **12:3-29. Terms and conditions required in lease or grant**

Every lease, grant or conveyance by the board of commerce and navigation of lands lying under the waters of the Hudson river adjacent to or in front of the Palisades, or adjacent to or in front of the strip of land between the base of the Palisades and the lands under water, shall contain such terms, conditions, restrictions and limitations as will, so far as possible, forever thereafter preserve unbroken the uniformity and continuity of the Palisades, and prevent the lands leased, granted or conveyed from being used or devoted to injurious or destructive work or operations against the Palisades, or in connection with or for the encouragement, aid or promotion of such work or operations.

³³ **12:3-30. Work or operations for buildings and commercial purposes**

No terms, conditions, restrictions or limitations shall be inserted in any such lease, grant or conveyance which shall prevent or interfere with any work or operations, whether by blasting and removing rock or otherwise, on any part of land lying between the base of the vertical line of the Palisades and the highwater mark on the Hudson river, for the purpose of preparing the ground for the construction of buildings or for commercial purposes.

³⁴ **12:3-31. "Palisades" defined**

As used in sections 12:329 and 12:3-30 of this title, "Palisades" means that portion of the west shore of the Hudson river, lying between the high-water line and the top or edge of the steep cliffs or the crest of the slope in places where the steep cliffs are absent, from the road leading from the old Fort Lee dock or landing to Fort Lee in Bergen county on the south to the northerly boundary line of the state of New Jersey. The riparian lands lying under the water of the Hudson river to the southward of the said road, leading from the Fort Lee dock or landing to Fort Lee in Bergen county, shall not be subject to the provisions of said sections.

Chapter - Licenses

These two provisions authorize the Tidelands Resource Council to grant licenses for the removal of sand, and for laying pipelines, with the approval of the Governor.

TD-1. License for removal of sand and other material

The Tidelands Resource Council, with the approval of the Governor and the Commissioner of Environmental Protection, may grant a license to any person to dig, dredge or remove any deposits of sand or other material from tidelands of the State. They shall set terms and restrictions as to duration, compensation and any other conditions and restrictions that the interests of the State require. The license shall be executed in the same manner as grants and leases of tidelands.

Source: 12:3-22³⁵

COMMENT

This source section was originally enacted as section 2 of L.1891, c.123. Section 1 of the same enactment affirmatively prohibits removal of sand and other materials from tidelands without a license. That section, included in the 1937 Revision as R.S. 12:3-21 is continued in the proposed chapter entitled "Tidelands generally." In this proposed subsection, the authority of the Council to give licenses has been restated in a form consistent with other proposed provisions in this subtitle under which the Council is given authority of this kind.

TD-2. Licenses to lay pipelines

The Tidelands Resource Council, with the approval of the Governor and the Commissioner of Environmental Protection, may grant a license to any person to lay any pipelines on tidelands of the State under terms and restrictions as to duration, compensation to be paid, and any other conditions and restrictions that the interests of the State may require. The license shall be executed in the same manner as grants and leases of tidelands

Source: 12:3-26³⁶

COMMENT

The language of the source section has been simplified, and has been changed to be consistent with other proposed provisions giving the Council authority to make grants, leases and licenses of tidelands.

³⁵ **12:3-22. License to remove sand or other materials from lands under tidewaters**

The board, with the approval of the governor, 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.

³⁶ **12:3-26. License required to lay pipes under state lands under tidewaters**

The council, with the approval of the Governor, 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. Amended by L.1979, c. 311, §3,eff. Jan. 17, 1980.

Chapter - Confirmatory grants and leases

This proposed chapter contains proposed provisions derived from two separate sets of source provisions concerning the making of confirmatory grants and leases of tidelands.

The first set of source provisions was enacted as L.1923, c.154, and permits the "board" (then the Board of Commerce and Navigation) to make confirmatory grants and leases of tidelands upon the petition of an adjacent owner, and upon a finding that making the grant or lease would be "equitable and just" as defined in the enactment. Those provisions have been continued in this chapter as the first three proposed sections. Several of the source provisions have been recommended for repeal as redundant and unnecessary, e.g., 12:3-40, 12:3-43.

The particularity of the provisions of the 1923 act, especially the list of factors in 12:3-42 used in determining whether it is "equitable and just" to make a confirmatory grant or lease, suggest that these provisions were enacted as a form of special legislation designed to be applicable to a single grantee or a small class of grantees, but sufficiently generalized to overcome constitutional problems. Note that it may be argued that these provisions are unnecessary, as the Tidelands Resource Council, acting in the capacity of proprietor of the State's tidelands, has the power to grant confirmatory leases in the exercise of its discretion and without the need for specific authorizing legislation. Cf. Attorney General Formal Opinion No. 3 (1983) (Tidelands Resource Council has the discretion to give a "good faith discount" from the fair market value of tidelands on which an owner under color of title has made improvements in good faith, and may also sell tidelands at a discount from fair market value reflecting the strength of the State's ownership claim). Nevertheless, these provisions are retained here in the event that there are any outstanding circumstances to which they might apply.

The last proposed section in this chapter derives from a provision that was enacted as part of the General Riparian Act of 1869, L.1869, c.353, sec.4. As noted in the introduction, the acquisition of tidelands interests prior to the 1869 act was through legislative grants, which were often imprecise and ambiguous, and through common law and statutory rights of appropriation, both of which resulted in questionable title. As originally enacted, this provision was aimed at enabling the holders of interests in tidelands the opportunity to perfect their title by applying to the Board of Riparian Commissioners for a grant or lease of a confirmatory nature. Because this provision is stated in mandatory terms, unlike the 1923 provisions which are discretionary in nature, it is retained here in the event that any interests such as those defined remain outstanding.

TF-1. Petition for confirmatory grant or lease of tidelands

The Tidelands Resource Council shall have the power to give to any upland owner a confirmatory lease or grant of adjacent tidelands which are within the area of tidelands covered by a prior lease or grant through which the upland owner claims title. The Tidelands Resource Council may make such a grant or lease upon the petition of an upland owner if the Council finds that it is equitable and just to ratify and confirm the title of the upland owner. A confirmatory grant or lease may be made of tidelands whether or not they are now under water.

Source: 12:3-38³⁷ 12:3-41³⁸ 12:3-44³⁹

³⁷

12:3-38. Investigation by board on petition of riparian owner

The board of commerce and navigation may, upon petition of any riparian owner, investigate the facts relative to any lease or grant of riparian lands purporting to have heretofore been made under authority of any legislative act for the purpose of determining whether or not it is equitable and just that a confirmatory lease or grant shall be made to ratify and confirm to the petitioner the title to lands under water adjacent to the riparian lands of the petitioner and within the area of lands covered by a prior lease or grant through which the petitioner claims title to the lands under water for which a confirmatory lease or grant is required.

³⁸

12:3-41. Character of lands affected

The lands to be affected by sections 12:3-38 to 12:3-40 of this title shall be lands which are now or were formerly under the tidewaters of this state. Any lease or grant of new areas or by way of confirmation may be based upon the original natural higher line as of the date of the lease or grant being confirmed or as of the date of the new confirmatory grant.

³⁹

12:3-44. Who entitled to confirmatory lease or grant

Any person owning riparian lands shall be deemed to be entitled to the benefits of sections 12:3-38 to 12:3-43 of this title.

COMMENT

The source sections have been combined and rewritten for clarity.

TF-2. Factors considered in determining whether to make confirmatory lease or grant

The Tidelands Resource Council may determine that it is equitable and just to make a confirmatory grant or lease if it determines that:

- a. The consideration paid for the original lease or grant was at the date of its execution full and adequate consideration for the lands leased or granted;
- b. The lands leased or granted lie in front of the upland on which the lease or grant was based because the lands under water in the vicinity of the lands under consideration have been equitably apportioned to the upland owners by any agency authorized by law to make grants of tidelands in the name of the State and the lands under consideration are within the area of the tidelands so apportioned to the lands owned by the petitioner, and provide reasonable access to upland owners to deep water beyond bulkhead and pierhead lines;
- c. The lands leased or granted lie in front of the tidelands of the petitioner because the lands so leased or granted constitute an equitable allotment or apportionment of the lands under water to the tidelands to which they are attached, even though the boundaries defining the limits of the lands granted are irregular and do not constitute straight side lines running parallel to each other and extending from the shore to the bulkhead or pierhead lines, and provide reasonable access to upland owners to deep water beyond bulkhead and pierhead lines; and
- d. The owner of all estates, rights and privileges under the lease or grant to be confirmed to the extent of the lands under water to be defined in a confirmatory lease or grant is the petitioning owner of tidelands to be benefited on the date the petition is filed, or at the date of the finding of the board that it is equitable and just that a confirmatory lease or grant shall be executed.

Source: 12:3-42⁴⁰

COMMENT

The introductory paragraph has been simplified. The terminology has been conformed to other provisions of this subtitle.

TF-3. Execution of confirmatory lease or grant

The Tidelands Resource Council may execute a confirmatory grant or lease in consideration of the moneys previously paid to the State for the lease or grant, or upon payment of such further consideration as may be equitable and just. Any confirmatory lease or grant made in compliance with this chapter shall be conclusive and final as to its equity or justness and thereafter shall be binding upon the State.

Source: 12:3-39⁴¹

⁴⁰ 12:3-42. Facts to be considered by board in determining whether confirmatory lease or grant should be granted

The board may, in reaching its conclusion that it is equitable and just to confirm in a present riparian owner title to lands now or formerly under tidal waters which he has acquired through any previous lease or grant of the state, determine that it is equitable and just if it determines that:

- a. The consideration paid for the original lease or grant was at the date of its execution full and adequate consideration for the lands so leased or granted;
- b. The lands leased or granted lie in front of the riparian lands on which the lease or grant was based because the lands under water in the vicinity of the lands under consideration have been equitably apportioned to the riparian owners by any agency authorized by law to make grants of land under tidal waters in the name of the state and the lands under consideration are within the area of the lands under water so apportioned to the lands owned by the petitioner, and provide reasonable access to riparian owners to deep water beyond bulkhead and pierhead lines;
- c. The lands leased or granted lie in front of the riparian lands of the petitioner because the lands so leased or granted constitute an equitable allotment or apportionment of the lands under water to the riparian lands to which they are attached, even though the boundaries defining the limits of the lands granted are irregular and do not constitute straight side lines running parallel to each other and extending from the shore to the bulkhead or pierhead lines, and provide reasonable access to riparian owners to deep water beyond bulkhead and pierhead lines; and
- d. The owner of all estates, rights and privileges under the lease or grant to be confirmed to the extent of the lands under water to be defined in a confirmatory lease or grant is the petitioning owner of riparian lands to be benefited on the date the petition is filed, or at the date of the finding of the board that it is equitable and just that a confirmatory lease or grant shall be executed.

COMMENT

The language of the source section has been simplified and conformed. The passage "a proper confirmatory lease or grant shall be executed and delivered to the petitioner, his heirs, successors or assigns" has been eliminated as unnecessary.

TF-4. Deed to grantee or licensee under legislative act

a. A grant from the State to tide-flowed or formerly tide-flowed lands or any interest in such lands shall be given by the Tidelands Resource Council to any person who, by any legislative act, is a grantee or licensee of such lands or is the successor in interest to the grantee or licensee.

b. A person seeking a grant pursuant to this section shall provide the Tidelands Resource Council with a certified copy of the legislative act pursuant to which the right to a deed is claimed.

c. A grant given by the State pursuant to this section shall contain a conveyance according to the terms of the legislative grant under which the right to the deed is claimed, and shall include any provisions that were stipulated by L.1952, c.225, sec. 1 as may be applicable to the grant or lease.

d. A grant given by the State pursuant to this section shall be executed in the same manner as other grants and leases of tidelands pursuant to this subtitle.

Source: 12:3-5⁴²

COMMENT

This provision was first enacted as section 4 of the General Riparian Act of 1869, L.1969, c.363. It permits grantees and licensees who acquired their rights in tidelands by a prior legislative act to apply for and

⁴¹ 12:3-39. Execution of confirmatory lease or grant; consideration; effect

If the board finds that it is equitable and just that such a confirmatory lease or grant be executed in consideration of the money heretofore paid to the state on account of the lease or grant, or upon payment of such further consideration as may be equitable and just, a proper confirmatory lease or grant shall be executed and delivered to the petitioner, his heirs, successors or assigns. A confirmatory lease or grant made in compliance with sections 12:3-38 to 12:3-44 of this title shall be conclusive and final as to its equity or justness and thenceforth shall be binding upon the state.

⁴² 12:3-5. 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

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 sixtyfour," approved March thirtyfirst, one thousand eight hundred and sixty-nine (12:3-4 of this Title), 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 Planning and Development Council in the Department of Conservation and Economic Development, 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 Planning and Development Council, and Commissioner of Conservation and Economic Development with the Governor and Attorney General for the time being, to be shown by the Governor signing the grant, and the Attorney General attesting it, 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 Planning and Development Council may fix with the approval of the Commissioner of Conservation and Economic Development 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 Planning and Development Council may fix with the approval of the Commissioner of Conservation and Economic Development 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 board 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 Planning and Development Council may fix, with the approval of the Commissioner of Conservation and Economic Development, the conveyance or lease of the board under this section or sections 12:3-9 of this Title, 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. Amended by L.1952, c. 225, p. 765, § 1, eff. July 4, 1952.

receive a written grant from the State, in a form suitable for recording in the land records, in order to secure the title to the lands. Note the discussion in the introductory material "Assertion of the State's ownership interest in tide-flowed lands," supra, concerning how the inspecific language in these legislative grants led to questions concerning the extent and nature of the interests granted. By a subsequent remedial act in 1871, L.1871, c.605 (see now R.S. 12:3-12) the power to make these "curative" grants was extended to all reclaimed former tidelands, not just those acquired and reclaimed pursuant to a specific legislative grant. As stated in the introduction to this chapter, this section is continued because it is mandatory. While it is unlikely that any legislative grants remain outstanding that have not been converted to grant form, this provision preserves the right of any remaining interest holders by legislative act to obtain a grant from the Tidelands Resource Council.

In this proposed section, the language has been greatly simplified. A reference to the source provision in the chapter laws has been retained in the event of any question as to the nature of the interest which a legislative grantee or licensee is entitled to receive.

Chapter - Erroneous grants and leases

The source of these proposed provisions is an act of 1927, apparently enacted to deal with the problem of tidelands grants and leases erroneously made to non-upland owners. The problem arises because the Legislature has consistently limited the authority of the Tidelands Resource Council and its predecessor entities to conveying tidelands to upland owners except in certain very limited circumstances. In accordance with legislative requirements, grants and leases of tidelands contain a provision which conditions their validity upon the fact of the transferee's status as the owner of adjacent upland (except in cases where a grant or lease is expressly made to a non-upland owner, in which case certain statutory requirements must be met). Thus, if the applicant for a grant or lease of tidelands is not the upland owner, the grant or lease is both ultra vires and invalid according to its terms. In addition, such a grant or lease could be upset by the true upland owner if that owner was not given notice of the impending transaction under the provisions noted above. An erroneous grant or lease may occur, for example, because of an error concerning the title to upland, or because a conveyance of the upland occurs during the pendency of an application for a grant or lease. This chapter mitigates the situation by putting a five-year limit on the right of the true upland owner to challenge the transaction, and further by allowing the erroneous grantee or the grantee's successors in interest to apply for a valid grant or lease, provided that the specified conditions are met.

TG-1. Erroneous grant of tidelands to other than adjacent owner

Whenever the Tidelands Resource Council grants tidelands of the State to any person erroneously claiming to be the owner of the adjacent upland, and by virtue of that fact the grant is void according to its terms, every preemptive and other statutory right of the true upland owner to apply for and obtain a grant from the State of the lands so occupied shall cease unless the upland owner, before the expiration of the period of five years of occupation, applies in writing to the Council for a grant of the lands so occupied; and pays the price fixed, which price shall include the reasonable value of the improvements upon the lands.

This section shall apply only if:

- a. The state has received the stipulated consideration for the erroneous grant; and
- b. The grantee named in the grant, or the grantee's successors in interest have recorded the grant in the county or counties where the land described is located; and
- c. The grantee, or the grantee's successors in interest have gone into occupation of the lands described in the grant and the lands if any between the same and the original high-water line by bulkheading or filling in, or erecting structures thereon, or otherwise improving the land in a way that gives visible notice of the grantee's occupation; and
- d. The occupation has continued for a period of five years after the recording of the supposed grant.

Source: 12:3-45⁴³

⁴³ **12:3-45. Erroneous grant to other than riparian owner; valid unless riparian owner acts**

Whenever:

- a. The board of commerce and navigation has granted or shall hereafter grant any lands of the state flowed by tidewater to any person erroneously claiming to be and not being the riparian owner, by reason whereof the grant shall be void as therein provided; and
 - b. The state has or shall have received the stipulated consideration for such supposed grant; and
 - c. The grantee named therein, or his heirs or assigns has or shall have recorded the grant in the county or counties where the land described therein shall or may be located; and
 - d. Such grantee, his heirs or assigns has or shall have gone into occupation of the lands described in the supposed grant and the lands if any between the same and the original highwater line by bulkheading or filling in, or erecting structures thereon, or otherwise improving the same in such manner as to give visible notice of such occupation; and
 - e. Such occupation has or shall have continued for a period of five years after the recording of the supposed grant
- Every pre-emptive and other right conferred by any legislative act upon the riparian owner to apply for and obtain a grant from the state of the lands so occupied shall cease and determine, unless the riparian owner shall, before the expiration of such period of five years of occupation, apply in writing to the board for a grant of the lands so occupied; and pay or give security for the price fixed or that shall be fixed therefor, which price shall include the reasonable value of the improvements upon the lands.

COMMENT

This section has been restructured. the phrase “his heirs or assigns” has been changed to “the grantee’s successors in interest.” Other minor change in language have been made.

TG-2. Subsequent grant to named grantee

If the actual upland owner fails to apply for a grant and pay the consideration for the grant within five years of the occupation of the lands as provided in [proposed section TG-1], the Tidelands Resource Council, on application of the person named in the erroneous grant, or the grantee’s successors in interest, shall convey absolutely in fee to the applicant all right and title of the State in and to the lands so occupied and without condition that the grant shall be void if the grantee is not the upland owner.

Source: 12:3-46⁴⁴

COMMENT

Minor changes in language. The phrase “his heirs and assigns” changed to “the grantee’s successors in interest.”

TG-3. Additional consideration for further grant

If the Tidelands Resource Council determines that the original consideration paid to the State for an erroneous grant was not the reasonable, fair and adequate value of the lands occupied as of the date of the supposed grant, the applicant shall pay to the State such additional consideration for a further grant as the Council determines to be necessary, in order that the total consideration received by the State for the lands shall be reasonable, fair and adequate as of the date of the original erroneous grant.

Source: 12:3-47⁴⁵

COMMENT

Minor changes in language.

⁴⁴ **12:3-46. Grant to named grantee in default of application and payment by riparian owner**

In default of such application and payment of or security for the price of the lands by the riparian owner within the period of five years of occupation of the lands, the board, on application of the person named in the supposed grant, or of his heirs and assigns, shall grant and convey absolutely in fee to the applicant, his heirs or assigns forever, all right and title of the state in and to the lands so occupied and without condition that the grant shall be void if the grantee is not the riparian owner.

⁴⁵ **12:3-47. Additional consideration for further grant**

If the board shall determine that the original consideration paid to the state for the supposed grant was not the reasonable, fair and adequate value of the lands so occupied, as of the date of the supposed grant, the applicant shall pay to the state such additional consideration for a further grant as the board shall determine to be necessary, in order that the total consideration received by the state for the lands shall be reasonable, fair and adequate as of the date of the original supposed grant.

Chapter - Delinquent leases of tidelands

The source provisions in this proposed chapter were all enacted in the early twentieth century as part of the same act, see L.1906, c.83. The source provisions provide a process by which leased tidelands may be recovered when rental payments are in arrears. The method provided for reentry is archaic; a more modern approach, of giving notice, followed by recording the termination of the lease, has been substituted. Certain unnecessary provisions deriving from this source act, i.e., 12:3-53, -54 and -55, are recommended for repeal.

TH-1. List of tidelands leases in arrears

The department shall, on or before the first Tuesday in January in each year, make out a list of all tidelands leases held by the State on which rentals are in arrears and unpaid for one year, and transmit the list to the Tidelands Resource Council.

Source: 12:3-48⁴⁶

COMMENT

Minor changes in language.

TH-2. Termination of tidelands leases

If a lease of tidelands made in the name of the State is in arrears for a year, and the lease contains a covenant or condition that upon nonpayment of the yearly rental or other periodic sum the State may reenter and possess the leased lands, the Tidelands Resource Council may terminate the lease by serving and filing written notice of termination as provided in this chapter.

Source: 12:3-49⁴⁷ 12:3-50⁴⁸

COMMENT

The source provisions specified a procedure involving physical reentry on the land. These re-drafted provisions substitute the filing of a notice of termination for physical reentry.

TH-3. Notice of termination and service of the notice

- a. Written notice of termination of a lease of State tidelands shall state:
 - (1) The name of the person or entity to whom the lease was granted;
 - (2) The name of the person or entity holding the lease by devise, grant, assignment or otherwise, if known to the Council;
 - (3) A description of the leased lands and the nature of the lessee's interest; and

⁴⁶ **12:3-48. List of riparian leases in arrears**

The state treasurer shall, on or before the first Tuesday in January in each year, make out a list of all riparian leases held by the state on which rentals are in arrears and unpaid for the space of one year, and transmit the same to the board of commerce and navigation.

⁴⁷ **12:3-49. Re-entry under covenant by board on behalf of state when rent unpaid**

Where a riparian lease, the rentals of which are unpaid for the space of one year, contains a covenant or condition that upon nonpayment of the yearly rent or sum reserved at the time or times fixed for the payment thereof, the state may reenter and possess the lands described in the lease, the board may enter upon said lands, and in the name and on behalf of the state, take possession thereof.

⁴⁸ **12:3-50. Manner of reentry**

Such entry shall be made by the board or any member thereof, by going on the land and announcing in the presence of one or more witnesses that all rights under the lease are forfeited to the state.

(4) A statement that if the rentals unpaid are not paid on or before the expiration of six weeks from the date the notice is served, the lease shall terminate and all rights under the lease shall become void and forfeited to the State.

b. The written notice of termination shall be served:

(1) By personal service upon the lessee, or the guardian of the lessee if the lessee is a minor or incompetent.

(2) If the lessee is a corporation, by personal service upon any officer performing the duties of president, secretary, treasurer or director within this State or upon the registered agent of the corporation.

(3) By certified or registered mail to the actual address of the lessee, if known, if the lessee is not a resident of this State, or to the lessee's last address shown on the tax records of the municipality in which the tidelands are located.

c. If the notice of termination cannot be served as provided in this section, the notice may be published once a week for at least six weeks in a newspaper published in the county in which the leased tidelands are located.

Source: 12:3-51⁴⁹ 12:3-52⁵⁰

COMMENT

The source sections have been combined into a single section, and minor changes in language have been made. The order of preference in giving notice has been reversed, to make it clear that personal service of a notice is preferred to notice by publication, given current standards of due process requiring notice prior to the extinguishment of interests in property.

TH-4. Filing of notice of termination

a. Upon the expiration of six weeks from the service or last publication of the notice of termination, if the amount of arrears remains unpaid, the notice of termination shall be recorded in the records of the county in which the lands are located in the same manner as a deed. The same fee shall be paid for recording the notice of termination as is required for recording deeds.

b. Upon the recordation of the notice of termination, all rights of the lessee shall terminate, and the State may re-enter and possess, or re-lease, the tidelands described in the lease.

Source: 12:3-55⁵¹

COMMENT

Minor changes in language.

⁴⁹**12:3-51. Notice**

Before the entry is made the board shall give notice:

a. By publication at least once a week for six weeks in a newspaper published in the county in which the land covered by the lease is situate; or

b. By serving a copy of the notice personally on the lessee, his heirs, executors, administrators, successors or assigns.

⁵⁰**12:3-52. Contents of notice**

The notice so to be published or served shall set forth:

a. The name of the person to whom the lease was granted;

b. The name of the person holding the lease by devise, grant, assignment or otherwise, if known to the board; and

c. A statement that if the rentals unpaid are not paid on or before the expiration of said six weeks, all rights under the lease shall determine, become void and forfeited to the state.

⁵¹**12:3-55. Certificate of re-entry and repossession; recording; fee**

Upon making entry and taking possession of any lands described in any such lease, the board shall execute its certificate certifying to the re-entry and repossession and describing the lands entered and repossessed.

The certificate shall be executed and acknowledged as deeds are required to be acknowledged, and shall be recorded in the records of the county wherein such lands are located as deeds are required to be recorded.

The same fee shall be paid for recording the certificate as is required for recording deeds.

Chapter - Acquisition of upland

This chapter permits the Department of Environmental Protection to acquire upland by purchase or by condemnation, and to convey it, along with adjacent tidelands, for the purpose of developing and improving waterways, waterfront properties, or access to lands of the State.

TI-1. Acquisition of tidelands by department

The department may acquire title, in fee simple, in the name of the State, by gift, devise or purchase or by condemnation in the manner provided in Title 20 Eminent Domain to any lands in the State, including upland adjacent to tidelands, of such area and extent which, in the discretion of the department, may be deemed necessary and advisable. All lands so acquired shall be subject to the jurisdiction and control of the department.

Lands acquired pursuant to this chapter shall be used for the improvement or development of any waterway, stream, river or creek or any waterfront or oceanfront property or to give access to any lands of the State.

Source: 12:3-64⁵²

COMMENT

Minor changes in language. The cross-reference to Title 20 Eminent Domain has been updated (chapter 1 of Title 20 was repealed in 1971). The second and third paragraphs of the source section concerning the manner in which acquisition by condemnation is undertaken, have been deleted; acquisition of lands by condemnation should comply in all respects with the current title on Eminent Domain.

TI-2. Lease or grant of lands acquired

a. The use and occupation of any lands acquired by the department pursuant to this chapter, together with all the improvements upon it, may be leased or granted by the Tidelands Resource Council to any person, upon such terms and covenants and for such periods of time not exceeding sixty years, as may be required and directed by the Council.

b. The grant or lease of uplands shall be permitted only in conjunction with the grant or lease of the adjacent tidelands and only to the same party or parties and for the same period of time.

Source: 12:3-65⁵³

COMMENT

Minor changes in language.

⁵² 12:3-64. Acquisition by department; jurisdiction; entry before making compensation; use of lands acquired

The Department of Conservation and Economic Development may acquire title, in fee simple, in the name of the State, by gift, devise or purchase or by condemnation in the manner provided in chapter one of the Title Eminent Domain (20:1 et seq.) to any lands in the State, including riparian lands, of such area and extent which, in the discretion of the department, may be deemed necessary and advisable. All lands so acquired shall be subject to the jurisdiction and control of the department.

The department may enter upon and take property in advance of making compensation therefor where for any reason it cannot acquire the property by agreement with the owner.

Upon the department exercising the right of condemnation and entering upon and taking land in advance of making compensation therefor it shall proceed to have the compensation fixed and paid to the owner, as provided in said chapter one of the Title Eminent Domain.

Lands thus acquired shall be used for the improvement or development of any waterway, stream, river or creek or any waterfront or oceanfront property or to give access to any lands of the State. Amended by L.1939, c. 193, p. 569, | 1; L.1953, c. 12, p. 101, | 7eff. March 19, 1953.

⁵³ 12:3-65. Lease or grant of lands acquired; maximum period; restrictions

The use and occupation of any lands so acquired, together with all the improvements thereon, may be leased or granted by the board to any person, upon such terms and covenants and for such periods of time not exceeding sixty years, as may be required and directed by the board.

The grant or lease of riparian lands shall be permitted only in conjunction with the grant or lease of the adjacent lands under tidewater and only to the same party or parties and for the same period of time.

TI-3. Lease or grant to former owner

a. The Tidelands Resource Council may, as a consideration for the transfer of title of any uplands to the state, enter into an agreement with the owner of the upland to lease and grant, after transfer of title to the state, the use and occupation of the upland as well as the adjacent tidelands, to such owner or any party designated by him, whereby the lands, both upland and under tidelands, shall be improved and developed at the expense of the grantee or lessee, in such manner, under such plans and specifications, at such minimum cost and within such time as may be required by the Council.

b. The Council shall also require that after such improvements have been made and constructed, the lessee or grantee shall, under the supervision and jurisdiction of the council, maintain and operate, during the life of the lease or grant upon said premises, such enterprise, commercial operation, business or venture as the improvements are designed for, at the sole cost and expense of the lessee or grantee.

Source: 12:3-66⁵⁴ 12:3-67⁵⁵

COMMENT

The source sections have been combined. Minor changes in language to conform terminology to other proposed provisions.

TI-4. Annual percentage of income in lieu of rent reserved in cash

In lieu of rent reserved in cash for the grant or lease of lands pursuant to this chapter, the Tidelands Resource Council may require as rental, for the full term of the grant or lease, an annual percentage of not less than thirty-three and one-third per cent of the income the less ee or grantee received from the use and occupation of the premises and the business or enterprise conducted on the premises. The income shall be calculated and adjusted in such manner as the Council shall determine and all of the requirements shall be set forth in detail in the grant or lease.

Source: 12:3-68⁵⁶

COMMENT

Minor changes in language.

TI-5. Expiration of grant or lease

At the expiration of the term of a grant or lease pursuant to this chapter, the title to all improvements, railways, buildings, docks, wharves, bulkheads, machinery, stock and equipment and all chattels comprising the fixtures located upon the land and premises and then in the operation and maintenance of the enterprise, business or venture conducted on the premises, together with the title and goodwill of the business or enterprise, shall vest in the state. The grant or lease shall contain in detail the mode and manner and subject matter of the transfer to the state.

⁵⁴ **12:3-66. Lease or grant to former owner; improvements by lessee or grantee**

The board may, as a consideration for the transfer of title of any riparian lands to the state, enter into an agreement with the owner thereof to lease and grant, after transfer of title to the state, the use and occupation of the riparian lands as well as the adjacent lands under tidewater, to such owner or any party designated by him, whereby the lands, both riparian and under tidewater, shall be improved and developed at the expense of the grantee or lessee, in such manner, under such plans and specifications, at such minimum cost and within such time as may be required by the board.

⁵⁵ **12:3-67. Operation of commercial enterprise by lessee or grantee**

The board shall also require that after such improvements have been made and constructed, the lessee or grantee shall, under the supervision and jurisdiction of the board, maintain and operate, during the life of the lease or grant upon said premises, such enterprise, commercial operation, business or venture as the improvements are designed for, at the sole cost and expense of the lessee or grantee.

⁵⁶ **12:3-68. Annual percentage of income in lieu of rent reserved in cash**

In lieu of rent reserved in cash for the grant or lease of said riparian lands and lands under tidewater, the board may require as rental, for the full term of the grant or lease, an annual percentage of not less than thirtythree and onethird per cent of the income the lessee or grantee received from the use and occupation of the premises and the business or enterprise conducted thereon. The income shall be calculated and adjusted in such manner as the board shall determine and all of such requirements shall be set forth in detail in the grant or lease.

Source: 12:3-70⁵⁷

COMMENT

Minor changes in language.

⁵⁷

12:3-70. Improvements and fixtures and title and goodwill of enterprise to revert to state

At the expiration of the term of the grant or lease the title to all improvements, railways, buildings, docks, wharves, bulkheads, machinery, stock and equipment and all chattels comprising the fixtures located upon such land and premises and then in the operation and maintenance of the enterprise, business or venture conducted on the premises, together with the title and goodwill of the business or enterprise, shall vest in the state. The grant or lease shall contain in detail the mode and manner and subject matter of the transfer to the state.

Chapter - Hackensack Meadowlands

The provisions in this chapter were enacted as part of the 1968 legislation which created the Hackensack Meadowlands Development Commission. See L.1968, c.404. This legislation was enacted at a time when economic development of the Hackensack meadowlands in Bergen County was envisioned, and the Legislature was concerned about title questions arising out of State claims to tidelands in that area. The provisions concerning tidelands claims directed the State to study a particular category of tidelands, i.e., meadowlands, or salt-water swamps, to map those areas and to affirmatively set forth State claims to those lands in maps filed in the counties in which the claimed lands were situated. The legislation also provided a method by which persons with adverse claims could assert their claims, and, if appropriate, obtain title documents to perfect their title. Provision was also made for parties to apply for grants of meadowlands, and, in the case of meadowlands within the jurisdictional area of the then-newly-created Hackensack Meadowlands Development Commission ("HMDC"), for consideration and review of those applications by that Commission.

The deadline for the completion of the mapping process was extended twice, see L.1975, c.288, sec.1 and L.1978, c.44, sec.1. Ultimately, the Legislature became dissatisfied with the pace of work in the surveying and mapping project, and with the persistent title problems in tidelands areas throughout the State. This dissatisfaction led to the proposal for a constitutional amendment to limit State claims to certain former tidelands. The proposal was adopted by referendum in November 1981. The amendment added section 5, paragraph 1, to N.J.Const. Art VIII, providing that the State is barred from claiming as State-owned, any former tidelands that have been dry land (i.e., "upland") for more than 40 years unless an affirmative claim has been made. The State was also given an additional year from the date of the adoption of the amendment to assert any such claims to former tidelands.

It should be noted that as originally enacted, the provisions continued in this chapter applied only to "meadowlands," i.e., salt water swamps, throughout the State. Nevertheless, at the time this legislation was enacted, the State had undertaken to survey and map all tidelands throughout the State, and continued to include non-meadowlands tidelands after the legislation was enacted.

Although the enactment of the constitutional amendment and the passage of time have rendered some of the source provisions inoperative, those included below have continuing vitality. It should be noted that the Tidelands Resource Council has adopted some of the procedures and standards set forth in these provisions, applicable by their terms only to meadowlands, to other tidelands applications. The Council has the discretion to apply these standards and procedures to all tidelands applications, even though non- meadowlands applications are not required to be processed or considered according to these provisions.

HM-1 Applicability

This chapter shall apply to those lands, now or formerly consisting chiefly of salt water swamps, meadows, or marshes, known as meadowlands.

Source: 13:1B-13.1⁵⁸

COMMENT

The source provision contained definitions of the terms "meadowlands," "virgin meadowlands," and "improved meadowlands." The last two terms were not used in any of the operative provisions of the source legislation. Only the definition of the term "meadowlands" is retained here, as it defines the scope of the chapter.

⁵⁸ **13:1B-13.1. Definitions**

As used in sections 86 through 102, inclusive, of this act.

(a) "Meadowlands" means those lands, now or formerly consisting chiefly of salt water swamps, meadows, or marshes;
(b) "Improved meadowlands" means such meadowlands as have been reclaimed by fill or other material thereon, and may include the erection of structure.
(c) "Virgin meadowlands" means such meadowlands that are still in their natural state and upon which no diking, fill or structures have been placed.
(d) "Council" means the Resource Development Council of the Department of Conservation and Economic Development. L.1968, c. 404, §87.

HM-2 Application for conveyance or lease of State's interest in meadowlands

a. Any claimant of meadowlands may apply to the Tidelands Resource Council for a conveyance or lease of the State's interest in the claimed lands. The application shall include a survey of the property showing its metes and bounds, an affidavit of title, a copy of the instrument of title under which the applicant claims the land; a statement of the purpose for, and the manner in which, the applicant proposes to use or further improve the property; and any other information that the Council requires. Any claimant owning meadowlands and applying only for a meadowlands grant or quitclaim instrument may apply for and receive a meadowland's riparian instrument for those lands without regard to the requirement of notices to riparian proprietors contained in [R.S. 12:3-7 and R.S. 12:3-7.1].

b. Any department, agency or instrumentality of the State, any county or municipality, or any person, not a claimant of meadowlands, may apply to the Council for a conveyance or lease of the State's interest in meadowlands. The application shall include a survey of the property showing its metes and bounds; a copy of the latest purported title which has been duly recorded in the county recording office in which the land is located; a statement of the purpose for, and the manner in which the applicant proposes to utilize or further improve the property; an affidavit of the applicant that the applicant has sent notification of the application to the person or persons named in such instrument of title and to the person or persons named as the owners in the tax records of the municipality in which the lands are located; and any other information that the Council requires. No title or lease shall be issued pursuant to this subsection until any claimant to all, or part of, the property applied for has been given notice of the application and 3 months thereafter, in which to apply for a conveyance or lease of the lands.

Source: 13:1B-13.7⁹

COMMENT

The source provision sets forth requirements for an application by both claimants and non-claimants of meadowlands, including state departments and agencies, municipalities and other governmental entities. The language of the section has been rearranged to consolidate the provisions belonging to the two classes of applicants. Minor changes in language have been made as well.

HM-3 Consideration of mean high water line

In determining whether a parcel of land which is the subject of an application pursuant to this chapter is now or was formerly flowed by mean high tide, the Tidelands Resource Council shall take into account the mean high water line as established by the United States Coast and Geodetic Survey, the nature of the vegetation on the land, artificial changes inland or water elevation, and any other historical or scientific data which, in the opinion of the Council, are relevant

Source: 13:1B-13.3⁰

⁵⁹ **13:1B-13.7. Conveyance or lease of state's interest; application**

(a) Any claimant of the meadowlands who shall desire to obtain a conveyance or lease of the State's interest in such land may apply to the council submitting with his application, a survey of the property showing its metes and bounds, an affidavit of title, a copy of the instrument of title under which he claims the land, a statement of the purpose for, and the manner in which, the claimant proposes to use or further improve the property and such other information as the council shall require.

(b) Any department, agency or instrumentality of the State, county, municipality, or any person, not a claimant, may apply to the council for a conveyance or lease of the State's interest in the meadowlands, said application shall contain a survey of the property showing its metes and bounds, a copy of the latest purported title which has been duly recorded in the county recording office in which the land is located, a statement of the purpose for, and the manner in which the applicant proposes to utilize or further improve the property, an affidavit of the applicant that he has sent notification of his application to the person or persons named in such instrument of title and to the person named as the owners in the tax records of the municipality in which the lands are located, and such other information as the council may require. No title or lease shall be issued pursuant to this subsection until any claimant to all, or part of, the property applied for has been given notice of the application and 3 months thereafter, in which to apply for a conveyance or lease of said lands.

(c) Any claimant owning meadowlands and applying only for a meadowlands grant or quitclaim instrument may apply for and receive a meadowland's riparian instrument for such lands without regard to the requirement of notices to riparian proprietors contained in R.S. 12:3-7 and R.S. 12:3-7.1. L.1968, c. 404, §93. Amended by L.1973, c. 335, § 2eff. Dec. 27, 1973.

COMMENT

The source provision set a standard for determining the mean high water line in the making of studies and surveys which have long since been completed. To the extent that a determination must be made of the mean high water line in considering an application for a conveyance or lease of meadowlands, it retains validity. The source provision has been rewritten in more general language, to apply to any circumstance in which the mean high water line must be determined by the Tidelands Resource Council in a meadowlands application.

HM-4 Action by persons aggrieved

a. Any person aggrieved by a designation by the Tidelands Resource Council that a parcel is State-owned land may file an application with the Council, including pertinent information, maps, studies or other matters documenting the person's claim of title. Within 90 days of the filing of the application, the Council shall determine either to issue a statement or quitclaim deed indicating that the State has no interest or releases its claim in the property or shall reaffirm that all or part of the property is or may be State-owned.

b. Any person aggrieved by a designation by the Council that a parcel is State-owned may, either initially or after requesting the review as provided by subsection (a.), commence an action in the Superior Court to adjudicate the title dispute.

Source: 13:1B-13.5⁶¹

COMMENT

Minor changes in language.

HM-5 Recommendations on application

Within 10 days of receipt of any application for a conveyance or lease pursuant to this chapter, or any extension of a lease, the Tidelands Resource Council shall send a copy of the application and all materials submitted with it to the Department of Transportation; the Department of Community Affairs; and the Department of Environmental Protection and other interested governmental agencies. A copy of the application and materials shall also be sent to the Hackensack Meadowlands Development Commission, if the application pertains to lands within the jurisdiction of the Commission.

The Council shall take no action on an application until receiving the recommendations of the Commission and the departments and agencies regarding the application, or for 45 days, whichever occurs first. Any recommendation shall be considered by the Council and the authorized State officials in determining the terms, conditions and consideration for the conveyance or lease. A copy of the recommendations shall also be forwarded to the Governor.

⁶⁰ **13:1B-13.3. Consideration of mean high water line**

In making a thorough study of all such lands to determine which are State-owned lands and in making its determination the council shall take into account the mean high water line as established by the United States Coast and Geodetic Survey, the nature of the vegetation thereon, artificial changes inland or water elevation, and such other historical or scientific data which, in the opinion of the council, are relevant in determining whether a parcel of land is now or was formerly flowed by mean high tide. L.1968, c. 404, §89.

⁶¹ **13:1B-13.5. Action by persons aggrieved**

(a) Any person aggrieved by a designation by the council that certain parcels are State-owned lands may file with the council pertinent information, maps, studies or other matters documenting his claim of title. Within 90 days the council shall determine either to issue a statement or quitclaim deed indicating that the State has no interest or releases its claim in the property or shall reaffirm that all or part of said property is or may be State-owned.

(b) Any person aggrieved by a designation by the council that certain parcels are State-owned may, either initially or after requesting the review as provided by subsection (a), commence an action in the Superior Court to adjudicate the title dispute. L.1968, c. 404, §91. Amended by L.1973, c. 335, §1, eff. Dec. 27,1973.

Source: 13:1B-13.8²

COMMENT

The source provision has been reworded for clarity.

HM-6 Approval of application

The Council shall approve an application for lease, conveyance, license or permit, if after investigation and a review of the recommendations submitted to it pursuant to HM-5, it is satisfied that the lease, conveyance, license or permit will be in the public interest. In determining whether a lease, conveyance, license or permit is in the public interest, the council shall consider the environmental impact of the use proposed to be made of the property in question.

Source: 13:1B-13.9³

COMMENT

Minor changes in language.

HM-7 Consideration, terms and conditions of transaction

Upon approving an application for a conveyance, lease, license or permit, the Tidelands Resource Council shall determine the fair market value of the property in question at the time of the transaction. The Council shall base the consideration upon the fair market value at the time of the State's interest in the property at the time of the transaction. In determining the consideration to be charged, the Council shall take into account the actions of a claimant under color of title who in good faith make improvements or paid taxes, or both, on the lands in question. The Council may set terms and conditions on the transaction as it deems necessary and appropriate.

Upon receipt of the payment of the consideration for a conveyance, the Council and the appropriate State officers, in accordance with the riparian statutes, shall convey the premises by deed of bargain and sale or quitclaim deed under the seal of the State. The Council and the appropriate State officers shall require terms and conditions in the conveyance instrument as they deem necessary and appropriate.

The lessee shall have the option of acquiring, if the council approves, a conveyance of the State's interest at any time during the term of the lease or any extension of the lease. In fixing the consideration for a conveyance, the Council and the appropriate State officers shall determine the fair market value of the property and the State's interest in the property at the start of the lease and shall give a reasonable credit for the rental paid by the lessee during the term of the lease or any extension of the lease.

⁶² **13:1B-13.8. Recommendations on application**

Within 10 days of receipt of any application for a conveyance or lease, or any extension thereof, the council or its staff shall send a copy of the application and all material submitted therewith to the Hackensack Meadowlands Development Commission, if said application pertains to lands within the district; the Department of Transportation; the Department of Community Affairs; and the Department of Environmental Protection and other interested governmental agencies. The council shall take no action on such application until receipt of the recommendations of said commission and departments and agencies regarding the application or for 45 days, whichever occurs first. Any such recommendation shall be considered by the council and the authorized State officials in determining the terms, conditions and consideration for the conveyance or lease, and a copy thereof shall be forwarded to the Governor. L.1968, c. 404, §94. Amended by L.1973, c. 335, § 3ff. Dec. 27, 1973.

⁶³ **13:1B-13.9. Approval of application; fixing of consideration; conveyance by deed of bargain and sale or quitclaim deed**

The council shall, subject to the provisions of applicable law, approve an application for lease, conveyance, license or permit, if after investigation and a review of the recommendations submitted to it pursuant to section 94, it is satisfied that the lease, conveyance, license or permit will be in the public interest. In determining whether a lease, conveyance, license or permit is in the public interest, the council shall consider the environmental impact of the use proposed to be made of the property in question. The council shall further determine the fair market value of the property at the time of the lease, conveyance, license or permit and shall fix the proper consideration to be charged for the lease, conveyance, license or permit of the lands owned by the State or quitclaim of any claim asserted by the State. In determining such consideration the council shall take into account the actions of a claimant under color of title who in good faith made improvements or paid taxes, or both, on the lands in question. Upon receipt of the payment of the consideration for a conveyance, the council and the appropriate State officers in accordance with the riparian statutes, shall convey the premises by deed of bargain and sale or quitclaim deed under the seal of the State. The council and the appropriate State officers shall require such terms and conditions in the conveyance instrument as it deems necessary and appropriate. L.1968, c. 404, §95. Amended by L.1973, c. 335, §4, eff. Dec. 27, 1973.

Source: 13:1B-13.9 [above], 13:1B-13.10⁶⁴

COMMENT

This proposed provision consolidates the provisions of the source statutes, except those provisions in 13:1B-13.9 which are retained in the immediately previous proposed section.

HM-8 Effect of application for lease

The application for or acceptance of a lease shall not be deemed a recognition of the State's claim of paramount title by the claimant, nor shall the claimant be deemed to have waived the right to apply for an adjudication of title to the Superior Court. An application for any conveyance may also be made after the claimant has failed to establish the primacy of the claimant's title before the Superior Court.

Source: 13:1B-13.11⁶⁵

COMMENT

Minor language changes.

HM-9 Termination of lease

Upon the expiration of a lease pursuant to this chapter, or any renewal of a lease, the lessee shall cease activity on the land and vacate the parcel. The lessee shall be entitled to be reimbursed by the Council for the provable original cost of any reclamation performed on the parcel prior to January 13, 1969 or with the approval of the Council, and also for the value of any permanent structures erected on the parcel prior to January 13, 1969 or with the approval of the Council. The amount of reimbursement for permanent structures shall be based on the provable original cost, unamortized, at the time of expiration of the lease.

Source: 13:1B-13.12⁶⁶

COMMENT

Minor language changes. "The effective date of this act" changed to January 13, 1969, the effective date of L.1968, c.404.

⁶⁴ **13:1B-13.10. Investigation of applications for and approval of lease, license or permit; terms and conditions; acquisition of state's interest**

The council shall investigate any application for a lease, license or permit in the wetlands and if the council is satisfied that such a lease, license or permit will be in the public interest, or if the council approves the giving of a lease, license or permit in lieu of the conveyance applied for, the annual rental for the leasehold interest or the fee for the license or permit, shall be fixed based upon the fair market value of the land owned by the State or the value of any interest the State may have in said premises at the time of the lease, license or permit, upon such terms and conditions as the council may deem appropriate. In determining such annual rental the Council shall take into account the actions of a claimant under color of title who in good faith made improvements or paid taxes, or both, on the lands in question.

The lessee shall have the option of acquiring, if the council approves, a conveyance of the State's interest at any time during the term of the lease or any extension. In fixing the consideration for said conveyance, the council and the appropriate State officers shall determine the fair market value of the property and the State's interest therein at the start of the lease and shall give a reasonable credit for the rental paid by the lessee during the term of the lease or any extension thereof. L.1968, c. 404, §96. Amended by L.1973, c. 335, § 6ff. Dec. 27,1973.

⁶⁵ **13:1B-13.11. Application for or acceptance of lease not deemed recognition of state's claim of paramount title**

The application for or acceptance of a lease shall not be deemed a recognition of the State's claim of paramount title by the claimant, nor shall the claimant be deemed to have waived his right to apply for an adjudication of title to the Superior Court. An application for any conveyance may also be made after the claimant has failed to establish the primacy of his title before the Superior Court. L.1968, c. 404, §97.

⁶⁶ **13:1B-13.12. Termination of lease; vacation of premises; reimbursement for original costs of reclamation and permanent structures**

Upon the expiration of the lease, or any renewal thereof, the lessee shall cease his activity and vacate the parcel; provided, however, that he shall be entitled to be reimbursed by the council for the provable original cost of any reclamation performed on the parcel prior to the effective date of this act or with the approval of the council, and also for the value of any permanent structures erected on the parcel prior to the effective date of this act or with the approval of the council. The amount of reimbursement for permanent structures shall be based on the provable original cost, unamortized, at the time of expiration of the lease. L.1968, c. 404, §98.

HM-10 Disposition of proceeds

The net proceeds from the sale, lease or transfer of the State's interest in the meadowlands shall be paid to the Fund for the Support of Free Public Schools established by the Constitution, Article VIII, Section IV, after deducting from the net proceeds any expenditures of the Hackensack Meadowlands Development Commission for reclaiming land within the district. The amount of the deduction for reclamation shall be paid to the Hackensack Meadowland Development Commission.

Source: 13:1B-13.13⁶⁷

COMMENT

Minor changes in language.

HM-11 Approval of conveyances, leases, permits and licenses

Except as expressly provided in this chapter, the Tidelands Resource Council shall approve conveyances, leases, permits and licenses for meadowlands in the same manner and subject to the same provisions, terms, conditions and requirements as are applicable by law to all riparian instruments.

Source: 13:1B-13.14⁶⁸

COMMENT

Minor changes in language. The last sentence concerning the validity of instruments executed prior to the effective date of the 1968 legislation, has been eliminated as superfluous.

⁶⁷ **13:1B-13.13. Disposition of net proceeds from sale, lease or transfer of state's interest in meadowlands**

The net proceeds from the sale, lease or transfer of the State's interest in the meadowlands shall be paid to the Fund for the Support of Free Public Schools established by the Constitution, Article VIII, Section IV, after deducting from the net proceeds any expenditures of the Hackensack Meadowlands Development Commission for reclaiming land within the district. The amount of said deduction for reclamation shall be paid to the Hackensack Meadowland Development Commission. L.1968, c. 404, §99.

⁶⁸ **13:1B-13.14. Approval of conveyances, leases, permits and licenses; validation of instruments**

Except as expressly provided by this act, the council shall approve conveyances, leases, permits and licenses for meadowlands in the same manner and subject to the same provisions, terms, conditions and requirements as are applicable by law to all riparian instruments. Any instrument conveying or releasing the State's interest in the meadowlands executed by the council prior to this act is valid and binding notwithstanding any inconsistency with the provisions of this act. L.1968, c. 404, § 00. Amended by L.1973, c. 335, § 6f. Dec. 27, 1973.

Chapter - Acts repealed and saved from repeal

R-1. Prior acts relating to leases and grants of riparian lands to municipalities for streets, highways, parks and other public purposes

The following acts are saved from repeal:

a. L.1889, c. 199, p. 322 (C.S. p. 4393, | 31), entitled "A further supplement to "An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty -four, and the several supplements thereto," approved April nineteenth, one thousand eight hundred and eighty-nine.

b. L.1901, c. 28, p. 54 (C.S. p. 4393, || 32, 33), entitled "A supplement to an act entitled "A further supplement to "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 the state," approved April eleventh, one thousand eight hundred and sixty-four, and the several supplements thereto,' and which said supplement was approved April nineteenth, eighteen hundred and eighty-nine," approved March seventh, one thousand nine hundred and one.

c. L.1903, c. 202, p. 387 (C.S. p. 4397, || 41 to 43), entitled "A further supplement to "An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty -four," approved April eighth, one thousand nine hundred and three.

d. L.1914, c. 136, p. 237 (1924 Suppl. | 178-46a), entitled "A further supplement to "An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty -four," approved April eighth, one thousand nine hundred and fourteen.

e. L.1914, c. 228, p. 474 (1924 Suppl. | *136-2240A(1)), entitled "An act to authorize the riparian commissioners of the state of New Jersey to grant lands of the state now or formerly under tidewater to municipalities for street and park purposes, and impose terms upon such municipalities as conditions of such grant," approved April seventeenth, one thousand nine hundred and fourteen.

f. L.1915, c. 398, p. 760 (1924 Suppl. || 178-46b, 178-46c), entitled "A further supplement to "An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixty -four," approved April twenty-third, one thousand nine hundred and fifteen.

g. L.1920, c. 283, p. 509 (1924 Suppl. | *42-16), entitled "A supplement to an act entitled "An act creating a department to be known as the board of commerce and navigation, and vesting therein all the powers and duties now devolved by law, upon the board of riparian commissioners, the department of inland waterways, the inspectors of power vessels, and the New Jersey harbor commission,' approved April eighth, one thousand nine hundred and fifteen," passed April twenty-first, one thousand nine hundred and twenty.

Source: 12:3-37⁶⁹

⁶⁹ **12:3-37. Prior acts relating to leases and grants of riparian lands to municipalities for streets, highways, parks and other public purposes**

The following acts are saved from repeal:

a. L.1889, c. 199, p. 322 (C.S. p. 4393, § 31), entitled "A further supplement to "An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixtyfour, and the several supplements thereto," approved April nineteenth, one thousand eight hundred and eighty-nine.

b. L.1901, c. 28, p. 54 (C.S. p. 4393, §§32, 33), entitled "A supplement to an act entitled "A further supplement to "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 the state," approved April eleventh, one thousand eight hundred and sixtyfour, and the several supplements thereto,' and which said supplement was approved April nineteenth, eighteen hundred and eighty-nine," approved March seventh, one thousand nine hundred and one.

c. L.1903, c. 202, p. 387 (C.S. p. 4397, §§41 to 43), entitled "A further supplement to "An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixtyfour," approved April eighth, one thousand nine hundred and three.

d. L.1914, c. 136, p. 237 (1924 Suppl. §178-46a), entitled "A further supplement to "An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixtyfour," approved April eighth, one thousand nine hundred and fourteen.

COMMENT

The acts saved from repeal by this section authorize the making of tidelands grants and leases to municipalities (and in the last act, the state highway commissioner) for parks and recreation and other public purposes, and provide for the reversion of the granted lands to the State if the lands are not used for specified purposes. This provision is continued in this revision in the event that there are such grants outstanding.

e. L.1914, c. 228, p. 474 (1924 Suppl. §136-2240A(1)), entitled "An act to authorize the riparian commissioners of the state of New Jersey to grant lands of the state now or formerly under tidewater to municipalities for street and park purposes, and impose terms upon such municipalities as conditions of such grant," approved April seventeenth, one thousand nine hundred and fourteen.

f. L.1915, c. 398, p. 760 (1924 Suppl. §§178-46b, 178-46c), entitled "A further supplement to 'An act to ascertain the rights of the state and the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state,' approved April eleventh, one thousand eight hundred and sixtyfour," approved April twentythird, one thousand nine hundred and fifteen.

g. L.1920, c. 283, p. 509 (1924 Suppl. § 42-16), entitled "A supplement to an act entitled 'An act creating a department to be known as the board of commerce and navigation, and vesting therein all the powers and duties now devolved by law, upon the board of riparian commissioners, the department of inland waterways, the inspectors of power vessels, and the New Jersey harbor commission,' approved April eighth, one thousand nine hundred and fifteen," passed April twentyfirst, one thousand nine hundred and twenty.

[The above acts authorize the board of commerce and navigation to grant, lease or rent lands under water to municipalities, and under the act saved from repeal in paragraph "g" above, to the state highway commission or to counties, for streets, highways, parks, docks, wharves and other public purposes; regulate the consideration for such grants and leases and specify the conditions to be set forth therein.]

Recommended for repeal

The following provisions are recommended for outright repeal.

12:3-1 Commissioners to make survey and report as to riparian lands, etc.

COMMENT

This section saves from repeal certain provisions of the the 1864 Riparian Act, which established the Board of Riparian Commissioners and empowered them to survey State tidelands in the Hudson River area and report to the Legislature. There does not appear to be any present reason to retain these provisions, therefore this section is recommended for outright repeal.

12:3-4 Repeal of Wharf Act of 1851; reclaiming or building upon lands under tidewaters; consent of department; prior grants and licenses

COMMENT

The second paragraph of the source provision is recommended for continuation, see TB-1 above. The first paragraph of the source provision, recommended for repeal, states a principle of construction relevant to the repeal of The Wharf Act of 1851, that the repeal shall not be construed to revive any former common law rights to appropriate tidelands. Given the century that has passed since the repeal, such an affirmative statement is no longer necessary. The source section also states the principle that the repeal of The Wharf Act, as well as the adoption of the original source provision prohibiting appropriations of tidelands; that is, that previous legislative grants of tidelands are not impaired by the adoption of legislation prohibiting further appropriations of tidelands, nor are interests in tidelands validly acquired pursuant to the provisions of The Wharf Act of 1851 thereby revoked. This provision is also unnecessary, particularly in light of R.S. 1:1-11 (the repeal of an act shall not invalidate property rights acquired under the act prior to its repeal).

12:3-2 Establishment of exterior bulkhead and pier lines in tidewaters of Hudson river, New York bay and Killvon Kull⁷¹

COMMENT

Both this source section and its companion below, 12:3-3, refer specifically to tidelands in the Hudson River, New York bay and Kill von Kull. These are the tidelands that were the first surveyed by the commissioners appointed under the Act of 1863, L.1863, c.391. These Hudson River and adjacent area tidelands were of primary concern to the commissioners because, among other reasons, the State's interest in these lands was under threat from adverse claims by New York State, and the lands were also rapidly being appropriated by private parties filling in and reclaiming under The Wharf Act of 1851 and by virtue of various legislative grants. The

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12:3-1. Commissioners to make survey and report as to riparian lands, etc.

P.L.1864, c. 391, p. 681 (Rev.1877, pp. 981, 982, §§1 to 6;C.S. pp. 4383, 4384, §§1 to 7), entitled "An Act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the state," approved April eleventh, one thousand eight hundred and sixtyfour, saved from repeal. [This act provides for the appointment of a board of commissioners to cause to be made surveys of the lands lying under the waters of the bay of New York, of the Hudson river and the lands adjacent thereto, the Kill Kull, Newark bay, Arthur Kill, Raritan bay and the Delaware river opposite to the county of Philadelphia, heretofore granted by the state; to ascertain the state's rights in the same and the value thereof; to fix the exterior line beyond which no permanent obstruction should be permitted and to report to the legislature and recommend a plan for the improvement, use, renting or leasing of said lands with maps of said lands showing the said exterior line, the lines of existing piers, etc., and any grants of such lands not then occupied, with other appropriate information.]

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12:3-2. Establishment of exterior bulkhead and pier lines in tidewaters of Hudson river, New York bay and Kill Kull

The bulkhead line or lines of solid filling and pier lines in the tidewaters of the Hudson river, New York bay and Kill Kull, lying between Enyard's dock, on the Killvon Kull, and the New York state line, so far as they have been recommended and reported to the legislature by the commissioners appointed under the act entitled "An act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in the state," approved April eleventh, one thousand eight hundred and sixtyfour (L.1864, c. 391, p. 681), by report bearing date February first, one thousand eight hundred and sixtyfive, are hereby adopted and declared to be fixed and established as the exterior bulkhead and pier lines between the points above named, as such exterior bulkhead and pier lines so fixed, established and adopted are shown upon the manuscript maps, accompanying said report, and filed in the office of the secretary of state, except as said lines have been or may hereafter be changed pursuant to section 12:313 of this title and except said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company by the act entitled "A further supplement to the act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," passed December thirteenth, eighteen hundred and twentyfour," approved March fourteenth, one thousand eight hundred and sixtyseven (L.1867, c. 133, p. 251).

commissioners subsequently recommended that the State not permit any further filling beyond the exterior bulkhead and pier lines that they recommended, in order to preserve the navigability of the adjacent channels.

This source section adopted the exterior bulkhead and pier lines in the Hudson River-Newark Bay-Kill von Kull areas as those set by the Riparian Commissioners pursuant to the authority given them under the 1863 Act which constituted the Board to make recommendations. See L.1863, c.391. By L.1872, c.548 (see now R.S. 12:3-13, -14 & -15) the commissioners were given the authority to change the bulkhead and pier lines by filing new surveys and maps in the office of the Secretary of State. The bulkhead and pier lines in the Hudson River area were indeed changed, at least once, see 1872 Report of the Riparian Commissioners (reprinted in 1873 Collection), effectively rendering this section a nullity to the extent that the new lines conflicted with the old ones established pursuant to this section. Further, this section is unnecessary in light the continuation of R.S. 12:3-13 and -14 elsewhere in this revision as general provisions permitting the Tidelands Resource Council, as the successor to the Riparian Commissioners, to establish and change exterior bulkhead and pier lines through the filing of surveys and maps.

12:3-3 Filling in beyond bulkhead lines; erection of piers⁷²

COMMENT

See discussion above with respect to R.S. 12:3-3 concerning the history of this section. This provision is unnecessary in light of the more general statement in the provisions of the first proposed chapter that tidelands may not be reclaimed or encroached upon without a grant, lease or license from the Tidelands Resource Council, and also permitting the department to bring a civil action against trespassers on tidelands of the State.

12:3-7.1. Inability to give required notice; notice by publication; effect⁷³

COMMENT

This section was enacted in 1965 to give relief to applicants for grants, conveyances or leases of tidelands who were unable to determine the adjacent owners to whom notice of the application need be given pursuant to R.S. 12:3-7 because of inability to determine the location of the high water line. This provision is no longer necessary in light of the mapping of the State's tidelands claims which took place in the 1970's and 1980's. See *Dickinson v. Fund for the Support of Free Public Schools*, 95 N.J. 65 (1983).

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12:3-3. Filling in beyond bulkhead lines; erection of piers

It shall not be lawful to fill in with earth, stones or other solid material, in the tidewaters of the Hudson river, New York bay and Kill von Kull, beyond the bulkhead line or lines of solid filling by section 12:3 of this title adopted, fixed and established, laid down and exhibited on the aforesaid maps; and it shall not be lawful to erect or maintain any pier or other structure exterior to the said bulkhead line or lines of solid filling in any place or places where no exterior line for piers is reported or indicated by said maps, on the Hudson river, New York bay and Kill von Kull and when an exterior line for piers is recommended and shown by said report and maps, no erection or structure of any kind shall be erected, allowed or maintained beyond or exterior to the aforesaid bulkhead line or lines of solid filling, except piers which shall not exceed one hundred feet in width respectively, and which shall in no case extend beyond the line indicated for piers on said maps accompanying said report; and no piers shall be constructed in said tidewaters, when such exterior pier lines are adopted, fixed and established, at less intervals between such piers than sixty feet, except at places occupied and used for ferries, or to be so occupied or used, when the spaces between the piers may be less; nor shall any such pier be constructed in any other manner than on piles or on blocks and bridges; and if on blocks and bridges, such blocks and bridges shall not occupy more than one-half of the length of the pier, and they shall be so constructed as to permit a free flow or passage of water under and through them, without any other interruption or obstruction than the pile or blocks necessary to support said piers.

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12:3-7.1. Inability to give required notice; notice by publication; effect

In the event an applicant for a grant or lease of riparian lands cannot comply with the provisions of Revised Statutes 12:3 or Revised Statutes 12:3-23, requiring 6 months notice to the riparian or shore owner of an application for a grant or lease because of the applicant's inability to determine the location of the present or former mean high water line, such applicant shall file with the Department of Conservation and Economic Development a notice of his intention to apply for a riparian grant or lease, describing therein the lands desired, together with an affidavit of an engineer or surveyor licensed in this State, setting forth the reasons why the location of the mean high water line cannot be determined, and requesting permission of the Commissioner of the Department of Conservation and Economic Development to publish the notice of intention to make an application in form prescribed by the commissioner once a month for 6 successive months, prior to the filing of the application, in a newspaper published and circulated in the county or counties wherein the lands are situate. Upon receipt of such notice of intention the commissioner shall investigate the facts set forth therein and may grant the requested permission for publication; and may also, as a condition thereof, require such additional notice as he shall deem appropriate to inform adjacent property owners of the applicant's intention to seek a riparian grant or lease.

Upon the execution of the grant or lease after the notice as provided herein, all privileges or claims of riparian owners to the lands therein described shall forever cease and terminate. 1965, c. 102, §1.

12:3-9. Grant to person other than riparian owner; procedure⁷⁴

COMMENT

This provision was enacted as section 13 of the General Riparian Act of 1869. It requires the extinction of the rights of upland owners when a grant or lease of tidelands is made to a non-upland owner, of tidelands adjacent to the upland owner. The qualified language concerning the rights of upland owners ("if any he has") bespeaks an uncertainty at the time as to whether upland owners had any rights as against a conveyance by the state of adjacent tidelands, other than any statutory rights of preemption given by the Legislature. See 1871 Report of the Board of Riparian Commissioners 20 (reprinted in 1873 Collection). That issue was settled in Stevens v. Paterson and Newark R.R. Co., (E. & A. 1870) (holding that the rights of upland owners were only that of adjacency, i.e., the right to access to navigation). Thereafter, the enactments which extended the authority of the commissioners to make grants and leases did not include this requirement. See L.1891, c.124 (authorizing the commissioners to make grants and leases of tidelands to non-upland owners other than in the Hudson River area covered by the 1869 act).

Several points should be noted about R.S. 12:3-9. It was enacted as part of the General Riparian Act of 1869, virtually side by side with another provision, R.S. 12:3-7, which gives upland owners preemptive rights to any grant or lease to a non-upland owner, by permitting them to appropriate the non-upland owner's transaction by payment of the same consideration. Under current law, R.S. 12:3-7 gives upland owners the right to appropriate the transaction, while R.S. 12:3-7.1, enacted in 1965, permits an alternative form of newspaper notice in the event that the identity of uplands owners is difficult to determine because of uncertainty about the location of the mean high water line. In referring to the preemptive rights of upland owners, the 1965 enactment refers only to 12:3-7 and 12:3-23 (the notice provision for areas other than the Hudson River area covered by the 1869 enactment); there is no reference to 12:3-9, which also requires notice to the upland owner. This absence of reference strongly suggests that the Legislature regarded 12:3-9 as defunct, at least as to 1965.

12:3-11 Waters excluded^f

COMMENT

This provision was originally enacted as part of L.1871, c.256, which extended the authority of the Board of Riparian Commissioners to consider applications for grants or leases of tidelands in areas of the State other than the Hudson River area covered by the General Riparian Act of 1869. This provision, section 2 of L.1871, c.256, provided that the new act "shall not interfere" with the provisions of the 1869 Act. This limiting provision is unnecessary in light of the elimination in this revision of the geographic distinctions in the jurisdiction of the Tidelands Resource Council over grants, leases and licenses of tidelands, consistent with complete repeal of The Wharf Act of 1851 as of 1891, see L.1891, c.124.

⁷⁴ **12:3-9. Grant to person other than riparian owner; procedure**

In any case where a grant of the lands of the State under water is made by the department to any person other than the riparian owner the State's grantee shall not fill up or improve said lands under water until the rights and interest of the riparian owner in said lands under water (if any he has) shall be extinguished, as follows: The department shall fix the amount to be paid to said riparian owner for his rights and interest therein (if any he has), and said riparian owner shall have the right, within twenty days after he has been notified of said amount, to accept said sum in full extinguishment of all his rights, or if he is dissatisfied with said award he may apply to the Superior Court for a struck jury to try the question in such place as may be designated by said court, and said jury may increase or diminish the amount to be paid the said riparian owner, and their verdict shall be final as to said amount, and on the payment or tender by the State's grantee to the riparian owner of the amount fixed by said jury all the rights and interests of said riparian owner in the lands of the State under water in front of his land shall be extinguished; the costs of the trial shall be paid as follows: If the verdict of the jury is greater than the award of the board then the State shall pay the costs of the trial, if the verdict is the same as the award or less than the award of the department then the riparian owner shall pay the costs. Amended by L.1953, c. 12, p. 99, §3, eff. March 19,

1953.

12:3-11. Waters excluded

Section 12:3-10 of this title shall not interfere with sections 12:3-2 to 12:3-9 of this title as to the waters of the Hudson river, New York bay or Kill von Kull, easterly of Enyard's dock.

12:3-13 Change in pier lines or lines of solid filling; map and survey; basins⁷⁶

COMMENT

This section and the one immediately following, 12:3-14, were enacted as part of the 1869 act. At that time, the delineation of pier lines and lines of solid filling were important, as these lines marked the seaward limit on certain grants and leases. At least by 1979, when 12:3-10 was amended to give the Tidelands Resource Council the authority to make grants and leases of tidelands "to the seaward territorial jurisdiction of the State," these provisions were effectively superseded.

12:3-14 Encroachment prohibited⁷⁷

COMMENT

See discussion of 12:3-13, above.

12:3-24. Sale or lease of lands below highwater mark; lease convertible into grant not required⁷⁸

COMMENT

This provision and the next (12:3-25) were originally enacted in 1891 (L.1891, c.123, sec.4), to change the then-existing rule, enacted as L.1871, c.605, p.113 (see now R.S. 12:3-12), which required leases of tidelands to include a provision permitting them to be converted into an outright grant upon payment of a calculated sum set forth in the lease. The current operative source provision is 12:3-16, which gives the Tidelands Resource Council the power to set the amount of consideration together with the Governor.

12:3-25. Renewals of leases; provision for determining annual rentals⁷⁹

COMMENT

This provision was also enacted as part of L.1891, c.123, sec.4 (see 12:3-24 above).

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12:3-13. Change in pier lines or lines of solid filling; map and survey; basins

The council may change, fix and establish any other lines than those now fixed and established for pier lines, or lines for solid filling in the tidewaters of the State, or make any changes in any basin now fixed and established, or lay out and fix and establish any new basin or basins in the tidewaters of the State, and when so fixed and established, the council shall file a map and surveys in the office of the secretary of state, showing what lines have been fixed and established by it for the exterior lines for solid filling and pier lines, as well as for any changes in basins or new basins fixed, laid out and established by it under this section. Amended by L.1979, c. 311, §2, eff. Jan. 17, 1980.

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12:3-14. Encroachment prohibited

From and after the filing of said map and surveys in the office of the secretary of state, no encroachment of any kind shall be permitted to be made beyond said lines so fixed and established for solid filling or pier lines, or in or upon any basin or basins so laid out and established.

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12:3-24. Sale or lease of lands below highwater mark; lease convertible into grant not required

The board, together with the governor, 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 highwater 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 board, together with the governor.

⁷⁹

12:3-25. Renewals of leases; provision for determining annual rentals

The department, together with the Governor, may, in any lease of lands of the State below mean highwater 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.

Amended by L.1953, c. 12, p. 100, §5, eff. March 19, 1953.

12:3-27. Certain leases, grants and conveyances not affected⁸⁰

COMMENT

This provision excepts then-existing grants and leases from the effect of 12:3-29, -30 and -31, which limit certain kinds of changes adjacent to the Palisades. Under modern concepts of property law and due process, subsequent legislation would have no effect on prior conveyances, thus these provisions are unnecessary and may be repealed.

12:3-36 Revocable lease or permit for nominal consideration⁸¹

COMMENT

This section has been determined to be unconstitutional insofar as it authorizes the Tidelands Resource Council to accept less than fair market value for a conveyance of State tidelands. See Attorney General Formal Opinion No. 18 (1960).

12:3-37.1 Counties, municipalities and other instrumentalities of state; lease or permission to use for park and recreational purposes⁸²

COMMENT

This section has been determined to be unconstitutional insofar as it authorizes the Tidelands Resource Council to accept less than fair market value for a conveyance of State tidelands. See Attorney General Formal Opinion No. 8 (1978).

12:3-40. Grant of additional lands; consideration⁸³

COMMENT

This section, along with 12:3-41 and -43 are recommended for repeal as unnecessary. They are among a group of provisions enacted to give the Board of Commerce and Navigation the authority to make confirmatory grants of tidelands in defined circumstances. Several of the provisions, those giving the statutory authority to make

⁸⁰ **12:3-32. Certain leases, grants and conveyances not affected**

No lease, grant or conveyance made prior to March eleventh, one thousand nine hundred and twentytwo, of lands lying under the waters of the Hudson river southward of said road leading from the Fort Lee dock or landing to Fort Lee in Bergen county, shall be held invalid because not containing the terms, conditions and restrictions prescribed in section 12:3-32 of this title.

Nothing in sections 12:3-29 to 12:3-31 of this title shall affect or impair any lease or grant made prior to March eighth, one thousand eight hundred and ninetyeight.

⁸¹ **12:3-36. Revocable lease or permit for nominal consideration; grant to new grantee; condition**

If the proper authority of the state, or a municipal or other subdivision thereof, applying for a grant of lands under section 12:3-36 of this title, shall be unable or unwilling to pay the price fixed by the board for such lands, the board may grant to such authority a revocable lease of or permit to use the lands for a public park, place, street or highway or dock purpose for a nominal consideration until such time as the board shall decide to make a grant in fee of the lands to such proper authority, or to other grantees, for such consideration as the board may determine to be adequate compensation for such lands.

The revocable lease or permit may contain a provision that if the same shall be revoked and the lands in question granted to a grantee other than such proper authority, the new grantee shall pay, as a condition of his grant, the cost of any improvement that may have been constructed upon the lands which were the subject of the revocable lease or permit.

⁸² **12:3-37.1. Counties, municipalities and other instrumentalities of state; lease or permission to use for park and recreational purposes**

The State is authorized to lease or otherwise permit county or municipal or other instrumentality of the State use of riparian lands owned by the State and situate within the county or other instrumentality of the State or within or contiguous to said municipality, when said lease or use is approved by the Department of Environmental Protection, without consideration or at nominal consideration, and to be maintained and used exclusively for park and recreational purposes. Said lease or use agreement shall contain a limitation that if the riparian lands are not maintained and used in accordance with the provisions of this act, such lease or use agreement shall be of no further force and effect. L.1975, c. 354, §1, eff. March 3, 1976. Amended by L.1977, c. 375, §2, eff. Feb. 8, 1978.

⁸³ **12:3-40. Grant of additional lands; consideration**

The board may consider, under a petition filed under section 12:3-38 of this title, the granting of additional lands under water adjacent to the lands to be covered by any confirmatory lease or grant, provided the petitioner shall have made application for the grant of additional lands in accordance with the requirements of the statutes in force at the date of the petition, to the end that a lease or grant may include not only the lands, title to which is being confirmed, but also additional lands adjacent thereto. The expressed consideration for such lease or grant shall be the sum total of any additional sum to be paid for the confirmation of previous leases or grants and of the sum agreed to be paid for the new area.

such grants, and setting out the factors to be considered in making the determination, are retained as proposed TF-1, TF-2 and TF-3. The remaining provisions, which authorize the Tidelands Resource Council to consider an application for an additional tidelands grant in conjunction with an application for a confirmatory grant; these provisions merely restate the general authority of the Tidelands Resource Council to make grants and leases and are therefore unnecessary

12:3-41. Character of lands affected [see above]

COMMENT

See note to 12:3-40 above.

12:3-43. When grant may be executed to petitioner⁸⁴

COMMENT

See note to 12:3-40 above.

12:3-53. Report to by Board to state treasurer⁸⁵

COMMENT

This section and the related sections, 12:3-54 and 12:3-56, are recommended for repeal. Changes in the alignment and responsibilities of various executive agencies have rendered them inoperative.

12:3-54. State treasurer to transmit original lease to board; new lease or grant⁸⁶

COMMENT

See note to 12:3-53 above.

12:3-56. Rights of state as to unpaid rentals not affected⁸⁷

COMMENT

See note to 12:3-53 above.

⁸⁴ **12:3-43. When grant may be executed to petitioner**

Any lease or grant which shall be authorized under a petition filed in accordance with section 12:38 of this title may be in fact executed to the petitioner, or his heirs, devisees or assigns, provided that the grantee named in the lease or grant is the owner of the land at the date of the lease or grant.

⁸⁵ **12:3-53. Report by board to state treasurer**

After such notice shall have been published or served and entry made on the land described in the lease, the board shall report to the state treasurer the fact of such publication or service and entry on the land, and:

a. In case the notice shall have been published, annex a copy of the publication to the report; and,
b. In case the notice shall have been served personally, annex to the report an affidavit by the person serving the notice, proving the truth thereof.

⁸⁶ **12:3-54. State treasurer to transmit original lease to board; new lease or grant**

Upon receipt of the report of the board, the state treasurer shall transmit forthwith to the board the original lease of the land on which entry shall have been made. Thereupon the board may, in the manner prescribed by law, again lease or grant the land as fully as if the original lease had never been made.

⁸⁷ **12:3-56. Rights of state as to unpaid rentals not affected**

All rights, at law or in equity, which had accrued to the state for the rentals in arrears and unpaid up to the expiration of the time fixed in the notice mentioned in sections 12:351 and 12:3-52 of this title shall not abate but shall remain in force and effect.

12:3-57 State treasurer released from responsibility under original lease⁸⁸

COMMENT

See note to 12:3-53 above.

12:3-69 Moneys received by board from leases and grants⁸⁹

COMMENT

This provision, stating that money received in payment for grants and leases shall be disposed of as provided by law, is recommended for repeal as superfluous.

12:3-71 Laws applicable⁹⁰

COMMENT

This provision, stating that grants and leases shall be made subject to the provisions of law, is recommended for repeal as superfluous.

13:1B-13.2⁹¹ Title studies and surveys; certification of state owned lands

COMMENT

This provision directed the Resource Development Council (the predecessor to the Tidelands Resource Council) to make title studies and surveys of meadowlands throughout the State, starting first with meadowlands in the Hackensack meadowlands area in Bergen County. The title studies and surveys in these areas were completed some time ago.

⁸⁸

12:3-57. State treasurer released from responsibility under original lease

The state treasurer, upon returning to the board the original lease of the land upon which entry has been made, shall be released from all responsibility arising from the lease.

⁸⁹

12:3-69. Moneys received by board from leases and grants

All moneys received by the board under the provisions of this article shall be subject to the provisions of law applicable to the receipts from grants or leases of land under tidewater.

⁹⁰

12:3-71. Laws applicable

All grants or leases under the provisions of this article shall be subject to the provisions of existing laws so far as the same are not inconsistent with the terms of this article.

⁹¹

13:1B-13.2. Title studies and surveys; certification of state owned lands

The council is hereby directed to undertake title studies and surveys of meadowlands throughout the State and to determine and certify those lands which it finds are State owned lands.

In undertaking its studies and surveys the council shall divide its work into such a number of surveys as it shall determine is advisable and it shall establish the priority in which such surveys shall be undertaken. As its first survey, and within 6 months of the effective date of this act, the council shall undertake, and complete, a study of the Hackensack meadowlands. During the period of time between the initiation of a project and the publication of the map and study delineating the State-owned lands within the survey area, the council shall make no conveyances, leases or transfers of any riparian land within the survey area.

These studies and surveys shall be performed on behalf of the council by the Navigation Bureau of the Department of Conservation and Economic Development. L.1968, c. 404, §88.

13:1B-13.4⁹² Publication of map; filing; distribution

COMMENT

See Comment for 13:1B-4, above.

13:1B-13.6⁹³ Progress reports to governor and legislature

COMMENT

This provision requires the former Resource Development Council to make progress reports on the conduct of titles studies and surveys. By its terms, requiring such work to be completed by December 31, 1980, this provision is now defunct.

⁹² **13:1B-13.4. Publication of map; filing; distribution**

Upon completion of each separate study and survey, the council shall publish a map portraying the results of its study and clearly indicating those lands designated by the council as State-owned lands. Copies of each such map and study shall be filed with the Secretary of State and sent to the clerk of each county or to the register of deeds and mortgages, whoever shall have the responsibility as the recording officer of the county, and to the governing body of each municipality whose political boundaries include lands shown on the map. Such maps and studies shall be available for public inspection.

The council shall also cause to be published at least once in a newspaper circulating in each county whose political boundaries include lands designated as State-owned lands a list of those parcels designated in whole or in part as State-owned lands. L.1968, c. 404, §90. Amended by L.1982, c. 101, §1, eff. July 28, 1982.

⁹³ **13:1B-13.6. Progress reports to governor and legislature**

The council shall make progress reports to the Governor and Legislature at least annually and shall complete its studies and title surveys and make its determinations as to interest of the State in meadowlands throughout the State on or before December 31, 1980. L.1968, c. 404, §92. Amended by L.1975, c. 288, §1, eff. Jan. 12, 1976; L.1978, c. 44, §1, eff. June 19, 1978.

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