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CHAPTER 5.

GRANTS OF PERPETUAL RIGHTS AND EASEMENTS TO UNITED STATES FOR DEVELOPMENT OF WATERWAYS

ARTICLE 1.

WINYAH BAY TO SOUTH, ASHLEY AND SHIPYARD RIVERS

**SECTION 3‑5‑10.** Governor and Secretary of State authorized to issue grants to United States for projects.

For the purpose of aiding in the construction and maintenance by the United States of the projects approved by Congress by the River and Harbor Act approved August 26, 1937 for the construction of the intracoastal waterway from the Cape Fear River, North Carolina, to the Savannah River, Georgia (Rivers and Harbors Committee Document No. 6, 75th Congress, first session), of the Ashley River, South Carolina, project (House Document No. 449, 74th Congress, second session) and of the Shipyard River, South Carolina, project (Rivers and Harbors Committee Document No. 38, 75th Congress, first session) and any changes, modifications or extensions thereto and any tributaries thereof, the Governor and the Secretary of State may issue to the United States of America a grant or grants of a perpetual right and easement to enter upon, excavate, cut away and remove any and all of the land, including submerged lands, composing a part of the prism required for the channels, anchorage areas and turning basin, and their slopes and berms, as may be required at any time for construction and maintenance of said intracoastal waterway from Winyah Bay, South Carolina, to the State boundary line in the Savannah River and any changes, modifications or extensions thereto and any tributaries thereof and for said Ashley River and Shipyard River projects and to maintain the portions so excavated and the channels, anchorage areas and turning basin thereby created as a part of the navigable waters of the United States and a further perpetual right and easement to enter upon, occupy and use any portion of the land, including submerged land, composing a part of the spoil disposal area not so cut away and converted into public navigable waters as aforesaid, for the deposit of dredged material and for such other purposes as may be needful in the construction, maintenance and improvement of said intracoastal waterway and any changes, modifications or extensions thereto and any tributaries thereof and of the Ashley River and Shipyard River projects, in so far as such lands, including submerged lands, are subject to grant by the State, such grant to issue upon a certificate showing the location and description of such rights of way and spoil disposal areas furnished to the Governor by the Secretary of the Army, any authorized officer of the Corps of Engineers of the United States Army or any other authorized official exercising control over the construction or maintenance of such projects.

**SECTION 3‑5‑20.** Right of United States to use previously submerged lands raised by projects.

Whenever in the construction or maintenance of such intracoastal waterway from Winyah Bay, South Carolina, to the State boundary line in the Savannah River, and its tributaries, or the Ashley River or Shipyard River projects, lands theretofore submerged shall be raised above the water by the deposit of excavated material, the United States of America shall have a perpetual right and easement to enter upon, excavate, cut away and remove any and all of such land, including submerged land, composing a part of the prism required for the channels, anchorage areas and turning basin, and their slopes and berms, as may be required at any time for construction and maintenance of such intracoastal waterway and any changes, modifications or extensions thereto and any tributaries thereof and of said Ashley River or Shipyard River projects and to maintain the portion so excavated and the channels, anchorage areas and turning basin thereby created, as a part of the navigable waters of the United States, and a further perpetual right and easement to enter upon, occupy and use any portion of such land, including submerged lands, composing a part of the spoil disposal area not so cut away and converted into public navigable waters, as aforesaid, for the deposit of dredged material and for such other purposes as may be useful in the construction, maintenance and improvement of said intracoastal waterway and any changes, modifications or extensions thereto and any tributaries thereof and of the Ashley River and Shipyard River projects, if within the limits of such rights of way or spoil disposal areas.

**SECTION 3‑5‑30.** Governor and Secretary of State authorized to issue to United States grants of easements with respect to previously submerged lands raised by projects.

The Governor and Secretary of State may issue to the United States of America a grant or grants within such limits as above specified of a perpetual right and easement to enter upon, excavate, cut away and remove any and all of the land raised above water as mentioned in Section 3‑5‑20, including submerged land, composing a part of the prism required for the channels, anchorage areas and turning basin, their slopes and berms, as may be required at any time for the construction and maintenance of said intracoastal waterway from Winyah Bay, South Carolina, to the State boundary line in the Savannah River and any changes, modifications or extensions thereto and any tributaries thereof and for the Ashley River and Shipyard River projects and to maintain the portions so excavated and the channels, anchorage areas and turning basin thereby created as a part of the navigable waters of the United States and a further perpetual right and easement to enter upon, occupy and use any portion of such land, including submerged land, composing a part of the spoil disposal areas not so cut away and converted into public navigable waters, as aforesaid, for the deposit of dredged material and for such other purposes as may be needful in the construction, maintenance and improvement of such intracoastal waterway and any changes, modifications or extensions thereto and any tributaries thereof and the Ashley River and Shipyard River projects, the grant or grants to issue upon a certificate furnished to the Governor by some authorized official of the United States as provided in Section 3‑5‑10.

**SECTION 3‑5‑40.** Acquisition of land needed from private persons or public service companies.

If the title to any part of the lands, including submerged lands, property or property rights, required by the United States Government for the construction and maintenance of the aforesaid intracoastal waterway from Winyah Bay, South Carolina, to the State boundary line in the Savannah River and any changes, modifications or extensions thereto and any tributaries thereof, and the Ashley River and Shipyard River projects shall be in any private person, firm or corporation, telephone or telegraph company or other public service corporation or shall have been donated or condemned for public or public service purposes by any political subdivision of this State or any public service corporation, the South Carolina Department of Health and Environmental Control may, acting for and in behalf of the State, secure the above described rights of way and spoil disposal areas for such intracoastal waterway and all its tributaries and for the Ashley River and Shipyard River projects upon, across and through such lands, including submerged lands, or any part thereof, including oyster beds, telephone and telegraph lines, railroad lines, property of other public service corporations and other property and property rights, by purchase, donation or otherwise, through agreement with the owner when possible. And when any such easement or property is thus acquired the Governor and the Secretary of State shall execute a deed for it to the United States.

**SECTION 3‑5‑50.** Condemnation of lands needed from private persons or public service companies by Department of Health and Environmental Control.

If for any reason the South Carolina Department of Health and Environmental Control is unable to secure any rights‑of‑way and spoil disposal area upon, across, or through any such land, including submerged lands, property, or rights, by voluntary agreement with the owner, the South Carolina Department of Health and Environmental Control, acting for and in behalf of the State may condemn it.

**SECTION 3‑5‑60.** Condemnation by United States of lands needed from private persons or public service companies.

If the United States Government shall so determine, it may condemn and use all lands, including submerged lands, property and property rights which may be needed for the purposes set forth in Section 3‑5‑40 under the authority of the United States Government and according to the provisions existing in the Federal statutes for condemning lands and property for the use of the United States Government. In case the United States Government shall so condemn such lands, including submerged lands, property and property rights, the South Carolina Department of Health and Environmental Control may pay all expenses of such condemnation proceedings and any award that may be made thereunder out of any monies appropriated for such purposes.

**SECTION 3‑5‑70.** Uses for which property is condemned declared to be for purposes paramount to other uses.

In such condemnation proceedings the uses for which such easements or property are condemned are hereby declared to be for a purpose paramount to all other public uses and the fact that any portion of it has previously been condemned by a railroad company, canal company, telephone or telegraph company or other public service corporation or by any political subdivision of the State for public uses or has been conveyed by any person for any such public uses shall in no way affect the right of the State or of the United States Government to condemn such lands, property and property rights as herein provided.

**SECTION 3‑5‑80.** Surveys for purpose of determining property necessary for uses.

For the purpose of determining the lands, easements and property necessary for the uses herein set out, the South Carolina Department of Health and Environmental Control or the United States Government, or the agents of either, may enter upon any lands along the general line of the rights of way for the purposes of locating definitely the specific lines of such rights of way and the land required for such purposes and there shall be no claim against the State or the United States for such acts as may be done in making such surveys.

**SECTION 3‑5‑90.** State shall retain jurisdiction over property granted.

Neither this article, nor any part thereof, nor any grant or deed made under the authority hereof shall operate to divest the State of jurisdiction over any lands and all civil or criminal process issued under the authority of any laws of this State may be executed in or on any part of the lands or premises devoted to the use of the intracoastal waterway or to any use incidental thereto to the same effect as if this article had not been enacted and as if such grant or deed had not been executed.

**SECTION 3‑5‑100.** Areas leased for cultivation and gathering of oysters; rights of lessees.

If any of the lands or property, the use of which is acquired for the rights‑of‑way and spoil disposal areas has been leased by the South Carolina Department of Natural Resources to any person for the cultivation and gathering of oysters, the Department of Natural Resources shall substitute for the leased areas lying within the rights‑of‑way and spoil disposal areas other equal areas lying without the rights‑of‑way and spoil disposal areas that also are suitable for the cultivation and gathering of oysters. The Department of Health and Environmental Control may reimburse the person for any direct actual losses resulting from the transfer of leased oyster beds. If for any reason the Department of Natural Resources is unable to reach an agreement with the owner of the leased oyster beds, the Department of Health and Environmental Control, acting for the State, may condemn the rights and property of the lessees in the leased areas.

**SECTION 3‑5‑110.** Damages to oysters and oyster beds beyond area of waterway.

All persons engaged in the cultivation of oysters on oyster beds held either in fee simple or in leasehold beyond the limits of the areas to be acquired for said waterway project from Winyah Bay to the State boundary line in the Savannah River shall be entitled to compensation for damages done to such oyster beds or the oysters therein by reason of dredging operations in the construction of said waterway, such compensation to be paid by the persons engaged in the dredging operations and not by the State.

**SECTION 3‑5‑120.** Survey and determination of damage to oyster beds or oysters.

If and when any such oyster beds or oysters growing therein shall have been damaged by muddy water or by other effects of such dredging operations any person holding such oyster beds in fee simple or in leasehold or owning the oysters growing therein or any person engaged in the prosecution of the work of constructing the waterway shall be privileged to apply to the South Carolina Department of Health and Environmental Control to survey such oyster beds and oysters and to determine the extent and amount of such damage. Upon any such application, the Department of Health and Environmental Control shall proceed promptly to survey the damage done to such oyster beds and oysters and to determine the identity of the person causing such damage and the identity of the owner in fee or in leasehold of such oyster beds and oysters suffering such damage. The South Carolina Department of Health and Environmental Control may subpoena witnesses to assist in the determination of such facts. The department of Health and Environmental Control must afford the owner of the alleged damaged oyster beds and oysters and the person alleged to have caused the damage an opportunity to be heard.

**SECTION 3‑5‑130.** Coastal Division to make determination of actual damages.

Staff of the Coastal Division of the Department of Health and Environmental Control shall make a determination of the amount of actual damage.

**SECTION 3‑5‑140.** Review of and appeal of damage determinations; recording final award.

If the person in whose favor or the person against whom such determination is made shall be dissatisfied therewith, such person may apply to an Administrative Law Judge to review the determination. An appeal from the decision of the Administrative Law Judge may be taken to the Coastal Zone Management Appellate Panel. An appeal from the decision of the Panel may be taken to the court of common pleas for the county in which the oyster beds lie. The Court shall review the award in the same manner as reports of a master in equity are reviewed by the court and the determination of the amount of the award by the court of common pleas shall be final.

Before a review shall be granted to the person against whom the award is made, such person shall pay to the person in whose favor the award is made, one half of the amount of the said award, and shall file with the said clerk of court a bond conditioned for the payment of the remaining half of the award or so much thereof as may be finally awarded, such bond to be approved by the clerk of court of the county in which the oyster beds lie as to form, surety and amount.

The final award shall be entered on record in the office of the clerk of court of common pleas for the county in which the oyster beds lie and when so entered shall have the force and effect of a judgment. The amount of the award shall be limited to the direct actual damage suffered by the person owning in fee or in leasehold the oyster beds and the oysters growing therein.

**SECTION 3‑5‑150.** Cost of survey to be repaid.

Upon the filing with the clerk of court of any such award there shall be added thereto as a part thereof the costs of the survey held to determine the damage resulting in such award. Such costs shall be repaid to the Department of Health and Environmental Control by the person against whom the award is given. If it shall be finally determined that no damage has been done the cost of the survey shall be paid by the person requesting the survey.

**SECTION 3‑5‑160.** Accounting for moneys recovered.

The Department of Health and Environmental Control shall account for all monies recovered under the provisions of Sections 3‑5‑110 to 3‑5‑150 to the State Treasurer.

**SECTION 3‑5‑170.** Removal of cultivated oysters which might be damaged to different leased area.

Should any person cultivating oysters upon an area leased from the State outside of the limits to be acquired for said waterway project from Winyah Bay to the state boundary line in the Savannah River elect, in lieu of claiming damages which might be done to such oysters by dredging operations, to transfer such cultivated oysters to a different leased area and the person whose dredging operations in the construction of said intracoastal waterway either shall have damaged or might damage such oysters agrees to pay the expenses of such removal, the South Carolina Department of Natural Resources may substitute for such leased areas other equal areas suitable for the cultivation and gathering of oysters in a location not subject to damage by dredging operation.

**SECTION 3‑5‑180.** Remedies with respect to oysters beyond limits of acquired areas exclusive.

The remedies herein given with respect to oysters lying beyond the limits of the areas to be acquired for said waterway project such rights of way shall be exclusive.

**SECTION 3‑5‑190.** Compensation for damage to oysters precludes further claims for damage.

Any person, his heirs, executors, administrators, successors or assigns, who may be compensated for damage to oysters during the construction or maintenance of said intracoastal waterway and its tributaries and the Ashley River and Shipyard River projects, whether by the Department of Health and Environmental Control, the contractor engaged on the work or the United States, shall be estopped from making further claim for damage to oysters in or upon the same area on account of dredging operations during maintenance or further improvement of the waterway and its tributaries or Ashley River or Shipyard River.

ARTICLE 3.

NORTH CAROLINA LINE TO WINYAH BAY

**SECTION 3‑5‑310.** Right of way from Little River to Winyah Bay.

For the purpose of aiding in the construction of the proposed inland waterway by the United States from the North Carolina‑South Carolina State line at Little River to Winyah Bay the Governor and the Secretary of State may issue to the United States of America a grant to the land located within said inland waterway right of way of a width of one thousand feet when the land does not exceed eight feet in elevation above mean low water, with increased widths approximately in proportion to the quantity of excavation required as the elevation of the land increases until a maximum of one thousand seven hundred and fifty feet is reached when the ground elevation is thirty feet or more above mean low water, in so far as such land is subject to grant by the State, such grant to issue upon a certificate showing the location and description of such right of way furnished to the Governor by the Secretary of the Army or by an authorized officer of the Corps of Engineers of the United States Army or by any other authorized official exercising control over the construction of said waterway. Whenever in the construction of such inland waterway within this State lands theretofore submerged shall be raised above the water by the deposit of excavated material, the lands so formed shall become the property of the United States if within the limits of such inland waterway right of way and the Governor and the Secretary of State may issue to the United States of America a grant to the land so formed within such limits as above specified, the grant to issue upon a certificate furnished to the Governor by some authorized official of the United States as above provided.

**SECTION 3‑5‑320.** Acquisition of lands from private persons or public service companies.

If the title to any part of the lands required by the United States Government for the construction of the aforesaid inland waterway from the North Carolina‑South Carolina State line at Little River to Winyah Bay shall be in any private person, company, firm or corporation, railroad company, canal company, telephone or telegraph company or other public service corporation or shall have been donated or condemned for any such use by any political subdivision of this State, the Department of Health and Environmental Control may, acting for and in behalf of the State, secure a right of way of the width aforesaid for such inland waterway upon, across and through such lands or any part thereof by purchase, donation or otherwise, through agreement with the owner when possible, and when any such property is thus acquired the Governor and the Secretary of State shall execute a deed for it to the United States.

**SECTION 3‑5‑330.** Condemnation of lands needed from private persons or public service companies by Department of Health and Environmental Control.

If for any reason the Department of Health and Environmental Control is unable to secure the right‑of‑way upon, across, or through the property by voluntary agreement with the owner, the Department of Health and Environmental Control acting for the State, may condemn the right‑of‑way. The Governor and the Secretary of State shall promptly execute a deed for the condemned property to the United States.

**SECTION 3‑5‑340.** Condemnation by United States of lands needed from private persons or public service companies.

If the United States Government shall so determine, it may condemn and use all lands and property which may be needed for the purposes set forth in Section 3‑5‑310 under the authority of the United States Government and according to the provisions existing in the Federal statutes for condemning lands and property for the use of the United States Government. In case the United States Government shall so condemn such lands and property, the Department of Health and Environmental Control may pay all expenses of the condemnation proceedings and any award that may be made thereunder out of any moneys appropriated or which may be appropriated for such purposes.

**SECTION 3‑5‑350.** Uses for which property is condemned declared to be for purposes paramount to other uses.

In such condemnation proceedings the uses for which such land or property is condemned are hereby declared to be for a purpose paramount to all other public uses and the fact that any portion thereof has theretofore been condemned by a railroad company, canal company, telephone or telegraph company or other public service corporation or by any political subdivision of the State for public uses or has been conveyed by any person for any such public uses shall in no way affect the right of the State or the United States Government to condemn such lands and property as herein provided.

**SECTION 3‑5‑360.** Surveys for purpose of determining property necessary for uses.

For the purpose of determining the lands and property necessary for the uses herein set out the Department of Health and Environmental Control or the United States Government, or the agents of either, may enter upon any lands along the general line of said right of way and make such surveys and do such other acts as in their judgment may be necessary for the purpose of definitely locating the specific lines of said right of way and the lands required for said purposes and there shall be no claim against the State or the United States for such acts as may be done in making such surveys.

**SECTION 3‑5‑370.** State shall retain concurrent jurisdiction over lands for purpose of civil and criminal process.

The State retains concurrent jurisdiction with the United States over any lands acquired and held in pursuance of the provisions of this article so far as that all civil and criminal process issued under authority of any laws of this State may be executed in any part of the premises so acquired for such inland waterway or for the buildings or constructions thereon erected for the purposes of such inland waterway.