

Article 23A.

Promotion of Coastal Fisheries and Seafood Industry.

§ 113-308. Definitions.

The definitions as given in G.S. 113-128 shall apply to this Article, except that the following will additionally apply:

- (1) Agency: A group or an association which shall make applications and otherwise act for the fishing and seafood industry or a distinguishable part thereof. (1967, c. 890, s. 1.)

§ 113-309. Declaration of policy.

It is declared to be in the interest of the public welfare of North Carolina that those engaged in "coastal fisheries," as defined in G.S. 113-129, shall be permitted and encouraged to act jointly and cooperatively for the purposes of promoting the common good, welfare, and advancement of their industry. (1967, c. 890, s. 2.)

§ 113-310. Certain activities not to be deemed illegal or in restraint of trade.

No association, meeting or activity undertaken in pursuance of the provisions of this Article and intended to benefit all of the coastal fisheries or distinguishable part thereof hereinunder certified by the Marine Fisheries Commission shall be deemed or considered illegal or in restraint of trade. (1967, c. 890, s. 3; 1973, c. 1262, s. 28.)

§ 113-311. Referendum and assessment declared to be in public interest.

It is hereby declared to be in the interest of the public that the coastal fisheries or any distinguishable part thereof shall be permitted by referendum to be held among themselves as prescribed by this Article, to levy upon themselves an assessment on such respective catches, volume, landings, income, or production for the purposes of promoting the common good, welfare, and advancement of the fishing and seafood industry of North Carolina, in addition to any and all taxes, levies, and licenses in effect on June 22, 1967, or that may be enacted and levied or imposed subsequently. (1967, c. 890, s. 4.)

§ 113-312. Application to Marine Fisheries Commission for authority to conduct referendum.

Any agency fairly representative of any distinguishable part or all of the fishing and seafood industry may at any time make application in writing or petition to the Marine Fisheries Commission for certification and approval to conduct a referendum among the coastal fisheries or any distinguishable part thereof for the purpose of levying an assessment under the provisions of this Article, collecting, and utilizing the proceeds for the purposes stated in such referendum and as set forth in this Article. (1967, c. 890, s. 5; 1973, c. 1262, s. 28.)

§ 113-313. Action of Marine Fisheries Commission on application.

Upon receiving an application or petition as herein provided, the Marine Fisheries Commission shall at its next regular quarterly meeting consider such application as follows:

- (1) The Marine Fisheries Commission shall determine if the agency is in fact fairly representative of the coastal fisheries or distinguishable part thereof making application or petitioning for referendum and record in its minutes its determination.
- (2) The Marine Fisheries Commission shall determine if the application or petition is in conformity with the provisions and purposes of this Article and record in its minutes its determination.
- (3) If the Marine Fisheries Commission determines in the affirmative as to (1) and (2) above, it shall authorize and empower the agency to hold and conduct a referendum on the question of whether or not members of the fishing and seafood industry, or the distinguishable part thereof, making application or petition, shall levy upon themselves an assessment under and subject to the conditions and provisions and for the purpose stated in this Article. (1967, c. 890, s. 6; 1973, c. 1262, s. 28.)

§ 113-314. Agency to determine time and place of referendum, amount and basis of assessment, etc.; notice of referendum.

The agency shall fix, determine, and publicly announce such referendum at least 30 days before the date set for such referendum, the date, hours, and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if favorably voted upon, and the general purposes to which said amount so collected shall be applied. Such public notice shall be published at least once 20 days prior to the election in one or more newspapers having general circulation in the area where the vote is to be taken. (1967, c. 890, s. 7.)

§ 113-315. Maximum assessment.

No assessment levied on any commodity under the provisions of this Article shall exceed one percent (1%) of the average value of this commodity during the next three years for which published statistics by the State of North Carolina or the federal government are available next preceding the application or petition. (1967, c. 890, s. 8.)

§ 113-315.1. Arrangements for and management of referendum; expenses.

The arrangements for and management of any referendum conducted under the provisions of this Article shall be under the direction of the agency duly certified and authorized to conduct the same, and any and all expenses in connection herewith shall be borne by the agency. (1967, c. 890, s. 9.)

§ 113-315.2. Referendum may be by mail ballot or box ballot; who may vote.

Any referendum conducted under the provisions of this Article may be held by mail ballot or by box ballot as may be determined and publicly announced as herein provided by the agency before such referendum is called. A person licensed by the Marine Fisheries Commission to engage in business and commerce as may be directly affected by the paying of the assessment, or anyone who would be subject to paying such assessment should the question be voted in the affirmative,

shall be eligible and may vote in such referendum. (1967, c. 890, s. 10; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1987, c. 641, s. 6.)

§ 113-315.3. Preparation and distribution of ballots; conduct of referendum; canvass and declaration of results.

The duly certified agency shall prepare and distribute in advance of such referendum all necessary ballots for the purpose thereof, and shall under rules and regulations drawn up and promulgated by said agency, arrange for the necessary poll holders or officials for conducting the said referendum; and following said referendum and within 10 days thereafter the duly certified agency shall canvass and publicly declare the result of such referendum; except that in the event a mail ballot is used, a mail ballot shall be posted by registered mail on a prearranged date at least 30 days following announcement of same to each duly licensed voter by the agency, and a return, self-addressed envelope of suitable size and construction for containing the completed ballot with ample postage affixed shall be enclosed along with complete instructions on the voting procedure, these instructions stating that the ballot should be marked by the voter to indicate and show his preference, then inserted into the return envelope, sealed, and posted or returned within 10 days of the date of the original or first posting, and on a predesignated date and hour at least 15 days after the original mailing and at an open and public meeting, the return envelopes described above shall be opened, the ballots counted, tabulated, and the results publicly declared by the agency or its authorized representatives. (1967, c. 890, s. 11.)

§ 113-315.4. Levy and collection of assessment; use of proceeds and other funds.

If in such referendum called under the provisions of this Article two thirds or more of the voters eligible and voting vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum, then such assessment shall be collected annually, or more often as predetermined by the agency, for the three years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules, and regulations as may be determined by the agency prior to the announcement of the referendum and included in the announcement of the referendum; said assessment so collected shall be paid into the treasury of the agency, to be used together with other funds, including donations and grants from individuals, firms, governmental agencies, or corporations, and from other fees, dues, or assessments, for the purpose set out in the referendum. (1967, c. 890, s. 12.)

§ 113-315.5. Alternative method for collection of assessment.

As an alternate method for the collection of assessments provided for in G.S. 113-315.4, upon the request or petition of the agency and action by the Marine Fisheries Commission as prescribed in G.S. 113-313, the Secretary shall notify, by letter, all persons or firms licensed by the Marine Fisheries Commission to engage in business and commerce as may be directly affected by the paying of the assessment, that on and after the date specified in the letter the assessment shall become due and payable, and shall be remitted by said persons or firms to the Secretary who shall thereupon pay the amount of the assessments to the agency. The books and records of all such persons and firms shall at all times during regular business hours be open for inspection by the Secretary or his duly authorized agents. (1967, c. 890, s. 13; 1973, c. 1262, ss. 28, 86; 1977, c. 356; c. 771, s. 4; 1987, c. 641, s. 6; 1995, c. 504, s. 6; c. 509, s. 57.)

§ 113-315.6. Subsequent referendum where assessment defeated.

In the event such referendum as herein provided for shall not be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall have full power and authority to call another referendum for the purposes herein set forth at any time after the next succeeding 12 months, on the question of an assessment for three years. (1967, c. 890, s. 14.)

§ 113-315.7. Subsequent referendum where assessment adopted.

In the event such referendum as herein provided for shall be voted on affirmatively by two thirds or more of the voters eligible and voting, then the agency shall in its discretion have full power and authority to call and conduct during the third year after the latest referendum another referendum for the purpose set forth herein for the next ensuing three years. (1967, c. 890, s. 15.)

§ 113-315.8. Refund of assessment; refusal to pay assessment.

Any persons or firm hereinunder assessed shall have the right to demand of and receive from the treasurer or disbursing office of the agency a refund of such assessment so collected, provided such demand for refund is made in writing within 30 days from the end of the assessment year which shall be determined by the agency. Should a person or firm hereinunder assessed refuse to pay and does not pay the assessment within 30 days of when it is due and payable, then in such event suit may be brought by the duly certified agency in a court of competent jurisdiction to enforce the collection of the said assessment. (1967, c. 890, s. 16; 1971, c. 642, s. 1.)

§ 113-315.9. Bond of financial officer; audit.

(a) Before collecting and receiving such assessments, such treasurer or financial officer shall give bond to the agency to run in favor of the agency in the amount of the estimated total of such assessments as will be collected, and from time to time the agency may alter the amount of such bond which, at all times, must be equal to the total financial assets of the agency, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency and to be filed with the chairman or executive head of such agency.

(b) The chairman or executive head of such agency shall cause an annual certified audit to be made of the financial records of the agency. Such audit shall include, among other things, total annual compensation of each employee of the agency and detailed expenses incurred and reimbursed for each employee of the agency. The chairman or executive head of such agency shall cause a copy of the certified audit to be submitted to the Department within 60 days of the end of the agency's fiscal year and shall cause a copy of the audit, or a summary thereof, to be published at least once in one or more newspapers having general circulation in the area where the assessments are made within 60 days of the end of the agency's fiscal year. If the chairman or executive head of the agency shall fail to carry out the provisions of this paragraph, he shall be guilty of a Class 1 misdemeanor. (1967, c. 890, s. 17; 1971, c. 642, s. 2; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1989, c. 727, s. 115; 1993, c. 539, s. 868; 1994, Ex. Sess., c. 24, s. 14(c).)

§§ 113-315.10 through 113-315.14. Reserved for future codification purposes.