

# ASSEMBLY, No. 1667

## STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

**Sponsored by:**

**Assemblywoman ALISON LITTELL MCHOSE**

**District 24 (Sussex, Hunterdon and Morris)**

**Assemblyman GARY R. CHIUSANO**

**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**

**Assemblymen Fisher, Dancer, Wolfe, DeCroce, Merkt and  
Assemblywoman Cruz-Perez**

**SYNOPSIS**

Clarifies that Fish and Game Council has sole authority to regulate freshwater fishing, hunting, and trapping.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 9/26/2008)**

1 AN ACT concerning the Fish and Game Council, the Division of  
2 Fish and Wildlife, and the Department of Environmental  
3 Protection, amending various parts of the statutory law, and  
4 supplementing Title 23 of the Revised Statutes.

5

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

8

9 1. Section 25 of P.L.1948, c.448 (C.13:1B-23) is amended to  
10 read as follows:

11 25. All of the functions, powers and duties of the Division of  
12 Fish and Game of the existing State Department of Conservation,  
13 **[of the Fish and Game Council therein,]** and of the State  
14 Commissioner of Conservation relating to or administered through  
15 **[said]** that division, herein transferred to the Department of  
16 Conservation and Economic Development, are hereby assigned to,  
17 and shall be exercised and performed through, the Division of Fish  
18 and Game in the department.

19 (cf: P.L.1948, c.448, s.25)

20

21 2. Section 26 of P.L.1948, c.448 (C.13:1B-24) is amended to  
22 read as follows:

23 26. There shall be within but not of, the Division of Fish **[,**  
24 **Game]** and Wildlife, a Fish and Game Council which shall consist  
25 of 11 members, each of whom shall be chosen with due regard to  
26 **[his]** the member's knowledge of and interest in the conservation of  
27 fish and game. Each member of the council shall be appointed by  
28 the Governor, with the advice and consent of the Senate. Three of  
29 **[such]** the members shall be farmers, recommended to the  
30 Governor for appointment to the council by the agricultural  
31 convention held pursuant to the provisions of article 2 of chapter 1  
32 of Title 4 of the Revised Statutes; six of **[such]** the members shall  
33 be sportsmen, recommended to the Governor for appointment to the  
34 council by the New Jersey State Federation of Sportsmen's Clubs;  
35 one of **[such]** the members shall be the **[chairman]** chairperson of  
36 the committee established pursuant to section 7 of **[the**  
37 **"Endangered]** "The Endangered and Nongame Species  
38 Conservation [Act" (P.L.1973, c.309; C.23:2A-7)] Act," P.L.1973,  
39 c.309 (C.23:2A-7) , and one of **[such]** the members shall be a  
40 person knowledgeable in land use management and soil  
41 conservation practices. One of **[such]** the farmer representatives  
42 and two of **[such]** the sportsmen representatives in the council shall  
43 be chosen from among residents of any of the following counties--

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren; one of  
2 **【such】** the farmer representatives and two of **【such】** the sportsmen  
3 representatives in the council shall be chosen from among residents  
4 of any of the following counties--Hunterdon, Mercer, Middlesex,  
5 Monmouth, Ocean, Somerset and Union; and one of such farmer  
6 representatives and two of such sportsmen representatives shall be  
7 chosen from among residents of any of the following counties--  
8 Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester  
9 and Salem.

10 Each member of the council shall be appointed for a term of **【4】**  
11 four years and shall serve until his successor has been appointed  
12 and has qualified.

13 (cf: P.L.1979, c.199, s.72)

14

15 3. Section 29 of P.L.1948, c.448 (C.13:1B-27) is amended to  
16 read as follows:

17 29. The Division of Fish and **【Game】** Wildlife shall be under  
18 the immediate supervision of a director, who shall be a person with  
19 special training and experience in **【wild life】** wildlife management  
20 and otherwise qualified to direct the work of **【such】** the division.  
21 The director of **【such】** the division shall be appointed by the Fish  
22 and Game Council, subject to the approval of the Governor, and  
23 shall, unless sooner removed by the Governor as hereinafter  
24 provided, serve at the pleasure of **【such】** the council and until the  
25 director's successor is appointed and has qualified. **【He】** The  
26 director shall receive such salary as shall be provided by law.

27 The director shall administer the work of **【such】** the division  
28 under the direction and supervision of the commissioner , except,  
29 with respect to implementation of the State Fish and Game Code  
30 and any comprehensive policies concerned therewith adopted or  
31 formulated by the Fish and Game Council, the director shall be  
32 under the direction of the Fish and Game Council.

33 (cf: P.L.1948, c.448, s.29)

34

35 4. Section 30 of P.L.1948, c.448 (C.13:1B-28) is amended to  
36 read as follows:

37 30. a. In addition to its powers and duties otherwise hereinafter  
38 provided in sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29  
39 et al.) , the Fish and Game Council shall, subject to the approval of  
40 the commissioner, formulate comprehensive policies for the  
41 protection and propagation of fish, birds, and game animals and for  
42 the propagation and distribution of food fish and for the keeping up  
43 of the supply thereof in the waters of the State. No such approval  
44 of the commissioner shall be required with respect to the  
45 formulation of any comprehensive policies concerning the State  
46 Fish and Game Code adopted pursuant to sections 31 through 41 of  
47 P.L.1948, c.448 (C.13:1B-29 et al.) or with respect to the

1 implementation of the State Fish and Game Code by the Division of  
2 Fish and Wildlife, the division director, the Department of  
3 Environmental Protection, and the commissioner as directed by the  
4 council.

5 b. The council shall also:

6 **[a.]** (1) Consult with and advise the commissioner and director  
7 of the Division of Fish and **[Game]** Wildlife with respect to the  
8 work of such division.

9 **[b.]** (2) Study the activities of the Division of Fish and  
10 **[Game]** Wildlife and hold hearings with respect thereto as it may  
11 deem necessary or desirable.

12 **[c.]** (3) Report to the Governor and the Legislature annually,  
13 and at such other times as it may deem in the public interest, with  
14 respect to its findings and conclusions.

15 (cf: P.L.1948, c.448, s.30)

16

17 5. Section 31 of P.L.1948, c.448 (C.13:1B-29) is amended to  
18 read as follows:

19 31. As used in this article, unless otherwise specifically  
20 indicated:

21 **["Division"** means the Division of Fish and Game in the  
22 Department of Conservation and Economic Development.

23 "Council" means the Fish and Game Council in the Division of  
24 Fish and Game of the Department of Conservation and Economic  
25 Development.]

26 "Code" means the State Fish and Game Code **[.]** ;

27 "Council" means the Fish and Game Council in but not of the  
28 Division of Fish and Wildlife; and

29 "Division" means the Division of Fish and Wildlife in the  
30 Department of Environmental Protection.

31 (cf: P.L.1948, c.448, s.31)

32

33 6. Section 32 of P.L.1948, c.448 (C.13:1B-30) is amended to  
34 read as follows:

35 32. For the purpose of providing an adequate and flexible  
36 system of protection, propagation, increase, control and  
37 conservation of fresh water fish, game birds, game animals, and fur-  
38 bearing animals in this State, and for their use and development for  
39 public recreation and food supply, the council is hereby authorized  
40 and empowered to determine under what circumstances, when and  
41 in what localities, by what means and in what amounts and numbers  
42 such fresh water fish, game birds, game animals, and fur-bearing  
43 animals, or any of them, may be pursued, taken, killed, or had in  
44 possession so as to maintain an adequate and proper supply thereof,  
45 and may, after first having determined the need for such action on  
46 the basis of scientific investigation and research, adopt and from  
47 time to time amend and repeal such appropriate and reasonable

1 regulations concerning the same, or any of them, penalties for the  
2 violation of which are prescribed by certain of the sections of Title  
3 23 of the Revised Statutes amended herein, as it deems necessary to  
4 preserve, properly utilize or maintain the best relative number of  
5 any species or variety thereof, at the times, in the manner and to the  
6 extent hereinafter provided. The regulations so established shall be  
7 called the State Fish and Game Code.

8 The council shall be the sole authority in determining whether or  
9 not any species of fresh water fish, game bird, game animal, or fur-  
10 bearing animal may be pursued, taken, killed, or had in possession  
11 and in determining what circumstances, when and in what localities,  
12 by what means and in what amounts and numbers those species may  
13 be pursued, taken, killed, or had in possession. As directed by the  
14 council, the division, the division director, the Department of  
15 Environmental Protection, and the Commissioner of Environmental  
16 Protection shall implement the State Fish and Game Code as  
17 adopted by the council and any comprehensive policies concerned  
18 therewith as formulated by the council.

19 (cf: P.L.1948, c.448, s.32)

20

21 7. Section 7 of P.L.1970, c.33 (C.13:1D-4) is amended to read  
22 as follows:

23 7. a. All the functions, powers and duties of the Division of  
24 Fish and Game of the existing Department of Conservation and  
25 Economic Development, **[of the Fish and Game Council therein,]**  
26 and of the Division of Shell Fisheries of the existing Department of  
27 Conservation and Economic Development, and of the Shell  
28 Fisheries Council therein, and of the Commissioner of Conservation  
29 and Economic Development relating to, or administered through  
30 **[said] those** divisions, are transferred to and vested in the Division  
31 of Fish, Game and Shell Fisheries established hereunder.

32 b. The Fish and Game Council, together with all of its functions,  
33 powers and duties, is continued as the Fish and Game Council in  
34 but not of the Division of Fish, Game and Shell Fisheries in the  
35 Department of Environmental Protection. This act shall not affect  
36 the terms of office of the present members of the council. The  
37 members of the council shall continue to be appointed as provided  
38 by existing law.

39 c. The Shell Fisheries Council, together with all of its functions,  
40 powers, and duties, is continued as the Shell Fisheries Council in  
41 the Division of Fish, Game and Shell Fisheries in the Department of  
42 Environmental Protection. This act shall not affect the terms of  
43 office of the present members of the council. The members of the  
44 council shall continue to be appointed as provided by existing law.

45 (cf: P.L.1970, c.33, s.7)

46

47 8. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read

1 as follows:

2 12. The department shall formulate comprehensive policies for  
3 the conservation of the natural resources of the State, the promotion  
4 of environmental protection and the prevention of pollution of the  
5 environment of the State. These comprehensive policies shall not  
6 supersede or contradict the State Fish and Game Code as adopted  
7 and implemented by the Fish and Game Council pursuant to  
8 sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29 et al.) or any  
9 comprehensive policies concerned therewith formulated by the  
10 council. The department shall in addition to the powers and duties

11 vested in it by this act or by any other law have the power to:

12 a. Conduct and supervise research programs for the purpose of  
13 determining the causes, effects and hazards to the environment and  
14 its ecology;

15 b. Conduct and supervise Statewide programs of education,  
16 including the preparation and distribution of information relating to  
17 conservation, environmental protection and ecology;

18 c. Require the registration of persons engaged in operations  
19 which may result in pollution of the environment and the filing of  
20 reports by them containing such information as the department may  
21 prescribe to be filed relative to pollution of the environment, all in  
22 accordance with applicable codes, rules or regulations established  
23 by the department;

24 d. Enter and inspect any building or place for the purpose of  
25 investigating an actual or suspected source of pollution of the  
26 environment and ascertaining compliance or noncompliance with  
27 any codes, rules and regulations of the department. Any  
28 information relating to secret processes concerning methods of  
29 manufacture or production, obtained in the course of such  
30 inspection, investigation or determination, shall be kept  
31 confidential, except this information shall be available to the  
32 department for use, when relevant, in any administrative or judicial  
33 proceedings undertaken to administer, implement, and enforce State  
34 environmental law, but shall remain subject only to those  
35 confidentiality protections otherwise afforded by federal law and by  
36 the specific State environmental laws and regulations that the  
37 department is administering, implementing and enforcing in that  
38 particular case or instance. In addition, this information shall be  
39 available upon request to the United States Government for use in  
40 administering, implementing, and enforcing federal environmental  
41 law, but shall remain subject to the confidentiality protection  
42 afforded by federal law. If samples are taken for analysis, a  
43 duplicate of the analytical report shall be furnished promptly to the  
44 person suspected of causing pollution of the environment;

45 e. Receive or initiate complaints of pollution of the environment,  
46 including thermal pollution, hold hearings in connection therewith  
47 and institute legal proceedings for the prevention of pollution of the  
48 environment and abatement of nuisances in connection therewith

- 1 and shall have the authority to seek and obtain injunctive relief and  
2 the recovery of fines and penalties in summary proceedings in the  
3 Superior Court;
- 4 f. Prepare, administer and supervise Statewide, regional and  
5 local programs of conservation and environmental protection,  
6 giving due regard for the ecology of the varied areas of the State  
7 and the relationship thereof to the environment, and in connection  
8 therewith prepare and make available to appropriate agencies in the  
9 State technical information concerning conservation and  
10 environmental protection, cooperate with the Commissioner of  
11 Health and Senior Services in the preparation and distribution of  
12 environmental protection and health bulletins for the purpose of  
13 educating the public, and cooperate with the Commissioner of  
14 Health and Senior Services in the preparation of a program of  
15 environmental protection;
- 16 g. Encourage, direct and aid in coordinating State, regional and  
17 local plans and programs concerning conservation and  
18 environmental protection in accordance with a unified Statewide  
19 plan which shall be formulated, approved and supervised by the  
20 department. In reviewing such plans and programs and in  
21 determining conditions under which such plans may be approved,  
22 the department shall give due consideration to the development of a  
23 comprehensive ecological and environmental plan in order to be  
24 assured insofar as is practicable that all proposed plans and  
25 programs shall conform to reasonably contemplated conservation  
26 and environmental protection plans for the State and the varied  
27 areas thereof;
- 28 h. Administer or supervise programs of conservation and  
29 environmental protection, prescribe the minimum qualifications of  
30 all persons engaged in official environmental protection work, and  
31 encourage and aid in coordinating local environmental protection  
32 services;
- 33 i. Establish and maintain adequate bacteriological, radiological  
34 and chemical laboratories with such expert assistance and such  
35 facilities as are necessary for routine examinations and analyses,  
36 and for original investigations and research in matters affecting the  
37 environment and ecology;
- 38 j. Administer or supervise a program of industrial planning for  
39 environmental protection; encourage industrial plants in the State to  
40 undertake environmental and ecological engineering programs; and  
41 cooperate with the State Departments of Health and Senior Services  
42 [,] and Labor and Workforce Development , and [Commerce and  
43 Economic Development] the New Jersey Commerce and Economic  
44 Growth Commission. in formulating rules and regulations  
45 concerning industrial sanitary conditions;
- 46 k. Supervise sanitary engineering facilities and projects within  
47 the State, authority for which is now or may hereafter be vested by

1 law in the department, and shall, in the exercise of such supervision,  
2 make and enforce rules and regulations concerning plans and  
3 specifications, or either, for the construction, improvement,  
4 alteration or operation of all public water supplies, all public  
5 bathing places, landfill operations and of sewerage systems and  
6 disposal plants for treatment of sewage, wastes and other  
7 deleterious matter, liquid, solid or gaseous, require all such plans or  
8 specifications, or either, to be first approved by it before any work  
9 thereunder shall be commenced, inspect all such projects during the  
10 progress thereof and enforce compliance with such approved plans  
11 and specifications;

12 l. Undertake programs of research and development for the  
13 purpose of determining the most efficient, sanitary and economical  
14 ways of collecting, disposing or utilizing of solid waste;

15 m. Construct and operate, on an experimental basis, incinerators  
16 or other facilities for the disposal of solid waste, provide the various  
17 municipalities and counties of this State, the Board of Public  
18 Utilities, and the Division of Local Government Services in the  
19 Department of Community Affairs with statistical data on costs and  
20 methods of solid waste collection, disposal and utilization;

21 n. Enforce the State air pollution, water pollution, conservation,  
22 environmental protection, waste and refuse disposal laws, rules and  
23 regulations, including the making and signing of a complaint and  
24 summons for their violation by serving the summons upon the  
25 violator and thereafter filing the complaint promptly with a court  
26 having jurisdiction;

27 o. Acquire by purchase, grant, contract or condemnation, title to  
28 real property, for the purpose of demonstrating new methods and  
29 techniques for the collection or disposal of solid waste;

30 p. Purchase, operate and maintain, pursuant to the provisions of  
31 this act, any facility, site, laboratory, equipment or machinery  
32 necessary to the performance of its duties pursuant to this act;

33 q. Contract with any other public agency or corporation  
34 incorporated under the laws of this or any other state for the  
35 performance of any function under this act;

36 r. With the approval of the Governor, cooperate with, apply for,  
37 receive and expend funds from, the federal government, the State  
38 Government, or any county or municipal government or from any  
39 public or private sources for any of the objects of this act;

40 s. Make annual and such other reports as it may deem proper to  
41 the Governor and the Legislature, evaluating the demonstrations  
42 conducted during each calendar year;

43 t. Keep complete and accurate minutes of all hearings held  
44 before the commissioner or any member of the department pursuant  
45 to the provisions of this act. All such minutes shall be retained in a  
46 permanent record, and shall be available for public inspection at all  
47 times during the office hours of the department;

48 u. Require any person subject to a lawful order of the

1 department, which provides for a period of time during which such  
2 person subject to the order is permitted to correct a violation, to  
3 post a performance bond or other security with the department in  
4 such form and amount as shall be determined by the department.  
5 Such bond need not be for the full amount of the estimated cost to  
6 correct the violation but may be in such amount as will tend to  
7 insure good faith compliance with said order. The department shall  
8 not require such a bond or security from any public body, agency or  
9 authority. In the event of a failure to meet the schedule prescribed  
10 by the department, the sum named in the bond or other security  
11 shall be forfeited unless the department shall find that the failure is  
12 excusable in whole or in part for good cause shown, in which case  
13 the department shall determine what amount of said bond or  
14 security, if any, is a reasonable forfeiture under the circumstances.  
15 Any amount so forfeited shall be utilized by the department for the  
16 correction of the violation or violations, or for any other action  
17 required to insure compliance with the order; and

18 v. Encourage and aid in coordinating State, regional and local  
19 plans, efforts and programs concerning the remediation and reuse of  
20 former industrial or commercial properties that are currently  
21 underutilized or abandoned and at which there has been, or is  
22 perceived to have been, a discharge, or threat of a discharge, of a  
23 contaminant. For the purposes of this subsection, "underutilized  
24 property" shall not include properties undergoing a reasonably  
25 timely remediation or redevelopment process.

26 (cf: P.L.1997, c.278, s.26)

27

28 9. Section 21 of P.L.1970, c.33 (C.13:1D-18) is amended to read  
29 as follows:

30 21. With respect to the functions, powers and duties hereby  
31 transferred to the Department of Environmental Protection,  
32 whenever in any law, rule, regulation, contract, document, judicial  
33 or administrative proceeding or otherwise, reference is made to the  
34 Department of Conservation and Economic Development, or the  
35 commissioner thereof, the same shall mean and refer to the  
36 Department of Environmental Protection and the Commissioner of  
37 Environmental Protection, respectively.

38 With respect to the functions, power and duties of the  
39 Department of Health and the commissioner thereof, which are  
40 herein transferred and vested in the Division of Environmental  
41 Quality established hereunder, whenever in any law, rule,  
42 regulation, contract, document or otherwise, reference is made to  
43 the Department of Health, or the commissioner thereof, the same  
44 shall be deemed to mean and refer to the Department of  
45 Environmental Protection and the Commissioner of Environmental  
46 Protection, respectively.

47 Whenever the term "Division of Clean Air and Water" occurs or  
48 any reference is made thereto in any law, contract or document, the

1 same shall be deemed to mean or refer to the Division of  
2 Environmental Quality in the Department of Environmental  
3 Protection established hereunder.

4 Whenever the term "Clean Air Council" occurs or any reference  
5 is made thereto in any law, contract or document, the same shall be  
6 deemed to mean or refer to the Clean Air Council in the Department  
7 of Environmental Protection established hereunder.

8 Whenever the term "Clean Water Council" occurs or any  
9 reference is made thereto in any law, contract or document, the  
10 same shall be deemed to mean or refer to the Clean Water Council  
11 in the Department of Environmental Protection established  
12 hereunder.

13 Whenever the term, "Commission on Radiation Protection" or  
14 any reference is made thereto in any law, contract or document, the  
15 same shall be deemed to mean or refer to the Commission on  
16 Radiation Protection in the Department of Environmental Protection  
17 established hereunder.

18 Whenever the term "Division of Fish and Game" or "Division of  
19 Shell Fisheries" occurs or any reference is made thereto in any law,  
20 contract or document, the same shall be deemed to refer to the  
21 Division of Fish [ , Game and Shell Fisheries] and Wildlife  
22 established hereunder.

23 Whenever the term "Director of Fish and Game" occurs or any  
24 reference is made thereto in any law, contract or document, the  
25 same shall be deemed to mean or refer to the Director of the  
26 Division of Fish [ , Game and Shell Fisheries] and Wildlife  
27 established hereunder.

28 Whenever the term "Fish and Game Council" occurs or any  
29 reference is made thereto in any law, contract or document, the  
30 same shall be deemed to mean or refer to the Fish and Game  
31 Council in but not of the Department of Environmental Protection  
32 established hereunder.

33 Whenever the term "Shell Fisheries Council" occurs or any  
34 reference is made thereto in any law, contract or document, the  
35 same shall be deemed to mean or refer to the Shell Fisheries  
36 Council in the Department of Environmental Protection established  
37 hereunder.

38 Whenever the term "Director of Shell Fisheries" occurs or any  
39 reference is made thereto in any law, contract or document, the  
40 same shall be deemed to mean or refer to the Director of the  
41 Division of Fish [ , Game and Shell Fisheries] and Wildlife  
42 established hereunder.

43 Whenever the term "Division of Resource Development" or  
44 "Director of the Division of Resource Development" occurs or any  
45 reference is made thereto in any law, contract or document, the  
46 same shall be deemed to mean or refer to the Division of Natural  
47 Resources established hereunder and the director thereof,

1 respectively.

2 Whenever the term "Resource Development Council" or  
3 "Planning and Development Council" occurs or any reference is  
4 made thereto in any law, contract or document, the same shall be  
5 deemed to mean or refer to the Natural Resource Council  
6 established hereunder.

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

12 Whenever the term "Parks, Forestry and Recreation Council"  
13 occurs or any reference is made thereto in any law, contract or  
14 document, the same shall be deemed to mean or refer to the Parks,  
15 Forestry and Recreation Council in the Department of  
16 Environmental Protection established hereunder.

17 Whenever the term "Division of Water Policy and Supply"  
18 occurs or any reference is made thereto in any law, contract or  
19 document, the same shall be deemed to mean or refer to the  
20 Division of Water Policy and Supply in the Department of  
21 Environmental Protection.

22 Whenever the term "Water Policy and Supply Council" occurs or  
23 any reference is made thereto in any law, contract or document, the  
24 same shall be deemed to mean or refer to the Water Policy and  
25 Supply Council in the Department of Environmental Protection.

26 Whenever the term "Division of Economic Development" is  
27 referred to in any law, contract or document, the same shall be  
28 deemed to mean or refer to the Division of Economic Development  
29 in the Department of Labor and Industry.

30 Whenever the term "Economic Development Council" is referred  
31 to in any law, contract or document, the same shall be deemed to  
32 mean or refer to the Economic Development Council in the  
33 Department of Labor and Industry.

34 Whenever the term "Division of Veterans' Services" is referred  
35 to in any law, contract or document, the same shall be deemed to  
36 mean or refer to the organizational unit of the Department of  
37 Institutions and Agencies to be established pursuant to section 13 of  
38 this act.

39 Whenever the term "Veterans' Services Council" is referred to in  
40 any law, contract or document, the same shall be deemed to mean or  
41 refer to the Veterans Services Council in the Department of  
42 Institutions and Agencies.

43 With respect to the functions, powers and duties of the  
44 Department of Agriculture which are hereby transferred and vested  
45 in the Division of Environmental Quality established hereunder,  
46 whenever in any law, rule, regulation, contract, document or  
47 otherwise reference is made to the Department of Agriculture, the

1 same shall mean and refer to the Department of Environmental  
2 Protection established hereunder.  
3 (cf: P.L.1970, c.33, s.21)  
4  
5 10. R.S.23:1-1 is amended to read as follows:  
6 23:1-1. As used in this title:  
7 "Assistant protector" or "assistant fish and game protector"  
8 means the Deputy Chief of the Bureau of Law Enforcement in the  
9 division;  
10 "Closed season" means the date and time of year when wildlife  
11 may not be captured, taken, killed, or had in possession in the field;  
12 "Code" means the State Fish and Game Code;  
13 "Conservation officer" means any sworn, salaried member of the  
14 Bureau of Law Enforcement in the division holding the titles of  
15 Conservation Officer I, II, or III, and includes the titles of  
16 Supervising Conservation Officer and Chief of the Bureau of Law  
17 Enforcement;  
18 "Council" means the Fish and Game Council in but not of the  
19 Division of Fish and Wildlife in the Department of Environmental  
20 Protection;  
21 "Delaware river" means the waters of the Delaware river from  
22 the Pennsylvania shore to the New Jersey shore, or in the case of  
23 any tributaries or inland bays on the New Jersey side, to the mouths  
24 of those tributaries or bays;  
25 "Deputy warden" or "deputy fish and game warden" means any  
26 commissioned deputy conservation officer of the Bureau of Law  
27 Enforcement in the division;  
28 "Division," "Division of Fish, Game and Wildlife," "board," or  
29 "Board of Fish and Game Commissioners" means the Division of  
30 Fish and Wildlife in the Department of Environmental Protection;  
31 "Fishing" means the possession of an instrument used to take fish  
32 in a condition that makes the instrument readily usable, while in a  
33 place or in proximity thereto where fish may be found;  
34 "Hunting" means the possession of an instrument used to take  
35 wildlife in a condition that makes the instrument readily usable,  
36 while in a place or in proximity thereto where wildlife may be  
37 found;  
38 "Open season" means the date and time of year when wildlife  
39 may be captured, taken, killed, or had in possession;  
40 "Protector" or "fish and game protector" means the Chief of the  
41 Bureau of Law Enforcement in the division;  
42 "Warden" or "fish and game warden" means a conservation  
43 officer; and  
44 "Wildlife" means any wild mammal, bird, reptile, amphibian,  
45 fish, mollusk, crustacean or other wild animal or any part, product,  
46 egg or offspring or the dead body or parts thereof.  
47 (cf: P.L.1999, c.282, s.1)

1 11. R.S.23:2-2 is amended to read as follows:

2 23:2-2. The duties of the **【board】** division shall be the  
3 protection and propagation of fish, birds and game animals ,  
4 implementation of the State Fish and Game Code as adopted by the  
5 Fish and Game Council pursuant to sections 31 through 41 of  
6 P.L.1948, c.448 (C.13:1B-29 et al.) and of any comprehensive  
7 policies concerned therewith as formulated by the council ,  
8 enforcement of the laws relating thereto, propagation and  
9 distribution of food fish and the keeping up of the supply thereof in  
10 the waters of the **【state】** State . The **【board】** division may close  
11 streams or parts of streams for **【forty-eight】** 48 hours immediately  
12 following the stocking **【of same】** thereof by the **【board】** division ,  
13 and may revoke the license of any person who shall violate the  
14 regulation so prescribed. The **【board】** division may permit persons,  
15 when duly authorized by the **【board】** division , to carry firearms in  
16 the woods and fields at any time when necessary for the  
17 conservation of **【wild life】** wildlife . The **【board】** shall have the  
18 conduct and control of all hatching stations owned and operated by  
19 the **【state】** State . It may investigate any complaint made to it, at  
20 all times inspect any dam, weir, fish basket, net or other illegal  
21 apparatus for taking fish, and forthwith remove the same, and, on  
22 view or information, enforce the laws for the protection and  
23 propagation of fish, birds and game animals in **【this state】** the  
24 State, by arrest and prosecution of the offender, without complaint  
25 or warrant. It shall make a full report to the **【legislature】**  
26 Legislature annually, at its meeting, of all its official operations for  
27 the year ending on June **【thirtieth】** 30th preceding, with any  
28 suggestions and recommendations it deems useful.

29

30 12. Section 1 of P.L.1948, c.39 (C.23:2-2.1) is amended to read  
31 as follows:

32 1. Whenever pursuant to law the Governor shall, by  
33 proclamation, close any forests, woodlands or open lands to entry,  
34 and any open season for taking fish, game birds, game animals or  
35 fur-bearing animals or any of them, shall have been suspended or  
36 curtailed thereby, the Fish and Game Council, at the expiration of  
37 the period of **【such】** that closure, may **【,** subject to the approval of  
38 the State Commissioner of Conservation,**】** by order provide for a  
39 new open season or for an extension of **【such】** the open season  
40 curtailed, within the limits of the area affected by the Governor's  
41 proclamation, for a period not exceeding that during which **【said】**  
42 the open season was suspended or curtailed.

43 (cf: P.L.1948, c.39, s.1)

44

45 13. Section 74 of P.L.1979, c.199 (C.23:2B-15) is amended to  
46 read as follows:

1       74. a. The Division of Fish, Game and Shellfisheries is  
2 continued and constituted as the Division of Fish, Game and  
3 Wildlife in the Department of Environmental Protection. Except as  
4 otherwise provided by this act, all the functions, powers and duties  
5 of the existing Division of Fish, Game and Shellfisheries, and the  
6 director, thereof, are continued in the Division of Fish, Game and  
7 Wildlife and the director thereof, and whenever the term "Division  
8 of Fish, Game and Shellfisheries" occurs or any reference is made  
9 thereto in any law, contract or document, the same shall be deemed  
10 or mean to refer to the Division of Fish, Game and Wildlife.

11       b. The Fish and Game Council, together with all its functions,  
12 powers and duties, is continued as the Fish and Game Council in  
13 but not of the Division of Fish, Game and Wildlife in the  
14 Department of Environmental Protection.

15 (cf: P.L.1979, c.199, s.74)

16

17       14. Section 2 of P.L.1999, c.282 (C.23:2B-15.1) is amended to  
18 read as follows:

19       2. a. The Division of Fish, Game and Wildlife is continued and  
20 constituted as the Division of Fish and Wildlife in the Department  
21 of Environmental Protection. All the functions, powers, and duties  
22 of the existing Division of Fish, Game and Wildlife and the director  
23 thereof are continued in the Division of Fish and Wildlife and the  
24 director thereof, and whenever the term "Division of Fish, Game  
25 and Wildlife" occurs or any reference is made thereto in any law,  
26 contract, or document, it shall be deemed or mean to refer to the  
27 Division of Fish and Wildlife.

28       b. The Fish and Game Council, together with all its functions,  
29 powers and duties, is continued as the Fish and Game Council in  
30 but not of the Division of Fish and Wildlife in the Department of  
31 Environmental Protection.

32 (cf: P.L.1999, c.282, s.2)

33

34       15. Section 4 of P.L.1984, c.37 (C.23:4-22.4) is amended to read  
35 as follows:

36       4. The Board of Governors of Rutgers, The State University,  
37 shall direct the Department of Wildlife Management at Cook  
38 College to conduct a study to identify or develop an animal trap  
39 which substantially reduces injury and pain to both targeted and  
40 nontargeted animals which are caught in the trap and which could  
41 serve as an alternative to the steel-jaw leghold type animal trap.  
42 The results of this study shall be published in a report to the New  
43 Jersey Fish and Game Council, hereinafter referred to as the  
44 "council," in but not of the Department of Environmental Protection  
45 within one year of the effective date of this amendatory and  
46 supplementary act. For the purposes of this amendatory and

1 supplementary act, the steel-jaw leghold type animal trap does not  
2 mean mouse and rat traps designed for use in or under buildings.  
3 (cf: P.L.1984, c.37, s.4)

4  
5 16. (New section) a. Notwithstanding any law, rule, or  
6 regulation to the contrary, including but not limited to the  
7 provisions of subsection a. of section 5 of P.L.1948, c.448  
8 (C.13:1B-5), lands under the administration, ownership,  
9 management, or control of the Division of Fish and Wildlife or the  
10 Department of Environmental Protection which were acquired in  
11 whole or in part with monies from the "hunters' and anglers' license  
12 fund" created pursuant to R.S.23:3-11 and R.S.23:3-12, from the  
13 New Jersey Waterfowl Stamp Account established pursuant to  
14 section 5 of P.L.1983, c.504 (C.23:3-79), or with federal aid for fish  
15 and wildlife purposes, shall not be closed to the taking of any  
16 species of freshwater fish or wildlife in accordance with the State  
17 Fish and Game Code by the action of any State agency or official  
18 without the approval of the Fish and Game Council.

19 b. For the purposes of subsection a. of this section, "federal aid  
20 for fish and wildlife purposes" means any federal grant program to  
21 the states for fish and wildlife purposes using funds derived from  
22 the assessment of federal excise taxes on sporting equipment,  
23 including but not limited to the federal aid in sport fish restoration  
24 program, 16 U.S.C. s.777 et seq., and the federal aid in wildlife  
25 restoration program, 16 U.S.C. s.669 et seq.

26  
27 17. This act shall take effect immediately.

28  
29  
30 STATEMENT

31  
32 This bill clarifies existing law that the Fish and Game Council is  
33 empowered as the sole State governmental entity responsible for  
34 determining whether or not any species of fresh water fish, game  
35 bird, game animal, or fur-bearing animal may be fished, hunted, or  
36 trapped, and in determining what circumstances, when and in what  
37 localities, by what means and in what amounts and numbers those  
38 species may be fished, hunted, or trapped. The bill also clarifies  
39 existing law to require the Division of Fish and Wildlife, the  
40 division director, the Department of Environmental Protection  
41 (DEP), and the Commissioner of Environmental Protection to  
42 implement the State Fish and Game Code as adopted by the council  
43 and any comprehensive policies concerned therewith as formulated  
44 by the council, all as directed by the council. The bill further  
45 emphasizes the autonomy of the council pertaining to matters of  
46 fresh water fishing, hunting, and trapping by removing the council  
47 from the division and instead locating it in, but not of, the division  
48 and the DEP.

1 This bill is necessary to correct the clearly erroneous  
2 interpretation of the statutory law given recently by the New Jersey  
3 Supreme Court in the case of U.S. Sportsmen' Alliance Foundation  
4 v. New Jersey Department of Environmental Protection. In its  
5 December 2, 2004 decision in that case, the Court reversed a well-  
6 reasoned, unanimous three-judge Appellate Division opinion and  
7 thereby stopped the black bear hunt scheduled for December 2004  
8 until certain specified conditions were met. In doing so, the  
9 Supreme Court found that the Fish and Game Council and the  
10 Commissioner of Environmental Protection have "shared  
11 responsibility" regarding the formulation of comprehensive policies  
12 pertaining to game animals, including black bears. The effect of  
13 this decision was to give the commissioner veto authority over any  
14 action taken by the council, thereby transforming the council into a  
15 mere advisory body. This result is clearly contrary to the statutory  
16 law establishing the Fish and Game Council as a fully capable  
17 regulatory body, providing for adoption of the State Fish and Game  
18 Code by the council only, and establishing the State Fish and Game  
19 Code as the only mechanism by which fresh water fishing, hunting,  
20 and trapping is regulated in the State. The Court's decision wrongly  
21 upset an established statutory framework, over 50 years of  
22 precedent, and the designed and mutually accepted working  
23 relationship established by the council with the Division of Fish and  
24 Wildlife over that time period since the council was created by law.

25 Section 16 of this bill also provides that lands under the  
26 administration, ownership, management, or control of the Division  
27 of Fish and Wildlife or the DEP which were acquired in whole or in  
28 part with monies from the "hunters' and anglers' license fund," from  
29 the New Jersey Waterfowl Stamp Account, or with federal aid for  
30 fish and wildlife purposes, shall not be closed to the taking of any  
31 species of freshwater fish or wildlife in accordance with the State  
32 Fish and Game Code by the action of any State agency or official  
33 without the approval of the Fish and Game Council. This section  
34 responds in part to an Appellate Division opinion issued November  
35 24, 2004 in the case of Safari Club International v. New Jersey  
36 Department of Environmental Protection in which the court  
37 interpreted the current statutory law in support of affirming the  
38 notice recently issued by the Commissioner of Environmental  
39 Protection closing all lands owned, managed or controlled by the  
40 DEP to bear hunting.