

SENATE, No. 2624

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 8, 2014

Sponsored by:

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Requires DEP to establish “private wildlife habitat certification program”; creates affirmative defense against municipal nuisance ordinances for properties certified under the program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the creation of private wildlife habitat and
2 municipal nuisance ordinances and supplementing Title 13 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. As used in this act:

9 "Certifying entity" means a nonprofit conservation organization,
10 a for-profit landscaping company, or any other private entity,
11 provided that the commissioner has determined that the entity
12 possesses the appropriate expertise, qualifications, and resources to
13 assess whether a property satisfies the standards and criteria
14 established for purposes of certifying a property as a "certified
15 private wildlife habitat" pursuant to section 2 of this act.

16 "Commissioner" means the Commissioner of Environmental
17 Protection.

18
19 2. a. The Commissioner of Environmental Protection shall
20 establish a private wildlife habitat certification program. In
21 establishing the program, the commissioner may consider any
22 standards used by recognized conservation organizations for
23 purposes of certifying properties as suitable wildlife habitat.

24 b. The commissioner shall adopt, pursuant to the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.), rules and regulations necessary to implement the program,
27 including but not limited to, rules and regulations that:

28 (1) establish standards and procedures for the physical
29 inspection and certification of a property as "certified private
30 wildlife habitat";

31 (2) identify one or more certifying entities which shall be
32 authorized to physically inspect and certify that a property is a
33 "certified private wildlife habitat," and provide that the certifying
34 entities may charge fees to cover reasonable costs associated with
35 the inspection and certification process; and

36 (3) promote the substantial use of native plants.

37 c. The commissioner shall maintain a list of all certifying
38 entities identified pursuant to paragraph (2) of subsection b. of this
39 section and shall publish the list on the department's Internet
40 website.

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42 3. A certifying entity shall issue to the owner of each property
43 that applies and qualifies for certification as a "certified private
44 wildlife habitat" a certificate of registration to be filed by the
45 property owner with the municipality in which the property is
46 located pursuant to the provisions of section 4 of this act, and a sign
47 designating the property as a "certified private wildlife habitat,"
48 which may be posted on the property by the owner.

1 4. a. Prior to altering a property for purposes of establishing a
2 “certified private wildlife habitat,” a property owner shall obtain
3 from a certifying entity a certificate of registration designating the
4 property as a “certified private wildlife habitat” and file the
5 certificate of registration with the municipal clerk of the
6 municipality in which the property is located. The municipal clerk
7 may charge a fee not to exceed \$25 for each certificate of
8 registration filed with the clerk.

9 b. (1) A certificate of registration shall expire two years after
10 the issue date thereof, provided, however, a property owner may
11 renew the certificate of registration one time prior to its expiration
12 for an additional two years by submitting to the municipality a
13 written and signed certification that the property:

14 (a) continues to comply with all applicable standards and criteria
15 for the certification of the property as a “certified private wildlife
16 habitat”; and

17 (b) remains substantially unaltered or has been improved since
18 the time the initial certificate of registration was issued.

19 (2) The municipal clerk may charge a fee not to exceed \$25 for
20 the renewal of a certificate of registration pursuant to paragraph (1)
21 of this subsection.

22 c. Upon the expiration of a certificate of registration, a person
23 may apply for a new certificate of registration, which shall be
24 issued subject to all the standards, procedures, and requirements
25 established in this act, and any rules or regulations adopted pursuant
26 thereto, including a new physical inspection and new certification
27 of the property by a certifying entity.

28
29 5. A person who files and maintains an unexpired certificate of
30 registration with a municipality in compliance with the provisions
31 of this act, and the rules and regulations adopted pursuant thereto,
32 shall be entitled to an affirmative defense against any liability for a
33 violation of a municipal ordinance under which the “certified
34 private wildlife habitat,” or any component thereof, is deemed, or
35 would be deemed, a nuisance or an otherwise unlawful condition.
36 The person shall be entitled to this affirmative defense from the
37 time of filing the notice of intent to alter the property, provided that
38 a certificate of registration is filed within 60 days thereafter
39 pursuant to section 4 of this act.

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41 6. This act shall take effect immediately.

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44 STATEMENT

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46 This bill would direct the Commissioner of Environmental
47 Protection to establish a private wildlife habitat certification
48 program. In establishing the program, the commissioner would be

1 authorized to consider any standards used by recognized
2 conservation organizations for purposes of certifying properties as
3 suitable wildlife habitat. A person who registers a property that has
4 been certified under the program, as outlined below, would be
5 entitled to an affirmative defense against any liability for a violation
6 of a municipal ordinance under which the “certified private wildlife
7 habitat,” or any component thereof, is deemed, or would be deemed,
8 a nuisance or an otherwise unlawful condition.

9 In establishing a private wildlife habitat certification program,
10 the commissioner would be required to adopt regulations to
11 implement the program. The regulations would establish standards
12 and procedures for the physical inspection of a property and,
13 thereafter, its certification as "certified private wildlife habitat."
14 The regulations would also identify one or more private certifying
15 entities to implement the physical inspection and certification.

16 The certifying entities identified in the regulations could include
17 nonprofit conservation organizations, for-profit landscaping
18 companies, or any other private entities, provided that the
19 commissioner has determined that any such entity possesses the
20 appropriate expertise, qualifications, and resources to assess
21 whether a property satisfies the standards and criteria established
22 for purposes of certifying a property as a “certified private wildlife
23 habitat.” The certifying entities would be authorized to charge fees
24 to cover reasonable costs associated with the inspection and
25 certification process.

26 The bill would also require that the regulations promote the use
27 of native plants. In addition, certifying entities would be required
28 to issue to the owner of each certified property (1) a certificate of
29 registration to be filed with the municipality in which the property
30 is located, and (2) a sign for purposes of designating the property as
31 a “certified private wildlife habitat.”

32 Under the bill, prior to altering a property for purposes of
33 establishing a “certified private wildlife habitat,” the owner of the
34 property would be required to obtain from a certifying entity a
35 certificate of registration and file it with the municipal clerk of the
36 municipality in which the property is located. The municipal clerk
37 would be authorized to charge a fee not to exceed \$25 for each
38 certificate of registration filed.

39 A certificate of registration would expire two years after the
40 issue date; however, the bill provides that the property owner could
41 renew a certificate of registration for an additional two years by
42 submitting a written and signed certification affirming that the
43 property continues to comply with all applicable standards and
44 criteria for certified private wildlife habitats and remains
45 substantially unaltered, or has been improved, since the time the
46 initial certificate of registration was issued. The bill would allow
47 for only one such renewal. Upon the expiration of a certificate of
48 registration, a person could apply for a new certificate of

1 registration, which would be issued subject to all the
2 aforementioned standards, procedures, and requirements, including
3 a new physical inspection and new certification of the property by a
4 certifying entity.

5 A person who provides a notice of intent to alter a property for
6 purposes of establishing a “certified private wildlife habitat,” and
7 thereafter timely registers the property and maintains an unexpired
8 certificate of registration with a municipality, would be entitled to
9 an affirmative defense against any liability for a violation of a
10 municipal ordinance under which the “certified private wildlife
11 habitat,” or any component thereof, is deemed, or would be deemed,
12 a nuisance or an otherwise unlawful condition. The person would
13 be entitled to this affirmative defense from the time of filing the
14 notice of intent, provided that a certificate of registration is indeed
15 obtained and filed within 60 days after the notice of intent.