

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 2608

STATE OF NEW JERSEY

ADOPTED JUNE 12, 1997

Sponsored by Assemblywoman ALLEN and Assemblyman  
DeSOPO

1 AN ACT concerning the prevention of flooding, amending P.L.1993,  
2 c.376, and supplementing Title 58 of the Revised Statutes.

3

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

6

7 1. Section 1 of P.L.1993, c.376 (C.58:16A-67) is amended to read  
8 as follows:

9 1. a. The provisions of any other law, or any rule or regulation  
10 adopted pursuant thereto, to the contrary notwithstanding, a county  
11 or municipality, or designated agency thereof, before undertaking any  
12 project to clean, clear, or desnag a stream within its jurisdiction, shall  
13 submit to the Department of Environmental Protection or to any State  
14 agency requiring a stream cleaning permit or an application for the  
15 proposed stream cleaning, clearing, or desnagging project, a written  
16 notice of intent to undertake a project to clean, clear, or desnag a  
17 stream and a certification attested to by the county or municipal  
18 engineer or the local soil conservation district, provided that the  
19 certification is made by a licensed professional engineer. The engineer  
20 shall certify that:

21 (1) the project is being undertaken solely for the purpose of  
22 stream cleaning, clearing, or desnagging;

23 (2) the removal of any material will not extend below the natural  
24 stream bed;

25 (3) the activities will not alter the natural [streambanks] stream  
26 banks;

27 (4) the activities will consist of the removal only of accumulated  
28 sediments, debris, and garbage from a stream with a natural stream bed  
29 or the removal of any accumulated material from a stream previously  
30 channelized with concrete or similar artificial material;

31 (5) every effort will be made to perform work from only one

**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 [streambank] stream bank and that vegetation and canopy on the more  
2 southerly or westerly banks will be preserved for stream shading; and

3  
4 (6) the activities are necessary and in the public interest.

5 The notice shall also include a description of the nature of the  
6 project, a description, including a photograph, of the reach of the  
7 stream in which the activity is to take place, and an identification of  
8 the regulatory water quality classification of the stream in which the  
9 activity is to take place. The reach of the stream may be provided by  
10 the submission of a photostatic copy of the United States Geological  
11 Survey topographic quadrangle.

12 b. For any project that includes sediment removal, in addition to  
13 the conditions enumerated in subsection a. of this section, the  
14 following conditions must be met:

15 (1) the applicant shall provide a statement from the engineer that  
16 the stream floods and that such flooding results or can result in  
17 property damage necessitating the proposed cleaning, clearing or  
18 desnagging;

19 (2) the stream to be cleaned, cleared, or desnagged is not  
20 classified as pinelands waters or category one waters;

21 (3) the stream bed is 15 feet or less in average width;

22 (4) the stream corridor to be cleaned, cleared, or desnagged is less  
23 than 500 feet in length;

24 (5) the stream is not in a municipality, as defined by the  
25 department, that is known to have federally or State listed threatened  
26 or endangered species associated with its wetlands. Regulated  
27 activities in these municipalities shall be coordinated with federal  
28 agencies;

29 (6) the applicant shall provide a certification by the engineer that  
30 the material to be removed is not beyond the natural stream bed;

31 (7) the applicant shall submit surface color photographs of the  
32 areas of the stream to be cleaned, cleared, or desnagged and of the  
33 access points; and

34 (8) the applicant shall incorporate appropriate timing restrictions  
35 as required by the department.

36 [b.] c. Upon receipt of a notice and certification submitted  
37 pursuant to this section, the department, or any other State agency  
38 requiring a stream cleaning permit or an application for the proposed  
39 stream cleaning, clearing, or desnagging project, as the case may be,  
40 shall, except as provided otherwise in this subsection, have [30] 15  
41 days to notify the [county or municipality, or designated agency  
42 thereof,] applicant if particular circumstances mandate that the stream  
43 cleaning, clearing, or desnagging not be done in this particular case.  
44 For a project involving the removal of sediment, the department shall  
45 have 60 days prior to the commencement of activities to notify the  
46 applicant if particular circumstances mandate that the stream cleaning,

1 clearing, or desnagging not be done in that particular case. If the  
2 department, or any other State agency requiring a stream cleaning  
3 permit or an application for the proposed stream cleaning, clearing, or  
4 desnagging project, as the case may be, makes such a determination,  
5 it shall provide the [county or municipality, or designated agency  
6 thereof,] applicant with the technical reasons therefor. For the  
7 purposes of this subsection, if the department's technical reasons  
8 therefor are based upon the inability to determine the natural stream  
9 bed, the department shall, at the request of the applicant, assist in  
10 identifying the natural stream bed. The department may not prohibit  
11 the removal of any garbage no matter how long it has been in the  
12 stream, nor shall the department require extensive mapping or other  
13 engineering services which involve significant expense to the  
14 municipality.

15 d. Upon completion of the project to clean, clear, or desnag a  
16 stream involving the removal of sediment within its jurisdiction, the  
17 applicant shall submit to the department a written notice that the  
18 project has been completed in accordance with the conditions outlined  
19 in subsection b. of this section. The notice shall contain a certification  
20 attested to by the county or municipal engineer or the local soil  
21 conservation district, provided that the certification is made by a  
22 licensed professional engineer. The engineer shall certify that all the  
23 conditions in subsection b. of this section have been adhered to.

24 e. As used in this section:

25 "Applicant" means a county or municipality, or designated agency  
26 thereof;

27 "Category one waters" means, for the purposes of sediment  
28 removal, those waters designated by the Department of Environmental  
29 Protection, for purposes of implementing the antidegradation policies  
30 of the "Water Pollution Control Act", P.L.1977, c.74 (C.58:10A-1 et  
31 seq.), for protection from measurable changes in water quality  
32 characteristics because of their clarity, color, scenic setting, other  
33 characteristics of aesthetic value, exceptional ecological significance,  
34 exceptional recreational significance, exceptional water supply  
35 significance, or exceptional fisheries resources. These waters may  
36 include, but are not limited to:

37 (1) Waters originating wholly within federal, interstate, State,  
38 county, or municipal parks, forests, fish and wildlife lands, and other  
39 special holdings that have not been designated by the department as  
40 FW1;

41 (2) Waters classified by the department as FW2 trout production  
42 waters and their tributaries;

43 (3) Surface waters classified by the department as FW2 trout  
44 maintenance waters or FW2 nontrout waters that are not more than  
45 750 feet upstream of waters classified by the department as FW2 trout  
46 production waters;

1       (4) Shellfish waters of exceptional resource value; or

2       (5) Other waters and their tributaries that flow through, or border,  
3 federal, State, county or municipal parks, forest, fish and wildlife  
4 lands, and other special holdings;

5       "Department" means the Department of Environmental Protection;

6       "FW" means the general surface water classification applied to  
7 fresh waters;

8       "FW1" means those fresh waters that originate in and are wholly  
9 within federal or State parks, forests, fish and wildlife lands, and other  
10 special holdings, that are to be maintained in their natural state of  
11 quality and not subjected to any man-made wastewater discharges;

12       "FW2" means the general surface water classification applied to  
13 those fresh waters that are not designated as FW1 or pinelands waters;

14       "Trout maintenance waters" means waters designated by the  
15 department for the support of trout throughout the year; and

16       "Trout production waters" means waters designated by the  
17 department for use by trout for spawning or nursery purposes during  
18 their first summer.

19       [c.] f. Any person or governmental entity violating the provisions  
20 of this [act] section shall be subject to penalties imposed for violations  
21 of the "Flood Hazard Area Control Act," P.L.1962, c.19  
22 (C.58:16A-50 et seq.).  
23 (cf: P.L.1993, c.376, s.1)

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25       2. (New section) a. Any municipality, either alone or jointly with  
26 any other municipality, may establish a plan, with the approval of the  
27 Department of Environmental Protection, for the size and location of  
28 flood control facilities, including detention basins, in order to minimize  
29 flood damage, to reduce stormwater runoff from new or existing  
30 development, or to induce water recharge into the ground where  
31 practical. Notwithstanding any provision of this subsection to the  
32 contrary, for new development the standards adopted pursuant to  
33 P.L.1993, c.32 (C.40:55D-40.1 et seq.) shall be applicable. This  
34 subsection shall apply only to municipally-owned flood control  
35 facilities, including detention basins, constructed on public property.

36       b. Any municipality, either alone or jointly with any other  
37 municipality, may establish a plan, with the approval of the  
38 Department of Environmental Protection, to maintain the water level  
39 of any lake or reservoir within its borders at a level necessary to  
40 provide both an equivalent surface water safe yield established by the  
41 department for any affected water supply system and protection  
42 against flooding. Any such plan shall (1) comply with the provisions  
43 of R.S.23:5-29, P.L.1981, c.262 (C.58:1A-1 et seq.), and R.S.58:4-1  
44 et seq., (2) include a calculation of the quantity of storage necessary  
45 to achieve a given level of flood control protection, (3) consider the  
46 environmental impact upon aquatic resources and fish spawning, the

1 impact upon recreational use, and the financial impact upon all users  
2 of the lake or reservoir, and (4) consider any other criteria deemed  
3 necessary by the department. No plan that jeopardizes safe yield and  
4 the provision of adequate water supply shall be approved by the  
5 department. No plan within the area of jurisdiction of the New Jersey  
6 Water Supply Authority may be established without the approval of  
7 the authority.

8 c. Nothing in this section shall be construed to supersede any  
9 other State law that applies to the construction of flood control  
10 facilities or the regulation of water levels in lakes or reservoirs.

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12 3. This act shall take effect immediately.

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17 Provides for expedited permit procedures for certain stream cleaning  
18 activities and for other planning functions to prevent flooding.