

P.L. 1997, CHAPTER 286, *approved January 8, 1998*
Senate Committee Substitute (*Third Reprint*) for
Senate, No. 275

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

4

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

7

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

10 1. a. The provisions of any other law, or any rule or regulation
11 adopted pursuant thereto, to the contrary notwithstanding, a county
12 or municipality, or designated agency thereof, before undertaking any
13 project to clean, clear, or desnag a stream within its jurisdiction, shall
14 submit to the Department of Environmental Protection or to any State
15 agency requiring a stream cleaning permit or an application for the
16 proposed stream cleaning, clearing ^{2,2} or desnagging project, a written
17 notice of intent to undertake a project to clean, clear, or desnag a
18 stream and a certification attested to by the county or municipal
19 engineer or the local soil conservation district, provided that the
20 certification is made by a licensed professional engineer. The engineer
21 shall certify that:

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted January 27, 1997.

² Assembly AES committee amendments adopted June 12, 1997.

³ Assembly floor amendments adopted December 4, 1997.

1 (3) the activities will not alter the natural ²[streambanks] stream
2 banks² ;

3 (4) the activities will consist of the removal only of accumulated
4 sediments, debris ^{2,2} and garbage from a stream with a natural stream
5 bed or the removal of any accumulated material from a stream
6 previously channelized with concrete or similar artificial material;

7 (5) every effort will be made to perform work from only one
8 ²[streambank] stream bank² and that vegetation and canopy on the
9 more southerly or westerly banks will be preserved for stream shading;
10 and

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

12 The notice shall also include a description of the nature of the
13 project, a description, including a photograph, of the reach of the
14 stream in which the activity is to take place, and an identification of
15 the regulatory water quality classification of the stream in which the
16 activity is to take place. The reach of the stream may be provided by
17 the submission of a photostatic copy of the United States Geological
18 Survey topographic quadrangle.

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

22 (1) the applicant shall provide a statement from the engineer that
23 the ²[subject]² stream floods and ²that such flooding² results or can
24 result in property damage necessitating the proposed cleaning ²,
25 clearing, or desnagging² :

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

28 (3) the ²[streambed] stream bed² is 15 feet or less in average
29 width;

30 (4) the stream corridor to be cleaned ², cleared, or desnagged² is
31 less than 500 feet in length;

32 (5) the stream is not in a municipality, as defined by the
33 department, that is known to have federally or State listed threatened
34 or endangered species associated with its wetlands. Regulated
35 activities in these municipalities ²[require coordination] shall be
36 coordinated² with federal agencies;

37 (6) the applicant shall provide a certification by the engineer that
38 the material to be removed is not beyond the natural ²[streambed]
39 stream bed² ;

40 (7) the applicant shall submit surface color photographs of the
41 areas of the stream to be cleaned ², cleared, or desnagged² and of the
42 access points; and

43 (8) the applicant shall incorporate appropriate timing restrictions
44 as required by the ²[Department of Environmental Protection]
45 department² .

1 [b.] c. Upon receipt of a notice and certification submitted
2 pursuant to this section, the department, or any other State agency
3 requiring a stream cleaning permit or an application for the proposed
4 stream cleaning, clearing²,² or desnagging project, as the case may be,
5 shall, except as provided² [below] otherwise in this subsection², have
6 [30] 15 days to notify the ²[county or municipality, or designated
7 agency thereof,] applicant² if particular circumstances mandate that the
8 stream cleaning², clearing, or desnagging² not be done in this
9 particular case. For² [those projects] a project² involving the removal
10 of sediment, the department shall have 60 days prior to the
11 commencement of activities to notify the² [county or municipality, or
12 designated agency thereof,] applicant² if particular circumstances
13 mandate that the stream cleaning², clearing, or desnagging² not be
14 done in that particular case. If the department, or any other State
15 agency requiring a stream cleaning permit or an application for the
16 proposed stream cleaning, clearing²,² or desnagging project, as the
17 case may be, makes such a determination, it shall provide the ²[county
18 or municipality, or designated agency thereof,] applicant² with the
19 technical reasons therefor. ²For the purposes of this subsection, if the
20 department's technical reasons therefor are based upon the inability to
21 determine the natural stream bed, the department shall, at the request
22 of the applicant, assist in identifying the natural stream bed.² The
23 department may not prohibit the removal of any garbage no matter
24 how long it has been in the stream², nor shall the department require
25 extensive mapping or other engineering services which involve
26 significant expense to the municipality².

27 d. Upon completion of the project to clean², clear, or desnag² a
28 stream involving the removal of sediment within its jurisdiction, the
29 ²[county or municipality, or designated agency thereof,] applicant²
30 shall submit to the department a written notice that the project has
31 been completed in accordance with the² [criteria] conditions² outlined
32 in subsection b. of this section. The notice shall contain a certification
33 attested to by the county or municipal engineer or the local soil
34 conservation district, provided that the certification is made by a
35 licensed professional engineer. The engineer shall certify that all the
36 ²[criteria] conditions² in subsection b. of this section have been
37 adhered to.

38 e. As used in this section:

39 ²"Applicant" means a county or municipality, or designated agency
40 thereof.²

41 "Category one waters" means, for the purposes of sediment
42 removal, those waters² [designed] designated² by the Department of
43 Environmental Protection, for purposes of implementing the
44 antidegradation policies of the "Water Pollution Control Act",
45 P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable

1 changes in water quality characteristics because of their clarity, color,
2 scenic setting, other characteristics of aesthetic value, exceptional
3 ecological significance, exceptional recreational significance,
4 exceptional water supply significance, or exceptional fisheries
5 resources. These waters may include, but are not limited to:

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

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

12 (3) Surface waters classified by the department as FW2 trout
13 maintenance ²waters² or FW2 nontrot ²waters² that are not more than
14 750 feet upstream of waters classified ²by the department² as FW2
15 trout production ²waters² ;

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

17 (5) Other waters and their tributaries that flow through, or border,
18 federal, State, county or municipal parks, forest, fish and wildlife
19 lands, and other special holdings ²[.] ;

20 "Department" means the Department of Environmental Protection;²

21 "FW" means the general surface water classification applied to
22 fresh waters ²[.] ;²

23 "FW1" means those fresh waters that originate in and are wholly
24 within federal or State parks, forests, fish and wildlife lands, and other
25 special holdings, that are to be maintained in their natural state of
26 quality and not subjected to any man-made wastewater discharges
27 ²[.] ;²

28 "FW2" means the general surface water classification applied to
29 those fresh waters that are not designated as FW1 or pinelands waters
30 ²[.] ;²

31 "Trout maintenance waters" means waters designated by the
32 department for the support of trout throughout the year ²[.] ; and²

33 "Trout production waters" means waters designated by the
34 department for use by trout for spawning or nursery purposes during
35 their first summer.

36 [c.] f. Any person or governmental entity violating the provisions
37 of this [act] section shall be subject to penalties imposed for violations
38 of the "Flood Hazard Area Control Act," P.L.1962, c.19
39 (C.58:16A-50 et seq.).

40 (cf: P.L.1993, c.376, s.1)

41
42 2. (New section) a. Any municipality², either alone or jointly with
43 any other municipality,² may establish a plan², with the approval of the
44 Department of Environmental Protection,² for the size and location of
45 flood control facilities, including detention basins, ²[in conjunction

1 with any other municipality and the Department of Environmental
2 Protection]² in order to minimize flood damage, to reduce stormwater
3 runoff from new or existing development, ²[and] or² to induce water
4 recharge into the ground where practical. ¹Notwithstanding any
5 provision of this subsection to the contrary, for new development the
6 standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.)
7 shall be applicable. This subsection shall apply only to municipally-
8 owned flood control facilities, including detention basins, constructed
9 on public property.¹

10 b. Any municipality¹, either alone or jointly with any other
11 municipality,¹ may establish a plan ¹[either alone or jointly with any
12 other municipality and],¹ with the ¹[Department of Environmental
13 Protection] approval of the ²[New Jersey Water Supply Authority¹]
14 Department of Environmental Protection², to maintain the water level
15 of any lake or reservoir within its borders at a level necessary to
16 ¹[protect] provide ²[both an effective yield] an equivalent surface
17 water safe yield established by the department for any affected water
18 supply system² and protection¹ against flooding. ²Any such plan shall
19 (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262
20 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation
21 of the quantity of storage necessary to achieve a given level of flood
22 control protection, (3) consider the environmental impact upon aquatic
23 resources and fish spawning, the impact upon recreational use, and the
24 financial impact upon all users of the lake or reservoir, and (4)
25 consider any other criteria deemed necessary by the department. ³The
26 department shall hold a public hearing prior to approval of a plan to
27 seek input on the plan from any municipality that borders the lake or
28 reservoir, or borders a river, stream or brook that feeds into or flows
29 from that lake or reservoir. The department shall issue its decision on
30 the plan in writing and transmit a copy thereof to each affected
31 municipality and water supply purveyor prior to the effective date of
32 the decision.³ No plan that jeopardizes safe yield and the provision of
33 adequate water supply ³or reduces current safe yield levels of any lake
34 or reservoir³ shall be approved by the department. No plan within the
35 area of jurisdiction of the New Jersey Water Supply Authority may be
36 established without the approval of the authority.

37 c. Nothing in this section shall be construed to supersede any
38 other State law that applies to the construction of flood control
39 facilities or the regulation of water levels in lakes or reservoirs.²

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41 ²[3. (New section) Upon application by a municipality, the
42 Department of Environmental Protection shall identify the natural
43 streambed of any stream in the municipality that floods and which
44 flooding results or can result in property damage and which will be
45 subject to routine maintenance to control flooding. Any maps or data

1 generated by the department shall be sent to the clerk of the
2 municipality.]²

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4 ²[4.] 3.² This act shall take effect immediately.

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