

## CHAPTER 97

**AN ACT** concerning dredging and dredged material disposal, providing for the expenditure of monies made available pursuant to P.L.1996, c.70, supplementing Title 12 and Title 34 of the Revised Statutes , and making an appropriation.

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

C.12:6B-1 Findings, declarations relative to dredging, dredged material disposal.

1. The Legislature finds and declares that the existence of deep water ports in both the northern and southern sections of the State have been of critical importance to the economy and growth of the region since the colonial era; that the combination of the natural silting of New Jersey's harbor areas and the building of larger oceangoing vessels that require greater water depth has resulted in a reduction of the volume of maritime commerce in the region, resulting in a loss of jobs and the potential elimination of the Port of New York and New Jersey's present status as the primary port on the Eastern seaboard; that many of these port waters contain harmful contaminants that upset the ecological balance and threaten the environment, and that must be disposed of in the most cost-efficient manner possible, using the most up-to-date technology including the possible creation of a usable end product; and that the voters, in November 1996, overwhelmingly approved a bond issue for the dredging of New Jersey's navigation channels.

The Legislature therefore determines that it is in the public interest that the port dredging and dredged material disposal projects proceed as expeditiously and efficiently as possible, and that the monies approved by the voters for this purpose be used effectively; that it is necessary for the State to establish an administrative procedure to set priorities for dredging projects in accordance with their economic benefit to the State, and their relative potential to bring about economic growth through enhanced maritime commerce, to retain existing jobs and create new ones, and to support the continuing viability of the State's recreation and tourism industries; and that it is essential that the priorities for the dredging and dredged material disposal projects be established with the participation of the affected sectors of the State's economy, including representatives of the maritime industry, business and commercial interests, labor, and recreation and tourism industries, so that a consensus is reached on the most effective use of the available funds.

C.12:6B-2 Definitions relative to dredging, dredged material disposal.

2. As used in this act:

"Containment facility" means an upland or in-water confined disposal facility which shall consist of an artificially constructed island, a diked extension of an existing island, or a diked extension attached to land, and which is used solely for the disposal of dredged materials;

"Decontamination" means a process by which contaminants are removed or reduced from dredged materials, or by which dredged materials are otherwise made acceptable for use;

"Dredge" or "dredging" means the removal of sand, silt, mud, and other materials from the bottom of a waterway in order to deepen navigation channels and ship berths;

"Dredged material" means material removed by dredging that is, in the determination of the federal Environmental Protection Agency, either unsuitable for ocean disposal or suitable for ocean disposal only with capping;

"Port region" means the geographic area created by Article II of the Compact of April 30, 1921, creating the bi-state agency, now known as the Port Authority of New York and New Jersey, and which is commonly referred to as the Port of New York District ;

"Project" means any work relating to the construction of a containment facility or facilities and subaqueous pits for the disposal of dredged material from the port region; the decontamination of dredged material; the dredging of the Kill Van Kull, the Arthur Kill and other navigation channels located in the port region; the dredging of navigation channels not located in the port region; or the purchase of real or personal property, equipment, and any building, construction, and miscellaneous site improvements associated with an economic development site; and

"Task force" means the Dredging Project Facilitation Task Force established pursuant to section 3 of this act .

C.12:6B-3 Dredging Project Facilitation Task Force.

3. a. There is established in the Executive Branch of the State Government a Dredging Project Facilitation Task Force. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the task force is allocated within the Department of Commerce and Economic Development, but, notwithstanding that allocation, the task force shall be independent of any supervision or control by the department or by the commissioner or any officer or employee thereof. The task force shall constitute an instrumentality of the State exercising public and essential governmental functions, and the exercise by the task force of the powers conferred by this or any other act shall be deemed and held to be an essential governmental function of the State.

b. (1) The task force shall consist of 12 members, and shall include the following three ex-officio members: the Commissioner of the Department of Environmental Protection, or his designee; the Commissioner of the Department of Commerce and Economic Development, or his designee; and the State Treasurer, or his designee. The task force shall also include three public members appointed by the Governor; three public members appointed by the President of the Senate, one of whom the President of the Senate shall designate as chair of the task force; and three public members appointed by the Speaker of the General Assembly.

(2) The public members shall serve for terms of two years, except that of the public members first appointed by each appointing authority, one shall serve a term of three years, one shall serve a term of two years, and one shall serve a term of one year. Not more than two public members appointed by the same appointing authority shall be members of the same political party.

(3) The appointment of the members shall be made within 45 days of the effective date of this act. The appointee of the President of the Senate designated as chair of the task force shall serve a term of two years and shall convene an organizational meeting of the task force as soon as is practicable following the appointment of at least six public members to the task force.

(4) Each member of the task force shall serve for the term of the appointment and until a successor shall have been appointed and qualified. Task force members shall serve without compensation. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only. A public member may be reappointed to the task force upon term expiration.

(5) Any member of the task force may be removed by the appointing authority, for cause, after a public hearing.

(6) A majority of the full membership of the task force shall constitute a quorum for the transaction of task force business. Action may be taken and motions and resolutions adopted by the task force at any meeting thereof by the affirmative vote of a majority of the full membership of the task force.

(7) The public members shall, to the maximum extent practicable, represent one or more of the following areas of expertise and specialization: the maritime industry, the business community, the trucking industry, organized labor, marine terminal operations, the tourism and recreation industry, environmental technology, and commercial fishing.

C.12:6B-4 Priority list for dredging project; appropriations.

4. a. It shall be the duty of the Office of Maritime Resources in the Department of Commerce and Economic Development to establish, from time to time, a project priority list for dredging, dredged material disposal projects and decontamination projects based primarily on the maintenance of the viability of the Port of New Jersey and New York as a deep water port accessible to international commerce, on the maintenance of the viability of navigation channels not located in the port region to promote commerce, recreation and tourism, and on the prospects for the creation and retention of jobs in New Jersey. In developing a project priority list, the office shall consult with the task force and the Department of Environmental Protection, and shall review and consider the plan developed pursuant to subsection a. of section 5 of P.L.1997, c.97 (C.12:6B-5). The office, in consultation with the task force and the Department of Environmental Protection, shall identify in the project priority lists developed pursuant to this subsection, not less than a total of \$5 million for decontamination projects. Upon the development of a project priority list, the office shall submit the list to the task force for its

approval. The task force is authorized to approve, disapprove, or approve in part, a project priority list.

b. Upon approval of a project priority list for projects authorized to receive funding pursuant to sections 5 and 7 of P.L.1996, c.70, or upon the failure of the task force to approve or disapprove a project priority list within 60 days of receipt of the list from the office, the task force shall submit the list to the President of the Senate and the Speaker of the General Assembly, who shall cause the project priority list to be introduced in each House in the form of legislative appropriations bills.

c. The Legislature shall consider, and may amend or supplement, the appropriations bills containing the project priority list. Any bill introduced pursuant to subsection b. of this section and approved by the Legislature shall appropriate monies from the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of P.L.1996, c.70, only for the projects authorized pursuant to sections 5 and 7 of P.L.1996, c.70, and shall identify the specific projects, including the individual amounts therefor, for which monies are appropriated.

d. No monies appropriated pursuant to subsection c. of this section shall be expended for any project unless the expenditure is authorized pursuant to the project priority list contained in the legislation approved in accordance with the provisions of subsection c. of this section.

e. Nothing in this section shall preclude the Legislature from developing a project priority list and making appropriations therefor.

#### C.12:6B-5 Dredging, dredged material, management and disposal plan.

5. a. The Office of Maritime Resources in the Department of Commerce and Economic Development shall, in consultation with the Department of Environmental Protection and the task force established pursuant to section 3 of P.L.1997, c.97 (C.12:6B-3), develop, implement and maintain a comprehensive dredging and dredged material management and disposal plan, including dredged material decontamination, for the navigable waters of the State.

b. The Department of Environmental Protection and the Department of Commerce and Economic Development shall be authorized, in accordance with the rules, regulations and procedures of the General Services Administration, to enter into agreements with public or private entities to establish ownership, lease provisions and other related real and personal property interests. The departments may also, in accordance with the rules, regulations and procedures of the General Services Administration, enter into agreements with regard to:

(1) the development, operation and management of dredging projects including, but not necessarily limited to, any cost sharing, right of way or easement provisions involved;

(2) the development, operation, management, closure and monitoring of dredged material disposal, treatment and processing facilities; and

(3) the development, evaluation, certification and implementation of demonstration dredged material decontamination and treatment technologies that are cost-effective, environmentally sound and that create a usable end product.

c. The departments shall be authorized to acquire by purchase, lease, grant or otherwise, any land, real or personal property which, in the determination of the departments, is reasonably necessary to effectuate the purposes of this act.

d. The departments shall be authorized to solicit proposals and to enter into all contracts and agreements necessary to plan, design, construct, equip, operate, finance, improve or maintain demonstration projects for dredging, dredged material disposal and dredged material decontamination projects.

e. The departments shall be authorized to charge and collect fees or charges for dredging and for the use of a dredged material disposal facility at such rates necessary to compensate for the costs to dredge, and to plan, design, construct, equip, operate, improve, maintain, close or replace the dredged material disposal facility and to ensure continued availability of dredging and dredged material disposal.

#### C.34:1B-140 Economic Development Site Task Force.

6. a. There is established in the Executive Branch of the State Government an Economic Development Site Task Force. For the purpose of complying with the provisions of Article V,

Section IV, paragraph 1 of the New Jersey Constitution, the task force is allocated within the Department of Commerce and Economic Development, but, notwithstanding that allocation, the task force shall be independent of any supervision or control by the department or by the commissioner or any officer or employee thereof. The task force shall constitute an instrumentality of the State exercising public and essential governmental functions, and the exercise by the task force of the powers conferred by this or any other act shall be deemed and held to be an essential governmental function of the State.

b. The task force shall consist of 12 members, and shall include: two representatives of the Department of Commerce and Economic Development, one of whom shall be the commissioner, or his designee, who shall serve ex-officio, and one of whom shall be appointed by the Commissioner of Commerce and Economic Development; the Chairperson of the New Jersey Economic Development Authority, or his designee, who shall serve ex-officio; three public members appointed by the Governor; three public members appointed by the President of the Senate; and three public members appointed by the Speaker of the General Assembly, one of whom the Speaker of the General Assembly shall designate as chair of the task force. The appointment of the members shall be made within 45 days of the effective date of this act. An official making appointments to the task force shall not appoint more than one public member from the same county of residence. The appointee of the Speaker of the General Assembly designated as chair of the task force shall serve a term of two years and shall convene an organizational meeting of the task force as soon as is practicable following the appointment of at least six public members to the task force. The public members shall reside in the Delaware River and Bay Region.

c. The public members shall serve terms of two years, except that of the public members first appointed by each appointing authority, one shall serve a term of three years, one shall serve a term of two years, and one shall serve a term of one year. Not more than two public members appointed by the same appointing authority shall be members of the same political party.

d. Each member of the task force shall serve for the term of the appointment and until a successor shall have been appointed and qualified. Task force members shall serve without compensation. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only. A public member may be reappointed to the task force upon term expiration.

e. Any member of the task force may be removed by the appointing authority, for cause, after a public hearing.

f. A majority of the full membership of the task force shall constitute a quorum for the transaction of task force business. Action may be taken and motions and resolutions adopted by the task force at any meeting thereof by the affirmative vote of a majority of the full membership of the task force.

C.34:1B-141 Project application procedure; priority list; appropriations.

7. a. The Department of Commerce and Economic Development shall establish a process under which applicants may apply for monies made available from the "1996 Economic Development Site Fund," established pursuant to section 20 of P.L. 1996, c.70.

b. It shall be the duty of the Department of Commerce and Economic Development to review and evaluate applications received pursuant to the process established in subsection a. of this section to determine whether the project is eligible pursuant to the provisions of section 8 of P.L. 1997, c.97 (C.34:1B-142). Of those projects deemed eligible, the Department of Commerce and Economic Development shall include a description of each project and its purpose, impact, cost, and construction schedule and a recommendation for the approval or disapproval by the task force.

c. Upon the development of the project priority list, the Department of Commerce and Economic Development shall submit the list to the task force for its approval. The task force is authorized to approve, disapprove or approve with modifications, a project priority list. Upon approval of a project priority list containing projects eligible pursuant to section 8 of P.L.1997, c.97 (C.34:1B-142), and authorized to receive funding pursuant to section 8 of P.L.1996, c.70, the task force shall submit a project priority list to the President of the Senate and the Speaker

of the General Assembly, who shall cause the project priority list to be introduced in each House in the form of legislative appropriations bills.

d. The Legislature shall consider, and may amend or supplement, the appropriations bills containing the project priority list. The monies authorized to be appropriated pursuant to this subsection shall be appropriated from the "1996 Economic Development Site Fund," established pursuant to section 20 of P.L.1996, c.70, to the Department of Commerce and Economic Development for the projects designated in the legislation. The Department of Commerce and Economic Development shall administer the projects designated in the legislation.

e. No monies appropriated pursuant to subsection d. of this section shall be expended for any economic development site related project unless the expenditure is authorized pursuant to the legislation approved in accordance with the provisions of subsection d. of this section.

f. Nothing in this section shall preclude the Legislature from developing a project priority list and making appropriations therefor.

C.34:1B-142 Eligibility for economic development site funds.

8. a. To be eligible to receive monies from the "1996 Economic Development Site Fund," established pursuant to section 20 of P.L.1996, c.70, an economic development site project must meet at least two of the following criteria:

(1) The project will support or enhance the existing economic base of the region in which it is located, which may include, but need not be limited to, the agricultural, tourism and commercial sectors, or improvements to the region's infrastructure;

(2) The project will result in the rehabilitation or expansion of existing facilities in the region in which it is located;

(3) The project will result in the creation or retention of jobs in the region in which it is located; and

(4) The project will foster the development of business or commercial ventures which will promote long-term economic growth in the region in which it is located.

b. No monies from the "1996 Economic Development Site Fund," established pursuant to section 20 of P.L.1996, c.70, shall be expended for an economic development site outside of the Delaware River and Bay Region.

c. For the purposes of sections 6, 7 and 8 of P.L.1997, c.97 (C.34:1B-140, C.34:1B-141, and C.34:1B-142) "Delaware River and Bay Region" means all the State territory located within the "port district," as defined pursuant to section 1(6) of P.L.1951, c.288 (C.32:3-13.23); and "economic development site" means land, equipment, buildings, appurtenant infrastructure and miscellaneous site improvements designed to promote economic activity and new jobs in the Delaware River and Bay Region.

C.34:1B-143 Appropriation from fund.

9. The Legislature shall, from time to time, appropriate monies from the "1996 Economic Development Site Fund," established pursuant to section 20 of P.L.1996, c.70, to the Department of Commerce and Economic Development for the projects designated in the legislation. Any appropriation from this fund shall specify the projects involved, all of which shall meet the requirements of section 8 of P.L.1997, c.97 (C.34:1B-142).

C.12:6B-6 Criteria for final request for proposals.

10. The Department of Commerce and Economic Development and the Department of Environmental Protection shall establish, in consultation with the Dredging Project Facilitation Task Force, the criteria for the content of final requests for proposals for any studies, assessments, demonstration projects and dredging, and all phases in the development and construction of a dredged material disposal facility. The State may include in a request for proposals developed pursuant to this act, on a case-by-case basis, a provision for the indemnification of the State by the contract holder. The Department of Commerce and Economic Development or the Department of Environmental Protection, as appropriate, in consultation with the task force, shall solicit requests for proposals and negotiate contracts.

C.12:6B-7 Rules, regulations.

11. a. The Department of Environmental Protection shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to effectuate the purposes of this act.

b. The Department of Commerce and Economic Development shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules or regulations necessary to effectuate the purposes of this act.

C.12:6B-8 Limitations on administrative costs.

12. The Legislature may, in the annual appropriations act or in any other act, limit the amount of funds appropriated from the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of P.L.1996, c.70, that may be expended for any direct or indirect program administrative costs of the State, its departments, agencies, or authorities.

13. There is appropriated to the Department of Environmental Protection from the "1996 Dredging and Containment Facility Fund," established pursuant to section 18 of the "Port of New Jersey Revitalization, Dredging, Environmental Cleanup, Lake Restoration, and Delaware Bay Area Economic Development Bond Act of 1996," P.L. 1996, c.70, the sum of \$32,000,000 for the following dredging and dredged material disposal projects, including infrastructure investments:

<b>Project Name</b>	<b>Channel/Reach</b>
New York and New Jersey Channels	Kill Van Kull
New York and New Jersey Channels	Arthur Kill
Upper New York Harbor	Port Jersey Channel
Upper New York Harbor	Claremont Channel
New York and New Jersey Channels	Wards Point Bend
Port Newark/Elizabeth	Reaches A,B,C and D
Hudson River & Adjacent Channels	New Jersey Anchorages
New York and New Jersey Channels	Shooter's Island Reach
Raritan River	Raritan River Channel
New York and New Jersey Channels	Raritan Bay Reach
Hudson River Channel	40 foot channel (New Jersey side)
Newark Bay, Hackensack and Passaic Rivers	Newark Bay Channels

14. This act shall take effect immediately.

Approved May 8, 1997.