

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3133

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 27, 2014

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 3133.

This bill would direct the Commissioner of Environmental Protection to establish a private wildlife habitat certification program. In establishing the program, the commissioner would be authorized to consider any standards used by recognized conservation organizations for purposes of certifying properties as suitable wildlife habitat. A person who registers a property that has been certified under the program, as outlined below, would be entitled to an affirmative defense against any liability for a violation of a municipal ordinance under which the "certified private wildlife habitat," or any component thereof, is deemed, or would be deemed, a nuisance or an otherwise unlawful condition.

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

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

The bill would also require that the regulations promote the use of native plants. In addition, certifying entities would be required to issue to the owner of each certified property (1) a certificate of

registration to be filed with the municipality in which the property is located, and (2) a sign for purposes of designating the property as a “certified private wildlife habitat.”

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

A certificate of registration would expire two years after the issue date; however, the bill provides that the property owner could renew a certificate of registration for an additional two years by submitting a written and signed certification affirming that the property continues to comply with all applicable standards and criteria for certified private wildlife habitats and remains substantially unaltered, or has been improved, since the time the initial certificate of registration was issued. The bill would allow for only one such renewal. Upon the expiration of a certificate of registration, a person could apply for a new certificate of registration, which would be issued subject to all the aforementioned standards, procedures, and requirements, including a new physical inspection and new certification of the property by a certifying entity.

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

COMMITTEE AMENDMENTS:

The committee amendments make technical corrections to the bill.