

# ASSEMBLY, No. 3507

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JULY 11, 2014

**Sponsored by:**

**Assemblyman TIMOTHY J. EUSTACE**

**District 38 (Bergen and Passaic)**

**Assemblyman JAY WEBBER**

**District 26 (Essex, Morris and Passaic)**

**Assemblywoman NANCY F. MUNOZ**

**District 21 (Morris, Somerset and Union)**

**Assemblywoman HOLLY SCHEPISI**

**District 39 (Bergen and Passaic)**

**Assemblyman SCOTT T. RUMANA**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Senator ROBERT M. GORDON**

**District 38 (Bergen and Passaic)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Co-Sponsored by:**

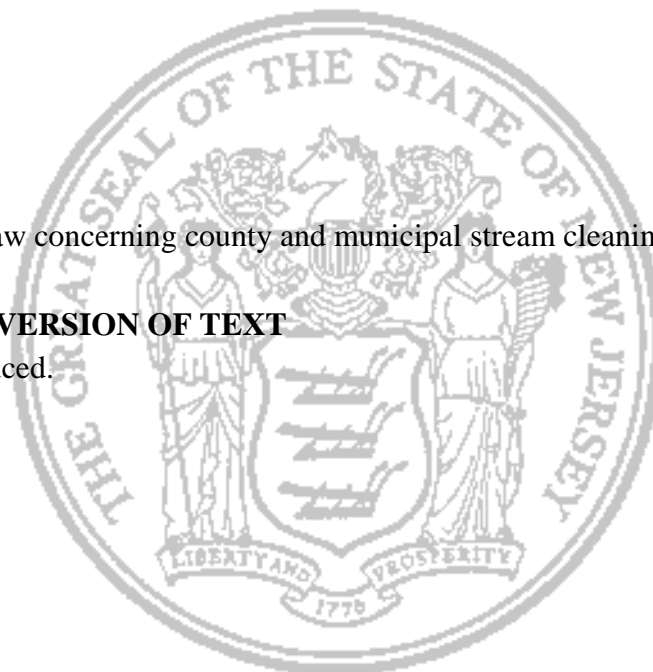
**Assemblymen Russo, Johnson, Space, Assemblywoman McHose,  
Assemblyman Coughlin and Senator Oroho**

**SYNOPSIS**

Amends law concerning county and municipal stream cleaning activities.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 8/14/2015)

1 AN ACT concerning stream cleaning and amending P.L.1993, c.376.

2

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

5

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

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

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

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

24 (3) the activities will not alter the natural stream banks;

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

29 (5) every effort will be made to perform work from only one  
30 stream bank and that vegetation and canopy on the more southerly  
31 or westerly banks will be preserved for stream shading; and

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

33 The notice shall also include a description of the nature of the  
34 project, a description, including a photograph, of the reach of the  
35 stream in which the activity is to take place, and an identification of  
36 the regulatory water quality classification of the stream in which the  
37 activity is to take place. The reach of the stream may be provided  
38 by the submission of a photostatic copy of the United States  
39 Geological Survey topographic quadrangle.

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

43 (1) the applicant shall provide a statement from the engineer that  
44 the stream floods and that such flooding results or can result in  
45 property damage necessitating the proposed cleaning, clearing, or  
46 desnagging;

**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 (2) the stream to be cleaned, cleared, or desnagged is not  
2 classified as pinelands waters or category one waters;
- 3 (3) the stream bed is ~~15~~ 30 feet or less in average width;
- 4 (4) the stream corridor to be cleaned, cleared, or desnagged is :
- 5 (a) in the case of a project undertaken by a municipality, or a  
6 designated agency thereof, located wholly within the jurisdictional  
7 boundaries of that municipality; or
- 8 (b) in the case of a project undertaken by a county, or a  
9 designated agency thereof, (i) located wholly within the  
10 jurisdictional boundaries of one municipality, or (ii) less than 500  
11 feet in length if located within more than one municipality ;
- 12 (5) the stream is not in a municipality, as defined by the  
13 department, that is known to have federally or State listed  
14 threatened or endangered species associated with its wetlands.  
15 Regulated activities in these municipalities shall be coordinated  
16 with federal agencies;
- 17 (6) the applicant shall provide a certification by the engineer  
18 that the material to be removed is not beyond the natural stream  
19 bed;
- 20 (7) the applicant shall submit surface color photographs of the  
21 areas of the stream to be cleaned, cleared, or desnagged and of the  
22 access points; and
- 23 (8) the applicant shall incorporate appropriate timing restrictions  
24 as required by the department.
- 25 c. Upon receipt of a notice and certification submitted pursuant  
26 to this section, the department, or any other State agency requiring a  
27 stream cleaning permit or an application for the proposed stream  
28 cleaning, clearing, or desnagging project, as the case may be, shall,  
29 except as provided otherwise in this subsection, have 15 days to  
30 notify the applicant if particular circumstances mandate that the  
31 stream cleaning, clearing, or desnagging not be done in this  
32 particular case. For a project involving the removal of sediment,  
33 the department shall have 60 days prior to the commencement of  
34 activities to notify the applicant if particular circumstances mandate  
35 that the stream cleaning, clearing, or desnagging not be done in that  
36 particular case. If the department, or any other State agency  
37 requiring a stream cleaning permit or an application for the  
38 proposed stream cleaning, clearing, or desnagging project, as the  
39 case may be, makes such a determination, it shall provide the  
40 applicant with the technical reasons therefor. For the purposes of  
41 this subsection, if the department's technical reasons therefor are  
42 based upon the inability to determine the natural stream bed, the  
43 department shall, at the request of the applicant, assist in identifying  
44 the natural stream bed. The department may not prohibit the  
45 removal of any garbage no matter how long it has been in the  
46 stream, nor shall the department require extensive mapping or other  
47 engineering services which involve significant expense to the  
48 municipality.

1 d. Upon completion of the project to clean, clear, or desnag a  
2 stream involving the removal of sediment within its jurisdiction, the  
3 applicant shall submit to the department a written notice that the  
4 project has been completed in accordance with the conditions  
5 outlined in subsection b. of this section. The notice shall contain a  
6 certification attested to by the county or municipal engineer or the  
7 local soil conservation district, provided that the certification is  
8 made by a licensed professional engineer. The engineer shall  
9 certify that all the conditions in subsection b. of this section have  
10 been adhered to.

11 e. As used in this section:

12 "Applicant" means a county or municipality, or designated  
13 agency thereof;

14 "Category one waters" means, for the purposes of sediment  
15 removal, those waters designated by the Department of  
16 Environmental Protection, for purposes of implementing the  
17 antidegradation policies of the "Water Pollution Control Act,"  
18 P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable  
19 changes in water quality characteristics because of their clarity,  
20 color, scenic setting, other characteristics of aesthetic value,  
21 exceptional ecological significance, exceptional recreational  
22 significance, exceptional water supply significance, or exceptional  
23 fisheries resources. These waters may include, but are not limited  
24 to:

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

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

31 (3) Surface waters classified by the department as FW2 trout  
32 maintenance waters or FW2 nontrout waters that are not more than  
33 750 feet upstream of waters classified by the department as FW2  
34 trout production waters;

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

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

39 "Department" means the Department of Environmental  
40 Protection;

41 "FW" means the general surface water classification applied to  
42 fresh waters;

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

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

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

6 "Trout production waters" means waters designated by the  
7 department for use by trout for spawning or nursery purposes during  
8 their first summer.

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

13 (cf: P.L.1997, c.286, s.1)

14

15 2. This act shall take effect immediately.

16

17

18

#### STATEMENT

19

20 This bill would amend the provisions of the current stream  
21 cleaning law that allow a county or municipality, or a designated  
22 agency thereof, to undertake certain stream cleaning projects that  
23 include sediment removal.

24 The current stream cleaning law restricts a county or municipal  
25 stream cleaning project that includes sediment removal to stream  
26 beds of 15 feet or less in average width. Under this bill, the average  
27 width of a stream bed that would be allowed to be part of any such  
28 project would be increased to 30 feet.

29 This bill would also revise the provision in the law that limits the  
30 availability of the procedure set forth in the law to a county or  
31 municipal stream cleaning project that includes sediment removal to  
32 a stream corridor to be cleaned, cleared, or desnagged of less than  
33 500 feet in length. Under the bill, in the case of a project  
34 undertaken by a municipality, the procedure set forth in the law  
35 would be applicable if the stream corridor to be cleaned, cleared, or  
36 desnagged is located wholly within the jurisdictional boundaries of  
37 that municipality, or in the case of a project undertaken by a county,  
38 the procedure would be applicable if the stream corridor to be  
39 cleaned, cleared, or desnagged is either located wholly within the  
40 jurisdictional boundaries of one municipality, or less than 500 feet  
41 in length if located within more than one municipality.

42 These changes to current law will assist counties and  
43 municipalities to quickly and economically engage in stream  
44 cleaning projects that include sediment removal activities in order  
45 to help reduce or prevent future flooding events.