

SENATE, No. 156

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

SYNOPSIS

Changes restrictions on certain county or municipal stream cleaning activities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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:

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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

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 property damage necessitating the proposed cleaning, clearing, or
2 desnagging;
- 3 (2) the stream to be cleaned, cleared, or desnagged is not
4 classified as pinelands waters **[or category one waters]** ;
- 5 (3) the stream bed is **[15]** 50 feet or less in average width;
- 6 (4) **[the stream corridor to be cleaned, cleared, or desnagged is**
7 **less than 500 feet in length;]** (Deleted by amendment, P.L. , c.)
8 (pending before the Legislature as this bill)
- 9 (5) the stream is not in a municipality, as defined by the
10 department, that is known to have federally or State listed
11 threatened or endangered species associated with its wetlands.
12 Regulated activities in these municipalities shall be coordinated
13 with federal agencies;
- 14 (6) the applicant shall provide a certification by the engineer
15 that the material to be removed is not beyond the natural stream
16 bed;
- 17 (7) the applicant shall submit surface color photographs of the
18 areas of the stream to be cleaned, cleared, or desnagged and of the
19 access points; and
- 20 (8) the applicant shall incorporate appropriate timing restrictions
21 as required by the department.
- 22 c. Upon receipt of a notice and certification submitted pursuant
23 to this section, the department, or any other State agency requiring a
24 stream cleaning permit or an application for the proposed stream
25 cleaning, clearing, or desnagging project, as the case may be, shall,
26 except as provided otherwise in this subsection, have 15 days to
27 notify the applicant if particular circumstances mandate that the
28 stream cleaning, clearing, or desnagging not be done in this
29 particular case. For a project involving the removal of sediment,
30 the department shall have 60 days prior to the commencement of
31 activities to notify the applicant if particular circumstances mandate
32 that the stream cleaning, clearing, or desnagging not be done in that
33 particular case. If the department, or any other State agency
34 requiring a stream cleaning permit or an application for the
35 proposed stream cleaning, clearing, or desnagging project, as the
36 case may be, makes such a determination, it shall provide the
37 applicant with the technical reasons therefor. For the purposes of
38 this subsection, if the department's technical reasons therefor are
39 based upon the inability to determine the natural stream bed, the
40 department shall, at the request of the applicant, assist in identifying
41 the natural stream bed. The department may not prohibit the
42 removal of any garbage no matter how long it has been in the
43 stream, nor shall the department require extensive mapping or other
44 engineering services which involve significant expense to the
45 municipality.
- 46 d. Upon completion of the project to clean, clear, or desnag a
47 stream involving the removal of sediment within its jurisdiction, the

1 applicant shall submit to the department a written notice that the
2 project has been completed in accordance with the conditions
3 outlined in subsection b. of this section. The notice shall contain a
4 certification attested to by the county or municipal engineer or the
5 local soil conservation district, provided that the certification is
6 made by a licensed professional engineer. The engineer shall
7 certify that all the conditions in subsection b. of this section have
8 been adhered to.

9 e. As used in this section:

10 "Applicant" means a county or municipality, or designated
11 agency thereof; and

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

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

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

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

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

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

37 "Department" means the Department of Environmental
38 Protection **【**;

39 "FW" means the general surface water classification applied to
40 fresh waters;

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

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15 2. This act shall take effect immediately.

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STATEMENT

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20 This bill would delete the provision under the current stream
21 cleaning law that restricts county or municipal stream cleaning
22 projects which include sediment removal activities to stream
23 corridors of less than 500 feet in length. Under the bill, there would
24 no longer be any such limit on the reach of the stream that could be
25 part of any such project. The bill would also modify the restriction
26 on the average width of a stream bed that would be allowed to be
27 part of any such project from 15 feet to 50 feet.

28 In addition, this bill would delete the provision under the current
29 stream cleaning law that prohibits county or municipal stream
30 cleaning projects which include sediment removal activities from
31 occurring in category one waters. This bill would allow these
32 activities to occur in category one waters.

33 This bill is necessary to allow municipalities and counties to
34 properly, quickly, and economically clean and de-silt streams to
35 help prevent serious flooding that may cause personal injury and
36 property damage.