

SENATE, No. 2677

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 22, 2014

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Co-Sponsored by:

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.