SENATE, No. 1419



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Clarifies that Fish and Game Council has sole authority to regulate freshwater fishing, hunting, and trapping.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning the Fish and Game Council, the Division of Fish and Wildlife, and the Department of Environmental Protection, amending various parts of the statutory law, and supplementing Title 23 of the Revised Statutes.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

1. Section 25 of P.L.1948, c.448 (C.13:1B-23) is amended to read as follows:

25. All of the functions, powers and duties of the Division of Fish and Game of the existing State Department of Conservation, [of the Fish and Game Council therein,] and of the State Commissioner of Conservation relating to or administered through [said] that division, herein transferred to the Department of Conservation and Economic Development, are hereby assigned to, and shall be exercised and performed through, the Division of Fish and Game in the department.

(cf: P.L.1948, c.448, s.25)

2. Section 26 of P.L.1948, c.448 (C.13:1B-24) is amended to read as follows:

26. There shall be within , but not of, the Division of Fish [, Game] and Wildlife, a Fish and Game Council which shall consist of 11 members, each of whom shall be chosen with due regard to [his] the member's knowledge of and interest in the conservation of fish and game. Each member of the council shall be appointed by the Governor, with the advice and consent of the Senate. Three of [such] the members shall be farmers, recommended to the Governor for appointment to the council by the agricultural convention held pursuant to the provisions of article 2 of chapter 1 of Title 4 of the Revised Statutes; six of [such] the members shall be sportsmen, recommended to the Governor for appointment to the council by the New Jersey State Federation of Sportsmen's Clubs; one of [such] the members shall be the [chairman] chairperson of the committee established pursuant to section 7 of [the "Endangered] "The Endangered and Nongame Species Conservation [Act" (P.L.1973, c.309; C.23:2A-7)] Act," P.L.1973, c.309 (C.23:2A-7) , and one of [such] the members shall be a person knowledgeable in land use management and soil conservation practices. One of [such] the farmer representatives and two of [such] the sportsmen representatives in the council shall be chosen from among residents of any of the following counties--Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren; one of [such] the farmer representatives and two of [such] the sportsmen

representatives in the council shall be chosen from among residents

of any of the following counties--Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset and Union; and one of such farmer representatives and two of such sportsmen representatives shall be chosen from among residents of any of the following counties--Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem.

Each member of the council shall be appointed for a term of [4] four years and shall serve until his successor has been appointed and has qualified.

(cf: P.L.1979, c.199, s.72)

3. Section 29 of P.L.1948, c.448 (C.13:1B-27) is amended to read as follows:

29. The Division of Fish and [Game] Wildlife shall be under the immediate supervision of a director, who shall be a person with special training and experience in [wild life] wildlife management and otherwise qualified to direct the work of [such] the division. The director of [such] the division shall be appointed by the Fish and Game Council, subject to the approval of the Governor, and shall, unless sooner removed by the Governor as hereinafter provided, serve at the pleasure of [such] the council and until the director's successor is appointed and has qualified. [He] The director shall receive such salary as shall be provided by law.

The director shall administer the work of [such] the division under the direction and supervision of the commissioner , except, with respect to implementation of the State Fish and Game Code and any comprehensive policies concerned therewith adopted or formulated by the Fish and Game Council, the director shall be under the direction of the Fish and Game Council .

(cf: P.L.1948, c.448, s.29)

4. Section 30 of P.L.1948, c.448 (C.13:1B-28) is amended to read as follows:

30. a. In addition to its powers and duties otherwise hereinafter provided in sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29 et al.) , the Fish and Game Council shall, subject to the approval of the commissioner, formulate comprehensive policies for the protection and propagation of fish, birds, and game animals and for the propagation and distribution of food fish and for the keeping up of the supply thereof in the waters of the State. No such approval of the commissioner shall be required with respect to the formulation of any comprehensive policies concerning the State Fish and Game Code adopted pursuant to sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29 et al.) or with respect to the implementation of the State Fish and Game Code by the Division of Fish and Wildlife, the division director, the Department of Environmental Protection, and the commissioner as directed by the council.

b. The council shall also:

[a.] (1) Consult with and advise the commissioner and director of the Division of Fish and [Game] Wildlife with respect to the work of such division.

[b.] (2) Study the activities of the Division of Fish and [Game] Wildlife and hold hearings with respect thereto as it may deem necessary or desirable.

[c.] (3) Report to the Governor and the Legislature annually, and at such other times as it may deem in the public interest, with respect to its findings and conclusions.

(cf: P.L.1948, c.448, s.30)

5. Section 31 of P.L.1948, c.448 (C.13:1B-29) is amended to read as follows:

31. As used in this article, unless otherwise specifically indicated:

["Division" means the Division of Fish and Game in the Department of Conservation and Economic Development.

"Council" means the Fish and Game Council in the Division of Fish and Game of the Department of Conservation and Economic Development.]

"Code" means the State Fish and Game Code [.] ;

"Council" means the Fish and Game Council in but not of the Division of Fish and Wildlife; and

"Division" means the Division of Fish and Wildlife in the Department of Environmental Protection.

(cf: P.L.1948, c.448, s.31)

6. Section 32 of P.L.1948, c.448 (C.13:1B-30) is amended to read as follows:

32. For the purpose of providing an adequate and flexible system of protection, propagation, increase, control and conservation of fresh water fish, game birds, game animals, and fur-bearing animals in this State, and for their use and development for public recreation and food supply, the council is hereby authorized and empowered to determine under what circumstances, when and in what localities, by what means and in what amounts and numbers such fresh water fish, game birds, game animals, and fur-bearing animals, or any of them, may be pursued, taken, killed, or had in possession so as to maintain an adequate and proper supply thereof, and may, after first having determined the need for such action on the basis of scientific investigation and research, adopt and from time to time amend and repeal such appropriate and reasonable regulations concerning the same, or any of them, penalties for the violation of which are prescribed by certain of the sections of Title 23 of the Revised Statutes amended herein, as it deems necessary to preserve, properly utilize or maintain the best relative number of any species or variety thereof, at the times, in the manner and to the extent hereinafter provided. The regulations so established shall be called the State Fish and Game Code.

The council shall be the sole authority in determining whether or not any species of fresh water fish, game bird, game animal, or fur-bearing animal may be pursued, taken, killed, or had in possession and in determining what circumstances, when and in what localities, by what means and in what amounts and numbers those species may be pursued, taken, killed, or had in possession. As directed by the council, the division, the division director, the Department of Environmental Protection, and the Commissioner of Environmental Protection shall implement the State Fish and Game Code as adopted by the council and any comprehensive policies concerned therewith as formulated by the council.

(cf: P.L.1948, c.448, s.32)

7. Section 7 of P.L.1970, c.33 (C.13:1D-4) is amended to read as follows:

7. a. All the functions, powers and duties of the Division of Fish and Game of the existing Department of Conservation and Economic Development, [of the Fish and Game Council therein,] and of the Division of Shell Fisheries of the existing Department of Conservation and Economic Development, and of the Shell Fisheries Council therein, and of the Commissioner of Conservation and Economic Development relating to, or administered through [said] those divisions, are transferred to and vested in the Division of Fish, Game and Shell Fisheries established hereunder.

b. The Fish and Game Council, together with all of its functions, powers and duties, is continued as the Fish and Game Council in but not of the Division of Fish, Game and Shell Fisheries in the Department of Environmental Protection. This act shall not affect the terms of office of the present members of the council. The members of the council shall continue to be appointed as provided by existing law.

c. The Shell Fisheries Council, together with all of its functions, powers, and duties, is continued as the Shell Fisheries Council in the Division of Fish, Game and Shell Fisheries in the Department of Environmental Protection. This act shall not affect the terms of office of the present members of the council. The members of the council shall continue to be appointed as provided by existing law.

(cf: P.L.1970, c.33, s.7)

8. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read as follows:

12. The department shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State. These comprehensive policies shall not supersede or contradict the State Fish and Game Code as adopted and implemented by the Fish and Game Council pursuant to sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29 et al.) or any comprehensive policies concerned therewith formulated by the council. The department shall in addition to the powers and duties vested in it by this act or by any other law have the power to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards to the environment and its ecology;

b. Conduct and supervise Statewide programs of education, including the preparation and distribution of information relating to conservation, environmental protection and ecology;

c. Require the registration of persons engaged in operations which may result in pollution of the environment and the filing of reports by them containing such information as the department may prescribe to be filed relative to pollution of the environment, all in accordance with applicable codes, rules or regulations established by the department;

d. Enter and inspect any property, facility, building, premises, site or place for the purpose of investigating an actual or suspected source of pollution of the environment and conducting inspections, collecting samples, copying or photocopying documents or records, and for otherwise ascertaining compliance or noncompliance with any laws, permits, orders, codes, rules and regulations of the department. Any information relating to secret processes concerning methods of manufacture or production, obtained in the course of such inspection, investigation or determination, shall be kept confidential, except this information shall be available to the department for use, when relevant, in any administrative or judicial proceedings undertaken to administer, implement, and enforce State environmental law, but shall remain subject only to those confidentiality protections otherwise afforded by federal law and by the specific State environmental laws and regulations that the department is administering, implementing and enforcing in that particular case or instance. In addition, this information shall be available upon request to the United States Government for use in administering, implementing, and enforcing federal environmental law, but shall remain subject to the confidentiality protection afforded by federal law. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing pollution of the environment;

e. Receive or initiate complaints of pollution of the environment, including thermal pollution, hold hearings in connection therewith and institute legal proceedings for the prevention of pollution of the environment and abatement of nuisances in connection therewith and shall have the authority to seek and obtain injunctive relief and the recovery of fines and penalties in a court of competent jurisdiction;

f. Prepare, administer and supervise Statewide, regional and local programs of conservation and environmental protection, giving due regard for the ecology of the varied areas of the State and the relationship thereof to the environment, and in connection therewith prepare and make available to appropriate agencies in the State technical information concerning conservation and environmental protection, cooperate with the Commissioner of Health and Senior Services in the preparation and distribution of environmental protection and health bulletins for the purpose of educating the public, and cooperate with the Commissioner of Health and Senior Services in the preparation of a program of environmental protection;

g. Encourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection in accordance with a unified Statewide plan which shall be formulated, approved and supervised by the department. In reviewing such plans and programs and in determining conditions under which such plans may be approved, the department shall give due consideration to the development of a comprehensive ecological and environmental plan in order to be assured insofar as is practicable that all proposed plans and programs shall conform to reasonably contemplated conservation and environmental protection plans for the State and the varied areas thereof;

h. Administer or supervise programs of conservation and environmental protection, prescribe the minimum qualifications of all persons engaged in official environmental protection work, and encourage and aid in coordinating local environmental protection services;

i. Establish and maintain adequate bacteriological, radiological and chemical laboratories with such expert assistance and such facilities as are necessary for routine examinations and analyses, and for original investigations and research in matters affecting the environment and ecology;

j. Administer or supervise a program of industrial planning for environmental protection; encourage industrial plants in the State to undertake environmental and ecological engineering programs; and cooperate with the State Departments of Health and Senior Services[,] and Labor and Workforce Development, and the New Jersey [Commerce Commission] Economic Development Authority, in formulating rules and regulations concerning industrial sanitary conditions;

k. Supervise sanitary engineering facilities and projects within the State, authority for which is now or may hereafter be vested by law in the department, and shall, in the exercise of such supervision, make and enforce rules and regulations concerning plans and specifications, or either, for the construction, improvement, alteration or operation of all public water supplies, all public bathing places, landfill operations and of sewerage systems and disposal plants for treatment of sewage, wastes and other deleterious matter, liquid, solid or gaseous, require all such plans or specifications, or either, to be first approved by it before any work thereunder shall be commenced, inspect all such projects during the progress thereof and enforce compliance with such approved plans and specifications;

l. Undertake programs of research and development for the purpose of determining the most efficient, sanitary and economical ways of collecting, disposing, recycling or utilizing [of] solid waste;

m. Construct and operate, on an experimental basis, incinerators or other facilities for the disposal of solid waste, provide the various municipalities and counties of this State, and the Division of Local Government Services in the Department of Community Affairs with statistical data on costs and methods of solid waste collection, disposal and utilization;

n. Enforce the State air pollution, water pollution, conservation, environmental protection, solid and hazardous waste management laws, rules and regulations, including the making and signing of a complaint and summons for their violation by serving the summons upon the violator and thereafter filing the complaint promptly with a court having jurisdiction;

o. Acquire by purchase, grant, contract or condemnation, title to real property, for the purpose of demonstrating new methods and techniques for the collection or disposal of solid waste;

p. Purchase, operate and maintain, pursuant to the provisions of this act, any facility, site, laboratory, equipment or machinery necessary to the performance of its duties pursuant to this act;

q. Contract with any other public agency or corporation incorporated under the laws of this or any other state for the performance of any function under this act;

r. With the approval of the Governor, cooperate with, apply for, and receive and expend funds from, the federal government, the State Government, or any county or municipal government or from any public or private sources for any of the objects of this act;

s. Make annual and such other reports as it may deem proper to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, evaluating the demonstrations conducted during each calendar year;

t. Keep complete and accurate minutes of all hearings held before the commissioner or any member of the department pursuant to the provisions of this act. All such minutes shall be retained in a permanent record, and shall be available for public inspection at all times during the office hours of the department;

u. Require any person subject to a lawful order of the department, which provides for a period of time during which such person subject to the order is permitted to correct a violation, to post a performance bond or other security with the department in such form and amount as shall be determined by the department. Such bond need not be for the full amount of the estimated cost to correct the violation but may be in such amount as will tend to insure good faith compliance with said order. The department shall not require such a bond or security from any public body, agency or authority. In the event of a failure to meet the schedule prescribed by the department, the sum named in the bond or other security shall be forfeited unless the department shall find that the failure is excusable in whole or in part for good cause shown, in which case the department shall determine what amount of said bond or security, if any, is a reasonable forfeiture under the circumstances. Any amount so forfeited shall be utilized by the department for the correction of the violation or violations, or for any other action required to insure compliance with the order;

v. Encourage and aid in coordinating State, regional and local plans, efforts and programs concerning the remediation and reuse of former industrial or commercial properties that are currently underutilized or abandoned and at which there has been, or is perceived to have been, a discharge, or threat of a discharge, of a contaminant. For the purposes of this subsection, "underutilized property" shall not include properties undergoing a reasonably timely remediation or redevelopment process; and

w. Conduct research and implement plans and programs to promote ecosystem-based management.

(cf: P.L.2007, c.288, s.6)

9. Section 21 of P.L.1970, c.33 (C.13:1D-18) is amended to read as follows:

21. With respect to the functions, powers and duties hereby transferred to the Department of Environmental Protection, whenever in any law, rule, regulation, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Department of Conservation and Economic Development, or the commissioner thereof, the same shall mean and refer to the Department of Environmental Protection and the Commissioner of Environmental Protection, respectively.

With respect to the functions, power and duties of the Department of Health and the commissioner thereof, which are herein transferred and vested in the Division of Environmental Quality established hereunder, whenever in any law, rule, regulation, contract, document or otherwise, reference is made to the Department of Health, or the commissioner thereof, the same shall be deemed to mean and refer to the Department of Environmental Protection and the Commissioner of Environmental Protection, respectively.

Whenever the term "Division of Clean Air and Water" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Environmental Quality in the Department of Environmental Protection established hereunder.

Whenever the term "Clean Air Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Clean Air Council in the Department of Environmental Protection established hereunder.

Whenever the term "Clean Water Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Clean Water Council in the Department of Environmental Protection established hereunder.

Whenever the term, "Commission on Radiation Protection" or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Commission on Radiation Protection in the Department of Environmental Protection established hereunder.

Whenever the term "Division of Fish and Game" or "Division of Shell Fisheries" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to refer to the Division of Fish [, Game and Shell Fisheries] and Wildlife established hereunder.

Whenever the term "Director of Fish and Game" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Director of the Division of Fish [, Game and Shell Fisheries] and Wildlife established hereunder.

Whenever the term "Fish and Game Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Fish and Game Council in but not of the Department of Environmental Protection established hereunder.

Whenever the term "Shell Fisheries Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Shell Fisheries Council in the Department of Environmental Protection established hereunder.

Whenever the term "Director of Shell Fisheries" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Director of the Division of Fish [, Game and Shell Fisheries] and Wildlife established hereunder.

Whenever the term "Division of Resource Development" or "Director of the Division of Resource Development" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Natural Resources established hereunder and the director thereof, respectively.

Whenever the term "Resource Development Council" or "Planning and Development Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Natural Resource Council established hereunder.

Whenever the term "Division of Parks, Forestry and Recreation" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Parks, Forestry and Recreation in the Department of Environmental Protection established hereunder.

Whenever the term "Parks, Forestry and Recreation Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Parks, Forestry and Recreation Council in the Department of Environmental Protection established hereunder.

Whenever the term "Division of Water Policy and Supply" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Water Policy and Supply in the Department of Environmental Protection.

Whenever the term "Water Policy and Supply Council" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Water Policy and Supply Council in the Department of Environmental Protection.

Whenever the term "Division of Economic Development" is referred to in any law, contract or document, the same shall be deemed to mean or refer to the Division of Economic Development in the Department of Labor and Industry.

Whenever the term "Economic Development Council" is referred to in any law, contract or document, the same shall be deemed to mean or refer to the Economic Development Council in the Department of Labor and Industry.

Whenever the term "Division of Veterans' Services" is referred to in any law, contract or document, the same shall be deemed to mean or refer to the organizational unit of the Department of Institutions and Agencies to be established pursuant to section 13 of this act.

Whenever the term "Veterans' Services Council" is referred to in any law, contract or document, the same shall be deemed to mean or refer to the Veterans Services Council in the Department of Institutions and Agencies.

With respect to the functions, powers and duties of the Department of Agriculture which are hereby transferred and vested in the Division of Environmental Quality established hereunder, whenever in any law, rule, regulation, contract, document or otherwise reference is made to the Department of Agriculture, the same shall mean and refer to the Department of Environmental Protection established hereunder.

(cf: P.L.1970, c.33, s.21)

10. R.S.23:1-1 is amended to read as follows:

23:1-1. As used in this title:

"Apprentice license" means any resident's apprentice firearm hunting license, resident's apprentice bow and arrow license, nonresident's apprentice firearm hunting license, or nonresident's apprentice bow and arrow license issued pursuant to R.S.23:3-4.

"Assistant protector" or "assistant fish and game protector" means the Deputy Chief of the Bureau of Law Enforcement in the division;

"Closed season" means the date and time of year when wildlife may not be captured, taken, killed, or had in possession in the field;

"Code" means the State Fish and Game Code;

"Conservation police officer" means any sworn, salaried member of the Bureau of Law Enforcement in the division holding the titles of Conservation Police Officer I, II, or III, and includes the titles of Supervising Conservation Police Officer and Chief of the Bureau of Law Enforcement;

"Council" means the Fish and Game Council in but not of the Division of Fish and Wildlife in the Department of Environmental Protection;

"Delaware river" means the waters of the Delaware river from the Pennsylvania shore to the New Jersey shore, or in the case of any tributaries or inland bays on the New Jersey side, to the mouths of those tributaries or bays;

"Deputy warden" or "deputy fish and game warden" means any commissioned deputy conservation police officer of the Bureau of Law Enforcement in the division;

"Division," "Division of Fish, Game and Wildlife," "board," or "Board of Fish and Game Commissioners" means the Division of Fish and Wildlife in the Department of Environmental Protection;

"Fishing" means the possession of an instrument used to take fish in a condition that makes the instrument readily usable, while in a place or in proximity thereto where fish may be found;

"Hunting" means the possession of an instrument used to take wildlife in a condition that makes the instrument readily usable, while in a place or in proximity thereto where wildlife may be found;

"Open season" means the date and time of year when wildlife may be captured, taken, killed, or had in possession;

"Protector" or "fish and game protector" means the Chief of the Bureau of Law Enforcement in the division;

"Warden" or "fish and game warden" means a conservation police officer; and

"Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean , or other wild animal or any part, product, egg , or offspring or the dead body or parts thereof.

(cf: P.L.2019, c.407, s.1)

11. R.S.23:2-2 is amended to read as follows:

23:2-2. The duties of the [board] division shall be the protection and propagation of fish, birds and game animals , implementation of the State Fish and Game Code as adopted by the Fish and Game Council pursuant to sections 31 through 41 of P.L.1948, c.448 (C.13:1B-29 et al.) and of any comprehensive policies concerned therewith as formulated by the council , enforcement of the laws relating thereto, propagation and distribution of food fish and the keeping up of the supply thereof in the waters of the [state] State . The [board] division may close streams or parts of streams for [forty-eight] 48 hours immediately following the stocking [of same] thereof by the [board] division , and may revoke the license of any person who shall violate the regulation so prescribed. The [board] division may permit persons, when duly authorized by the [board] division , to carry firearms in the woods and fields at any time when necessary for the conservation of [wild life] wildlife . The [board] shall have the conduct and control of all hatching stations owned and operated by the [state] State . It may investigate any complaint made to it, at all times inspect any dam, weir, fish basket, net or other illegal apparatus for taking fish, and forthwith remove the same, and, on view or information, enforce the laws for the protection and propagation of fish, birds and game animals in [this state] the State, by arrest and prosecution of the offender, without complaint or warrant. It shall make a full report to the [legislature] Legislature annually, at its meeting, of all its official operations for the year ending on June [thirtieth] 30th preceding, with any suggestions and recommendations it deems useful.

(cf: R.S.23:2-2)

12. Section 1 of P.L.1948, c.39 (C.23:2-2.1) is amended to read as follows:

1. Whenever pursuant to law the Governor shall, by proclamation, close any forests, woodlands or open lands to entry, and any open season for taking fish, game birds, game animals or fur-bearing animals or any of them, shall have been suspended or curtailed thereby, the Fish and Game Council, at the expiration of the period of [such] that closure, may [, subject to the approval of the State Commissioner of Conservation,] by order provide for a new open season or for an extension of [such] the open season curtailed, within the limits of the area affected by the Governor's proclamation, for a period not exceeding that during which [said] the open season was suspended or curtailed.

(cf: P.L.1948, c.39, s.1)

13. Section 74 of P.L.1979, c.199 (C.23:2B-15) is amended to read as follows:

74. a. The Division of Fish, Game and Shellfisheries is continued and constituted as the Division of Fish, Game and Wildlife in the Department of Environmental Protection. Except as otherwise provided by this act, all the functions, powers and duties of the existing Division of Fish, Game and Shellfisheries, and the director, thereof, are continued in the Division of Fish, Game and Wildlife and the director thereof, and whenever the term "Division of Fish, Game and Shellfisheries" occurs or any reference is made thereto in any law, contract or document, the same shall be deemed or mean to refer to the Division of Fish, Game and Wildlife.

b. The Fish and Game Council, together with all its functions, powers and duties, is continued as the Fish and Game Council in but not of the Division of Fish, Game and Wildlife in the Department of Environmental Protection.

(cf: P.L.1979, c.199, s.74)

14. Section 2 of P.L.1999, c.282 (C.23:2B-15.1) is amended to read as follows:

2. a. The Division of Fish, Game and Wildlife is continued and constituted as the Division of Fish and Wildlife in the Department of Environmental Protection. All the functions, powers, and duties of the existing Division of Fish, Game and Wildlife and the director thereof are continued in the Division of Fish and Wildlife and the director thereof, and whenever the term "Division of Fish, Game and Wildlife" occurs or any reference is made thereto in any law, contract, or document, it shall be deemed or mean to refer to the Division of Fish and Wildlife.

b. The Fish and Game Council, together with all its functions, powers and duties, is continued as the Fish and Game Council in but not of the Division of Fish and Wildlife in the Department of Environmental Protection.

(cf: P.L.1999, c.282, s.2)

15. Section 4 of P.L.1984, c.37 (C.23:4-22.4) is amended to read as follows:

4. The Board of Governors of Rutgers, The State University, shall direct the Department of Wildlife Management at Cook College to conduct a study to identify or develop an animal trap which substantially reduces injury and pain to both targeted and nontargeted animals which are caught in the trap and which could serve as an alternative to the steel-jaw leghold type animal trap. The results of this study shall be published in a report to the New Jersey Fish and Game Council, hereinafter referred to as the "council," in but not of the Department of Environmental Protection within one year of the effective date of this amendatory and supplementary act. For the purposes of this amendatory and supplementary act, the steel-jaw leghold type animal trap does not mean mouse and rat traps designed for use in or under buildings.

(cf: P.L.1984, c.37, s.4)

16. (New section) a. Notwithstanding any law, rule, or regulation to the contrary, including but not limited to the provisions of subsection a. of section 5 of P.L.1948, c.448 (C.13:1B-5), lands under the administration, ownership, management, or control of the Division of Fish and Wildlife or the Department of Environmental Protection which were acquired in whole or in part with monies from the "hunters' and anglers' license fund" created pursuant to R.S.23:3-11 and R.S.23:3-12, from the New Jersey Waterfowl Stamp Account established pursuant to section 5 of P.L.1983, c.504 (C.23:3-79), or with federal aid for fish and wildlife purposes, shall not be closed to the taking of any species of freshwater fish or wildlife in accordance with the State Fish and Game Code by the action of any State agency or official without the approval of the Fish and Game Council.

b. For the purposes of subsection a. of this section, "federal aid for fish and wildlife purposes" means any federal grant program to the states for fish and wildlife purposes using funds derived from the assessment of federal excise taxes on sporting equipment, including but not limited to the federal aid in sport fish restoration program, 16U.S.C. s.777 et seq., and the federal aid in wildlife restoration program, 16U.S.C. s.669 et seq.

17. This act shall take effect immediately.

STATEMENT

This bill clarifies existing law that the Fish and Game Council is empowered as the sole State governmental entity responsible for determining whether or not any species of fresh water fish, game bird, game animal, or fur-bearing animal may be fished, hunted, or trapped, and in determining what circumstances, when and in what localities, by what means and in what amounts and numbers those species may be fished, hunted, or trapped. The bill also clarifies existing law to require the Division of Fish and Wildlife, the division director, the Department of Environmental Protection (DEP), and the Commissioner of Environmental Protection to implement the State Fish and Game Code as adopted by the council and any comprehensive policies concerned therewith as formulated by the council, all as directed by the council. The bill further emphasizes the autonomy of the council pertaining to matters of fresh water fishing, hunting, and trapping by removing the council from the division and instead locating it in, but not of, the division and the DEP.

This bill is necessary to correct the clearly erroneous interpretation of the statutory law given recently by the New Jersey Supreme Court in the case of U.S. Sportsmen' Alliance Foundation v. New Jersey Department of Environmental Protection. In its December 2, 2004 decision in that case, the Court reversed a well-reasoned, unanimous three-judge Appellate Division opinion and thereby stopped the black bear hunt scheduled for December 2004 until certain specified conditions were met. In doing so, the Supreme Court found that the Fish and Game Council and the Commissioner of Environmental Protection have "shared responsibility" regarding the formulation of comprehensive policies pertaining to game animals, including black bears. The effect of this decision was to give the commissioner veto authority over any action taken by the council, thereby transforming the council into a mere advisory body. This result is clearly contrary to the statutory law establishing the Fish and Game Council as a fully capable regulatory body, providing for adoption of the State Fish and Game Code by the council only, and establishing the State Fish and Game Code as the only mechanism by which fresh water fishing, hunting, and trapping is regulated in the State. The Court's decision wrongly upset an established statutory framework, over 50 years of precedent, and the designed and mutually accepted working relationship established by the council with the Division of Fish and Wildlife over that time period since the council was created by law.

Section 16 of this bill also provides that lands under the administration, ownership, management, or control of the Division of Fish and Wildlife or the DEP which were acquired in whole or in part with monies from the "hunters' and anglers' license fund," from the New Jersey Waterfowl Stamp Account, or with federal aid for fish and wildlife purposes, shall not be closed to the taking of any species of freshwater fish or wildlife in accordance with the State Fish and Game Code by the action of any State agency or official without the approval of the Fish and Game Council. This section responds in part to an Appellate Division opinion issued November 24, 2004 in the case of Safari Club International v. New Jersey Department of Environmental Protection in which the court interpreted the current statutory law in support of affirming the notice recently issued by the Commissioner of Environmental Protection closing all lands owned, managed or controlled by the DEP to bear hunting.