

58:16A-68

LEGISLATIVE HISTORY CHECKLIST

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(Stream cleaning--permit not needed)

NJSA: 58:16A-68

LAWS OF: 1997 CHAPTER: 286

BILL NO: S275

SPONSOR(S): Cardinale

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Environment

SENATE: Environment

AMENDED DURING PASSAGE: No Senate Committee substitute  
(3R)

DATE OF PASSAGE: ASSEMBLY: December 18, 1996

SENATE: March 10, 1996

DATE OF APPROVAL: January 8 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement with  
Assembly floor amendments,  
adopted 12-4-97 & 1-27-97

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

P.L. 1997, CHAPTER 286, *approved January 8, 1998*  
Senate Committee Substitute (*Third Reprint*) for  
Senate, No. 275

1 AN ACT concerning the prevention of flooding, <sup>2</sup>[and]<sup>2</sup> amending  
2 P.L.1993, c.376, and supplementing Title 58 of the Revised  
3 Statutes.

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

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

10 1. a. The provisions of any other law, or any rule or regulation  
11 adopted pursuant thereto, to the contrary notwithstanding, a county  
12 or municipality, or designated agency thereof, before undertaking any  
13 project to clean, clear, or desnag a stream within its jurisdiction, shall  
14 submit to the Department of Environmental Protection or to any State  
15 agency requiring a stream cleaning permit or an application for the  
16 proposed stream cleaning, clearing <sup>2,2</sup> or desnagging project, a written  
17 notice of intent to undertake a project to clean, clear, or desnag a  
18 stream and a certification attested to by the county or municipal  
19 engineer or the local soil conservation district, provided that the  
20 certification is made by a licensed professional engineer. The engineer  
21 shall certify that:

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

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate floor amendments adopted January 27, 1997.

<sup>2</sup> Assembly AES committee amendments adopted June 12, 1997.

<sup>3</sup> Assembly floor amendments adopted December 4, 1997.

1 (3) the activities will not alter the natural <sup>2</sup>[streambanks] stream  
2 banks<sup>2</sup> ;

3 (4) the activities will consist of the removal only of accumulated  
4 sediments, debris <sup>2,2</sup> and garbage from a stream with a natural stream  
5 bed or the removal of any accumulated material from a stream  
6 previously channelized with concrete or similar artificial material;

7 (5) every effort will be made to perform work from only one  
8 <sup>2</sup>[streambank] stream bank<sup>2</sup> and that vegetation and canopy on the  
9 more southerly or westerly banks will be preserved for stream shading;  
10 and

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

12 The notice shall also include a description of the nature of the  
13 project, a description, including a photograph, of the reach of the  
14 stream in which the activity is to take place, and an identification of  
15 the regulatory water quality classification of the stream in which the  
16 activity is to take place. The reach of the stream may be provided by  
17 the submission of a photostatic copy of the United States Geological  
18 Survey topographic quadrangle.

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

22 (1) the applicant shall provide a statement from the engineer that  
23 the <sup>2</sup>[subject]<sup>2</sup> stream floods and <sup>2</sup>that such flooding<sup>2</sup> results or can  
24 result in property damage necessitating the proposed cleaning <sup>2</sup>.  
25 clearing, or desnagging<sup>2</sup> ;

26 (2) the stream to be cleaned <sup>2</sup>. cleared, or desnagged <sup>2</sup> is not  
27 classified as pinelands waters or category one waters;

28 (3) the <sup>2</sup>[streambed] stream bed<sup>2</sup> is 15 feet or less in average  
29 width;

30 (4) the stream corridor to be cleaned <sup>2</sup>. cleared, or desnagged<sup>2</sup> is  
31 less than 500 feet in length;

32 (5) the stream is not in a municipality, as defined by the  
33 department, that is known to have federally or State listed threatened  
34 or endangered species associated with its wetlands. Regulated  
35 activities in these municipalities <sup>2</sup>[require coordination] shall be  
36 coordinated<sup>2</sup> with federal agencies;

37 (6) the applicant shall provide a certification by the engineer that  
38 the material to be removed is not beyond the natural <sup>2</sup>[streambed]  
39 stream bed<sup>2</sup> ;

40 (7) the applicant shall submit surface color photographs of the  
41 areas of the stream to be cleaned <sup>2</sup>. cleared, or desnagged<sup>2</sup> and of the  
42 access points; and

43 (8) the applicant shall incorporate appropriate timing restrictions  
44 as required by the <sup>2</sup>[Department of Environmental Protection]  
45 department<sup>2</sup> .

1       **[b.] c.** Upon receipt of a notice and certification submitted  
2 pursuant to this section, the department, or any other State agency  
3 requiring a stream cleaning permit or an application for the proposed  
4 stream cleaning, clearing<sup>2</sup>,<sup>2</sup> or desnagging project, as the case may be,  
5 shall, except as provided<sup>2</sup> [below] otherwise in this subsection<sup>2</sup>, have  
6 [30] 15 days to notify the<sup>2</sup> [county or municipality, or designated  
7 agency thereof,] applicant<sup>2</sup> if particular circumstances mandate that the  
8 stream cleaning<sup>2</sup>, clearing, or desnagging<sup>2</sup> not be done in this  
9 particular case. For<sup>2</sup> [those projects] a project<sup>2</sup> involving the removal  
10 of sediment, the department shall have 60 days prior to the  
11 commencement of activities to notify the<sup>2</sup> [county or municipality, or  
12 designated agency thereof,] applicant<sup>2</sup> if particular circumstances  
13 mandate that the stream cleaning<sup>2</sup>, clearing, or desnagging<sup>2</sup> not be  
14 done in that particular case. If the department, or any other State  
15 agency requiring a stream cleaning permit or an application for the  
16 proposed stream cleaning, clearing<sup>2</sup>,<sup>2</sup> or desnagging project, as the  
17 case may be, makes such a determination, it shall provide the<sup>2</sup> [county  
18 or municipality, or designated agency thereof,] applicant<sup>2</sup> with the  
19 technical reasons therefor. <sup>2</sup>For the purposes of this subsection, if the  
20 department's technical reasons therefor are based upon the inability to  
21 determine the natural stream bed, the department shall, at the request  
22 of the applicant, assist in identifying the natural stream bed.<sup>2</sup> The  
23 department may not prohibit the removal of any garbage no matter  
24 how long it has been in the stream<sup>2</sup>, nor shall the department require  
25 extensive mapping or other engineering services which involve  
26 significant expense to the municipality<sup>2</sup>.

27       d. Upon completion of the project to clean<sup>2</sup>, clear, or desnag<sup>2</sup> a  
28 stream involving the removal of sediment within its jurisdiction, the  
29 <sup>2</sup>[county or municipality, or designated agency thereof,] applicant<sup>2</sup>  
30 shall submit to the department a written notice that the project has  
31 been completed in accordance with the<sup>2</sup> [criteria] conditions<sup>2</sup> outlined  
32 in subsection b. of this section. The notice shall contain a certification  
33 attested to by the county or municipal engineer or the local soil  
34 conservation district, provided that the certification is made by a  
35 licensed professional engineer. The engineer shall certify that all the  
36 <sup>2</sup>[criteria] conditions<sup>2</sup> in subsection b. of this section have been  
37 adhered to.

38       e. As used in this section:

39       <sup>2</sup>"Applicant" means a county or municipality, or designated agency  
40 thereof;<sup>2</sup>

41       "Category one waters" means, for the purposes of sediment  
42 removal, those waters<sup>2</sup> [designed] designated<sup>2</sup> by the Department of  
43 Environmental Protection, for purposes of implementing the  
44 antidegradation policies of the "Water Pollution Control Act",  
45 P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable

1 changes in water quality characteristics because of their clarity, color,  
2 scenic setting, other characteristics of aesthetic value, exceptional  
3 ecological significance, exceptional recreational significance,  
4 exceptional water supply significance, or exceptional fisheries  
5 resources. These waters may include, but are not limited to:

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

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

12 (3) Surface waters classified by the department as FW2 trout  
13 maintenance <sup>2</sup>waters<sup>2</sup> or FW2 nontrout <sup>2</sup>waters<sup>2</sup> that are not more than  
14 750 feet upstream of waters classified <sup>2</sup>by the department<sup>2</sup> as FW2  
15 trout production <sup>2</sup>waters<sup>2</sup> ;

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

17 (5) Other waters and their tributaries that flow through, or border,  
18 federal, State, county or municipal parks, forest, fish and wildlife  
19 lands, and other special holdings <sup>2</sup>[.] ;

20 "Department" means the Department of Environmental Protection;<sup>2</sup>

21 "FW" means the general surface water classification applied to  
22 fresh waters <sup>2</sup>[.] ;<sup>2</sup>

23 "FW1" means those fresh waters that originate in and are wholly  
24 within federal or State parks, forests, fish and wildlife lands, and other  
25 special holdings, that are to be maintained in their natural state of  
26 quality and not subjected to any man-made wastewater discharges  
27 <sup>2</sup>[.] ;<sup>2</sup>

28 "FW2" means the general surface water classification applied to  
29 those fresh waters that are not designated as FW1 or pinelands waters  
30 <sup>2</sup>[.] ;<sup>2</sup>

31 "Trout maintenance waters" means waters designated by the  
32 department for the support of trout throughout the year <sup>2</sup>[.] ; and<sup>2</sup>

33 "Trout production waters" means waters designated by the  
34 department for use by trout for spawning or nursery purposes during  
35 their first summer.

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

40 (cf: P.L.1993, c.376, s.1)

41

42 2. (New section) a. Any municipality<sup>2</sup>, either alone or jointly with  
43 any other municipality,<sup>2</sup> may establish a plan<sup>2</sup>, with the approval of the  
44 Department of Environmental Protection,<sup>2</sup> for the size and location of  
45 flood control facilities, including detention basins, <sup>2</sup>[in conjunction

1 with any other municipality and the Department of Environmental  
2 Protection]<sup>2</sup> in order to minimize flood damage, to reduce stormwater  
3 runoff from new or existing development, <sup>2</sup>[and] or<sup>2</sup> to induce water  
4 recharge into the ground where practical. <sup>1</sup>Notwithstanding any  
5 provision of this subsection to the contrary, for new development the  
6 standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.)  
7 shall be applicable. This subsection shall apply only to municipally-  
8 owned flood control facilities, including detention basins, constructed  
9 on public property.<sup>1</sup>

10 b. Any municipality<sup>1</sup>, either alone or jointly with any other  
11 municipality,<sup>1</sup> may establish a plan <sup>1</sup>[either alone or jointly with any  
12 other municipality and],<sup>1</sup> with the <sup>1</sup>[Department of Environmental  
13 Protection] approval of the <sup>2</sup>[New Jersey Water Supply Authority<sup>1</sup>]  
14 Department of Environmental Protection<sup>2</sup>, to maintain the water level  
15 of any lake or reservoir within its borders at a level necessary to  
16 <sup>1</sup>[protect] provide <sup>2</sup>[both an effective yield] an equivalent surface  
17 water safe yield established by the department for any affected water  
18 supply system<sup>2</sup> and protection<sup>1</sup> against flooding. <sup>2</sup>Any such plan shall  
19 (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262  
20 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation  
21 of the quantity of storage necessary to achieve a given level of flood  
22 control protection, (3) consider the environmental impact upon aquatic  
23 resources and fish spawning, the impact upon recreational use, and the  
24 financial impact upon all users of the lake or reservoir, and (4)  
25 consider any other criteria deemed necessary by the department. <sup>3</sup>The  
26 department shall hold a public hearing prior to approval of a plan to  
27 seek input on the plan from any municipality that borders the lake or  
28 reservoir, or borders a river, stream or brook that feeds into or flows  
29 from that lake or reservoir. The department shall issue its decision on  
30 the plan in writing and transmit a copy thereof to each affected  
31 municipality and water supply purveyor prior to the effective date of  
32 the decision.<sup>3</sup> No plan that jeopardizes safe yield and the provision of  
33 adequate water supply <sup>3</sup>or reduces current safe yield levels of any lake  
34 or reservoir<sup>3</sup> shall be approved by the department. No plan within the  
35 area of jurisdiction of the New Jersey Water Supply Authority may be  
36 established without the approval of the authority.

37 c. Nothing in this section shall be construed to supersede any  
38 other State law that applies to the construction of flood control  
39 facilities or the regulation of water levels in lakes or reservoirs.<sup>2</sup>

40  
41 <sup>2</sup>[3. (New section) Upon application by a municipality, the  
42 Department of Environmental Protection shall identify the natural  
43 streambed of any stream in the municipality that floods and which  
44 flooding results or can result in property damage and which will be  
45 subject to routine maintenance to control flooding. Any maps or data

1 generated by the department shall be sent to the clerk of the  
2 municipality.]<sup>2</sup>

3

4 <sup>2</sup>[4.] 3.<sup>2</sup> This act shall take effect immediately.

5

6

7

8

9 Provides for expedited permit procedures for certain stream cleaning  
10 activities and for other planning functions to prevent flooding.

SENATE, No. 275

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator CARDINALE

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

3

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

6

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

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

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

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

25 (3) the activities will not alter the natural streambanks;

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

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

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

34 The notice shall also include a description of the nature of the

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**Matter underlined thus is new matter.**



1 project, a description, including a photograph, of the reach of the  
2 stream in which the activity is to take place, and an identification of  
3 the regulatory water quality classification of the stream in which the  
4 activity is to take place. The reach of the stream may be provided by  
5 the submission of a photostatic copy of the United States Geological  
6 Survey topographic quadrangle.

7 b. Upon receipt of a notice and certification submitted pursuant to  
8 this section, the department, or any other State agency requiring a  
9 stream cleaning permit or an application for the proposed stream  
10 cleaning, clearing or desnagging project, as the case may be, shall have  
11 30 days to notify the county or municipality, or designated agency  
12 thereof, if particular circumstances mandate that the stream cleaning  
13 not be done in this particular case. If the department, or any other  
14 State agency requiring a stream cleaning permit or an application for  
15 the proposed stream cleaning, clearing or desnagging project, as the  
16 case may be, makes such a determination, it shall provide the county  
17 or municipality, or designated agency thereof, with the technical  
18 reasons therefor.

19 c. Notwithstanding the provisions of this section or any other law,  
20 rule, or regulation to the contrary, a county or municipality, or  
21 designated agency thereof, shall not be required to obtain a permit  
22 from or the approval of the Department of Environmental Protection  
23 or any other State agency prior to conducting a stream cleaning,  
24 clearing or desnagging project for any nontrout stream or intermittent  
25 stream. A county, municipality, or designated entity thereof may  
26 clean, clear or desnag a stream pursuant to this subsection only if the  
27 notice and certification requirements set forth in subsection a. of this  
28 section are met.

29 As used in this subsection,

30 "Intermittent stream" means a stream with a minimum average  
31 seven consecutive day flow with a statistical recurrence interval of 10  
32 years, of less than one-tenth (0.1) cubic foot per second; and

33 "Nontrout waters" means fresh waters not designated by the  
34 Department of Environmental Protection as trout production or trout  
35 maintenance.

36 d. Any person or governmental entity violating the provisions of  
37 this **[act]** section shall be subject to penalties imposed for violations  
38 of the "Flood Hazard Area Control Act," P.L.1962, c.19  
39 (C.58:16A-50 et seq.).  
40 (cf: P.L.1993, c.376, s.1)

41  
42 2. This act shall take effect immediately.

STATEMENT

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This bill would eliminate the need for counties and municipalities, and their agencies, to get a permit or approval from the Department of Environmental Protection or any other State agency in order to engage in a stream cleaning, clearing or desnagging project upon certain streams. The intent of this provision is to allow local governments to engage in minor stream cleaning activities without the need to wait long periods of time for State approvals.

Local governments would only be exempted from the need to obtain a permit or approval for those activities on nontrout waters and intermittent, or small, streams. The bill provides that only certain minor cleaning activities may be undertaken under this exemption. The local government would also be required to submit a notice and an engineering certification to the relevant State agencies prior to the commencement of the project. The limitations, notices, and certifications will prevent any actions being undertaken that may cause environmental harm to the stream or the surrounding area.



Eliminates the need to obtain State permit or approval for certain stream cleaning activities.

[Passed Both Houses]

[Third Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 275

STATE OF NEW JERSEY

ADOPTED DECEMBER 16, 1996

Sponsored by Senators CARDINALE, McNAMARA, Ciesla,  
Martin, LaRossa, Bubba, Assemblywoman Allen  
and Assemblyman DeSopo

1 AN ACT concerning the prevention of flooding, <sup>2</sup>[and]<sup>2</sup> amending  
2 P.L.1993, c.376, and supplementing Title 58 of the Revised  
3 Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

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9 as follows:

10 1. a. The provisions of any other law, or any rule or regulation  
11 adopted pursuant thereto, to the contrary notwithstanding, a county  
12 or municipality, or designated agency thereof, before undertaking any  
13 project to clean, clear, or desnag a stream within its jurisdiction, shall  
14 submit to the Department of Environmental Protection or to any State  
15 agency requiring a stream cleaning permit or an application for the  
16 proposed stream cleaning, clearing <sup>2,2</sup> or desnagging project, a written  
17 notice of intent to undertake a project to clean, clear, or desnag a  
18 stream and a certification attested to by the county or municipal  
19 engineer or the local soil conservation district, provided that the  
20 certification is made by a licensed professional engineer. The engineer  
21 shall certify that:

22 (1) the project is being undertaken solely for the purpose of

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<sup>1</sup> Senate floor amendments adopted January 27, 1997.

<sup>2</sup> Assembly AES committee amendments adopted June 12, 1997.

<sup>3</sup> Assembly floor amendments adopted December 4, 1997.

1 stream cleaning, clearing, or desnagging;

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

4 (3) the activities will not alter the natural <sup>2</sup>**[streambanks]** stream  
5 banks<sup>2</sup> ;

6 (4) the activities will consist of the removal only of accumulated  
7 sediments, debris<sup>2,2</sup> and garbage from a stream with a natural stream  
8 bed or the removal of any accumulated material from a stream  
9 previously channelized with concrete or similar artificial material;

10 (5) every effort will be made to perform work from only one  
11 <sup>2</sup>**[streambank]** stream bank<sup>2</sup> and that vegetation and canopy on the  
12 more southerly or westerly banks will be preserved for stream shading;  
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14 (6) the activities are necessary and in the public interest.

15 The notice shall also include a description of the nature of the  
16 project, a description, including a photograph, of the reach of the  
17 stream in which the activity is to take place, and an identification of  
18 the regulatory water quality classification of the stream in which the  
19 activity is to take place. The reach of the stream may be provided by  
20 the submission of a photostatic copy of the United States Geological  
21 Survey topographic quadrangle.

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

25 (1) the applicant shall provide a statement from the engineer that  
26 the <sup>2</sup>**[subject]**<sup>2</sup> stream floods and <sup>2</sup>that such flooding<sup>2</sup> results or can  
27 result in property damage necessitating the proposed cleaning <sup>2</sup>,  
28 clearing, or desnagging<sup>2</sup> :

29 (2) the stream to be cleaned <sup>2</sup>, cleared, or desnagged<sup>2</sup> is not  
30 classified as pinelands waters or category one waters;

31 (3) the <sup>2</sup>**[streambed]** stream bed<sup>2</sup> is 15 feet or less in average  
32 width;

33 (4) the stream corridor to be cleaned <sup>2</sup>, cleared, or desnagged<sup>2</sup> is  
34 less than 500 feet in length;

35 (5) the stream is not in a municipality, as defined by the  
36 department, that is known to have federally or State listed threatened  
37 or endangered species associated with its wetlands. Regulated  
38 activities in these municipalities <sup>2</sup>**[require coordination]** shall be  
39 coordinated<sup>2</sup> with federal agencies;

40 (6) the applicant shall provide a certification by the engineer that  
41 the material to be removed is not beyond the natural <sup>2</sup>**[streambed]**  
42 stream bed<sup>2</sup> ;

43 (7) the applicant shall submit surface color photographs of the  
44 areas of the stream to be cleaned <sup>2</sup>, cleared, or desnagged<sup>2</sup> and of the  
45 access points; and

1       (8) the applicant shall incorporate appropriate timing restrictions  
2 as required by the <sup>2</sup>[Department of Environmental Protection]  
3 department<sup>2</sup>.

4       **[b.] c.** Upon receipt of a notice and certification submitted  
5 pursuant to this section, the department, or any other State agency  
6 requiring a stream cleaning permit or an application for the proposed  
7 stream cleaning, clearing <sup>2,2</sup> or desnagging project, as the case may be,  
8 shall except as provided <sup>2</sup>[below] otherwise in this subsection <sup>2</sup>,  
9 have [30] 15 days to notify the <sup>2</sup>[county or municipality, or  
10 designated agency thereof,] applicant<sup>2</sup> if particular circumstances  
11 mandate that the stream cleaning <sup>2</sup>, clearing, or desnagging<sup>2</sup> not be  
12 done in this particular case. For <sup>2</sup>[those projects] a project<sup>2</sup> involving  
13 the removal of sediment, the department shall have 60 days prior to  
14 the commencement of activities to notify the <sup>2</sup>[county or municipality,  
15 or designated agency thereof,] applicant<sup>2</sup> if particular circumstances  
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17 done in that particular case. If the department, or any other State  
18 agency requiring a stream cleaning permit or an application for the  
19 proposed stream cleaning, clearing <sup>2,2</sup> or desnagging project, as the  
20 case may be, makes such a determination, it shall provide the <sup>2</sup>[county  
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22 technical reasons therefor. <sup>2</sup>For the purposes of this subsection, if the  
23 department's technical reasons therefor are based upon the inability to  
24 determine the natural stream bed, the department shall, at the request  
25 of the applicant, assist in identifying the natural stream bed.<sup>2</sup> The  
26 department may not prohibit the removal of any garbage no matter  
27 how long it has been in the stream <sup>2</sup>, nor shall the department require  
28 extensive mapping or other engineering services which involve  
29 significant expense to the municipality<sup>2</sup>.

30       d. Upon completion of the project to clean <sup>2</sup>, clear, or desnag<sup>2</sup> a  
31 stream involving the removal of sediment within its jurisdiction, the  
32 <sup>2</sup>[county or municipality, or designated agency thereof,] applicant<sup>2</sup>  
33 shall submit to the department a written notice that the project has  
34 been completed in accordance with the <sup>2</sup>[criteria] conditions<sup>2</sup> outlined  
35 in subsection b. of this section. The notice shall contain a certification  
36 attested to by the county or municipal engineer or the local soil  
37 conservation district, provided that the certification is made by a  
38 licensed professional engineer. The engineer shall certify that all the  
39 <sup>2</sup>[criteria] conditions<sup>2</sup> in subsection b. of this section have been  
40 adhered to.

41       e. As used in this section:

42       <sup>2</sup>"Applicant" means a county or municipality, or designated agency  
43 thereof.<sup>2</sup>

44       <sup>2</sup>"Category one waters" means, for the purposes of sediment

1 removal, those waters <sup>2</sup>[designed] designated<sup>2</sup> by the Department of  
2 Environmental Protection, for purposes of implementing the  
3 antidegradation policies of the "Water Pollution Control Act",  
4 P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable  
5 changes in water quality characteristics because of their clarity, color,  
6 scenic setting, other characteristics of aesthetic value, exceptional  
7 ecological significance, exceptional recreational significance,  
8 exceptional water supply significance, or exceptional fisheries  
9 resources. These waters may include, but are not limited to:

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

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

16 (3) Surface waters classified by the department as FW2 trout  
17 maintenance <sup>2</sup>waters<sup>2</sup> or FW2 nontrout <sup>2</sup>waters<sup>2</sup> that are not more  
18 than 750 feet upstream of waters classified <sup>2</sup>by the department<sup>2</sup> as  
19 FW2 trout production <sup>2</sup>waters<sup>2</sup> ;

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

21 (5) Other waters and their tributaries that flow through, or border,  
22 federal, State, county or municipal parks, forest, fish and wildlife  
23 lands, and other special holdings <sup>2</sup>[.] :

24 "Department" means the Department of Environmental  
25 Protection;<sup>2</sup>

26 "FW" means the general surface water classification applied to  
27 fresh waters <sup>2</sup>[.] :<sup>2</sup>

28 "FW1" means those fresh waters that originate in and are wholly  
29 within federal or State parks, forests, fish and wildlife lands, and other  
30 special holdings, that are to be maintained in their natural state of  
31 quality and not subjected to any man-made wastewater discharges  
32 <sup>2</sup>[.]<sup>2</sup>

33 "FW2" means the general surface water classification applied to  
34 those fresh waters that are not designated as FW1 or pinelands waters  
35 <sup>2</sup>[.]<sup>2</sup>

36 "Trout maintenance waters" means waters designated by the  
37 department for the support of trout throughout the year <sup>2</sup>[.] : and<sup>2</sup>

38 "Trout production waters" means waters designated by the  
39 department for use by trout for spawning or nursery purposes during  
40 their first summer.

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

45 (cf: P.L.1993, c.376, s.1)

1        2. (New section) a. Any municipality<sup>2</sup>, either alone or jointly  
2 with any other municipality.<sup>2</sup> may establish a plan<sup>2</sup>, with the approval  
3 of the Department of Environmental Protection.<sup>2</sup> for the size and  
4 location of flood control facilities, including detention basins, <sup>2</sup>[in  
5 conjunction with any other municipality and the Department of  
6 Environmental Protection]<sup>2</sup> in order to minimize flood damage, to  
7 reduce stormwater runoff from new or existing development, <sup>2</sup>[and]  
8 or<sup>2</sup> to induce water recharge into the ground where practical.  
9 <sup>1</sup>Notwithstanding any provision of this subsection to the contrary, for  
10 new development the standards adopted pursuant to P.L.1993, c.32  
11 (C.40:55D-40.1 et seq.) shall be applicable. This subsection shall  
12 apply only to municipally-owned flood control facilities, including  
13 detention basins, constructed on public property.<sup>1</sup>

14        b. Any municipality<sup>1</sup>, either alone or jointly with any other  
15 municipality.<sup>1</sup> may establish a plan <sup>1</sup>[either alone or jointly with any  
16 other municipality and],<sup>1</sup> with the <sup>1</sup>[Department of Environmental  
17 Protection] approval of the <sup>2</sup>[New Jersey Water Supply Authority<sup>1</sup>]  
18 Department of Environmental Protection<sup>2</sup>, to maintain the water level  
19 of any lake or reservoir within its borders at a level necessary to  
20 <sup>1</sup>[protect] provide <sup>2</sup>[both an effective yield] an equivalent surface  
21 water safe yield established by the department for any affected water  
22 supply system<sup>2</sup> and protection<sup>1</sup> against flooding. <sup>2</sup>Any such plan shall  
23 (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262  
24 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation  
25 of the quantity of storage necessary to achieve a given level of flood  
26 control protection, (3) consider the environmental impact upon aquatic  
27 resources and fish spawning, the impact upon recreational use, and the  
28 financial impact upon all users of the lake or reservoir, and (4)  
29 consider any other criteria deemed necessary by the department.<sup>3</sup>The  
30 department shall hold a public hearing prior to approval of a plan to  
31 seek input on the plan from any municipality that borders the lake or  
32 reservoir, or borders a river, stream or brook that feeds into or flows  
33 from that lake or reservoir. The department shall issue its decision on  
34 the plan in writing and transmit a copy thereof to each affected  
35 municipality and water supply purveyor prior to the effective date of  
36 the decision.<sup>3</sup> No plan that jeopardizes safe yield and the provision of  
37 adequate water supply<sup>3</sup> or reduces current safe yield levels of any lake  
38 or reservoir<sup>3</sup> shall be approved by the department. No plan within the  
39 area of jurisdiction of the New Jersey Water Supply Authority may be  
40 established without the approval of the authority.

41        c. Nothing in this section shall be construed to supersede any  
42 other State law that applies to the construction of flood control  
43 facilities or the regulation of water levels in lakes or reservoirs.<sup>2</sup>

44

45        <sup>2</sup>[3. (New section) Upon application by a municipality, the

1 Department of Environmental Protection shall identify the natural  
2 streambed of any stream in the municipality that floods and which  
3 flooding results or can result in property damage and which will be  
4 subject to routine maintenance to control flooding. Any maps or data  
5 generated by the department shall be sent to the clerk of the  
6 municipality.]<sup>2</sup>

7

8 <sup>2</sup>[4.] ~~3.~~<sup>2</sup> This act shall take effect immediately.

9

10

11

12

13 Provides for expedited permit procedures for certain stream cleaning  
14 activities and for other planning functions to prevent flooding.



ASSEMBLY ENVIRONMENT, SCIENCE AND TECHNOLOGY  
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 275**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 12, 1997

The Assembly Environment, Science and Technology Committee favorably reports the Senate Committee Substitute for Senate Bill No. 275 (1R) with committee amendments.

The bill, as amended, simplifies the process for counties and municipalities, and their agencies, to get a permit or approval from the Department of Environmental Protection or any other State agency in order to engage in a stream cleaning, clearing or desnagging project upon nontrout waters and intermittent, or small, streams.

The bill, as amended, would require notification to the Department of Environmental Protection prior to the commencement of a project and provides for the removal of sediments. Current law would still provide that the procedures could only be used if the project is solely for cleaning, clearing, or desnagging a stream, so long as any material involved will not extend below the stream's natural bed, and if certain other environmentally protective conditions are met. The existing law also affords the Department of Environmental Protection, or any other permitting agency, the opportunity to review the proposed permit and to deny the project if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done.

The bill, as amended, would also provide additional environmental safeguards in those situations where sediment is to be removed from a stream. These safeguards include assurances that the stream has a flooding problem, the stream is not a category one or pinelands water, the streambed has an average width of less than 15 feet, the corridor to be cleaned is less than 500 feet, the stream has not been designated as an endangered species habitat, and the applicant submits certain photographs.

The bill, as amended, would extend the date for the department's response to an application from 30 to 60 days where it involves

sediment removal and lessens the review period from 30 to 15 days for all other types of stream cleaning. The bill, as amended, requires that a notice and certification be sent to the department after the completion of a stream cleaning activity involving sediment removal, and adds a definition of category one waters so as to limit the streams that would be subject to the bill.

The bill, as amended, would also prohibit the department from refusing to allow for the removal or any garbage no matter how long it has been present in a stream.

The bill, as amended, includes provisions that would allow municipalities to establish a plan for the size and location of flood control facilities, including detention basins, in conjunction with any other municipality and the Department of Environmental Protection in order to minimize flood damage, to reduce stormwater runoff from new or existing development, to induce water recharge into the ground, and to establish a plan either alone or jointly with any other municipality and with the Department of Environmental Protection to maintain the water level of any lake or reservoir within its borders at a level necessary to protect against flooding.

The bill, as amended, provides that, in the case of new development, the standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) (the uniform site standards law) would be applicable, and would be limited to municipally-owned flood control facilities constructed on public property. Any plan established by a municipality to maintain the level of water in a lake or reservoir would require the approval of the Department of Environmental Protection, and, where applicable, the New Jersey Water Supply Authority. Finally, such a plan would involve maintenance of the water level for the purposes of providing effective yield and protection against flooding.

The committee amendments made technical and clarifying corrections to the changes made to Senate Bill No. 275 by the Senate committee substitute and the Senate floor amendments, and specified that no municipal plan to maintain the water level in a lake or reservoir can be approved by the Department of Environmental Protection if it jeopardizes safe yield and the provision of adequate water supply.

As amended and reported by the committee, this bill is identical to the Assembly committee substitute for Assembly Bill No. 2608 of 1996 as also reported by the committee.

# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 275

# STATE OF NEW JERSEY

DATED: DECEMBER 16, 1996

The Senate Environment Committee reports favorably a Senate Committee Substitute for Senate Bill No. 275.

The committee substitute would provide that a county or municipality may remove sediments from a stream pursuant to the expedited permit procedures for doing so adopted by the Legislature in 1993. When originally passed by the Legislature, sediments were allowed to be removed from streams with natural beds, but this provision was removed after a conditional veto of the bill. This committee substitute would partially reverse the changes made by that conditional veto.

Although this committee substitute would allow sediments to be removed from a stream pursuant to the expedited permit procedures, the law would still provide that the procedures could only be used if the project is solely for cleaning, clearing, or desnagging a stream, so long as any material involved will not extend below the stream's natural bed, and if certain other environmentally protective conditions are met. The existing law also affords the Department of Environmental Protection, or any other permitting agency, the opportunity to review the proposed permit and to deny the project if particular circumstances mandate that the stream cleaning not be done.

The committee substitute provides additional environmental safeguards in those situations where sediment is to be removed from a stream. These safeguards include assurances that the stream has a flooding problem, the stream is not a category one or pinelands water, the streambed has an average width of less than 15 feet, the corridor to be cleaned is less than 500 feet, the stream has not been designated as an endangered species habitat, and the applicant submits certain photographs.

The committee substitute also extended the date for the department's response to an application from 30 to 60 days where it involves sediment removal and lessens the review period from 30 to 15 days for all other types of stream cleaning. The committee substitute requires that a notice and certification be sent to the department after the completion of a stream cleaning activity involving sediment removal.

The committee substitute adds a definition of category one waters so as to limit the streams that would be subject to the bill.

The committee substitute would also prohibit the department from refusing to allow for the removal of any garbage no matter how long it has been present in a stream.

Finally, the committee substitute includes provisions that would allow municipalities to establish a plan for the size and location of flood control facilities, including detention basins, in conjunction with any other municipality and the Department of Environmental Protection in order to minimize flood damage, to reduce stormwater runoff from new or existing development, to induce water recharge into the ground, and to establish a plan either alone or jointly with any other municipality and with the Department of Environmental Protection to maintain the water level of any lake or reservoir within its borders at a level necessary to protect against flooding. Finally, the bill would require the Department of Environmental Protection, upon application by a municipality, to identify the natural streambed of any stream in the municipality that floods and which flooding results or can result in property damage and which will be subject to routine maintenance to control flooding. Any maps or data generated by the department shall be sent to the clerk of the municipality.

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 275**

with Senate Floor Amendments  
(Proposed By Senator CARDINALE)

ADOPTED: JANUARY 27, 1997

These amendments would amend section 2 of the bill (which authorizes municipalities to establish plans for the size and location of flood control facilities) to provide that, in the case of new development, the standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) (the uniform site standards law) would be applicable. The amendments would also limit that authority to municipally-owned flood control facilities constructed on public property.

The amendments would also provide that any plan established by a municipality to maintain the level of water in a lake or reservoir would require the approval of the New Jersey Water Supply Authority and that such a plan would involve maintenance of the water level for the purposes of providing both an effective yield and protection against flooding.

STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
[Second Reprint]  
**SENATE, No. 275**

with Assembly Floor Amendments  
(Proposed By Assemblywoman ALLEN)

ADOPTED: DECEMBER 4, 1997

These floor amendments would require the Department of Environmental Protection to hold a public hearing on a municipal plan concerning water levels of a lake or reservoir within its borders, prior to the department making a decision on the plan.

LEGISLATIVE FISCAL ESTIMATE TO  
SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 275

**STATE OF NEW JERSEY**

DATED: JANUARY 15, 1997

Senate Committee Substitute for Senate Bill No. 275 of 1996 provides that a county or municipality may remove sediments from a stream pursuant to expedited permit procedures as cited below. The committee substitute also provides additional environmental safeguards for projects where sediments are removed from a stream.

The committee substitute establishes a 60 day period in which the Department of Environmental Protection (DEP) can respond to a notification of a project which involves sediment removal; no such deadline is presently in effect. The bill also lessens the review period from 30 to 15 days for all other types of stream cleaning projects, and requires that a notice and certification be sent to the DEP after the completion of a stream cleaning activity involving sediment removal.

Finally, the committee substitute includes provisions that allow local governments to establish a plan for the size and location of flood control facilities. In doing so, the bill requires the DEP, upon application by a local government, to identify the natural streambed of any stream in the municipality that could be subject to routine maintenance to control flooding.

The Office of Legislative Services estimates that the bill will not fiscally affect local governments because it mostly addresses technical aspects or criteria of stream cleaning that are essentially voluntary in nature (on the part of local governments). With respect to the DEP, the bill's inclusion of sediment removal from streams as a viable cleanup activity by local governments may require the department to perform new duties with respect to review and project oversight. The number and scope of projects initiated by the bill's enactment will ultimately determine whether additional employees and resources will be needed to carry out these functions.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.