

13:9C-1 to 13:9C-4

LEGISLATIVE HISTORY CHECKLIST
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(Wetlands establish state/
county program)

NJSA: 13:9C-1 to 13:9C-4

LAWS OF: 1993 **CHAPTER:** 298

BILL NO: S651

SPONSOR(S) Cafiero

DATE INTRODUCED: March 30, 1992

COMMITTEE: **ASSEMBLY:** Environment
SENATE: Environment

AMENDED DURING PASSAGE: Yes Amendments during passage
Fifth reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** November 15, 1993
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Fifth reprint

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

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REPORTS: No

HEARINGS: No

STATE OF NEW JERSEY

INTRODUCED MARCH 30, 1992

By Senator CAFIERO

1 AN ACT concerning wetlands ¹[mitigation] creation ³,
2 enhancement,³ or restoration¹ ²[and] ², ¹amending ²[and]¹
3 supplementing² P.L.1987, c.156 ², and supplementing Title 13
4 of the Revised Statutes².

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

8 1. (New section) As used in this act:
9 ²"Council" means the Wetlands Mitigation Council established
10 pursuant to section 14 of P.L.1987, c.156 (C.13:9B-14).

11 "Department" means the Department of Environmental
12 Protection.²

13 "Wetlands" means ¹[those lands] freshwater wetlands as¹
14 defined [as wetlands] pursuant to P.L.1987, c.156 (C.13:9B-1 et
15 seq.), ²[and] or² ¹[those lands regulated by the Department of
16 Environmental Protection under] coastal wetlands as defined
17 pursuant to¹ P.L.1970, c.272 (C.13:9A-1 et seq.) ¹[and P.L.1973,
18 c.185 (C.13:19-1 et seq.)]¹.

19 ³"Wetlands permit" means a permit approved and issued by
20 the department for activities regulated pursuant to P.L.1987,
21 c.156 (C.13:9B-1 et seq.) ¹[,] ²[and¹] or² P.L.1970, c.272
22 (C.13:9A-1 et seq.) ¹[and P.L.1973, c.185 (C.13:19-1 et seq.)]¹.³

23 "Wetlands ¹[mitigation]" creation ³, enhancement,³ or
24 restoration¹ ³³ means those activities or techniques designed to
25 ¹[diminish or eliminate adverse environmental impacts to wetland
26 areas, restore or replace vegetation, habitats, and land and water
27 features therein, prevent sedimentation and erosion thereof,
28 minimize wetland disturbance and insure compliance with section
29 404 of the "Federal Water Pollution Control Act Amendments of
30 1972" as amended by the "Clean Water Act of 1977" (33 U.S.C.
31 §1344) and the regulations adopted pursuant thereto] create ²[a
32 wetland] wetlands² or ³enhance or³ restore ²[a]² degraded
33 wetland¹ wetlands².

34 ³"Wetlands permit" means a permit approved and issued by the
35 department for activities regulated pursuant to P.L.1987, c.156
36 (C.13:9B-1 et seq.) or P.L.1970, c.272 (C.13:9A-1 et seq.).³

37 2. (New section) a. The ²[Wetlands Mitigation Council
38 created pursuant to section 14 of P.L.1987, c.156 (C.13:9B-14)
39 shall] Department of Environmental Protection², in addition to
40 its responsibilities under P.L.1987, c.156 ²(C.13:9B-1 et seq.) and
41 P.L.1970, c.272 (C.13:9A-1 et seq.)², and pursuant to the
42 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill was not enacted and is intended to be omitted in the law.

1a. Underlined words show new language.
Matter enclosed in bold-faced brackets [thus] in the above bill was not enacted and is intended to be omitted in the law.
1 Senate SEN committee amendments adopted June 15, 1992.
2 Senate floor amendments adopted October 9, 1992.
3 Senate floor amendments adopted November 30, 1992.
4 Assembly AEN committee amendments adopted May 6, 1993.
5 Assembly floor amendments adopted June 17, 1993.

1 et seq.), ²shall² adopt ², within six months of the effective date
 2 of this act, rules and² regulations ²[which will] to² assist counties
 3 in identifying areas suitable for wetlands ¹[mitigation]
 4 creation ³, enhancement,³ or restoration¹, and which ²[will]
 5 shall² be used by the ²[council] Wetlands Mitigation Council² to
 6 approve or disapprove areas so identified by the governing body
 7 of ²[the] a² county.

8 b. If the governing body of a county submits ¹to the
 9 ²[Wetlands Mitigation Council¹] council² a map ²[, and such
 10 supporting material as may be required,]² of areas proposed for
 11 use in wetlands ¹[mitigation] creation ³, enhancement,³ or
 12 restoration¹ ², and any supporting documents or information that
 13 the council may require², the council shall review and approve or
 14 disapprove the submittal within 120 days of ³[the submittal]
 15 receipt thereof³ ¹[, causing to be conducted such]. The council
 16 may conduct¹ site visits and evaluations as may be necessary
 17 within that time to confirm the suitability ¹for wetlands creation
 18 ³, enhancement,³ or restoration¹ of the areas being proposed.
 19 The council may approve some of the areas identified by the
 20 county while disapproving other areas, stating the reasons for the
 21 disapproval of areas in writing.

22 c. ¹[Upon approval, whenever,] Whenever¹ the department
 23 issues a wetlands permit within ¹[that] a¹ county ¹with an
 24 approved list of areas suitable for wetlands creation ³,
 25 enhancement,³ or restoration¹ and ¹the department¹ is requiring
 26 ¹[mitigation it shall] wetlands creation ³, enhancement,³ or
 27 restoration as a condition of the permit, the department may¹
 28 utilize the list of sites approved by the council for that county in
 29 identifying the areas wherein the ¹[mitigation] wetlands creation
 30 ³, enhancement,³ or restoration¹ activities are to take place ¹[in
 31 addition to any other sites recommended by the county governing
 32 body but not yet submitted to the council for approval]¹.

33 3. (New section) a. The governing body of a county may, in
 34 consultation with the municipalities within its territorial
 35 jurisdiction, identify and inventory areas within the county that it
 36 deems suitable for use in wetlands ¹[mitigation] creation ³,
 37 enhancement,³ or restoration¹ in the event a wetlands permit is
 38 issued by the Department of Environmental Protection and the
 39 department requires the creation ³, enhancement,³ or restoration
 40 of wetlands ²as a condition of the permit².

41 b. Upon identification, the governing body shall forward to the
 42 ²[Wetlands Mitigation Council] council² a map of the areas and
 43 any supporting documents or information that the council may
 44 require in order to ³review and³ approve ³or disapprove³ the use
 45 of those areas for ¹[mitigation] wetlands creation ³,
 46 enhancement,³ or restoration¹ purposes.

47 ¹4. (New section) ³a.³ Nothing in this act shall be construed
 48 to discourage or prevent the creation ³, enhancement,³ or
 49 restoration of ²[a wetland] wetlands² on the site of the approved
 50 regulated activity or to discourage or prevent the use of any area
 51 suitable for the creation ³, enhancement,³ or restoration of ²[a
 52 wetland which] wetlands because the² area was not previously
 53 approved by the council pursuant to section 2 of this act.¹

54 ³b. No State, regional, county, or local governmental entity,

1 agency, or authority may deny or disapprove a permit, approval,
 2 or other authorization, which is required pursuant to law, rule,
 3 regulation, or local resolution or ordinance in order to develop a
 4 parcel or engage in any other activities thereon, because the
 5 parcel is located within an area approved by the council pursuant
 6 to section 2 of this act as being suitable for wetlands creation,
 7 enhancement, or restoration.³

8 ^{15.} Section 13 of P.L.1987, c.156 (C.13:9B-13) is amended to
 9 read as follows:

10 13. a. The department shall require as a condition of a
 11 freshwater wetlands permit that all appropriate measures have
 12 been carried out to mitigate adverse environmental impacts,
 13 restore vegetation, habitats, and land and water features, prevent
 14 sedimentation and erosion, minimize the area of freshwater
 15 wetland disturbance and insure compliance with the Federal Act
 16 and implementing regulations.

17 b. The department may require the creation ³, enhancement,³
 18 or restoration of an area of freshwater wetlands of equal
 19 ecological value to those which will be lost, and shall determine
 20 whether the creation ³, enhancement,³ or restoration of
 21 freshwater wetlands is conducted onsite or offsite. The
 22 department shall accept and evaluate a proposal to create ³,
 23 enhance,³ or restore an area of freshwater wetlands only after
 24 the department has evaluated the permit application for which
 25 the proposal is made, and shall evaluate the proposal to create
 26 ³, enhance,³ or restore an area of freshwater wetlands
 27 independently of the permit application. The department's
 28 evaluation of a proposal to create ³, enhance,³ or restore an area
 29 of freshwater wetlands shall be conducted in consultation with
 30 the United States Environmental Protection Agency.

31 c. If the department determines that the creation ³,
 32 enhancement,³ or restoration of freshwater wetlands onsite is not
 33 feasible, the department, in consultation with the United States
 34 Environmental Protection Agency, may consider the option of
 35 permitting ²:² the creation of freshwater wetlands or the
 36 ³enhancement or³ restoration of degraded freshwater wetlands
 37 offsite on private property ²[, or in the case of a public entity,
 38 offsite on private]² ⁴[or public property,]⁴ with the restriction on
 39 these ²freshwater² wetlands of any future development ²[,] ; the
 40 protection of transition areas or upland areas offsite, on private
 41 property ⁴[or public property]⁴ , that are deemed by the
 42 department to be valuable for the protection of a freshwater
 43 wetlands ecosystem, with the restriction on these areas of any
 44 future development;² or the making of a contribution to the
 45 Wetlands Mitigation Bank. The contribution shall be equivalent
 46 to the lesser of the following costs: (1) purchasing ³,³ and
 47 ³enhancing or³ restoring ³,³ existing degraded freshwater
 48 wetlands, resulting in preservation of freshwater wetlands of
 49 equal ecological value to those which are being lost; or (2)
 50 purchase of property and the cost of creation of freshwater
 51 wetlands of equal ecological value to those which are being lost.
 52 The applicant may also donate land as part of the contribution if
 53 the Wetlands Mitigation Council determines that the donated land
 54 has potential to be a valuable component of the freshwater

1 wetlands ecosystem. The department shall permit the donation
2 of land as a part of the contribution to the Wetlands Mitigation
3 Bank only after determining that all alternatives to the donation
4 are not practicable or feasible.¹

5 (cf: P.L.1987, c.156, s.13)

6 ²6. Section 15 of P.L.1987, c.156 (C.13:9B-15) is amended to
7 read as follows:

8 15. a. The Wetlands Mitigation Council shall be responsible
9 for disbursements of funds from the bank to finance mitigation
10 projects. The council shall have the power to purchase land to
11 provide areas for the ⁵creation of freshwater wetlands or the⁵
12 ³enhancement or³ restoration of degraded freshwater wetlands,
13 to engage in ⁵[the ³creation of freshwater wetlands or]⁵ the
14 enhancement or³ restoration of degraded freshwater wetlands on
15 any public lands, including public lands other than those acquired
16 by the bank, and to preserve freshwater wetlands and transition
17 areas determined to be of critical importance in protecting
18 freshwater wetlands. [The council shall not engage in the
19 restoration of degraded freshwater wetlands on public lands,
20 except those lands which are acquired by the bank.] The council
21 shall assist the department in preparing the portions of the report
22 required pursuant to section 29 of this act which pertain to
23 mitigation.

24 b. The council may contract with nonprofit organizations, the
25 Division of Fish, Game and Wildlife in the department, the United
26 States Fish and Wildlife Service, and other appropriate agencies
27 to carry out its responsibilities, and may aggregate mitigation
28 actions to achieve economies of scale. Any contract proposed by
29 the council pursuant to this subsection shall be subject to review
30 and approval by the United States Environmental Protection
31 Agency.

32 c. The council ⁴, in consultation with the United States
33 Environmental Protection Agency,⁴ may transfer any funds or
34 lands restricted by deed, easement or other appropriate means to
35 mitigation and freshwater wetlands conservation purposes, to a
36 state or federal conservation agency that consents to the
37 transfer, to expand or provide for:

38 (1) Freshwater wetlands preserves;

39 (2) Transition areas around existing freshwater wetlands to
40 preserve freshwater wetland quality;

41 (3) Future mitigation sites for freshwater wetlands
42 ⁵[³creation,]⁵ enhancement,³ restoration ³, or other mitigation
43 efforts³; or

44 (4) Research to enhance the practice of mitigation.²

45 (cf: P.L.1987, c.156, s.15)

46 ¹[4.] ²[6.] ²7.² This act shall take effect immediately.

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50
51 Authorizes counties to establish inventories of sites suitable for
52 wetlands creation, enhancement, or restoration.

ASSEMBLY ENVIRONMENT COMMITTEE

STATEMENT TO

[CORRECTED COPY]
[THIRD REPRINT]

SENATE, No. 651

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 1993

The Assembly Environment Committee favorably reports Senate Bill No. 651 [3R] (Corrected Copy) with Assembly committee amendments.

This bill would require the Department of Environmental Protection (DEP) to adopt, within six months of the effective date of the bill, rules and regulations to assist counties in identifying areas suitable for the creation, enhancement, or restoration of freshwater wetlands or coastal wetlands. These rules and regulations would be used by the Wetlands Mitigation Council (WMC) to approve or disapprove areas so identified by the governing body of a county.

Under the bill, if the governing body of a county, after consulting with the municipalities within its territorial jurisdiction, submits to the WMC a map of areas proposed for use in wetlands creation, enhancement, or restoration, and any supporting documents or information that the WMC may require, the WMC would be required to review and approve or disapprove the submittal within 120 days of receipt thereof. The WMC may conduct site visits and evaluations as may be necessary within that time period to confirm the suitability for wetlands creation, enhancement, or restoration of the areas being proposed. The WMC may approve some of the areas identified by the county while disapproving other areas, stating the reasons for the disapproval of areas in writing.

Also under the bill, whenever the DEP issues a wetlands permit within a county with an approved list of areas suitable for wetlands creation, enhancement, or restoration and the DEP is requiring wetlands creation, enhancement, or restoration as a condition of the permit, the DEP may utilize the list of sites approved by the WMC for that county in identifying the areas wherein the wetlands creation, enhancement, or restoration activities are to take place.

The bill provides that it should not be construed to discourage or prevent the creation, enhancement, or restoration of wetlands on the site of the approved regulated activity or to discourage or prevent the use of any area suitable for the creation, enhancement, or restoration of wetlands because the area was not previously approved by the WMC. The bill also provides that no State, regional, county, or local governmental entity, agency, or authority may deny or disapprove a permit, approval, or other authorization, which is required pursuant to law, rule, regulation, or local resolution or ordinance in order to develop a parcel or engage in any other activities thereon because the parcel is located within an area approved by the WMC as being suitable for wetlands creation, enhancement, or restoration.

The bill also makes several changes to provisions concerning wetlands mitigation in the "Freshwater Wetlands Protection Act," as follows:

(1) allows enhancement of existing freshwater wetlands as a mitigation option for wetlands mitigation efforts;

(2) allows freshwater wetlands mitigation efforts to be conducted on public property;

(3) allows as a mitigation option the protection of transition areas or upland areas offsite, on private property or public property, that are deemed by the DEP to be valuable for the protection of a freshwater wetlands ecosystem, with the restriction on these areas of any future development;

(4) allows the WMC to, among other things, disburse funds from the Wetlands Mitigation Bank to purchase land to provide areas for the creation or enhancement (in addition to restoration) of freshwater wetlands, and to engage in the creation of freshwater wetlands or the enhancement or restoration of freshwater wetlands on any public lands, including public lands other than those acquired by the bank;

(5) deletes the provision that the WMC shall not engage in the restoration of degraded freshwater wetlands on public lands other than those acquired by the Wetlands Mitigation Bank.

The committee amended the bill to (1) delete certain references that allowed mitigation efforts on public property, and (2) to require the WMC to consult with the United States Environmental Protection Agency before making certain transfers involving the Wetlands Mitigation Bank.

As amended and reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 796 of 1992, which was also reported by the committee.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 651

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 1992

The Senate Environment Committee favorably reports Senate Bill No. 651 with committee amendments.

Senate Bill No. 651, as amended, would authorize counties to develop inventories of areas within their territorial jurisdiction which would be suitable for use in wetland creation or restoration. Under current federal and State law, the creation of a new wetland or the restoration of a degraded wetland may be required when construction activities are permitted in certain wetlands. Wetland creation or restoration may occur either onsite or offsite. When offsite creation or restoration measures are allowed, the applicant is delayed until he finds suitable areas to conduct these measures. This bill would facilitate wetlands creation or restoration by identifying and cataloging the areas appropriate for creation or restoration prior to the actual permit process.

The bill provides that a county, in consultation with its constituent municipalities, may, on a voluntary basis, submit maps and other support material identifying areas suitable for wetlands creation or restoration to the Wetlands Mitigation Council for review. The council would approve or disapprove the areas within 120 days of submittal. Any disapproval would be accompanied with written reasons therefor. Upon approval the department would use the list of those areas to assist it and a permit applicant in selecting an area appropriate for wetlands creation or restoration.

The committee amended the bill to:

(1) clarify that the definition of wetlands applies only to freshwater wetlands regulated under the "Freshwater Wetlands Protection Act" and coastal wetlands regulated under "The Wetlands Act of 1970";

(2) clarify that the bill applies to wetlands creation and restoration activities, and not other mitigation measures;

(3) provide that areas not approved by the council, either onsite or offsite, may be utilized by the department in the selection of areas suitable for wetlands creation or restoration; and

(4) allow governmental entities to perform wetlands creation or restoration on public lands.