

58:16A-50

LEGISLATIVE HISTORY CHECKLIST

HJSA 58:16A-50, et al; 13:1D-29 ("Flood Hazard Area Control Act")

LAWS OF 1979 CHAPTER 359

Bill No. S1494

Sponsor(s) Feldman

Date Introduced Dec. 4, 1978

Committee: Assembly Energy and Natural Resources

Senate Energy and Environment

Amended during passage Yes  Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 3, 1979

Senate May 7, 1979

Date of approval Jan. 31, 1980

Following statements are attached if available:

Sponsor statement	Yes	<input checked="" type="checkbox"/>	(Below) Senate amendments adopted 4-26-79 with statement (attached)
Committee Statement: Assembly	Yes	<input checked="" type="checkbox"/>	
Senate	Yes	<input checked="" type="checkbox"/>	(Not attached since identical to Assembly Committee statement)
Fiscal Note	<del>Yes</del>	No	
Veto message	<del>Yes</del>	No	
Message on signing	Yes	<input checked="" type="checkbox"/>	

Following were printed:

Reports	<del>Yes</del>	No
Hearings	<del>Yes</del>	No

Sponsor's statement:

This bill combines the existing State flood hazard area control program with its stream encroachment program and integrates the combined State program with the ongoing activities of the Federal, county and municipal governments. It further authorizes the formation of county water resources associations and enables the Department of Environmental Protection to delegate certain approval and enforcement powers to the associations.

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## SENATE, No. 1494

## STATE OF NEW JERSEY

INTRODUCED DECEMBER 4, 1978

By Senator FELDMAN

Referred to Committee on Energy and Environment

AN ACT to amend the title of "An act concerning the delineation and marking of flood hazard areas; and prescribing the functions, powers, and duties of the Division of Water Resources and of the Department of Environmental Protection in connection therewith, and authorizing the adoption of land use regulations for the flood hazard areas" approved April 3, 1962 (P. L. 1962, c. 19), as said title was amended by P. L. 1972, c. 185, so that the same shall read "An act concerning the delineation *\*and marking\** of flood hazard areas; prescribing the functions, powers and duties of the Department of Environmental Protection in connection therewith; authorizing the adoption of land use regulations for flood hazard areas; providing for the control of stream encroachments and for the integration of municipal, county, State and Federal programs in the flood hazard area", to amend and supplement the body of said act, repealing **\*[sections 4 and]\*** *\*section\** 5 thereof, to amend P. L. 1972, c. 185 and P. L. 1975, c. 232 and to repeal R. S. 58:1-26 and 58:1-27.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. The title of P. L. 1962, c. 19 is amended to read as follows:

2 An act concerning the delineation **[and marking]** *\*and marking\**  
3 of flood hazard area; **[and]** prescribing the functions, powers, and  
4 duties of the **[Division of Water Resources and of the]** Department  
5 of Environmental Protection in connection therewith**[, and]**;  
6 authorizing the adoption of land use regulations for **[the]** flood  
7 hazard **[area.]** *areas; providing for the control of stream encroach-*  
8 *ments and for the integration of municipal, county, State and*  
9 *Federal programs in the flood hazard area.*

1 2. Section 1 of P. L. 1962, c. 19 (C. 58:16A-50) is amended to  
2 read as follows:

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

3 1. a. *This act shall be known and may be cited as the "Flood*  
4 *Hazard Area Control Act."*

5 b. It is in the interest of the safety, health, and general welfare  
6 of the people of the State that legislative action be taken to  
7 empower the **[Division of Water Resources]** *Department of*  
8 *Environmental Protection* to delineate **[and mark]** *\*\*and mark\*\**  
9 flood hazard areas, to authorize the Department of Environmental  
10 Protection to adopt land use regulations for the **\*[floodway]\***  
11 *\*flood hazard area\**, to control stream encroachments, **[and]** to  
12 coordinate effectively the development, dissemination, and use of  
13 information on floods and flood damages that may be available, to  
14 authorize the delegation of certain administrative and enforcement  
15 functions to county **\*[water resources associations]\*** *\*governing*  
16 *bodies\** and to integrate the flood control activities of the municipal,  
17 county, State and Federal Governments.

1 3. Section 2 of P. L. 1962, c. 19 (C. 58:16A-51) is amended to  
2 read as follows:

3 2. As used in this act, unless the context indicates another or  
4 different meaning or intent:

5 **[(a)]** "Division" means the Division of Water Resources in the  
6 Department of Environmental Protection;

7 (b) "Council" means the Water Policy and Supply Council in  
8 the Division of Water Resources;

9 (c) "Flood plain" means the relatively flat area adjoining the  
10 channel of a natural stream, which has been or may be hereafter  
11 covered by flood water;**]**

12 (a) "Channel" means **\*[the natural and ordinary highwater**  
13 **mark of any stream without any conditions of flooding present]\***  
13A *\*a watercourse with definite bed and banks which confine and con-*  
13B *duct continuously or intermittently flowing water\**;

14 **[(d)]** (b) "Floodway" means the channel of a natural stream  
15 and portions of the flood **[plain]** *hazard area* adjoining the channel,  
16 which are reasonably required to carry and discharge the flood  
17 water or flood flow of any natural stream;

18 **[(e)]** (c) "Flood hazard area" means the floodway and **[any**  
19 **additional portions of the flood plain,]** *the flood fringe area* as  
20 determined by the **[council]** *department\*\*[;]\*\** under section 3  
20A hereof;

21 **[(f)]** (d) "Relative risk" means the varying degrees of hazard  
22 to life and property in a flood hazard area which are occasioned by  
23 differences in depth and velocity of flood waters covering and  
24 flowing over it;

25    **[(g)]** (e) "Flood fringe area" means that portion of the flood  
26 hazard area not **[(designated)]** \**delineated*\* as the floodway;

27    **[(h)]** (f) "Department" means the Department of Environ-  
28 mental Protection.

29    **[(i)]** (g) "Person" means and shall include corporations, com-  
30 panies, associations, societies, firms, partnerships and joint stock  
31 companies as well as individuals, and shall also include all political  
32 subdivisions of this State or any agencies or instrumentalities  
33 thereof.

1    4. Section 3 of P. L. 1962, c. 19 (C. 58:16A-52) is amended to  
2 read as follows:

3    3. a. The **[division]** *department* shall study the nature and  
4 extent of the **[flood plains of]** *areas affected by flooding in the*  
5 State. After public hearing upon notice, *and pursuant to the*  
6 *"Administrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1*  
7 *et seq.)*,\* the **[council]** *department* shall **[(, from time to time,)]**\*  
8 *adopt rules and regulations which* delineate as flood hazard areas  
9 such **[portions of the flood plains]** *areas* as, in the judgment of the  
10 **[council]** *department*, the improper development and use of which  
11 would constitute a threat to the safety, health, and general welfare  
12 *from flooding*\*. Such **[(delineation)]** \**delineations*\* shall identify  
13 the various subportions of the flood hazard area for reasonable  
14 and proper use according to relative risk, including the **[(design-**  
15 **nation)]** \**delineation*\* of floodways necessary to preserve the  
16 flood carrying capacity of natural streams. The **[council]** *depart-*  
17 *ment* may\*, *after public hearing upon notice and pursuant to the*  
18 *aforecited "Administrative Procedure Act,"*\* revoke, amend, alter,  
19 or modify **[(actions taken as herein authorized)]** \**such regula-*  
20 *tions*\* if in its judgment the public interest so warrants. **[(The**  
21 **resolution adopted by the [council] [department] department**  
22 **shall be filed [with the**  
23 **division] and shall be distributed by the [council] department in**  
24 **such manner and in such places as it may determine proper.)**\*

25    b. *The department shall wherever practicable, make [all*  
26 *such] floodway delineations identical to the floodway deline-*  
27 *tions approved by the Federal Government for the National Flood*  
28 *Insurance Program.*

29    c. *The department shall establish a procedure for reducing any*  
30 *delineated flood hazard area when a [municipality approves a*  
31 *structural or nonstructural] change has been made which in-*  
32 *creases the flood carrying capacity of the concerned stream at that*  
33 *location.*

1 5. Section 4 of P. L. 1972, c. 185 (C. 58:16A-55) is amended to  
2 read as follows:

3 4. (a) The department is authorized to adopt, amend and repeal  
4 rules and regulations *\*\*and to issue orders\*\** concerning the  
5 development and use of land in any **【designated】** *\*delineated\**  
6 floodway which shall be designed to preserve its flood carrying  
7 capacity and to minimize the threat to the public safety, health and  
8 general welfare. *Such rules and regulations \*\*or orders\*\* may*  
9 *require the approval of the department for specified changes in the*  
9A *use of land within any such floodway.*

10 (b) Provision **【may】** *\*shall\** be made by the department for  
11 the waiver, according to definite criteria, of strict compliance with  
12 the rules and regulations, where necessary to alleviate hardship.

1 6. (New section) a. No structure or alteration within the **【chan-**  
2 **nel of any】** *\*area which would be inundated by the 100 year design*  
2A *flood of any nondelineated\** stream shall be made, rebuilt or renewed  
3 by any person without the approval of the department and without  
4 complying with such conditions as the department may prescribe for  
5 preserving **【the channel】** *\*\*such area\*\** and providing for the  
6 flow of water therein to safeguard the public against danger from  
7 the waters impounded or affected by such structure or alteration.  
8 No such approval by the department shall impair or affect any  
9 property rights otherwise existing which might be invaded by the  
10 construction or maintenance of any such structure or alteration.

11 **【b.** The department may, whenever in its judgment public  
12 safety so requires, make and serve an order directing any person  
13 constructing or maintaining any **【such】** structure or alteration  
14 *\*in violation of this section\** in any of the waters of this State to  
15 remove or repair it within such reasonable time and in such manner  
16 as shall be specified in the order and with the conditions prescribed  
17 by the department for preserving the channels of streams and for  
18 safeguarding the public against danger from waters impounded by  
19 such structures or alterations.】**\*\***

20 **【\*c.】** **【\*b.\*** *The department is authorized, pursuant to the*  
21 *“Administrative Procedure Act” P. L. 1968, c. 410 (C. 52:14B-1*  
22 *et seq.), to adopt, amend or repeal rules and regulations \*\*and to*  
23 *issue orders\*\* concerning the making, rebuilding or renewing of*  
24 *any structure or alteration and the development or use of land in*  
25 *the area which would be inundated by the 100 year design flood of*  
26 *any nondelineated stream, which rules and regulations shall be*  
27 *designed to preserve the flood carrying capacity of the stream to*  
28 *minimize the threat to the public safety, health and general welfare.*

29 *Such rules and regulations shall include a provision which exempts,*  
 30 *according to definite criteria, certain minor structures or altera-*  
 31 *tions of a specific size or type from the provisions of subsection a.*  
 32 *of this section.\**

1 7. Section 12 of P. L. 1972, c. 185 (C. 58:16A-63) is amended  
 2 to read as follows:

3 12. (a) Any person who *\*knowingly\** violates a provision of this  
 4 act or a rule **[or]**, regulation *or order* adopted pursuant to this act  
 5 shall be subject to a penalty of not more than \$2,500.00 for each  
 6 offense *\*and any person who otherwise violates a provision of this*  
 6A *act shall be subject to a penalty of not more than \$1,500.00 for each*  
 6B *offense both\**, to be collected by the department in a summary pro-  
 7 ceeding under the Penalty Enforcement Law (N. J. S. 2A:58-1 et  
 8 seq.), and in any court of competent jurisdiction wherein injunctive  
 9 relief has been requested. The Superior Court and county district  
 10 court shall have jurisdiction to enforce said Penalty Enforcement  
 11 Law. If the violation is of a continuing nature each day which it con-  
 12 tinues shall constitute an additional, separate and distinct offense.  
 13 The department is hereby authorized and empowered to compro-  
 14 mise and settle any claim for a penalty under this section in such  
 15 amount in the discretion of the department as may appear appro-  
 16 priate and equitable under all of the circumstances. *All moneys*  
 17 *recovered in any such action, together with the costs recovered*  
 18 *therein, shall be paid to the Environmental Services Fund.*

19 (b) If any person violates any of the provisions of this act or  
 20 any rule or regulation promulgated pursuant to the provisions of  
 21 this act, the department may institute an action in a court of com-  
 22 petent jurisdiction for injunctive relief to prohibit and prevent such  
 23 violation or violations and the said court may proceed in the action  
 24 in a summary manner.

1 8. Section 1 of P. L. 1975, c. 232 (C. 13:1D-29) is amended to  
 2 read as follows:

3 1. For the purposes of this act, unless the context clearly re-  
 4 quires a different meaning, the following terms shall have the  
 5 following meanings:

6 a. "Commissioner" means the State Commissioner of Environ-  
 7 mental Protection.

8 b. "Construction permit" means and shall include:

9 (1) Approval of plans for the development of any waterfront  
 10 upon any tidal waterway pursuant to R. S. 12:5-3.

11 (2) A permit for a regulated activity pursuant to "The Wet-  
 12 lands Act of 1970," P. L. 1970, c. 272 (C. 13:9A-1 et seq.).

13 (3) A permit issued pursuant to the "Coastal Area Facility  
14 Review Act," P. L. 1973, c. 185 (C. 13:19-1 et seq.).

15 (4) Approval of a structure \***[withn the natural and ordinary**  
16 **high-water mark of any]**\* *\*or alteration within the area which*  
16A *would be inundated by the 100 year design flood of any nondeline-*  
16B *ated\** stream **[pursuant to R. S. 58:1-26.]** *or of a change in land*  
17 *use within any \*delineated\* floodway \*or any State administered*  
17A *and delineated flood fringe area, all\* pursuant to the "Flood*  
18 *Hazard Area Control Act," P. L. 1962, c. 19 (C. 58:16A-50 et seq.)*  
18A *\*as amended and supplemented\*.*

19 (5) Approval of plans and specifications for the construction  
20 changes, improvements, extensions or alterations to any sewer  
21 system pursuant to R. S. 58:11-10.

22 "Construction permit" shall not, however, include any approval  
23 of or permit for an electric generating facility or for a petroleum  
24 processing or storage facility, including a liquefied natural gas  
25 facility, with a storage capacity of over 50,000 barrels.

26 c. "Department" means the Department of Environmental  
27 Protection.

1 9. (New section) No application for development *\*as defined in*  
2 *the "Municipal Land Use Law" (P. L. 1975, c. 291 (C. 40:55D-1*  
3 *et seq.)\**, for a structure within **\*[a stream channel]**\* *\*the area*  
4 *which would be inundated by the 100 year design flood of any*  
5 *nondelineated stream\** or for a change in land use within a delin-  
6 eated floodway *\*or any State-administered and delineated flood*  
7 *fringe area\** when such change would require departmental  
8 approval, may be granted by any municipality to any person with-  
9 out application to and approval by the department as required  
10 pursuant to this act.

1 10. (New section) Any county governing body may prepare a  
2 stormwater control and drainage plan for the county. Such plans  
3 shall be prepared after consultation and discussion with the De-  
4 partment of Environmental Protection and with adjacent counties  
5 and shall consider and evaluate the impact of any developments  
6 within the county or upstream from the county on the streams  
7 within the county and downstream from the county. Such plans  
8 may be financed in part from the "Emergency Flood Control Bond  
9 Act" (P. L. 1978, c. 78). County stormwater control and drainage  
10 plans prepared as herein provided shall be utilized by the depart-  
11 ment in deciding to approve or disapprove any application sub-  
12 mitted pursuant to this act.

1 11. (New section) Any county governing body may by ordinance  
 2 or resolution as appropriate, create a county water resources as-  
 3 sociation \***[**to include the county planning director and county engi-  
 4 neer as voting members and such other members as the ordinance  
 5 or resolution of creation may provide, for purposes of adminis-  
 6 tering any programs delegated to the association pursuant to this  
 7 act. The**]**\* *which may include the*\* chief administrative officer of  
 8 any *county planning agency, county engineers office,*\* county  
 9 utilities authority, county health department, county mosquito  
 10 commission, county soil conservation district, or county parks  
 11 agency \***[**may be appointed to the association. The governing body  
 12 may appoint**]**\* *and*\* any other public or private members \***[**to the  
 13 county water resources association**]**\*. The county water resources  
 14 association shall *advise the county governing body, shall coor-*  
 15 *dinate the flood control and water management programs for the*  
 16 *county and shall*\* have such powers as the county governing body  
 17 may delegate to it concerning water management in the ordinance  
 18 or resolution of creation.

1 12. (New section) The Department of Environmental Protection  
 2 \***[**shall**]**\* *may*\* delegate its power to approve or disapprove any  
 3 application made to it pursuant to this act and its power to enforce  
 4 any aspect of this act to a county \***[**water resources agency**]**\*  
 5 *governing body*\* which agrees to accept such designation and in  
 6 the department's judgment is capable of utilizing the rules, regula-  
 7 tions and standards adopted by the department for the administra-  
 8 tion of this program. *The department shall review this delegation*  
 9 *at least biannually and may revoke such delegation for failure to*  
 9A *properly administer such delegated powers.*\* The county \***[**water  
 9B resources association**]**\* *governing body*\* may charge the same  
 9C fees promulgated by the commissioner pursuant to P. L. 1975,  
 10 c. 232 (C. 13:1D-33), when such powers are delegated to it.

1 \*13. Section 4 of P. L. 1962, c. 19 (C. 58:16A-53) is amended to  
 2 read as follows:

3 4. The **[**division**]** *department* may conspicuously mark in the  
 4 field (1) any flood hazard area delineated by the **[**council**]** *depart-*  
 5 *ment*, and (2) any other area the **[**council**]** *department* may deem  
 6 necessary to effectuate the purposes of this act. The **[**division**]**  
 7 *department* may erect markers on any property belonging to the  
 8 State, or any agency or instrumentality thereof. Such markers  
 9 may be erected on any county, municipal, or private property pro-  
 10 vided that such county, municipality, or owner shall have consented  
 11 thereto. **[**Every person, corporation, municipality, or other public



12 authority removing, defacing, or otherwise disturbing]. *No person*  
 13 *may remove, deface or otherwise disturb* any marker erected under  
 14 the provisions of this act [shall be subject to a penalty not to  
 15 exceed \$50.00 for each and every offense to be collected in accord-  
 16 ance with the penalty enforcement law (N. J. S. 2A :58-1 et seq.)].

1 14. Section 7 of P. L. 1972, c. 185 (C. 58:16A-58) is amended to  
 2 read as follows:

3 7. If any affected municipality or other responsible entity fails  
 4 to adopt or fails to enforce rules and regulations concerning the  
 5 development and use of land in the flood fringe area which at least  
 6 conform to the standards promulgated by the department within  
 7 the specified period, thereafter the department may adopt such  
 8 rules and regulations which shall be applicable to the particular  
 9 flood fringe area. *Such rules and regulations may require applica-*  
 10 *tion to and approval by the department for such development or*  
 11 *use within any such flood fringe area.\**

1 \***[13.]**\* \*15.\* The following sections and parts of acts are  
 1A repealed:

2 R. S. 58:1-26;

3 R. S. 58:1-27.

4 \***[Sections 4 and]**\* \*Section\* 5 of P. L. 1962, c. 19  
 5 (C. \***[58:16A-53 and]**\* 58:16A-54).

1 \***[14.]**\* \*16.\* This act shall take effect immediately.

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SENATE AMENDMENTS TO  
**SENATE, No. 1494**  
[OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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ADOPTED APRIL 26, 1979

Amend page 2, section 2, line 8, after “mark”], insert “and mark”.

Amend page 2, section 3, line 20, after “department”, omit “;”.

Amend page 3, section 4, line 21, omit “dpeartment”, insert “department”.

Amend page 4, section 5, line 4, after “regulations”, insert “and to issue orders”.

Amend page 4, section 5, line 8, after “regulations”, insert “or orders”.

Amend page 4, section 6, line 5, omit “the channel”, insert “such area”.

Amend page 4, section 6, lines 11-19, omit entirely.

Amend page 4, section 6, line 20, omit “c.”, insert “b.”.

Amend page 4, section 6, line 22, after “regulations”, insert “and to issue orders”.

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STATEMENT

These amendments replace subsection b. of section 6. (the existing language in the stream encroachment statute) with modern language concerning orders. They also make several technical changes.

ASSEMBLY ENERGY AND NATURAL RESOURCES  
COMMITTEE

STATEMENT TO  
**SENATE, No. 1494**

**STATE OF NEW JERSEY**

DATED: JUNE 28, 1979

As introduced, this bill would provide for the integration of the State stream encroachment program, with municipal, county, State and Federal flood hazard area control programs. This integration would be accomplished through a series of amendments to the statutes concerning the delineation of flood hazard areas and the regulation of the development or use of land therein, and through a repeal and re-enactment, in modified form, of certain statutory stream encroachment provisions. Specific provisions of the bill, as introduced, would: (1) require that flood hazard area delineations adopted by the Department of Environmental Protection be identical to flood hazard area delineations approved by the Federal Government for the National Flood Insurance Program; (2) direct the establishment of procedures for the reduction of flood hazard areas, upon changes therein which increase the flood-carrying capacity of the affected stream; (3) bring the processing of applications for land use changes in any floodway within the 90 day deadline of P. L. 1975, c. 232; (4) require State approval of land use changes in any floodway *prior* to any municipal approval thereof; (5) authorize the preparation of county stormwater control and drainage plans by county governing bodies, which plans would be eligible for funding to be provided from the "Emergency Flood Control Bond Act" (P. L. 1978, c. 78); (6) provide for the creation of county water resources associations; and (7) require that, in certain instances, the department delegate its powers with respect to the development and use of land in flood hazard areas to such county water resources associations.

Several substantive and technical amendments to this bill were adopted by the Senate Energy and Environment Committee. These amendments would: (1) explicitly require that flood hazard area delineations, or revisions thereto, be adopted by the department pursuant to the "Administrative Procedure Act" (P. L. 1968, c. 410); (2) require State floodway, rather than flood hazard area, delineations to be identical to National Flood Insurance Program delineations; (3) limit the applicability of the stream encroachment program to nondelineated streams; (4) require the exemption, according to definite criteria, of certain structures or alterations in nondelineated streams areas from

regulations requiring departmental approval therefor; (5) establish higher penalties for "knowing" violations for the relevant statutes, rules, regulations or orders with respect to the development and use of land in flood hazard areas; (6) require the delegation of departmental powers with respect to the development and use of land in flood hazard areas to county governing bodies, rather than county water resource associations; and (7) make various technical amendments to section 4 of P. L. 1962, c. 19 (C. 58:16A-53) and to section 7 of P. L. 1972, c. 185 (C. 58:16A-68).

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FROM THE OFFICE OF THE GOVERNOR

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FOR FURTHER INFORMATION

FEBRUARY 1, 1980

PAT SWEENEY

Governor Brendan Byrne has signed two bills, sponsored by Senator Matthew Feldman (D-Bergen), which will enhance the State's ability to control flood areas.

S-1492 amends a 32-year old statute which authorizes the Commissioner of Environmental Protection to participate in federal flood control projects with legislative approval.

The bill authorizes the Commissioner to acquire, construct and operate flood control facilities either separately or in conjunction with the federal government or any municipality or county.

The bill makes it clear that the State can construct, acquire and operate flood control facilities rather than just "participate" in flood control projects with the federal government.

A companion bill, S-1494, provides for the integration of the State stream encroachment program, with municipal, county, state and federal flood hazard area control programs.

These have been merged because they both have the same objective, which is to control land use in the flood-carrying portions of stream beds in order to protect areas down stream.

# # #