

State of New Jersey



**FINAL REPORT AND RECOMMENDATIONS**

relating to

**ENVIRONMENTAL STATUTES - NATURAL AND HISTORIC RESOURCES**

June 1999

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**Subtitle: NATURAL AND HISTORIC RESOURCES**

**Chapter: DIVISION OF PARKS AND FORESTRY**

**CHAPTER NOTE**

This chapter contains the source statutes establishing the present Division of Parks and Forestry, formerly the Division of Parks, Forestry and Recreation.

**DV-1 Division of Parks and Forestry**

- a. There is hereby established within the department a Division of Parks and Forestry.
- b. The Division shall include the State Park Service and the State Forestry Service and such other additional or subordinate administrative units as may be provided by law.
- c. The commissioner shall have the authority to establish by regulation such additional or subordinate administrative units within the Division of Parks and Forestry as may be appropriate for the efficient and effective administration of the department.

**Source: 13:1B-15.100,<sup>1</sup> 13:1B-15.102<sup>2</sup>**

**COMMENT**

Source statute 13:1B-15.100 provides for the establishment of the Division of Parks and Forestry, formerly the Division of Parks, Forestry and Recreation. Subsection (b) is new; it gives statutory recognition to the long-established Forestry Service and Parks Service, and refers to the fact that the Division may include other administrative units as provided by other statutes. Subsection (c) derives from the first paragraph of source section 13:1B-15.102.

The proposed statute captioned "General powers and duties of Division of Parks and Forestry" (see below) enumerates specific related and additional responsibilities of the Division.

**DV-2 General powers and duties of Division of Parks and Forestry**

The Division of Parks and Forestry shall:

- a. Develop, improve, protect, operate, manage and administer all state forests, state parks, state recreation areas, state natural areas, and state historic sites, monuments and cemeteries assigned to the administration of the Division.
- b. Protect all forests, brush lands and marshes from damage by fire, insects and disease; promote the use of good forestry principles on all forest lands; and develop and administer forestry programs and state forestry facilities.
- c. Administer the program for licensing of certified tree experts in accordance with the "Tree Expert Act" (C.45:15C-1 et seq.).

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<sup>1</sup> **13:1B-15.100. Division of Parks and Forestry, director**

Within the Department of Environmental Protection there shall be a Division of Parks and Forestry. The division shall be under the immediate supervision of a director, who shall be a person qualified by academic training and at least 7 years of responsible professional experience in the management of public parks, forests, and outdoor recreation facilities to direct the work of such division.

L.1966,c.54, §1; amended 1991,c.415, §1.

<sup>2</sup> **13:1B-15.102. Division organization**

The functions of the division shall be administered by the director, under the direction and supervision of the commissioner, within such bureaus as may be necessary.

The commissioner shall have authority to create and organize such bureaus as may be appropriate for the efficient and effective administration of this act. The commissioner may designate a deputy director to assist the director and to exercise the duties of the director in event of the absence or disability of the director or of a vacancy in that office.

L.1966, c. 54, §3, eff. July 1,1966.

- d. Provide liaison between the Federal and the other governmental levels and administer grants in matters pertaining to parks, forestry, conservation, recreation, historic sites and other appropriate fields.
- e. Administer state and federal historic preservation programs.
- f. Perform such other functions of the department as the commissioner may assign.
- g. Perform such other functions as may be established by law.

**Source: 13:1B-15.101<sup>3</sup>**

**COMMENT**

The phrase "develop, improve, protect, manage and administer" in subsection (a) has been changed to "develop, protect, operate, manage and administer." In subsection (b) the phrase "forest management" has been changed to "forestry."

Subsection (d) of the source section concerning the Bureau of Recreation has been eliminated; the Bureau of Recreation was transferred to the jurisdiction of the Department of Community Affairs. The phrase "and administer grants" has been added in proposed subsection (d), and the word "parks" has been added to the enumeration of matters. Subsection (g) of the source section concerning specific statutes relating to historic sites has been eliminated as duplicative of subsection (a) of the source section. Subsection (e) of the source section has been eliminated; the natural lands section was abolished in 1983; its duties are currently performed by the administratively created Office of Natural Lands Management. Subsection (f) of the source section has been eliminated in accordance with the proposed elimination of the Morris Canal and Banking Company as a corporate entity. Subsections (e), (f) and (g) of the proposed section are new.

**DV-3 Director and deputy director**

- a. The Division of Parks and Forestry shall be administered by a director, who shall be a person qualified by academic training and at least 7 years of responsible professional experience in the administration of public parks and forests and outdoor recreation facilities.
- b. The commissioner may designate a deputy director to assist the director and to exercise the duties of the director in event of the absence or disability of the director or of a vacancy in that office.

**Source : 13:1B-15.100 [see above], 13:1B-15.102**

**COMMENT**

This proposed statute consolidates the provisions in the source statute which provide for the appointment of a director and deputy director. The adjective "management " has been changed to "administration" in the phrase "administration of public parks and forests" to be consistent with changes in other sections in this chapter.

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<sup>3</sup> **13:1B-15.101. Powers and duties**

The division shall, under the direction and supervision of the commissioner:

- a. Develop, improve, protect, manage and administer all State forests, State parks, State recreation areas, State historic sites, and State natural areas, excepting those regulated by interstate compact.
- b. Protect all forests, brush lands and marshes from damage by fire, insects and disease, and promote the use of good forest management principles on all forest lands.
- c. Administer the program for licensing of certified tree experts in accordance with the "Tree Expert Act" (P.L.1940, c. 100).
- d. Administer the program of the Bureau of Recreation in accordance with P.L.1950, chapter 338, effective July 24, 1950.
- e. Administer the program of the natural areas section in accordance with P.L.1961, chapter 51.
- f. Manage the properties of the Morris Canal and Banking Company in accordance with Revised Statutes 13:12-1 to 13:12-29.
- g. Administer the historic sites program as in this act provided and in accordance with Revised Statutes 28:1-4 to 28:1-11, 28:1-13, 28:1-17, 28:2-7 to 28:2-14, 28:2-17 and 28:2-18, P.L.1945, chapter 22 and P.L.1948, chapter 448.
- h. Provide liaison between the Federal and the lesser governmental levels in matters pertaining to forestry, conservation, recreation, historic sites and other appropriate fields.
- i. Perform such other functions of the department as the commissioner may prescribe. L.1966, c. 54, §2, eff. July 1, 1966.

**Repeal as unnecessary:**

**13:1B-15.106. Transfer of moneys, employees or property<sup>4</sup>**

**COMMENT**

This is a transitional provision and is no longer necessary.

**13:1B-15.107. Repeal<sup>5</sup>**

**COMMENT**

This is a general repealer provision that is no longer necessary. As to the legal effect of repealing a "repealer", see 1:1-3.2 which expressly provides that the subsequent repeal "shall not of itself revive such other statute or section."

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<sup>4</sup> **13:1B-15.106. Transfer of moneys, employees or property**

The transfer of any appropriation and other moneys available or of any employee, files, records, books, papers, tools, equipment and other property required by the adoption of this act shall be done in the same manner as is provided in P.L.1948, chapter 448.  
L.1966, c. 54, §11, eff. July 1, 1966.

<sup>5</sup> **13:1B-15.107. Repeal**

The provisions of any other act or acts inconsistent with the provisions of this act are to the extent of such inconsistency hereby repealed.  
L.1966, c. 54, §12, eff. July 1, 1966.

## **Chapter: STATE PARKS, FORESTS AND OTHER PROPERTIES**

### **CHAPTER NOTE**

This chapter contains the provisions which formerly constituted the "State Park and Forestry Resources Act." The title has been expanded to reflect the fact that its provisions apply to all state properties administered by the department, including lands and waters, recreational areas, historic sites and natural areas, see 13:1L-3 (see PF-3 below). The terminology in the draft subsections has been conformed to this usage.

### **PF-1 Legislative findings and declarations**

The Legislature finds and declares that the acquisition, development, management and operation of state parks and forests is in the best interest of the citizens of this State and that the provision of recreational programs to all segments of the public enhances the public health, prosperity and general welfare and is a proper responsibility of the State. The Legislature further finds and declares that forested lands in the State should be managed to maximize the public benefit from the State's forest resources.

**Source: 13:1L-2<sup>6</sup>**

### **COMMENT**

The list of operative terms in the first sentence (acquiring, planning, designing, developing, operating and managing) has been edited to change the gerunds (acquiring, developing, etc.) to nouns (acquisition, development, etc.).

### **PF-2 Definitions**

For the purposes of this chapter:

"Forest resources" means those renewable products and reusable resources of all forest lands in the State, including trees, timber, shrubs and other vegetation, and the value of forest lands relating to recreation, wilderness appreciation, aesthetic appeal and soil fertility.

"Forestry" means the protection and management of forest land, including forest fire prevention and control, forest health, insect and disease control, forest product conservation and recycling, reforestation and improvement, and forest conservation education.

"Green Acres program" means the program for the purchase of land for recreation and conservation purposes pursuant to P.L.1961, c. 45 (C. 13:8A-1 et seq.), P.L.1971, c. 419 (C. 13:8A-19 et seq.), and P.L.1975, c. 155 (C. 13:8A-35 et seq.) and subsequent, similar enactments by that name.

"Recreational activities" includes fresh and salt water swimming, water skiing, boating and fishing, ice skating, snow skiing, camping, trail hiking, horseback riding, picnicking, bicycling, court and field games, track and field events, birdwatching, playground activities, golf and other similar activities.

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<sup>6</sup> **13:1L-2. Legislative findings and declarations**

The Legislature finds and declares that the acquiring, planning, designing, developing, operating and managing of the State parks and forests is in the best interest of the citizens of this State and that the provision of recreational programs to all segments of the public enhances the public health, prosperity and general welfare and is a proper responsibility of the State. The Legislature further finds and declares that forested lands in the State should be managed to maximize the public benefit from the State's forest resources.

L.1983, c. 324, §2, eff. Sept. 1, 1983.

"State parks, forests and other properties" means all State owned or leased lands, waters and facilities assigned to the administration of the Division of Parks and Forestry, including parks, forests, recreation areas, marinas, historic sites, historic monuments, historic cemeteries and natural areas.

**Source: 13:1L-3<sup>7</sup>**

#### COMMENT

No change in source subsections (a), (c), and (d) except to delete "but not limited to" after "including" in subsections (a) and (d), and "department" in source subsection (a). "And other similar activities" was added to subsection (d). Subsection (e) of the source section has been redrafted to refer to those state parks, forests, and properties administered by the Division and to conform to other proposed sections enumerating these properties. "Other" was added to subsection (e) also. Subsection (b) is new; it defines the term "forestry."

### PF-3 Duties

The department shall:

- a. Acquire, plan, construct, manage, operate and maintain state parks, forests and other properties;
- b. Provide recreational activities and programs within state parks, forests, and other properties for the benefit of the State's citizens;
- c. Strive to provide recreational opportunities to all segments of the State's population and may provide transportation for urban residents to the state parks, forests, and other properties;
- d. Conduct and promote cultural and educational activities at state parks, forests, and other properties throughout the State and at other locations;
- e. Prepare and implement a master plan and a management plan for each state park, forest, or other property.

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#### <sup>7</sup> 13:1L-3. Definitions

For the purposes of this act:

- a. "Department" means the Department of Environmental Protection.
- b. "Forest resources" means those renewable products and reusable resources of all forest lands in the State, including but not limited to trees, timber, shrubs and other vegetation, and the value of forest lands relating to recreation, wilderness appreciation, aesthetic appeal and soil fertility.
- c. "Green Acres program" means the program for the purchase of land for recreation and conservation purposes pursuant to P.L.1961, c. 45 (C. 13:8A-1 et seq.), P.L.1971, c. 419 (C. 13:8A-19 et seq.), and P.L.1975, c. 155 (C. 13:8A-35 et seq.).
- d. "Recreational activities" includes, but is not limited to, fresh and salt water swimming, water skiing, boating and fishing, ice skating, snow skiing, camping, trail hiking, horseback riding, picnicking, bicycling, court and field games, track and field events, birdwatching, playground activities and golf.
- e. "State parks and forests" means all State owned or leased lands, waters and facilities administered by the Department of Environmental Protection, including, but not limited to, parks, forests, recreational areas, marinas, historic sites, burial sites and natural areas, but not including wildlife management areas or reservoir lands.  
L.1983, c. 324, §3, eff. Sept. 1, 1983.

- f. Conserve and protect natural and historic resources.

**Source: 13:1L-4,<sup>8</sup> 13:1L-5<sup>9</sup>**

#### **COMMENT**

This proposed section combines the introductory phrase of source section 13:1L-4 and the enumerated duties in source section 13:1L-5 into a single source section. The remaining provisions of source section 13:1L-4 are continued in the following proposed section entitled "Powers." A new subsection (f) describes the overall mission of the division in general terms. The word "other" was added to modify "property" in the section.

#### **PF-4 General powers**

The department shall have the power to:

- a. Install permanent improvements for the health and comfort of the public in state parks, forests and other properties;
- b. Install permanent improvements for the protection, development or maintenance of lands or other properties;
- c. Acquire, lay out, construct and maintain roads and trails:
  - (1) over the state park and forest lands and acquired lands;
  - (2) between or connecting any separate portions of such lands;
  - (3) from points on such land up to, but not including, other public roads outside of and adjacent to such lands;
- d. For the purposes of this section, acquire rights of way upon and across any intervening lands;
- e. Vacate and close any municipal street or any portion of a municipal street that is solely bordered by state property when closure is necessary to protect the public interest;

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<sup>8</sup> **13:1L-4. Powers**

The department shall acquire, plan, design, construct, operate and maintain State parks and forests and shall have the power to:

- a. Install permanent improvements for the health and comfort of the public;
- b. Install permanent improvements for the protection, development or maintenance of lands or properties;
- c. Acquire, lay out, construct and maintain roads and trails:
  - (1) over the State park and forest lands and acquire lands;
  - (2) between or connecting any separate portions of such lands;
  - (3) from points on such land up to, but not including, other public roads outside of and adjacent to such lands;
- d. For the purposes of this section, acquire rights of way upon and across any intervening lands;
- e. Vacate and close any municipal street or any portion of a municipal street that is solely bordered by State property when closure is necessary to protect the public interest;
- f. Sell or exchange forest products or products reasonably related to recreational activities on State park and forest land.

L.1983, c. 324, §4, eff. Sept. 1, 1983.

<sup>9</sup> **13:1L-5. Duties**

The department shall:

- a. Provide recreational activities and programs within State parks and forests for the benefit of the State's citizens;
- b. Strive to provide recreational opportunities to all segments of the State's population and may provide transportation for urban residents to the State parks and forests;
- c. Conduct and promote cultural activities, such as plays, movies and exhibits, at State parks and forests and at other locations throughout the State;
- d. Prepare and implement a master plan and a management plan for each State park and forest.

L.1983, c. 324, §5, eff. Sept. 1, 1983.

f. Sell or exchange forest products or products reasonably related to recreational activities in state parks, forests and other properties.

**Source: 13:1L-5 [above]**

#### COMMENT

This proposed section consists of all subsections from the source section. The introductory phrase from the source section has been incorporated into the proposed section above entitled "Duties." The word "other" was added to modify "properties." Minor language changes in subsection (f).

### PF-5 Operation of facilities

a. The department shall have the power to enter into agreements with individuals or entities for the construction, operation and maintenance for private profit of any facility, utility or device upon the state parks, forests, or other properties as the department shall find necessary and proper for the use and enjoyment of the lands by the public. Such agreements may include concessions, franchises, licenses, leases, permits or other rights deemed by the commissioner to be appropriate in the utilization of the properties for the public benefit. Agreements shall be made in the name of the State of New Jersey and executed by the commissioner or the commissioner's authorized representative, at such price and upon such terms and conditions as shall be fixed by the commissioner.

b. The department shall have the power to enter into agreements to acquire rights in lands owned by individuals or entities where the commissioner deems it necessary or useful in the utilization of state parks, forests, or properties for the public benefit. Such agreements may include leases, licenses, concessions, franchises, permits and other rights. Such agreements shall be for such consideration, and under terms and conditions fixed by the commissioner.

**Source: 13:1L-6<sup>10</sup>**

#### COMMENT

These subsections have been re-drafted to be parallel in standards and essential construction.

Subsection (a) has been redrafted to provide that the department may enter into agreements, rather than to state that the department may grant "rights or privileges." Elsewhere, the word "right" has been substituted for the synonymous words "right" and "privilege." The phrase "shall have the authority" has been changed to "shall have the power" in both subsections. The word "leases" has been added as fairly encompassed in the existing verbiage.

In subsection (b) the phrase "for the proper implementation of the provisions of this amendatory and supplementary act" has been changed to mirror the standard in subsection (a), so that the section as whole provides that the department may either convey rights, or acquire rights when the commission deems it appropriate for the utilization of public lands, etc., by the public.

### PF-6 Acquisition of property

a. The department shall have the power to enter, inspect, survey, and take title to any appropriate lands of the State that would be useful as a state park, forest or other property.

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<sup>10</sup> **13:1L-6. Grant of authority to operate facilities for private profit; acquisition of interest in lands**

Notwithstanding any other law, rule or regulation to the contrary, the department shall have the authority to grant such rights or privileges to individuals or corporations for the construction, operation and maintenance for private profit of any facility, utility or device upon the State parks and forests, lands and waters as the department shall find necessary and proper for the use and enjoyment of the lands by the public. Such rights and privileges shall include, but not be limited to, concessions, franchises, licenses, permits and other rights and privileges deemed by the department to be appropriate in the utilization of the lands for the public benefit. The grant or award of such rights or privileges shall be made in the name of the State of New Jersey and executed by the department, at such price and upon such terms and conditions as shall be fixed by the department.

b. The department shall have the authority to acquire rights and privileges in lands owned by individuals or corporations where the department deems it necessary or useful, for the proper implementation of the provisions of this amendatory and supplementary act, that an interest in such lands be acquired. Such rights and privileges shall include, but not be limited to, leases, licenses, concessions, franchises and permits. Any rights or privileges acquired hereunder and the considerations therefor shall be subject to terms and conditions fixed by the department.

L.1983, c. 324, §6, eff. Sept. 1, 1983.



b. The department may acquire by gift, grant or by payment of tax lien any municipal lands that have been acquired by the municipality through the foreclosure of a tax lien pursuant to chapter 5 of Title 54 (Taxation).

c. If the department acquires or owns title to, for the purposes of this chapter, more than 10 acres of land in a municipality, the department shall annually pay that municipality one dollar (\$1.00) per acre for each acre of land so acquired, except that this sum shall not be paid if any other payments in lieu of taxes are determined to be due and payable to that municipality pursuant to any other law.

**Source: 13:1L-7<sup>11</sup>**

#### COMMENT

The proposed section makes minor language changes in the source section, e.g., "such" changed to "the," and eliminates superfluous language. Subsections (b), (c), (d) and (g) of the source section pertaining to eminent domain have been placed in a separate proposed section entitled "Eminent domain." The remaining subsections have been relettered. "Or other property" was added to subsection (a).

### **PF-7 Eminent domain**

a. The department shall have the power of eminent domain, which shall extend to all rights, interests and easements in any property in the State.

b. The department shall exercise its power of eminent domain in accordance with the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

c. Whenever the department wishes to acquire title to unoccupied lands by eminent domain and it appears that such title may be defective in any manner, the department may, with the consent of the Attorney General, acquire the best available title, notwithstanding that the title is defective or incomplete.

d. No interest in any of the property held by the department for the purposes of this chapter shall be subject to be taken by condemnation proceedings through the power of eminent domain.

**Source: 13:1L-7 [see above]**

#### COMMENT

These four subsections were taken from the source section and consolidated as a separate section; they have been relettered.

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<sup>11</sup> **13:1L-7. Power to enter, inspect, survey, investigate ownership and take title to lands; eminent domain; acquisition of land with defective title; acquisition of land acquired by municipality under tax liens**

a. For the purposes of acquiring, holding, managing or developing lands or other properties for a State park or forest, the department shall have the power to enter, inspect, survey, investigate ownership and take title to, in fee or otherwise, by purchase, gift, devise or eminent domain, any appropriate lands of the State that would be useful as a State park or forest.

b. The power of eminent domain shall extend to all rights, interests and easements in any property in the State.

c. The department shall exercise its power of eminent domain in accordance with the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).

d. Whenever the department wishes to acquire, by eminent domain, title to unoccupied lands and it appears that such title may be defective in any manner, the department may, with the consent of the Attorney General, acquire the best available title, notwithstanding that such title is defective or incomplete.

e. For purposes of this amendatory and supplementary act, the department may acquire by gift, grant or by payment of tax lien any municipal lands that have been acquired by the municipality through the foreclosure of a tax lien pursuant to chapter 5 of Title 54 (Taxation).

f. If the department acquires or owns title to, for the purposes of this act, more than 10 acres of land in a municipality, the department shall annually pay that municipality one dollar (\$1.00) per acre for each acre of land so acquired, except that this sum shall not be paid if any other payments in lieu of taxes are determined to be due and payable to that municipality pursuant to any other law.

g. No title or interest in any of the lands or properties acquired or held by the department for the purposes of this amendatory and supplementary act shall be subject to be taken by condemnation proceedings through the power of eminent domain.

L.1983, c.324, §7; amended 1989, c.347, §1.

## **PF-8 Authority to exchange lands**

a. The department shall have the power to sell, lease or exchange any land or any interest in land for the acquisition of any other land or interest in land for incorporation into the state park and forest system, except that the department shall not have the power to sell, lease or exchange lands or interests acquired pursuant to the Green Acres program.

b. Any sale, lease or exchange pursuant to this section shall be executed in accordance with P.L.1993, c.38 (C.13:1D-51 et al.).

**Source: 13:1L-8<sup>12</sup>**

### **COMMENT**

The word "authority" has been changed to "power" to conform to the style of other proposed sections. Other minor changes in language have been incorporated. The section has been divided into two subsections, and the language of proposed subsection (a) has been rearranged to place the exception of Green Acres lands at the end of the operative sentence, to improve clarity.

Note that a 1988 decision of the Appellate Division holds that contracts entered into under this provision are not subject to the state public bidding laws. Jersey City v. State Department of Environmental Protection, 227 N.J. Super. 5 (App. Div. 1988).

## **PF-9 Closing of park; removal of persons**

The department may close a state park, forest or other property or may remove any person from a state park, forest or other property without legal procedure if the department determines that it is in the interest of the State to do so.

**Source: 13:1L-9<sup>13</sup>**

### **COMMENT**

No change, except to replace the phrase "state park or forest" with the phrase "state park, forest or other property."

## **PF-10 Protection of park property**

a. No person shall, without the department's permission, either mutilate, destroy, alter or move any property, whether man-made or natural, in any state park, forest or other property, including any animal or any plant; or any archaeological findings, including relics, objects or artifacts of an historical, prehistorical, geological, archaeological or anthropological nature.

b. No person shall litter or abandon any material on the grounds of any state park, forest, or other property.

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<sup>12</sup> **13:1L-8. Authority to exchange lands**

The department shall have the authority to sell, lease or exchange any lands or any interest therein, except those lands or interests acquired pursuant to the Green Acres program, for the acquisition of any other lands or interests therein for incorporation into the State park and forest system. Any such sale, lease or exchange shall be executed in accordance with P.L.1993, c.38 (C.13:1D-51 et al.).

L.1983,c.324, §8; amended 1993,c.38, §8.

<sup>13</sup> **13:1L-9. Closing of park; removal of persons**

The department may close a State park or forest or may remove any person from a State park or forest without legal procedure if the department determines that it is in the interest of the State to do so.

L.1983, c. 324, §9, eff. Sept. 1, 1983.

**Source: 13:1L-10<sup>14</sup>**

**COMMENT**

The phrase "includes, but shall not be limited to" preceding the definition of archaeological findings has been changed to "including." The word "may" in both subsections has been changed to "shall." Both subsections have been redrafted for clarity. "Other" was added to modify "property."

**PF-11 High Point State Park**

No person shall shoot or trap birds on the grounds of High Point State Park. This section shall not apply to the shooting or trapping of vermin by authorized representatives of the state.

**Source: 13:1L-11<sup>15</sup>**

**COMMENT**

The source section contained provisions concerning High Point State Park and Island Beach State Park. The provisions relating to Island Beach State Park have been made into a separate proposed section. The remaining provisions concerning High Point State Park have been redrafted to state the prohibition against shooting or trapping in the affirmative. This provision derives from a restriction in the deed by which the State acquired the property which now comprises the Park.

**PF-12 Island Beach State Park**

The department shall preserve, maintain and improve Island Beach State Park in such a manner as it determines will best perpetuate the Park in its present physical state as a unique natural and recreational resource which is highly valued for its topography, flora and fauna.

**Source: 13:1L-11 [see above]**

**COMMENT**

This proposed section has been re-drafted as a separate section. The provisions in the source section on High Point State Park have been retained in a proposed section by that name.

**PF-13 Certain admission fees prohibited**

The department shall not charge an admission fee for entrance into a state park, forest or property by any resident of the State of 62 or more years of age or who is totally disabled or who is an active member of the New Jersey National Guard who has completed Initial active Duty Training. The department shall prescribe by regulation the types of evidence that may be used to qualify persons for the benefits of this section.

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<sup>14</sup> **13:1L-10. Destruction of park property; abandonment of property**

No person may mutilate, destroy, alter or move any State park or forest property, whether man-made or natural, or any animal, or any archaeological findings, which shall include, but not be limited to, relics, objects or artifacts of an historical, prehistorical, geological, archaeological or anthropological nature, which are held by the department pursuant to the provisions of this amendatory and supplementary act, without the department's permission. No person may litter or abandon any material on State park or forest property held pursuant to the provisions of this amendatory and supplementary act.

L.1983, c. 324, §10, eff. Sept. 1, 1983.

<sup>15</sup> **13:1L-11. Shooting or trapping of birds at High Point Park; preservation of Island Beach Park**

a. In specific regard to High Point Park, the department shall not allow the shooting or trapping of birds on park grounds, other than that of vermin, and then only by authorized representatives of the State.

b. As Island Beach State Park is a unique recreational resource and is highly valued for its topography, flora and fauna, it shall be preserved, maintained and improved in such a manner as the department determines will best perpetuate the present physical state.

L.1983, c. 324, §11, eff. Sept. 1, 1983.

As used in this section, "Initial Active Duty Training" means Basic Military Training for members of the New Jersey Air National Guard, and Basic Combat Training and Advanced Individual Training, for members of the New Jersey Army National Guard.

**Source: 13:1L-12<sup>16</sup>**

#### COMMENT

No change, except to replace the phrase "state park or forest" with the phrase "state park, forest or property."

### PF-14 Youth and disadvantaged programs

a. The department shall implement comprehensive programs to provide employment opportunities for youth or for disadvantaged persons in the improvement, maintenance and conservation of state parks, forests, and other properties. The department shall seek the assistance and cooperation of any other federal, state or municipal department or agency in providing such employment opportunities.

b. The department shall have the power to enter into agreements with, and make grants of money to, nonprofit organizations and municipalities to provide to disadvantaged youth up to age 18, transportation to and from state parks and forests, recreation areas and other properties, and camping experiences at day or overnight camps approved by the department.

**Source: 13:1L-24,<sup>17</sup> 13:1L-25<sup>18</sup>**

#### COMMENT

The two source sections have been consolidated into a single proposed section divided into two subsections. In proposed subsection (a), the phrase "the department is authorized and directed" has been changed to read "the department shall." In subsection (b) the phrase "the department is authorized to" has been changed to "the department shall have the power to." "Public lands, recreation facilities and natural resources" was replaced with "and other properties." "Recreational facilities" and changed to "properties" in subsection (b).

### PF-15 Forest management program

The department shall plan, develop and implement a forest management program for the forest resources of the state parks and forests and provide technical information, advice and related assistance to promote the best technical management practices for public and private forest landowners and managers, vendors, forest operators, wood processors, public agencies and individuals regarding:

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<sup>16</sup> **13:1L-12. Free admission for elderly, disabled, members of New Jersey National Guard**

The department shall not charge an admission fee for entrance into a State park or forest by any resident of the State of 62 or more years of age or who is totally disabled or who is an active member of the New Jersey National Guard who has completed Initial Active Duty Training. The department shall prescribe by regulation the types of evidence that may be used to qualify persons for the benefits of this subsection.

As used in this section, "Initial Active Duty Training" means Basic Military Training, for members of the New Jersey Air National Guard, and Basic Combat Training and Advanced Individual Training, for members of the New Jersey Army National Guard.

L.1983,c.324,s.1; amended 1993,c.304.

<sup>17</sup> **13:1L-24. Programs for providing job opportunities for youth and disadvantaged persons**

The department is authorized and directed to implement and administer comprehensive programs for the purpose of providing employment opportunities for youth or for disadvantaged persons in the improvement, maintenance and conservation of State parks and forests, public lands, recreation facilities and natural resources. The department is authorized and directed to seek the assistance and cooperation of any other federal, State or municipal department or agency in providing such employment opportunities.

L.1983, c. 324, §24, eff. Sept. 1, 1983.

<sup>18</sup> **13:1L-25. Disadvantaged youth; agreements or grants to provide transportation or camping experiences**

Upon proper application to the department by a nonprofit association or corporation, or municipality, the department is authorized to enter into agreements with, and make grants of money to, the applicant for the purpose of providing to disadvantaged youth up to age 18:

a. Transportation to and from State parks and forests, recreation areas and other recreational facilities, or

b. Camping experiences at day or overnight camps approved by the department.

L.1983, c. 324, §25, eff. Sept. 1, 1983.

- a. The harvesting, marketing and processing of timber and other forest resources and the development of maximum efficiency in the utilization of wood and wood products consistent with the principle of maintaining long-term, sustained yield of these products;
- b. Conversion of wood to energy for domestic, industrial, municipal and other uses;
- c. Management planning and treatment of forest land, including protection, site preparation, timber stand improvement, reforestation, prescribed burning and other practices designed to increase the quantity and improve the quality of timber and other forest resources;
- d. Protection and improvement of forest soil fertility; watersheds to enhance the quality and quantity of water yields; and beneficial effects of forest habitat on fish and wildlife.

**Source: 13:1L-13<sup>19</sup>**

#### **COMMENT**

The first sentence of the introductory paragraph, "forest management" has been changed to "forestry." The superfluous phrase "But not limited to" has been deleted from subsection (c).

#### **PF-16 Distribution of tree seeds and seedling trees**

The department shall procure, produce and distribute tree seeds and seedling trees for the purpose of:

- a. Establishing forests, windbreaks, shelterbelts, woodlots, and other plantings;
- b. Developing genetically improved tree seeds;

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<sup>19</sup> **13:1L-13. Forest management program**

The department shall plan, develop and implement a forest management program for the forest resources of the State parks and forest and by providing technical information, advice and related assistance to promote the best technical management practices for public and private forest landowners and managers, vendors, forest operators, wood processors, public agencies and individuals regarding:

- a. The harvesting, marketing and processing of timber and other forest resources and the development of maximum efficiency in the utilization of wood and wood products consistent with the principle of maintaining long-term, sustained yield of these products;
- b. Conversion of wood to energy for domestic, industrial, municipal and other uses;
- c. Management planning and treatment of forest land, including but not limited to, protection, site preparation, timber stand improvement, reforestation, prescribed burning and other practices designed to increase the quantity and improve the quality of timber and other forest resources;
- d. Protection and improvement of: forest soil fertility; watersheds to enhance the quality and quantity of water yields; and beneficial effects of forest habitat on fish and wildlife.

L.1983, c. 324, §13, eff. Sept. 1, 1983.

c. Planting tree seeds and trees for the reforestation or forestation of lands suitable for the production of timber and other benefits associated with the growing of trees.

**Source: 13:1L-14<sup>20</sup>**

**COMMENT**

No change.

**PF-17 Protection of trees and wood from insects and disease**

The department shall protect from insects and diseases the trees and forests and wood products, stored wood, and wood in use in the State. This protection shall include:

- a. Conducting surveys to detect and evaluate insect infestations and disease conditions affecting forests and trees;
- b. Determining the biological, chemical and mechanical measures necessary to prevent, retard, control or suppress incipient, potentially threatening or emergency insect infestation and disease conditions affecting trees;
- c. Taking any other actions deemed necessary to protect the State's trees, forests and wood products from insects and diseases.

**Source: 13:1L-15<sup>21</sup>**

**COMMENT**

The phrase "shall include, but not be limited to" has been changed to "shall include."

**PF-18 Fire prevention**

The department shall minimize the threat to life, property, and damage to forest resources through the use of appropriate fire prevention, presuppression and suppression practices.

**Source: 13:1L-16<sup>22</sup>**

**COMMENT**

The source section has been divided into two separate draft sections. See PF-19 below.

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<sup>20</sup> **13:1L-14. Tree seeds and seedling trees; procurement, production and distribution**

The department shall procure, produce and distribute tree seeds and seedling trees for the purpose of:

- a. Establishing forests, windbreaks, shelterbelts, woodlots, and other plantings;
- b. Developing genetically improved tree seeds;
- c. Planting tree seeds and trees for the reforestation or forestation of lands suitable for the production of timber and other benefits associated with the growing of trees.

L.1983, c. 324, §14, eff. Sept. 1, 1983.

<sup>21</sup> **13:1L-15. Protection of trees and wood from insects and disease**

The department shall protect from insects and diseases the trees and forests and wood products, stored wood, and wood in use in the State.

This protection shall include, but not be limited to:

- a. Conducting surveys to detect and evaluate insect infestations and disease conditions affecting forests and trees;
- b. Determining the biological, chemical and mechanical measures necessary to prevent, retard, control or suppress incipient, potentially threatening or emergency insect infestation and disease conditions affecting trees;
- c. Taking any other actions deemed necessary to protect the State's trees, forests and wood products from insects and diseases.

L.1983, c. 324, §15, eff. Sept. 1, 1983.

<sup>22</sup> **13:1L-16. Fire protection; technical assistance to local government**

The department shall:

- a. Minimize the threat to life, property, and damage to forest resources through the use of appropriate fire prevention, presuppression and suppression practices;
- b. Provide information and technical assistance to units of local government, including but not limited to Shade Tree Commissions and Soil Conservation Districts, to encourage urban and community forestry programs.

L.1983, c. 324, §16, eff. Sept. 1, 1983.

## **PF-19 Technical assistance to local governments**

The department shall provide information and technical assistance to units of local government, including Shade Tree Commissions and Soil Conservation Districts, to encourage urban and community forestry programs.

**Source: 13:1L-16 [above]**

### **COMMENT**

The phrase "but not limited to" has been eliminated from as unnecessary; the word "including" indicates non-exclusivity.

## **PF-20 Plan for compensatory reforestation.**

a. Each State department, agency, or office of state government, including every State university or college and every authority created by the State, shall at least annually develop and submit to the Division of Parks and Forestry a plan for compensatory reforestation for all areas at least one acre in size that are owned or maintained by that department, agency or office and are scheduled for deforestation. A reforestation plan required pursuant to this section shall establish a goal of no net loss of forested area, based upon an approximation of at least a one-for-one replacement of trees lost due to deforestation, and shall be subject to approval of the division. No project that would deforest land at least one acre of size that is owned or maintained by a State department, agency or office may be commenced without approval of that plan by the Division.

b. A reforestation plan developed pursuant to subsection (a) of this section may provide:

(1) that tree planting be conducted off-site by the State department, agency or office, if the division determines that it is not practicable to conduct the tree planting efforts on-site. Off-site property may include property owned or maintained by a State department, agency or office other than the one developing and implementing the plan if the State department agency or office that is to receive the benefits of the off-site tree planting efforts agrees thereto;

(2) that the State department, agency or office plant seedlings to meet the goal of no net loss of forested area, which seedlings shall be planted from six to 10 feet apart, or at a distance mutually agreed to by the division and the State department, agency or office; and

(3) for the planting of species of trees or seedlings that are obtainable from a tree nursery owned and operated by the State, including, but not limited to, such species as white pine, Norway spruce, pitch pine, shortleaf pine, loblolly pine, Virginia pine, oaks, ash, poplar, sweet gum, and black locust. Subject to availability from a State tree nursery, the trees used in reforestation by a State department, agency or office pursuant to this section shall be those that are the most suitable for the site.

c. This section shall not apply to activities that are deemed by the division to constitute standard forestry or arboricultural practices.

**Source: 13:1L-14.1,<sup>23</sup> 13:1L-14.2,<sup>24</sup> 13:1L-14.3<sup>25</sup>**

#### COMMENT

The definition of "state entity" in source section 13:1L-14.1 has been incorporated into the provisions of the operative source section. The definition in the source section of the "Division" is unnecessary.

### PF-21 State forester

The chief forester employed by the department shall be designated the State Forester.

**Source: 13:1L-17<sup>26</sup>**

#### COMMENT

The phrase "designated and known as" has been changed to "designated."

### PF-22 Employees

a. The department may hire such employees as may be necessary to carry out the provisions of this chapter. Subject to the provisions of Title 11A Civil Service, the department shall determine the compensation for the employees.

b. The division shall employ the underprivileged, minorities and young people where appropriate.

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<sup>23</sup> **13:1L-14.1.** As used in this act:

"Division" means the Division of Parks and Forestry in the Department of Environmental Protection.

"State entity" means a department, agency, or office of State government, including a State university or college, or an authority created by the State.

L.1993, c.106, §1.

<sup>24</sup> **13:1L-14.2 Plan for compensatory reforestation.**

a. Each State entity, by July 1, 1993, and at least annually thereafter, shall develop, and submit to the Division of Parks and Forestry in the Department of Environmental Protection, a plan for compensatory reforestation for all areas at least one acre in size that is owned or maintained by that State entity and is scheduled for deforestation. A reforestation plan required pursuant to this act shall establish a goal of no net loss of forested area, based upon an approximation of at least a one-for-one replacement of trees lost due to deforestation, and shall be subject to approval of the division. No project that would deforest land at least one acre of size that is owned or maintained by a State entity may be commenced without approval of that State entity's plan by the division.

b. A reforestation plan developed pursuant to subsection a. of this section may provide:

(1) that tree planting be conducted off-site by the State entity, if the division determines that it is not practicable to conduct the tree planting efforts on-site. Off-site property may include property owned or maintained by a State entity other than the one developing and implementing the plan if the State entity that is to receive the benefits of the off-site tree planting efforts agrees thereto;

(2) that the State entity plant seedlings to meet the goal of no net loss of forested area, which seedlings shall be planted from six to 10 feet apart, or at a distance mutually agreed to by the division and the State entity; and

(3) for the planting of species of trees or seedlings that are obtainable from a tree nursery owned and operated by the State, including, but not limited to, such species as white pine, Norway spruce, pitch pine, shortleaf pine, loblolly pine, Virginia pine, oaks, ash, poplar, sweet gum, and black locust. Subject to availability from a State tree nursery, the trees used in reforestation by a State entity pursuant to this act shall be those that are the most suitable for the site.

L.1993, c.105, §2.

<sup>25</sup> **13:1L-14.3 Nonapplicability of act.**

The requirements of this act shall not apply to activities that are deemed by the division to constitute standard forestry or arboricultural practices.

L.1993, c.106, §3.

<sup>26</sup> **13:1L-17. State forester**

The chief forester employed by the department shall be designated and known as the State Forester.

L.1983, c. 324, §17, eff. Sept. 1, 1983.



**Source: 13:1L-20<sup>27</sup>**

**COMMENT**

The source section has been divided into two proposed subsections.

**PF-23 Publications**

The department may publish any information concerning the subject matter of this chapter as it deems to be in the public interest, at a cost not to exceed that of publication and distribution.

**Source: 13:1L-18<sup>28</sup>**

**COMMENT**

The phrase "from time to time" has been eliminated from the source section, and the phrase "concerning the subject matter of this chapter" has been added to the word "information."

**PF-24 Regulations and fees**

The department may adopt regulations to implement the purposes of this chapter, including the establishment of fees for any of the services it performs pursuant to this chapter.

**Source: 13:1L-19<sup>29</sup>**

**COMMENT**

The reference in the source section to P.L. 1975, c. 363 is to the Natural Areas Systems Act; it is included in the source section as a limitation on the power of the department to enact implementing regulations under this section. It appears that the limiting language was included so that the later enactment of the 1983 act, of which this source section is a part, would not be regarded as superseding the 1975 act, which contains limitations on the use to which land included in the natural areas system may be put.

**PF-25. Oaths, witnesses and subpoenas**

For the purpose of this chapter, the department may administer oaths, examine witnesses under oath, and issue subpoenas for the production of written material or requiring personal attendance before the department.

**COMMENT**

The phrase "amendatory and supplementary act" has been changed to "chapter."

**Source: 13:1L-22<sup>30</sup>**

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<sup>27</sup> **13:1L-20. Employees**

The department may hire such employees as may be necessary to carry out the provisions of this amendatory and supplementary act. Subject to the provisions of Title 11 (Civil Service), the department shall determine the compensation for the employees hired under this amendatory and supplementary act. The department shall employ the underprivileged, minorities and young people where appropriate.

L.1983, c. 324, §20, eff. Sept. 1, 1983.

<sup>28</sup> **13:1L-18. Publications**

The department may publish, from time to time, any information it deems to be in the public interest at a cost not to exceed that of publication and distribution.

L.1983, c. 324, §18, eff. Sept. 1, 1983.

<sup>29</sup> **13:1L-19. Fees for services; rules and regulations**

The department may, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), charge and collect fees for any of the services it performs pursuant to the provisions of this amendatory and supplementary act, and adopt any other rules or regulations consistent with the provisions of P.L.1975, c. 363 (C. 13:1B-15.12a et seq.) necessary to carry out the provisions of this amendatory and supplementary act.

L.1983, c. 324, §19, eff. Sept. 1, 1983.

<sup>30</sup> **13:1L-22. Oaths; witnesses; subpoenas**

For the purpose of this amendatory and supplementary act, the department may administer oaths, examine witnesses under oath, and issue subpoenas for the production of written material or requiring personal attendance before the department.

L.1983, c. 324, §22, eff. Sept. 1, 1983.

#### COMMENT

This section giving investigatory powers to the department pursuant to this chapter appears unnecessary. The general powers of the department in this regard will be provided for in the article on organization of the department.

#### **PF-26. Injunctive relief and penalties**

If any person violates any of the provisions of this chapter or any regulation or order promulgated pursuant to it, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation and the court may proceed in a summary manner.

Any person who violates any of the provisions of this chapter or any regulation or order promulgated pursuant to it shall be liable to a penalty of not more than \$1,000.00 for each offense, to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case before a court of competent jurisdiction in which injunctive relief has been requested. The Superior Court and municipal courts shall have jurisdiction to hear and determine violations of the provisions of this chapter. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. If the damage resulting from any violation of this chapter or from any violation of a regulation or order promulgated pursuant to it exceeds \$1,000.00, the person causing the damage shall be liable to a penalty equal to the value of the damage caused.

**Source: 13:1L-23<sup>31</sup>**

#### COMMENT

The phrase "mandatory and supplementary act" has been changed to "chapter." The word "rule" has been deleted and other minor language changes have been made.

**Repeal as unnecessary:**

**13:1L-1 Short title<sup>32</sup>**

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<sup>31</sup> **13:1L-23. Injunctive relief; penalties**

If any person violates any of the provisions of this amendatory and supplementary act or any rule, regulation or order promulgated pursuant thereto, the department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation and the court may proceed in a summary manner.

Any person who violates any of the provisions of this amendatory and supplementary act or any rule, regulation or order promulgated pursuant thereto shall be liable to a penalty of not more than \$1,000.00 for each offense, to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court and municipal courts shall have jurisdiction to hear and determine violations of the provisions of this amendatory and supplementary act. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. If the damage resulting from any violation of this amendatory and supplementary act or from any violation of any rule, regulation or order promulgated pursuant thereto exceeds \$1,000.00, the person causing the damage shall be liable to a penalty equal to the value of the damage so caused.

L.1983,c.324, §23; amended 1991,c.91, §225.

<sup>32</sup> **13:1L-1. Short title**

This act shall be known and may be cited at the "State Park and Forestry Resources Act."  
L.1983, c.324, §1, eff. Sept. 1, 1983.

## Chapter: FOREST FIRES AND FOREST FIRE SERVICE

### CHAPTER NOTE

The statutes in the source chapter, chapter 9 of Title 13, have been rearranged to integrate the provisions of the "Forest Fire Prevention and Control Act," added in 1981, with the provisions concerning firewardens, which were contained in the 1937 Revised Statutes. Thus, the order of the source sections has been substantially changed in some areas. The proposed new chapter contains the provisions establishing the Forest Fire Service as well as regulatory provisions concerning permits for certain kinds of fires, maintenance of forests to prevent forest fires, etc.

### FF-1 Legislative policy

The Legislature declares it to be the policy of this State:

- a. to prevent, control and manage wildfires on or threatening the forests or wildlands of New Jersey in order to preserve forests and other natural resources;
- b. to enhance the growth and maintenance of forests;
- c. to protect recreational, residential, wildlife, plant life, watershed, airshed, and other values;
- d. to promote the stability of forest using industries; and
- e. to prevent loss of life, bodily injury and damage to property from wildfires and conflagrations.

**Source: 13:9-44.2<sup>33</sup>**

### COMMENT

No change, except to divide into subsections to conform to the style of similar provisions.

### FF-2 Definitions

As used in this chapter:

"Back fire" means a controlled fire purposely ignited in the path of wildfire along the inner edge of a control line.

"Forest" means and includes any forest, bushland, grassland, salt marsh, and any combination thereof.

"Prescribed fire" or "prescribed burn" means a controlled fire designed and ignited for the purpose of reducing or eliminating a forest hazard or for silvicultural purposes.

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<sup>33</sup> **13:9-44.2. Legislative declarations**

The Legislature declares it to be the policy of this State to prevent, control and manage wildfires on or threatening the forests or wildlands of New Jersey in order to preserve forests and other natural resources; to enhance the growth and maintenance of forests; to protect recreational, residential, wildlife, plant life, watershed, airshed, and other values; to promote the stability of forest using industries; and to prevent loss of life, bodily injury and damage to property from wildfires and conflagrations. L.1981, c. 369, §2, eff. Dec. 30, 1981.

"Wildfire" means an uncontrolled fire burning the different types of vegetation that cover the land.

**Source: 13:9-44.3<sup>34</sup>; new**

#### COMMENT

The phrase "as used in this ... act" has been changed to "this chapter." The definitions of the terms "commissioner" and "department" have been eliminated as unnecessary, and the subsections have been relettered. The definition of "prescribed burn" or "prescribed fire" is new. This term is used in proposed sections FF-3, FF-24 and FF-32.

### **FF-3 Forest fire service, establishment, powers and duties**

The department shall establish and maintain the New Jersey Forest Fire Service for the protection of forests and adjacent property. The department, through the Forest Fire Service, shall have the power to:

- a. Determine forest fire hazards;
- b. Remove undergrowth or other material which contributes to forest fire hazards;
- c. Construct and maintain fire breaks;
- d. Plough lands, set prescribed fires and back fires, order any highway or road closed to traffic and adopt regulations for burning forests or any forest material;
- e. Summon any person between the ages of 18 and 50, who may be within the jurisdiction of the State, to assist in extinguishing fires; and
- f. Require the use of materials, equipment or property needed for extinguishing wildfires when required to abate an emergency.

**Source: 13:9-1<sup>35</sup>, 13:9-2<sup>36</sup>**

#### COMMENT

The source sections have been combined. The phrase from source section 13:9-1, that the department shall act "through its agents" has been replaced with a reference to the forest fire service. In 13:9-1, the phrase "wherever the department shall determine the necessity therefor." has been eliminated as surplusage and because it is unclear what it is intended to modify.

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#### <sup>34</sup> 13:9-44.3. Definitions

As used in this amendatory and supplementary act:

- a. "Commissioner" means the Commissioner of Environmental Protection or an official designated by the commissioner.
  - b. "Back fire" means a controlled fire purposely ignited in the path of wildfire along the inner edge of a control line.
  - c. "Department" means the Department of Environmental Protection.
  - d. "Forest" means and includes any forest, bushland, grassland, salt marsh, and any combination thereof.
  - e. "Wildfire" means an uncontrolled fire burning the different types of vegetation that cover the land.
- L.1981, c. 369, §3, eff. Dec. 30, 1981.

#### <sup>35</sup> 13:9-1. Forest fire service established

The Department of Environmental Protection shall maintain a forest fire service for the protection of forests, and property adjacent thereto, wherever the department shall determine the necessity therefor.

Amended by L.1981, c. 369, §11, eff. Dec. 30, 1981.

#### <sup>36</sup> 13:9-2. General powers of department

The department, through its agents, shall have power to:

- a. Determine forest fire hazards;
  - b. Remove or cause to be removed brush, undergrowth or other material which contributes to forest fire hazards;
  - c. Maintain or cause to be maintained fire breaks;
  - d. Plough lands, set prescribed fires and back fires, order any highway or road closed to traffic and adopt regulations for burning forests or any forest material;
  - e. Summon any person between the ages of 18 and 50, who may be within the jurisdiction of the State, to assist in extinguishing fires; and
  - f. Require the use of materials, equipment or property needed for extinguishing wildfires when required to abate an emergency.
- Amended by L.1981, c. 369, §12, eff. Dec. 30, 1981.

In subsection (c) the word "maintain" has been changed to "construct and maintain." Note that (e) and (f) are echoed in provisions below which pertain to the power of firewardens to summon assistance and appropriate property.

#### **FF-4 State firewarden and other employees**

a. The department may appoint a state firewarden and other officers and employees as may be needed and may fix their compensation. The department may create job titles and appoint with or without annual salary, a work force necessary to conduct the business of the service.

b. The state firewarden and other officers and employees appointed pursuant to this section may be removed by the department after charges have been preferred and a hearing granted.

**Source: 13:9-7<sup>37</sup>**

#### **COMMENT**

The source section has been divided into two subsections. The proviso in the first sentence of the source section concerning removal of employees has been stated affirmatively in proposed subsection (b). The phrase "such supervisors, deputies, assistants, other officers and employees" in both sections has been changed to "other officers and employees." The phrase "shall be removable" in subsection (b) has been changed to "may be removed."

#### **FF-5 General powers of state firewarden**

The state firewarden, under the direction of the commissioner, shall administer and supervise the Forest Fire Service and cooperating agencies and shall administer the laws that deal with the protection of forests from wildfire.

**Source: 13:9-13<sup>38</sup>**

#### **COMMENT**

The language of this section has been modified slightly to eliminate the inappropriate reference to the firewarden as "supervising the laws" dealing with protection of forests from wildfire, to provide that the firewarden shall administer those laws.

#### **FF-6 Firewardens**

a. The department shall have the power to employ firewardens, and to prescribe by regulation their powers, duties and authority.

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<sup>37</sup> **13:9-7. State firewarden, supervisors, deputies and other officers and employees; appointment, removal and compensation**  
The department may appoint, removable by the department after charges have been preferred and hearing granted, a State firewarden, and such supervisors, deputies, assistants, other officers and employees as may be needed and fix their compensation. The department may create job titles and appoint with or without annual salary, a work force necessary to conduct the business of the service. Amended by L.1981, c. 369, §17, eff. Dec. 30, 1981.

<sup>38</sup> **13:9-13. General powers of state firewarden**  
The State firewarden, under the direction of the commissioner, shall administer and supervise the forest fire service, cooperating agencies and such laws as shall deal with the protection of forests from wildfire. Amended by L.1981, c. 369, §20, eff. Dec. 30, 1981.

- b. Firewardens shall be trained law enforcement officers.

**Source: 13:9-3,<sup>39</sup> 13:9-15<sup>40</sup>**

**COMMENT**

Proposed subsection (a) is a streamlined version of source section 13:9-3, eliminating surplus language. Subsection (b) is taken from source section 13:9-15, the bulk of which is continued in two other draft provisions below (see FF-12, FF-13).

**FF-7 Deputy firewardens**

Subject to the approval of the department, each firewarden may designate one or more deputy firewardens to act in case of the firewarden's absence or disability.

**Source: 13:9-10<sup>41</sup>**

**COMMENT**

This section has been reworded for clarity.

**FF-8 Mandatory training requirements for fire service instructors**

In accordance with the legislative findings and declarations in section 1 of P.L.1995, c.266, training for fire service instructors of forestland fire fighters shall be mandatory and shall be implemented under the authority and pursuant to regulations of the Department of Environmental Protection. This training requirement shall apply to instructors of fire fighters with the State forest fire service in the Division of Parks and Forestry of the Department of Environmental Protection whose job descriptions, duties and training standards are determined, regulated and implemented by the State forest fire service in accordance with standards of the United States Forest Service and of nationally recognized forest fire service associations or organizations.

**Source: 13:9-7.1<sup>42</sup>**

**COMMENT**

No change.

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<sup>39</sup> **13:9-3. Duties of and regulations governing firewardens**

The department shall have power, from time to time, subject to the limitations of this chapter, to prescribe such duties and make such regulations for the government of firewardens for the prevention and extinguishing of forest fires, and for the employment, discharge and pay of firewardens, as, in its judgment, shall be efficacious to that purpose. Firewardens shall perform such service and have such authority as shall be determined by the department.

Amended by L.1981, c. 369, §13, eff. Dec. 30, 1981.

<sup>40</sup> **13:9-15. Enforcement of laws and extinguishment of fires; summoning assistance**

Firewardens shall be trained law enforcement officers and shall enforce the laws of this State for the protection of forests from wildfire. They shall have control and direction of all persons and apparatus engaged in extinguishing fires in forests. They may plough lands or set back fires to check any fire. They may summon any person between the ages of 18 and 50 years, living or being within their jurisdiction, to assist in extinguishing fires, and may require the use of any property needed for such purpose. No physically fit person so summoned shall refuse or neglect to assist, nor shall any person refuse the use of any property, equipment or material required.

Amended by L.1981, c. 369, §21, eff. Dec. 30, 1981.

<sup>41</sup> **13:9-10. Deputy firewardens; designation**

Each firewarden, subject to the approval of the department, may designate one or more proper persons to act as deputy or deputies in case of his absence or disability from any cause.

Amended by L.1981, c. 369, §19, eff. Dec. 30, 1981.

<sup>42</sup> **Mandatory training requirements for fire service instructors**

In accordance with legislative findings and declarations in section 1 of P.L.1995, c.266, training for fire service instructors of forestland fire fighters shall be mandatory and shall be implemented under the authority and pursuant to regulations of the Department of Environmental Protection. This training requirement shall apply to instructors of fire fighters with the State forest fire service in the Division of Parks and Forestry of the Department of Environmental Protection whose job descriptions, duties and training standards are determined, regulated and implemented by the State forest fire service in accordance with standards of the United States Fire Service and of nationally recognized forest fire service associations or organizations.

L.1995, c.266, §7.

## **FF-9 Material, supplies, equipment and property**

- a. The department may purchase and distribute to the firewardens such material, supplies, equipment and other property as may be necessary to effectuate the provisions of this chapter.
- b. The department shall be custodian of all property, equipment and supplies used in the protection of forests.

**Source: 13:9-4<sup>43</sup>**

### **COMMENT**

The language of the first sentence of the source section has been reworded slightly for clarity, and it has been divided into two subsections.

## **FF-10 Expenses of forest fire service**

All expenses incurred by the department in carrying out the provisions of this chapter, including the compensation of officers and employees in the forest fire service, shall be paid by the State. In addition to legislative appropriations, the department may utilize cooperative forest fire funds received from the federal government or any county, municipality, corporation or person.

**Source: 13:9-5<sup>44</sup>**

### **COMMENT**

The phrase limiting the expenditures of the forest fire service to the legislative appropriation appears unnecessary, except that it also mentions cooperative funds received from other sources. Therefore, the proposed section eliminates the superfluous restriction against expenditures in excess of appropriations, retaining the authority to utilize cooperative forest fire funds in addition to legislative appropriations.

## **FF-11 Divisions, sections and districts**

The department shall divide the forest areas of the State into divisions, sections and districts.

**Source: 13:9-6<sup>45</sup>**

### **COMMENT**

No change.

## **FF-12 Emergency assistance**

- a. When an emergency arises, the department shall employ work crews and purchase equipment necessary to fight forest fires.
- b. The department may enter into cooperative or contractual agreements with any person, with the United States or any of its agencies or departments, with state departments, agencies or other state governmental subdivisions in order to accomplish the purposes of this chapter.

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<sup>43</sup> **13:9-4. Material, supplies, equipment and property; purchase and distribution; custodian**

The department may purchase and distribute to the firewardens such material, supplies and equipment and purchase such other property as it may deem necessary to effectuate the provisions of this chapter. The department shall be custodian of all property, equipment and supplies used in the protection of forests.

Amended by L.1981, c. 369, §14, eff. Dec. 30, 1981.

<sup>44</sup> **Expenses of forest fire service**

All expenses incurred by the department in carrying out the provisions of this chapter, including the compensation of officers and employees in the forest fire service, shall be paid by the State; but such sums shall not exceed the amount appropriated therefor by the Legislature with the amount available from cooperative forest fire funds received from the Federal Government or any county, municipality, corporation or person.

<sup>45</sup> **13:9-6. Divisions, sections and districts**

The department shall divide the forest areas of the State into divisions, sections and districts.

Amended by L.1981, c. 369, §16, eff. Dec. 30, 1981.

c. The department shall cooperate with any public or private agencies or persons in the conduct of fire management plans and other matters of mutual interest.

**Source: 13:9-9<sup>46</sup>**

**COMMENT**

"This ... act" has been changed to "this chapter." The section has been divided into subsections. The language of the subsections has been reworded for clarity. "Othe state departments and any subdivisions of this State or any other person or body politic" has been changed to "state departments, agencies or other state governmental subdivisions."

**FF-13 Enforcement of laws and extinguishment of fires**

Firewardens shall enforce the laws of this State for the protection of both state and private forests from wildfire. They shall have control and direction of all persons and apparatus engaged in extinguishing fires in both state and private forests. They may plough lands or set back fires to check any fire.

**Source: 13:9-15 [above]**

**COMMENT**

The language from source section 13:19-15 requiring firewardens to be law enforcement officers has been moved to the proposed section above which permits the appointment of firewardens (see FF-6). The remainder of source section 13:19-15 has been divided into two proposed sections, this one and another entitled "Summoning assistance" (see FF-14 below.) In both sentences, the word "forests" has been changed to "both state and private forests."

**FF-14 Summoning assistance**

Firewardens shall have the power to summon any person between the ages of 18 and 50 years, living or being within their jurisdiction, to assist in extinguishing fires, and may require the use of any property needed for such purpose. No physically fit person so summoned shall refuse or neglect to assist, nor shall any person refuse the use of any property, equipment or material required.

**Source: 13:9-15 [above]**

**COMMENT**

This is one of three proposed sections that are drawn from 13:9-15 (see FF-6 and FF-13).

**FF-15 Arrests without warrant**

A firewarden may arrest, without warrant, any person whom the firewarden has probable cause to believe is committing a violation of this chapter.

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<sup>46</sup> **13:9-9. Emergency help; cooperative or contractual agreements**

The department shall, when the emergency arises, employ work crews and purchase equipment to fight forest fires as may be deemed necessary. The department may enter into cooperative or contractual agreements with the United States or any agency or department thereof, other State departments and any subdivisions of this State or any other person or body politic for the accomplishment of the purposes of this amendatory and supplementary act. The department shall cooperate with any public and private agencies or persons in the conduct of fire management plans and other matters of mutual interest.

Amended by L.1981, c. 369, §18, eff. Dec. 30, 1981.



**Source: 13:9-29<sup>47</sup>**

**COMMENT**

"Any" firewarden has been changed to "a"; "he" has been changed to "the firewarden."

**FF-16 Obstruction of firewarden, deputies or assistants**

No person shall obstruct, threaten or assault any firewarden, deputy firewarden or any other officer or employee of the Forest Fire Service who is engaged in the performance of any duty under this chapter.

**Source: 13:9-16<sup>48</sup>**

**COMMENT**

The phrase "or any one or more of them," has been deleted as unnecessary; the phrase "who is engaged in" has been added. The words "abuse," "injure" and "interfere" have been eliminated as they describe conduct fairly included in the remaining proscribed acts. The word "assistant firewarden" has been changed to "any other officer or employee of the Forest Fire Service."

**FF-17 Right of entry**

a. No action for trespass shall be brought against any person crossing or working upon lands of another to extinguish wildfire.

b. Any duly authorized employee of the department and any law enforcement officer or fire protection officer having jurisdiction to enforce any provision of this chapter shall have the power to enter upon any forest lands at any time in order to inspect the same and to ascertain the degree of compliance with this chapter or any regulation or order adopted pursuant to this chapter.

**Source: 13:9-17<sup>49</sup>**

**COMMENT**

References to "this act" have been changed to "this chapter." The reference to a "rule" has been eliminated. In subsection (a), the archaic "no action shall lie" has been changed to "no action shall be brought."

**FF-18 Permits**

a. In any district for which fire wardens have been appointed under the provisions of this chapter, no person shall, without obtaining an open burning permit from the department.

(1) set a forest on fire or cause a forest to be set on fire;

(2) set fire to or cause to be set on fire in any way, any waste, fallows, stumps, logs, brush, dry grass, or fallen timber, or any other material or vegetation, that may cause a forest fire.

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<sup>47</sup> **13:9-29. Arrests without warrant**

Any firewarden may arrest, without warrant, any person whom he has probable cause to believe is committing a violation of this act. Amended by L.1981, c. 369, §32, eff. Dec. 30, 1981.

<sup>48</sup> **13:9-16. Obstruction, threat, abuse, assault, injury or interference with firewarden, deputies or assistants**

No person shall obstruct, threaten, abuse, assault, injure or in anywise interfere with any firewarden, his deputies or assistants, or any one or more of them, in the performance of any duty under this chapter.

Amended by L.1981, c. 369, §22, eff. Dec. 30, 1981.

<sup>49</sup> **13:9-17. Right of trespass to extinguish wildfire; right of entry to inspect**

No action for trespass shall lie against any person crossing or working upon lands of another to extinguish wildfire. Any duly authorized employee of the department and any law enforcement officer or fire protection officer having jurisdiction to enforce any provision of this amendatory and supplementary act shall have power to enter upon any forest lands at any time in order to inspect the same and to ascertain the degree of compliance with this act and rule, regulation or order adopted pursuant to this act.

Amended by L.1981, c. 369, §23, eff. Dec. 30, 1981.

- b. Within the designated districts the open burning permit requirement supersedes any inconsistent law, regulation or ordinance.
- c. An open burning permit shall not be granted if the department finds that:
  - (1) any forest will be endangered; or
  - (2) the granting of the permit will violate the air pollution statutes.
- d. The granting of an open burning permit pursuant to this section shall not relieve any person from any penalty provided by this chapter if any forest is burned by wildfire.

**Source: 13:9-19<sup>50</sup>, 13:9-20<sup>51</sup>**

**COMMENT**

Source section 13:9-20 has been divided into this proposed section and several others, entitled "Fire watch" and "Backfires." This portion of source section 13:9-20 has been combined with source section 13:9-19 and redrafted for clarity. The fire districts referred to in this section are designated by a form of administrative circular, pursuant to source section 13:9-6 (see proposed section FF-11, Divisions, sections and districts).

**FF-19 Backfires**

a. A person may, without obtaining an open burning permit, set a back fire upon that person's own property to protect it from an approaching wildfire. If the back fire escapes to adjoining property, the person setting the back fire or causing it to be set, shall bear the costs of extinguishment and any damage incurred upon the property of another.

b. Any firewarden shall have the power to set any back fire.

**Source: 13:9-20 [above]**

**COMMENT**

The phrase "without obtaining an open burning permit" has been added to make more clear the relationship between this and other provisions.

**FF-20 Fire watch**

Any person maintaining a recreational fire, a permitted fire, or a fire to burn any brush, grass, litter, undergrowth or other material shall keep and maintain a competent watch. All reasonable precautions must be taken to prevent its escape from control. No such fire shall be left until extinguished or certified by a firewarden to be safely contained.

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<sup>50</sup> **13:9-19. Burning waste, vegetation or other materials; permits**

In any district for which firewardens have been appointed under the provisions of this chapter, no person shall set fire to or cause to be set on fire in any manner whatsoever; or to start fires anywhere and permit them to spread to forests, thereby causing damage to or threat to life or property, either accidentally or otherwise, directly or indirectly, in person or by agent, or cause to be burned waste, fallows, stumps, logs, brush, dry grass, fallen timber or any property, material, or vegetation being grown thereon, or anything that may cause a forest fire, without first obtaining the written permission of the department. Within the designated protection area this requirement supersedes any law, rule, regulation or ordinance inconsistent therewith. No such permission shall be granted if, in the department's opinion, any forest will be endangered thereby; or if it violates the air pollution statutes; nor shall any such permission, if granted, relieve or exonerate any person from any penalties provided by this chapter, if by reason of such wildfire, any forest be burned.

Amended by L.1981, c. 369, § 24, eff. Dec. 30, 1981.

<sup>51</sup> **13:9-20. Burning forest; permit; back fires; liability; recreational or permitted fire; precautions**

No person shall, unless granted a permit by the department, set fire to or burn, or cause to be burned, any forest, but nothing in this section shall be interpreted to forbid any person from setting a back fire upon his own property to protect the same; but, if such permitted back fire be allowed to escape or does escape to adjoining property, the person setting such back fire, or causing it to be set, shall be subject to costs of extinguishment and all damage incurred upon the property of another. Any firewarden, however, shall have power to set any back fire.

Any person maintaining a recreational fire or a permitted fire or a fire to burn any brush, grass, litter, undergrowth or other material shall keep and maintain a competent watch. All reasonable precautions must be taken to prevent its escape from control. No such fire shall be left until extinguished or certified by a firewarden to be safely contained.

Amended by L.1981, c. 369, §25, eff. Dec. 30, 1981.

**Source: 13:9-20 [above]**

**COMMENT**

This is one of three proposed sections which derive from source section 13:9-20 (see FF-18 and FF-19).

**FF-21 Forest fires**

In any district for which fire wardens have been appointed under the provisions of this chapter, no person shall, either purposefully, negligently or accidentally, or through an agent, set fire to a forest, or permit a fire to spread to a forest, thereby causing damage to or threat to life or property.

**Source: 13:9-19 [above]**

**COMMENT**

This provision has been extracted from the source section 13:9-19, the main provisions of which are contained in proposed section FF-18.

**FF-22 Duty to extinguish fires**

In any district for which firewardens have been appointed under the provisions of this chapter, any person who finds a wildfire burning in a forest or where the forest is endangered, shall immediately extinguish the fire and notify a firewarden as soon as possible.

**Source: 13:9-21<sup>52</sup>**

**COMMENT**

The phrase "in which a fire service is established" has been changed to the phrase "for which firewardens have been appointed under the provisions of this chapter" to make it parallel with the preceding section.

**FF-23 Theft, mutilation or destruction of property, equipment or posted notices**

No person shall willfully or maliciously steal, mutilate, tear down or destroy any Forest Fire Service property or equipment or any notice concerning forest fires which has been posted under regulations of the department.

**Source: 13:9-22<sup>53</sup>**

**COMMENT**

This section has been slightly reworded for clarity.

**FF-24 Accumulation of litter from trees**

a. Neither the owner of a forest, the lessee, a contractor or employee working with the authority of the owner, nor a person doing public work in a forest, shall permit the accumulation of any litter by human activity from trees within 100 feet of any road trail or fire break, in such a manner as to facilitate either the origin or spread of forest fires. An owner, lessee, contractor, employee or person doing public work who permits such accumulation shall be deemed to have created an extraordinary fire hazard which endangers life and property and to have maintained a public nuisance.

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<sup>52</sup> **13:9-21. Duty to extinguish fires and notify firewarden**

In any district in which a fire service is established, any person finding a wildfire burning in a forest or where the forest is endangered, shall immediately extinguish the same and shall notify a firewarden as soon as possible.

Amended by L.1981, c. 369, §26, eff. Dec. 30, 1981.

<sup>53</sup> **13:9-22. Theft, mutilation or destruction of property, equipment or posted notices**

No person shall willfully or maliciously steal, mutilate, tear down or destroy any forest fire service property, equipment or any notice concerning forest fires, which has been posted under regulations of the department.

Amended by L.1981, c. 369, §27, eff. Dec. 30, 1981.

b. If the department determines that an accumulation of litter prohibited under subsection (a) endangers the security of adjacent property, it shall require the owner, lessee, contractor, employee or person doing public work who is responsible for the accumulation to remove it. The department shall specify a reasonable time within which the accumulation shall be removed, and the manner in which it shall be removed, at the cost of the responsible person.

c. If the responsible person fails to remove the accumulation as directed by the department pursuant to subsection (b), the person shall be subject to penalties provided for in this chapter.

d. When the department considers it necessary to prevent danger to life or property, it may remove an accumulation of litter prohibited under subsection (a) and charge the costs to the responsible person.

e. If the removal of an accumulation prohibited under subsection (a) is done by prescribed burning, all the provisions and requirements of this chapter shall be observed. If fire escapes and damages the property of another, nothing done under this chapter shall operate as a release of responsibility.

**Source: 13:9-23,<sup>54</sup>13:9-24<sup>55</sup>**

#### COMMENT

The first subsection is derived from source section 13:9-23; the provisions have been extensively reworded for clarity. The remaining subsections derive from source section 13:9-24. They have been reworded somewhat less extensively for clarity.

The first sentence of source section 13:9-25, authorizing the department to investigate, has been eliminated as unnecessary.

### **FF-25 Civil liability for damages**

Compliance with the provisions of this chapter shall not bar any action for damages for which any person would otherwise be liable; but conformance with the provisions of this chapter and with the terms of any notice or order issued by the department may be shown and considered as evidence of the use of due care on the part of such person.

**Source: 13:9-25<sup>56</sup>**

#### COMMENT

The phrase "or corporation" has been eliminated as unnecessary.

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#### <sup>54</sup> **13:9-23. Accumulations in forests as extraordinary fire hazard and public nuisance**

The owner or lessee of any forest, any contractor or employee with authority of the owner of, or any person doing public work in or upon, such forest, who shall permit or suffer the accumulation by human activity of any litter from trees, to lie or be upon such forest within 100 feet of any road trail or fire break, to such an extent or in such manner as to facilitate either the origin or spread of forest fires, shall be deemed thereby to have created an extraordinary fire hazard, which endangers life and property and to have made and maintained a public nuisance.

Amended by L.1939, c. 246, p. 660, §1; L.1981, c. 369, §28, eff. Dec. 30, 1981.

#### <sup>55</sup> **13:9-24. Removal of fire hazard and nuisance; penalty**

On the complaint of a firewarden or any citizen, the department shall cause an investigation to be made of the alleged nuisance mentioned in section 13:9-23 of this Title. If, in its judgment, a situation endangering the security of adjacent property, either with reference to the possible origin or spread of forest fires, exists, it shall require the responsible party to remove such menace within a reasonable specified time, in manner as directed and at his own cost. If he neglects to do so, he shall be subject to penalties provided for in this act. When the department considers it necessary to prevent danger to life or property, it may abate such public nuisance and charge the costs to the responsible person, owner, lessee, firm, corporation or public agency. If the removal is done by burning, all the provisions and requirements of this chapter shall be observed. If fire escapes and damages the property of another, nothing done under this chapter shall operate as a release of responsibility therefor.

Amended by L.1981, c. 369, §29, eff. Dec. 30, 1981.

#### <sup>56</sup> **13:9-25. Compliance with chapter; civil liability for damages**

Compliance with the provisions of this chapter shall not bar any action for damages for which any person or corporation would otherwise be liable; but conformance with the provisions of this chapter and with the terms of any notice or order issued by the department may be shown and considered as evidence of the use of due care on the part of such person or corporation.

Amended by L.1981, c. 369, §30, eff. Dec. 30, 1981.

## **FF-26 Penalties**

All payments on account of penalties under this chapter shall be made to the department for the support of the Forest Fire Service.

**Source: 13:9-28<sup>57</sup>**

### **COMMENT**

No change except for "department" and "Forest Fire Service."

## **FF-27 Investigations**

The department shall have the power to conduct or participate in any investigation or survey designed to establish the cause of and responsibility for a particular wildfire and to cooperate with any law enforcement officers of this State with respect to violations of this chapter.

**Source: 13:9-44.4<sup>58</sup>**

### **COMMENT**

"Department of Environmental Protection" has been changed to "department." "This act" has been changed to "this chapter." The word "make" has been deleted from the phrase "make, conduct or participate in." The phrase "is authorized to" has been changed to "shall have the power to."

## **FF-28 Regulations**

The department shall have the power to make regulations and to issue orders to carry out the purposes of this chapter.

**Source: 13:9-44.5<sup>59</sup>**

### **COMMENT**

The "Department of Environmental Protection" has been changed to "department." The reference to the power of the department to make regulations has been simplified.

## **FF-29 Mechanisms which may cause wildfire**

No person shall:

- a. discharge or cause to be discharged, on or across any forest land, any incendiary device; or
- b. operate a welding torch or other mechanism which may cause a wildfire, without clearing flammable material surrounding the operation or without taking other precautions prescribed by the department to insure against the ignition and spread of wildfire.

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<sup>57</sup> **13:9-28. Penalties; payment and disposition**

All payments on account of penalties under this chapter shall be made to the Department of Environmental Protection for the support of the fire service.

Amended by L.1981, c. 369 §31, eff. Dec. 30, 1981.

<sup>58</sup> **13:9-44.4. Authority to make, conduct or participate in investigation of cause or responsibility for wildfire; cooperation**

The Department of Environmental Protection is authorized to make, conduct or participate in any investigation or survey designed to establish the cause of and responsibility for a particular wildfire and to cooperate with any law enforcement officers of this State with respect to violations of this act.

L.1981, c. 369, §4, eff. Dec. 30, 1981.

<sup>59</sup> **13:9-44.5. Rules and regulations; orders**

The Department of Environmental Protection is authorized to formulate, promulgate, amend, and repeal rules and regulations and to issue orders to carry out the purposes of this act.

L.1981, c. 369, §5, eff. Dec. 30, 1981.

**Source: 13:9-44.6<sup>60</sup>**

**COMMENT**

The source section has been divided into two proposed sections. This proposed section contains the prohibition against certain activities in a forest which may cause wildfire. The second proposed section, below, contains the provisions from the source section that deal with operation of devices without fire protection devices.

**FF-30 Fire protection devices**

a. No person shall operate or cause to be operated in a forest any engine, locomotive, power vehicle, equipment, or other machinery not equipped with spark arrestors or other fire protection devices approved by the department to prevent the escape of fire or sparks. Spark arrestors and other fire protection devices on such equipment or machinery must be in good working order and in use.

b. The department may prohibit the operation of any locomotive, rapid transit, engine, equipment, or other motorized unit not properly equipped with department approved fire protection devices.

c. The escape of fire from equipment or machinery required to have fire protection devices shall give rise to a presumption that the devices were not maintained properly in compliance with this section. A person charged with a violation of this section shall be permitted to introduce evidence to rebut the presumption of improper maintenance.

**Source: 13:9-44.6 [above]**

**COMMENT**

This proposed section contains the provisions from the source section that deal with operation of devices without fire protection devices. Subsection (c) has been rewritten to eliminate the archaic reference to a defendant being "put on his proof."

**FF-31 Objects likely to cause wildfire**

No person shall throw or drop within a forest a lighted cigarette, lighted cigar, match or live ashes, or any other object which is likely to cause a wildfire.

**Source: 13:9-44.7<sup>61</sup>**

**COMMENT**

The source section has been slightly reworded for clarity.

**FF-32 Rights-of-way of railroads**

a. The rights-of-way of all railroads which are operated through forests shall be prescribed burned by the railroad during the fall and winter months and kept cleared of all obsolete ties or other flammable material.

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<sup>60</sup> **13:9-44.6. Discharge of incendiary device, operation of mechanism which might cause wildfire or machinery without spark arrestor; precautions; presumption on escape of fire**

No person shall discharge or cause to be discharged any incendiary device on or across any forest land, or operate a welding torch or other mechanism which may cause a wildfire, without clearing flammable material surrounding the operation or without taking such other precautions as prescribed by the department to insure against the ignition and spread of wildfire, or cause to be operated any engine, locomotive, power vehicle, equipment, or other machinery not equipped with spark arrestors or other suitable controls, approved by the department by rule to prevent the escape of fire or sparks. Spark arrestors or devices must be in good working order and in use. The department may prohibit the operation of any locomotive, rapid transit, engine, equipment, or other motorized unit not properly equipped with department approved fire protection devices. Escape of fire from such equipment shall be presumed to be evidence that it was not maintained properly in compliance with this section. Any person in violation thereof may be put upon his proof to rebut such presumption in any civil proceeding under this act.

L.1981, c. 369, §6, eff. Dec. 30, 1981.

<sup>61</sup> **13:9-44.7. Throwing or dropping object within forest likely to cause wildfire**

No person shall throw or drop any object within forests which is likely to cause a wildfire, including but not limited to a lighted cigarette, lighted cigar, match or live ashes.

L.1981, c. 369, §7, eff. Dec. 30, 1981.

b. The department shall notify the owner of railroad right-of-way and the person responsible for the condition or operation of the property that failure to comply with the clearing requirement of subsection (a) will result in the property being declared a public nuisance which by reason of its condition or operation is a special forest fire hazard that endangers other property or human life.

c. The department shall notify the owner of railroad rights-of-way or the person responsible for the condition or operation of the property, that it has been declared a public nuisance and shall order the owner or other person to abate it.

**Source: 13:9-44.8<sup>62</sup>**

#### COMMENT

The source section has been divided into three subsections which have been reworded for clarity.

The inconsistent references to the responsible parties in the source section has been conformed to refer to "the owner of the railroad right-of-way" and "the person presonsible for the condition or operation of the property."

### FF-33 Costs of extinguishment

a. The department may, in the name of the State, recover costs of extinguishment and associated costs from any person or agency, public or private, whose negligent or knowing violation of any provision of this chapter caused a fire. The costs of extinguishment shall include the services of persons and equipment provided under this chapter to control, confine, extinguish, or suppress the fire.

b. If a claim for the costs of extinguishment is not paid within 60 days of being served upon the responsible party, the department may bring suit against the person or agency responsible for paying the claim in a court of competent jurisdiction to collect the claim.

**Source: 13:9-44.9<sup>63</sup>**

#### COMMENT

This section has been divided into two subsections and reworded for clarity.

In subsection (b), the triggering event for the running of the 60 day period has been added, providing that a claim must be paid within 60 days "of being served upon the responsible party."

### FF-34 Penalties; enforcement

If any person violates any of the provisions of this chapter or any rule, regulation or order promulgated pursuant to provisions of this chapter, the department may:

a. Institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation and the court may proceed in the action in a summary manner. Any person who violates the provisions of this act or any rule, regulation or order promulgated pursuant to this chapter shall be liable to a penalty of not more than \$5,000.00 for each offense, to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case before a court of competent jurisdiction

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<sup>62</sup> **13:9-44.8. Rights-of-way of railroads; burning and clearance; failure to comply; notice; declaration as public nuisance**

The rights-of-way of all railroads which are operated through forests shall be prescribed burned by the railroad during the fall and winter months and kept cleared of all obsolete ties or other flammable material. The department shall notify the owner of such property that failure to comply will result in the property being declared a public nuisance which by reason of its condition or operation is a special forest fire hazard and as such endangers other property or human life. The department shall notify the owner of such property or the person responsible for the condition or operation thereof, that it has been declared a public nuisance and order him to abate it.

L.1981, c. 369, §8, eff. Dec. 30, 1981.

<sup>63</sup> **13:9-44.9. Costs of extinguishment; recovery; action**

The department may, in the name of the State, recover costs of extinguishment and costs associated therewith from any person or agency, public or private, whose negligence or whose knowing violation of any provision of this act caused any fire in the State for the services of persons and equipment under the provisions of this act to control confine, extinguish, or suppress such fire. The claim shall be paid within 60 days and if not paid within that time, the department may bring suit against the person or agency in a court of competent jurisdiction for the collection of the claim.

L.1981, c. 369, §9, eff. Dec. 30, 1981.

wherein injunctive relief has been requested. The Superior Court and municipal courts shall have jurisdiction to enforce "the penalty enforcement law." The Attorney General or the prosecuting attorney of the municipality or county in which the offense was committed may prosecute the case. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department is authorized to settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances;

b. Petition the Attorney General to bring a criminal action against any person who knowingly violates any of the provisions of this chapter or any rule, regulation or order promulgated pursuant to the provisions of this chapter and thereby causes a wildfire. Such person shall, upon conviction, be guilty of a crime of the fourth degree and notwithstanding the provisions of N.J.S.2C:43-3 shall be subject to a fine of not more than \$100,000.00 for each offense; or

c. Levy a civil administrative remedy of not more than \$5,000.00 for each violation and additional penalties of not more than \$500.00 for each day during which such violation continues after receipt of an order from the department. No penalty shall be levied pursuant to this section until the person has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute violated; a concise statement of the facts alleged to constitute a violation; a statement of the person's right to a hearing. The person shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, then the notice shall become a final order after the expiration of the 20 day period. Payment is due when the final order is issued or the notice becomes a final order.

**Source: 13:9-44.10<sup>64</sup>**

#### COMMENT

"Act" changed to "chapter."

### FF-35 Closing of forests

a. Whenever the forests of the State are in danger of fire due to drought, the commissioner shall have the power to issue a proclamation forbidding entry into forests in such parts of the State as the department deems the public interest requires. The proclamation may include the suspension or curtailment of any open season for taking fish, game birds, game animals and furbearing animals.

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<sup>64</sup> **13:9-44.10. Penalties; enforcement**

If any person violates any of the provisions of this act or any rule, regulation or order promulgated pursuant to provisions of this act, the department may:

(a) Institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation and the court may proceed in the action in a summary manner. Any person who violates the provisions of this act or any rule, regulation or order promulgated pursuant to this act shall be liable to a penalty of not more than \$5,000.00 for each offense, to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court and municipal courts shall have jurisdiction to enforce "the penalty enforcement law." The Attorney General or the prosecuting attorney of the municipality or county in which the offense was committed may prosecute the case. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. The department is authorized to settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances;

(b) Petition the Attorney General to bring a criminal action against any person who knowingly violates any of the provisions of this act or any rule, regulation or order promulgated pursuant to the provisions of this act and thereby causes a wildfire. Such person shall, upon conviction, be guilty of a crime of the fourth degree and notwithstanding the provisions of N.J.S.2C:43-3 shall be subject to a fine of not more than \$100,000.00 for each offense; or

(c) Levy a civil administrative remedy of not more than \$5,000.00 for each violation and additional penalties of not more than \$500.00 for each day during which such violation continues after receipt of an order from the department. No penalty shall be levied pursuant to this section until the person has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute violated; a concise statement of the facts alleged to constitute a violation; a statement of the person's right to a hearing. The person shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, then the notice shall become a final order after the expiration of the 20 day period. Payment is due when the final order is issued or the notice becomes a final order.

L.1981,c.369, §10; amended 1991,c.91, §227.



b. A proclamation closing forests shall be in effect for the period of time stipulated by the commissioner. Notice of the proclamation shall be given in the manner the commissioner determines.

c. No person shall enter a forest which has been closed by proclamation of the commissioner without written permission from the commissioner.

**Source: 13:9-52<sup>65</sup>**

**COMMENT**

The source section has been divided into three subsections; all three have been rewritten for clarity.

**Provisions recommended for repeal:**

**13:9-12. Hourly compensation of district firewardens and helpers<sup>66</sup>**

**COMMENT**

This provision sets the compensation of certain firewardens, and has been long outdated. The fire service was of the impression that it had already been repealed.

**13:9-44.1. Short title<sup>67</sup>**

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**<sup>65</sup> 13:9-52. Drought; closing of forests and suspension or curtailment of open seasons for game and fish; proclamation of commissioner**

Notwithstanding the provisions of any other law to the contrary:

Whenever, by reason of drought, the forests of the State are in danger of fires, the commissioner shall have the authority to forbid by proclamation any person or persons, except those authorized by such proclamation, from entering forests in such parts of the State as the department deems the public interest requires, and may by such proclamation suspend or curtail any open season for taking fish, game birds, game animals and furbearing animals, or any of them, therein. Such proclamation shall be in effect at such time as the commissioner may determine after notice is given in the manner the commissioner may determine and remain in force and effect until rescinded by the commissioner. It shall be unlawful for any person or persons, except those authorized by written permission of the commissioner, to enter such forests while such proclamation shall be in effect.

L.1948, c. 11, p. 59, §1, eff. April 5, 1948. Amended by L.1981, c. 369, §33, eff. Dec. 30, 1981.

**<sup>66</sup> 13:9-12. Hourly compensation of district firewardens and helpers**

District firewardens and their helpers shall be paid at the following rates while fighting forest fires:

a. District firewardens, while engaged in fighting fires, two dollars for two hours or less, and fifty cents per hour thereafter; and, while otherwise employed, fifty cents per hour;

b. Helpers, fighting fire, one dollar for two hours or less, and forty cents per hour thereafter;

c. Helpers, on patrol or employed otherwise than fighting fire, forty cents per hour.

**<sup>67</sup> 13:9-44.1. Short title**

Sections 1 through 10 inclusive of this act shall be cited and may be known as the "Forest Fire Prevention and Control Act."  
L.1981, c. 369, §1, eff. Dec. 30, 1981.

## Chapter: Shade Tree and Community Forestry Assistance

### ST-1. Legislative findings

The Legislature finds and declares that shade trees and forests are a necessary and important part of community and urban environments, and are critical to the environmental, social and economic welfare of the State; that the ability of all county and municipal governments to care for and manage their shade trees could be enhanced through technical and financial assistance from a State community forestry program; that local governments have experienced recurring and damaging exposure to litigation due to the drastic decline and poor condition of the State's community tree resource; that properly planned and implemented local community forestry programs can provide the necessary basis for local governments to reduce or eliminate liability associated with local tree care programs and shade tree commissions; and that the viability of county and municipal shade tree commissions is essential to the preservation and enhancement of the State's community tree resource.

The Legislature therefore determines that it is appropriate for the State to encourage, promote and assist in the establishment, retention and enhancement of shade tree and community forestry programs by local governments; and that it is altogether fitting and proper to establish a shade tree and community forest preservation license plate, the revenues from which would be dedicated to the support of a State community forestry program.

**Source: 13:1L-17.2<sup>68</sup>**

#### COMMENT

No change.

### ST-2. Definitions

As used in this chapter:

"Community forestry" means the planting, protection, care and management of trees and other related natural resources within a municipality or county;

"Local government" means a municipality, county or other political subdivision of the State, or any agency thereof;

"Shade tree commission" means a municipal body created pursuant to R.S.40:64-1 et seq. or a county body created pursuant to R.S.40:37-1 et seq.; and

"State Forester" means the State Forester designated pursuant to [the proposed chapter entitled "Forest fires, and forest fire services".]

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#### **68 13:1L-17.2. Findings, declarations relative to shade trees, forests in communities**

The Legislature finds and declares that shade trees and forests are a necessary and important part of community and urban environments, and are critical to the environmental, social and economic welfare of the State; that the ability of all county and municipal governments to care for and manage their shade trees could be enhanced through technical and financial assistance from a State community forestry program; that local governments have experienced recurring and damaging exposure to litigation due to the drastic decline and poor condition of the State's community tree resource; that properly planned and implemented local community forestry programs can provide the necessary basis for local governments to reduce or eliminate liability associated with local tree care programs and shade tree commissions; and that the viability of county and municipal shade tree commissions is essential to the preservation and enhancement of the State's community tree resource.

The Legislature therefore determines that it is appropriate for the State to encourage, promote and assist in the establishment, retention and enhancement of shade tree and community forestry programs by local governments; and that it is altogether fitting and proper to establish a shade tree and community forest preservation license plate, the revenues from which would be dedicated to the support of a State community forestry program.

L.1996, c.135, §2.

**Source:13:1L-17.3<sup>69</sup>**

**COMMENT**

Superfluous definitions eliminated, cross-references conformed.

**ST-3. New Jersey Shade Tree and Community Forestry Program established.**

There is established in the Division of Parks and Forestry in the Department of Environmental Protection, under the supervision of the State Forester, the "New Jersey Shade Tree and Community Forestry Program," the purposes of which shall be to:

a. Assist local governments and shade tree commissions in establishing and maintaining community forestry programs and in encouraging persons to engage in appropriate and approved practices with respect to tree management and care;

b. Advise local governments and shade tree commissions in the development and coordination of policies, programs and activities for the promotion of community forestry;

c. Provide grants to local governments and shade tree commissions applying for assistance in the development and implementation of a comprehensive community forestry plan approved pursuant to this chapter, to the extent monies are appropriated or otherwise made available therefor;

d. Educate citizens on the importance of trees and forests and their role in the maintenance of a clean and healthy environment;

e. Provide technical assistance, planning and analysis for projects related to community forestry;

f. Provide training assistance to local governments and shade tree commissions regarding community forestry issues such as tree diseases, insect programs and tree planting and maintenance; and

g. Provide volunteer opportunities for the State's citizens and organizations interested in community forestry activities.

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**<sup>69</sup> 13:1L-17.3. Definitions relative to community forestry**

As used in this chapter"

"Commissioner" means the Commissioner of Environmental Protection;

"Community forestry" means the planting , production, care and management of trees and other related natural resources within a municipality or county;

"Department" means the Department of Environmental Protection;

"Local government" means a municipality, county or other political subdivision of the State, or any agency thereof;

"Shade tree commission" means a municipal body created pursuant to R.S. 40:64-1 et seq. or a county body created pursuant to R.S. 40:37-1 et seq.; and

"State Forester" means the State Forester designated pursuant to section 17 of P.L.1983, c.324 (C.13:1L-17).

L.1996, c.135, §3.

**Source: 13:1L-17.4<sup>70</sup>**

**COMMENT**

No change except to conform cross-references.

**ST-4. Community Forestry Council**

a. There is established in the department a Community Forestry Council, which shall consist of 20 members, appointed by the State Forester, all of whom shall be citizens with expertise or interest in trees, forestry, or tree or forest management, maintenance or care. Each of the members appointed shall serve for a term of three years and until a successor is appointed and qualified, except that of the members first appointed, seven shall serve terms of one year and seven shall serve terms of two years. All vacancies, except those created through the expiration of term, shall be filled for the unexpired term only, and in the same manner as the original appointment. Each member shall be eligible for reappointment, but may be removed by the commissioner or the State Forester for cause.

b. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting by the affirmative vote of a majority of the full membership of the council.

c. Members of the council shall serve without compensation, but may be reimbursed for expenses necessarily incurred in the discharge of their official duties.

d. The State Forester shall appoint a chairperson and vice-chairperson and the council may elect any other officers as may be necessary. The council may appoint such staff or any such experts as it may require within the limits of appropriations made for these purposes.

e. The council may call to its assistance any employees that are necessary and made available to it from any agency or department of the State or its political subdivisions.

f. The council may adopt any regulations necessary to carry out its responsibilities pursuant to this chapter.

g. The council shall advise the State Forester, the Division of Parks and Forestry and the department on issues concerning community forestry and assist with such other functions as may be authorized pursuant to this chapter.

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**<sup>70</sup> 13:1L-17.4. “New Jersey Shade Tree and Community Forestry Program” established**

There is established in the Division of Parks and Forestry in the Department of Environmental Protection, under the supervision of the State Forester, the “New Jersey Shade Tree and Community Forestry Program,” the purposes of which shall be to:

a. Assist local governments and shade tree commissions in establishing and maintaining community forestry programs and in encouraging persons to engage in appropriate and approved practices with respect to tree management and care;

b. Advise local governments and shade tree commissions in the development and coordination of policies, programs and activities for the promotion of community forestry;

c. Provide grants to local governments and shade tree commissions applying for assistance in the development and implementation of a comprehensive forestry plan approved pursuant to section 7 of P.L.1996, c.135 (C.13:1L-17.7) to the extent monies are appropriated or otherwise made available therefore;

d. Educate citizens on the importance of trees and forests and their role in the maintenance of a clean and healthy environment;

e. Provide technical assistance, planning and analysis for projects related to community forestry;

f. Provide training assistance to local governments and shade tree commissions regarding community forestry issues such as tree diseases, insect programs and tree planning and maintenance; and

g. Provide volunteer opportunities for the State’s citizens and organizations interested in community forestry activities.

L.1996, c.135, §4.

**Source: 13:1L-17.5<sup>71</sup>**

**COMMENT**

No change except to conform cross-references.

**ST-5. Duties of State Forester**

The State Forester, with the advice and assistance of the council, shall establish minimum standards, and provide a training skills and accreditation program, for representatives of local governments and shade tree commissions, the content of which shall be the appropriate and approved methods for the planting, protection, care and management of trees and other related natural resources under their control.

**Source: 13:1L-17.6<sup>72</sup>**

**COMMENT**

No change.

**ST-6. Comprehensive community forestry plans**

a. The State Forester, with the advice and assistance of the council, shall develop and make available to local governments and shade tree commissions a list of guideline elements found within a comprehensive community forestry plan. These guidelines shall establish but not limit the basic framework of an approved plan. The State Forester, with the advice and assistance of the council, shall develop and make available to local governments and shade tree commissions a procedure for submitting for approval a comprehensive community forestry plan.

b. A local government may develop and submit to the State Forester for approval a comprehensive community forestry plan according to procedures established by the department.

c. The State Forester, after review and comment by the council, shall approve a comprehensive community forestry plan if all required parts of the plan adequately address the needs of the community and the tree resource.

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**<sup>71</sup> 13:1L-17.5. Community Forestry Council, establishment, membership, powers**

a. There is established in the department a Community Forestry Council, which shall consist of 20 members, appointed by the State Forester, all of whom shall be citizens with expertise or interest in trees, forestry or tree or forest management, maintenance or care. Each of the members appointed shall serve for a term of three years and until a successor is appointed and qualified, except that of the members first appointed, seven shall serve terms of one year and seven shall serve terms of two years. All vacancies, except those created through the expiration of term, shall be filled for the unexpired term only, and in the same manner as the original appointment. Each member shall be eligible for reappointment, but may be removed by the commissioner or the State Forester for cause.

b. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the full membership of the council.

c. Members of the council shall serve without compensation, but may be reimbursed for expenses necessarily incurred in the discharge of their official duties.

d. The State Forester shall appoint a chairperson and vice-chairperson and the council may elect such other officers as necessary. The council may appoint such staff or hire such experts as it may require within the limits of appropriations made for these purposes.

e. The council may call to its assistance such employees as are necessary and made available to it from any agency or the department of the State or its political subdivisions.

f. The council may adopt, pursuant to the "Administrative Procedure act," P.L.1968, c.410 (C.52:14B-1 et seq.) and in consultation with the department any rules and regulations necessary to carry out its responsibilities pursuant to P.L.1996, c.135 (C.13:1L-17-1 et al.)

g. The council shall advise the State Forester, the Division of Parks and Forestry and the department on issues concerning community forestry and assist with such other functions as may be authorized pursuant to P.L.1996, c.135 (C.13:1L-17-1 et seq.) or any other law.

L.1996, c.135, §5.

**<sup>72</sup> 13:1L-17.6. Duties of State Forester**

The State Forester, with the advice and assistance of the council, shall establish minimum standards, and provide a training skills and accreditation program, for representatives of local governments and shade tree commissions, the content of which shall be the appropriate and approved methods for the planting, protection, care and management of trees and other related natural resources under their control.

L.1996, c.135, §6.

**Source: 13:1L-17.7<sup>73</sup>**

**COMMENT**

No change.

**ST-7. Annual report**

The commissioner, with advice from the State Forester, shall prepare an annual report on the status of the New Jersey Shade Tree and Community Forestry Program established pursuant to this chapter, which shall also include any recommendations for legislative or administrative action to improve implementation of this chapter, and transmit that report to the Governor, the President of the Senate, the Speaker of the General Assembly, and the chairpersons of the Senate Natural Resources and Economic Development Committee, the Senate Budget and Appropriations Committee, the Assembly Environment, Science and Technology Committee, and the Assembly Appropriations Committee, or the successors of those committees as designated respectively by the President of the Senate and the Speaker of the General Assembly.

**Source: 13:1L-17.8<sup>74</sup>**

**COMMENT**

No change except to conform cross-references.

**ST-8. Regulations**

The department shall adopt any regulations necessary to implement this chapter, including establishment of:

- a. Guidelines for development of a comprehensive community forestry plan;
- b. Criteria for proper selection, planting and care of trees;
- c. Procedures to accept and evaluate submitted comprehensive community forestry plans;
- d. Procedures for the review and approval of training skills and accreditation programs in tree care and management for local officials;
- e. Guidelines for the provision of technical assistance under the program to local governments and shade tree commissions in the formation of comprehensive community forestry plans; and
- f. Criteria for ranking grant applications received from local governments and shade tree commissions applying for assistance in the development and implementation of comprehensive community forestry plans.

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**<sup>73</sup> 13:1L-17.7. Development, distribution of comprehensive community forestry plan, approval**

a. The State Forester, with the advice and assistance of the council, shall develop and make available to local governments and shade tree commissions a list of guideline elements found within a comprehensive community forestry plan. These guidelines shall establish but not limit the basic framework of an approved plan. The State Forester, with the advice and assistance of the council, shall develop and make available to local governments and shade tree commission a procedure for submitting for approval a comprehensive community forestry plan.

b. A local government may develop and submit to the State Forester for approval a comprehensive community forestry plan according to procedures established by the department.

c. The State Forester, after review and comment by the council, shall approve a comprehensive community forestry plan if all required parts of the plan adequately address the needs of the community and the tree resource.

L.1996, c.135, §7.

**<sup>74</sup> 13:1L-17.8. Annual Report on status of New Jersey Shade Tree and Community Forestry Program**

The commissioner, with advice from the State Forester, shall prepare an annual report on the status of the New Jersey Shade Tree and Community Forestry Program established pursuant to section 4 of P.L.1996, c.135 (C.13:1L-17.4), which shall also include any recommendations for legislative or administrative action to improve implementation of that act, and transmit that report to the Governor, the President of the Senate, the Speaker of the General Assembly, and the chairpersons of the Senate Natural Resources and Economic Development Committee, the Senate Budget and Appropriations Committee, the Assembly Environment, Science and Technology Committee, and the Assembly Appropriations Committee, or the successors of those committees as designated respectively by the President of the Senate and the Speaker of the General Assembly.

L.1996, c.135, §8.

**Source: 13:1L-17.9<sup>75</sup>**

**COMMENT**

No change except to eliminate superfluous reference to the Administrative Procedure Act.

**Recommended for repeal:**

**13:1L-17.1. Short title**

Sections 1 through 9 of this act shall be known and may be cited as the "New Jersey Shade Tree and Community Forestry Assistance Act."

**L.1996,c.135,s.1.<sup>76</sup>**

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**<sup>75</sup> 13:1L-17.9. Rules, regulations**

The department shall adopt, pursuant to the "Administrative Procedure act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be necessary to implement P.L.1996, c.135 (C.13:1L-17.1 et al.), including establishment of:

- a. Guidelines for development of a comprehensive community forestry plan;
- b. Criteria for proper selection, planting and care of trees;
- c. Procedures to accept and evaluate submitted comprehensive forestry plans;
- d. Procedures for the review and approval of training skills and accreditation programs in tree care and management for local officials;
- e. Guidelines for the provision of technical assistance under the program to local governments and share tree commissions in the formation of comprehensive community forestry plans; and
- f. Criteria for ranking grant applications received from local governments and shade tree commissions applying for assistance in the development and implementation of comprehensive community forestry plans.

L.1996, c.135, §9.

**<sup>76</sup> 13:1L-17.1. Short title**

Sections 1 through 9 of this act shall be known and may be cited as the "New Jersey Shade Tree and Community Forestry Assistance Act.:  
L.1996, c.135, §1

## Chapter: TRAILS SYSTEM

### TS-1 Definitions

As used in this chapter:

a. "Scenic easement" means a perpetual easement in land which (1) is held for the benefit of the public (2) is specifically enforceable by its holder or beneficiary, and (3) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of activities conducted thereon, the object of such limitations and obligations being the maintenance or enhancement of the natural beauty of the land in question or of areas affected by it.

b. "Scenic trail" means an extended trail so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the significant scenic, historic, natural or cultural qualities of the areas through which such trails may pass.

**Source: 13:8-32<sup>77</sup>**

#### COMMENT

The definitions of "department" and "commissioner" in the source statute have been eliminated as unnecessary.

### TS-2 Legislative findings

a. The Legislature hereby finds that in order to provide for the ever-increasing outdoor recreation needs of an expanding population, and in order to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural and remote areas of this State, trails should be established both in natural and scenic areas of New Jersey, and in and near the urban areas of this State.

b. The Legislature declares that it is the policy of this State to provide the means for attaining these objectives by instituting a Statewide system of recreation and scenic trails, by designating the Appalachian trail as the initial component of that system, and by prescribing the methods by which, and standards according to which, additional components may be added to the system.

**Source: 13:8-31<sup>78</sup>**

#### COMMENT

Very minor style changes in capitalization. In subsection (b), the word "therefore" has been eliminated.

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#### <sup>77</sup> 13:8-32. Definitions

As used in this act, unless the context clearly indicates otherwise:

a. "Department" means the Department of Environmental Protection.

b. "Commissioner" means the Commissioner of Environmental Protection.

c. "Scenic easement" means a perpetual easement in land which (1) is held for the benefit of the public (2) is specifically enforceable by its holder or beneficiary, and (3) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of activities conducted thereon, the object of such limitations and obligations being the maintenance or enhancement of the natural beauty of the land in question or of areas affected by it.

d. "Scenic trail" means an extended trail so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the significant scenic, historic, natural or cultural qualities of the areas through which such trails may pass.

L.1974, c. 159, §3, eff. Nov. 14, 1974.

#### <sup>78</sup> 13:8-31. Legislative findings and declaration

a. The Legislature hereby finds that in order to provide for the ever-increasing outdoor recreation needs of an expanding population, and in order to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural and remote areas of this State trails should be established both in natural and scenic areas of New Jersey, and in and near the urban areas of this State.

b. The Legislature, therefore, declares that it is the policy of this State to provide the means for attaining these objectives by instituting a Statewide system of recreation and scenic trails, by designating the Appalachian trail as the initial component of that system, and by prescribing the methods by which, and standards according to which, additional components may be added to the system.

L.1974, c. 159, §2, eff. Nov. 14, 1974.



### TS-3 Establishment of trails system

a. The department shall establish and maintain a State trails system of recreation trails, scenic trails and connecting or side trails in the State composed of (1) the Appalachian trail, and (2) such other trails that are established or designated from time to time by the department under the provisions of this chapter.

b. The department, in consultation with appropriate federal, state, and local governmental agencies and public and private organizations, shall establish a uniform marker for the trails system, and shall coordinate the trails system with the National trails system established under applicable provisions of federal law.

**Source: 13:8-34<sup>79</sup>**

#### COMMENT

In subsection (a), the word "act" is changed to "chapter."

### TS-4 Classes of trails

The state trails system shall be composed of the following classes of trails:

a. State scenic trails, which will be extended trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological, or cultural qualities of the areas through which such trails may pass. Each of these trails will be limited exclusively to foot use, except that the use by horses or nonmotorized bicycles may also be permitted on segments of scenic trails where deemed appropriate by the department.

b. State recreation trails, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.

c. Connecting or side trails, which will provide additional points of public access to State scenic or recreation trails or which will provide connections between such trails. They shall be of the nature of the trails they serve.

**Source: 13:8-33<sup>80</sup>**

#### COMMENT

No change.

### TS-5 Designation of trails

a. The department may establish and designate recreation and scenic trails over lands administered by it.

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**<sup>79</sup> 13:8-34. Establishment of system; uniform markers; coordination with national trails system**

a. The department is hereby authorized, empowered, and directed to establish a State trails system of recreation trails, scenic trails and connecting or side trails in the State composed of (1) the Appalachian trail, and (2) such other trails that are established or designated from time to time by the department under the provisions of this act.

b. The department, in consultation with appropriate Federal, State, and local governmental agencies and public and private organizations, shall establish a uniform marker for the trails system, and shall coordinate the trails system with the National trails system established under applicable provisions of Federal law.

L.1974, c. 159, §5, eff. Nov. 14, 1974.

**<sup>80</sup> 13:8-33. Classes of trails**

The State trails system shall be composed of the following classes of trails:

a. State scenic trails, which will be extended trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological, or cultural qualities of the areas through which such trails may pass. Each of these trails will be limited exclusively to foot use, except that the use by horses or nonmotorized bicycles may also be permitted on segments of scenic trails where deemed appropriate by the department.

b. State recreation trails, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.

c. Connecting or side trails, which will provide additional points of public access to State scenic or recreation trails or which will provide connections between such trails. They shall be of the nature of the trails they serve.

L.1974, c. 159, §4, eff. Nov. 14, 1974.

b. Connecting or side trails within other lands owned or administered by the State may be established, designated and marked as components of a recreation or scenic trail.

**Source: 13:8-35<sup>81</sup>**

#### COMMENT

Subsection (b) of the source section has been combined with the provisions of 13:8-29 in a new proposed section TS-6 Appalachian Trail (see below). In subsection (c) of the source section (now subsection (b) of the proposed section) the phrase "park, forest, and other recreation areas or natural areas" has been changed to "other lands owned or administered by the State."

### TS-6 Appalachian Trail

a. The Commissioner of the department shall have the power, in consultation with the Appalachian Trail Conference and the United States Secretary of the Interior, to acquire title to, easements over, or controlled use agreements relating to, sections of the Appalachian Trail lying within the State which are not in public ownership. Acquisition shall be in the name of the State and may be by gift, purchase or appropriation.

b. Any section of the Appalachian Trail in which the department acquires any property shall be designated as a scenic trail, and shall be administered by the department primarily as a footpath.

c. The department shall have the power to construct suitable shelters or other facilities for use by hikers on the Trail.

d. The department shall have the power to enter into cooperative agreements with the Appalachian Trail Conference or the Secretary of the Interior regarding the operation, maintenance and supervision of the Trail.

**Source: 13:8-35 [see above], 13:8-29<sup>82</sup>**

#### COMMENT

This proposed provision incorporates the provisions of source section 13:8-29 (see L.1973, c.54, sec. 1), the enactment of which briefly predated the enactment of the "Trails System Act," (see L.1974, c.159), with subsection (b) of source section 13:8-35.

### TS-7 Selection of routes and rights-of-way

a. The selected route of any trail designated as part of the system shall be compatible with the preservation or enhancement of the environment it traverses, and the boundaries of the right-of-way shall be established in such a manner that they protect the scenic values of the trail.

b. In selecting rights-of-way, the department shall give full consideration to minimizing the adverse effects upon the adjacent landowner or user and the landowner's or user's operation. Development and management of each segment of the trails system shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land.

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**81 13:8-35. Establishment and designation; recreation and scenic trails; Appalachian trail; connecting or side trails**

a. The department may establish and designate recreation and scenic trails over lands administered by it.

b. There is hereby established as the initial scenic trail the Appalachian trail, which shall be administered primarily as footpath by the department, provided however, that nothing herein contained shall be construed as amending, repealing or superseding the provisions of P.L.1973, c. 54 (C. 13:8-29), except as specifically provided herein.

c. Connecting or side trails within park, forest, and other recreation areas or natural areas may be established, designated and marked as components of a recreation or scenic trail.

L.1974, c. 159, §6, eff. Nov. 14, 1974.

**82 13:8-29. Easements; acquisition**

The Commissioner of the Department of Environmental Protection is hereby authorized to acquire by gift, purchase or appropriation, in the name of the State and in consultation with the Appalachian Trail Conference and the United States Secretary of the Interior, title to easements over, or controlled use agreements relating to, sections lying within the State of the hiking trail commonly known as the Appalachian Trail which are not in public ownership; to construct thereon suitable shelters or other facilities for use by hikers; and to enter into cooperative agreements with the conference or secretary regarding the operation, maintenance and supervision thereof.

L.1973, c. 54, §1, eff. March 7, 1973.

**Source: 13:8-36<sup>83</sup>**

**COMMENT**

In subsection (a), the phrase "of any trail designated as part of the system" has been added for clarity. Other grammatical changes have been made for gender neutrality.

**TS-8 Use of state lands for trails**

The department may use for trail purposes lands owned by the State, with the concurrence of the head of the administering agency, and may acquire lands or interests in land by scenic easements, written cooperative agreement, eminent domain, donation, purchase with donated or appropriated funds, or exchange.

**Source: 13:8-37<sup>84</sup>**

**COMMENT**

The final sentence, "Acquisition of land or interest shall be accomplished with all possible speed" has been eliminated as superfluous given the 20 year period since the enactment of the source legislation.

**TS-9 Maintenance of natural and scenic qualities**

Within the external boundaries of the right-of-way of trails within the trails system, the natural vegetation shall be kept undisturbed except for any clearing required for construction of the trail, occasional vistas, or trail-use facilities. The department shall make every effort to avoid any use of the right-of-way of any trail in the trails system that is incompatible with the purposes for which the trails were established. Development and management of each segment of the State trails system shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continual maximum benefits from the land. Other uses along the trail which will not substantially interfere with the nature and purposes of the trail may be permitted by the department.

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**83 13:8-36. Selection of routes and rights-of-way; criteria**

a. The selected route shall be compatible with the preservation or enhancement of the environment it traverses, and the boundaries of the right-of-way shall be established in such a manner that they protect the scenic values of the trail.

b. In selecting rights-of-way, the department shall give full consideration to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the trails system shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land.

L.1974, c. 159, §7, eff. Nov. 14, 1974.

**84 13:8-37. Use of state lands; acquisition of lands or interests in land**

The department may use for trail purposes lands owned by the State, with the concurrence of the head of the administering agency, and may acquire lands or interests in land by scenic easements, written cooperative agreement, eminent domain, donation, purchase with donated or appropriated funds, or exchange. Acquisition of land or interest shall be accomplished with all possible speed.

L.1974, c. 159, §8, eff. Nov. 14, 1974.

State scenic trails shall be managed in such a way as to maintain their natural and scenic quality.

**Source: 13:8-38<sup>85</sup>**

**COMMENT**

The phrase "of trails within the trails system" has been added to the first and second sentences for clarity.

**TS-10 Development and maintenance of trails**

a. The department shall provide for the development and maintenance of trails in the trails system and shall cooperate with and encourage other State agencies to operate, develop and maintain portions of such trails which are located in areas administered by those agencies.

b. When deemed to be in the public interest, the department may enter into written cooperative agreements with local governments, landowners, private organizations or individuals to operate, develop and maintain any portion of a recreation or scenic trail.

**Source: 13:8-39<sup>86</sup>**

**COMMENT**

In subsection a., "such agencies" has been changed to "those agencies"; the reference to trails "established under this act" has been changed to trails "in the trails system."

**TS-11 Studies for designation of additional trails**

The department shall make studies for the purpose of determining the feasibility and desirability of designating additional trails as recreation or scenic trails.

**Source: 13:8-40<sup>87</sup>**

**COMMENT**

No change.

**TS-12 Railroad rights-of-way**

The department shall review all formal declarations of railroad right-of-way abandonments by federal agencies for possible inclusion in the State trails system.

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**85 13:8-38. Noninterference with nature and purposes by use of trail; maintenance of natural and scenic qualities**

Within the external boundaries of the right-of-way, the natural vegetation shall be kept undisturbed except for any clearing required for construction of the trail, occasional vistas, or trail-use facilities. The department shall make every effort to avoid any use of the right-of-way that is incompatible with the purposes for which the trails were established. Development and management of each segment of the State trails system shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continual maximum benefits from the land. Other uses along the trail which will not substantially interfere with the nature and purposes of the trail may be permitted by the department.

State scenic trails shall be managed in such a way as to maintain their natural and scenic quality.  
L.1974, c. 159, §9, eff. Nov. 14, 1974.

**86 13:8-39. Development and maintenance of trails; written cooperative agreements**

a. The department shall provide for the development and maintenance of trails established under this act and shall cooperate with and encourage other State agencies to operate, develop and maintain portions of such trails which are located in areas administered by such agencies.

b. When deemed to be in the public interest, the department may enter into written cooperative agreements with local governments, landowners, private organizations or individuals to operate, develop and maintain any portion of a recreation or scenic trail.

L.1974, c. 159, §10, eff. Nov. 14, 1974.

**87 13:8-40. Studies for designation of additional trails**

The department shall make studies for the purpose of determining the feasibility and desirability of designating additional trails as recreation or scenic trails.

L.1974, c. 159, §11, eff. Nov. 14, 1974.

**Source: 13:8-41<sup>88</sup>**

**COMMENT**

The reference to the Interstate Commerce Commission has been eliminated, leaving the general reference to "federal agencies."

**TS-13 Regulations**

The commissioner may adopt any regulations which the commissioner deems necessary to effectuate the purposes of this chapter, including regulations governing the use, protection, management, development and administration of the trails system.

**Source: 13:8-42<sup>89</sup>**

**COMMENT**

Minor editorial changes necessary to effectuate the purposes of this chapter.

**TS-14 Penalties**

Any person violating a regulation promulgated under this chapter shall be liable for a penalty of not more than \$50.00 to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.).

**Source: 13:8-43<sup>90</sup>**

**COMMENT**

The reference to violations of "this act" has been deleted as there are no penal provisions in the act. Various other minor language changes.

**TS-15 Funds available for acquisition of lands or interests therein**

The commissioner may use any sum hereafter appropriated by any act from the proceeds of the sale of bonds and such other sums as may be appropriated for like purposes for the acquisition of lands or interests therein for the purposes of this chapter.

**Source: 13:8-44<sup>91</sup>**

**COMMENT**

No change except to generalize the reference to funds from bond acts, as there have been numerous "Green Acres" bond acts enacted since 1974.

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**88 13:8-41. Review of formal declarations of railroad right-of-way abandonments for inclusion in system**

The department shall review all formal declarations of railroad right-of-way abandonments by the Interstate Commerce Commission or other Federal agencies, for possible inclusion into the State trails system.  
L.1974, c. 159, §12, eff. Nov. 14, 1974.

**89 13:8-42. Rules and regulations**

The commissioner may adopt and promulgate pursuant to law, rules and regulations governing the use, protection, management, development and administration of the trails system and such other rules and regulations as he deems necessary to effectuate the purposes of this act.  
L.1974, c. 159, §13, eff. Nov. 14, 1974.

**90 13:8-43. Violations; penalties**

Any person violating any provision of this act or any rule or regulation promulgated thereunder shall be liable to a penalty of not more than \$50.00 to be collected in a summary proceeding pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.).  
L.1974, c. 159, §14, eff. Nov. 14, 1974.

**91 13:8-44. Funds available for acquisition of lands or interests therein**

The commissioner may use any sum hereafter appropriated by any act from the proceeds of the sale of bonds under the New Jersey Green Acres Land Acquisition Act of 1971, P.L.1971, c. 419 (C. 13:8A-19 et seq.), and such other sums as may be appropriated for like purposes for the acquisition of lands or interests therein for the purposes of this act.  
L.1974, c. 159, §15, eff. Nov. 15, 1974.

**Section recommended for repeal:**

**13:8-30. Short title<sup>92</sup>**

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<sup>92</sup> **13:8-30. Short title**

This act shall be known and may be cited as the "New Jersey Trails System Act."  
L.1974, c. 159, §1, eff. Nov. 14, 1974.

## **Chapter: MORRIS CANAL AND BANKING COMPANY**

### **CHAPTER NOTE**

The Morris Canal and Banking Company came into existence by legislative act in 1824, see L.1824, p.158. The purpose of the company, as expressed in the title to the act, was to build a canal to link the Delaware and Passaic rivers for the purpose of commercial navigation. The canal was duly built and operated into the early twentieth century.

The corporate charter embodied in the 1824 act gave the company the power of eminent domain to acquire property for the canal. The 1824 act also provided, however, that the property acquired, as well as any improvements upon it, would revert to state ownership at the expiration of 99 years (provided that the State paid the then "fair value" of the Canal), or outright at the expiration of 50 additional years after the expiration of the 99 years. See L.1824, p.158.

By legislation enacted in 1922, the State empowered a group of commissioners to negotiate with the Canal and Banking Company, as well as the Lehigh Valley Railroad Company (a lessee of certain of the canal property), to acquire all stock of the Canal Company as well as all rights in the canal itself. The acquisition process was ongoing when the Legislature adopted L.1923, c.11, which vested "the title to all of the property and property rights acquired or to be acquired by the State of New Jersey" under the 1922 act in the Canal Company "in trust for the State of New Jersey." By an act of 1924, L.1924, c.229, the navigation function of the canal was abolished and authority was given to convey various assets of the Canal Company, i.e., the land, the water rights, etc., for specified purposes and under certain conditions.

The convenience of maintaining the MCBC as a corporate entity apparently persisted at the time of the 1937 Revision, presumably in order to facilitate certain pending land transactions, see R.S. 13:12-7, and projects to complete the conversion of the former canal bed and install certain improvements, see R.S. 13:12-19 (removal of bridges), R.S. 13:12-20 (repair of dams, sluice gates, etc.). The relevant provisions in the Revised Statutes concerning the Company carefully continue its corporate existence, and memorialize certain property and water rights, as well as certain obligations, which inhered in the Company. See, e.g., R.S. 13:12-4 (rights of the MCBC in the waters of certain lakes held in trust for certain public purposes, provided the rights of adjacent riparian owners be maintained). Three state officials were made eligible to be directors of the canal Company, see R.S. 13:12-7, and were given the authority to manage the Company, R.S. 13:12-9. Currently, administrative responsibility for the remaining lands and obligations of the Company are assigned to the Division of Parks and Forestry in the Department of Environmental Protection.

Almost 60 years after the adoption of the Revised Statutes, and more than 70 years after the State takeover of the MCBC, there appears to be no further reason to maintain the fiction of a separate corporate existence of the Company. The first provision set forth below abolishes the corporate existence of the Company and provides that all right, title and interest in the Company and all of its property is vested in the State of New Jersey.

Certain obligations of the State, such as maintaining the water level in Lake Hopatcong and preserving the interest of riparian owners in certain other waters formerly affected by the canal, should be retained as part of the permanent and general law and they are continued in this draft chapter. It should also be noted that the entire length of the Morris Canal is listed in the New Jersey and National Registers of Historic Places, which affords protection to the physical attributes of the canal.

### **MC-1 Morris Canal and Banking Company abolished**

The corporate existence of the Morris Canal and Banking Company, chartered by the act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," passed December thirty-one, one thousand eight hundred and twenty-four (L.1824, p. 158) is hereby abolished.

All rights and obligations of the former Morris Canal and Banking Company shall be vested in the State of New Jersey, including all title and interest in any real property and in any personal property of the Morris Canal and Banking Company, all rights of the former Morris Canal and Banking Company in the Morris Canal remaining as to the effective date of this act, and all rights formerly exercised under the provisions of the following acts: "An act to authorize the acquisition by the state of the Morris canal (as defined in this act), in whole or in

part, and all the stock of the Morris Canal and Banking Company and the rights of all stockholders in said company in said canal property and water rights, and all or any part of the right, title and interest of the Lehigh Valley Railroad Company in said canal property and water rights by virtue of its lease of said canal from the Morris Canal and Banking Company, or otherwise; to provide for a commission authorized to negotiate and agree upon terms of settlement with the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, in relation to the said canal property and water rights, and to vest in said commission certain powers necessary for carrying out the terms of settlement and to make such other provisions as may be necessary to effectuate the objects aforesaid," approved March eleven, one thousand nine hundred and twenty-two (L.1922, c. 212, p. 367) and "An act to vest in the Morris Canal and Banking Company, in trust for the state of New Jersey, all of the property and property rights, other than shares of the capital stock, bonds and scrip of said company, acquired or to be acquired by the state of New Jersey under and by virtue of the agreement entered into under the authority of an act entitled "An act to authorize the acquisition by the state of the Morris canal (as defined in this act), in whole or in part, and all the stock of the Morris Canal and Banking Company and the rights of all stockholders in said company and in said canal property and water rights, and all or any part of right, title and interest of the Lehigh Valley Railroad Company in said canal property and water rights by virtue of its lease of said canal from the Morris Canal and Banking Company, or otherwise; to provide for a commission authorized to negotiate and agree upon terms of settlement with the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, in relation to the said canal property and water rights, and to vest in said commission certain powers necessary for carrying out the terms of settlement and to make such other provisions as may be necessary to effectuate the objects aforesaid,' approved March eleventh, one thousand nine hundred and twenty-two," approved February twenty-eight, one thousand nine hundred and twenty-three (L.1923, c. 11, p. 34).

Source: 13:12-1<sup>93</sup> 13:12-3<sup>94</sup>

#### COMMENT

The first source provision is that from the 1937 Revised Statutes which continued the corporate existence of the Canal Company; the second source provision provides that the property of the Company shall be held in trust for the State of New Jersey. The revised statute abolishes the corporate existence of the Canal Company and provides that all rights and obligations of the former Company, including all of its property interests, shall be vested in the State of New Jersey.

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#### <sup>93</sup> 3:12-1. Corporate existence of canal and banking company continued

The corporate existence of the Morris Canal and Banking Company, chartered by the act entitled "An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers," passed December thirty-one, one thousand eight hundred and twenty-four (L.1824, p. 158), and hereinafter in this chapter designated as the "canal and banking company", is continued.

#### <sup>94</sup> 13:12-3. Title to property vested in canal and banking company in trust for state

The title to all the property and property rights acquired or to be acquired by the state of New Jersey, under and by virtue of the agreement entered into under the authority of the act entitled "An act to authorize the acquisition by the state of the Morris canal (as defined in this act), in whole or in part, and all the stock of the Morris Canal and Banking Company and the rights of all stockholders in said company in said canal property and water rights, and all or any part of the right, title and interest of the Lehigh Valley Railroad Company in said canal property and water rights by virtue of its lease of said canal from the Morris Canal and Banking Company, or otherwise; to provide for a commission authorized to negotiate and agree upon terms of settlement with the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, in relation to the said canal property and water rights, and to vest in said commission certain powers necessary for carrying out the terms of settlement and to make such other provisions as may be necessary to effectuate the objects aforesaid," approved March eleven, one thousand nine hundred and twenty-two (L.1922, c. 212, p. 367), other than the shares of capital stock, bonds and scrip of the canal and banking company, the title to all of which property, other than such shares of stock, bonds and scrip, was vested in the canal and banking company in trust for the state of New Jersey by section one of the act entitled "An act to vest in the Morris Canal and Banking Company, in trust for the state of New Jersey, all of the property and property rights, other than shares of the capital stock, bonds and scrip of said company, acquired or to be acquired by the state of New Jersey under and by virtue of the agreement entered into under the authority of an act entitled "An act to authorize the acquisition by the state of the Morris canal (as defined in this act), in whole or in part, and all the stock of the Morris Canal and Banking Company and the rights of all stockholders in said company and in said canal property and water rights, and all or any part of right, title and interest of the Lehigh Valley Railroad Company in said canal property and water rights by virtue of its lease of said canal from the Morris Canal and Banking Company, or otherwise; to provide for a commission authorized to negotiate and agree upon terms of settlement with the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, in relation to the said canal property and water rights, and to vest in said commission certain powers necessary for carrying out the terms of settlement and to make such other provisions as may be necessary to effectuate the objects aforesaid,' approved March eleventh, one thousand nine hundred and twenty-two," approved February twenty-eight, one thousand nine hundred and twenty-three (L.1923, c. 11, p. 34), shall continue to be so vested in the canal and banking company in trust for the state of New Jersey.



## **MC-2 Morris Canal defined**

The term "Morris canal" as used in this chapter, means and includes all of the property, lands, rights, easements, privileges and franchises of whatsoever character vested on March eleven, one thousand nine hundred and twenty-two, in the Morris Canal and Banking Company as well as that which on said date had passed to or had been directly or indirectly acquired by the Lehigh Valley Railroad Company, a corporation of the commonwealth of Pennsylvania, as lessee under and by virtue of a certain indenture of lease, dated May fourth, one thousand eight hundred and seventy-one, between the Morris Canal and Banking Company and the Lehigh Valley Railroad Company under and by virtue of the authority of the act entitled "A further supplement to 'An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers,' passed December thirty-one, one thousand eight hundred and twenty-four," approved March fourteen, one thousand eight hundred and seventy-one (L.1871, c. 153, p. 444), including two tracts of land and land under water in Jersey City fronting on the Hudson river, known as the "Little basin" and the "Big basin", respectively, and including any water rights and rights of diversion vested on March eleven, one thousand nine hundred and twenty-two, or prior to such date, vested in the Lehigh Valley Railroad Company or the Morris Canal and Banking Company, excepting any such rights that may have been acquired by any municipality of this state.

**Source: 13:12-2<sup>95</sup>**

### **COMMENT**

The source provision, repeated with only minor editorial change in the revised provision, defines the bundle of rights and obligations constituting the "Morris Canal."

## **MC-3 Rights in certain lakes maintained for public purposes**

a. The rights vested in the former Morris Canal and Banking Company to impound and divert waters of lakes, ponds and streams, and the property and rights vested in such company in Lake Hopatcong, Lake Musconetcong--otherwise known as Stanhope reservoir--Cranberry lake, Bear ponds, the pond on the Musconetcong river at Saxton Falls, and Greenwood lake, together with all such lands, easements, rights and other property, the title to which is now vested in the State of New Jersey, as may be necessary to maintain such lakes and ponds, or as may be of public value for public parks or recreation areas, shall be maintained by the State for the public use of conserving the public waters of the State or for public use for recreation, and shall be and are hereby dedicated to such public use.

b. The Department of Environmental Protection is hereby authorized and directed to control, maintain and operate the dams and sluice gates at the lakes and ponds specified in this section for the foregoing public purposes and in such manner that the rights of the riparian owners upon such lakes and ponds and the outlets thereof shall be properly conserved.

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### **95 13:12-2. "Morris canal" defined**

The term "Morris canal" as used in this chapter, and hereinafter designated as the "canal", means and includes all of the property, lands, rights, easements, privileges and franchises of whatsoever character vested on March eleven, one thousand nine hundred and twenty-two, in the Morris Canal and Banking Company as well as that which on said date had passed to or had been directly or indirectly acquired by the Lehigh Valley Railroad Company, a corporation of the commonwealth of Pennsylvania, as lessee under and by virtue of a certain indenture of lease, dated May fourth, one thousand eight hundred and seventy-one, between the Morris Canal and Banking Company and the Lehigh Valley Railroad Company under and by virtue of the authority of the act entitled "A further supplement to 'An act to incorporate a company to form an artificial navigation between the Passaic and Delaware rivers,' passed December thirty-one, one thousand eight hundred and twenty-four," approved March fourteen, one thousand eight hundred and seventy-one (L.1871, c. 153, p. 444), including two tracts of land and land under water in Jersey City fronting on the Hudson river, known as the "Little basin" and the "Big basin", respectively, and including any water rights and rights of diversion vested on March eleven, one thousand nine hundred and twenty-two, or prior to such date, vested in the Lehigh Valley Railroad Company or the Morris Canal and Banking Company, excepting any such rights that may have been acquired by any municipality of this state.

**Source: 13:12-4<sup>96</sup>**

**COMMENT**

This revised provision continues the limitations on the State's rights in the riparian rights of the former Canal Company in certain lakes, stipulating that those rights be utilized for certain purposes. This revised provision divides the source section into two subsections for purposes of clarity. Subsection (b) has been revised to place specifically upon the Department of Environmental Protection the obligation to maintain the dams and sluice gates specified.

**MC-4 Lake Hopatcong, maintenance of water level and recreation purposes**

The waters of Lake Hopatcong may be used as an aquatic public park, for boating, bathing, fishing and winter sports, and the lake level shall be maintained for such purposes at the normal high water mark as established on March eleven, one thousand nine hundred and twenty-two, natural elements permitting.

**Source: 13:12-5<sup>97</sup>**

**COMMENT**

No change has been made in the source statute.

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**<sup>96</sup> 13:12-4. Rights in certain lakes, etc., vested in canal and banking company in trust for certain purposes**

The rights vested in the Canal and Banking Company to impound and divert waters of lakes, ponds and streams, and the property and rights vested in such company in Lake Hopatcong, Lake Musconetcong--otherwise known as Stanhope reservoir--Cranberry lake, Bear ponds, the pond on the Musconetcong river at Saxton Falls, and Greenwood lake, together with all such lands, easements, rights and other property, the title to which is vested in such company in trust for the State of New Jersey, as may be necessary to maintain such lakes and ponds, or as may be of public value for public parks or recreation areas, shall be retained by such company in trust for the State of New Jersey, for the public use of conserving the public waters of the State or for public use for recreation, and shall be and are hereby dedicated to such public use; and the Canal and Banking Company is hereby authorized and directed to control, maintain and operate the dams and sluice gates at such lakes and ponds for the purpose aforesaid and in such manner that the rights of the riparian owners upon such lakes and ponds and the outlets thereof shall be properly conserved.

Amended by L.1939, c. 326, §1.

**<sup>97</sup> 13:12-5. Use of Lake Hopatcong for boating, etc.; maintenance of water level**

The waters of Lake Hopatcong may be used as an aquatic public park, for boating, bathing, fishing and winter sports, and the lake level shall be maintained for such purposes at the normal high water mark as established on March eleven, one thousand nine hundred and twenty-two, natural elements permitting.

## **Statutes recommended for repeal:**

### **13:1B-68. Terms of directors of Morris Canal and Banking Company to expire; persons to constitute board until successors qualify<sup>98</sup>**

### **13:12-6. Title to shares of stock of canal and banking company transferred to Department in trust<sup>99</sup>**

### **13:12-7. Management and control of property by canal and banking company<sup>100</sup>**

### **13:12-8. Board of directors of canal and banking company; voting capital stock<sup>101</sup>**

### **13:12-9. General powers of board of directors<sup>102</sup>**

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#### **<sup>98</sup> 13:1B-68. Terms of directors of Morris Canal and Banking Company to expire; persons to constitute board until successors qualify**

The terms of office of the present directors of the Morris Canal and Banking Company shall expire on the effective date of this act, and the persons holding the offices of Commissioner of Conservation and Economic Development, State Treasurer, and Director of the Division of Budget and Accounting in the Department of the Treasury, respectively, on the effective date of this act, shall constitute the board of directors, and shall exercise and perform the functions, powers and duties of the directors, of the Morris Canal and Banking Company until the next annual meeting of the stockholders of said company, and until their successors are duly elected and qualified.

L.1948, c. 448, p. 1844, §119.

#### **<sup>99</sup> 13:12-6. Title to shares of stock of canal and banking company transferred to Department in trust**

The title to the shares of capital stock of the canal and banking company acquired or to be acquired by the State of New Jersey, under and by virtue of the agreement entered into under the authority of the act entitled "An act to authorize the acquisition by the State of the Morris canal (as defined in this act), in whole or in part, and all the stock of the Morris Canal and Banking Company and the rights of all stockholders in said company in said canal property and water rights, and all or any part of the right, title and interest of the Lehigh Valley Railroad Company in said canal property and water rights by virtue of its lease of said canal from the Morris Canal and Banking Company, or otherwise; to provide for a commission authorized to negotiate and agree upon terms of settlement with the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, in relation to the said canal property and water rights, and to vest in said commission certain powers necessary for carrying out the terms of settlement and to make such other provisions as may be necessary to effectuate the objects aforesaid," approved March eleven, one thousand nine hundred and twenty-two (L.1922, c. 212, p. 367), and the title to the shares of capital stock of the canal and banking company, acquired or to be acquired by the State of New Jersey pursuant to the provisions of the act entitled "An act concerning and regulating the acquisition and taking of shares of the capital stock of the Morris Canal and Banking Company by the State of New Jersey, or any agent thereof, providing a procedure and the manner of making compensation therefor," approved March nineteen, one thousand nine hundred and twenty-three (L.1923, c. 112, p. 210), and the act entitled "A supplement to an act entitled "An act concerning and regulating the acquisition and taking of shares of the capital stock of the Morris Canal and Banking Company by the State of New Jersey, or any agent thereof, providing a procedure and the manner of making compensation therefor," approved March nineteen, one thousand nine hundred and twenty-three," approved March eight, one thousand nine hundred and twenty-four (L.1924, c. 80, p. 156), and vested in the Board of Conservation and Development in trust for the State of New Jersey by section one of the act entitled "An act vesting in the Board of Conservation and Development in trust for the State of New Jersey, the title to the shares of capital stock of the Morris Canal and Banking Company now held or that may hereafter be acquired by the State of New Jersey and providing that the members of said board shall be eligible to serve as directors of said company," approved March nineteen, one thousand nine hundred and twenty-three (L.1923, c. 110, sec. 1, p. 208), is hereby transferred to and vested in the Department of Conservation and Economic Development in trust for the State of New Jersey.

Amended by L.1948, c. 448, p. 1791, §14.

#### **<sup>100</sup> 13:12-7. Management and control of property by canal and banking company**

Pending the sale of the property authorized or directed by the provisions of this chapter to be sold, such property shall continue to be managed and controlled by the canal and banking company. All the other property and rights, the title to which is vested in the canal and banking company in trust for the state of New Jersey, shall continue to be managed and controlled by the canal and banking company.

#### **<sup>101</sup> 13:12-8. Board of directors of canal and banking company; voting capital stock**

The board of directors of the canal and banking company shall consist of three members, two of whom shall constitute a quorum. The members of the board shall be elected at the annual meeting of the stockholders of the canal company, and shall hold office for one year and until their successors are duly elected and qualified. The Commissioner of Conservation and Economic Development, the State Treasurer and the Director of the Division of Budget and Accounting in the Department of the Treasury and their successors in office shall be eligible to serve as directors of the canal and banking company.

The capital stock of the canal and banking company, the title to which is vested in the Department of Conservation and Economic Development in trust for the State by section 13:12-6 of this Title, shall, at each election of directors of the canal and banking company, be voted in favor of the election as such directors of the persons then holding the offices of Commissioner of Conservation and Economic Development, State Treasurer, and Director of the Division of Budget and Accounting in the Department of the Treasury, respectively. Amended by L.1948, c. 448, p. 1793, §15.

#### **<sup>102</sup> 13:12-9. General powers of board of directors**

The directors elected pursuant to section 13:12-8 of this title shall manage the affairs of the canal and banking company, and shall be fully vested with all the rights and powers, except as modified by this chapter of the board of directors of such company existing prior to March nineteen, one thousand nine hundred and twenty-three, which former board, and the terms of office of the members thereof are abolished.

**13:12-10. Grants to municipalities to lay and maintain sewer pipes under and along canal right of way<sup>103</sup>**

**13:12-11. Sale of canal property for railroad purposes<sup>104</sup>**

**13:12-12. Construction of electric railways on canal lands acquired by municipalities<sup>105</sup>**

**13:12-13. Abandoned portions of canal property dedicated as public highways<sup>106</sup>**

**13:12-14. Diversion of waters for municipal purposes<sup>107</sup>**

**13:12-15. Sale of canal property in counties to such counties for road purposes<sup>108</sup>**

**13:12-16. Sale of canal property in municipalities to such municipalities or Port of New York Authority<sup>109</sup>**

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**103 13:12-10. Grants to municipalities to lay and maintain sewer pipes under and along canal right of way**

The board of directors of the canal and banking company shall have power to grant to any municipality or municipalities the right and easement of laying, constructing, replacing, renewing and forever maintaining, under or along the right of way of the Morris canal, sewer pipes for the preservation of the purity of the potable waters of this state and the protection of the health of the inhabitants of such municipality or municipalities. Any such grant or grants shall be made only when the board of directors is satisfied that such pipes are necessary and convenient. All pipes laid under any such grant or grants shall be laid under the supervision of and in the manner prescribed by the board of directors.

**104 13:12-11. Sale of canal property for railroad purposes**

L.1924, c. 218, p. 482 (1924 suppl. §170-144m), entitled "An act to authorize the sale of lands of the Morris Canal and Banking Company for railroad purposes in certain cases," approved March twelve, one thousand nine hundred and twenty-four, saved from repeal. [This act authorizes the board of directors of the canal and banking company to sell and convey to railroad companies whose right of ways adjoin the lands of the canal and banking company such portions of such lands as may be deemed reasonable and proper to enable the railroad companies to construct additional main tracks.

**105 13:12-12. Construction of electric railways on canal lands acquired by municipalities**

L.1925, c. 75, p. 248, entitled "An act to authorize any municipality through which the Morris canal passes to construct an electric railway upon such canal lands and other lands required for such purpose and to enter into leases or contracts providing for the operation thereof, and to issue bonds therefor," approved March thirteenth, one thousand nine hundred and twenty-five, saved from repeal. [This act authorizes any municipality through which the Morris canal passes and which has or shall acquire any such lands pursuant to law to construct and maintain thereon electric railways and issue bonds therefor.]

**106 13:12-13. Abandoned portions of canal property dedicated as public highways**

Upon the discontinuance by the canal and banking company of the use as a means of transportation by water of that portion of the property the title to which is, by section 13:12-3 of this title, vested in the canal and banking company in trust for the state of New Jersey, and the discontinuance of the use as a means of transportation of water to the canal of those portions of such property which had been used as feeders to the canal, which discontinuance was authorized by section one of the act entitled "An act to authorize the abandonment of navigation upon the Morris canal and providing for the dismantling of the canal and the disposition of portions of the property, the title to which is now held in trust for the state of New Jersey by the Morris Canal and Banking Company upon terms and compensation fixed by said Morris Canal and Banking Company and providing for the review of said terms and compensation by the board of public utility commissioners of the state of New Jersey, and further providing for the management and control of such property pending the disposition thereof," approved March twelve, one thousand nine hundred and twenty-four (L.1924, c. 229, § 1, p. 506), such portions of such property, the use of which has been so discontinued, shall be applied and are hereby dedicated, subject to the limitations hereinafter provided, to the public use as public highways for the transportation and passage thereon of persons and property and for any and all other purposes of public highways.

**107 13:12-14. Diversion of waters for municipal purposes**

The canal and banking company is hereby authorized to consent, under restrictions which shall not impair any existing rights, and for a consideration in each case to be fixed by its board of directors and approved in writing by the governor of this state, to the diversion, for the purpose of municipal water supply, of the waters or any portion thereof, the title to the right to the use of which is vested in the canal company in trust for the state of New Jersey; but nothing in this section contained shall be construed to dispense with any consent at any time required to be obtained by any municipality, board or commission as a condition precedent to the diversion of the state's waters or to the development of a municipal water supply.

**108 13:12-15. Sale of canal property in counties to such counties for road purposes**

The canal and banking company is hereby authorized and directed to sell any and all of the property the title to which is vested in the company in trust for the state of New Jersey, other than the rights and property to be retained for public use as provided by section 13:12-4 of this title. Wherever such property shall consist of lands so located as to be capable of use in the widening of any county road, the canal and banking company is authorized to transfer to the county wherein such section of the canal is located such section thereof, upon the adoption by the board of chosen freeholders of such county of a resolution indicating the desire of such county to acquire such section for the purposes of a county road, within the period provided by section 13:12-16 of this title for the adoption of a similar resolution by municipalities or agencies; such transfer to be made upon such terms and for such consideration as shall be fixed after negotiation as provided by said section 13:12-16 in the case of municipalities and agencies and subject to the same right of review.

## **13:12-17. Sale of canal property outside municipalities to municipalities; public sale<sup>110</sup>**

### **13:12-17.1. Sale by municipalities of canal property acquired from Morris Canal and Banking Company<sup>111</sup>**

## **13:12-18. Leases; termination<sup>112</sup>**

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#### **109 13:12-16. Sale of canal property in municipalities to such municipalities or Port of New York Authority**

The canal and banking company is hereby authorized to transfer to the respective municipalities through which the canal passes the portions of the canal situated within their respective boundaries or to the Port of New York Authority, exclusive of the rights and property to be retained for public use as provided in section 13:12-4 of this title, upon the passage by the respective municipalities or by the Port of New York Authority, on or before the first day of January, one thousand nine hundred and thirty-one, of resolution expressing the desire of such municipalities or the Port of New York Authority to acquire such portions of the canal and setting forth the purposes to which such municipalities or the Port of New York Authority intend to devote such property when so acquired. Upon the submission of any such resolution the canal and banking company is authorized to negotiate with such municipality or the Port of New York Authority the terms upon which such property will be transferred to such municipality, and in determining the compensation, if any, to be paid by such municipality or the Port of New York Authority for such property the canal and banking company shall take into consideration the conditions of the canal in such municipality and the effect thereof upon such municipality and the adjoining property and also the nature of the use to which such property is to be devoted and the estimated cost of adapting the property to such new use. After the conclusion of such negotiations the canal and banking company shall, subject to the approval of the governor, determine the terms upon which such transfer shall be made and the price, if any, which in its judgment, regard being had to the considerations above set forth, is a fair price for such municipality or Port of New York Authority to pay; such determination, whether in the case of a municipality or the Port of New York Authority, or of a county as provided in section 13:12-15 of this title, shall be subject to review by the board of public utility commissioners of the state of New Jersey, which is hereby directed and empowered to grant such review on the application either of such municipality or the Port of New York Authority or county or of the canal and banking company; and upon such review, such board shall have power to determine the fairness of the terms and compensation determined upon by the canal and banking company, and in the event that such board finds said terms or compensation unfair to fix the terms and compensation deemed by it to be fair. The terms and compensation so fixed shall be the terms and compensation for which such property shall be transferred to such municipality or to the Port of New York Authority, unless such municipality or the Port of New York Authority shall, within thirty days thereafter, determine not to proceed with the acquisition of such property and shall pay the costs of such proceeding. Upon the purchase as herein above provided by any municipality, or the Port of New York Authority, county or counties of any such property for any such public use or uses, the property so purchased shall be applied to such public use or uses, or some of them, and such public use or uses shall supersede any other or different public use to which such property may have been heretofore dedicated; but upon the acquisition of any such property by the Port of New York Authority it shall be devoted to no use other than the uses contemplated by the contract between the states of New York and New Jersey under which the Port of New York Authority is created.

#### **110 13:12-17. Sale of canal property outside municipalities to municipalities; public sale**

If any municipality mentioned in section 13:12-16 of this title shall fail to accept the terms and compensation for any such property fixed by the canal and banking company or upon review of its decision by the board of public utility commissioners as provided in said section 13:12-16 or if prior to the first day of January, one thousand nine hundred and thirty-one, any such municipality shall have failed to adopt the resolution mentioned in said section 13:12-16, or if prior to such date any such municipality shall have adopted a resolution declaring that it does not desire to acquire the property of the canal and banking company within its limits, then, and in either of such cases, the canal and banking company may transfer such property as hereinafter in this section provided.

In the first place, the canal and banking company shall offer, subject to the same review as provided in said section 13:12-16, to any municipality which shall have taken appropriate steps to acquire the canal property lying within its boundaries pursuant to said section 13:12-16, such portions of the canal lying in any municipality or municipalities which shall have failed to take the necessary steps to acquire such property, as shall form a single, contiguous tract capable of development for the purpose for which the first mentioned municipality shall have acquired its tract.

In the second place, if, after a reasonable time, any municipality to which any such canal property lying without its limits shall have been offered, shall fail to have availed itself of such offer, the canal and banking company, after advertisement, in such manner as may be determined by its board of directors, shall sell any unsold portions of the canal property to the highest bidder deemed by such board of directors to be responsible, at public or private sale; but no such sale shall be made unless first approved, in writing, by the governor of the state of New Jersey; and at such sale any municipality through which such canal may pass, either alone or jointly with other municipalities through which such canal may pass, may bid for any parcel of the canal so offered for sale.

Upon any such sale, any previous dedication of the property so sold to any public use shall cease and be of no further force and effect, and the purchaser shall be entitled to take and hold such property free from any previous dedication to any public use.

The canal company is also hereby authorized to sell, in such manner and for such price and upon such terms as its board of directors may deem advisable, the structures and parts thereof and other materials to be removed on dismantling the canal as provided for in section 13:12-19 of this title and other personal property no longer useful in connection with the canal.

#### **111 13:12-17.1. Sale by municipalities of canal property acquired from Morris Canal and Banking Company**

When any municipality to which canal property has been conveyed pursuant to chapter 229 of the laws of 1924 or chapter 12 of Title 13 of the Revised Statutes, shall hereafter determine that any part or parts thereof are no longer needed for the public use or uses for which such property was purchased, the governing body of such municipality may sell or lease said land in the manner provided by law for the sale or leasing of lands owned by municipalities.

L.1957, c. 185, p. 681, §1, eff. Aug. 22, 1957.

#### **112 13:12-18. Leases; termination**

The canal and banking company is hereby authorized to let part or parts of the property and property rights, the title to which is vested in it in trust for the state of New Jersey; but any and all leasehold estates so created shall be terminable upon thirty days' notice to the lessee of the desire of the canal and banking company or the state of New Jersey to terminate the same.

**13:12-19. Removal of bridges, etc.<sup>113</sup>**

**13:12-20. Repair, etc., of dams, sluice gates, etc.<sup>114</sup>**

**13:12-21. Crossings in municipalities<sup>115</sup>**

**13:12-22. Legal and administrative help, etc.; agreements with independent contractors<sup>116</sup>**

**13:12-23. Canal and banking company acting through officers thereof; execution of contracts, conveyances, etc.<sup>117</sup>**

**13:12-24. Contracts, conveyances, etc., approved by attorney general<sup>118</sup>**

**13:12-25. Title conveyed by deeds of canal and banking company<sup>119</sup>**

**13:12-26. Release of lien of bonds on sale of property<sup>120</sup>**

**13:12-27. Receipts from sales or rentals of property; payment into state treasury<sup>121</sup>**

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**<sup>113</sup> 13:12-19. Removal of bridges, etc.**

The canal and banking company is hereby authorized and directed, as soon as the water shall have been drained off from the canal under authority of the act mentioned in section 13:12-13 of this title, to proceed promptly to remove such highway and road bridges as have heretofore been maintained by the canal and banking company at intersections of the canal with existing highways and roads and to refill the canal bed at these points and to grade down the approaches and to replace such bridges with roadways connecting with the adjoining highways or roads, graded, paved or surfaced to conform to the adjoining highways or roads respectively.

**<sup>114</sup> 13:12-20. Repair, etc., of dams, sluice gates, etc.**

The canal and banking company is authorized and directed to repair and make safe the dams and sluice gates at the lakes and ponds mentioned in section 13:12-4 of this title and to raze and remove or put in a condition safe to life and limb all other structures heretofore maintained by the canal company and to make proper provision to prevent future obstruction of highways, roads or watercourses through the decay and fall of culverts, aqueducts or other structures and to provide for the proper drainage of the canal.

**<sup>115</sup> 13:12-21. Crossings in municipalities**

If the authorities in charge of any street, highway or road, on which there is a bridge or crossing to be removed by the canal and banking company as provided by section 13:12-19 of this title, shall prefer to relocate or otherwise readjust such crossing in a manner and to an extent different from that provided in said section 13:12-19, the canal and banking company, instead and in lieu of constructing any such crossing as required by said section 13:12-19, is authorized to contract with such authorities for the construction, by such authorities, of any such relocated or readjusted crossing, and, in such contract, to agree with such authorities for the payment by the canal company of such portion of the cost of such relocated or readjusted crossing as shall not exceed the estimated cost of the crossing instead of which such relocated or readjusted crossing shall be so contracted for.

**<sup>116</sup> 13:12-22. Legal and administrative help, etc.; agreements with independent contractors**

The canal and banking company is hereby authorized to procure and employ such legal and technical aid and to employ such administrative officers, clerical assistants and laborers as it may require for the purpose of enabling it to administer, in accordance with the terms of this chapter, the property, the title to which is vested in it in trust for the state of New Jersey. The canal and banking company is hereby authorized to enter into such agreements with independent contractors as its board of directors may deem advisable in order to carry out the directions contained in this chapter; but no such agreement involving the expenditure of more than one thousand dollars shall be entered into unless first approved in writing by the governor of this state; nor shall any such agreement be entered into in excess of existing appropriations available therefor and applicable thereto.

**<sup>117</sup> 13:12-23. Canal and banking company acting through officers thereof; execution of contracts, conveyances, etc.**

The board of directors of the canal and banking company are hereby authorized and directed in behalf of the canal and banking company to do or cause to be done by the officers of the canal and banking company, thereunto authorized by the board of directors, all acts and things and to execute or cause to be executed all contracts, instruments of conveyance, consents, leases or other documents authorized or directed by the provisions of this chapter to be done or executed by the canal and banking company or which its board of directors shall deem expedient to be done or executed for the purpose of this chapter.

**<sup>118</sup> 13:12-24. Contracts, conveyances, etc., approved by attorney general**

All contracts, instruments of conveyance, consents, leases or other documents mentioned in section 13:12-23 of this title shall be approved as to form by the attorney general before being executed by the canal company.

**<sup>119</sup> 13:12-25. Title conveyed by deeds of canal and banking company**

Any instrument of conveyance executed by the canal and banking company pursuant to any of the provisions of this chapter shall operate to convey all the right, title and interest of the canal and banking company and of the state of New Jersey in and to the property therein described.

**<sup>120</sup> 13:12-26. Release of lien of bonds on sale of property**

The board of conservation and development, in whom is vested the title to the bonds issued by the canal and banking company, shall, upon any sale of any property as authorized by the terms of this chapter, take such action and execute such documents as may be necessary or advisable to procure the release of such property from the lien of the mortgage securing such bonds.

### **13:12-28. Canal fund<sup>122</sup>**

### **13:12-29. Injuries to or destruction of canal property; forfeiture; recovery<sup>123</sup>**

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#### **121 13:12-27. Receipts from sales or rentals of property; payment into state treasury**

The canal and banking company, by its general manager or by any officer thereunto duly authorized by its board of directors, shall be entitled to and is hereby authorized to receive and receipt for the purchase price, rentals or other income of any property sold or let as authorized by any of the provisions of this chapter, and to receive and receipt for the consideration paid upon the granting of any consent, as authorized by any of the provisions of this chapter. All moneys so received by the canal and banking company shall be paid into the state treasury not later than the tenth of the month following that during which such moneys were collected or received.

#### **122 13:12-28. Canal fund**

The money heretofore paid or to be paid to the state of New Jersey by the Lehigh Valley Railroad Company by the terms of the agreement dated the twenty-ninth day of November, one thousand nine hundred and twenty-two, between Frank H. Sommer, Louis Focht and Edward L. Young, commissioners acting on behalf of the state of New Jersey pursuant to the act mentioned in section 13:12-3 of this title, and the canal and banking company and the Lehigh Valley Railroad Company, together with so much of the interest thereon payable by such railroad company as has not been heretofore otherwise appropriated and also all rents and other income from the property, the title to which is vested in the canal and banking company in trust for the state of New Jersey, and also all moneys received as the purchase price of any such property sold, and all moneys received upon the granting of any consent to the diversion of water, and also any unexpended balance of the rents and other income from such property received during the fiscal year ending June thirtieth, nineteen hundred and twenty-four, and heretofore appropriated to the department of conservation and development by the act approved March twenty-third, one thousand nine hundred and twenty-three, known as chapter 165 of the laws of 1923, shall constitute a special fund to be known as the "canal fund". The entire cost of the dismantling of that part of the property, the title to which is vested in the canal and banking company in trust for the state of New Jersey, heretofore maintained as a means of water transportation, including the removal of highway and road bridges heretofore maintained by the canal company and the refilling of the canal bed at these points and the drainage of the canal upon the abandonment of navigation upon the canal and the entire cost of the management and control of the property, the title to which is vested in the canal and banking company in trust for the state of New Jersey, shall be paid from such fund and shall be a first charge thereon, and there is hereby appropriated from such fund, in such amounts as shall be included in any annual or supplemental appropriation bill, so much of such fund as may be necessary promptly to accomplish the work aforesaid. The balance of such fund after all expenses of dismantling the canal and of managing and controlling such property have been met shall be available, up to eight hundred and seventy-five thousand dollars, for the purpose of acquiring rights of way for the New Jersey ship canal or for such other purposes as the legislature may determine, but nothing in this section shall in any way be construed to interfere with the provisions of the act entitled "An act appropriating to the board of commerce and navigation for the acquisition of rights of way for the New Jersey ship canal, the moneys heretofore realized and hereafter to be derived, pursuant to the terms of the contract between the commissioners acting for the state of New Jersey and the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, which said contract was made pursuant to the provisions of an act entitled "An act to authorize the acquisition by the state of the Morris canal (as defined in this act) in whole or in part and all the stock of the Morris Canal and Banking Company and the rights of all stockholders in said company, and in said canal property, and water rights, and all or in part of the right, title and interest of the Lehigh Valley Railroad Company in said canal property and water rights by virtue of its lease of said canal from the Morris Canal and Banking Company, or otherwise; to provide for a commission authorized to negotiate and agree upon terms of settlement with the Morris Canal and Banking Company and the Lehigh Valley Railroad Company, in relation to the said canal property and water rights, and to vest in said commission certain powers necessary for carrying out the terms of settlement and to make such other provisions as may be necessary to effectuate the objects aforesaid," approved March eleventh, one thousand nine hundred and twenty-two, approved March twenty-first, one thousand nine hundred and twenty-three.

#### **123 13:12-29. Injuries to or destruction of canal property; forfeiture; recovery**

If any person shall, in any manner, willfully or maliciously, destroy, injure or damage any of the property of the Morris canal, the title to which is vested in the canal and banking company in trust for the state of New Jersey, or any of its parts, or any of the works connected therewith, or thereunto appertaining, or if any person shall, against the will or without the consent of the person appointed by the canal and banking company to have charge of or attend any existing lock, open any gate of such lock, or pass a boat, raft or other floating thing through or over such lock, or if any person shall willfully or maliciously let off or discharge water from any part of the canal property still in existence, through or by any waste weir, or water gate, or otherwise, or shall shut down or close, either in part or in whole, any feed gate, or water weir, when the same shall be in operation, such person, so offending, shall forfeit and pay to the canal and banking company the sum of twenty-five dollars, to be recovered by and in the name of the president and board of directors of the canal and banking company, in any court of competent jurisdiction.

## **Chapter: DELAWARE AND RARITAN CANAL**

### **CHAPTER NOTE**

The statutes in source chapters 13 and 13A of Title 13 concern the Delaware and Raritan Canal. The canal was built in the 1830's, by the Delaware and Raritan Canal Company. The formation of the company had been authorized by legislative act in 1830. The act of incorporation gave to the company the right to build a canal for transportation of goods and passengers between Philadelphia and New York. The act also gave to the canal company the right to exercise the power of eminent domain to acquire property to build and operate the canal. Section 17 of the act expressly provided that the canal and all rights and interests in it would revert to the State in the event that the canal was abandoned or ceased to be used for navigational purposes. The latter event took place in 1932-33. In a series of legislative acts in 1934, 1935 and 1936, the State asserted its rights in the canal, and took possession and control of it.

After the cessation of its role as an important route of commercial transportation, the canal also became recognized as an important commercial water resource. Legislation enacted in 1944 provided that the canal would continue to be operated and maintained as an industrial water source, and the State was given the authority to enter into contracts for industrial water supply, see L.1944, c.272, and later as a potable water source, see L.1949, c.168.

The canal was also recognized as an important historical and recreational resource which needed to be preserved. In 1974, the State enacted the Delaware and Raritan Canal State Park Law, L.1974, c.118, which established the Delaware and Raritan State Park, created the Delaware and Raritan Canal Commission, and empowered it to identify lands to be added to the park to enhance its recreational usability and protect its usefulness as a water resource. It should be noted that most of the canal is listed in the New Jersey and National Registers of Historic Places.

Authority over the function of the canal as an industrial water source was ceded to the Water Supply Authority upon its creation in 1981, see 58:1B-24. In particular, 58:1B-5 of the Water Supply Authority Act provides that "All water supply facilities, owned or operated by the State," specifically including the "Delaware and Raritan Canal Transmission Complex," "are transferred to the authority," which "shall operate these facilities pursuant to the statutes and authorizations enabling the State to operate and manage the facilities." In 1984, a lease was concluded between the Water Supply Authority, the Department of Environmental Protection, and the Delaware and Raritan Canal Commission to effectuate this provision of the Water Supply Authority Act. The lease has appended to it maps which delineate the area which constitutes the "Delaware and Raritan Canal Transmission Complex."

A brief recounting of the history of the canal may be found in the legislative findings and declarations recited in the preamble to L.1991, c.344. The 1991 legislation clarified the respective responsibilities of the Canal Commission and the Department of Transportation concerning bridges over the canal.

This proposed chapter and the one following maintain the chapter divisions of the source chapters; this chapter, entitled "Delaware and Raritan Canal" concerns the ownership of the canal by the State and the provisions which allocate responsibility for the canal to, respectively, the Water Supply Authority, the State Park Service, and the Delaware and Raritan Canal Commission. The following chapter contains most of the provisions of the Delaware and Raritan State Park Law of 1974, which established the Commission and sets forth its powers and duties.

### **DC-1 Title to canal vested in state**

Pursuant to the rights reserved by it in an act entitled "An act to incorporate the Delaware and Raritan Canal Company," enacted by the legislature of the state of New Jersey on February fourth, one thousand eight hundred and thirty, and by virtue of section seventeen of that act, and all other acts supplemental and amendatory to that act, the state of New Jersey shall have title, possession and control of the Delaware and Raritan canal, the feeder and appendages to the canal, and the works and improvements erected on the canal, the feeder and the appendages.



**Source: 13:13-1<sup>124</sup>**

#### COMMENT

The proposed section has been redrafted for simplicity. The 1830 act referred to is the act which incorporated the Delaware and Raritan Canal Company, and gave it the franchise to build and develop the canal, including the authority to take property through eminent domain proceedings. Section 17 of the act provided for the reversion to the State of the canal and canal property should the canal be abandoned or cease to be used for navigational purposes. That eventuality took place in the winter of 1932-33, and shortly thereafter the State asserted its rights to the canal. Therefore, the rights of the State in the canal and canal property ultimately derive from section 17 of the 1830 act, reference to which is retained in the proposed section.

The source provision for this proposed section was part of the 1934 legislation pursuant to which the State asserted its rights in the canal. The boundaries of the canal and the establishment of the extent of the State's rights in the canal and any remaining interests of the railroad companies in the canal were subsequently established pursuant to 13:13-7 and 13:13-9, both of which are recommended for repeal as part of this project. See further discussion of this point in the note to DC-2 below, and the notes to these provisions in "Provisions recommended for repeal," below.

### **DC-2 Custody of canal and feeder vested in department of environmental protection**

Except as otherwise provided in this chapter, the Department of Environmental Protection shall have possession and control of the canal, the feeder and appendages to the canal, and the works and improvements constructed on the canal, on the feeder and on the appendages to the canal. The department shall maintain the same as a public recreational resource and, in conjunction with the Water Supply Authority, a water supply resource.

**Source: 13:13-2<sup>125</sup> 13:13-12.1<sup>126</sup> 13:13-12.2<sup>127</sup>**

#### COMMENT

This proposed section has been redrafted to simplify the language of the source section, and to state in general terms the purposes for which the canal is to be maintained, i.e. recreational and water supply purposes. The introductory proviso refers to other provisions of this proposed chapter, such as the provisions which give the Department of Transportation authority over the bridges over the canal.

Source section 13:13-2 was enacted as part of the 1934 legislation pursuant to which the State asserted its rights in the canal, see 1934, c.139, sec.5, amended by 1934, c.238, sec.4. This source provision empowered the

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<sup>124</sup>**13:13-1. Title to canal vested in state**

Pursuant to the rights reserved by it in and by virtue of an act entitled "An act to incorporate the Delaware and Raritan Canal Company," which act was enacted by the legislature of the state of New Jersey on February fourth, one thousand eight hundred and thirty, and by virtue of section seventeen of said act, and all other acts supplemental and amendatory to said act, the state of New Jersey shall forthwith take possession of the Delaware and Raritan canal, hereinafter in this chapter designated as the "canal" , and the feeder thereof and the appendages thereto, and the works and improvements erected thereon, except the properties and facilities now used for railroad purposes referred to in section 13:13-7 of this title, heretofore abandoned by the United New Jersey Railroad and Canal Company, the former owner thereof, and that in and by and upon such taking of possession, title to such canal and feeder, the appendages thereto and the works and improvements erected thereon shall be deemed to be and shall thenceforth be vested in the state of New Jersey to be thereafter used or disposed of as the legislature may deem proper.

<sup>125</sup>**13:13-2. Custody of canal and feeder vested in department of conservation and development**

The department of conservation and development is empowered and directed to enter upon and take possession of the canal and feeder mentioned in section 13:13-1 of this title, except the properties and facilities now used for railroad purposes referred to in section 13:13-7 of this title, for and on behalf of the state of New Jersey.

<sup>126</sup>**13:13-12.1. Canal to be used for industrial water supply and for recreational purposes**

The Delaware and Raritan canal and the feeder thereof and the appendages thereto and the works and improvements erected thereon, except the properties and facilities referred to in the proviso of section five of chapter one hundred thirty-nine of the laws of one thousand nine hundred and thirty-four and except the existing vehicle bridges over the same, shall henceforth be used as a source of industrial water supply and for recreational purposes, all as hereinafter more fully set forth.

L.1944, c. 172, p. 659, § 1, eff. April 20, 1944.

<sup>127</sup>**13:13-12.2. Department to retain possession of canal**

The Department of Conservation and Development shall continue to retain possession of said canal and shall hold the same for the purposes of this act. L.1944, c. 172, p. 659, § 2.

Department of Conservation and Economic Development to take possession and control of the canal, but excepted from the takeover authority of the Department any easement rights of the railroads which continued to exist. The exception includes a cross-reference to 13:13-7, the provision of the 1934 legislation which directed the Department of Conservation and Development to accept quitclaim deeds from the railroad companies who had remaining interests in the canal, excepting any perpetual easement rights for railroad tracks and other railroad facilities then in use. The cross-reference has been eliminated from this proposed section as the settlement of the rights of the railroads has long since taken place. In addition, the provision referred to in the cross-reference, 13:13-7, is recommended for repeal, see "Provisions recommended for repeal," below.

### **DC-3 Department to maintain canal**

The Department shall repair, rehabilitate, reconstruct, maintain and improve the canal, the banks of the canal, the feeder and the appendages to the canal, and maintain the flow of water through the canal, in such manner as to preserve it in safe and proper condition for use as a recreational resource and, in conjunction with the Water Supply Authority, a water supply resource.

**Source: 13:13-3<sup>128</sup> 13:13-12.3<sup>129</sup> 13:13-12.7<sup>130</sup>**

#### **COMMENT**

The primary source for the language of this proposed provision is 13:13-12.3. The proposed section generalizes the language and intent of the source sections which direct the Department and the Water Supply Authority to maintain the canal for recreational and water supply resource. The rather convoluted language of source section 13:13-12.3, the provision of the 1944 act establishing the canal as a water supply resource, has been truncated to preserve the essential purpose of the source section as a mandate to maintain the canal for recreational and water supply purposes. Similar in its provisions and purpose is source section 13:13-12.7, also part of the 1944 act.

Most of the detail of source section 13:13-3 has been eliminated, as the details pertain to the use of the canal as a navigational resource, a use which was effectively superseded in subsequent legislation (such as the other source sections for this provision) which established that the canal should be maintained as a recreational resource and water resource.

### **DC-4 Bridge maintenance and design**

a. The Department of Transportation shall have control and responsibility for the maintenance, repair, rehabilitation and replacement of any existing vehicle bridges over the Delaware and Raritan Canal carrying State,

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#### **128 13:13-3. Repair and preservation of canal and feeder and banks thereof**

The canal and feeder shall continue to be a public highway, and, until the legislature shall have further directed the use or disposition of the canal and feeder, the Department of Environmental Protection or its designee, the New Jersey Water Supply Authority, shall, until further directions of the legislature, repair and preserve the banks of the canal and feeder, and at all times keep a flow of water through the canal at a level heretofore maintained when the canal was in operation or as necessary to conduct dredging operations or effect repairs, except that, during the period of December fifteenth of each year and March first of the ensuing year, the department may close the canal or maintain such flow of water as it deems desirable or necessary to comply with any contract for the sale of water.

To insure the flow aforesaid and in order to preserve sanitary conditions in the canal and about the banks thereof and the towpath adjacent thereto, the feeder, the canal and the banks thereof and the towpath shall be kept free of weeds and other growth, save and except such growth as, in the judgment of the department, is conducive to the appearance of the canal and feeder and the banks and towpath thereof.

Amended 1991,c.344, §2.

#### **129 13:13-12.3. Department to maintain canal and flow**

Until otherwise directed by the Legislature, the Department of Conservation and Development shall repair, rehabilitate, reconstruct, maintain and improve the said canal in such manner as shall preserve said canal in safe and proper condition for operation of the same for the purposes of this act and as shall maintain such necessary flow through said canal in order that safety and sanitary conditions in and adjoining said canal shall be in a safe and wholesome condition and as shall assure and maintain such flow of water through said canal as may from time to time be appropriate in order that the maintenance and operation of said canal as a source of industrial water supply may be efficiently provided for.

L.1944, c. 272, p. 659, §3.

#### **130 13:13-12.7. Park and recreational uses**

The Department of Conservation and Development shall, in addition, improve such portion of said canal and its appurtenances as it may deem proper to develop for recreational and park uses; provided, said uses shall not unreasonably interfere with the efficient operation of said canal as a source of industrial water supply.

L.1944, c. 272, p. 661, §7.

county, or municipal roads and any guardrails or barriers along the approaches to these vehicle bridges. The Commissioner of the Department of Transportation, in accordance with generally accepted engineering principles, standards or techniques, may, in order to protect the public safety, order the closing of public access, including roads, highways, sidewalk, tracks, paths or passageways, leading to, in, under or near any such bridge.

b. The Department of Transportation shall consult with the Department of Environmental Protection, the Delaware and Raritan Canal Commission, and the Water Supply Authority not less than 30 days before undertaking any maintenance, repair, rehabilitation and replacement performed upon any existing vehicle bridges carrying State, county, or municipal roads and any guardrails or barriers along the approaches to these vehicle bridges over the Delaware and Raritan Canal. Section 5 of P.L.1974, c.118 (C.13:13A-5), Section 4 of P.L.1970, c.268 (C.13:1B-15.131), or any other law, rule, or regulation to the contrary notwithstanding, the Department of Transportation shall be responsible for the design of any bridges or structures appurtenant thereto along or traversing the canal.

c. Each person, agency of the State or instrumentality thereof owning or controlling a right-of-way shall provide permission for the use of and sufficient access to that right-of-way, and any other incidental services required by the Department of Transportation to undertake its responsibilities under the provisions of this section.

d. The Commissioner of Transportation shall adopt the regulations necessary to carry out its responsibilities under the provisions of this section.

**Source: 13:13-3.1<sup>131</sup> 13:13-3.2<sup>132</sup> 13:13-3.3<sup>133</sup> 13:13-3.4<sup>134</sup> 13:13-12.8<sup>135</sup>**

#### COMMENT

The source provisions of this section were enacted in 1991, to resolve issues concerning the relative jurisdiction of the Department of Transportation, the Department of Environmental Protection and the Delaware and Raritan Canal Commission over the maintenance, repair and design of bridges over the canal. Proposed subsections (a), (b), (c) and (d) correspond to source sections 13:13-3.1 to -3.4 respectively. Source section 13:13-

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**131 13:13-3.1. Department of Transportation, control and responsibility for bridge maintenance; commissioner may close public access**

The provisions of any law, rule, or regulation to the contrary notwithstanding, and until further direction from the Legislature, the Department of Transportation shall have control and responsibility for the maintenance, repair, rehabilitation and replacement of any existing vehicle bridges over the Delaware and Raritan Canal carrying State, county, or municipal roads and any guardrails or barriers along the approaches to these vehicle bridges. The commissioner, in accordance with generally accepted engineering principles, standards or techniques, may, in order to protect the public safety, order the closing of public access, including roads, highways, sidewalk, tracks, paths or passageways, leading to, in, under or near any bridge described pursuant to this amendatory and supplementary act, the provisions of any law, rule, or regulation to the contrary notwithstanding.

L.1991,c.344, §4.

**132 13:13-3.2. Department of Transportation, consult prior to bridge repair; responsibility for bridge design**

The Department of Transportation shall consult with the Department of Environmental Protection and the Delaware and Raritan Canal Commission, not less than 30 days before the Department of Transportation undertakes, or causes to be undertaken, any maintenance, repair, rehabilitation and replacement performed upon any existing vehicle bridges carrying State, county, or municipal roads and any guardrails or barriers along the approaches to these vehicle bridges over the Delaware and Raritan Canal. The provisions of section 5 of P.L.1974, c.118 (C.13:13A-5), Section 4 of P.L.1970, c.268 (C.13:1B-15.131), or any other law, rule, or regulation to the contrary notwithstanding, the Department of Transportation shall be responsible for the design of any bridges or structures appurtenant thereto along or traversing the canal.

L.1991,c.344, §5.

**133 13:13-3.3. Right-of-way permission provided**

Each person, agency of the State or instrumentality thereof owning or controlling a right-of-way shall provide permission for the use of and sufficient access to that right-of-way, and any other incidental services required by the Department of Transportation to undertake its responsibilities under this amendatory and supplementary act.

L.1991,c.344, §6.

**134 13:13-3.4. Rules, regulations**

The Commissioner of Transportation shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) adopt the rules and regulations necessary to carry out its responsibilities under the provisions of this amendatory and supplementary act.

L.1991,c.344, §7.

**135 13:13-12.8. Bridges; possession by Department of Transportation**

The provisions of any law, rule, or regulation to the contrary notwithstanding, and until further direction from the Legislature, the Department of Transportation in co-operation with the Department of Environmental Protection is empowered and directed to enter upon and take possession of, all of the existing vehicle bridges carrying State, county, or municipal roads and any guardrails or barriers along the approaches to any such vehicle bridges over the canal. L.1944,c.172,s.8; amended 1991,c.344, §3.

12.8, which was part of the 1944 act, appears to have been subsumed into the 1991 enactments. "This amendatory and supplementary act" has been changed to "the provisions of this section."

The cross-references to section 5 of the act establishing the Delaware and Raritan Canal Commission (13:13A-5)(proposed section DP-4), and the existing provision protecting historic sites (C.13:1B-15.131) have been retained.

The 1991 legislation also created a Delaware and Raritan Canal Transportation Safety Study Commission and directed it to report to the Legislature not later than 15 months after the first organizational meeting of the Commission. See L.1991, c.344, secs. 8-14. These provisions of the legislation were not compiled in the general and permanent law as they were regarded as "temporary and executed" provisions.

### **DC-5 Maintenance deficit**

The deficit, if any, arising from the maintenance of the canal, after deducting the income derived from the sale of water or the rental of canal property, shall be paid by funds appropriated under any general or special act of the Legislature.

**Source: 13:13-5<sup>136</sup>**

#### **COMMENT**

The language of this proposed section has been simplified. The cross-reference in the source section to source section 13:13-4 has been changed to refer textually to income derived from the sale of water or the rental of canal property.

### **DC-6 Operation of canal**

The department shall have the power to operate the canal and locks, and, as a part of such operation, permit the use of the canal and locks by pleasure and commercial craft, or pleasure craft alone. If the department permits such use, it shall adopt a tariff of tolls and lock charges to be paid by the craft using the canal.

**Source: 13:13-6<sup>137</sup>**

#### **COMMENT**

"Department of conservation and development" has been changed to "department." The language of the section has been simplified.

### **DC-7 Lease of buildings**

a. The department shall have the power to lease any canal lands or buildings which are not required for use in the maintenance and operation of the canal, and shall have the power to determine the terms of such leases.

b. The department shall have the power to use canal buildings as residences for its employees connected with the maintenance of the canal, lands and dwellings adjoining the canal and feeder.

c. No lease of canal lands or buildings shall unreasonably interfere with the use of the canal as a recreational resource or a water supply resource.

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#### **<sup>136</sup>13:13-5. Maintenance deficit**

The deficit, if any, arising from the maintenance of the canal, after deducting the income derived therefrom in the manner provided in section 13:13-4 of this title, shall be borne and paid out of funds appropriated under any general or special act of the legislature.

#### **<sup>137</sup>13:13-6. Operation of canal; charges for use**

The department of conservation and development may, but, by this chapter, shall not be required to, operate the canal and the locks thereof, and, as a part of such operation, permit the use of the canal by pleasure and commercial craft, or pleasure craft alone, passing through or requiring the use of such locks. In the event of such operation, the department of conservation and development shall adopt and formulate, from time to time, a tariff of tolls and lock charges to be paid by the craft so using the canal.

**Source: 13:13-4 [below], 13:13-8<sup>138</sup> 13:13-12.6<sup>139</sup>**

#### COMMENT

This section derives from a portion of source section 13:13-4 concerning rental of buildings, from 13:13-8, and from 13:13-12.6, one of the provisions enacted in 1944. The remainder of source section 13:13-4 concerning water rights is a source section for the proposed section "Sale of water at wholesale."

"Department of conservation and development" has been changed to "department." The language of both proposed subsections has been simplified. The phrase "shall have the authority" has been changed to "shall have the power."

### DC-8 Grants of easements and sales of land

The department shall have the power:

a. To grant to any public utility the right to cross the lands of the canal, including the canal itself, upon such conditions as in the judgment of the department may be necessary to protect the state in its use and occupancy thereof;

b. To grant to any department of the state, or to any county or municipal authority, or any person or corporation owning or occupying lands abutting lands of the canal, an easement for highway, driveway or drainage purposes across or along any canal lands; and

c. To sell, subject to the approval of the Governor, any lands not needed for canal purposes.

No grant or sale shall be made, or easement created, which shall interfere with the canal as a waterway for either drainage, recreational, or water supply use.

**Source: 13:13-10<sup>140</sup>**

#### COMMENT

"Department of conservation and development" has been changed to "department." Minor changes in language. In the proviso in the last sentence, the phrase "commercial use" has been changed to "water supply use."

### DC-9 Sale of water at wholesale

a. The Water Supply Authority established by L.1981, c.293 (C.58:1B-1 et seq.) shall have the power to sell water from the Delaware and Raritan canal and from the feeder of the canal, at wholesale, on just and reasonable terms and conditions and at just and reasonable prices, to persons, corporations, municipalities,

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**138 13:13-8. Lease of buildings**

The department of conservation and development is empowered to lease any buildings acquired by the state under the provisions of this chapter, which buildings are not required for use in the maintenance and operation of the canal, and shall have authority to determine the terms of such lease or leases.

**139 13:13-12.6. Lease of canal lands**

The Department of Conservation and Development is empowered to lease or, in its discretion, use as residence for its employees connected with the maintenance of said canal, such canal lands and dwellings as will not interfere with the operation of the same as herein provided and the Department of Conservation and Development is empowered to lease, for industrial or other purposes, such canal lands as may, in the opinion of the department, be suitable for such use and as will not, in the opinion of the department, unreasonably interfere with the use of said canal as a source of industrial water supply and for recreational and park purposes as hereinafter provided for.

L.1944, c. 272, p. 660, § 6.

**140 13:13-10. Grants of easements along or across canal; sale of canal lands not needed The department of conservation and development shall have power:**

a. To grant to any public utility the right to cross the lands of the canal, including the canal itself, upon such conditions as in the judgment of the department may be necessary to protect the state in its use and occupancy thereof;

b. To grant to the state highway commissioner or any other department of the state, or to any county or municipal authority, or any person or corporation owning or occupying lands abutting lands of the canal, an easement for highway, driveway or drainage purposes across or along any canal lands; and

c. To sell, subject to the approval of the governor, any lands not needed for canal purposes.

No grant or sale shall be made, or easement created, which shall interfere with the canal as a waterway for either drainage, recreational, or commercial use.

municipal and district water commissions, for industrial, public, potable and other purposes upon application and after public hearing. Before such water may be used for potable purposes, purification and treatment shall be accomplished by the purchaser, subject to the approval of the State Department of Health. The Authority may, at its discretion, dispense with required public hearings when the quantity of water applied for is less than one-half million gallons a day.

b. Contracts for the sale of water from the canal shall not exceed twenty-five years.

c. No contracts for the sale of water from the canal shall be valid unless approved by the Governor.

d. Nothing in this section shall affect the use of the canal and feeder for recreational purposes.

e. Contracts for the sale of water from the canal may include provisions requiring the purchaser to improve or maintain parts of the canal.

**Source: 13:13-4<sup>141</sup> 13:13-12.4<sup>142</sup> 13:13-12.5<sup>143</sup> 13:13-12.9<sup>144</sup> 13:13-12.10<sup>145</sup>**

#### COMMENT

The source provisions authorizing the sale of water from the canal consist of a series of successive enactments in 1934, 1944, and 1949, 1954 and 1981. The earliest source provisions include 13:13-4, first enacted in 1934, and 13:13-12.4 and 13:13-12.5, enacted in 1944. Source sections 13:13-12.9 through -12.12, enacted in 1949, appear to supersede the earlier source provisions while providing more explicit standards for the sale of water. The text of the four subsections in this proposed provision all derive from this 1949 legislation which gave the power to sell water to the former Division of Water Policy and Supply of the Department of Conservation and Economic Development. That legislation was in turn in part superseded by the 1981 establishment of the Water Supply Authority, see L.1981, c.293 (C.58:1B-1 et seq.), and in particular 58:1B-5, which transfers to the Authority "all water supply facilities owned or operated by the State," expressly including the "Delaware and Raritan Canal Transmission Complex." The Water Supply Authority was ceded the authority of the former Water

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#### **141 13:13-4. Sale of water; rental or use of property**

The department of conservation and development is empowered to sell water from the canal for industrial or potable purposes, and rent or, in its discretion, use as a residence for its employees connected with the maintenance of the canal lands and dwellings adjoining the canal and feeder, to which the title has vested in this state.

#### **142 13:13-12.4. Department may sell water; long term contracts**

The Department of Conservation and Development shall be empowered to sell, for industrial purposes, water from said canal, on just and reasonable terms and conditions and at just and reasonable prices, and shall be empowered to enter into long term contracts, but not exceeding twenty-five years for the sale of such water, for industrial purposes, whenever it deems the same will reasonably promote industrial development in any section or sections of the State through which said canal flows and will properly conserve the public interest.

L.1944, c. 272, p. 660, § 4.

#### **143 13:13-12.5. Contracts for sale of water; duration; repair and reconstruction**

Without limiting the powers herein granted to the Department of Conservation and Development it may, if it deems proper, enter into contracts for the sale, for industrial purposes, of water from the said canal but such contracts shall not exceed a duration of twenty-five years and which contracts may as a part thereof provide that the purchaser of such industrial water may repair, reconstruct, rehabilitate, improve and maintain certain parts of the canal and likewise require when such purchaser shall return to the canal the water developed for such industrial purposes in such condition as the department may require or determine and may likewise contract for the sale of such water for industrial purposes by the withdrawal from the canal either in pipeline, viaduct or other means of transmission to any convenient point within the Raritan basin; provided, however, that no contract for the sale of industrial water or the repair, rehabilitation, reconstruction, maintenance and improvement of the said canal shall be entered into or let or awarded unless and until the Governor shall have approved thereof in writing. L.1944, c. 272, p. 660, § 5.

#### **144 13:13-12.9. Sale of water at wholesale**

The Division of Water Policy and Supply of the Department of Conservation and Economic Development shall be empowered to sell water from the Delaware and Raritan canal and from the feeder of said canal, at wholesale, on just and reasonable terms and conditions and at just and reasonable prices, to persons, corporations, municipalities, municipal and district water commissions, for industrial, public, potable and other purposes upon application and after public hearing, provided that before such water may be used for potable purposes, purification and treatment shall be accomplished by the purchaser, subject to the approval of the State Department of Health. The division may, at its discretion, dispense with public hearing when the quantity of water applied for is less than one-half million gallons a day.

Nothing in this act shall affect the use of the canal and feeder for recreational purposes.

L.1949, c. 168, p. 555, § 1, eff. May 19, 1949.

#### **145 13:13-12.10. Long term contracts**

The Division of Water Policy and Supply shall be empowered to enter into long term contracts, but not exceeding twenty-five years, for the sale of such water, provided that no contract shall be entered into unless and until the Governor shall have approved thereof in writing.

L.1949, c. 168, p. 555, § 2.

Supply Facilities Element in the Division of Water Resources of the Department of Environmental Protection. See L.1981, c.293, sec. 24 (C.58:1B-24).

### **DC-10 Notice of hearings**

Notice of public hearings concerning applications for the purchase of water from the canal shall be given by the Water Supply Authority, by mail, at least 10 days prior to the scheduled date of the hearing, as follows:

- a. To every county and municipality in which any part of the Delaware and Raritan canal is located or which abuts the canal; and
- b. To every person whose property abuts the canal waterway and its banks; and
- c. To every user of the water of the canal, provided, on or before January 1 in each year, a written request for notice of such public hearings is filed with the Water Supply Authority.

The expense of any hearing on application to purchase canal water shall be certified by the Water Supply Authority to the applicant, who shall pay the same within thirty days thereafter.

**Source: 13:13-12.9a<sup>146</sup> 13:13-12.11<sup>147</sup>**

#### **COMMENT**

The source sections have been combined, and references have been changed to refer to the Water Supply Authority, in conformity with the changes made in the previous proposed section. The language has been simplified. In subsection (b), the word "canal" has been changed to "canal waterway and its banks" to make clear that only those few remaining property owners who own land directly abutting the canal itself need receive notice.

### **Provisions recommended for Repeal:**

**13:13-7. Quitclaim deeds to canal and feeder<sup>148</sup>**

#### **COMMENT**

The source provision authorizes the former Department of Conservation and Development to accept quitclaim deeds from the companies which had certain rights in the canal and the canal property as of the date the canal property reverted to the State. The quitclaim deeds authorized were accepted in 1937, and the railroads retained certain limited easement rights pursuant to this section.

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#### **<sup>146</sup>13:13-12.9a. Notice of hearing**

The Division of Water Policy and Supply of the Department of Conservation and Economic Development shall cause a notice of every public hearing required to be held pursuant to section 1 of the act to which this act is supplementary to be given by mail at least 10 days prior to such public hearing to every county and municipality wherein any part of the Delaware and Raritan canal is located or which abuts said canal and to every person whose property abuts said canal and to every user of the water of said canal provided, on or before January 1 in each year, a written request for notice of such public hearings is filed with the Division of Water Policy and Supply.

L.1954, c. 163, p. 670, § 1, eff. July 15, 1954.

#### **<sup>147</sup>13:13-12.11. Expense of hearing**

The expense of any hearing on application to purchase canal water shall be certified by the division to the applicant, who shall pay the same within thirty days thereafter.

L.1949, c. 168, p. 555, § 3.

#### **<sup>148</sup>13:13-7. Quitclaim deeds to canal and feeder**

The department of conservation and development, if it deems it necessary and advisable so to do, is empowered and directed to accept a quitclaim deed or deeds from the United New Jersey Railroad and Canal Company and the Pennsylvania Railroad Company, or either of them, of their rights in and to the canal and feeder. Any such quitclaim deed or deeds may except perpetual easement rights for railroad tracks, sidings, switches, spurs, crossings and other railroad facilities now existing for the operation of the railroads owning the same and their service to the shippers and industries located thereon.

### **13:13-9. Fixing boundaries of canal<sup>149</sup>**

#### **COMMENT**

The source provision, enacted in 1935, empowered the former Department of Conservation and Development to settle the boundaries of the canal with the railroad companies which retained or claimed certain rights in property adjacent to the canal.

### **13:13-11. Transfer of portion of canal property to city of Trenton for highway purposes<sup>150</sup>**

#### **COMMENT**

The source provision, enacted in 1936, authorized the former department of Conservation and Development to transfer a portion of the canal running through Trenton to the City of Trenton. The conveyance was accomplished some time after the legislation was enacted.

### **13:13-12. Filling in of canal**

**Source: 13:13-12<sup>151</sup>**

#### **COMMENT**

The practice of filling in the canal in certain sections ceased several decades ago; this provision appears to have been superseded by the enactment of the Delaware and Raritan State Park Law in 1974.

### **13:13-12.12. Repeal of inconsistent acts<sup>152</sup>**

#### **COMMENT**

Note that under the principles of construction of the statutes set forth in Title 1, the repeal of a repealing act does not re-effectuate the repealed statutes.

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#### **<sup>149</sup>13:13-9. Fixing boundaries of canal**

In addition to the powers conferred by the other provisions of this chapter the department of conservation and development shall have power to agree with the Pennsylvania Railroad Company or the United New Jersey Railroad and Canal Company, or both, as to the limits and boundaries of the land vested in the state of New Jersey by virtue of this chapter and of section seventeen of an act entitled "An act to incorporate the Delaware and Raritan Canal Company," passed February fourth, one thousand eight hundred and thirty.

#### **<sup>150</sup>13:13-11. Transfer of portion of canal property to city of Trenton for highway purposes**

The department of conservation and development is authorized and directed to transfer and convey to the city of Trenton, New Jersey, for highway purposes that portion of the Delaware and Raritan canal property lying within said city and extending from the south side of the junction of the feeder with the main canal southward to the city limits on such terms as shall be agreed upon by the board of conservation and development and the city authorities of the city of Trenton, and approved by the governor.

#### **<sup>151</sup>13:13-12. Filling in of canal**

The department of conservation and development is authorized, by agreement either with the city of Trenton, or with any Federal agency, or with the authorities of any municipalities in which the canal may lie, to fill the canal from the southerly line of the city of Trenton to its terminus at Bordentown.

#### **<sup>152</sup>13:13-12.12. Repeal of inconsistent acts**

The provisions of any other act or acts inconsistent with the provisions of this act are hereby repealed.  
L.1949, c. 168, p. 556, § 4.



## **Chapter: Delaware and Raritan Canal State Park**

### **CHAPTER NOTE**

As more fully set forth in the previous chapter note, the Delaware and Raritan Canal was built in the 1830's and operated as a navigational and water resource for almost one hundred years. Recognition of its continuing importance as an historical, recreational and water resource culminated in the enactment of the Delaware and Raritan State Park Law of 1974, L.1974, c.118. The act created the Delaware and Raritan Canal State Park and the Delaware and Raritan Canal Commission. The Commission was empowered to identify lands suitable for addition to the park, was directed to prepare a master plan for the park, and was given review authority over certain types of projects within the canal review area that might impact on the park's value as a public resource. The canal is listed in the New Jersey and National Registers of Historic Places.

The substance, arrangement and wording of the 1974 act have been almost completely retained in this proposed chapter. As a general matter, the provisions have been reworded to eliminate references to actions expected in 1974 to have been undertaken immediately and which have long since been accomplished. Where appropriate, references to continuing powers and duties have been retained. The cross references to "this act" have also been conformed, in some cases being replaced with textual references.

### **DP-1 Legislative findings and declarations**

The Legislature finds and declares that:

a. The Delaware and Raritan Canal is a vital source of water supply and is of historic, ecological, and recreational value to the citizens of New Jersey; that the canal and the narrow band of land along the canal banks owned by the State are also an extremely attractive and lucrative asset to the State; that the quantity and quality of surface water runoff, flooding potential, esthetic surroundings, and even the structural integrity of the canal, can all be adversely affected by surrounding developments; that within the State Government, decisions which affect the canal and the State owned land appertaining thereto are often made separately by different State agencies and local governing bodies; that the surrounding properties are private and public portions of 17 municipalities in four counties, each with its own planning and zoning authority; that, in general, the decisions which are made often reflect local expediencies rather than a coherent plan.

b. The State of New Jersey must act to preserve, locate, survey, and acquire such lands as may be available for public recreation and the conservation of natural resources, in order to promote the public health, prosperity, and general welfare, as a proper responsibility of government; that this chapter establishes a Delaware and Raritan Canal State Park maintained and operated under the jurisdiction of the Department of Environmental Protection, which shall have the power, with the approval of the Delaware and Raritan Canal Commission, as hereafter provided, to take such measures as may be necessary to preserve, maintain, improve, and enlarge the park, if funds for these purposes are made available from time to time; that a Delaware and Raritan Canal Commission shall prepare, adopt, and implement a master plan for the physical development of the park, and to review State and local actions that impact on the park to insure that these actions conform as nearly as possible to the commission's master plan; that funds will be appropriated to the Department of Environmental Protection for the purposes of locating, surveying, and selecting necessary land sites appertaining to the canal, which information shall be reported to the Legislature from time to time for its consideration, and for the use of the Delaware and Raritan Canal Commission in the performance of its powers and duties pursuant to this chapter, and that funds will be appropriated from time to time for the use of the commission in the performance of its powers and duties pursuant to this chapter.

**Source: 13:13A-2<sup>153</sup>**

#### **COMMENT**

The source provision has been extensively edited to change references to acts to be taken immediately and in the anticipated near future, to acts which may be undertaken from time to time.

#### **DP-2 Definitions**

As used in this chapter:

"Agency" means any body or instrumentality of a municipality responsible for the issuance of permits or the approval of projects as defined in this section, and shall include, but not be limited to, governing bodies, planning and zoning boards, building inspectors, managers and municipal engineers.

"Canal" means the Delaware and Raritan Canal, its feeder canal, and the abandoned section of the canal in the township of Hamilton, county of Mercer.

"Commission" means the Delaware and Raritan Canal Commission.

"Park" means the Delaware and Raritan Canal Park as determined by the Department of Environmental Protection, pursuant to this chapter.

"Project" means any structure, land use change, or public improvements for which a permit from, or determination by, a municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits.

"Review zone" means that region appertaining to and including the park, as determined pursuant to the provisions of this chapter, in which a proposed projects as defined in this section may cause an adverse impact on the park including, but not limited to, drainage, esthetic, and ecological factors. The review zone shall not include that portion of the canal and those lands along and appertaining to the canal banks situated between the Landing Lane bridge and the juncture of the canal with the Raritan river.

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#### **153 13:13A-2. Legislative findings and declarations**

The Legislature finds and declares that:

a. The Delaware and Raritan Canal is a vital source of water supply and is of historic, ecological, and recreational value to the citizens of New Jersey; that the canal and the narrow band of land along the canal banks owned by the State are also an extremely attractive and lucrative asset to the State; that the quantity and quality of surface water runoff, flooding potential, esthetic surroundings, and even the structural integrity of the canal, can all be adversely affected by surrounding developments; that within the State Government, decisions which affect the canal and the State owned land appertaining thereto are often made separately by different State agencies and local governing bodies; that the surrounding properties are private and public portions of 17 municipalities in four counties, each with its own planning and zoning authority; that, in general, the decisions which are made often reflect local expediencies rather than a coherent plan.

b. The State of New Jersey must act immediately and thereafter to preserve, locate, survey, and acquire such lands as are now available for public recreation and the conservation of natural resources, in order to promote the public health, prosperity, and general welfare, as a proper responsibility of government; that the enactment of the provisions set forth in this act would create a Delaware and Raritan Canal State Park to be maintained and operated under the jurisdiction of the Department of Environmental Protection, which shall have the power, with the approval of the Delaware and Raritan Canal Commission, as hereafter provided, to take such measures as may be necessary to preserve, maintain, improve, and enlarge the park, if funds for these purposes are made available from time to time; that a Delaware and Raritan Canal Commission be established to prepare, adopt, and implement a master plan for the physical development of the park, and to review State and local actions that impact on the park to insure that these actions conform as nearly as possible to the commission's master plan; that funds will be appropriated in this act to the Department of Environmental Protection for the purposes of locating, surveying, and selecting necessary land sites appertaining to the canal, immediately and thereafter, which information shall be reported to the Legislature for its consideration, and for the use of the Delaware and Raritan Canal Commission in the performance of its powers and duties pursuant to this act, and that funds will be appropriated for the use of the commission in the performance of its powers and duties pursuant to this act.

L.1974, c. 118, § 2, eff. Oct. 10, 1974.

**Source: 13:13A-3<sup>154</sup> 13:13A-14<sup>155</sup>**

**COMMENT**

The definitions of "Department" and "Commissioner" have been eliminated. The definitions of "project" and "agency" which were included in source section 13:13A-14(c) have been moved to this proposed section. The definition of "canal" contains a reference to source section L.1974, c.118, sec. 6(f)(C. 13:13A-6(f)), which specifies that the abandoned section of the canal, as determined by the department, is to be considered as part of the canal.

**DP-3 Designation of park**

The Delaware and Raritan Canal and the lands along the canal banks, now or hereafter owned by the State, except that portion of the canal and those lands along and appertaining to the canal banks situated between the Landing Lane bridge and the juncture of the canal with the Raritan river, are designated as the Delaware and Raritan Canal State Park, to be maintained and operated under the Department of Environmental Protection as a State park.

**Source: 13:13A-4<sup>156</sup>**

**COMMENT**

No change.

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**154 13:13A-3. Definitions**

As used in this act:

- a. "Department" means the Department of Environmental Protection.
- b. "Park" means the Delaware and Raritan Canal Park as determined by the Department of Environmental Protection, pursuant to section 6 a. of this act.
- c. "Canal" means the Delaware and Raritan Canal, its feeder canal, and the abandoned section of the canal in the township of Hamilton, county of Mercer, to be determined, pursuant to subsection 6 f. of this act.
- d. "Commission" means the Delaware and Raritan Canal Commission.
- e. "Commissioner" means the Commissioner of the Department of Environmental Protection.
- f. "Review zone" means that region appertaining to and including the park, as determined pursuant to subsections 6 e. and 14 a. of this act, in which proposed "projects," as defined in subsection 14 c., may cause an adverse impact on the park including, but not limited to, drainage, esthetic, and ecological factors. Such review zone shall not include that portion of the canal and those lands along and appertaining to the canal banks situated between the Landing Lane bridge and the juncture of the canal with the Raritan river. L.1974, c. 118, § 3, eff. Oct. 10, 1974.

Amended by L.1977, c. 126, § 1, eff. June 13, 1977.

**155 13:13A-14. Review zone; boundaries; designation; state actions and private or public projects; approval**

...

...

- c. The commission shall review and approve, reject, or modify any project within the review zone. The initial application for a proposed project within the zone shall be submitted by the applicant to the appropriate municipal reviewing agency. If approved by the agency, the application shall be sent to the commission for review. The commission shall review each proposed project in terms of its conformity with, or divergence from, the objectives of the commission's master plan and shall: (1) advise the appropriate municipal reviewing agency that the project can proceed as proposed; (2) reject the application and so advise the appropriate municipal reviewing agency and the governing body of the municipality; or (3) require modifications or additional safeguards on the part of the applicant, and return the application to the appropriate municipal reviewing agency, which shall be responsible for insuring that these conditions are satisfied before issuing a permit. If no action is taken by the commission within a period of 45 days from the date of submission of the application to the commission by the municipal reviewing agency, this shall constitute an approval by the commission. The commission's decision shall be final and binding on the municipality, and the commission may, in the case of any violation or threat of a violation of a commission's decision by a municipality, or by the appropriate municipal reviewing agency, as the case may be, institute civil action (1) for injunctive relief; (2) to set aside and invalidate a decision made by a municipality in violation of this subsection; or (3) to restrain, correct or abate such violation. As used herein: (1) "project" means any structure, land use change, or public improvements for which a permit from, or determination by, the municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits; and (2) "agency" means any body or instrumentality of the municipality responsible for the issuance of permits or the approval of projects, as herein defined, which shall include, but not be limited to, governing bodies, planning and zoning boards, building inspectors, managers and municipal engineers.

L.1974, c. 118, § 14, eff. Oct. 10, 1974.

**156 13:13A-4. Designation; maintenance and operation**

The Delaware and Raritan Canal and the lands along the canal banks, now or hereafter owned by the State, except that portion of the canal and those lands along and appertaining to the canal banks situated between the Landing Lane bridge and the juncture of the canal with the Raritan river, are designated as the Delaware and Raritan Canal State Park, to be maintained and operated under the Department of Environmental Protection as a State park.

L.1974, c. 118, § 3, eff. Oct. 10, 1974. Amended by L.1977, c. 126, § 2, eff. June 13, 1977.

#### **DP-4 Preservation, maintenance, development and improvement of park**

a. The department shall, as funds for these purposes are made available from time to time, take such measures as may be necessary to preserve, maintain, develop and improve the park in such manner and to such extent as, in its judgment, will best make it of use to the public. In the development of the park, the department shall have the power to install permanent improvements for the health and comfort of the public; provided, however, that the department shall take no such measures, nor install such improvements, unless the plans therefor shall have been submitted to and approved by the Delaware and Raritan Canal Commission.

b. Notwithstanding the provisions of any other law to the contrary, no building or structure, streets, bridges, parking areas, public transit lines, utilities, sewerage, and service-water supply facilities may be altered within the park unless the plans or specifications for the proposed alteration meet park standards to be adopted and promulgated by the department.

**Source: 13:13A-5<sup>157</sup>**

#### **COMMENT**

Minor language changes. Note that L.1991, c.344, sec. 5, renders this provision expressly inapplicable to Department of Transportation bridge repair and maintenance projects. The 1991 provision is continued in the preceding proposed chapter "Delaware and Raritan Canal," in the proposed section entitled "Bridge maintenance and design."

#### **DP-5 Selection of land sites for acquisition**

a. The department may, from time to time, locate, survey and select land sites appertaining to the park which may be advisable, proper or necessary for the purpose of establishing the park and expanding and preserving the uses, benefits, and enjoyments the park to the people, and report its findings, including its recommended priorities, and a schedule of required funding for the acquisition of such lands, pursuant to the provisions of this chapter.

b. In locating, surveying, and selecting such land sites the department shall: (1) maintain a detailed data base, including updated mapping and zoning information, to determine the ownership and use of lands appertaining to park properties; and (2) consult with the Delaware and Raritan Canal Commission, county and municipal governmental officials of jurisdictions in which the State park or any of the land sites are located; concerned environmental groups; water suppliers; historical associations and such State agencies as may have jurisdiction over the park, or any part of the park.

c. In determining which land sites should be recommended to the Legislature for acquisition, the department shall consider: (1) the existence of present historical structures; (2) the immediate danger of an occurrence of adverse impact to the park including, but not limited to, drainage, esthetic, and ecological factors; (3) proximity to high-density population concentrations; and (4) the availability of land at a cost advantageous to the State.

d. The department may from time to time determine and recommend to the Legislature a schedule of required funding for the acquisition of land sites. The schedule may provide for any combination of: (1) inclusion of necessary revenues in a future State bond issue for the acquisition of open space or other lands; (2) special

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**<sup>157</sup> 13:13A-5. Preservation, maintenance, development and improvement of park; approval of plans by commission; alteration of facilities; approval**

a. The department shall, as funds for these purposes are made available from time to time, take such measures as may be necessary to preserve, maintain, develop and improve the park in such manner and to such extent as, in its judgment, will best make it of use to the public. In the development of the park, the department shall have the power to install permanent improvements for the health and comfort of the public; provided, however, that the department shall take no such measures, nor install such improvements, unless the plans therefor shall have been submitted to and approved by the Delaware and Raritan Canal Commission, created pursuant to section 11 of this act.

b. Notwithstanding the provisions of any other law to the contrary, no building or structure, streets, bridges, parking areas, public transit lines, utilities, sewerage, and service-water supply facilities may be altered within the park unless the plans or specifications for the proposed alteration meet park standards to be adopted and promulgated by the department.

L.1974, c. 118, § 5, eff. Oct. 10, 1974.

authorization for purposes of completing the State Park; and (3) local-State matching fund proposals to implement or expand the agreed plan.

e. The department may, from time to time, locate, survey, select, and recommend to the commission land sites to be included in the review zone, pursuant to the provisions of this chapter; provided that such recommendations shall not be binding on the commission.

**Source: 13:13A-6<sup>158</sup>**

#### COMMENT

The source section provided time periods for the commencement and accomplishment of certain acts concerning land identification and acquisition which have now been accomplished. The proposed section restates these mandatory directives into permissive form. Subsections (f) and (g) of the source section have been completely executed and have been deleted from the proposed section. Note, however, the definition of "canal" in DP-2 incorporates a reference to subsection (f). The references to acts undertaken "pursuant to subsection 6a. of this act" has been changed to "pursuant to the provisions of this chapter."

### DP-6 Entry on lands, waters or premises

The commissioner, and the commissioner's authorized agents and employees, may enter upon any lands, waters, and premises for the purpose of making surveys, soundings, drillings, and examinations as the commissioner may deem necessary or convenient for the purposes of this chapter, all in accordance with due process of law. Such entry shall not be deemed a trespass nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The commissioner shall make reimbursement for any actual damages resulting to such lands, waters, and premises as a result of such activities.

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#### **158 13:13A-6. Selection of land sites for acquisition**

a. The department shall, within 1 month after this act takes effect, proceed to locate, survey and select critical land sites, and within 1 year after this act takes effect, and from time to time thereafter, such other land sites appertaining to the park which may be advisable, proper or necessary for the purpose of establishing the park and to expand and preserve the uses, benefits, and enjoyments thereof to the people, and report its findings, including its recommended priorities, and a schedule of required funding for the acquisition of such lands, pursuant to the provisions of subsection 6 d. of this act, to the Legislature.

b. In locating, surveying, and selecting the land sites mentioned in subsection 6 a. of this act, the department shall: (1) assemble a detailed data base, including updated mapping and zoning information, to determine the ownership and use of lands appertaining to park properties; and (2) consult with the Delaware and Raritan Canal Commission, county and municipal governmental officials of jurisdictions in which the State park or any of the land sites therefor are located; concerned environmental groups; water suppliers; historical associations and such State agencies as now or hereafter have jurisdiction over the park, or any part thereof.

c. In determining which land sites described in subsection 6 a. of this act should be recommended to the Legislature for acquisition, the department shall consider: (1) the existence of present historical structures; (2) the immediate danger of an occurrence of adverse impact to the park including, but not limited to, drainage, esthetic, and ecological factors; (3) proximity to high-density population concentrations; and (4) the availability of land at a cost advantageous to the State.

d. The department shall, pursuant to the provisions of subsection 6 a. of this act, determine and recommend to the Legislature a schedule of required funding for the acquisition of those land sites described in subsection 6 a. of this act. The schedule may provide for any combination of: (1) inclusion of necessary revenues in a future State bond issue for the acquisition of open space or other lands; (2) special authorization for purposes of completing the State Park; and (3) local-State matching fund proposals to implement or expand the agreed plan.

e. The department, in locating, surveying, and selecting the land sites described in subsection 6 a. of this act, and in assembling a detailed data base pursuant to subsection 6 b. of this act shall locate, survey, select, and recommend to the commission land sites to be included in the review zone, pursuant to the provisions of subsection 14 a. of this act; provided that such recommendations shall not be binding on the commission.

f. The department shall, within 3 months after this act takes effect, proceed to locate, survey, and select the abandoned section of the canal, in the township of Hamilton, county of Mercer, which, for purposes of this act, shall be considered part of the canal.

g. The department shall in locating, surveying, and selecting the land sites described in subsection 6 a. of this act, exclude those lands situated between the Landing Lane bridge and the juncture of the canal with the Raritan river.

L.1974, c. 118, § 6, eff. Oct. 10, 1974.

**Source: 13:13A-7<sup>159</sup>**

### **DP-7 Acquisition of lands**

a. The department shall have power to take title to any lands appertaining to the park and to any rights, interests and easements in such lands, in the name of the State of New Jersey, in fee or otherwise, by gift or by devise. If funds are made available for these purposes from time to time, the department shall have the power to acquire such lands, or rights, interests and easements in such lands, by purchase or by eminent domain.

b. The department shall exercise the power of eminent domain in accordance with the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.)

**Source: 13:13A-8<sup>160</sup>**

#### **COMMENT**

The language describing the power of the department to acquire lands and interests in lands by gift, devise, purchase or eminent domain have been redrafted for clarity. The sentence referring to the Eminent Domain Act has been redrafted to conform to wording used in the general provisions applicable to the department.

### **DP-8 Leasing lands to private enterprises**

The department, to effectuate the general purpose of this chapter, shall, with the approval of the commission, have the power to hire, rent or lease any portion of lands appertaining to the park to private enterprises and such moneys as are derived from such hiring, renting, or leasing shall be deposited with the General State Fund.

**Source: 13:13A-9<sup>161</sup>**

#### **COMMENT**

This provision refers to the power to lease "such lands" to private enterprise, an apparent reference to the previous section, which concerns the acquisition of lands "appertaining to the park." Thus, the phrase "such lands" in this proposed section has been changed to "lands appertaining to the park."

### **DP-9 Regulations**

The department shall, with the approval of the commission, have the power to make such regulations for the use and protection of the park as may, in its judgment, be necessary.

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#### **159 13:13A-7. Entry on lands, waters or premises**

In addition to the foregoing powers, the commissioner and his authorized agents and employees may enter upon any lands, waters, and premises for the purpose of making surveys, soundings, drillings, and examinations as he may deem necessary or convenient for the purposes of this act, all in accordance with due process of law, and such entry shall not be deemed a trespass nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The commissioner shall make reimbursement for any actual damages resulting to such lands, waters, and premises as a result of such activities.

L.1974, c. 118, § 7, eff. Oct. 10, 1974.

#### **160 13:13A-8. Acquisition of lands by gift, devise, purchase or eminent domain; authorization**

The department shall have power to take title, in fee or otherwise, by gift or devise, and, if funds are made available for these purposes from time to time, by purchase or eminent domain to such lands appertaining to the park and to any rights, interests and easements therein, in the name of the State of New Jersey. In the event that it becomes necessary or advisable to acquire any lands or interest therein for the purpose of this act by eminent domain, the procedure for condemnation of such lands shall be taken in accordance with the provisions of the "Eminent Domain Act of 1971," P.L.1971, c. 361 (C. 20:3-1 et seq.).

L.1974, c. 118, § 8, eff. Oct. 10, 1974.

#### **161 13:13A-9. Hiring or leasing lands to private enterprises**

The department, to effectuate the general purpose of this act, shall with the approval of the commission, have power to hire, rent or lease any portion of such lands to private enterprises and such moneys as are derived from such hiring, renting, or leasing shall be deposited with the General State Fund.

L.1974, c. 118, § 9, eff. Oct. 10, 1974.

**Source: 13:13A-10<sup>162</sup>**

**COMMENT**

The source section has been divided into two proposed sections. The second proposed section follows, entitled "Powers of employees as peace officers."

**DP-10 Powers of employees as peace officers**

The department shall, subject to the approval of the Attorney General and in accordance with such regulations for the protection of the public safety and welfare as the Attorney General shall prescribe, further have power to vest in such of its employees as it may be determined to be necessary the powers and duties of peace officers for the abatement of nuisances, stopping of abuses, and protection and management of the park under any rules and regulations the department may prescribe.

**Source: 13:13A-10 [above]**

**COMMENT**

This proposed provision is one of two that derive from the same source section. See also the preceding proposed section entitled "regulations."

**DP-11 Delaware and Raritan canal commission, establishment, members**

a. There is hereby established in the Department of Environmental Protection the Delaware and Raritan Canal Commission which shall consist of nine members appointed and qualified as follows:

(1) The Commissioner of the Department of Environmental Protection, serving ex officio; provided, however, that the commissioner may designate an officer or employee of the department to represent him at meetings of the commission, and such designee may lawfully vote and otherwise act on behalf of the commissioner. Any such designation shall be in writing delivered to the chairman of the commission and shall continue in effect during the period the commissioner is in such office, or until revoked or amended by writing delivered to the chairman of the commission.

(2) Eight citizens of the State, appointed by the Governor, with the advice and consent of the Senate, no more than four of whom shall be of the same political party; at least four of whom shall be residents of the counties of Hunterdon, Mercer, Middlesex and Somerset, respectively, and one of whom shall be a mayor of a municipality appertaining to the Delaware and Raritan Canal State Park; provided, however, that no more than one citizen shall be appointed from any one municipality. In making appointments to the commission, the Governor may consider the recommendations of concerned environmental groups; historical associations; water suppliers; real estate interests; and members of relevant professions.

b. The commissioner shall serve on the commission during his term of office and shall be succeeded by his successor in office. Each member appointed by the Governor shall serve for terms of 5 years; provided that of the first members appointed by the Governor, two shall serve for a term of 2 years, two for a term of 3 years, two for a term of 4 years, and two for a term of 5 years. Each member shall serve for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only.

c. Any member of the commission may be removed by the Governor for cause after a public hearing.

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**<sup>162</sup>13:13A-10. Rules and regulations; powers of employees as peace officers**

The department shall, with the approval of the commission, have power to make such rules and regulations for the use and protection of the park as may, in its judgment, be necessary. The department shall, subject to the approval of the Attorney General and in accordance with such regulations for the protection of the public safety and welfare as the Attorney General shall prescribe, further have power to vest in such of its employees as it may be determined to be necessary the powers and duties of peace officers for the abatement of nuisances, stopping of abuses, and protection and management of the park under any rules and regulations the department may prescribe.

L.1974, c. 118, § 10, eff. Oct. 10, 1974.

d. Each member of the commission, before entering upon his duties, shall take and subscribe to an oath to perform the duties of his office faithfully, impartially, and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

e. The members of the commission shall serve without compensation, but the commission may reimburse its members for necessary expenses incurred in the discharge of their duties.

f. The Governor shall designate one of the members of the commission, other than the Commissioner of the Department of Environmental Protection, as chairman. The commission shall select from its members a vice-chairman and shall employ an executive director, who shall be secretary, and a treasurer. The commission may also appoint, retain and employ, without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes, such officers, agents, employees and experts as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation.

g. The powers of the commission shall be vested in the members of the commission in office from time to time, and a majority of the total authorized membership of the commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the commission at any meeting thereof by the affirmative vote of a majority of the members, unless in any case the bylaws of the commission or any of the provisions of this chapter shall require a larger number; provided, however, that the commission may designate one or more of its agents or employees to exercise such administrative functions, powers, and duties, as it may deem proper, under its supervision and control. No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the commission, except that the commission shall not take any final action on any matter to be submitted to the Legislature, pursuant to [proposed subsection DP-13(g) of this proposed chapter], except by a vote of two-thirds of the full membership of the commission.

h. The commission shall prepare, adopt, and implement a master plan for the physical development of the park, or a portion thereof; review State and local actions that impact on the park to insure that these actions conform as nearly as possible to the commission's master plan; and coordinate and support activities by citizens' groups to promote and preserve the park.

i. On or before December 31 in each year the commission shall make an annual report of its activities for the preceding calendar year to the Governor and to the Legislature. Each annual report shall set forth a complete operating and financial statement covering its operations during the year, all as more fully provided in [proposed section DP-16 of this proposed chapter]. The commission may, in addition, at any time request the Governor and the Legislature to appropriate funds for commission purposes, as more fully provided in [proposed subsection DP-13(g) of this proposed chapter].

j. The commission shall cause an audit of its books and accounts to be made at least once in each year and the cost shall be treated as one incurred by the commission in the administration of this chapter; and a copy of the audit shall be filed with the State Treasurer and the Office of Fiscal Affairs.



COMMENT

The source provision has been divided into two proposed sections. The first proposed section consists of subsection (a) through (j) of the source section, all of which pertain to the establishment of the commission, its membership and certain general powers and duties. Subsection (k) of the source provision, which pertains solely to conflicts of interest in land transactions, has been made into a separate proposed section (see below.)

Minor changes in language has been made in the proposed section: removal of "such" and "thereof"; changes in references and cross-references to "this act."

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**163**13:13A-11. Delaware and Raritan canal commission

a. There is hereby established in the Department of Environmental Protection a Delaware and Raritan Canal Commission which shall consist of nine members appointed and qualified as follows:

(1) The Commissioner of the Department of Environmental Protection, serving ex officio; provided, however, that the commissioner may designate an officer or employee of the department to represent him at meetings of the commission, and such designee may lawfully vote and otherwise act on behalf of the commissioner. Any such designation shall be in writing delivered to the chairman of the commission and shall continue in effect during the period the commissioner is in such office, or until revoked or amended by writing delivered to the chairman of the commission.

(2) Eight citizens of the State, appointed by the Governor, with the advice and consent of the Senate, no more than four of whom shall be of the same political party; at least four of whom shall be residents of the counties of Hunterdon, Mercer, Middlesex and Somerset, respectively, and one of whom shall be a mayor of a municipality appertaining to the Delaware and Raritan Canal State Park; provided, however, that no more than one citizen shall be appointed from any one municipality. In making appointments to the commission, the Governor may consider the recommendations of concerned environmental groups; historical associations; water suppliers; real estate interests; and members of relevant professions.

b. The commissioner shall serve on the commission during his term of office and shall be succeeded by his successor in office. Each member appointed by the Governor shall serve for terms of 5 years; provided that of the first members appointed by the Governor, two shall serve for a term of 2 years, two for a term of 3 years, two for a term of 4 years, and two for a term of 5 years. Each member shall serve for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term only.

c. Any member of the commission may be removed by the Governor for cause after a public hearing.

d. Each member of the commission, before entering upon his duties, shall take and subscribe to an oath to perform the duties of his office faithfully, impartially, and justly to the best of his ability. A record of such oaths shall be filed in the office of the Secretary of State.

e. The members of the commission shall serve without compensation, but the commission may reimburse its members for necessary expenses incurred in the discharge of their duties.

f. The Governor shall designate one of the members of the commission, other than the Commissioner of the Department of Environmental Protection, as chairman. The commission shall select from its members a vice-chairman and shall employ an executive director, who shall be secretary, and a treasurer. The commission may also appoint, retain and employ, without regard to the provisions of Title 11, Civil Service, of the Revised Statutes, such officers, agents, employees and experts as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation.

g. The powers of the commission shall be vested in the members thereof in office from time to time, and a majority of the total authorized membership of the commission shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the commission at any meeting thereof by the affirmative vote of a majority of the members, unless in any case the bylaws of the commission or any of the provisions of this act shall require a larger number; provided, however, that the commission may designate one or more of its agents or employees to exercise such administrative functions, powers, and duties, as it may deem proper, under its supervision and control. No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the commission, except that the commission shall not take any final action on any matter to be submitted to the Legislature, pursuant to subsection 12 g. of this act, except by a vote of two-thirds of the full membership of the commission.

h. The commission shall prepare, adopt, and implement a master plan for the physical development of the park, or a portion thereof; review State and local actions that impact on the park to insure that these actions conform as nearly as possible to the commission's master plan; and coordinate and support activities by citizens' groups to promote and preserve the park.

i. On or before December 31 in each year the commission shall make an annual report of its activities for the preceding calendar year to the Governor and to the Legislature. Each such report shall set forth a complete operating and financial statement covering its operations during the year, all as more fully provided in section 15 of this act. The commission may, in addition, at any time request the Governor and the Legislature to appropriate funds for commission purposes, as more fully provided in subsection 12 g. of this act.

j. The commission shall cause an audit of its books and accounts to be made at least once in each year and the cost thereof shall be treated as one incurred by the commission in the administration of this act, and a copy thereof shall be filed with the State Treasurer and the Office of Fiscal Affairs.

k. (1) No member, officer, employee, or agent of the commission shall be financially interested, either directly or indirectly, in any project or any part of a project area, other than a residence, or in any contract, sale, purchase, lease, or transfer of real or personal property to the Department of Environmental Protection for inclusion in the Delaware and Raritan Canal State Park.

(2) Any contract or agreement knowingly made in contravention of this section is voidable.

(3) Any person who shall willfully violate any of the provisions of this section shall forfeit his office or employment and shall be guilty of a misdemeanor.

L.1974, c. 118, § 11, eff. Oct. 10, 1974.

## **DP-12 Conflicts of interest**

a. No member, officer, employee, or agent of the commission shall be financially interested, either directly or indirectly, in any project or any part of a project area, other than a residence, or in any contract, sale, purchase, lease, or transfer of real or personal property to the Department of Environmental Protection for inclusion in the Delaware and Raritan Canal State Park.

b. Any contract or agreement knowingly made in contravention of this section is voidable.

c. Any person who willfully violates any of the provisions of this section shall forfeit his office or employment and shall be guilty of a misdemeanor.

**Source: 13:13A-11 [above]**

### **COMMENT**

This proposed section derives from subsection (k) of the source provision. No changes have been made other than to move it into a separate proposed section.

## **DP-13 Powers**

The commission shall have the power to:

a. Adopt and from time to time amend and repeal suitable bylaws for the management of its affairs;

b. Maintain offices at such place or places within the State as it may designate;

c. Enter upon any building or property in order to conduct investigations, examinations, surveys, soundings, or test borings necessary to carry out the purposes of this chapter, all in accordance with due process of law;

d. Receive and accept, from any Federal or other public agency or governmental entity, grants or loans for, or aid of, the purposes of this chapter, and to enter into cooperative agreements with the Federal Government or any other public or governmental agency for the performance of such acts as may be necessary and proper for the purposes of this chapter;

e. Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the commission or to carry out any power expressly given to the commission in this chapter;

f. Conduct examinations and investigations, hear testimony and take proof under oath at public or private hearings, of any material matter, require attendance of witnesses and the production of books and papers and issue commissions for the examination of witnesses who are out of State, unable to attend, or excused from attendance;

g. Petition the Legislature for specific direction or appropriation to accomplish commission objectives, in the event of substantial disagreement between the commission and the department.

**Source: 13:13A-12<sup>164</sup>**

#### COMMENT

Minor editorial changes. The cross references to the purposes of "sections 13 and 14 of this act" have been changed to "the purposes of this chapter."

#### DP-14 Master plan

a. The commission shall after public hearings, and pursuant to subsection (b) of this section, adopt or amend a master plan for the physical development of the park. The plan may include proposals for various stages in the future development of the park. The master plan shall include a report presenting the objectives, assumptions, standards and principles which are embodied in the various interlocking portions of the master plan. The master plan shall be a composite of the one or more written proposals recommending the physical development and expansion of the park either in its entirety or a portion thereof which the commission shall prepare after meetings with the governing bodies of the affected municipalities and counties, and any agencies and instrumentalities thereof.

b. In preparing or amending the master plan or any portion of the plan the commission shall give due consideration to: (1) the function of the canal as a major water supply facility in the State; (2) the necessity to provide recreational activities to the citizens of this State, including but not limited to, facilities, design capacities, and relationship to other available recreational areas; (3) existing historical sites and potential restorations or compatible development; (4) the range of uses and potential uses of the canal in the urban environments of the older, intensively developed communities through which it passes; and (5) designated wilderness areas to be kept as undeveloped, limited-access areas restricted to canoeing and hiking. In preparing or amending the master plan or any portion of the plan the commission shall consider existing patterns of development and any relevant master plan or other plan of development, and shall insure widespread citizen involvement and participation in the planning process.

c. The commission shall act in support of local suggestions or desires to complement the park master plan. Consultation, planning, and technical expertise will be made available to local planning bodies that wish to implement land-use policy to enhance the park area. The commission shall act on or refer complaints by citizens' groups or private residents who discover hazardous situations, pollution, or evidence of noncompliance with use regulations.

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#### **164**13:13A-12. Powers

The commission shall have the following powers:

- a. To adopt and from time to time amend and repeal suitable bylaws for the management of its affairs;
- b. To maintain offices at such place or places within the State as it may designate;
- c. To enter upon any building or property in order to conduct investigations, examinations, surveys, soundings, or test borings necessary to carry out the purposes of sections 13 and 14 of this act, all in accordance with due process of law;
- d. To receive and accept, from any Federal or other public agency or governmental entity, grants or loans for, or aid of, the purposes of sections 13 and 14 of this act, and to enter into cooperative agreements with the Federal Government or any other public or governmental agency for the performance of such acts as may be necessary and proper for the purposes of sections 13 and 14 of this act;
- e. To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the commission or to carry out any power expressly given to the commission in this act;
- f. To conduct examinations and investigations, hear testimony and take proof under oath at public or private hearings, of any material matter, require attendance of witnesses and the production of books and papers and issue commissions for the examination of witnesses who are out of State, unable to attend, or excused from attendance;
- g. To petition the Legislature for specific direction or appropriation to accomplish commission objectives, in the event of substantial disagreement between the commission and the department.

L.1974, c. 118, § 12, eff. Oct. 10, 1974.

d. The commission shall review and approve, reject or modify, any State project planned or State permits issued in the park, and submit its decision to the Governor.

**Source: 13:13A-13<sup>165</sup>**

#### COMMENT

The language pertaining to the preparation, adoption and amendment of the master plan has been simplified for clarity. The cross-reference to "subsection 13(b) of this act" has been changed to "subsection (b) of this section."

#### DP-15 Review zone

a. The commission shall determine, after public hearings held in Hunterdon, Somerset, Mercer, and Middlesex counties respectively, the extent and limits of the region to be designated the review zone. Any subsequent modification of review zone shall be made by the commission only after public hearings in the county or counties in which such modification is to be made. All public hearings required pursuant to this section shall be held only after giving notice by public advertisement once each week for 2 consecutive weeks prior to the date of any hearing in such newspaper or newspapers selected by the chairman of the commission as will best give notice. The last publication of notice shall be not less than 10 days prior to the date set for the hearing.

b. The commission shall approve all State actions within the review zone that impact on the park, and insure that these actions conform as nearly as possible to the commission's master plan and relevant local plans or initiatives. The State actions which the commission shall review shall include the operations of the Department of Environmental Protection concerning water supply and quality; the Division of Parks and Forestry in developing recreation facilities; and the activities of any other State department or agency that might affect the park.

c. The commission shall review and approve, reject, or modify any project within the review zone. The initial application for a proposed project within the zone shall be submitted by the applicant to the appropriate municipal reviewing agency. If approved by the agency, the application shall be sent to the commission for review.

d. The commission shall review each proposed project in terms of its conformity with, or divergence from, the objectives of the commission's master plan and shall:

- (1) advise the appropriate municipal reviewing agency that the project can proceed as proposed;
- (2) reject the application and so advise the appropriate municipal reviewing agency and the governing body of the municipality; or

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#### <sup>165</sup>13:13A-13. Master plan for physical development of park; review of state projects or permits

a. The commission shall prepare, or cause to be prepared, and, after a public hearing, or public hearings, and pursuant to the provisions provided for in subsection 13 b. of this act, adopt a master plan or portion thereof for the physical development of the park, which plan may include proposals for various stages in the future development of the park, or amend the master plan. The master plan shall include a report presenting the objectives, assumptions, standards and principles which are embodied in the various interlocking portions of the master plan. The master plan shall be a composite of the one or more written proposals recommending the physical development and expansion of the park either in its entirety or a portion thereof which the commission shall prepare after meetings with the governing bodies of the affected municipalities and counties, and any agencies and instrumentalities thereof.

b. In preparing the master plan or any portion thereof or amendment thereto the commission shall give due consideration to: (1) the function of the canal as a major water supply facility in the State; (2) the necessity to provide recreational activities to the citizens of this State, including but not limited to, facilities, design capacities, and relationship to other available recreational areas; (3) existing historical sites and potential restorations or compatible development; (4) the range of uses and potential uses of the canal in the urban environments of the older, intensively developed communities through which it passes; and (5) designated wilderness areas to be kept as undeveloped, limited-access areas restricted to canoeing and hiking. In preparing the master plan or any portion thereof or amendment thereto the commission shall consider existing patterns of development and any relevant master plan or other plan of development, and shall insure widespread citizen involvement and participation in the planning process.

c. The commission shall act in support of local suggestions or desires to complement the park master plan. Consultation, planning, and technical expertise will be made available to local planning bodies that wish to implement land-use policy to enhance the park area. The commission shall act on or refer complaints by citizens' groups or private residents who discover hazardous situations, pollution, or evidence of noncompliance with use regulations.

d. The commission shall review and approve, reject or modify, any State project planned or State permits issued in the park, and submit its decision to the Governor.

L.1974, c. 118, § 13, eff. Oct. 10, 1974.

(3) require modifications or additional safeguards on the part of the applicant, and return the application to the appropriate municipal reviewing agency, which shall be responsible for insuring that these conditions are satisfied before issuing a permit.

e. If no action is taken by the commission within a period of 45 days from the date of submission of the application to the commission by the municipal reviewing agency, this shall constitute an approval by the commission. The commission's decision shall be final and binding on the municipality, and the commission may, in the case of any violation or threat of a violation of a commission's decision by a municipality, or by the appropriate municipal reviewing agency, as the case may be, institute civil action (1) for injunctive relief; (2) to set aside and invalidate a decision made by a municipality in violation of this subsection; or (3) to restrain, correct or abate such violation.

**Source: 13:13A-14<sup>166</sup>**

#### COMMENT

Minor language changes for clarity. The definitions of "project" and "agency" have been moved to the section on definitions. The first part of source section (d) has been divided into subparagraphs for clarity. The latter part of subsection (d) of the source section has been made into a separate proposed subsection (e). "Division of Water Resources" has been changed to "Department of Environmental Protection."

#### DP-16 Annual audit of accounts

The commission shall cause an annual audit of its accounts to be made by a registered municipal accountant of New Jersey or a certified public accountant of New Jersey. The audit shall be completed and filed with the commission within 4 months after the close of the fiscal year of the commission, and a certified duplicate copy shall be filed in the Office of Management and Budget in the Department of Environmental Protection, in the office of the Division of Budget and Accounting in the Department of the Treasury, and in the Office of Fiscal Affairs within 5 days after the original audit is filed with the commission.

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#### **<sup>166</sup>13:13A-14. Review zone; boundaries; designation; state actions and private or public projects; approval**

a. The commission shall determine, after a public hearing, or public hearings held in Hunterdon, Somerset, Mercer, and Middlesex counties respectively, the extent and limits of the region to be designated the review zone. Any subsequent modification of said review zone shall be made by the commission only after public hearings in the county or counties in which such modification is to be made. All public hearings required pursuant to this section shall be held only after giving prior notice thereof by public advertisement once each week for 2 consecutive weeks in such newspaper or newspapers selected by the chairman of the commission as will best give notice thereof. The last publication of such notice shall be not less than 10 days prior to the date set for the hearing.

b. The commission shall approve all State actions within the review zone that impact on the park, and insure that these actions conform as nearly as possible to the commission's master plan and relevant local plans or initiatives. The State actions which the commission shall review will include the operations of the Division of Water Resources concerning water supply and quality; the Division of Parks and Forestry in developing recreation facilities; and the activities of any other State department or agency that might affect the park.

c. The commission shall review and approve, reject, or modify any project within the review zone. The initial application for a proposed project within the zone shall be submitted by the applicant to the appropriate municipal reviewing agency. If approved by the agency, the application shall be sent to the commission for review. The commission shall review each proposed project in terms of its conformity with, or divergence from, the objectives of the commission's master plan and shall: (1) advise the appropriate municipal reviewing agency that the project can proceed as proposed; (2) reject the application and so advise the appropriate municipal reviewing agency and the governing body of the municipality; or (3) require modifications or additional safeguards on the part of the applicant, and return the application to the appropriate municipal reviewing agency, which shall be responsible for insuring that these conditions are satisfied before issuing a permit. If no action is taken by the commission within a period of 45 days from the date of submission of the application to the commission by the municipal reviewing agency, this shall constitute an approval by the commission. The commission's decision shall be final and binding on the municipality, and the commission may, in the case of any violation or threat of a violation of a commission's decision by a municipality, or by the appropriate municipal reviewing agency, as the case may be, institute civil action (1) for injunctive relief; (2) to set aside and invalidate a decision made by a municipality in violation of this subsection; or (3) to restrain, correct or abate such violation. As used herein: (1) "project" means any structure, land use change, or public improvements for which a permit from, or determination by, the municipality is required, which shall include, but not be limited to, building permits, zoning variances, and excavation permits; and (2) "agency" means any body or instrumentality of the municipality responsible for the issuance of permits or the approval of projects, as herein defined, which shall include, but not be limited to, governing bodies, planning and zoning boards, building inspectors, managers and municipal engineers.

L.1974, c. 118, § 14, eff. Oct. 10, 1974.

**Source: 13:13A-15<sup>167</sup>**

**COMMENT**

Minor language changes.

**Recommended for repeal:**

**13:13A-1. Short title<sup>168</sup>**

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**<sup>167</sup>13:13A-15. Annual audit of accounts; employment of accountant**

The commission shall cause an annual audit of its accounts to be made, and for this purpose it shall employ a registered municipal accountant of New Jersey or a certified public accountant of New Jersey. The audit shall be completed and filed with the commission within 4 months after the close of the fiscal year of the commission, and a certified duplicate copy thereof shall be filed in the Office of Management and Budget in the Department of Environmental Protection, in the office of the Division of Budget and Accounting in the Department of the Treasury, and in the Office of Fiscal Affairs within 5 days after the original audit is filed with the commission.

L.1974, c. 118, § 15, eff. Oct. 10, 1974.

**<sup>168</sup>13:13A-1. Short title**

This act shall be known and may be cited as the "Delaware and Raritan Canal State Park Law of 1974."  
L.1974, c. 118, § 1, eff. Oct. 10, 1974.

## Chapter: PRESERVATION OF NATURAL AREAS

### NA-1 Definitions

For the purposes of this chapter:

"Natural areas" means areas of land or water which have retained their primeval character, although not necessarily completely natural and undisturbed, or having rare or vanishing species of plant and animal life or having similar features of interest which are worthy of preservation for the use of present and future residents of the State.

"Natural areas system" means those lands designated by the department pursuant to this chapter.

**Source: 13:1B-15.4<sup>169</sup>; [new]**

#### COMMENT

The definitions of "commissioner," "department," "council," and "section" have been deleted as unnecessary. The definition of "natural areas system" is new; it is implied in the current provisions. See, e.g., 13:1B-15.12a3.

### NA-2 Responsibilities of department

The department shall acquire, maintain and preserve natural areas within the State as a habitat for rare and vanishing species of plant and animal life so that the people of the State may be assured of their right to enjoy the benefits of such areas as places of natural interest and scenic beauty, as a living illustration of the State's original heritage and as a place for scientific study.

**Source: 13:1B-15.5<sup>170</sup>**

#### COMMENT

The phrase "shall be vested with the responsibility of" has been changed to "shall."

### NA-3 Natural areas unit

The commissioner shall designate a natural areas administrative unit within the division of parks and forestry, charged with the responsibility of acquiring, maintaining and preserving natural areas within the state pursuant to this chapter. The natural areas unit shall have such other duties as the commissioner may provide.

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#### **169** 13:1B-15.4. Definitions

The following terms wherever used or referred to in this act shall have the following meanings unless a different meaning clearly appears from the context:

- (a) "Commissioner" means the Commissioner of the Department of Conservation and Economic Development or his designated representative.
- (b) "Council" means the natural areas council established under this act.
- (c) "Department" means the Department of Conservation and Economic Development.
- (d) "Natural areas" means areas of land or water which have retained their primeval character, although not necessarily completely natural and undisturbed, or having rare or vanishing species of plant and animal life or having similar features of interest which are worthy of preservation for the use of present and future residents of the State.
- (e) "Section" means the natural areas section established under this act.  
L.1961, c. 51, p. 524, §1, eff. June 3, 1961.

#### **170** 13:1B-15.5. Responsibility of department for acquiring, maintaining and preserving natural areas

The department is hereby vested with the responsibility of acquiring, maintaining and preserving natural areas within the State as a habitat for rare and vanishing species of plant and animal life so that the people of the State may be assured of their right to enjoy the benefits of such areas as places of natural interest and scenic beauty, as a living illustration of the State's original heritage and as a place for scientific study.

L.1961, c. 51, p. 525, §2, eff. June 3, 1961.

**Source: 13:1B-15.5 [above]; 13:1B-15.6<sup>171</sup>**

#### **COMMENT**

The source section has been divided into two proposed sections, this one, which establishes a natural lands administrative unit, and the next, which enumerates the duties of the unit. The reference to the division of parks and forestry and recreation has been changed to the "division of parks and forestry." The reference to the unit having other duties "as may be prescribed by law" has been eliminated as surplusage.

#### **NA-4 Duties of the natural areas unit**

The department shall, through the natural areas unit:

- a. Make periodic State-wide surveys to determine the availability of land that should be preserved as natural areas and recommend an over-all program of acquisition.
- b. Recommend the acquisition of specific lands or interests in lands which are suitable for natural areas.
- c. Develop management plans for lands being preserved as natural areas.
- d. Prepare and disseminate literature and other materials to inform the public with respect to New Jersey's natural areas program.
- e. Consult with and co-operate with conservation and naturalists groups and organizations in the acquisition and maintenance of natural areas.

**Source: 13:1B-15.6 [above]**

#### **COMMENT**

In subsection (a) typographical error ("at") changed to "as." The reference to wildlife preserves is deleted as they are included in "natural areas."

In the introductory passage, the phrase "commissioner shall" has been changed to "department shall." In subsection (d), "area" has been changed to "areas."

#### **NA-5 Acquisition of lands, acceptance of funds**

The department is authorized to acquire by purchase, gift or otherwise any land or any interest in land that will serve to further the purposes of this chapter. The department may expend funds for this purpose from the State Recreation and Conservation Land Acquisition Fund. Lands or interest in land shall be acquired in the name of the state and on such terms and subject to such conditions and restrictions as the commissioner, after consultation with the Natural Areas Council, may determine. The department may also accept grants and gifts of money or other things of value to carry out the purposes of this chapter.

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#### **<sup>171</sup> 13:1B-15.6. Creation of natural areas section in Division of Parks, Forestry and Recreation; administration; powers and duties**

There is hereby created in the department a natural areas section in the Division of Parks, Forestry and Recreation, the function of which shall be, under the direction of the commissioner, to administer and enforce the provisions of this act and to perform such other duties as the commissioner may direct or as may be provided by law.

In addition to other functions, powers and duties vested in it by this and any other law, the Division of Parks, Forestry and Recreation shall, through the natural areas section:

- a. Make periodic State-wide surveys to determine the availability of land that should be preserved at natural areas or as wild life preserves and recommend an over-all program of acquisition.
- b. Recommend the acquisition of specific lands or interests in lands which are suitable for natural areas.
- c. Maintain and operate lands being preserved as natural areas.
- d. Prepare and disseminate literature and other materials to inform the public with respect to New Jersey's natural area program.
- e. Consult with and co-operate with conservation and naturalists groups and organizations in the acquisition and maintenance of natural areas.

L.1961, c. 51, p. 525, §3. Amended by L.1966, c. 54, §10, eff. July 1, 1966.



**Source: 13:1B-15.9<sup>172</sup>; 13:1B-15.11<sup>173</sup>, 13:1B-15.12a8<sup>174</sup>**

**COMMENT**

The source sections have been combined. The word "council" has been changed to "Natural Areas Council." The word "commissioner" has been changed to "department." The language has been clarified to expressly authorize the purchase of land for inclusion in the natural areas system, which appears to have been the intent of source section 13:1B-15.12a8.

**NA-6 Regulations**

The natural lands unit, with the advice of the Natural Areas Council, shall prescribe regulations establishing standards for the acquisition, maintenance and operation of lands designated as part of the natural areas system. The regulations shall be approved by the commissioner.

**Source: 13:1B-15.10<sup>175</sup>**

**COMMENT**

The reference to "rules and regulations" has been changed to "regulations" and the language otherwise simplified.

**NA-7 Natural areas system**

To be suitable for inclusion in the natural lands system, it is not necessary that an area be wholly unmarked by human activity, but that the impact of human activity be not permanent, not seriously destructive of the area's potential for developing natural values, and not obtrusively apparent to the casual observer, and is of such character that the lessening of human impact will allow the land or water to recover natural values of interest. Notwithstanding the above definition and criteria, lands subject to the noise of vehicular traffic and of commercial and industrial operations, and subject to air and water pollution as the result of the activities of human activity, may nevertheless be designated as parts of the system if they lie on the perimeters of primary natural areas within the system, and if the purpose of their inclusion within the system is to protect or buffer the primary natural areas.

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**172 13:1B-15.9. Acquisition of lands**

Lands acquired by the State pursuant to this act shall be acquired by the commissioner in the name of the State. They may be acquired by gift, purchase or otherwise on such terms and subject to such conditions and restrictions as the commissioner, after consultation with the council, may determine.

L.1961, c. 51, p. 526, §6, eff. June 3,1961.

**173 13:1B-15.11. Acceptance of grants and gifts by commissioner; expenditure of funds**

The commissioner may accept grants and gifts of lands, money or other things of value to carry out the purpose of this act and may use such grants and gifts and any sums as may be appropriated from time to time to acquire lands for natural areas and to maintain and operate such lands. The commissioner may expend funds in the State Recreation and Conservation Land Acquisition Fund, should such fund be established by law, to implement the purpose of this act.

L.1961, c.51, §8, eff. June 3, 1961.

**174 13:1B-15.12a8. Acquisition of land by purchase, gift or otherwise**

The department is authorized to acquire by purchase, gift, or otherwise any land or any interest therein that will serve to further the purposes of this act and the act to which this act is a supplement.

L.1975, c. 363, §9, eff. March 3,1976.

**175 13:1B-15.10. Rules and regulations; standards for acquisition, maintenance and operation of lands**

The section, with the advice of the council, shall prescribe rules and regulations establishing standards for the acquisition, maintenance and operation of lands under its administration. Such rules and regulations shall be approved by the commissioner.

L.1961, c. 51, p. 527, §7, eff. June 3,1961.

**Source: 13:1B-15.12a1<sup>176</sup>**

**COMMENT**

Source section 13:1B-15.12a1 established the natural areas system; the proposed section continues that designation for lands included in the system under the source section or thereafter included. The proposed section also continues the source section standard for inclusion of land in the system. References to "man" changed to "human activity."

**NA-8 Limitations on use of land in the natural areas system**

No land in the natural areas system may be leased, sold, exchanged or taken by any corporation, public or private, nor shall the timber on the land be sold, removed or destroyed, nor minerals extracted, except by authorizing special legislation.

**Source: 13:1B-15.12a7<sup>177</sup>**

**COMMENT**

Minor language changes, to change "system" to "natural areas system," and to change "thereon" to "on the land."

**NA-9 Study of lands**

The department shall have the power to study both State-owned and non-State-owned lands to determine their potential for inclusion in the natural lands system.

**Source: 13:1B-15.12a5<sup>178</sup>**

**NA-10 Registry of lands suitable for inclusion**

The department shall maintain a registry of all lands, public and private, which are suitable for inclusion within the natural areas system.

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**176 13:1B-15.12a1. Natural areas system; standards for inclusion of area**

For inclusion in the system, it is not necessary that an area be wholly unmarked by man, but that the impact of man be not permanent, not seriously destructive of the area's potential for developing natural values, and not obtrusively apparent to the casual observer, and is of such character that the lessening of human impact will allow the land or water to recover natural values of interest. Notwithstanding the above definition and criteria, lands subject to the noise of vehicular traffic and of commercial and industrial operations, and subject to air and water pollution as the result of the activities of man, may nevertheless be designated as parts of the system if they lie on the perimeters of primary natural areas within the system, and if the purpose of their inclusion within the system is to protect or buffer the primary natural areas.

L.1975, c. 363, §2, eff. March 3,1976.

**177 13:1B-15.12a7. Limitations on use of land in system**

No land in the system may be leased, sold or exchanged or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed, nor minerals extracted, except by authorizing special legislation.

L.1975, c. 363, §8, eff. March 3,1976.

**178 13:1B-15.12a5. Study of private lands for inclusion**

The department shall also, as rapidly as possible study lands that are not State-owned lands to determine their natural values and potential for inclusion with the system.

L.1975, c. 363, §6, eff. March 3,1976.

**Source: 13:1B-15.12a6<sup>179</sup>**

**COMMENT**

No change. Note that the obligation to maintain a registry of lands for inclusion in the system is an ongoing one; the source sections which directed the department to inventory public and private lands within a specified period of time are recommended for repeal as executed.

**NA-11 Inclusion of state lands**

The department shall make periodic recommendations to the Governor for the inclusion of additional state lands in the natural lands system. The department shall hold public hearings prior to making a recommendation.

**Source: 13:1B-15.12a3<sup>180</sup>, 13:1B-15.12a4<sup>181</sup>**

**COMMENT**

It appears to be the intent of the source section that the inclusion of any additional state lands above the acreage specified in source section 13:1B-15.12a5, be preceded by public hearings and a recommendation to the Governor. The provision in the source section for a rapid study of additional state lands has been eliminated as executed; the remaining provisions have been restated more clearly. Source section 13:1B-15.12a3 has also been executed but it is nevertheless included here as a source.

**NA-12 Classification of lands**

The department shall designate classifications of lands within the natural areas system and regulate uses within them so as to preserve the natural values of those lands. The designated classifications shall include:

- a. Areas of limited public access which are dedicated and restricted to ecological research and study, wherein the only permissible development shall be that of temporary, unobtrusive structures erected for scientific purposes and later removed;
- b. Areas which provide opportunities for public interpretation of the natural processes, flora and fauna of this State, wherein the development of nature trails and educational facilities shall be permitted;
- c. Areas of minimal interference by human activity wherein those recreational activities at those levels, to be determined by the department, which will not have serious or long-term effects on natural values and processes shall be permitted.

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**179 13:1B-15.12a6. Registry of lands suitable for inclusion**

The department shall, in keeping with the findings of the studies conducted pursuant to sections 5 and 6 of this act, maintain a registry of all lands, public and private, which are suitable for inclusion within the system under the provisions of this act and the act to which this act is a supplement.

L.1975, c. 363, §7, eff. March 3,1976.

**180 13:1B-15.12a3. Establishment of system; inclusion of additional areas**

The department shall have the authority to establish the system initially by declaring those areas designated as natural areas as of January 1, 1975 and, after suitable studies and public hearings, up to 5,000 additional acres of State parklands, State forests, hunting and fishing preserves, or other State lands within the jurisdiction of the department to be within the system.

L.1975, c. 363, §4, eff. March 3,1976.

**181 13:1B-15.12a4. Inclusion of other additional state lands; study; public hearings; periodic recommendations**

The department shall as rapidly as possible study all remaining State lands that may have the required potential for natural values, and after a public hearing as to each such area of land being considered for inclusion in the system, make periodic recommendations to the Governor concerning additional lands to be included within the system.

L.1975, c. 363, §5, eff. March 3,1976.

**Source: 13:1B-15.12a9<sup>182</sup>**

**COMMENT**

The language in the introductory provision referring to the purposes of the act has been replaced with language referring to the preservation of the natural values of land in the system. The distinction between classification of lands and regulation of the uses permitted within those classifications has been clarified. The reference to “man” in subsection (c) changed to “human activity.”

**NA-13 Permitted activities and obligation of users**

a. Swimming, canoeing, rowboating, fishing and hunting may be permitted in designated sections of the natural areas system at the discretion of the department, but only at levels of activity that will not have serious or long-term effects on the natural values of areas within the system.

b. Hiking may also be permitted in the natural areas system, but only to the extent of minimal impact on natural values.

c. Camping may be permitted in the natural areas system but shall be restricted to occasional overnight camping along trails and shall not include day-long camping or camping at established campgrounds. Auto campgrounds are excluded from all natural areas. Overnight trailside shelters of the type called lean-tos are permitted, but there may not be two such shelters within 3 miles of each other, and such shelters may not be used for day-long camping or for more extended stays.

d. Nothing may be brought into a natural area and left there except upon specific approval of the department. Nonburnable camping trash shall be removed for disposal elsewhere.

**Source: 13:1B-15.12a10<sup>183</sup>**

**COMMENT**

The source section has been divided into subsections.

**Provisions recommended for repeal**

**13:1B-15.12. Use of departmental employees<sup>184</sup>**

**COMMENT**

Recommended for repeal as unnecessary.

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**182 13:1B-15.12a9. Designation and regulation of classifications and uses of land within system**

The department shall designate and regulate those classifications and uses of lands within the system as it shall deem proper to effectuate the purposes of this act and the act to which this act is a supplement, such that the New Jersey Natural Areas System shall include:

a. Areas of limited public access which are dedicated and restricted to ecological research and study, wherein the only permissible development shall be that of temporary, unobtrusive structures erected for scientific purposes and later removed;

b. Areas which provide opportunities for public interpretation of the natural processes, flora and fauna of this State, wherein the development of nature trails and educational facilities shall be permitted;

c. Areas of minimal interference by man wherein those recreational activities at those levels, to be determined by the department, which will not have serious or long-term effects on natural values and processes shall be permitted.

L.1975, c. 363, §10, eff. March 3, 1976.

**183 13:1B-15.12a10. Permitted activities and obligation of users**

Swimming, canoeing, rowboating, fishing and hunting may be permitted in designated sections of the system at the discretion of the department, but only at levels of activity that will not have serious or long-term effects on the natural values of areas within the system. Hiking may also be permitted in lands of the system, but only to the extent of minimal impact on natural values. Camping may be permitted but shall be restricted to occasional overnight camping along trails and shall not include day-long camping or camping at established campgrounds. Auto campgrounds are excluded from all natural areas. Overnight trailside shelters of the type called lean-tos are permitted, but there may not be two such shelters within 3 miles of each other, and such shelters may not be used for day-long camping or for more extended stays. Nothing may be brought into a natural area and left there except upon specific approval of the department. Nonburnable camping trash shall be removed for disposal elsewhere.

L.1975, c. 363, §11, eff. March 3, 1976.

**184 Use of departmental employees**

Insofar as possible, the section shall make use of the employees of the department in carrying out the provisions of this act.

L.1961., c.51, §9, eff. June 3, 1961.

**13:1B-15.12a. Short title<sup>185</sup>**

**13:1B-15.12a2. Review and update of planning for natural areas<sup>186</sup>**

**COMMENT**

This provision has been executed.

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**185 13:1B-15.12a. Short title**

This act shall be known as, and may be cited as, the "Natural Areas System Act."  
L.1975, c. 363, §1, eff. March 3, 1976.

**186 13:1B-15.12a2. Review and update of planning for natural areas**

The Department of Environmental Protection shall within 2 years of the effective date of this act review and update the planning for natural areas as part of the New Jersey Statewide Comprehensive Outdoor Recreation Plan and shall recommend certain areas for inclusion within a New Jersey Natural Areas System, hereinafter referred to as "the system."

L.1975, c. 363, §3, eff. March 3, 1976.

## Chapter: NATURAL AREAS COUNCIL

### CHAPTER NOTE

The provisions concerning the Natural Areas Council were enacted as part of the Natural Areas Systems Act. These provisions concerning the Council have been made into a separate chapter. Note the similar treatment of other councils, commissions, boards and the like, e.g., the Historic Sites Council, the Natural Lands Trust, etc.

### NC-1 Natural areas council, establishment and membership

- a. There shall be within the natural areas administrative unit established in the department a natural areas council which shall consist of 7 members. The head of the natural areas administrative unit shall serve as a member of the council, ex officio, and as secretary of the council. The other 6 members shall be appointed by the Governor.
- b. After the expiration of the initial terms specified in L.1961, c.51, §4, appointments to the council shall be for terms of 3 years.
- c. The appointed members of the council shall be either professional naturalists or persons who have a demonstrated interest in the preservation of natural lands and wild life.
- d. The Governor shall fill any vacancy in the appointed membership of the council for the unexpired portion of the term.
- e. The members of the council shall serve without compensation. They may be reimbursed for expenses necessarily incident to their duties.
- f. The council shall meet at least once every 6 months and at such other times as the commissioner may determine. A meeting of the council shall be called by the commissioner when requested by 3 members of the council.
- g. The administrative head of the national areas administration unit shall serve as a secretary of the council.

**Source: 13:1B-15.7<sup>187</sup>**

### COMMENT

The source provision is part of the Natural Areas Systems Act, which is a single chapter in the source material. For the sake of consistency with other areas such as the historic sites council and the like, the material concerning this council is being placed in a separate chapter. References to the natural areas section in the source material has been changed to "natural areas administrative unit." The source section has been divided into subsections.

The references in the source section to appointment of council members' initial, staggered terms, long since executed, has been changed to a reference to the chapter law.

### NC-2 Natural areas council, duties

The natural areas council shall advise the commissioner in:

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#### **187 13:1B-15.7. Natural areas council; membership; terms; vacancies; reimbursement for expenses; meetings**

There shall be within this section a natural areas council which shall consist of 7 members. The administrative head of the section shall serve as a member, ex officio. The other 6 members shall be appointed by the Governor. First appointments shall be made so that 2 members shall serve for terms of 1 year from July 1, 1961; 2 members for terms of 2 years from July 1, 1961; and 2 members for terms of 3 years from July 1, 1961. Subsequent appointments shall be for terms of 3 years. The appointed members of the council shall be either professional naturalists or persons who have a demonstrated interest in the preservation of natural lands and wild life.

The Governor shall fill any vacancy in the appointed membership of the council for the unexpired portion of the term.

The members of the council shall serve without compensation. They may be reimbursed for expenses necessarily incident to their duties. The council shall meet at least once every 6 months and at such other times as the commissioner may determine. A meeting of the council shall be called by the commissioner when requested by 3 members of the council. The administrative head of the section shall serve as secretary of the council. L.1961, c. 51, p. 526, §4, eff. June 3, 1961.

- a. matters relating to the administration of the natural areas system;
- b. the development of regulations establishing standards for the acquisition, maintenance and operation of lands within the natural areas system; and
- c. the formation of an over-all program of land acquisition.

**Source: 13:1B-15.8<sup>188</sup>**

**COMMENT**

The reference to "rules and regulations" has been changed to "regulations." The narrative reference to "this act" has been changed to a reference to the natural areas system. "Under the administration of the natural lands unit" has been changed to "within the natural areas system."

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**188 13:1B-15.8. Duty of council to advise commissioner**

The council shall advise the commissioner in matters relating to the administration of this act and shall co-operate with the section:

- (a) In the development of rules and regulations to establish standards for the acquisition, maintenance and operation of lands under the administration of the section; and
- (b) In the formation of an over-all program of land acquisition.

L.1961, c. 51, p. 526, §5, eff. June 3,1961.

## **Chapter: NATURAL LANDS TRUST**

### **NT-1 Natural Lands Trust, establishment**

There is hereby established in but not of the department a body corporate and politic with corporate succession, to be known as the New Jersey Natural Lands Trust. The trust is hereby constituted an instrumentality exercising public and essential government functions and the exercise by the trust of the powers conferred by this chapter shall be deemed to be an essential government function of the State. The statutory goals of the trust shall include the preservation of land in its natural state for enjoyment by the public and to protect elements of natural diversity.

**Source: 13:1B-15.119<sup>189</sup>**

#### **COMMENT**

The specific reference to the department by name and to the Division of Parks and Forestry has been edited to refer only to "the department." Superfluous language has been eliminated.

### **NT-2 Trustees**

- a. The powers and duties of the trust shall vest in and be exercised by a board of 11 trustees.
- b. Six trustees shall be appointed by the Governor from a list of candidates nominated by a nominating committee provided by a group of nonprofit New Jersey corporations having open space preservation or environmental education as their corporate purpose, such as New Jersey Conservation Foundation, New Jersey Audubon Society, Rutgers, The State University, New Jersey Federation of Women's Clubs, Conservation and Garden Department, New Jersey Federation of Garden Clubs, and Watershed Associations incorporated in the State of New Jersey. Organizations must apply to the trustees in order to provide one member to the nominating committee. The trustees shall serve for 3 year terms, each of whom will continue to serve until succeeded.
- c. The remaining 5 trustees shall be: a member of the State House Commission designated by the Governor, and by virtue of their offices, the State Treasurer, the Commissioner of the Department of Environmental Protection and two members of the staff of the Department designated by the commissioner, or their respective representatives.
- d. The trustees shall elect a chairman.
- e. The concurrence of six members of the board shall be necessary to validate all acts of the board. At least one member of this majority must be an official of the State Government represented on the board.

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#### **189 13:1B-15.119.Natural Lands Trust**

There is hereby created and established in but not of the Division of Parks and Forestry of the Department of Environmental Protection, a body corporate and politic with corporate succession, to be known as the New Jersey Natural Lands Trust. The trust is hereby constituted an instrumentality exercising public and essential government functions and the exercise by the trust of the powers conferred by this act shall be deemed and held to be an essential government function of the State. The statutory goals of the trust shall include the preservation of land in its natural state for enjoyment by the public and to protect elements of natural diversity.

L. 1968, c. 425, §1, eff. Jan. 23, 1969. Amended by L. 1973, c. 64, §1, eff. March 22, 1973; L. 1986, c. 178, §1, eff. Dec. 9, 1986.



**Source: 13:1B-15.120<sup>190</sup>**

**COMMENT**

The source section has been divided into subsections. The language pertaining to the original terms of the trustees being filled by members of the Natural Lands Council has been eliminated; it does not appear to have any continuing purpose. "The validity of" has been changed to "validate."

**NT-3 Compensation, reimbursement**

The trustees shall serve without compensation, but the trust may reimburse its members for necessary expenses incurred in the discharge of their duties.

**Source: 13:1B-15.121<sup>191</sup>**

**COMMENT**

No change.

**NT-4 Powers of trust**

The New Jersey Natural Lands Trust shall have the power:

- a. To sue and be sued in its own name, but the trustees shall be held harmless for acts performed in good faith;
- b. To adopt a seal and alter the same at pleasure;
- c. To adopt bylaws for the regulation of its affairs and the conduct of its business;
- d. To maintain offices at such places within the State as it may designate;
- e. To appoint such officers, who need not be members of the trust, in addition to a secretary and a treasurer, as the trust shall deem advisable, and to employ such other employees and agents as may be necessary or desirable in its judgment, to fix their compensation, and to promote and discharge such officers, employees and agents, all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;
- f. To acquire in the name of the trust, hold and dispose of real or personal property in the exercise of its powers and the performance of its duties under this act;
- g. To apply for and accept any grant of money from the federal government, which may become available for programs in furtherance of its statutory goals, and to comply with any rule or regulation made by the federal government with respect to the application of such a grant, and to enter into and perform any contract or agreement with respect to the application of such a grant;

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**190 13:1B-15.120. Trustees; terms; appointment; chairman**

The powers and duties of the trust shall vest in and be exercised by a board of 11 trustees comprised initially of the six members of the Natural Areas Council, who shall serve for terms co-extensive with their respective terms on the council, and shall be succeeded by trustees appointed by the Governor from a list of candidates nominated by a nominating committee provided by a group of nonprofit New Jersey corporations having open space preservation or environmental education as their corporate purpose, such as North Jersey Conservation Foundation, New Jersey Audubon Society, Rutgers, The State University, New Jersey Federation of Women's Clubs, Conservation and Garden Department, New Jersey Federation of Garden Clubs, and Watershed Associations incorporated in the State of New Jersey. Organizations must apply to the trustees in order to provide one member to the nominating committee. The trustees thus appointed will serve for 3-year terms, each of whom will continue to serve until succeeded. The remaining trustees shall be: a member of the State House Commission designated by the Governor, and by virtue of their offices, the State Treasurer, the Commissioner of the Department of Environmental Protection and two members of the staff of the Department of Environmental Protection designated by the commissioner, or their respective representatives.

The Chairman of the Board of Trustees of the Natural Lands Trust shall be elected by the trustees.

The concurrence of six members of the board shall be necessary to the validity of all acts of the board. At least one member of this majority must be an official of the State Government represented on the board.

L.1968, c. 425, §2, eff. Jan. 23, 1969. Amended by L.1973, c. 64, §2, eff. March 22, 1973.

**191 13:1B-15.121.No compensation; reimbursement**

The trustees shall serve without compensation, but the trust may reimburse its members for necessary expenses incurred in the discharge of their duties.

L. 1968, c. 425, §3, eff. Jan. 23, 1969. Amended by L. 1986, c. 178, §2, eff. Dec. 9, 1986.

- h. To enter into and perform all contracts and agreements necessary or incidental to the performance of its duties, the maintenance of its property and the execution of its powers under this chapter;
- i. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;
- j. To hold and use all lands in the trust for educational and research purposes.

**Source: 13:1B-15.122<sup>192</sup>**

#### COMMENT

In subsection (e), the reference to civil service has been modified to reflect the revision of that title.

#### **NT-5 Particular powers**

The trust shall have power in particular:

- a. To accept gifts, legacies, bequests and endowments for any purpose which falls within that of the trust and, unless otherwise specified by the person making such a gift, legacy, bequest and endowment of money in furtherance of the trust, to invest the same in whole or in part in an interest-bearing trust account or general obligations of the State of New Jersey;
- b. To apply all moneys, assets, property or other things of value it may receive as an incident to its operation to the general purpose of the trust;
- c. To cooperate with and assist, insofar as practicable, any agency of the State or any of its political subdivisions, and any private agency or person in furtherance of the purposes of the trust;
- d. To give any moneys or property held by the trust to the Commissioner of the Department on behalf of the State, for the purpose of administering, operating or maintaining the natural areas programs of the State of New Jersey;
- e. To establish a stewardship program, comprising committees of volunteers under the direction and supervision of the board of trustees, and take all reasonable action necessary for maintenance of its property, and to

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**192 13:1B-15.122.Powers of trust**

The New Jersey Natural Lands Trust shall have the power:

- a. To sue and be sued in its own name, but the trustees shall be held harmless for acts performed in good faith;
  - b. To adopt a seal and alter the same at pleasure;
  - c. To adopt bylaws for the regulation of its affairs and the conduct of its business;
  - d. To maintain an office or offices at such a place or places within the State as it may designate;
  - e. To appoint such officers, who need not be members of the trust, in addition to a secretary and a treasurer, as the trust shall deem advisable, and to employ such other employees and agents as may be necessary or desirable in its judgment, to fix their compensation, and to promote and discharge such officers, employees and agents, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes;
  - f. To acquire in the name of the trust, hold and dispose of real or personal property in the exercise of its powers and the performance of its duties under this act;
  - g. To apply for and accept any grant of money from the federal government, which might be or may become available for programs in furtherance of its statutory goals, and to subscribe to and comply with any rule or regulation made by the federal government with respect to the application of such a grant, and to enter into and perform any contract or agreement with respect to the application of such a grant;
  - h. To make, enter into and perform all contracts and agreements necessary or incidental to the performance of its duties, the maintenance of its property and the execution of its powers under this act. No contract on behalf of the trust shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds the sum of \$7,500.00, unless the trust first publicly advertises for bids therefor, and awards the contract to the lowest responsible bidder; but advertising is not required where the contract to be entered into is one for furnishing or performing services of a professional nature, where there is only one source for the product or service being procured, or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges, made, charged, or exacted by the public utility for such products to be supplied or services to be rendered, are filed with the board. This section does not prevent the trust from having any work done by its own employees, nor does it apply to repairs, or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience requires, or the exigency of the circumstances will not admit of such advertisement. In such case the trust shall, by resolution passed by the affirmative vote of a majority of its members, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be expended;
  - i. To do all acts and things necessary or convenient to carry out the powers expressly granted in this act;
  - j. To hold and use all lands in said trust for educational and research purposes.
- L. 1968, c. 425, §4, eff. Jan. 23, 1969. Amended by L. 1973, c. 64, §3, eff. March 22, 1973; L. 1986, c. 178, §3, eff. Dec. 9, 1986.

employ such other employees and agents as may be required in its judgment to safeguard and maintain its lands, all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;

f. To procure insurance against any losses in connection with its property, operations or assets, in such amounts and from such insurers as it deems desirable.

**Source: 13:1B-13.123<sup>193</sup>**

#### COMMENT

The specific reference to the Commissioner of the Department of Environmental Protection has been changed to "the Commissioner of the Department"; the reference to the Civil Service title has been updated. Source subsection (b) has been deleted as unnecessary since it is duplicative of NT-4(f).

### NT-6 Annual report

The trust shall report annually to the Governor and the Legislature as to its activities during the preceding year. The report shall include any recommendations or requests the trustees deem appropriate to further the purposes of the trust.

**Source: 13:1B-15.124<sup>194</sup>**

#### COMMENT

The reference to "of the State of New Jersey" has been eliminated as superfluous.

### NT-7 Approval of land purchases

The trust may not purchase any lands directly or indirectly through the department which will result in the incurrence of any financial obligations on the part of the State, without express approval of the commissioner or the Legislature.

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#### **193 13:1B-15.123. Particular powers**

The trust shall have power in particular:

a. To accept gifts, legacies, bequests and endowments for any purpose which falls within that of the trust and, unless otherwise specified by the person making such a gift, legacy, bequest and endowment of money in furtherance of the trust, to invest the same in whole or in part in an interest-bearing trust account or general obligations of the State of New Jersey;

b. To acquire and hold real and personal property and lands significant as natural areas, by gift, purchase, devise, bequest or by any other means, and to preserve, interpret and administer such properties; in the acquisition of such properties, to acquire properties deemed necessary for the proper use and administration of natural areas property;

c. To apply all moneys, assets, property or other things of value it may receive as an incident to its operation to the general purpose of the trust;

d. To cooperate with and assist, insofar as practicable, any agency of the State or any of its political subdivisions, and any private agency or person in furtherance of the purposes of the trust;

e. To give any moneys or property held by the trust to the Commissioner of the Department of Environmental Protection on behalf of the State, for the

purpose of administering, operating or maintaining the natural areas programs of the State of New Jersey;

f. To establish a stewardship program, comprising committees of volunteers under the direction and supervision of the board of trustees, and take all reasonable action necessary for maintenance of its property, and to employ such other employees and agents as may be required in its judgment to safeguard and maintain its lands, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes;

g. To procure insurance against any losses in connection with its property, operations or assets, in such amounts and from such insurers as it deems desirable.

L. 1968, c. 425, §5, eff. Jan. 23, 1969. Amended by L. 1973, c. 64, §4, eff. March 22, 1973; L. 1986, c. 178, §4, eff. Dec. 9, 1986.

#### **194 13:1B-15.124. Annual report; recommendations or requests**

The trust shall report annually to the Governor and the Legislature of the State of New Jersey as to their activities during the preceding year, together with any recommendations or requests the trustees deem appropriate to further the purposes of the trust.

L. 1968, c. 425, §6, eff. Jan. 23, 1969.

**Source: 13:1B-15.125<sup>195</sup>**

**COMMENT**

The specific references to the commissioner and the department have been deleted. The reference to "the State of New Jersey" has been changed to "the State."

**NT-8 Legal counsel**

The trustees shall be entitled to receive from the Attorney General of the State of New Jersey, all legal counsel and services necessary to carry out the purposes of the trust.

**Source: 13:1B-15.126<sup>196</sup>**

**COMMENT**

The phrase "may request, and upon such request shall receive" has been changed to "shall be entitled to receive."

**NT-9 Public bidding**

a. No contract on behalf of the trust shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the amount determined pursuant to section 2 of P.L.1954, c.48 (C.52:34-7), unless the trust first publicly advertises for bids, and awards the contract to the lowest responsible bidder.

b. Advertising for bidders is not required:

(1) when the contract to be entered into is one for furnishing or performing services of a professional nature; or

(2) where there is only one source for the product or service being procured; or

(3) to effect repairs, or for the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of the trust's property or other public property or the public convenience requires and the exigency of the circumstances will not admit of such advertisement. In such case the trust shall, by resolution passed by the affirmative vote of a majority of its members, declare the exigency or emergency to exist, and set forth in the resolution the nature of the exigency or emergency and the approximate amount to be expended.

c. This section does not prevent the trust from having any work done by its own employees.

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**195 13:1B-15.125. Approval mandatory**

The trust may not purchase any lands directly or indirectly through the Department of Environmental Protection which will result in the incurrence of any financial obligations on the part of the State of New Jersey, without express approval of the Commissioner of the Department of Environmental Protection or the Legislature.

L. 1968, c. 425, §7, eff. Jan. 23, 1969. Amended by L. 1973, c. 64, §5, eff. March 22, 1973; L. 1986, c. 178, §5, eff. Dec. 9, 1986.

**196 13:1B-15.126. Legal counsel and services; request**

The trustees may request, and upon such request shall receive from the Attorney General of the State of New Jersey, all legal counsel and services necessary to carry out the purposes of the trust.

**Source: 13:1B-15.122<sup>197</sup>**

**COMMENT**

This section has been redrafted for clarity, and divided into subsections. In subsection (a), the \$7,500 has been changed to comply with current limits for public bidding. Subsection (b)(3) has been deleted since it was apparently copied from Water Supply Authority legislation by mistake during the 1986 revision of the trust statute.

**Repeal as unnecessary:**

**13:1B-15.127. Partial invalidity<sup>198</sup>**

**COMMENT**

As noted with respect to other similar provisions, they are unnecessary as there is a general principle of construction in 1:1-18 that covers this issue.

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**197 13:1B-15.122.Powers of trust**

The New Jersey Natural Lands Trust shall have the power:

[subsections a. through g. and i. through j., see above]

h. To make, enter into and perform all contracts and agreements necessary or incidental to the performance of its duties, the maintenance of its property and the execution of its powers under this act. No contract on behalf of the trust shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds the sum of \$7,500.00, unless the trust first publicly advertises for bids therefor, and awards the contract to the lowest responsible bidder; but advertising is not required where the contract to be entered into is one for furnishing or performing services of a professional nature, where there is only one source for the product or service being procured, or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges, made, charged, or exacted by the public utility for such products to be supplied or services to be rendered, are filed with the board. This section does not prevent the trust from having any work done by its own employees, nor does it apply to repairs, or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience requires, or the exigency of the circumstances will not admit of such advertisement. In such case the trust shall, by resolution passed by the affirmative vote of a majority of its members, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be expended;

L. 1968, c. 425, §4, eff. Jan. 23,1969. Amended by L. 1973, c. 64, §3, eff. March 22, 1973; L. 1986, c. 178, §3, eff. Dec. 9,1986.

**198 13:1B-15.127. Partial invalidity**

If any section or sections of this act or any provision thereof shall be declared to be unconstitutional, invalid or inoperative in whole or in part, such section or provision shall, to the extent that it is not unconstitutional, invalid or inoperative be enforced and effectuated and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the sections of this act.

L.1968, c. 425, §9, eff. Jan. 23,1969.

## Chapter: WILD AND SCENIC RIVERS

### WR-1 Legislative findings and declarations

The Legislature hereby finds and declares that many of the rivers of New Jersey, or sections thereof, together with adjacent land areas, possess outstanding scenic, recreational, geologic, fish and wildlife, floral, historic, cultural, or similar values which are of benefit and enjoyment to present and future generations of this State; that selected rivers, or sections thereof, are a public trust and should be preserved and protected so as to insure that this and succeeding generations have the opportunity to enjoy the aesthetic and recreational qualities of such rivers; and that it shall, therefore, be the policy of this State to preserve, protect, and enhance the natural and recreational values of such rivers through the establishment of a New Jersey Wild and Scenic Rivers System, and by prescribing the procedures and criteria for designating, protecting and administering the system and for adding new components to it from time to time.

**Source: 13:8-46<sup>199</sup>**

#### COMMENT

No change.

### WR-2 Definitions

For the purposes of this chapter:

"Designated adjacent area of land" means those lands immediately adjacent to rivers or sections of rivers included in the system which have been delineated by the department as a floodway, flood fringe area or flood hazard area, as determined by the department, pursuant to the provisions of P.L.1962, c. 19 (C. 58:16A-50 et seq.), as amended by P.L.1972, c. 185, as well as any additional lands to which the department acquires a fee simple interest or scenic easement in accordance with the provisions of this chapter.

"Free of impoundment," as applied to any river, means existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other significant modification of the waterway; provided, however, that the existence of low dams, diversion works, and other minor structures at the time any river or section of river is proposed for inclusion in the system shall not necessarily bar its consideration for such inclusion.

"River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including but not limited to rivers, streams, creeks, runs, kills, rills, and small lakes.

"River area" means rivers and designated adjacent areas of land which are included in the system.

"Scenic easement" means a perpetual easement in land which:

- a. is held for the benefit of the public;
- b. is specifically enforceable by its holder or beneficiary; and
- c. limits or obligates the holder of the servient estate, or the holder's successors in interest with respect to their use and management of activities conducted on the land, the object of the limitations and obligations being the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it; provided, however, that nothing in this section shall be construed to affect, without the owner's

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#### **199 13:8-46. Legislative findings and declarations**

The Legislature hereby finds and declares that many of the rivers of New Jersey, or sections thereof, together with adjacent land areas, possess outstanding scenic, recreational, geologic, fish and wildlife, floral, historic, cultural, or similar values which are of benefit and enjoyment to present and future generations of this State; that selected rivers, or sections thereof, are a public trust and should be preserved and protected so as to insure that this and succeeding generations have the opportunity to enjoy the aesthetic and recreational qualities of such rivers; and that it shall, therefore be the policy of this State to preserve, protect, and enhance the natural and recreational values of such rivers through the establishment of a New Jersey Wild and Scenic Rivers System, and by prescribing the procedures and criteria for designating, protecting and administering the system and for adding new components to it from time to time.

L.1977, c. 236, §2, eff. Sept. 28, 1977.

consent, any normal or usual use of land or water exercised prior to the acquisition of a scenic easement in the land.

**Source: 13:8-47<sup>200</sup>**

#### COMMENT

The definitions of "commissioner" and "department" have been eliminated. The definition of "system" in subsection (h) has been deleted as self-evident.

### **WR-3 Establishment and administration of wild and scenic rivers system**

a. The New Jersey wild and scenic rivers system shall consist of river areas classified, designated and administered as wild, scenic, recreational, or developed recreational rivers.

b. The river areas comprising the wild and scenic rivers system shall be administered by the department or by a local commission as provided in this chapter. The administration of all State-owned lands within any wild river area shall be consistent with the administration of lands included within the New Jersey Natural Areas System pursuant to the provisions of [P.L.1975, c.363 (C. 13:1B-15.12a et seq.)]

c. The administration of the wild and scenic rivers system shall reflect the classification of river areas established under this chapter so as to prevent incompatible management or development which could detract from the quality or alter the character of such areas.

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#### **200 13:8-47. Definitions**

As used in this act, unless the context clearly indicates otherwise:

a. "Commissioner" means the Commissioner of the Department of Environmental Protection.

b. "Department" means the Department of Environmental Protection.

c. "Designated adjacent area of land" means those lands immediately adjacent to rivers or sections of rivers included in the system which have been delineated by the department as a floodway, flood fringe area or flood hazard area, as determined by the department, pursuant to the provisions of P.L.1962, c. 19 (C. 58:16A-50 et seq.), as amended by P.L.1972, c. 185, as well as any additional lands to which the department acquires a fee simple interest or scenic easement in accordance with the provisions of this act.

d. "Free of impoundment," as applied to any river, means existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other significant modification of the waterway; provided, however, that the existence of low dams, diversion works, and other minor structures at the time any river or section of river is proposed for inclusion in the system shall not necessarily bar its consideration for such inclusion.

e. "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including but not limited to rivers, streams, creeks, runs, kills, rills, and small lakes.

f. "River area" means rivers and designated adjacent areas of land which are included in the system.

g. "Scenic easement" means a perpetual easement in land which (1) is held for the benefit of the public; (2) is specifically enforceable by its holder or beneficiary; and (3) limits or obligates the holder of the servient estate, his heirs, and assigns with respect to their use and management of activities conducted thereon, the object of such limitations and obligations being the maintenance or enhancement of the natural beauty of the land in question or of the areas affected by it; provided, however, that nothing herein contained shall be construed as to affect, without the owner's consent, any normal or usual use of and or water exercised prior to the acquisition of a scenic easement therein.

h. "System" means the New Jersey Wild and Scenic Rivers System established pursuant to this act.

L.1977, c. 236, §3, eff. Sept. 28, 1977.

**Source: 13:8-48<sup>201</sup>**

#### COMMENT

The source section has been divided into two separate sections, this section establishing the system and providing for its administration and the second proposed section defining the types of river areas to be included in the system (see below.) The material pertaining to the establishment and administration of the system has been extensively reorganized and edited for clarity.

#### **WR-4 Classification of rivers**

The classifications of rivers within the system shall be as follows:

- a. Wild river areas, which are those rivers, or sections thereof, that are free of impoundment and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and undeveloped and waters unpolluted.
- b. Scenic river areas, which are those rivers, or sections thereof, that are free of impoundment, with watersheds or shorelines still largely primitive and undeveloped, but accessible in places by road.
- c. Recreational river areas, which are those rivers, or sections thereof, that are readily accessible, that may have some development along their shorelines, and that may have undergone some impoundment or diversion prior to their inclusion in the New Jersey Wild and Scenic River System.
- d. Developed recreational rivers, which are those rivers, or sections thereof, that are readily accessible, that may have substantial development along their shorelines, that may have undergone substantial impoundment or diversion, but which remain suitable for a variety of recreational uses.

**Source: 13:8-48 [above]**

#### COMMENT

This proposed section consists of the lettered subsections contained in the source statute. The remaining provisions in the source section have been retained in a separate proposed section entitled "Establishment and administration of wild and scenic rivers system" (see above). No changes have been made in the language of these subsections.

#### **WR-5 Inclusion of river in system**

In order to determine the suitability of any river for inclusion in the system, the department shall:

- a. Complete the delineation of the flood hazard area for the river as required by section 3 of P.L.1962, c. 19 (C. 58:16A-52).

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**201 13:8-48. Establishment; components; administration; classification of river areas**

The department is hereby authorized, empowered and directed to establish a State system of rivers to be known as the New Jersey Wild and Scenic Rivers System, which shall comprise river areas classified, designated and administered as wild, scenic, recreational, or developed recreational rivers. Such river areas shall be administered by the department or by a local commission as provided in section 9 of this act. Such administration shall reflect the classification of such river area so as to prevent incompatible management or development which could detract from the quality or alter the character of such area. The administration of all State-owned lands within any wild river area shall be consistent with the administration of lands included within the New Jersey Natural Areas System pursuant to the provisions of P.L.1975, c. 363 (C. 13:1B-15.12a et seq.); provided, however that such lands within such river areas shall be deemed to be in addition to, and not a part of, the New Jersey Natural Areas System for the purposes of section 4 of P.L.1975, c. 363 (C. 13:1B-15.12a3). Such classifications shall be as follows:

- a. Wild river areas, which are those rivers, or sections thereof, that are free of impoundment and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and undeveloped and waters unpolluted.
- b. Scenic river areas, which are those rivers, or sections thereof, that are free of impoundment, with watersheds or shorelines still largely primitive and undeveloped, but accessible in places by road.
- c. Recreational river areas, which are those rivers, or sections thereof, that are readily accessible, that may have some development along their shorelines, and that may have undergone some impoundment or diversion prior to their inclusion in the New Jersey Scenic River System.
- d. Developed recreational rivers, which are those rivers, or sections thereof, that are readily accessible, that may have substantial development along their shorelines, that may have undergone substantial impoundment or diversion, but which remain suitable for a variety of recreational uses.

L.1977, c. 236, §4, eff. Sept. 28, 1977.



b. Conduct such studies as are necessary in order to prepare a report containing the following information concerning the proposed river area:

- (1) a map portraying the location and boundaries of the area;
- (2) a summary of the current and potential ownership and uses of the lands included in the area;
- (3) a discussion of the environmental and economic impact upon local communities and the State which would result from the inclusion of the area in the system;
- (4) a recommendation concerning the proper classification and use of the proposed river area; and,
- (5) an estimation of the cost which would be incurred by the State in designating the area as a component of the system.

The report shall be made available to the Assembly Agriculture and Environment Committee, the Senate Energy and Environment Committee and to the public at least 30 days prior to the public hearing required by this section.

c. Conduct a public hearing in a location convenient to all interested parties at least 30 days prior to designating any river area as a component of the system. Public notice of the hearing shall be published in at least two newspapers circulating within the affected counties not less than 3 weeks prior to the hearing. At least 2 weeks prior to the date set for the hearing, a copy of the public notice shall be sent by certified mail to each owner having a recorded interest in the lands within the proposed river area as shown in the tax office of the municipality within which the land is located. The notice shall be mailed to the address shown in the records of the municipal tax office. Following the public hearing, the commissioner shall consider the testimony presented and evaluate any reasonable alternative to, or revision of, the designation of the proposed river area.

d. Subsequent to the fulfillment of the above requirements, the commissioner may designate the river area as a component of the system. Upon the designation, the commissioner shall publish a notice of the designation, including a map portraying the boundaries of the river area, in the New Jersey Register.

e. Subsequent to the designation procedure provided in this section, the commissioner may reclassify the designation of any component river area of the system.

**Source: 13:8-49<sup>202</sup>; 13:8-56<sup>203</sup>**

#### COMMENT

Words such as "such" and "thereat" have been changed, and some other minor language changes have been made. In subsection (b)(2) the phrase "the lands" has been changed to "the lands included in the area." The elements set forth in subsection (b) have been divided into numbered sub-subsections. New subsection (e) is derived from the source section 13:8-56. It has been combined here with the first source section because it is pertinent to the designation process.

#### WR-6 Use of state lands

a. The department may use for the purposes of the system lands owned by the State, with the concurrence of the head of the administering agency, and acquire scenic easements in such lands by written cooperative agreement, donation, or purchase with donated or appropriated funds, or agree to manage any such lands in a manner consistent with the provisions of this chapter.

b. The department may enter into agreements with landowners, counties, municipalities, private organizations and individuals for the use of lands within the designated boundaries of any river area of the system in accordance with the provisions of this chapter, or may acquire scenic easements by donation or purchase with donated or appropriated funds.

**Source: 13:8-50<sup>204</sup>**

#### COMMENT

Minor language changes.

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#### **202 13:8-49. Inclusion of river in system; determination of suitability; hearings; designation; notice**

In order to determine the suitability of any river for inclusion in the system, the department shall:

a. Complete the delineation of the flood hazard area for such river as required by section 3 of P.L.1962, c. 19 (C. 58:16A-52).

b. Conduct such studies as are necessary in order to prepare a report containing the following information concerning the proposed river area: a map portraying the location and boundaries of such area; a summary of the current and potential ownership and uses of such lands; a discussion of the environmental and economic impact upon local communities and the State which would result from the inclusion of such area in the system; a recommendation concerning the proper classification and use of such proposed river area; and, an estimation of the cost which would be incurred by the State in designating such area as a component of the system. Such report shall be made available to the Assembly Agriculture and Environment Committee, the Senate Energy and Environment Committee and to the public at least 30 days prior to the public hearing required by this section.

c. Conduct a public hearing in a location convenient to all interested parties at least 30 days prior to designating any river area as a component of the system. Public notices of such hearings shall be published in at least two newspapers circulating within the affected counties not less than 3 weeks prior to the hearings. At least 2 weeks prior to the date set for such hearing, a copy of the public notice shall be sent by certified mail to each owner having a recorded interest in the lands within the proposed river area as shown in the municipal tax office wherein such land is located. Such notice shall be mailed to the address shown in the records of the municipal tax office. Following any such public hearing, the commissioner shall consider the testimony presented thereat and evaluate any reasonable alternative to, or revision of, the designation of such proposed river area.

d. Subsequent to the fulfillment of the above requirements, the commissioner may designate such river area as a component of the system. Upon such designation, the commissioner shall cause notice thereof, including a map portraying the boundaries of the river area, to be published in the New Jersey Register.

L.1977, c. 236, §5, eff. Sept. 28, 1977.

#### **203 13:8-56. Easements and rights-of-way on state-owned land; grants; reclassification of designation of component river area**

a. The department may grant easements and rights-of-way upon, over, under, across, or through any State-owned land within a component river area of the system in accordance with the laws and rules and regulations applicable to the department; provided, however, that any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purposes of this act.

b. Subsequent to the designation procedure provided in section 5 of this act, the commissioner may reclassify the designation of any component river area of the system.

L.1977, c. 236, §12, eff. Sept. 28, 1977.

#### **204 13:8-50. State lands; use for system; scenic easements; acquisition or agreements**

a. The department may use for the purposes of the system lands owned by the State, with the concurrence of the head of the administering agency, and acquire scenic easements in such lands by written cooperative agreement, donation, or purchase with donated or appropriated funds, or agree to manage any such lands in a manner consistent with the provisions of this act.

b. The department may enter into such agreements with landowners, counties, municipalities, private organizations and individuals for the use of lands within the designated boundaries of any river area of the system in accordance with the provisions of this act, or may acquire therefor scenic easements by donation or purchase with donated or appropriated funds.

L.1977, c. 236, §6, eff. Sept. 28, 1977.

## **WR-7 Funds**

The department is hereby authorized to apply for, accept and expend funds from any public or private source for planning, for the acquisition of lands and scenic easements, and for facilities for the wild and scenic rivers system.

**Source: 13:8-51<sup>205</sup>**

### **COMMENT**

Minor language changes: "system" changed to "wild and scenic rivers system"; reference to "this act" deleted. The awkward language has been redrafted to read "for planning, for the acquisition of lands and scenic easements, and for facilities."

## **WR-8. Adoption of regulations**

a. The department shall adopt regulations:

(1) concerning the development and use of designated adjacent areas of land defined under this chapter;

(2) containing guidelines for the preparation of the reports required for designation of component river areas of the wild and scenic rivers system, which guidelines shall include the goals, objectives and policies adopted by the department with respect to the development and use of designated adjacent areas of land defined under this chapter;

(3) concerning the management of the four classes of rivers established under this chapter.

The regulations shall serve as minimum standards for the adoption of regulations by any commission created by the affected municipalities in accordance with this chapter. The regulations shall not be construed so as to affect any use of designated adjacent areas of land which exists on the effective date of P.L.1977, c.236, that is, September 28, 1977, nor to prohibit or adversely affect the expansion of any agricultural use of such lands which exists on that date.

b. The department may, after conducting public hearings, adopt, amend or repeal any other regulations which may be necessary to effectuate the purposes of this chapter.

c. The department shall transmit copies of all regulations proposed pursuant to this section to the Assembly Agriculture and Environment Committee and to the Senate Energy and Environment Committee.

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**205 13:8-51. Funds; authorization to apply for, accept and expend**

The department is hereby authorized to apply for, accept and expend funds from any public or private source for the planning or acquisition of lands, scenic easements thereto, or the development of facilities for the system as provided by this act. L.1977, c. 236, §7, eff. Sept. 28, 1977.

**Source: 13:8-52<sup>206</sup>, 13:8-55<sup>207</sup>**

#### COMMENT

The source provisions have been combined into a single section mandating the adoption of regulations. While source section 13:8-55 provided for the promulgation of "guidelines," any such guidelines would necessarily be in the form of regulations, see Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313 (1984).

In subsection (a) of source section 13:8-52, the specific reference to the administrative procedure act is deleted as unnecessary. Subsection (d) of source section 13:8-52, providing for legislative oversight of administrative regulations, has been eliminated as contrary to the Supreme Court decision in General Assembly v. Byrne, 90 N.J. 376 (1982); neither does it seem consistent with the recent constitutional amendment authorizing legislative oversight of administrative regulations. See Art. V, Sec. IV, par. 6, as amended Nov. 3, 1992. Subsection (c), however, which requires the regulations to be transmitted to the legislative committees, has been retained as it does not appear to present any constitutional problems.

With respect to source section 13:8-55, the requirement that guidelines be adopted within one year has been eliminated as executed, and replaced with a continuing mandate to promulgate guidelines.

#### **WR-9 Municipal wild and scenic river commissions**

a. Within 6 months of the adoption by the department of regulations concerning the development and use of designated adjacent areas of land, each municipality affected by the adoption of the regulations may, singly or jointly, create a commission to be known and designated as "the . . . wild and scenic river commission." Any existing environmental commission or joint environmental commission established pursuant to P.L.1968, c. 245 (C. 40:56A-1 et seq.), by any affected municipality or municipalities may be designated as such a wild and scenic river commission. Wild and scenic river commissions shall have authority to adopt, amend and administer, with the approval of the commissioner, regulations concerning the development and use of the appropriate designated adjacent area of land; provided, however, that no such regulations shall be less restrictive than the minimum standards promulgated by the department. The members of wild and scenic river commissions shall be appointed by the governing body of the municipality or municipalities creating the commission. The method, number, and terms of such appointments shall be determined by the governing bodies with the approval of the commissioner.

b. If any affected municipality fails to create, or join in the creation of, a wild and scenic river commission, or if any such commission fails to adopt and enforce regulations, the department shall enforce existing State regulations applicable to such land.

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#### **206 13:8-52. Rules and regulations; use by commissions created by municipalities; transmittal; veto by legislature**

a. The department is hereby empowered and directed, pursuant to the "Administrative Procedure Act" (C. 52:14B-1 et seq.), and after public hearings thereon, to promulgate rules and regulations concerning the development and use of designated adjacent areas of land, which rules and regulations shall also serve as minimum standards for the adoption of appropriate rules and regulations by any commission created by the affected municipalities in accordance with section 9 of this act; provided, however, that such rules and regulations shall not be construed so as to affect any use of such lands which exists at the time of the effective date of this act; provided, further, however, that such rules and regulations shall not be construed so as to prohibit or adversely affect the expansion of any agricultural use of such lands which exists at the time of the effective date of this act.

b. The department is further authorized, pursuant to the aforesaid, "Administrative Procedure Act," and after public hearings thereon, to adopt, amend or repeal such other rules and regulations as are necessary to effectuate the purposes of this act.

c. The department shall transmit copies of all rules and regulations proposed pursuant to this section to the Assembly Agriculture and Environment Committee and to the Senate Energy and Environment Committee.

d. The department shall further transmit copies of all rules and regulations proposed pursuant to this section to the Senate and General Assembly on a day on which both Houses shall be meeting in the course of a regular or special session. The provisions of the aforesaid "Administrative Procedure Act" or any other law to the contrary notwithstanding, no such rule or regulation shall take effect if, within 60 days of the date of its transmittal to the Senate and General Assembly, the Legislature shall pass a concurrent resolution stating in substance that the Legislature does not favor such proposed rule or regulation.

L.1977, c. 236, §8, eff. Sept. 28, 1977.

#### **207 13:8-55. Guidelines for preparation of reports**

Within 1 year of the effective date of this act, the commissioner shall promulgate guidelines for the preparation of the reports required for designation of component river areas of the system and for the management of the four classes of rivers herein established, including the goals, objectives, policies, and State rules and regulations which shall also serve as minimum standards for local rules and regulations concerning the development and use of designated adjacent areas of land.

L.1977, c. 236, §11, eff. Sept. 28, 1977.

**Source: 13:8-53<sup>208</sup>**

**COMMENT**

Minor language changes.

**WR-10 Development of facilities for public welfare on state-owned land**

Nothing in this chapter shall be construed to prohibit the department from developing facilities on any State-owned land within a component river area of the system to provide for the public welfare, including recreational use and enjoyment of the area. The facilities shall be consistent with the relevant classification of the river area and with regulations promulgated by the department or a local wild and scenic river commission pursuant to this chapter.

**Source: 13:8-54<sup>209</sup>**

**COMMENT**

Minor language changes.

**WR-11 Easements and rights-of-way on state-owned land**

The department may grant easements and rights-of-way upon, over, under, across, or through any State-owned land within a component river area of the system. Any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purposes of this chapter.

**Source: 13:8-56 [see above]**

**COMMENT**

Language in subsection (a) requiring the department to act in accordance with the law has been deleted as unnecessary. "Act" has been changed to "chapter." Subsection (b) of the source section concerning re-designation of classified river areas is out of place here and has been moved to the proposed section entitled "Inclusion of river in system."

**WR-12 Penalties, injunctive relief**

a. Any person who violates the provisions of any regulation adopted by the department pursuant to this chapter shall be guilty of a disorderly persons offense. If such violation is of a continuing nature, each day in which it continues shall constitute an additional, separate and distinct offense.

b. The department may institute a summary action in a court of competent jurisdiction for injunctive relief to prohibit and prevent continuing violations of the regulations adopted pursuant to this chapter.

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**208 13:8-53. Municipal wild and scenic river commissions; authority; members; failure to adopt and enforce rules and regulations; enforcement by department**

a. Within 6 months of the adoption of rules and regulations pursuant to subsection a. of section 8 of this act, each affected municipality may, singly or jointly, create a commission to be known and designated as "the . . . wild and scenic river commission." Any existing environmental commission or joint environmental commission established pursuant to P.L.1968, c. 245 (C. 40:56A-1 et seq.), by any affected municipality or municipalities may be designated as such a wild and scenic river commission. Such commission shall have authority to adopt, amend and administer, with the approval of the commissioner, rules and regulations concerning the development and use of the appropriate designated adjacent area of land; provided, however, that no such rules and regulations shall be less restrictive than the minimum standards promulgated by the department pursuant to section 8 of this act. Members of such commissions shall be appointed by the governing body of municipalities creating same. The method, number, and terms of such appointments shall be determined by such governing bodies with the approval of the commissioner.

b. If any affected municipality fails to create, or join in the creation of, such a commission, or if any such commission fails to adopt and enforce such rules and regulations, the department shall enforce existing State rules and regulations applicable to such land.  
L.1977, c. 236, §9, eff. Sept. 28, 1977.

**209 13:8-54. Development of facilities for public welfare on state-owned land**

Nothing in this act shall be construed so as to prohibit the department from developing facilities on any State-owned land within a component river area of the system to provide for the public welfare, including recreational use and enjoyment of such area; provided, however, that such facilities shall be consistent with the relevant classification of the river area and with rules and regulations promulgated by the department or a local commission pursuant to this act.

L.1977, c. 236, §10, eff. Sept. 28, 1977.

**Source: 13:8-57<sup>210</sup>**

**COMMENT**

Minor language changes. The source section has been divided into two subsections.

**WR-13 Funds expendable for acquisition of lands or scenic easements**

The commissioner may use any sum appropriated by any act from the proceeds of the sale of bonds intended for the State acquisition of lands or interests in lands for recreation and conservation purposes, and such other sums as may be appropriated for like purposes, for the acquisition of lands or scenic easements in lands for the purposes of this chapter.

**Source: 13:8-58<sup>211</sup>**

**COMMENT**

The reference to the specific funding provision in the source section has been deleted as unnecessary because the section also includes a general funding provision. "Act" changed to "chapter."

**WR-14 Conflict between statutes**

Any portion of a component river area included in the system which is delineated as within the boundaries of a flood hazard area pursuant to section 3 of P.L.1962, c. 19 (C. 58:16A-52), or which is or shall become a part of any State park, wildlife refuge or similar area, shall be subject to the provisions of this chapter and the acts under which such other areas may be administered. In the case of conflict between the provisions of these statutes, the more restrictive provisions shall apply.

**Source: 13:8-59<sup>212</sup>**

**COMMENT**

The paragraph was condensed. No other change.

**WR-15 Inclusion of component river areas in national wild and scenic rivers system**

The Governor is hereby authorized to make application on behalf of the State for the inclusion of component river areas of the New Jersey Wild and Scenic Rivers System in the National Wild and Scenic Rivers System. The Governor is further authorized to enter into written cooperative agreements concerning the inclusion of these areas and for the joint Federal-State administration of a New Jersey component river area of the National system. No such agreement for the administration of a New Jersey component river area shall be less restrictive than the provisions of this chapter or the regulations promulgated pursuant to this chapter.

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**210 13:8-57. Violations; penalty; injunction**

Any person who violates the provisions of any rule or regulation adopted by the department pursuant to this act shall be guilty of a disorderly persons offense. If such violation is of a continuing nature, each day in which it continues shall constitute an additional, separate and distinct offense. The department is hereby empowered to institute any action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation, and such court may proceed in a summary manner.

L.1977, c. 236, §13, eff. Sept. 28, 1977.

**211 13:8-58. Funds expendable for acquisition of lands or scenic easements**

The commissioner may use any sum hereafter appropriated by any act from the proceeds of the sale of bonds under the "New Jersey Green Acres and Recreation Opportunities Bond Act of 1974" (P.L.1974, c. 102), which is intended for the State acquisition of lands or interests in lands for recreation and conservation purposes, and such other sums as may be appropriated for like purposes for the acquisition of lands or scenic easements thereto for the purposes of this act.

L.1977, c. 236, §14, eff. Sept. 28, 1977.

**212 13:8-59. Component river area within flood hazard area or part of state park, wildlife refuge or similar area; acts governing**

Any portion of a component river area included in the system which is delineated as within the boundaries of a flood hazard area pursuant to section 3 of P.L.1962, c. 19 (C. 58:16A-52), or which is or shall become a part of any State park, wildlife refuge or similar area shall be subject to the provisions of this act and the acts under which such other areas may be administered; in the case of conflict between the provisions of such acts, the more restrictive provisions shall apply.

L.1977, c. 236, §15, eff. Sept. 28, 1977.

Source: 13:8-60<sup>213</sup>

**COMMENT**

"Act" changed to "chapter"; "rules and regulations" changed to "regulations." Minor language changes.

**Sections recommended for repeal:**

**13:8-45. Short title<sup>214</sup>**

**13:8-61. Severability<sup>215</sup>**

**COMMENT**

As noted with respect to other similar provisions, they are unnecessary as there is a general principle of construction in 1:1-18 that covers this issue.

**13:8-62. Liberal construction of act<sup>216</sup>**

**13:8-63. Designation of initial components of system<sup>217</sup>**

**COMMENT**

The source section requires the designation of certain initial components of the system within one year. It is recommended for repeal as executed.

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**213 13:8-60. Inclusion of component river areas in national wild and scenic rivers system**

The Governor is hereby authorized to make application on behalf of the State for the inclusion of component river areas of the New Jersey Wild and Scenic Rivers System in the National Wild and Scenic Rivers System. The Governor is further authorized to enter into written cooperative agreements concerning such inclusion and for the joint Federal-State administration of a New Jersey component river area of such system; provided, however, that no such agreement for the administration of such area shall be less restrictive than the provisions of this act or the rules and regulations promulgated pursuant hereto.

L.1977, c. 236, §16, eff. Sept. 28, 1977.

**214 13:8-45. Short title**

This act shall be known and may be cited as the "New Jersey Wild and Scenic Rivers Act."

L.1977, c. 236, §1, eff. Sept. 28, 1977.

**215 13:8-61. Severability**

If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

L.1977, c. 236, §17, eff. Sept. 28, 1977.

**216 13:8-62. Liberal construction of act**

This act shall be liberally construed to effectuate the purpose and intent hereof.

L.1977, c. 236, §18, eff. Sept. 28, 1977.

**217 13:8-63. Designation of initial components of system**

The department shall, within 1 year of the effective date of this act, complete all of the necessary requirements as herein provided for the designation of that portion of the Mullica river from Lake Atsion at State Highway 206 to Burlington County Route 542 at Pleasant Mills and that creek known as Cedar creek, which has headwaters in Lacey, Berkeley, Manchester and Ocean townships in Ocean county, and flows thence easterly to a terminus in Barnegat bay, or portions thereof, as the initial components of the system.

L.1977, c. 236, §19, eff. Sept. 28, 1977.

## Chapter: OPEN LANDS MANAGEMENT

### OL-1 Legislative findings and declarations

The Legislature finds and declares that opportunities for access to recreational open space are rapidly diminishing and that, in an effort to explore alternate techniques to provide that access, the State should aid private landowners permitting public recreational use of their land.

The Legislature further finds and declares that administering a program to aid private landowners, informing the public of recreation opportunities and evaluating the operation of the program would best be implemented by establishing an Open Lands Management Program, and by empowering the department to provide financial assistance and in kind services to assist private landowners in maintaining and increasing public recreation opportunities.

**Source: 13:1B-15.135<sup>218</sup>**

#### COMMENT

"Department of Environmental Protection" changed to "department"; superfluous phrase, "all as hereinafter provided," deleted from end of last sentence.

### OL-2 Open lands management program, establishment

a. There is established in the division of parks and forestry in the department the Open Lands Management Program.

b. The open lands management program shall provide financial assistance and in kind services for the development and maintenance of privately owned land for recreational purposes.

c. The open lands management program shall include an informational and educational effort to acquaint landowners with the basic objectives and details of the program through public meetings in the various geographical regions of the State.

**Source: 13:1B-15.136,<sup>219</sup> 13:1B-15.138<sup>220</sup>**

#### COMMENT

The first two subsections of the proposed section derive from source section 13:1B-15.136. "Division of Parks and Forests" to "division of parks and forestry", etc. Superfluous phrase, "in accordance with the provisions of this act," deleted. The language referring to the purpose of the program has been changed to an affirmative statement of what the program shall do. The reference to the evaluation of State efforts has been deleted as executed because this evaluation has been accomplished.

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#### **218 13:1B-15.135. Legislative findings and declarations**

The Legislature finds and declares that opportunities for access to recreational open space are rapidly diminishing and that, in an effort to explore alternate techniques to provide that access, the State should aid private landowners permitting public recreational use of their land.

The Legislature further finds and declares that administering a program to aid private landowners, informing the public of recreation opportunities and evaluating the operation of the program would best be implemented by establishing an Open Lands Management Program, and by empowering the Department of Environmental Protection to provide financial assistance and in kind services to assist private landowners in maintaining and increasing public recreation opportunities, all as hereinafter provided.

L.1983, c. 560, §3, eff. Jan. 17,1984.

#### **219 13:1B-15.136. Open lands management program; establishment; purpose**

There is established in the Division of Parks and Forestry in the Department of Environmental Protection the Open Lands Management Program.

The purpose of this program shall be to provide financial assistance and in kind services for the development and maintenance of privately owned land for recreational purposes in accordance with the provisions of this act. It shall further be the purpose of this program to evaluate the operation of State efforts to provide opportunities for recreational access to privately-owned open space.

L.1983, c. 560, §4, eff. Jan. 17,1984.

#### **220 13:1B-15.138. Public meetings**

The department shall undertake an informational and educational effort to acquaint landowners with the basic objectives and details of the program by conducting public meetings in the various geographical regions of the State.

L.1983, c. 560, §6, eff. Jan. 17,1984.



Subsection (c) derives from source section 13:1B-15.138; the source section has been rephrased.

### **OL-3 Regulations**

The commissioner shall adopt and enforce regulations necessary to implement the provisions of this chapter.

**Source: 13:1B-15.137<sup>221</sup>**

#### **COMMENT**

The specific reference to the Administrative Procedure Act has been eliminated as unnecessary. "Act" has been changed to "chapter."

### **OL-4 Projects by private landowners**

a. Voluntary offers to undertake certain projects shall be solicited by the department from private landowners. The department may provide a landowner with any appropriate assistance and guidance in the development of recreational opportunity proposals particularly suited to the topographical characteristics of the land.

b. A landowner may file an application with the department, on forms prescribed by the commissioner, requesting financial assistance for a specific project or projects for public recreational access to the landowner's privately-owned open space. Within 30 days of receipt of the application, the department shall either deny the application, giving reasons for the denial, or grant preliminary approval of the application.

c. If preliminary approval of an application is granted, the landowner and the commissioner may enter into an access covenant guaranteeing public access to a specified parcel or parcels of land, for a specified period of time and for specified recreational purposes, in return for appropriate and reasonable financial assistance or in kind services, or both, as determined by the commissioner.

d. The landowner shall attach the access covenant to the deed and record them both. The access covenant shall contain a reference to the deed to the land by book and page.

**Source: 13:1B-15.139<sup>222</sup>**

#### **COMMENT**

In subsection (b), the phrase "The department shall evaluate the application" has been deleted as superfluous.

Subsection (d) has been rewritten to require the access covenant itself rather than a "statement containing the conditions" to be attached to a copy of the deed to the land, and both recorded.

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**221 13:1B-15.137. Rules and regulations**

The commissioner is authorized to adopt and enforce, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act.  
L.1983, c. 560, §5, eff. Jan. 17,1984.

**222 13:1B-15.139. Projects by private landowners**

a. Voluntary offers to undertake certain projects shall be solicited by the department from private landowners. The department may provide a landowner with any appropriate assistance and guidance in the development of recreational opportunity proposals particularly suited to the topographical characteristics of the land.

b. A landowner may file an application with the department, on forms prescribed by the commissioner, requesting financial assistance for a specific project or projects for public recreational access to his privately-owned open space. The department shall evaluate the application and, within 30 days of receipt of the application, either deny the application citing the reasons therefore or grant preliminary approval thereof.

c. If preliminary approval has been granted, the landowner and the commissioner may enter into an agreement, hereinafter referred to as an "access covenant," which guarantees public access for a specified period of time, for specified recreational purposes to a specified parcel or parcels of land in return for appropriate and reasonable financial assistance or in kind services, or both, as determined by the commissioner.

d. If an access covenant has been signed by a landowner and the commissioner, the landowner shall cause a statement containing the conditions of the covenant to be attached to and recorded with the deed to the land in the same manner as the deed was originally recorded.

L.1983, c. 560, §7, eff. Jan. 17,1984.

## **OL-5 Eligible projects**

Projects eligible for consideration by the commissioner shall include but not necessarily be limited to:

- a. Installation, repair or replacement of existing protective structures, such as fencing, water bars, berms or stiles;
- b. Installation, repair or replacement of any facility which provides or improves public recreational access to privately-owned land, such as parking areas, access roads, trails, signs, picnic areas, rest areas or boat or canoe launch areas;
- c. Planting, restoration or maintenance of trees or shrubs for the purpose of screening or increasing the value of scenic areas; and
- d. Repair or restoration of any vandalized crops or improvements located on, or adjacent to, agricultural land which is subject to an access covenant.

**Source: 13:1B-15.140<sup>223</sup>**

### **COMMENT**

No change.

## **OL-6 Liability**

- a. An owner, lessee or occupant of land subject to an access covenant entered into pursuant to this chapter does not thereby:
  - (1) extend any assurance that the premises, including any natural or man-made conditions, are safe for these purposes;
  - (2) constitute the person to whom access is guaranteed an invitee or licensee to whom a duty of care is owed; or
  - (3) assume responsibility for, or incur liability for, any injury to person or property caused by any act of persons to whom access is guaranteed.
- b. This section shall not limit the liability which would otherwise exist for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity.

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### **223 13:1B-15.140. Eligible projects**

Projects eligible for consideration by the commissioner shall include but not necessarily be limited to:

- a. Installation, repair or replacement of existing protective structures, such as fencing, water bars, berms or stiles;
- b. Installation, repair or replacement of any facility which provides or improves public recreational access to privately-owned land, such as parking areas, access roads, trails, signs, picnic areas, rest areas or boat or canoe launch areas;
- c. Planting, restoration or maintenance of trees or shrubs for the purpose of screening or increasing the value of scenic areas; and,
- d. Repair or restoration of any vandalized crops or improvements located on, or adjacent to, agricultural land which is subject to an access covenant.

L.1983, c. 560, §8, eff. Jan. 17,1984.

**Source: 13:1B-15.141<sup>224</sup>**

**COMMENT**

The cross reference in subsection (a) has been simplified to refer only to "an access covenant entered into pursuant to this chapter."

**OL-7 Assessment and taxation**

The entry of land into an access covenant for recreational purposes pursuant to this chapter shall not affect its assessment and taxation as agricultural land or vacant land pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c. 48 (C. 54:4-23.1 et seq.).

**Source: 13:1B-15.142<sup>225</sup>**

**COMMENT**

Language referring to the access covenant has been clarified.

**OL-8 Application, acceptance and expenditure of funds**

The department may apply for, accept and expend funds from any public or private source for the purposes of planning and implementing the open lands management program.

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**224 13:1B-15.141. Liability of owner, lessee or occupant**

a. An owner, lessee or occupant of land for which an access covenant has been entered into and who is participating in the program and thereby guarantees access pursuant to subsection c. of section 7 of this act does not thereby: (1) extend any assurance that the premises, including any natural or man-made conditions, are safe for these purposes; (2) constitute the person to whom access is guaranteed an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for, or incur liability for, any injury to person or property caused by any act of persons to whom access is guaranteed.

b. This section shall not limit the liability which would otherwise exist for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity.

L.1983, c. 560, §9, eff. Jan. 17, 1984.

**225 13:1B-15.142. Assessment and taxation**

The access covenant for recreational purposes shall not affect the assessment and taxation of agricultural land which is taxed pursuant to the "Farmland Assessment Act of 1964," P.L. 1964, c. 48 (C. 54:4-23.1 et seq.), nor shall it affect the assessment and taxation of vacant land or agricultural land which is not taxed pursuant to the "Farmland Assessment Act of 1964."

L.1983, c. 560, §10, eff. Jan. 17, 1984.

Source: **13:1B-15.145**<sup>226</sup>

**Provisions recommended for repeal:**

**13:1B-15.133. Short title**<sup>227</sup>

**13:1B-15.134. Definitions**<sup>228</sup>

**COMMENT**

The definitions of "commissioner" and "department" are unnecessary; the remaining definition ("program") has no operative effect.

**13:1B-15.143. Appointment of officers and employees**<sup>229</sup>

**13:1B-15.144. Report**<sup>230</sup>

**COMMENT**

This section requires the submission of a report within one year of the effective date of the act, which is in 1983.

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**226 13:1B-15.145. Application, acceptance and expenditure of funds**

The department may apply for, accept and expend funds from any public or private source for the purposes of planning and implementing the program in accordance with the provisions of this act.

L.1983, c. 560, §13, eff. Jan. 17,1984.

**227 13:1B-15.133. Short title**

This act shall be known and may be cited as the "Open Lands Management Act."

L.1983, c. 560, §1, eff. Jan. 17,1984.

**228 13:1B-15.134. Definitions**

As used in this act:

a."Commissioner" means the Commissioner of Environmental Protection;

b."Department" means the Department of Environmental Protection;

c."Program" means the Open Lands Management Program.

L.1983, c. 560, §2, eff. Jan. 17,1984.

**229 13:1B-15.143. Appointment of officers and employees**

Subject to the provisions of Title 11 of the Revised Statutes, and within the limits of funds appropriated or otherwise made available, the commissioner may appoint any officer or employee to the department necessary to carry out the provisions of this act, fix and determine their qualifications, which may include a knowledge of and familiarity with the pinelands area and the residents thereof.

L.1983, c. 560, §11, eff. Jan. 17,1984.

**230 13:1B-15.144. Report**

The commissioner shall submit a written report to the Governor and to the Legislature within one year of the effective date of this act. The report shall detail the effectiveness of the Open Lands Management Program in increasing recreational opportunities and the advisability of continuing the program at its current level, expanding the program Statewide or terminating the program.

L.1983, c. 560, §12, eff. Jan. 17,1984.

## **Chapter: NATURAL HERITAGE PROGRAM**

### **NH-1 Legislative findings and declarations**

The Legislature finds and declares that this State has a rich natural heritage which is in danger of disappearing as the State continues to experience economic and industrial growth; that the natural heritage program is providing up-to-date information on rare species and natural communities to planners, developers, and conservation agencies for use in resource management, environmental impact assessment, and both public and private land protection efforts; that the natural heritage program enables the State to share information, in a national network, with all 50 states with comparable programs; and that the continued success and usefulness of the program is dependent upon continuously updating and refining the information in the inventory.

**Source: 13:1B-15.146<sup>231</sup>**

#### **COMMENT**

This section has been redrafted to eliminate the references to the "historical" context in which the natural heritage program was formalized. The reference to "other states with comparable programs" has been revised for accuracy.

### **NH-2 Natural Heritage Program**

There is established in the division of parks and forestry of the department a Natural Heritage Program.

The purpose of the program is to identify the most critically important natural areas in the State and provide detailed up-to-date information on rare species and natural communities to planners, developers, and conservation agencies for use in resource management, environmental impact assessment, and both public and private land protection efforts.

**Source: 13:1B-15.147<sup>232</sup>**

#### **COMMENT**

References to the division and the department changed.

### **NH-3 Functions**

The natural heritage program shall include:

a. Maintaining and updating, through data collection and field work, a partially computerized data base which includes lists of rare and endangered species, and lists of natural communities ranked according to rarity, as well as information on the location, quality, protection status, lists of and sources of information of individual occurrences of the above species and natural communities; and

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**231 13:1B-15.146. Findings, declarations**

The Legislature finds and declares that this State has a rich natural heritage which is in danger of disappearing as the State continues to experience economic and industrial growth; that a program to conduct an inventory of rare plants, animals, and natural communities throughout New Jersey was established in 1984 through a cooperative agreement between the Department of Environmental Protection and The Nature Conservancy, a nonprofit conservation organization; that this program is providing up-to-date information on rare species and natural communities to planners, developers, and conservation agencies for use in resource management, environmental impact assessment, and both public and private land protection efforts; that this program enables the State to share information, in a national network, with the more than 40 other states with comparable programs; that the continued success and usefulness of the program is dependent upon continuously updating and refining the information in the inventory; that, by design, The Nature Conservancy intended to end their participation in the program after fiscal year 1987 but has temporarily extended their participation pending the establishment of a formal program; the Legislature therefore determines that in order to preserve the State's natural diversity the Natural Heritage Program needs to be formally recognized and established.

L. 1988, c. 127, §1.

**232 13:1B-15.147. Natural Heritage Program**

There is established in the Division of Parks and Forestry, Department of Environmental Protection, a Natural Heritage Program. The purpose of the program is to identify the most critically important natural areas in the State and provide detailed up-to-date information on rare species and natural communities to planners, developers, and conservation agencies for use in resource management, environmental impact assessment, and both public and private land protection efforts.

L. 1988, c. 127, §2.

b. Providing information on species and natural community occurrences and advice on how best to protect these occurrences to other government agencies, consultants, and private landowners seeking to preserve natural diversity.

**Source: 13:1B-15.148<sup>233</sup>**

#### COMMENT

The introductory sentence has been rephrased to eliminate the reference to the functions of the program, and restate it in terms of what the program shall do. The phrase “need not be limited to” has been eliminated as surplusage. “Lists of” has been added for clarity. In subsection (b), the last clause has been moved for clarity.

#### NH-4 Fees

The commissioner is authorized to charge and collect fees in an amount sufficient to cover the costs of any services performed pursuant to this chapter. The fees shall be in addition to any appropriation received by the department for this program and shall be devoted entirely and exclusively to carrying out the purposes and provisions of this chapter.

**Source: 13:1B-15.149<sup>234</sup>**

#### COMMENT

References to the commissioner and the act have been changed.

#### NH-5 Administration

The department may cooperate with and receive money from the federal government, from any county or municipal government or from private sources for the purposes of this chapter and to supplement administration of the program.

**Source: 13:1B-15.150<sup>235</sup>**

#### COMMENT

References to the commissioner and the act have been changed. Reference to the Governor has been deleted as unnecessary.

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**233 13:1B-15.148. Functions**

The functions of the program shall include, but need not be limited to:

a. Maintaining and updating, through data collection and field work, a partially computerized data base which includes lists of rare and endangered species, and natural communities ranked according to rarity, as well as information on the location, quality, protection status, and sources of information of individual occurrences of the above species and natural communities; and

b. Providing information on species and natural community occurrences to other government agencies, consultants, and private landowners seeking to preserve natural diversity and advice on how best to protect these occurrences.

L. 1988, c. 127, §3.

**234 13:1B-15.149. Fees**

The Commissioner of Environmental Protection is authorized to charge and collect fees in an amount sufficient to cover the costs of any services performed pursuant to this act. Such fees shall be in addition to any appropriation received by the department for this program and shall be devoted entirely and exclusively to carrying out the purposes and provisions of this act.

L. 1988, c. 127, §4.

**235 13:1B-15.150. Administration**

With the approval of the Governor, the Commissioner of Environmental Protection may cooperate with and receive money from the federal government, or any county or municipal government or from private sources for the purposes of this act and to supplement administration of the program.

L. 1988, c. 127, §5.

## Chapter: ENDANGERED PLANT SPECIES LIST

### CHAPTER NOTE

These provisions direct the Division of Parks and Forestry to prepare and promulgate a list of endangered plant species. Note that there also exists the "Endangered and Nongame Species Act," P.L.1973, c.309, compiled in Title 23. See 23:2A-1 et seq. This latter Act is scheduled to be included in the proposed subtitle "Fish, Game and Wildlife."

### ES-1. Legislative findings

The Legislature finds and declares that plant species have medicinal, genetic, ecological, educational and aesthetic value to the citizens of New Jersey; that the perpetuation of many plant species native to New Jersey or the United States is in jeopardy; and that a definitive, officially recognized State list of endangered plant species is needed to eliminate the confusion resulting from various existing unofficial lists which are inconsistent and is a necessary precondition to more effectively and efficiently incorporate the preservation of our State's natural diversity into government planning functions.

**Source: 13:1B-15.152<sup>236</sup>**

### COMMENT

No change.

### ES-2. Definitions

As used in this chapter:

"Endangered species" means any native plant species whose survival in the State or the nation is in jeopardy, including, but not limited to, plant species designated as listed, proposed, or under review by the federal government as endangered or threatened throughout its range in the United States pursuant to the "Endangered Species Act of 1973," Pub.L.93-205 (16 U.S.C. s. 1533), any additional species known or believed to be rare throughout its worldwide range, and any species having five or fewer extant populations within the State;

"Plant" means any member of the Plant Kingdom, including all roots, stems, leaves, flowers, fruits, seeds, spores, gametophytes and other parts thereof;

"Species" means any species, subspecies, or variety of plant.

**Source: 13:1B-15.153<sup>237</sup>**

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#### **236 13:1B-15.152. Findings, declarations**

The Legislature finds and declares that plant species have medicinal, genetic, ecological, educational and aesthetic value to the citizens of New Jersey; that the perpetuation of many plant species native to New Jersey or the United States is in jeopardy; and that a definitive, officially recognized State list of endangered plant species is needed to eliminate the confusion resulting from various existing unofficial lists which are inconsistent and is a necessary precondition to more effectively and efficiently incorporate the preservation of our State's natural diversity into government planning functions.

L.1989, c.56, §2.

#### **237 13:1B-15.153. Definitions**

**As used in this act:**

**"Commissioner" means the Commissioner of the Department of Environmental Protection;**

"Department" means the Department of Environmental Protection;

"Endangered species" means any native plant species whose survival in the State or the nation is in jeopardy, including, but not limited to, plant species designated as listed, proposed, or under review by the federal government as endangered or threatened throughout its range in the United States pursuant to the "Endangered Species Act of 1973," Pub.L.93-205 (16 U.S.C. s. 1533), any additional species known or believed to be rare throughout its worldwide range, and any species having five or fewer extant populations within the State;

"Plant" means any member of the Plant Kingdom, including all roots, stems, leaves, flowers, fruits, seeds, spores, gametophytes and other parts thereof;

"Species" means any species, subspecies, or variety of plant.

L.1989, c.56, §3.

#### COMMENT

Definitions of “department” and “commissioner” deleted. “This act” changed to “this chapter.”

### ES-3. Endangered plant species list

The Division of Parks and Forestry in the Department of Environmental Protection shall, on the basis of research and investigations and other available scientific data on plant species, and with the benefit of public comment, adopt and maintain a regulation designating a list of plant species occurring in the State which are endangered, either by the destruction, drastic modification, or severe curtailment of their habitat; their over-collection for aesthetic, commercial, educational, recreational, or scientific purposes; the effect on them of disease, pollution, or predation; or any other factor or combination of factors, natural or man-made.

**Source: 13:1B-15.154<sup>238</sup>**

#### COMMENT

The reference to adoption of regulations within one year of the enactment of this 1989 legislation has been changed to an ongoing obligation to maintain the mandated list.

### ES-4. Research to determine eligibility

Within the limits of funds appropriated or otherwise made available to the department for this purpose, the commissioner shall direct research and investigations relating to historical records, populations, distribution, critical habitat needs, limiting factors, and other biological and ecological data that will aid in determining the eligibility of a plant species for inclusion on the endangered plant species list.

**Source: 13:1B-15.555<sup>239</sup>**

#### COMMENT

No change.

### ES-5. Moneys

The commissioner may cooperate with, and accept moneys from, the federal government, or any county or municipal government, or from any other State or private source to carry out this chapter. The commissioner may establish a separate fund from these contributions for the support of endangered plant species.

**Source: 13:1B-15.156<sup>240</sup>**

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**238 13:1B-15.154. Endangered plant species list**

Within one year of the effective date of this act, the Division of Parks and Forestry in the Department of Environmental Protection shall, on the basis of research and investigations and other available scientific data on plant species, and with the benefit of public comment, develop and adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a list of plant species occurring in the State which are endangered, either by the destruction, drastic modification, or severe curtailment of their habitat; their over-collection for aesthetic, commercial, educational, recreational, or scientific purposes; the effect on them of disease, pollution, or predation; or any other factor or combination of factors, natural or man-made.

L.1989, c.56, §4.

**239 13:1B-15.155. Research to determine eligibility**

Within the limits of funds appropriated or otherwise made available to the department for this purpose, the commissioner shall direct research and investigations relating to historical records, populations, distribution, critical habitat needs, limiting factors, and other biological and ecological data that will aid in determining the eligibility of a plant species for inclusion on the endangered plant species list.

L.1989, c.56, §5.

**240 13:1B-15.156. Moneys**

The commissioner may cooperate with, and accept moneys from, the federal government, or any county or municipal government, or from any other State or private source to carry out this act. The commissioner may establish a separate fund from these contributions for the support of endangered plant species.

L.1989, c.56, §6.



**COMMENT**

“This act” changed to “this chapter.”

**ES-6. Educational, informational programs**

Within the limits of funds appropriated or otherwise made available to the department for this purpose, the commissioner shall develop and implement any educational or informational programs deemed necessary to inform the public as to the status and significance of endangered plant species in the State.

**Source: 13:1B-15.157<sup>241</sup>**

**COMMENT**

No change.

**ES-7. Regulations**

The department shall adopt regulations governing the formulation, and any revision, of the endangered plant species list adopted pursuant to this chapter.

**Source: 13:1B-15.158<sup>242</sup>**

**COMMENT**

The reference to “proposal of regulations within 90 days” has been changed to an ongoing obligation. “Section 4 of this act” had been changed to “this chapter.”

**Statutes Recommended for Repeal:**

**13:1B-15.151. Short title <sup>243</sup>**

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**<sup>241</sup> 13:1B-15.157. Educational, informational programs**

Within the limits of funds appropriated or otherwise made available to the department for this purpose, the commissioner shall develop and implement any educational or informational programs deemed necessary to inform the public as to the status and significance of endangered plant species in the State.

L.1989, c.56, §7.

**<sup>242</sup> 13:1B-15.158. Rules, regulations**

The department shall, within 90 days of the effective date of this act and pursuant to the "Administrative Procedure Act," propose rules and regulation governing the formulation, and any revision, of the endangered plant species list to be adopted pursuant to section 4 of this act.

L.1989, c.56, §8.

**<sup>243</sup> 13:1B-15.151. Short title**

This act shall be known and may be cited as the "Endangered Plant Species List Act."

L.1989, c.56, §1.

## Chapter: HISTORIC SITES AND HISTORIC PRESERVATION UNIT

### CHAPTER NOTE

This chapter contains the provisions from Title 28 Historic Sites. The Office of Historic Sites and the Historic Preservation Office administrative units in the Division of Parks and Forestry are the current successors in authority to the former Historic Sites Commission.

### HU-1 Historic sites and historic preservation unit

a. There shall be established in the Division of Parks and Forestry an administrative unit with responsibility to administer the State's program concerned with the interpretation of New Jersey's heritage through its historic sites and structures.

b. The commissioner shall have the authority to establish by regulation such additional or subordinate administrative units within the historic sites and historic preservation unit as may be appropriate for the efficient and effective administration of the department.

**Source: 13:1B-15.101,<sup>244</sup> 13:1B-15.102,<sup>245</sup> 13:1B-15.105<sup>246</sup>**

### COMMENT

Subsection (a) of this proposed section establishes the historic sites and historic preservation unit in the Division of Parks and Forestry, in accordance with source sections 13:1B-101 and 13:1B-105. Subsection (b) restates the commissioner's authority over the administrative organization of the division, see source section 13:1B-15.102.

### HU-2 Powers and duties

The historic sites and historic preservation unit shall:

a. Have responsibility for the custody and care of all monuments, the title to which is vested in the state, whether erected within or without the state, and which are not in the control or custody of any other state commission or agency. The historic sites and historic preservation unit may make suitable arrangements for the care of any such monuments with county or municipal officers, or with local commissions or societies, if, in its judgment, such arrangements are proper and desirable.

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#### **244 13:1B-15.101. Powers and duties [note: the full text of this source section is set forth above]**

The division shall, under the direction and supervision of the commissioner:

- a. Develop, improve, protect, manage and administer all State forests, State parks, State recreation areas, State historic sites, and State natural areas, excepting those regulated by interstate compact.
- g. Administer the historic sites program as in this act provided and in accordance with Revised Statutes 28:1-4 to 28:1-11, 28:1-13, 28:1-17, 28:2-7 to 28:2-14, 28:2-17 and 28:2-18, P.L.1945, chapter 22 and P.L.1948, chapter 448.
- h. Provide liaison between the Federal and the lesser governmental levels in matters pertaining to forestry, conservation, recreation, historic sites and other appropriate fields.
- i. Perform such other functions of the department as the commissioner may prescribe.

L.1966, c. 54, §2, eff. July 1, 1966.

#### **245 13:1B-15.102. Division organization**

The functions of the division shall be administered by the director, under the direction and supervision of the commissioner, within such bureaus as may be necessary.

The commissioner shall have authority to create and organize such bureaus as may be appropriate for the efficient and effective administration of this act. The commissioner may designate a deputy director to assist the director and to exercise the duties of the director in event of the absence or disability of the director or of a vacancy in that office.

L.1966, c. 54, §3, eff. July 1, 1966.

#### **246 13:1B-15.105. Administration of historic sites and structures program; functions and duties**

In addition to other functions, powers and duties provided by law, the Division of Parks and Forestry shall administer the State's program concerned with the interpretation of New Jersey's heritage through its historic sites and structures and perform the following functions and such other duties as the commissioner may direct:

- a. Formulate comprehensive policies for the preservation, restoration and public presentation of all historic sites within the State.
- b. Make the necessary research, prepare exhibits and furnish the services required for a proper and adequate interpretive program.
- c. Prepare and disseminate informational materials to inform the public with respect to New Jersey's historic sites.
- d. Consult and co-operate with groups and organizations in order to advance the purposes of the historic sites program.

L.1966, c. 54, §6, eff. July 1, 1966.

- b. Formulate comprehensive policies for the preservation, restoration and public presentation of all historic sites within the State.
- c. Make the necessary research, prepare exhibits and furnish the services required for a proper and adequate interpretive program.
- d. Prepare and disseminate informational materials to inform the public with respect to New Jersey's historic sites.
- e. Consult and co-operate with groups and organizations in order to advance the purposes of the historic sites program.

**Source: 13:1B-15.105,[above] 28:1-6<sup>247</sup>**

**COMMENT**

Subsection (a) derives from source section 28:1-6 concerning the former Commission on Historic Sites. Subsections (b) through (e) of the proposed section derive from source section 13:1B-15.105 which enumerates the functions and duties of the division with respect to historic sites, etc.

**HU-3 Regulations**

The historic sites and historic preservation unit, with the approval of the commissioner, shall adopt regulations for the proper disposition and administration of any monuments or historic sites owned or maintained by the State pursuant to this chapter, or any non-State-owned monuments or historic sites for which the State has responsibility.

**Source: 28:1-4<sup>248</sup>**

**COMMENT**

This proposed section continues the intent of the source section which gave the former Commission on Historic Sites the authority to adopt regulations "for the proper disposition and administration" of properties which it controlled. The language referring to sites under the State's administration has been expanded. Reference to the authority of the former Commission to adopt a seal is eliminated as unnecessary.

References to the former Commission have been changed to "historic sites and historic preservation unit."

**HU-4 Acquisition of historic property**

a. The historic sites and historic preservation unit, with the approval of the commissioner, shall have power to acquire, in the name of the State, any interest in any property within the state of historic interest or other unusual features which, in the judgment of the historic sites and historic preservation unit, should be acquired, preserved, and maintained for the use, education and pleasure of the people of New Jersey. The power of acquisition shall be within the limits of any appropriation that may be made by the legislature for such purposes, or of voluntary gifts or contributions placed at the disposal of the department for such purposes.

b. Before any property is purchased or acquired pursuant to this section by condemnation, the commissioner may call upon the attorney general to make an examination and render a report.

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<sup>247</sup> **28:1-6. Custody of state monuments; arrangements with county or municipal officers or local commissions or societies**

The commission shall have the custody and shall be charged with the care of all monuments of whatever nature, the title to which is now vested in the state, whether erected within or without the state, and which are not in the control or custody of any state commission or agency. The commission may make suitable arrangements for the care of any such monuments with county or municipal officers, or with local commissions or societies, if, in its judgment, such arrangements are proper and desirable.

<sup>248</sup> **28:1-4. Rules and regulations; seal**

The commission may adopt rules and regulations, not inconsistent with the provisions of this article, for the proper disposition and administration of any property to which it may acquire title or gain control under the provisions of this article. The commission may adopt a seal for the proper authentication of its acts.

**Source: 28:1-5<sup>249</sup>**

**COMMENT**

The source section has been divided into two subsections.

References to the former Commission have been changed to "historic sites and historic preservation unit."

**HU-5 Commemorative highway markers**

The historic sites and historic preservation unit may erect and maintain markers along the highways of the state to commemorate events, places and persons of importance in the history of the state. It may adopt and, from time to time, in its discretion, change the design for such markers, and may contract for their purchase and erection through competitive bidding. The historic sites and historic preservation unit may enter into an agreement with any state agency for services in connection with the manufacture, erection, location and care of the markers.

**Source: 28:1-7<sup>250</sup>**

**COMMENT**

"Commission" changed to "historic sites and historic preservation unit"; other minor language changes.

**HU-6 Historic monuments, contribution**

Whenever any association or society proposes the erection of any monument to commemorate any historic event of importance in the history of the state, the historic sites and historic preservation unit may in its discretion contribute up to fifty per cent of the cost toward the erection of the proposed monument, provided the title to the property is vested in the state and its custody is intrusted to the historic sites and historic preservation unit.

**Source: 28:1-8<sup>251</sup>**

**COMMENT**

"Commission" changed to "historic sites and historic preservation unit." The phrase "in stone or in bronze" has been deleted as an unnecessary limitation.

**HU-7 Celebrations of important historic events**

The historic sites and historic preservation unit shall make plans and arrange for appropriate celebrations of important historic events.

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**249 28:1-5. Acquisition of property of historic interest by gift, purchase or eminent domain; limitation on power**

The commission shall have power to acquire by gift or purchase, or by the exercise of the power of eminent domain, areas, properties, lands, or any estate or interest therein, situate within this state, of historic interest or other unusual features which, in the judgment of the commission, should be acquired, preserved, and maintained for the use, education and pleasure of the people of New Jersey. Such power of acquisition shall be within the limits of any appropriation that may be made by the legislature for such purposes, or of voluntary gifts or contributions placed at the disposal of the commission for such purposes. Before any such property shall be purchased or acquired by condemnation, the commission may call upon the attorney general to make an examination and render a report at the request of the commission.

**250 28:1-7. Commemorative highway markers; erection and maintenance**

The commission may erect and maintain markers of appropriate design and material along the highways of the state to commemorate events, places and persons of importance in the history of the state. It may adopt and, from time to time, in its discretion, change the design for such markers, and may contract for their purchase and erection through competitive bidding. The commission may enter into an agreement with any state agency for services in connection with the manufacture, erection, location and care of the markers.

**251 28:1-8. Erection of monuments by societies; contribution by commission to cost**

Whenever any association or society shall propose the erection of any monument in stone or in bronze to commemorate any historic event of importance in the history of the state, the commission may, if it approves the person or event to be commemorated and the design and material of the monument, contribute up to fifty per cent of the cost toward the erection of the proposed monument, provided the title to the property be vested in the state and its custody be intrusted to the commission.

**Source: 28:1-9<sup>252</sup>**

**COMMENT**

References to the former Commission have been changed to "historic sites and historic preservation unit."

**HU-8 Advisory committees or commissions**

The department, through the historic sites and historic preservation unit may authorize the formation of committees or commissions of citizens interested in the preservation and care of any of the memorials, monuments, sites and buildings for which the department is responsible. The department may also authorize the collection of funds from private sources for the maintenance and care of such memorials, monuments, sites and buildings.

**Source: 28:1-15<sup>253</sup>**

**COMMENT**

The reference to memorials, etc., transferred to the care of the department has been changed to refer to memorials, etc. for which the department is responsible.

References to the former Commission have been changed to "historic sites and historic preservation unit."

**Repeal as unnecessary:**

**28:1-10. Limitation on financial obligations<sup>254</sup>**

**COMMENT**

The former Commission on Historic Sites is no longer an operational entity, making this limitation unnecessary.

**28:1-11. Contracts made in name of state<sup>255</sup>**

**COMMENT**

The former Commission on Historic Sites is no longer an operational entity, making this limitation unnecessary.

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**252 28:1-9. Celebrations of important historic events**

The commission shall make plans and arrange for appropriate celebrations of important historic events.

**253 28:1-15. Municipal committees or commissions; funds from private sources; other powers**

The historic sites commission may authorize the formation of committees or commissions of citizens interested in the preservation and care of any of the memorials, monuments, sites and buildings transferred to its care by this article (° 28:1-13 et seq.), and may also authorize the collection of funds from private sources for the maintenance and care of such memorials, monuments, sites and buildings; and may otherwise assist in the purpose and to promote the interests of such memorials, monuments, sites and buildings.

**254 28:1-10. Limitation on financial obligations**

Authority is expressly denied the commission to assume, or to agree to assume any financial obligations or to impose any financial obligation on the state in excess of appropriations included in any appropriation bill.

**255 28:1-11. Contracts made in name of state**

All contracts and agreements of the commission shall be made in the name of the state.

## Chapter: HISTORIC SITES COUNCIL

### CHAPTER NOTE

The Historic Sites Council was established in 1967 to oversee the preservation of state historic sites. In 1970, their responsibilities were increased with the establishment of the State Register of Historic Places. The Council advises the Commissioner in the review of public undertakings impacting historic properties listed in the New Jersey Register of Historic Places. The statutes concerning the Register are contained in a separate, subsequent chapter in this proposed revision.

### HC-1 Historic Sites Council, establishment and membership

- a. Within the department there shall be an Historic Sites Council consisting of 11 members. Each member of the council shall be appointed by the Governor with the advice and consent of the Senate, from among citizens of New Jersey or persons otherwise associated with the State who are known for their competence and experience in connection with historic sites preservation and related areas, to serve for a term of 4 years from the date of appointment, except that of those first appointed, one shall be appointed for a term of 1 year, 2 for 2 years, 4 for 3 years, and 4 for 4 years.
- b. Any vacancies in the membership of the council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term only.
- c. Members of the council shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties.
- d. Any member of the council may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.
- e. The members of the council shall elect annually a chairman and vice-chairman from their number. The chairman of the council shall be its presiding officer.
- f. The council shall organize and adopt procedures for the conduct of its business.
- g. An employee of the department designated by the commissioner shall serve as secretary of the council.

**Source: 13:1B-15.108<sup>256</sup>**

### COMMENT

The text of this section has been divided into subsections.

### HC-2 Employees

Insofar as possible, the council shall make use of the employees of the department in carrying out its responsibilities.

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#### **256 13:1B-15.108. Historic sites council; members; terms; compensation; vacancies; removal**

Within the Division of Parks, Forestry and Recreation of the Department of Conservation and Economic Development there shall be an Historic Sites Council consisting of 11 members. Each member of the council shall be appointed by the Governor with the advice and consent of the Senate, from among citizens of New Jersey or persons otherwise associated with the State who are known for their competence and experience in connection with historic sites preservation and related areas, to serve for a term of 4 years from the date of his appointment, except that of those first appointed, one shall be appointed for a term of 1 year, 2 for 2 years, 4 for 3 years, and 4 for 4 years. Members of the council shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties. The members of the council shall elect annually a chairman and vice-chairman from their number. The council shall organize and adopt procedures for the conduct of its business. The director or an employee of the division designated by him shall serve as secretary of the council. The chairman of the council shall be its presiding officer. Any vacancies in the membership of said council occurring other than by expiration of term shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term only. Any member of the council may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.

L.1967, c.124, §1, eff. June 21, 1967.

**Source: 13:1B-15.109<sup>257</sup>**

**COMMENT**

The word "division" has been changed to "department"; the reference to "carrying out the provisions of this act" has been changed to "carrying out its responsibilities."

**HC-3 Powers and duties of council**

The Historic Sites Council shall consult with and advise the commissioner and the director of the Division of Parks and Forestry and shall recommend programs and policies for:

- a. The acquisition, development, use, improvement and extension of historic sites, including archeological sites.
- b. The development of a broad historic sites preservation program on a State-wide and local basis.
- c. The identification, authentication, protection, preservation, conservation, restoration, and management of all historic sites within the State.

**Source: 13:1B-15.110<sup>258</sup>**

**COMMENT**

The reference to "the director" has been changed to "director of the Division of Parks and Forestry." The introductory language has been simplified.

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**257 13:1B-15.109. Use of division employees**

Insofar as possible, the council shall make use of the employees of the division in carrying out the provisions of this act. L.1967, c. 124, §2, eff. June 21,1967.

**258 13:1B-15.110. Powers and duties of council**

The Historic Sites Council shall consult with and advise the commissioner and the director with respect to the work of the division. The council, in addition to other powers and duties vested in it, shall recommend programs and policies for:

- a. The acquisition, development, use, improvement and extension of historic sites, including archeological sites.
- b. The development of a broad historic sites preservation program on a State-wide and local basis.
- c. The identification, authentication, protection, preservation, conservation, restoration, and management of all historic sites within the State.

L.1967, c. 124, §3, eff. June 21,1967.

## Chapter: HISTORIC TRUST

### HT-1 New Jersey Historic Trust

There shall be in but not of the Department of State, a body corporate and politic with corporate succession, to be known as the New Jersey Historic Trust. The trust is hereby constituted an instrumentality exercising public and essential governmental functions, and the exercise by the trust of the powers conferred upon it shall be deemed to be an essential governmental function of the State.

**Source: 13:1B-15.111<sup>259</sup>**

#### COMMENT

The specific reference to the Department of Environmental Protection has been changed to "the Department of State" in accordance with Reorg. Plan No. 004-1998. The phrase "shall be deemed and held to be" has been edited down to "shall be deemed to be." The reference to the exercise of the powers of the trust conferred "by this act" has been changed to read "conferred upon it." The introductory phrase "There is hereby created and established in" has been changed to "There shall be in but no of."

### HT-2 Board of trustees

a. The powers and duties of the New Jersey Historic Trust shall be exercised by a board of 15 trustees. Three of the trustees shall be, respectively, the Secretary of State, the State Treasurer, and the Executive Director of the New Jersey Historical Commission or their respective designees, who shall serve ex officio. Twelve of the trustees shall be citizens of the State, representing the several geographic regions of the State, to be appointed by the Governor with the advice and consent of the Senate. Citizen trustees shall possess a minimum of five years experience in historic preservation, except the requirement shall not apply to any citizen trustees serving on the board on the effective date of P.L.1995, c.217, i.e., August 14, 1995.

b. Citizen trustees appointed prior to the effective date of P.L.1995, c.217, i.e., August 14, 1995, shall serve for three year terms, after the expiration of the initial terms provided in P.L.1967, c.124, §5. The four citizen trustees appointed pursuant to P.L.1995, c.217, §2, shall serve for three year terms, after the expiration of the initial terms provided in that act. No citizen trustee may serve more than three consecutive terms, except that this restriction shall not apply to terms either completed or commenced prior to the effective date of P.L.1995, c.217. Trustees shall hold office for the term of the appointment and until a successor shall have been appointed and qualified.

c. The trustees shall elect a chairman.

d. Eight trustees shall constitute a quorum, and a majority of trustees shall be necessary to validate all acts of the board.

e. The trustees shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties.

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#### <sup>259</sup> 13:1B-15.111. New Jersey historic trust

There is hereby created and established in the Department of Environmental Protection, a body corporate and politic with corporate succession, to be known as the New Jersey Historic Trust. The trust is hereby constituted an instrumentality exercising public and essential governmental functions, and the exercise by the trust of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

L.1967, c. 124, §4, eff. June 21,1967. Amended by L.1983, c. 562, §1, eff. Jan. 17, 1984.



Source: 13:1B-15.112a<sup>260</sup> 13:1B-15.113<sup>261</sup>

#### COMMENT

The source sections have been combined. Reference to the Commissioner and the Department of Environmental Protection has been changed to the Secretary of State, see Reorg. Plan No. 004-98. References to the members of the board of the trust have been simplified to refer to the members as trustees. The combined source sections have been divided into subsections.

### HT-3 Powers of trust

The New Jersey Historic Trust shall have the power:

- a. to sue and be sued in its own name;
- b. to adopt a seal;
- c. to adopt by-laws for the conduct of its business;
- d. to adopt regulations as necessary to implement this chapter;
- e. to maintain offices at such places within the State as it may designate;
- f. to appoint such officers, who need not be trustees, and any employees, as the trust shall deem advisable; to fix their compensation; and to promote and discharge such officers and employees; all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;
- g. to acquire, hold and dispose of personal property in the name of the trust;
- h. to apply for and accept any grant or aid in furtherance of the trust and the goals of this chapter, and to comply with any regulation made by the Federal Government with respect to the application of such grant or aid, and to enter into and perform any contract or agreement with respect to the application of such grant or aid;
- i. To enter into all contracts and agreements necessary to the performance of its duties. No contract on behalf of the trust shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, if the sum to be expended exceeds the appropriate amount set forth, or the amount calculated by the Governor pursuant to section 2 of P.L.1954, c.48 (C.52:34-7), unless the trust first publicly advertises for bids and awards the contract to the lowest responsible, qualified bidder; but advertising is not required if the contract entered into is one for furnishing or performing services of a professional nature, if there is only one source for the produce or service being procured, or if the product or service is supplied or rendered by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges made, charged, or exacted by the public utility for such produces to be supplied or charges made, charged, or exacted by the public utility for such products to be supplied or services to be rendered are filed with the board. the provisions of this subsection shall not prevent the trust from having any work done by its employees, nor does it apply to repairs or to the furnishing of materials,

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**260 13:1B-15.112a. Board of trustees**

- a. The powers and duties of the New Jersey Historic Trust shall vest in and be exercised by a board of 15 trustees, of whom three shall be the Commissioner of Environmental Protection, the State Treasurer, and the Executive Director of the New Jersey Historical Commission or their respective designees, who shall serve ex officio, and 12 shall be citizens of the State, representing the several geographic regions of the State, to be appointed by the Governor with the advice and consent of the Senate. Citizen trustees shall possess a minimum of five years experience in historic preservation, except this requirement shall not apply to any citizen trustee serving on the board on the effective date of P.L.1995, c.217 (C.13:1B-15.115f et al.) for the remainder of the unexpired term of that trustee.
- b. Citizen trustees shall serve for three year terms provided, however, that of terms of the four new trustees appointed pursuant to P.L.1995, c.217 (C.13:1B-15.115f et al.) shall begin in the same calendar year as the effective date of the act, and that two of those trustees first appointed shall be appointed for a two-year term and two shall be appointed for a one-year term. Each citizen trustee shall hold office for the term of the appointment and until a successor shall have been appointed and qualified. No citizen trustee may serve more than three consecutive terms, except this restriction shall not apply to terms either completed or commenced prior to the effective date of P.L.1995, c.217 (C.13:1B-15.115f et al.).
- c. The trustees shall elect a chairman.
- d. Eight trustees shall constitute a quorum, and the concurrence of a majority of the trustees shall be necessary to validate all acts of the board.

L.1983, c. 562, §3; amended 1995, c.217, §2.

**261 13:1B-15.113. Compensation of trustees**

The trustees shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties. L.1967, c. 124, §6, eff. June 21,1967. Amended by L.1983, c. 562, §2, eff. Jan. 17, 1984.

supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its other public property or the public convenience requires, or the exigency of the circumstances will not admit of such advertisement. in such case the trust shall, by resolution passed by the affirmative vote of a majority of the trustees in attendance, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be expended; and

- i. to do all things necessary or convenient to carry out the powers expressly granted to the trust.

**Source: 13:1B-15.114<sup>262</sup>**

#### COMMENT

The provisions have been edited to eliminate superfluous language.

#### HT-4 Additional powers

The trust shall have power in particular:

- a. to accept gifts, including legacies, bequests and endowments, for any purpose which falls within that of the trust, and to maintain interest-bearing trust accounts for those purposes. Unless otherwise specified by the person making a gift, the trustees may expend both principal and income of any gift of money in furtherance of the trust or invest it in whole or in part in securities which are legal for trust funds in the State of New Jersey;

- b. to acquire and hold real and personal property of historic, aesthetic or cultural significance, by gift, purchase, or any other means, and to preserve and administer such properties; in the acquisition of such properties, to acquire adjacent property deemed necessary for the proper use and administration of historic, aesthetic or cultural property.

- c. to apply all moneys, assets, property or other things of value it may receive as an incident to its operation to the general purpose of the trust;

- d. to assist, insofar as practicable, any agency of the State or any of its political subdivisions, and any private agency or person in furtherance of the purpose of the trust;

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#### **262 Powers of trust**

The New Jersey Historic Trust shall have the power:

- a. to sue and be sued in its own name;
- b. to adopt a seal and alter it at pleasure;
- c. to adopt by-laws for the regulation of its affairs and the conduct of its business, and adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as necessary to implement this act;
- d. to maintain an office or offices at such place or places within the State as it may designate;
- e. to appoint such officers, who need not be trustees, in addition to a secretary and a treasurer, as the trust shall deem advisable, to establish advisory groups, and to employ such other employees and agents as may be necessary or desirable in its judgment; to fix their compensation; and to promote and discharge such officers, employees and agents; all without regard to the provisions to Title 11A, Civil Service, of the New Jersey Statutes;
- f. to acquire in the name of the trust, . hold and dispose of personal property in the exercise of its powers and the performance of its duties under this act;
- g. to apply for and accept any grant or aid that might be or may become available for programs in furtherance of the trust and the goals of P.L.1967, c.124 (C.13:1VB-15.108 et seq.), and to subscribe and comply with any rule or regulation with respect to the application of such grant or aid, and to enter into and perform any contract or agreement with respect to the application of such grant or aid;
- h. to make, enter into and perform all contracts and agreements necessary or incidental to the performance of its duties. No contract on behalf of the trust shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, if the sum to be expended exceeds the appropriate amount set forth, or the amount calculated by the Governor pursuant to section 2 of P.L.1954, c.48 (C.52:34-7), unless the trust first publicly advertises for bids therefor and awards the contract to the lowest responsible, qualified bidder; but advertising is not required if the contract entered into is one for furnishing or performing services of a professional nature, if there is only one source for the produce or service being procured, or if the product or service is supplied or rendered by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges made, charged, or exacted by the public utility for such produces to be supplied or charges made, charged, or exacted by the public utility for such products to be supplied or services to be rendered are filed with the board. the provisions of this subsection shall not prevent the trust from having any work done by its employees, nor does it apply to repairs or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its other public property or the public convenience requires, or the exigency of the circumstances will not admit of such advertisement. in such case the trust shall, by resolution passed by the affirmative vote of a majority of the trustees in attendance, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be expended; and
- i. to do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

L.1967, c. 124, §7, amended 1995, c.217, §3.

e. to give any moneys or property held by the trust to the commissioner on behalf of the State for purpose of administering, operating or maintaining the historic sites programs of the State of New Jersey; and

f. to report annually to the Governor and the Legislature of the State of New Jersey the activities of the trust during the preceding year together with any recommendations or requests the trustees deem appropriate to further the purpose of the trust.

**Source: 13:1B-15.115<sup>263</sup>**

#### COMMENT

Superfluous language has been eliminated. In subsection (a) the phrase authorizing the acceptance of "gifts, legacies, bequests and endowments" has been changed to "gifts, including legacies, bequests and endowments" to permit simplification of the language of the remainder of the subsection. A similar change has been made in subsection (b).

### HT-5 Approval to incur financial obligations

The trust may not acquire, hold, receive or accept any moneys or other property, real or personal, tangible or intangible, which will result in the incurrence of any financial obligations on the part of the State of New Jersey which cannot be supported entirely from funds available in the trust, without the express approval of the Secretary of State or the Legislature.

**Source: 13:1B-15.116<sup>264</sup>**

#### COMMENT

The reference to the Commissioner of the Department of Environmental Protection has been changed to "the Secretary of State," see Reorg. Plan No. 004-98.

### HT-6 Legal counsel and services

The trustees of the trust shall be entitled to receive from the Attorney General of the State of New Jersey, all legal counsel and services necessary to carry out the purpose of the trust.

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#### **263 13:1B-15.115. Additional powers**

The trust shall have power in particular:

a. to accept gifts, legacies, bequests and endowments, for any purpose which falls within that of the trust, and to maintain interest-bearing trust accounts for those purposes; and unless otherwise specified by the person making such gift, legacy, bequest or endowment, the trustees may expend both principal and income of any such gift, legacy, bequest or endowment in furtherance of the trust or invest it in whole or in part in securities which are legal for trust funds in the State of New Jersey;

b. to acquire and hold real and personal property of historic, aesthetic or cultural significance, by gift, purchase, devise, bequest, or by any other means, and to preserve and administer such properties; and in the acquisition of such properties, to acquire property adjacent thereto deemed necessary for the proper use and administration of historic, aesthetic or cultural property.

c. to apply all moneys, assets, property or other things of value it may receive as an incident to its operation to the general purpose of the trust;

d. to co-operate and assist, insofar as practicable, any agency of the State or any of its political subdivisions, and any private agency or person in furtherance of the purpose of the trust;

e. to give any moneys or property held by the trust to the Commissioner of Environmental Protection on behalf of the State for purpose of administering, operating or maintaining the historic sites programs of the State of New Jersey; and

f. to report annually to the Governor and the Legislature of the State of New Jersey its activities during the preceding year together with any recommendations or requests it deems appropriate to further the purpose of the trust.

L.1967, c. 124, §7, amended 1995, C.217, §4.

#### **264 13:1B-15.116. Trust restrictions**

The trust may not acquire, hold, receive or accept any moneys or other property, real or personal, tangible or intangible, which will result in the incurrence of any financial obligations on the part of the State of New Jersey which cannot be supported entirely from funds available in the trust without the express approval of the Commissioner of Environmental Protection or the Legislature.

L.1967, c. 124, §7, amended L.1995, C.217, §5.

**Source: 13:1B-15.117<sup>265</sup>**

**COMMENT**

The phrase "may request, and upon request shall be entitled to receive" has been shortened to "shall be entitled to receive."

**Repeal as unnecessary:**

**13:1B-15.118. Partial invalidity<sup>266</sup>**

**COMMENT**

See R.S. 1:1-10 (stating general principle of saving construction).

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**<sup>265</sup> 13:1B-15.117. Legal counsel and services**

The trustees may request, and upon request shall receive from the Attorney General of the State of New Jersey, all legal counsel and services necessary to carry out the purpose of the trust.

L.1967, c. 124, §10, eff. June 21,1967.

**<sup>266</sup> 13:1B-15.118. Partial invalidity**

If any section or sections of this act or any provision thereof shall be declared to be unconstitutional, invalid or inoperative in whole or in part, such section or provision shall, to the extent that it is not unconstitutional, invalid or inoperative be enforced and effectuated and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the sections of this act.

L.1967, c. 124, §12, eff. June 21,1967.

## **Chapter: Historic Preservation Revolving Loan Fund**

### **HL-1. Historic Preservation Revolving Loan Fund created**

There is created a revolving loan fund to be known as the Historic Preservation Revolving Loan Fund, authorized pursuant to [subsection b. of section 10 of P.L.1987, c.265]. The Historic Preservation Revolving Loan Fund shall be administered by the New Jersey Historic Trust. Monies in the fund shall be used for loans for historic preservation projects.

**Source: 13:1B-15.115a<sup>267</sup>**

#### **COMMENT**

No change.

### **HL-2. Appropriation to "Historic Preservation Revolving Loan Fund"**

a. There is appropriated to the "Historic Preservation Revolving Loan Fund" from the "Cultural Centers and Historic Preservation Fund" created pursuant to [section 20 of P.L.1987, c.265] the sum of \$3,000,000 for the purpose of making low-interest loans, to the extent sufficient funds are available, to units of county or municipal government, or to tax-exempt nonprofit organizations, to finance the historic preservation costs of acquiring, restoring, repairing, or rehabilitating historic structures.

b. Prior to awarding any loans under this section, the New Jersey Historic Trust shall submit to the Legislature for its approval, which approval shall be in the form of the passage of a concurrent resolution, a list of projects that are to receive loans and the amount of each loan.

c. Loans issued from the "Historic Preservation Revolving Loan Fund" shall be for a term not to exceed 20 years and at an interest rate not to exceed 4 percent per year. The terms of any loan agreements shall be approved by the State Treasurer.

**Source: 13:1B-15.115b<sup>268</sup>**

#### **COMMENT**

No change.

### **HL-3. Criteria for awarding loan**

Any loan made by the New Jersey Historic Trust pursuant to this chapter shall be awarded based on the criteria established pursuant to section 5 of P.L.1987, c.265, except that no specific proportion of matching funds shall be required of loan applicants. The New Jersey Historic Trust shall, however, consider the extent of matching funds in reviewing loan applications.

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**267 13:1B-15.115a. "Historic Preservation Revolving Loan Fund" created**

There is created a revolving loan fund to be known as the "Historic Preservation Revolving Loan Fund," authorized pursuant to subsection b. of section 10 of P.L.1987, c.265. The "Historic Preservation Revolving Loan Fund" shall be administered by the New Jersey Historic Trust. Monies in the fund shall be used for loans for historic preservation projects.

L.1991,c.41, §1.

**268 13:1B-15.115b. Appropriation to "Historic Preservation Revolving Loan Fund;" approval, terms**

a. There is appropriated to the "Historic Preservation Revolving Loan Fund" from the "Cultural Centers and Historic Preservation Fund" created pursuant to section 20 of P.L.1987, c.265 the sum of \$3,000,000 for the purpose of making low-interest loans, to the extent sufficient funds are available, to units of county or municipal government, or to tax-exempt nonprofit organizations, to finance the historic preservation costs of acquiring, restoring, repairing, or rehabilitating historic structures.

b. Prior to awarding any loans under this section, the New Jersey Historic Trust shall submit to the Legislature for its approval, which approval shall be in the form of the passage of a concurrent resolution, a list of projects that are to receive loans and the amount of each loan.

c. Loans issued from the "Historic Preservation Revolving Loan Fund" shall be for a term not to exceed 20 years and at an interest rate not to exceed 4 percent per year. The terms of any loan agreements shall be approved by the State Treasurer.

L.1991,c.41, §2.

**Source: 13:1B-15.115c<sup>269</sup>**

**COMMENT**

“This act” changed to “this chapter.”

**HL-4. Regulations**

The expenditure of funds pursuant to this chapter shall be subject to the provisions and conditions of [P.L.1987, c.265] and any regulations adopted pursuant thereto.

**Source: 13:1B-15.115d<sup>270</sup>**

**COMMENT**

“This act” changed to “this chapter”; “rules and regulations” changed to “regulations.”

**HL-5. Repayment of loans**

All repayments of loans made pursuant to this chapter, and interest on the loans, shall be deposited in the "Historic Preservation Revolving Loan Fund." Earnings received from monies in the fund shall be credited to the fund.

**Source: 13:1B-15.115e<sup>271</sup>**

**COMMENT**

“This act” changed to “this chapter;” “interest thereon” changed to “interest on the loans.”

**HL-6. Application fee and appraisal costs**

a. The New Jersey Historic Trust may charge and collect an application fee not to exceed \$100 to be paid in connection with any application for a loan pursuant to this chapter. All application fees collected pursuant to this subsection shall be deposited into the Historic Preservation Revolving Loan Fund created pursuant to this chapter.

b. In connection with any application for a loan pursuant to this chapter, the New Jersey Historic Trust may require the applicant to pay for the cost of any appraisal, credit investigation or report, survey, or other professional service performed by a third party that is deemed necessary by the trust to properly evaluate the application.

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**269 13:1B-15.115c. Criteria for awarding loan**

Any loan made by the New Jersey Historic Trust pursuant to this act shall be awarded based on the criteria established pursuant to section 5 of P.L.1987, c.265, except that no specific proportion of matching funds shall be required of loan applicants. The New Jersey Historic Trust shall, however, consider the extent of matching funds in reviewing loan applications.

L.1991,c.41, §3.

**270 13:1B-15.115d. Rules, regulations for expenditure of funds**

The expenditure of funds pursuant to this act shall be subject to the provisions and conditions of P.L.1987, c.265 and any rules and regulations adopted pursuant thereto.

L.1991,c.41, §4.

**271 13:1B-15.115e. Repayment of loans**

All repayments of loans made pursuant to this act, and interest thereon, shall be deposited in the "Historic Preservation Revolving Loan Fund." Earnings received from monies in the fund shall be credited to the fund.

L.1991,c.41,§5.

Source: 13:1B-15.115f<sup>272</sup>

COMMENT

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**272 13:1B-15.115f Charge, collection of application fee, appraisal costs**

a. The New Jersey Historic Trust may charge and collect an application fee not to exceed \$100 to be paid in connection with any application for a loan pursuant to P.L.1991, c.41 (C.13:1B-115a et seq.). All application fees collected pursuant to this subsection shall be deposited into the Historic Preservation Revolving Loan Fund created pursuant to section 1 of P.L.1991, c.41 (C.13:1B-15.115a).

b. In connection with any application for a loan pursuant to P.L.1991, c.41 (C.13:1B-115a et seq.), the New Jersey Historic Trust may require the applicant to pay for the cost of any appraisal, credit investigation or report, survey, or other professional service performed by a third party that is deemed necessary by the trust to properly evaluate the application.

L.1995.c.217, §6.

## Chapter: NEW JERSEY REGISTER OF HISTORIC PLACES

### HP-1 New Jersey Register of Historic Places

There is established in the Division of Parks and Forestry a New Jersey Register of Historic Places, to consist of a permanent record of areas, sites, structures and objects within the State determined to have significant historical, archeological, architectural or cultural value.

**Source: 13:1B-15.128<sup>273</sup>**

#### COMMENT

This section has been redrafted for clarity.

### HP-2 Approval for inclusion

a. The commissioner, with the advice of the Historic Sites Council, shall by regulation establish criteria for consideration and approval of nominations of areas, sites, structures and objects, both publicly and privately owned, for inclusion in the Register of Historic Places. The council shall also advise the commissioner concerning appropriate documentation to be included and maintained in the register and the public identification of such historic places by appropriate plaques or documentation.

b. The department shall notify in writing the owners of all areas, sites, structures or objects approved for inclusion in the register.

**Source: 13:1B-15.129<sup>274</sup>**

#### COMMENT

The source section has been divided into two subsections and redrafted for clarity.

### HP-3 State aid

No State funds shall be expended for the acquisition, preservation, restoration or maintenance of any property as a historic place or site unless the property is approved for inclusion in the Register of Historic Places. This section shall not apply to presently owned or maintained State historic sites.

**Source: 13:1B-15.130<sup>275</sup>**

#### COMMENT

"For or in aid of" in the first sentence has been changed to "for the." "Unless and until" has been changed to "unless." The phrase "as a historic place or site" has been moved. The phrase "area, site or structure" has been changed to "property." The section has been divided into two sentences.

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**273 13:1B-15.128. New Jersey Register of Historic Places**

A New Jersey Register of Historic Places is established in the Division of Parks, Forestry and Recreation of the Department of Environmental Protection to consist of a permanent record of areas, sites, structures and objects within the State determined to have significant historical, archeological, architectural or cultural value.

L.1970, c. 268, §1, eff. Nov. 4,1970.

**274 13:1B-15.129. Approval of sites, structures, etc.; notice to owner**

The Commissioner of Environmental Protection, with the advice and recommendations of the Historic Sites Council, shall establish criteria for receiving and processing nominations and approval of areas, sites, structures and objects, both publicly and privately owned, for inclusion in the Register of Historic Places, together with appropriate documentation thereof to be included and maintained in the register and for the public identification of such historic places by appropriate plaques or documentation. The owners of all areas, sites, structures or objects approved for inclusion in the register shall be provided with appropriate written notification thereof by the department.

L.1970, c. 268, §2, eff. Nov. 4,1970.

**275 13:1B-15.130. State aid**

No State funds shall be expended for, or in aid of, acquisition, preservation, restoration or maintenance as a historic place or site of any area, site, structure or object unless and until the same shall be approved for inclusion in the Register of Historic Places, but this section shall not apply to presently owned or maintained State Historic Sites.

L.1970, c. 268, §3, eff. Nov. 4,1970.



#### **HP-4 Protection of historic places**

Neither the State, nor a county or municipality, nor any agency or instrumentality of the State, a county or a municipality shall undertake any project which will encroach upon, damage or destroy any area, site, structure or object included in the Register of Historic Places without the prior written authorization of the commissioner. The commissioner shall solicit the advice and recommendations of the Historic Sites Council in connection with any application for authorization and may direct the conduct of public hearings prior to granting or denying approval. The failure of the commissioner to approve or deny any such application within 120 days of the application shall constitute approval of the application.

**Source: 13:1B-15.131<sup>276</sup>**

#### **COMMENT**

The source section has been redrafted for clarity. The phrase "authorize or consent" has been changed to "authorization." The phrase "a public hearing or hearings" has been changed to "public hearings."

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**<sup>276</sup> 13:1B-15.131. Encroachment upon or damage to historic place; authorization; public hearing**

The State, a county, municipality or an agency or instrumentality of any thereof shall not undertake any project which will encroach upon, damage or destroy any area, site, structure or object included in the Register of Historic Places without application to, and the prior written authorization or consent of, the Commissioner of Environmental Protection. The commissioner shall solicit the advice and recommendations of the Historic Sites Council in connection with any such application and may direct the conduct of a public hearing or hearings thereon prior to granting or denying authorization or consent. The failure of the commissioner to authorize, consent or deny any such application within 120 days of application therefor shall constitute his consent thereto.

L.1970, c. 268, §4, eff. Nov. 4,1970.

## Chapter: BIRTHPLACE OF FOOTBALL MONUMENT COMMISSION

### FB-1 Legislative findings

The Legislature finds and declares:

a. The first intercollegiate game of football, in the distinctively American sense of the term, was played in this State, at New Brunswick, in the year 1869, between Rutgers College and the College of New Jersey (Princeton).

b. The subsequent development of this sport, with its widespread popularity and its pervasive influence upon the values and ethos of the American people, has had a profound impact upon the life and culture of this country.

c. It is fitting that the event of 1869 which renders New Jersey the birthplace of American football be commemorated through the erection of some suitable memorial; firstly, for the inherent importance of the event, and secondly, so that this State's historic role receives appropriate public and durable recognition, together with any incidental benefits that may accrue to the State through the augmentation of tourism encouraged by this form of memorial.

d. While it is appropriate that organs of State Government provide organizational and administrative direction and support for this project, it is feasible and desirable that private organizations, firms and citizens provide the means of carrying it out.

**Source: 28:2-20<sup>277</sup>**

#### COMMENT

No change.

### FB-2 Birthplace of Football Monument Commission

There is created in the department a commission to be known as the New Jersey Birthplace of Football Monument Commission, hereinafter referred to as "the commission." The commission shall consist of:

a. the commissioner of the department, who shall be the chairman and chief executive officer of the commission;

b. the chairman, or his designee, of the New Jersey Historical Commission in the Department of State;

c. the mayor of the city of New Brunswick;

d. the Administrator of the historic sites and historic preservation unit, within the department; and

e. three citizens and residents of this State not holding any other public office or position, who shall be chosen without regard to political affiliation and solely upon the basis of knowledge or experience in areas relevant to the duties and functions of the commission. Appointive members shall be appointed by the Governor with the advice and consent of the Senate, and shall serve for terms of three years, except that of the first three

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#### <sup>277</sup> 28:2-20. Findings, declarations

The Legislature finds and declares:

a. The first intercollegiate game of football, in the distinctively American sense of the term, was played in this State, at New Brunswick, in the year 1869, between Rutgers College and the College of New Jersey (Princeton).

b. The subsequent development of this sport, with its widespread popularity and its pervasive influence upon the values and ethos of the American people, has had a profound impact upon the life and culture of this country.

c. It is fitting that the event of 1869 which renders New Jersey the birthplace of American football be commemorated through the erection of some suitable memorial; firstly, for the inherent importance of the event, and secondly, so that this State's historic role receives appropriate public and durable recognition, together with any incidental benefits that may accrue to the State through the augmentation of tourism encouraged by this form of memorial.

d. While it is appropriate that organs of State Government provide organizational and administrative direction and support for this project, it is feasible and desirable that private organizations, firms and citizens provide the means of carrying it out.

L. 1986, c. 111, § 1, eff. Sept. 23, 1986.

appointees, one shall serve for a term of three years, one shall serve for a term of two years and one for a term of one year. Vacancies among appointive members shall be filled in the same manner as the original appointment was made, but for the unexpired term only. Members of the commission shall serve without remuneration, but shall be entitled to reimbursement for actual expenses necessarily incurred in the performance of their duties as members of the commission.

**Source: 28:2-21<sup>278</sup>**

#### COMMENT

"Division of Parks and Forestry" has been deleted as unnecessary; "Department of Environmental Protection" has been changed to "department." In subsection (d), "Office of New Jersey Heritage" has been changed to "historic sites and historic preservation unit."

### FB-3 Departmental allocation

a. For purposes of compliance with Article V, Section IV, paragraph 1 of the State Constitution, the commission is allocated to the department, which shall provide such office space and general clerical and administrative services and facilities as may be required for the performance of the commission's functions. The commission shall also be entitled to receive such technical, professional, managerial and administrative assistance as may be available from the Department of State and the Department of Commerce and Economic Development in relation to the responsibilities of those departments in the areas of historical preservation and the promotion of tourism, as well as from the department in relation to its responsibility for historic sites.

b. Whenever the commission is authorized to acquire or dispose of property, to enter into contracts or other agreements, or to receive, hold, invest or disburse funds, the commissioner shall carry out such transactions on behalf of the commission when authorized and directed to do so by a resolution of the commission duly adopted.

**Source: 28:2-22<sup>279</sup>**

#### COMMENT

In subsection (a), "request and receive" has been changed to "request." In subsection (b) the phrase "is authorized by this act or by any other law to acquire" has been changed to "is authorized to acquire." The phrase "or of such subordinate official or officials of the department as the commissioner may from time to time charge

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#### **278 28:2-21. Birthplace of Football Monument Commission**

There is created in the Division of Parks and Forestry in the Department of Environmental Protection a commission to be known as the New Jersey Birthplace of Football Monument Commission, hereinafter referred to as "the commission." The commission shall consist of: a. the Commissioner of the Department of Environmental Protection, who shall be the chairman and chief executive officer of the commission; b. the chairman, or his designee, of the New Jersey Historical Commission in the Department of State; c. the mayor of the city of New Brunswick; d. the Administrator of the Office of New Jersey Heritage, within the Department of Environmental Protection; and e. three citizens and residents of this State not holding any other public office or position, who shall be chosen without regard to political affiliation and solely upon the basis of knowledge or experience in areas relevant to the duties and functions of the commission. Appointive members shall be appointed by the Governor with the advice and consent of the Senate, and shall serve for terms of three years, except that of the first three appointees, one shall serve for a term of three years, one shall serve for a term of two years and one for a term of one year. Vacancies among appointive members shall be filled in the same manner as the original appointment was made, but for the unexpired term only. Members of the commission shall serve without remuneration, but shall be entitled to reimbursement for actual expenses necessarily incurred in the performance of their duties as members of the commission.

L. 1986, c. 111, §2, eff. Sept. 23, 1986.

#### **279 28:2-22. Allocated to Environmental Protection**

a. For purposes of compliance with Article V, Section IV, paragraph 1 of the State Constitution, the commission created by this act is allocated to the Department of Environmental Protection, which shall provide such office space and general clerical and administrative services and facilities as may be required for the performance of the commission's functions. The commission shall also be entitled to request and receive such technical, professional, managerial and administrative assistance as may be available from the Department of State and the Department of Commerce and Economic Development in relation to the responsibilities of those departments in the areas of historical preservation and the promotion of tourism, as well as from the Department of Environmental Protection in relation to its responsibility for historic sites.

b. Whenever the commission is authorized by this act, or by any other law, to acquire or dispose of property, to enter into contracts or other agreements, or to receive, hold, invest or disburse funds, it shall be the duty of the Commissioner of the Department of Environmental Protection, or of such subordinate official or officials of the department as the commissioner may from time to time charge with that responsibility, to carry out such transactions on behalf of the commission when authorized and directed to do so by a resolution of the commission duly adopted.

L. 1986, c. 111, §3, eff. Sept. 23, 1986.

with that responsibility" has been deleted as surplusage. The phrase "it shall be the duty of the commissioner" has been changed to "the commissioner shall."

#### **FB-4 Football monument**

It shall be the duty of the commission to provide, within the limit of funds and other means available pursuant to this chapter, for the siting, design, erection and maintenance of a suitable monument in the city of New Brunswick commemorating the occasion of the first intercollegiate football game, which was played in that city in the year 1869, together with such appurtenant facilities and improvements as may be necessary or suitable for the proper display of the monument and its fullest use and enjoyment by the general public.

**Source: 28:2-23<sup>280</sup>**

#### **COMMENT**

The phrase "section 5 of this act" has been changed to "this chapter."

#### **FB-5 Powers of commission**

The commission shall have the power to:

- a. Acquire, hold and dispose of real and personal property;
- b. Solicit and accept gifts, including legacies, bequests and endowments, from private or public sources, and agree to any regulations or restrictions on the use of such gifts which are not inconsistent with the purposes of this chapter;
- c. Invest any funds received by it, and not immediately necessary for carrying out its duties and functions, in securities which are legal for trust funds in the State of New Jersey;
- d. Enter into all contracts or agreements necessary or incidental to the performance of its duties.

**Source: 28:2-24<sup>281</sup>**

#### **COMMENT**

The introductory phrase "For the purpose of carrying out its duties under section 4 of this act, the commission shall be entitled to" has been changed to "The commission shall have the power to." Subsection (b) has been redrafted for clarity. The phrase "in connection therewith" has been deleted.

In subsection (d), the phrase "make, enter into and perform" has been changed to "enter into." The phrase "powers, functions and duties" has been changed to "duties."

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**280 28:2-23.Monument erection**

It shall be the duty of the commission to provide, within the limit of funds and other means available pursuant to section 5 of this act, for the siting, design, erection and maintenance of a suitable monument in the city of New Brunswick commemorating the occasion of the first intercollegiate football game, which was played in that city in the year 1869, together with such appurtenant facilities and improvements as may be necessary or suitable for the proper display of the monument and its fullest use and enjoyment by the general public.

L. 1986, c. 111, §4, eff. Sept. 23,1986.

**281 28:2-24.Powers of commission**

For the purpose of carrying out its duties under section 4 of this act, the commission shall be entitled to:

- a. Acquire, hold and dispose of real and personal property;
- b. Solicit and accept gifts, legacies, bequests and endowments from private or public sources, and in connection therewith agree to any regulations or restrictions on the use thereof not inconsistent with the terms and purposes of this act;
- c. Invest any funds received by it, and not immediately necessary for carrying out its duties and functions, in securities which are legal for trust funds in the State of New Jersey;
- d. Make, enter into and perform all contracts or agreements necessary or incidental to the performance of its duties, powers and functions.

L. 1986, c. 111, §5, eff. Sept. 23,1986.

## **Chapter: USS N.J. BATTLESHIP COMMISSION**

### **BC-1 Legislative findings**

It is hereby determined and declared:

a. In order to perpetuate the memory of the U.S.S. New Jersey in the minds of the people of this State and the Nation, this State should create and appoint a U.S.S. New Jersey Battleship Commission which should be charged with assisting in the location and creation of a permanent historical monument.

b. The preservation of this battleship as a monument would be of great educational interest and value to the people of New Jersey and of the nation and would perpetuate the proud tradition of this ship named in honor of the State of New Jersey.

**Source: 13:15A-2<sup>282</sup>**

#### **COMMENT**

No change.

### **BC-2 Commission, members**

a. There is hereby established in the department a U.S.S. New Jersey Battleship Commission consisting of 22 members as follows:

(1) The State Treasurer, the Commissioner of Environmental Protection and the Commissioner of Transportation, ex officio, or their designees;

(2) Nineteen citizens of the State to be appointed by the Governor with the advice and consent of the Senate.

b. After the expiration of the initial terms specified by L.1979, c.440 and L.1997, c.45, the terms of all members appointed, except those appointed to fill unexpired terms, shall run for 5 years from the date of expiration of the terms of their predecessors. Members may be appointed to succeed themselves.

c. A vacancy in the membership of the commission occurring otherwise than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

d. Members of the commission shall not receive compensation for their services as members but shall be entitled to reimbursement by the commission for expenses necessarily incurred in the performance of their duties.

e. A member of the commission may be removed from office by the Governor for cause after a public hearing.

f. As soon as may be after the appointment of its members the commission shall meet and organize by the election of a chairman and vice chairman and shall elect such other officers as it shall determine, all from among its membership.

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**282 13:15A-2. Purpose It is hereby determined and declared:**

a. In order to perpetuate the memory of the U.S.S. New Jersey in the minds of the people of this State and the Nation, this State should create and appoint a U.S.S. New Jersey Battleship Commission which should be charged with assisting in the location and creation of a permanent historical monument.

b. The preservation of this battleship as a monument would be of great educational interest and value to the people of New Jersey and of the nation and would perpetuate the proud tradition of this ship named in honor of the State of New Jersey.

L.1979, c. 440, §2, eff. Feb. 21, 1980.

**Source: 13:15A-3<sup>283</sup>**

**COMMENT**

Subsection (b) of the source section has been revised to replace the references to the initial staggered terms of citizen members with references to the chapter laws which specify those terms.

**BC-3 Acquisition of the U.S.S. New Jersey**

The commission is authorized to submit an application to the Navy Department for the acquisition by donation of the U.S.S. New Jersey pursuant to Title 10, U.S.C. 7308.

**Source: 13:15A-4<sup>284</sup>**

**COMMENT**

No change.

**BC-4 Duties of commission**

The duties of the commission shall include:

- a. To plan, promote and coordinate fund-raising drives and to solicit contributions for the purpose of providing funds for the acquisition of the U.S.S. New Jersey from the United States Navy.
- b. To act as liaison agency between the Navy Department and the State of New Jersey and to keep the Governor and Legislature informed on the status and availability of the battleship.
- c. To collect and maintain a file of information on the costs of acquiring and transporting the U.S.S. New Jersey to a berth on the New Jersey coast.
- d. To provide assistance and advice in planning an appropriate berth for the U.S.S. New Jersey.
- e. To recommend any additional legislation or action by the Governor and the Legislature to further the acquisition of the U.S.S. New Jersey by the State of New Jersey.

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**283 13:15A-3 U.S.S. Battleship Commission; members**

a. There is hereby established in the Department of Environmental Protection a U.S.S. New Jersey Battleship Commission consisting of 22 members as follows:

(1) The State Treasurer, the Commissioner of Environmental Protection, and the Commissioner of Transportation, ex officio, or their designees;

(2) Nineteen citizens of the State to be appointed by the Governor with the advice and consent of the Senate.

b. The Governor shall designate five of the initial 13 citizen members to serve for terms of one year, five to serve for three years, and three to serve for five years. Of the six citizen members initially appointed pursuant to P.L.1997, c.45, two shall serve terms which expire on October 6, 2000, two shall serve terms which expire on October 6, 2001 and two shall serve terms which expire on October 6, 2003. The terms of all members thereafter appointed, except those appointed to fill unexpired terms, shall run for 5 years from the date of expiration of the terms of their predecessors. Members may be appointed to succeed themselves.

c. A vacancy in the membership of the commission occurring otherwise than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

d. Members of the commission shall not receive compensation for their services as members but shall be entitled to reimbursement by the commission for expenses necessarily incurred in the performance of their duties.

e. A member of the commission may be removed from office by the Governor for cause after a public hearing.

f. As soon as may be after the appointment of its members the commission shall meet and organize by the election of a chairman and vice chairman and shall elect such other officers as it shall determine, all from among its membership.

L.1979,c.440,s.3; amended 1997, c.45, s.6.

**284 13:15A-4. Acquisition of the U.S.S. New Jersey**

The commission is authorized to submit an application to the Navy Department for the acquisition by donation of the U.S.S. New Jersey pursuant to Title 10, U.S.C. 7308.

L.1979, c. 440, §4, eff. Feb. 21, 1980.

**Source: 13:15A-5<sup>285</sup>**

**COMMENT**

No change.

**BC-5 Donations and grants**

The commission is authorized to accept donations or grants of money, property or personal services from any source.

**COMMENT**

No change.

**Source: 13:15A-6<sup>286</sup>**

**BC-6 Meetings and reports**

The commission shall establish a regular schedule of meetings and report periodically to the Governor, to the President of the Senate and to the Speaker of the General Assembly on its activities and recommendations. An initial report to the Governor, to the President of the Senate and the Speaker of the General Assembly shall be made within 6 months of the organization of the commission and on each November 15 thereafter.

**Source: 13:15A-7<sup>287</sup>**

**COMMENT**

No change.

**BC-7 Personnel and materials**

The commission shall be entitled to the assistance and services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. The commission shall be entitled to call upon any department, agency or office of the State of New Jersey for such documents, materials and information as it may deem necessary.

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**285 13:15A-5. Duties of commission**

The duties of the commission shall include:

- a. To plan, promote and coordinate fund-raising drives and to solicit contributions for the purpose of providing funds for the acquisition of the U.S.S. New Jersey from the United States Navy.
- b. To act as liaison agency between the Navy Department and the State of New Jersey and to keep the Governor and Legislature informed on the status and availability of the battleship.
- c. To collect and maintain a file of information on the costs of acquiring and transporting the U.S.S. New Jersey to a berth on the New Jersey coast.
- d. To provide assistance and advice in planning an appropriate berth for the U.S.S. New Jersey.
- e. To recommend any additional legislation or action by the Governor and the Legislature to further the acquisition of the U.S.S. New Jersey by the State of New Jersey.

L.1979, c. 440, §5, eff. Feb. 21, 1980.

**286 13:15A-6. Donations; grants**

The commission is authorized to accept donations or grants of money, property or personal services from any source.

L.1979, c. 440, §6, eff. Feb. 21, 1980.

**287 13:15A-7. Meetings; report to governor**

The commission shall establish a regular schedule of meetings and report periodically to the Governor, to the President of the Senate and to the Speaker of the General Assembly on its activities and recommendations. An initial report to the Governor, to the President of the Senate and the Speaker of the General Assembly shall be made within 6 months of the organization of the commission and on each November 15 thereafter.

L.1979, c. 440, §7, eff. Feb. 21, 1980.

**Source: 13:15A-8<sup>288</sup>**

**COMMENT**

A few changes for clarity.

**BC-8 Official seal**

The commission is authorized to designate a design as the official seal of the U.S.S. New Jersey Battleship Commission and may file for public informational purposes a true copy of the emblem with the Secretary of State.

**Source: 13:15A-9<sup>289</sup>**

**COMMENT**

"Said" is changed to "the." "Design or mark" is changed to "design."

**BC-9. Foundation for the U.S.S. New Jersey Battleship, established**

The U.S.S. New Jersey Battleship Commission is authorized to establish a nonprofit, educational and charitable organization to be known as the Foundation for the U.S.S. New Jersey Battleship, hereinafter referred to as "the foundation." The foundation shall be devoted to the sponsoring of activities and the raising of funds for the support and promotion of the commission and its several purposes. The foundation shall be incorporated, organized and operated in such manner as to be eligible under applicable federal law for tax-exempt status and for the receipt of tax-deductible contributions.

**Source: 13:15A-10<sup>290</sup>**

**COMMENT**

No change.

**BC-10. Board of directors**

The foundation shall be governed by a board of directors. No more than nine such directors shall also serve as members of the U.S.S. New Jersey Battleship Commission, and of those directors serving on both, at least three directors may also be officers of the foundation. Up to six members of the foundation may also be appointed as members of the commission because of their fundraising ability and other activities on behalf of the foundation. The number of all other directors and their terms and manner of selection shall be determined upon the incorporation of the foundation.

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**288 13:15A-8. Personnel and materials for purposes of commission**

The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes. The commission shall be entitled to call upon any department, agency or office of the State of New Jersey for such documents, materials and information as it may deem necessary.

L.1979, c. 440, §8, eff. Feb. 21, 1980.

**289 13:15A-9. Official seal of commission**

The commission is authorized to designate a design or mark as the official seal of the U.S.S. New Jersey Battleship Commission and may file for public informational purposes a true copy of said emblem with the Secretary of State.

L.1979, c. 440, §9, eff. Feb. 21, 1980.

**290 13:15A-10 Foundation for the U.S.S. New Jersey Battleship, established**

The U.S.S. New Jersey Battleship Commission is authorized to establish a nonprofit, educational and charitable organization to be known as the Foundation for the U.S.S. New Jersey Battleship, hereinafter referred to as "the foundation." The foundation shall be devoted to the sponsoring of activities and the raising of funds for the support and promotion of the commission and its several purposes. The foundation shall be incorporated, organized and operated in such manner as to be eligible under applicable federal law for tax-exempt status and for the receipt of tax-deductible contributions.

L.1997,c.45, §1.



**Source: 13:15A-11<sup>291</sup>**

**COMMENT**

No change.

**BC-11. Professional, administrative personnel, services**

The foundation's board of directors shall be authorized, within the limits of its own funds, to employ an executive director and professional, technical and administrative personnel. Employees of the foundation shall not be construed to be employees of the State of New Jersey. The board shall also be authorized to contract for such professional and administrative services as it shall deem necessary.

**Source: 13:15A-12<sup>292</sup>**

**COMMENT**

No change.

**BC-12. Bylaws adopted**

Upon the incorporation of the foundation and the establishment of the first board of directors, the board shall adopt bylaws setting forth the structure, offices, powers and duties of the foundation.

**Source: 13:15A-13<sup>293</sup>**

**COMMENT**

No change.

**BC-13. Use of funds**

All funds received by the foundation, other than those necessary to pay the expenses of the foundation, shall be used exclusively for the support and promotion of the U.S.S. New Jersey Battleship Commission.

**Source: 13:15A-14<sup>294</sup>**

**COMMENT**

No change.

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**291 13:15A-11 Board of directors**

The foundation shall be governed by a board of directors. No more than nine such directors shall also serve as members of the U.S.S. New Jersey Battleship Commission, and of those directors serving on both, at least three directors may also be officers of the foundation. Up to six members of the foundation may also be appointed as members of the commission because of their fundraising ability and other activities on behalf of the foundation. The number of all other directors and their terms and manner of selection shall be determined upon the incorporation of the foundation.

L.1997,c.45, §2.

**292 13:15A-12 Professional, administrative personnel, services**

The foundation's board of directors shall be authorized, within the limits of its own funds, to employ an executive director and professional, technical and administrative personnel. Employees of the foundation shall not be construed to be employees of the State of New Jersey. The board shall also be authorized to contract for such professional and administrative services as it shall deem necessary.

L.1997,c.45, §3.

**293 13:15A-13 Bylaws adopted**

Upon the incorporation of the foundation and the establishment of the first board of directors, the board shall adopt bylaws setting forth the structure, offices, powers and duties of the foundation.

L.1997,c.45, §4.

**294 13:15A-14 Use of funds**

All funds received by the foundation, other than those necessary to pay the expenses of the foundation, shall be used exclusively for the support and promotion of the U.S.S. New Jersey Battleship Commission.

L.1997,c.45, §5.

**Repeal as unnecessary:**

**13:15A-1. Short title<sup>295</sup>**

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<sup>295</sup> **13:15A-1. Short title**

This act shall be known and may be cited as the "U.S.S. New Jersey Battleship Commission Act."  
L.1979, c. 440, §1, eff. Feb. 21, 1980.

## **Chapter: Historic New Bridge Landing Park Commission**

### **LP-1. Historic New Bridge Landing Park Commission created**

a. The Historic New Bridge Landing Park Commission, a body corporate and politic with corporate succession, is created in the Division of Parks and Forestry of the Department of Environmental Protection. The commission is an instrumentality exercising public and essential governmental functions. Exercise by the commission of the powers conferred by this chapter is deemed to be an essential governmental function of the State.

b. The commission shall consist of the following nine members: the Director of the Division of Parks and Forestry or the director's designee; one representative each from the County of Bergen, the Blauvelt-Demarest Foundation, River Edge Borough, and New Milford Borough; and two representatives each from the Bergen County Historical Society and Teaneck Township. Members of the commission shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties. The members of the commission shall elect annually a chairman and vice-chairman from their number, and a secretary and treasurer who need not be members of the commission. The same person may be elected to serve both as secretary and treasurer. The chairman of the commission shall be its presiding officer and the vice-chairman shall serve as chairman in the absence of the chairman. The commission shall organize and adopt procedures for the conduct of its business. Five members of the commission shall constitute a quorum and the concurrence of five members of the commission shall be necessary to validate all acts of the commission.

**Source: 13:15B-1<sup>296</sup>**

#### **COMMENT**

“This act” changed to “this chapter.”

### **LP-2. Objectives, jurisdiction of commission**

a. The Historic New Bridge Landing Park Commission shall coordinate and implement federal, State, county, municipal, and private development policies and other activities relating to the historic preservation and recreational use of the property under the commission's jurisdiction.

b. The commission has jurisdiction over the area in Bergen County known as New Bridge Landing, in the Borough of River Edge, between Main Street and Hackensack Avenue and extending into Teaneck Township and the Borough of New Milford, the area being situated along the banks of the Hackensack River.

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#### **<sup>296</sup> 13:15B-1. Historic New Bridge Landing Park Commission created**

a. The Historic New Bridge Landing Park Commission, a body corporate and politic with corporate succession, is created in the Division of Parks and Forestry of the Department of Environmental Protection. The commission is an instrumentality exercising public and essential governmental functions. Exercise by the commission of the powers conferred by this act is deemed to be an essential governmental function of the State.

b. The commission shall consist of the following nine members: the Director of the Division of Parks and Forestry or the director's designee; one representative each from the County of Bergen, the Blauvelt-Demarest Foundation, River Edge Borough, and New Milford Borough; and two representatives each from the Bergen County Historical Society and Teaneck Township. Members of the commission shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties. The members of the commission shall elect annually a chairman and vice-chairman from their number, and a secretary and treasurer who need not be members of the commission. The same person may be elected to serve both as secretary and treasurer. The chairman of the commission shall be its presiding officer and the vice-chairman shall serve as chairman in the absence of the chairman. The commission shall organize and adopt procedures for the conduct of its business. Five members of the commission shall constitute a quorum and the concurrence of five members of the commission shall be necessary to validate all acts of the commission.

L.1995,c.260, §1.

Source: 13:15B-2<sup>297</sup>

COMMENT

No change.

**LP-3. Powers of commission**

The Historic New Bridge Landing Park Commission shall have the following powers:

- a. To sue and be sued in its own name, but the members of the commission shall be held harmless for acts performed in good faith;
- b. To adopt a seal and alter the same at its pleasure;
- c. To adopt bylaws for the regulation of its affairs and the conduct of its business;
- d. To maintain an office or offices at such place or places within the State as it may designate;
- e. To appoint officers, who need not be members of the commission, in addition to a secretary and a treasurer, as the commission deems advisable, and to employ other employees and agents as may be necessary or desirable in its judgment, to fix their compensation, and to promote and discharge officers, employees and agents all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;
- f. To acquire in the name of the commission, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;
- g. To make, enter into, and perform all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;
- h. To request the State Historic Preservation Officer to place the lands and buildings under the commission's jurisdiction on the National Register of Historic Places pursuant to the "National Historic Preservation Act," Pub.L.89-665 (16 U.S.C.470 et al.), as amended and supplemented by the "National Historic Preservation Act Amendments of 1980," Pub.L.96-515, and the "National Historic Preservation Act Amendments of 1992," Pub.L.102-575, or any future amendments or supplements thereto;
- i. To acquire and hold real and personal property by gift, purchase, devise, bequest, or by other means and to preserve and administer these properties;
- j. To conduct public information and education programs relating to the historic nature of the property under the commission's jurisdiction;
- k. To apply to the Department of Environmental Protection for grants from the Green Acres or historic preservation bond programs or other appropriate funding sources, for the purpose of acquisitions pursuant to subsection f. of this section or for the purposes of development, preservation, or maintenance of those acquired properties; and
- l. To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

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**297 13:15B-2. Objectives, jurisdiction of commission**

- a. The Historic New Bridge Landing Park Commission shall coordinate and implement federal, State, county, municipal, and private development policies and other activities relating to the historic preservation and recreational use of the property under the commission's jurisdiction.
- b. The commission has jurisdiction over the area in Bergen County known as New Bridge Landing, in the Borough of River Edge, between Main Street and Hackensack Avenue and extending into Teaneck Township and the Borough of New Milford, the area being situated along the banks of the Hackensack River.  
L.1995,c.260, §2.

**Source: 13:15B-3<sup>298</sup>**

**COMMENT**

“This act” changed to “this chapter.”

**LP-4. Specific power of commission**

The Historic New Bridge Landing Park Commission has the specific power to contract for the construction, reconstruction, restoration, or maintenance of all lands, buildings, landscaping, bridges, docks, and facilities under its jurisdiction including the maintenance, restoration, and reconstruction of the Steuben House, the Demarest House, the Campbell-Christie House, the Westervelt-Thomas Barn and the construction and operation of a visitor center, library, mill site, curator's residence, parking area, and other appropriate structures.

**Source: 13:15B-4<sup>299</sup>**

**COMMENT**

No change.

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**298 13:15B-3. Powers of commission**

The Historic New Bridge Landing Park Commission shall have the following powers:

- a. To sue and be sued in its own name, but the members of the commission shall be held harmless for acts performed in good faith;
- b. To adopt a seal and alter the same at its pleasure;
- c. To adopt bylaws for the regulation of its affairs and the conduct of its business;
- d. To maintain an office or offices at such place or places within the State as it may designate;
- e. To appoint officers, who need not be members of the commission, in addition to a secretary and a treasurer, as the commission deems advisable, and to employ other employees and agents as may be necessary or desirable in its judgment, to fix their compensation, and to promote and discharge officers, employees and agents all without regard to the provisions of Title 11A, Civil Service, of the New Jersey Statutes;
- f. To acquire in the name of the commission, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;
- g. To make, enter into, and perform all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;
- h. To request the State Historic Preservation Officer to place the lands and buildings under the commission's jurisdiction on the National Register of Historic Places pursuant to the "National Historic Preservation Act," Pub.L.89-665 (16 U.S.C.470 et al.), as amended and supplemented by the "National Historic Preservation Act Amendments of 1980," Pub.L.96-515, and the "National Historic Preservation Act Amendments of 1992," Pub.L.102-575, or any future amendments or supplements thereto;
- i. To acquire and hold real and personal property by gift, purchase, devise, bequest, or by other means and to preserve and administer these properties;
- j. To conduct public information and education programs relating to the historic nature of the property under the commission's jurisdiction;
- k. To apply to the Department of Environmental Protection for grants from the Green Acres or historic preservation bond programs or other appropriate funding sources, for the purpose of acquisitions pursuant to subsection f. of this section or for the purposes of development, preservation, or maintenance of those acquired properties; and
- l. To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

L.1995,c.260, §3.

**299 13:15B-4. Specific power of commission**

The Historic New Bridge Landing Park Commission has the specific power to contract for the construction, reconstruction, restoration, or maintenance of all lands, buildings, landscaping, bridges, docks, and facilities under its jurisdiction including the maintenance, restoration, and reconstruction of the Steuben House, the Demarest House, the Campbell-Christie House, the Westervelt-Thomas Barn and the construction and operation of a visitor center, library, mill site, curator's residence, parking area, and other appropriate structures.

L.1995,c.260, §4.

## **Chapter: PARTICULAR MONUMENTS AND SITES**

### **MS-1 Doyle Veterans' Cemetery**

a. The New Jersey Veterans' Memorial Cemetery--Arneytown located in North Hanover township, New Jersey shall be designated the "Brigadier General William C. Doyle Veterans' Memorial Cemetery."

b. The Adjutant General of the Department of Military and Veterans' Affairs is authorized to post appropriate placards bearing the designation "Brigadier General William C. Doyle Veterans' Memorial Cemetery."

**Source: 28:2-18.1,<sup>300</sup> 28:2-18.2<sup>301</sup>**

### **MS-2 Aviation Hall of Fame and Museum**

The aviation hall of fame and museum at Teterboro airport is designated the Aviation Hall of Fame and Museum of New Jersey.

**Source: 28:2-19<sup>302</sup>**

### **MS-3 New Jersey Naval Museum**

The U.S.S. Ling Naval Museum is designated as the "New Jersey Naval Museum" and may utilize that designation to promote the purposes for which it was established.

**Source: 28:2-25<sup>303</sup>**

### **MS-4 John P. Caufield Memorial Fire Engine and Equipment Museum**

a. The New Jersey Fire Engine and Equipment Museum, to be constructed at Allaire pursuant to P.L.1987, c.437 is designated the John P. Caufield Memorial Fire Engine and Equipment Museum.

b. This designation shall be displayed prominently at or near the entrance to the museum.

**Source: 28:2-26<sup>304</sup>**

### **MS-5 Axel B. Carlson, Jr. Reef**

For the public policy purposes cited in the preamble hereto, the artificial reef to be constructed at the site known as the "Proposed Mantoloking Reef Site," located in the waters of this State 4.35 nautical miles east of the Manasquan Inlet, is designated the "Axel B. Carlson, Jr. Reef."

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**300 28:2-18.1. Doyle Veterans' Cemetery**

The New Jersey Veterans' Memorial Cemetery--Arneytown located in North Hanover township, New Jersey shall be designated the "Brigadier General William C. Doyle Veterans' Memorial Cemetery."  
1988, J.R.No.20.

**301 28:2-18.2. Placards**

The Adjutant General of the Department of Military and Veterans' Affairs is authorized to post appropriate placards bearing the designation "Brigadier General William C. Doyle Veterans' Memorial Cemetery."  
1988, J.R.No.20.

**302 28:2-19. Designation**

The aviation hall of fame and museum at Teterboro airport is designated the Aviation Hall of Fame and Museum of New Jersey.  
L.1979, c. 123, §1, eff. July 3, 1979.

**303 28:2-25. New Jersey Naval Museum**

The U.S.S. Ling Naval Museum is designated as the "New Jersey Naval Museum" and may utilize that designation to promote the purposes for which it was established.  
L. 1988, J.R. No.17, §1.

**304 28:2-26. John P. Caufield Memorial Fire Engine and Equipment Museum; designated**

1. The New Jersey Fire Engine and Equipment Museum, to be constructed at Allaire pursuant to P.L.1987, c.437, under the auspices of the Department of Environmental Protection, is designated the John P. Caufield Memorial Fire Engine and Equipment Museum.

This designation shall be displayed prominently at or near the entrance to the museum.  
L.1991,c.215, §1.

Source: 28:2-27<sup>305</sup>

Repeal as unnecessary:

**13:1B-15.132. Appropriation<sup>306</sup>**

**COMMENT**

It is unclear with this section is intended to do; it appears to be unnecessary.

**28:1-13. Enumeration of memorials, monuments and sites transferred<sup>307</sup>**

**COMMENT**

This is a transitional provision; it is no longer an accurate enumeration of the memorials, etc., for which the State has responsibility.

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**305 28:2-27. Designation of "Axel B. Carlson, Jr. Reef"**

1.For the public policy purposes cited in the preamble hereto, the artificial reef to be constructed at the site known as the "Proposed Mantoloking Reef Site," located in the waters of this State 4.35 nautical miles east of the Manasquan Inlet, is designated the "Axel B. Carlson, Jr. Reef."

L.1992, JR6, §1.

**306 13:1B-15.132. Appropriation**

There is appropriated to the Department of Environmental Protection for the purpose of establishing and maintaining the New Jersey Register of Historic Places such sums as shall be included in any annual or supplemental appropriation act.

L.1970, c. 268, §5, eff. Nov. 4,1970.

**307 28:1-13. Enumeration of memorials, monuments and sites transferred**

The care, custody and control of the memorials, monuments and sites herein enumerated are vested in the historic sites commission:

Hancock House, at Hancock's Bridge, Lower Alloways Creek township, Salem county;

Wallace House, at Somerville, Somerset county;

Dey House Washington Headquarters, at Preakness, Wayne township, Passaic county;

Old Steuben Home, at Riverside, Bergen county;

Old Barracks, at Trenton;

Red Bank Battle Monument, in Gloucester county;

Princeton Battle Monument, at Princeton, Mercer county;

Old Tavern, also known as "Indian King", at Haddonfield, Camden county;

Trenton Battle Monument;

Monmouth Battle Monument, at Freehold, Monmouth county;

Washington Rock, in Somerset county.

All the powers and duties of the boards and commissions having, on July first, one thousand nine hundred and thirty-two, the care, custody and control of the memorials, monuments and sites herein enumerated, are transferred to and vested in the historic sites commission, which shall assume the duty and responsibility for the care and preservation of all the property belonging to or held by any of such boards or commissions; and the terms of office of the members of such boards and commissions shall cease and determine on said date; and all books, papers, records and property of whatsoever nature shall be delivered by all such boards and commissions to the historic sites commission.

## 28:1-14. Acts saved from repeal<sup>308</sup>

### COMMENT

These acts establish certain memorials and provide for their care, maintenance and repair. In light of the proposed provision giving the department authority over the maintenance of memorials, monuments and sites (see, e.g., the proposed sections deriving from source sections 28:1-4 and 28:1-6), the retention of these statutes is unnecessary.

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#### **308 28:1-14. Acts saved from repeal**

The following enumerated acts creating and establishing boards or commissions for the control, custody, care and preservation of the memorials, monuments and sites, transferred by section 28:1-13 of this title to the historic sites commission, are, in so far as they create and establish such memorials, monuments and sites and provide for their care, maintenance and repair, saved from repeal:

##### Hancock House.

L.1931, c. 230, p. 578, entitled "An act appointing a commission to purchase the Hancock House at Hancock's Bridge, in the township of Lower Alloways Creek, Salem county, making an appropriation for the purchase of the same and providing for the care and management thereof," approved April twenty-seventh, one thousand nine hundred and thirty-one.

##### Wallace House.

L.1931, c. 45, p. 93, entitled "An act to appropriate funds for the care, maintenance, treating, repair and perpetuation of the headquarters of General George Washington in 1778-1779, known as the Wallace House, in the borough of Somerville, Somerset county," approved April sixth, one thousand nine hundred and thirty-one.

##### Dey House.

L.1929, c. 308, p. 716, entitled "An act to authorize the acquisition and preservation of the Dey House Washington Headquarters, located at Preakness, in the township of Wayne, county of Passaic, to commemorate the sesquicentennial of the occupancy of said headquarters by General George Washington in the Revolutionary War; to appoint a commission with power to acquire and preserve the said headquarters; and to appropriate moneys to pay for the acquisition and preservation of the same," approved May sixth, one thousand nine hundred and twenty-nine.

##### Old Steuben Home.

L.1926, c. 15, p. 38, entitled "An act appointing a commission to purchase the Old Steuben Home in the borough of Riverside, Bergen county, making an appropriation for the purchase of the same and providing for the care and management thereof," approved March fifteenth, one thousand nine hundred and twenty-six, as amended by L.1927, c. 240, p. 454, approved March twenty-eighth, one thousand nine hundred and twenty-seven.

##### Old Barracks, at Trenton.

L.1917, c. 143, p. 305 (1924 Suppl. §§192-82 to §§192-84a), entitled "An act concerning the Old Barracks at Trenton," approved March twenty-sixth, one thousand nine hundred and seventeen.

##### Red Bank Battle Monument.

L.1905, c. 79, p. 163, entitled "An act to authorize the erection of a monument on the battlefield of Red Bank, in the county of Gloucester, and to appropriate money to pay the cost thereof," passed March thirtieth, one thousand nine hundred and five.

##### Princeton Battle Monument.

L.1888, c. 299, p. 450, entitled "An act relative to the Princeton battle monument," approved April twenty-third, one thousand eight hundred and eighty-eight. Also L.1902, c. 178, p. 571, entitled "An act relative to the Princeton battle monument," approved April third, one thousand nine hundred and two, as amended by L.1907, c. 13, p. 36, approved March twenty-seventh, one thousand nine hundred and seven; and supplemented by L.1908, c. 2, p. 12, approved February eighteenth, one thousand nine hundred and eight, and by L.1923, c. 78, p. 156, approved March sixteenth, one thousand nine hundred and twenty-three.

##### Old Tavern (Indian King).

L.1902, c. 128, p. 400 (C.S. pp. 3403, 3404, §§17, 18, 19), entitled "An act appointing a commission to purchase the old tavern house, in the borough of Haddonfield, making an appropriation for the payment of the same and providing for the care and management thereof," approved April third, one thousand nine hundred and two, and supplemented by L.1906, c. 100, p. 160, passed April tenth, one thousand nine hundred and six, and by L.1931, c. 15, p. 43, approved March twenty-third, one thousand nine hundred and thirty-one.

##### Trenton Battle Monument.

L.1887, c. 132, p. 166, entitled "An act relative to the Trenton battle monument," approved April fourteenth, one thousand eight hundred and eighty-seven, and L.1898, c. 147, p. 351, entitled "An act relating to the Trenton battle monument," approved April sixth, one thousand eight hundred and ninety-eight.

##### Monmouth Battle Monument.

L.1881, c. 93, p. 105, entitled "An act relative to the Monmouth battle monument," passed March fourteenth, one thousand eight hundred and eighty-one; and supplemented by L.1885, c. 79, p. 91, approved March sixteenth, one thousand eight hundred and eighty-five, as amended by L.1886, c. 118, p. 166, approved April fifth, one thousand eight hundred and eighty-six; and also supplemented by L.1895, c. 147, p. 305, approved March fourteenth, one thousand eight hundred and ninety-five, by L.1903, c. 98, p. 154, approved April first, one thousand nine hundred and three, by L.1906, c. 169, p. 313, approved April thirtieth, one thousand nine hundred and six, as amended by L.1916, c. 97, p. 212, approved March sixteenth, one thousand nine hundred and sixteen.

##### Washington Rock.

L.1913, c. 141, p. 224, entitled "An act to provide for the acquisition of the 'Washington Rock' and adjoining lands in the county of Somerset and for the appointment of a commission to improve and maintain the same as a public park," approved March twenty-seventh, one thousand nine hundred and thirteen, as amended by L.1924, c. 56, p. 107 (1924 Suppl. §§165-188, 165-188a), approved March sixth, one thousand nine hundred and twenty-four.



COMMENT

**28:1-16. Appropriations<sup>309</sup>**

COMMENT

This is a transitional provision concerning the transfer of appropriations from the former boards and commissions having custody of memorials, monuments, sites and buildings to the Historic Sites Commission in 1932.

**28:1-17. Employees of abolished boards and commissions<sup>310</sup>**

COMMENT

This is a transitional provision concerning the transfer of employees of abolished boards and commissions to the former Historic Sites Commission in 1932.

**28:2-1. Care and preservation of other monuments; title not to affect existence of monuments not mentioned therein<sup>311</sup>**

COMMENT

This is a transitional provision.

**28:2-7. Battle park at Princeton<sup>312</sup>**

COMMENT

See note on 28:1-14, which is recommended for repeal for similar reasons.

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**309 28:1-16. Appropriations**

All appropriations for the care, maintenance and repair of memorials, monuments, sites and buildings, made to any of the boards or commissions, the powers and duties of which are, by this article (° 28:1-13 et seq.), transferred to the historic sites commission, as well as all appropriations made after July first, one thousand nine hundred and thirty-two, to any historic site or monument association created after said date, are transferred to and shall be expended only under the direction of the historic sites commission.

All appropriations available on July first, one thousand nine hundred and thirty-two, or thereafter made, to the Washington Association of New Jersey, created by chapter three hundred and nine of the laws of one thousand eight hundred and seventy-four, and to the Walt Whitman House, created by joint resolution number six of the laws of one thousand nine hundred and twenty-five, are transferred to and shall be expended only under the direction of the historic sites commission.

**310 28:1-17. Employees of abolished boards and commissions**

All employees of any of the boards or commissions, the powers and duties of which are transferred to the historic sites commission by this article (° 28:1-13 et seq.), shall, at the expiration of ninety days from July first, one thousand nine hundred and thirty-two, cease to hold their employment, notwithstanding any law of this state to the contrary, unless, on or before that time, they shall have been reappointed or re-employed by the historic sites commission. Any person so reappointed or re-employed shall retain his rights and privileges, if any, under the civil service law, or any pension law or retirement system of this state.

**311 28:2-1. Care and preservation of other monuments; title not to affect existence of monuments not mentioned therein**

The control, custody, care and preservation of any public memorial, monument or site, not provided for in this title, shall continue to be vested in the body or organization, by whatever name known, to which such control, custody, care and preservation have been given by any law of this state now existing; and nothing contained in this title, or elsewhere in the Revised Statutes shall be construed to affect the existence of any such public memorial, monument or site or the laws providing for the control, custody, care and maintenance thereof.

**312 L.1927, J.R. No. 5, p. 807, entitled "Joint Resolution approving the acquisition of battlefield of Princeton in the revolutionary war," approved March twenty-eighth, one thousand nine hundred and twenty-seven, saved from repeal.**

[This joint resolution provides (° 1) that so much of the battlefield at Princeton as may be secured as provided by section two shall be set apart as a memorial park for the people of the state and nation forever; and (° 2) approves the association of citizens for the purpose of raising funds to acquire and establish the battlefield park.]

## Chapter: WASHINGTON ASSOCIATION

### CHAPTER NOTE

The statutes pertaining to the Washington Association currently are codified at 28:2-8 to -18. The Washington Association, an historic preservation organization, was chartered by the Legislature in 1874. See L.1874, c.309. The Association was formed by a group of private citizens dedicated to the acquisition and preservation of the Revolutionary War Headquarters of Gen. George Washington in Morristown, New Jersey. That acquisition was accomplished and the Association preserved the Headquarters and made it available to the public, in return for an annual payment by the State for the support of the building.

At the time of the 1937 revision of the New Jersey Statutes, the Association was in the process of negotiations for the transfer of the building to the federal government. Among the provisions in the 1937 Revised Statutes which remain in the codified law are those which authorize the Association to undertake the transaction with the federal government, see 28:2-14. Other provisions remaining in the codified law include a provision appropriating funds to resolve contractual claims between the Association and the State government related to the Washington's Headquarters transaction, see 28:2-13. and provisions pertaining to the acquisition of a veteran's memorial in Ocean County, see 28:2-17 and -18.

The Association continues its activities to the present day. Those activities include include an annual lunch on Washington's Day and financial and other support for the Revolutionary War historic sites in the Morristown area which are now owned and operated by the National Park Service, including Washington's Headquarters, Jockey Hollow, and Fort Nonsense.

In this proposed revision, the provisions continuing the Association according to its original legislative charter and enumerating the powers and duties of its trustees and similar organizational provisions are retained with some very minor editorial changes, e.g., for gender neutrality. As set forth below, those provisions which are executed or are otherwise no longer necessary in the codified law are recommended for repeal.

### WA-1 Association continued

The "Washington Association of New Jersey," created and incorporated by the act entitled "An act to incorporate the Washington Association of New Jersey," approved March 20, 1874 (L.1874, c. 309, p. 1147), is continued. The association shall have a board of trustees of not less than 9 nor more than 12 members. One-third of the trustees shall be elected by the stockholders of the association in each year. Each trustee shall hold office for a term of 3 years and until the trustee's successor is elected. Any vacancy occurring for any cause shall be filled by election for the unexpired term.

The board of trustees shall elect from its number, a president and a treasurer, one or more vice-presidents, and a secretary, whose duties, together with those of any other officers as the board may deem proper to appoint, shall be stated in the by-laws of the association. The by-laws shall be made by the board of trustees of the association.

The association may adopt and use a seal.

**Source: 28:2-8<sup>313</sup>**

### COMMENT

Minor editorial changes, including the division of long sentences and elimination of gender references.

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**313 The "Washington Association of New Jersey," created and incorporated by the act entitled "An act to incorporate the Washington Association of New Jersey," approved March 20, 1874 (L.1874, c. 309, p. 1147), is continued.**

Such association shall have a board of trustees of not less than 9 nor more than 12 members, 1/3 of which number of trustees shall be elected by the stockholders of the association in each year. Each trustee shall hold office for a term of 3 years and until his successor is elected, and any vacancy occurring for any cause shall be filled by election for the unexpired term.

The board of trustees shall elect from its number, a president and a treasurer, one or more vice-presidents, and a secretary, whose duties, together with those of such other officers as the board may deem proper to appoint, shall be stated in the by-laws of the association, which by-laws shall be made by the board of trustees of the association.

The association may adopt and use a seal.

Amended by L.1964, c. 151, §1.

## WA-2 Stock

The capital stock of the association shall be two hundred thousand dollars, divided into shares of one hundred dollars each. The trustees of the association are authorized to open and keep books of subscription to such capital stock at such time or times and in such manner as they shall deem proper, issuing to the subscribers certificates of the association. The certificates shall state the number of shares subscribed and paid for by the holder, and shall bear the signatures of the president and treasurer of the association, and the impress of the association's seal. The secretary of state shall place upon or attach to each certificate of the association the impress of the great seal of this state.

**Source: 28:2-9<sup>314</sup>**

### COMMENT

No change.

## WA-3 Assignment or transfer of stock

No certificate of stock issued by the Washington Association shall be assignable or transferable to any person unless the board of trustees shall give its express approval and consent to such transfer. When no request for transfer has been received within 10 years from the date of death of a stockholder, the share or shares of stock for which no request for transfer has been received shall be deemed forfeited, waived and surrendered to the association and become its property.

**Source: 28:2-10<sup>315</sup>**

### COMMENT

No change.

## WA-4 Powers of trustees

The board of trustees may:

- a. Purchase, hold and convey real estate in the name of the association;
- b. Receive donations of land, money, books, relics and other articles of value or of interest, and execute receipts or other proper vouchers therefor;
- c. Appoint persons with police powers to be exercised within the limits of the property of the association;
- d. Prevent the erection of any nuisance adjoining their property;
- e. Purchase or otherwise acquire books, relics and other articles of value or of interest;
- f. Grant, assign, transfer and convey, with or without valuable consideration, to the United States of America, or the State of New Jersey, or to any agency or department of either thereof existing for the purpose of the maintenance and preservation of articles and property of historical interest, or to any other responsible and established association, corporation or society existing for such purpose, such of its property, real and personal, as the board of trustees may deem proper and suitable for the accomplishment of the purposes of the association.

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<sup>314</sup> The capital stock of the association shall be two hundred thousand dollars, divided into shares of one hundred dollars each.

The trustees of the association are authorized to open and keep books of subscription to such capital stock at such time or times and in such manner as they shall deem proper, issuing to the subscribers certificates of the association. The certificates shall state the number of shares subscribed and paid for by the holder, and shall bear the signatures of the president and treasurer of the association, and the impress of the association's seal. The secretary of state shall place upon or attach to each certificate of the association the impress of the great seal of this state.

<sup>315</sup> No certificate of stock issued by the Washington Association shall be assignable or transferable to any person unless the board of trustees shall give its express approval and consent to such transfer. When no request for transfer has been received within 10 years from the date of death of a stockholder, the share or shares of stock for which no request for transfer has been received shall be deemed forfeited, waived and surrendered to the association and become its property.

Amended by L.1946, c. 127, p. 606, §1; L.1964, c. 151, §2.

**Source: 28:2-11<sup>316</sup>**

**COMMENT**

The source section has been divided into two proposed sections, respectively entitled "Powers of trustees" and "Exemption from taxes." No change has been made in the language of the source statute.

**WA-5 - Exemption from taxes**

The property of the association represented by the board of trustees shall at all times during the continuance of this association be exempt from all taxes and assessments whatever.

**Source: 28:2-11 [see above]**

**COMMENT**

The source section has been divided into two proposed sections, respectively entitled "Powers of trustees" and "Exemption from taxes." No change has been made in the language of the source statute.

**Recommended for repeal**

**28:2-12. Appropriation for care and maintenance of Washington headquarters;to whom paid and how expended<sup>317</sup>**

**COMMENT**

This provision as well as 28:2-13 and -14 below concern the completion of a transaction which has long since been executed.

**28:2-13. Final appropriation to Washington headquarters; acceptance as release of claims<sup>318</sup>**

**COMMENT**

See Note to 28:2-12, above.

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**316** The board of trustees may:  
a. Purchase, hold and convey real estate in the name of the association;  
b. Receive donations of land, money, books, relics and other articles of value or of interest, and execute receipts or other proper vouchers therefor;  
c. Appoint persons with police powers to be exercised within the limits of the property of the association;  
d. Prevent the erection of any nuisance adjoining their property;  
e. Purchase or otherwise acquire books, relics and other articles of value or of interest;  
f. Grant, assign, transfer and convey, with or without valuable consideration, to the United States of America, or the State of New Jersey, or to any agency or department of either thereof existing for the purpose of the maintenance and preservation of articles and property of historical interest, or to any other responsible and established association, corporation or society existing for such purpose, such of its property, real and personal, as the board of trustees may deem proper and suitable for the accomplishment of the purposes of the association.

The property of the association represented by the board of trustees shall at all times during the continuance of this association be exempt from all taxes and assessments whatever.

Amended by L.1946, c. 127, p. 606, §2.

**317** So long as the building known as the Washington headquarters, located at Morristown, shall be held as an historic building, within which any person of this state may deposit articles of interest connected with the men and events of the revolutionary war, and so long as such building shall be kept open to the public free of charge at all proper times, the treasurer of this state shall, when the same shall be appropriated by the legislature, pay to the historic sites commission, pursuant to section 28:1-16 of this title on the first days of April and November of each year, the sum of twenty-five hundred dollars, to be expended by the historic sites commission for the care, maintenance and perpetuation of the headquarters.

**318** The appropriation of five thousand dollars made to the Washington Association of New Jersey by section one of the act entitled "An act appropriating to the Washington Association of New Jersey the sum of five thousand dollars (\$5,000.00)," approved December seventh, one thousand nine hundred and thirty-three (L.1933, c. 440, ° 1, p. 1230), to be paid to such association out of the treasury of the state on the warrant of the comptroller upon a bill presented by such association, shall, upon the acceptance thereof by such association, be in full of all claims which such association has or may, at any time, have against the state by reason of any contract which the state may have made with such association.

**28:2-14. Transfer of property by association to United States; stock held by state transferred to association; contractual rights and payments to cease<sup>319</sup>**

**COMMENT**

See Note to 28:2-12, above.

**28:2-17 Land and monument acquired by board of trustees; gifts; deeds; relics; preservation and improvement of land and monument<sup>320</sup>**

**COMMENT**

This provision and the one following pertain to the acquisition of an historic property; they are recommended for repeal as executed.

**28:2-18 Expenditures by board of trustees<sup>321</sup>**

**COMMENT**

See Note to 28:2-17 above.

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<sup>319</sup> The Washington Association is authorized to grant and convey to the United States all its right, title and interest in and to all of its real and personal property of an historic character, located in the town of Morristown, Morris county; and, upon a conveyance being made to the United States pursuant to the authority herein granted, the state of New Jersey relinquishes and releases to the United States all of its right, title and interest in and to any and all of such real and personal property; and all stock at any time forfeited to the state of New Jersey shall become the property of the Washington Association and any and all stock standing in the name of the state of New Jersey on July fourth, one thousand nine hundred and thirty-three shall be transferred by the state treasurer to such association; and all contractual rights between the state of New Jersey and such association shall cease and determine, and the state shall not, in the future, be under obligation to make any payments to the trustees of such association.

<sup>320</sup> The board of trustees mentioned in section 28:2-15 of this title shall have power to acquire, maintain and make available for use as a public memorial the monument, together with the land held in trust on July fourth, one thousand nine hundred and thirty-four, by Minnie M. Hoffmann, of the city of Elizabeth, in the county of Union and state of New Jersey, and Eleanor J. Shopp, of the township of Hillside, in the county of Union and state of New Jersey, which land is situate in the township of Manchester, county of Ocean and state of New Jersey, whereon is erected a monument or memorial to commemorate the services rendered by veterans of the state of New Jersey in wars or conflicts wherein the United States of America has been an active participant, which land and monument or memorial were held in trust as aforesaid for the purpose of conveying and passing title thereto to the state of New Jersey; and for this purpose shall have power to take in fee or otherwise by gift such land or lands and monument, and any rights, interests and easement therein. The association shall also have the power to accept by gift all personal property now held in trust by Minnie M. Hoffmann and Eleanor J. Shopp for such memorial purposes. Deeds of conveyance for such lands shall be made to the board of trustees by its corporate name, and it shall be the duty of the board of trustees to preserve, care for, lay out and improve the memorial or monument and lands, and to make rules for the use and government of the same.

The board of trustees shall have power to acquire and hold historic relics and other personal property benefiting the purposes of the association, and also to receive by gift or devise any money or endowment, the purpose of which is to help support the memorial.

<sup>321</sup> The board of trustees mentioned in section 28:2-15 of this title is authorized to expend such sums of money as may be included in any appropriation bill for the necessary expenses of the board of trustees in carrying out the provisions of this article.

**This chapter should be moved to Title 46 - Property, to be compiled with other statutes concerning title to real property.**

## **Chapter: HISTORIC PRESERVATION AND CONSERVATION RESTRICTIONS**

### **COMMENT**

This chapter was adopted in 1980, to make clear that historic preservation and conservation restrictions could be made binding and enforceable. As a technical matter it appears more appropriate to compile it in Title 46 Real Property as it does not create any programs which the DEP administers. In addition, the combination of historic restrictions and conservation restrictions creates a compilation problem if kept with the other Division material.

### **HR-1 Definitions**

As used in this chapter:

"Charitable conservancy" means a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code;

"Conservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

- (1) Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
- (2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
- (3) Removal or destruction of trees, shrubs or other vegetation;
- (4) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
- (5) Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;
- (6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation;
- (7) Other acts or uses detrimental to the retention of land or water areas according to the purposes of this act.

"Historic preservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to preserving a structure or site which is historically significant for its architecture, archeology or associations, to forbid or limit any or all:

- (1) Alteration in exterior or interior features of such structure;
- (2) Changes in appearance or condition of such site;
- (3) Uses of such structure or site which are not historically appropriate;
- (4) Other acts or uses detrimental to the appropriate preservation of such structure or site.

"Local unit" means a municipality, county or other political subdivision of this State, or any agency thereof.

Source: 13:8B-2<sup>322</sup>

COMMENT

No change.

**HR-2 Acquisition and enforcement of restrictions**

A conservation restriction or an historic preservation restriction may be acquired by the Commissioner of the Department of Environmental Protection in the name of State, or by any local unit, or by any charitable conservancy, in the same manner as other interest in land may be acquired by gift, purchase or devise and, in the case of the State or local unit, by condemnation. Such restrictions may be enforced in the same manner as other interests in land, and shall entitle representatives of the holder of such restriction to enter the land or water area involved in a reasonable manner and at reasonable times so as to assure compliance with the provisions of the restriction.

Source: 13:8B-3<sup>323</sup>

COMMENT

Reference to the commissioner changed; other minor language changes. The phrase "land or water area involved" has been changed to "land or water area subject to the restriction."

**HR-3 Privity of estate or contract**

No conservation restriction or historic preservation restriction held by the State or a local unit or by a charitable conservancy, shall be unenforceable by reason of lack of privity of estate or contract, or lack of benefit to

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**322 13:8B-2. Definitions**

As used in this act:

a. "Charitable conservancy" means a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code;

b. "Conservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

- (1) Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
- (2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;

- (3) Removal or destruction of trees, shrubs or other vegetation;

- (4) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;

- (5) Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;

- (6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation;

- (7) Other acts or uses detrimental to the retention of land or water areas according to the purposes of this act.

c. "Local unit" means a municipality, county or other political subdivision of this State, or any agency thereof.

d. "Historic preservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to preserving a structure or site which is historically significant for its architecture, archeology or associations, to forbid or limit any or all:

- (1) Alteration in exterior or interior features of such structure;
- (2) Changes in appearance or condition of such site;
- (3) Uses of such structure or site which are not historically appropriate;
- (4) Other acts or uses detrimental to the appropriate preservation of such structure or site.

L.1979, c. 378, §2, eff. Feb. 5, 1980.

**323 13:8B-3. Acquisition and enforcement of conservation or historic preservation restrictions**

A conservation restriction or an historic preservation restriction may be acquired by the Commissioner of Environmental Protection in the name of State, or by any local unit, or by any charitable conservancy in the same manner as other interest in land may be acquired by gift, purchase or devise and, in the case of the State or local unit, by condemnation. Such restrictions may be enforced in the same manner as other interests in land, and shall entitle representatives of the holder of such restriction to enter the land or water area involved in a reasonable manner and at reasonable times so as to assure compliance with the provisions of said restriction.

L.1979, c. 378, §3, eff. Feb. 5, 1980.

particular land, or on account of the benefit being assignable or being assigned to any other governmental body or charitable conservancy with like purposes.

**Source: 13:8B-4<sup>324</sup>**

#### COMMENT

The source section has been divided into two proposed sections, the second one being entitled "Recording" (see below). Minor language changes.

#### **HR-4 Recording**

All conservation and historic preservation restrictions shall be duly recorded and indexed in the registry of deeds for the county where the land lies so as to affect its title, in the manner of other conveyances of interests in land, and shall describe the land subject to the restrictions by adequate legal description or by reference to a recorded plan showing its boundaries.

**Source: 13:8B-4 [above]**

#### COMMENT

This proposed section is one of two deriving from source section 13:8B-4. The phrase "All such restrictions" in the source section has been changed to "all conservation and historic preservation restrictions."

#### **HR-5 Release of restrictions**

a. A conservation restriction or an historic preservation restriction may be released, in whole or in part, by the holder of the restriction, in the same manner as the holder may dispose of other interests in land, subject to any conditions that may have been imposed at the time of the creation of the restriction. The holder of the restriction shall determine the consideration, if any, for the release.

b. Prior to any release of a conservation restriction or an historic preservation restriction a public hearing shall be held, after notice by publication at least twice in each of the 3 weeks next preceding the date of the hearing in a newspaper of general circulation in the municipality or municipalities in which the land is situated. The hearing shall be conducted by the governmental body holding the restriction, or, if the restriction is held by a charitable conservancy, by the governing body of the municipality in which the land is situated.

c. The release of a conservation restriction shall be subject to approval by the Commissioner of the Department of Environmental Protection pursuant to the provisions of this chapter.

**Source: 13:8B-5<sup>325</sup>**

#### COMMENT

The text of the source statute has been divided into subsections and rewritten for clarity.

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**324 13:8B-4. Privity of estate or contract; enforceability of restrictions; recording**

No conservation restriction or an historic preservation restriction held by the State or a local unit or by a charitable conservancy, shall be unenforceable by reason of lack of privity of estate or contract, or lack of benefit to particular land, or an account of the benefit being assignable or being assigned to any other governmental body or charitable conservancy with like purposes. All such restrictions shall be duly recorded and indexed in the registry of deeds for the county where the land lies so as to affect its title, in the manner of other conveyances of interests in land, and shall describe the land subject to said restrictions by adequate legal description or by reference to a recorded plan showing its boundaries.

L.1979, c. 378, §4, eff. Feb. 5, 1980.

**325 13:8B-5. Release of restrictions; public hearing**

A conservation restriction or an historic preservation restriction may be released in whole or in part, by the holder thereof, for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of other interests in land, subject to such conditions as may have been imposed at the time of creation of the restriction; provided, however, that prior to any release, a public hearing shall be held, after notice by publication thereof at least twice in each of the 3 weeks next preceding the date of such hearing in a newspaper of general circulation in the municipality or municipalities in which the land is situated. The hearing shall be held by the governmental body holding the restriction, or if held by a charitable conservancy, by the governing body of the municipality in which the land is situated.

L.1979, c. 378, §5, eff. Feb. 5, 1980.



## **HR-6 Approval of commissioner of environmental protection**

a. No conservation restriction acquired pursuant to this chapter shall be released without the approval of the Commissioner of the Department of Environmental Protection. In determining whether the release should be approved, the commissioner shall take into consideration the public interest in preserving these lands in their natural state, and any State, regional or local program in furtherance thereof, as well as any State, regional or local comprehensive land use or development plan affecting the property.

b. Approval of releases shall be evidenced by certificates of the Commissioner of Environmental Protection and shall be recorded in the same manner as the restriction itself.

**Source: 13:8B-6<sup>326</sup>**

### **COMMENT**

The source section has been divided into two subsections. In proposed subsection (a), the introductory phrase "The provisions of section 5 of this act notwithstanding," has been deleted in favor of an affirmative statement in the preceding proposed provision that the release of a conservation restriction is subject to the commissioner's approval. The order of the sentences has been changed.

## **HR-7 Valuation of land subject to restriction**

The existence of any conservation restriction or historical preservation restriction acquired pursuant to this chapter shall be considered by local assessors in establishing the full value of any lands subject to such restriction.

**Source: 13:8B-7<sup>327</sup>**

### **COMMENT**

No change.

## **HR-8 Construction**

Nothing in this chapter shall be construed to imply that any restriction, easement, covenant, or condition which does not have the benefit of this chapter, on account of any provision of this chapter, is unenforceable. Nothing in this chapter shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

**Source: 13:8B-8<sup>328</sup>**

### **COMMENT**

Minor language changes. "Act" changed to "chapter."

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#### **326 13:8B-6. Approval of commissioner of environmental protection**

The provisions of section 5 of this act notwithstanding, no conservation restriction acquired pursuant to this act shall be released without the approval of the Commissioner of Environmental Protection. Approval of releases shall be evidenced by certificates of the Commissioner of Environmental Protection and shall be recorded in the same manner as the restriction itself. In determining whether the release should be approved, the Commissioner of Environmental Protection shall take into consideration the public interest in preserving these lands in their natural state, and any State, regional or local program in furtherance thereof, as well as any State, regional or local comprehensive land use or development plan affecting such property.

L.1979, c. 378, §6, eff. Feb. 5, 1980.

#### **327 13:8B-7. Valuation of land subject to restriction**

The existence of any conservation restriction or historical preservation restriction acquired pursuant to this act shall be considered by local assessors in establishing the full value of any lands subject to such restriction.

L.1979, c. 378, §7, eff. Feb. 5, 1980.

#### **328 13:8B-8. Construction**

Nothing in this act shall be construed to imply that any restriction, easement, covenant, or condition which does not have the benefit of this act, on account of any provision hereof, is unenforceable. Nothing in this act shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

L.1979, c. 378, §8, eff. Feb. 5, 1980.

## Provisions recommended for repeal

### 13:8B-1. Title of act<sup>329</sup>

### 13:8B-9. Severability<sup>330</sup>

#### COMMENT

As noted with respect to other similar provisions, they are unnecessary as there is a general principle of construction in 1:1-18 that covers this issue.

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**329 13:8B-1. Title of act**

This act shall be known and may be cited as the "New Jersey Conservation Restriction and Historic Preservation Restriction Act."  
L.1979, c. 378, §1, eff. Feb. 5, 1980.

**330 13:8B-9. Severability**

If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

L.1979, c. 378, §9, eff. Feb. 5, 1980.