

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH60289-LH-110 (3/7)

Short Title: Durham Stream Clearing Program. (Local)

Sponsors: Representatives Wilkins, Luebke, Michaux, and Miller (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF DURHAM TO ESTABLISH EFFECTIVE PROCEDURES TO ALLOW THE CLEARING OF OBSTRUCTIONS FROM THE FLOODWAY OF STREAMS AND TO ENSURE THAT THE CLEARING OF STREAMS DOES NOT CONSTITUTE LEGAL ADOPTION OF STREAMS.

The General Assembly of North Carolina enacts:

SECTION 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is further amended by adding a new section to read:

"Section 36. Stream Clearing Program.

(a) The existence of obstructions in stream channels, on stream banks, and in the floodway of streams that may impede the passage of water during heavy rains, is hereby declared to be a public nuisance. Such obstructions include, but are not limited to, underbrush, tree limbs, dead trees, root balls, trash and debris, and mounds of earth and vegetation that have an obstructive effect.

(b) The City is authorized, though not required, to establish a program to clear such obstructions. Establishment of a program shall not create or increase any responsibility of the City to clear streams or affect in any manner the rights or entitlements of property owners to clear streams on their property. The clearing of obstructions in stream channels, on stream banks, and in the floodway of streams, whether at the request of property owners or without such request, and at whatever frequency it may occur, shall not constitute "adoption" of a stream by the City, or create or increase any responsibility or liability of the City for such stream. In addition, actions to clear obstructions shall not be allowed in any judicial or administrative proceeding as evidence of the City's assumption of control, ownership or maintenance of, or responsibility or liability for, a stream or constructed drainage feature associated with such stream.

1 (c) The City may by ordinance establish a procedure to allow administrative
2 determinations that authorize stream clearing, with prior notice to and an opportunity to
3 object by adjoining property owners. The ordinance shall contain provisions requiring
4 written mailed notice or documented delivery of notice to the property owner or to the
5 residence of the property containing the stream; an opportunity for the owner to make
6 objections to an administrative decision maker identified in the notice; and a written
7 administrative determination regarding the need for stream clearing that shall be filed
8 with the City. In the event of an objection to stream clearing, the written determination
9 shall be delivered to any objecting property owner by certified mail at least two days
10 prior to any clearing that may be authorized. A signed and dated certificate as to
11 delivery of notice of the administrative procedure and/or delivery of notice of the final
12 administrative decision and the address(es) to which the notice was delivered and mode
13 of delivery shall be deemed conclusive of delivery of notice, in the absence of fraud.

14 (d) The authority granted by this section is in addition to and not in derogation of
15 any other authority granted to the City by this Charter or any other law."

16 **SECTION 2.** This act is effective when it becomes law.