

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1029
Committee Substitute Favorable 6/1/05

Short Title: Municipal Stream Clearing/Clarify Liability.

(Public)

Sponsors:

Referred to:

March 31, 2005

1 A BILL TO BE ENTITLED
2 AN ACT FACILITATING THE ESTABLISHMENT OF MUNICIPAL PROGRAMS
3 TO CLEAR STREAMS BY CLARIFYING A MUNICIPALITY'S LIABILITY
4 FOR SUCH ACTIONS.

5 Whereas, the clearing of obstructions in streams, such as dead trees, fallen
6 tree limbs, root balls, underbrush, and trash and debris furthers the health, safety, and
7 welfare of the State's citizens by allowing such streams to function more efficiently to
8 remove stormwater, thus reducing flooding; and

9 Whereas, municipalities are deterred from engaging in stream-clearing
10 activities by the possibility that they will become legally responsible for regular stream
11 clearing, or the possibility that they will become legally responsible for the impact on
12 private properties of natural events such as flooding, which have never been the legal
13 responsibility of local governments; and

14 Whereas, many private landowners do not have the resources to clear
15 obstructions from the streams that are located on their property, and it is in the public
16 interest to facilitate the establishment of stream-clearing programs by municipal
17 governments; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** Article 8 of Chapter 160A is amended by adding a new section
20 to read:

21 **"§ 160A-195. Stream-clearing programs.**

22 (a) The existence of dead trees, tree limbs, root balls, underbrush, trash and
23 debris, mounds of earth and vegetation, and other obstructions in stream channels and in
24 the floodway of streams may impede the passage of water during rain events. The
25 removal of obstructions from the floodway of streams by a municipality furthers the
26 public health, safety, and welfare.

27 (b) The actions of a municipality to clear obstructions from a stream shall not
28 create or increase municipal responsibility for the clearing or maintenance of the stream,
29 or for flooding of the stream. In addition, actions by a municipality to clear obstructions

1 from a stream shall not create in the municipality any ownership in the stream,
2 obligation to control the stream, or affect any otherwise existing private property right,
3 responsibility, or entitlement regarding the stream. These provisions shall not relieve a
4 municipality for negligence that might be found under otherwise applicable law.

5 (c) Implementation by a municipality of a stream-clearing program shall not
6 affect otherwise existing rights of the State to control or regulate streams or activities
7 within streams. The municipality shall comply with all permitting requirements
8 otherwise provided for by law."

9 **SECTION 2.** This act is effective when it becomes law and applies to
10 stream-clearing activities commenced on or after that date.