

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

3

HOUSE BILL 1029
Committee Substitute Favorable 6/1/05
Senate Agriculture/Environment/Natural Resources Committee Substitute
Adopted 8/10/05

Short Title: Local Govt Stream Clearing/Clarify Liability.

(Public)

Sponsors:

Referred to:

March 31, 2005

1 A BILL TO BE ENTITLED
2 AN ACT FACILITATING THE ESTABLISHMENT OF LOCAL GOVERNMENT
3 PROGRAMS TO CLEAR STREAMS BY CLARIFYING LOCAL
4 GOVERNMENT LIABILITY 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, local governments 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 local
17 governments; Now, therefore,

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** Article 6 of Chapter 153A of the General Statutes is amended
20 by adding a new section to read:

21 "**§ 153A-140.1. Stream-clearing programs.**

22 (a) A county shall have the authority to remove natural and man-made
23 obstructions in stream channels and in the floodway of streams that may impede the
24 passage of water during rain events.

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

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

5 (c) Nothing in this section shall be construed to affect existing rights of the State
6 to control or regulate streams or activities within streams. In implementing a
7 stream-clearing program, the county shall comply with all requirements in State or
8 federal statutes and rules."

9 **SECTION 2.** Article 8 of Chapter 160A of the General Statutes is amended
10 by adding a new section to read:

11 **"§ 160A-193.1. Stream-clearing programs.**

12 (a) A city shall have the authority to remove natural and man-made obstructions
13 in stream channels and in the floodway of streams that may impede the passage of water
14 during rain events.

15 (b) The actions of a city to clear obstructions from a stream shall not create or
16 increase the responsibility of the city for the clearing or maintenance of the stream, or
17 for flooding of the stream. In addition, actions by a city to clear obstructions from a
18 stream shall not create in the city any ownership in the stream, obligation to control the
19 stream, or affect any otherwise existing private property right, responsibility, or
20 entitlement regarding the stream. These provisions shall not relieve a city for negligence
21 that might be found under otherwise applicable law.

22 (c) Nothing in this section shall be construed to affect otherwise existing rights of
23 the State to control or regulate streams or activities within streams. In implementing a
24 stream-clearing program, the city shall comply with all requirements in State or federal
25 statutes and rules."

26 **SECTION 3.** This act is effective when it becomes law and applies to
27 stream-clearing activities commenced on or after that date.