

(H. B. 1814)

**(No. 83)**

(Approved May 5, 2006)

### **AN ACT**

To amend Section 1 of Act No. 49 of January 4, 2003, as amended, which establishes the public policy on flood prevention and conservation of rivers and creeks in order to authorize the Department of Natural Resources to use its own funds for the cleaning of privately owned creeks in situations in which, according to the experience of said agency, they represent a state of emergency or urgency or which according to its specialized knowledge thereof, it is a special or meritorious case.

### **STATEMENT OF MOTIVES**

Floods are increasingly more frequent in Puerto Rico due to excessive deforestation, the topography, climate and location of the Island. One of the alternatives to mitigate damages caused by floods is the cleaning of the bodies of water.

Act No. 49 of January 4, 2003, as amended, which sets forth the public policy on flood prevention and the preservation of rivers and creeks, establishes the preservation and cleaning of the rivers in Puerto Rico as a ministerial duty of the Department of Natural Resources. Through the referred Act, said Department may carry out preservation and cleaning works of riverbeds when it is determined that a situation exists that affects public interests or purposes, affects lives and properties or sensitive ecosystems, it has been determined to be the most effective alternative, and funds are appropriated for it.

In the case of privately owned creeks or beds of bodies of water, the Act established that their cleaning and preservation are not the responsibility of the Department, although said agency may perform works directed toward such purposes, through work programs defrayed by the Legislature or the municipalities. However, many municipalities do not have the resources to defray such expenses.

We believe it is a legitimate public purpose to authorize the Department of Natural and Environmental Resources to use funds for the cleaning of privately owned creeks in emergency situations or special and meritorious cases, since if it is not done, they could constitute a risk or cause damage due to flooding, which in the long run would affect the community in which they are located, and the Commonwealth would have to defray further resources.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- Section 1 of Act No. 49 of January 4, 2003, as amended, is hereby amended to read as follows:

“Section 1.-Public Policy for Public Flood Control Works

The conservation of rivers and creeks as ecosystems that provide multiple benefits is hereby decreed as the public policy of the Government of Puerto Rico. The Department of Natural and Environmental Resources may carry out flood control and river channeling works provided said works are necessary for the prevention and reduction of flood risks in areas that have a history of floods causing damages to lives and property, the performance of which has an obvious public interest and purpose, and for which the cost is lower than the cost of eminent domain, relocation, or removal of structures, construction, or landfills in floodable zones. The Department must include direct, indirect, and cumulative environmental impacts caused by the works, as well as the cost of the mitigation of such works, in its cost analyses. If it

is determined that the cost of preservation, cleaning, and channeling works, or any other flood prevention works is greater than the cost of eminent domain, relocation, or removal of structures and improvements built in floodable zones, the Department of Natural and Environmental Resources shall use appropriations of legislative funds, or any other funds, for eminent domain, relocation, or removal of structures from floodable zones, with the exception of landfills, structures, or substantial improvements to existing structures performed in violation of Act No. 3 of September 27, 1961, as amended, known as the “Act for the Control of Buildings in Zones Susceptible to Floods,” in which case action shall be taken pursuant to the provisions of said Act. The relocation of families affected by floods shall be carried out together with the Department of Housing, pursuant to the provisions of Act No. 3, *supra*. No public official shall promote the building of structures in floodable zones against the requirements and provisions of Act No. 3 of September 27, 1961, as amended, and the regulations adopted thereunder nor shall interfere with the relocation of structures located in floodable zones when so determined pursuant to the same laws and regulations. In no case shall residential, commercial or industrial developments be allowed in areas in which families affected by floods have been relocated. Water works under dammed rivers must comply with the dispositions set forth in Act No. 132 of June 25, 1968, as amended, known as the “Sand, Gravel and Stone Act.” The development of public flood control works whose main purpose is the rescue of public or private land shall not be fostered.

For purposes of this Act, the term “cleaning” is defined as the removal of materials exogenous to bodies of water that are not produced by geological processes and that obstruct the free flow of the waters. The term

“preservation” is defined as works at riverbeds geared toward the restoration of eroded riverbanks, or for the reduction or elimination of the erosion process. Cleaning and preservation works shall not alter the geometry or the sectional area of the body of water, nor interfere with the natural cycle of transport of sediments toward the coast.

It is hereby set forth that the ministerial duty of the Department is the oversight, preservation, and cleaning of beaches; and the preservation and cleaning of rivers pursuant to the dispositions in the foregoing paragraph. The Department may perform preservation and cleaning works of riverbeds when it is determined that a situation affecting public interest or purposes exists, and it affects life and property, or sensitive ecosystems, and it has been determined that it is the most effective alternative of action from the point of view of economics and the environment, and funds have been appropriated for said purposes. The Department shall consult the municipalities when making any determination. The Department is not responsible for the cleaning and preservation of creeks and beds of private bodies of water. This disposition shall not hinder the Department in coordination with the municipalities and private parties, from the performance of conservation and preservation works of creeks or streams, pursuant to a work program defrayed by the Legislature or the municipalities. Notwithstanding the foregoing provisions, the Department of Natural Resources is hereby authorized to use its own funds for the cleaning of privately owned creeks in situations in which, according to the experience of said agency, they represent a state of emergency or urgency or which according to its specialized knowledge thereof, it is a special or meritorious case; provided that once the cleaning is finished, the Department shall take the necessary steps to recover the costs incurred in the cleaning of the

privately owned creeks. The money collected shall be covered into a special account to be administered by the Department, which shall be used to comply with the objectives of this Act.

It is hereby provided that any cleaning and preservation works in these bodies of water shall be approved by the Department, include the cost analysis and benefits of the direct, indirect and cumulative environmental impacts caused by the works, and the mitigation costs of said impacts. For the purposes of this Act, the emergency situations or special and meritorious cases shall refer to all cases of potential and imminent severe flooding and when the intervention in the creek or body of water is part of a broader plan for the preservation and cleaning of the surrounding natural resources or interconnected bodies of water, among others.

...”

Section 2.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 83 (H.B. 1814) of the 3<sup>rd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend Section 1 of Act No. 49 of January 4, 2003, as amended, which establishes the public policy on flood prevention and conservation of rivers and creeks in order to authorize the Department of Natural Resources to use its own funds for the cleaning of privately owned creek in situations in which, according to the experience of said agency, they represent a state of emergency or urgency or which according to its specialized knowledge thereof, it is a special or meritorious case,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 8<sup>th</sup> of September of 2006.

Francisco J. Domenech  
Director