

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

New Jersey governor signs law protecting public beach access
Associated Press State Wire: New Jersey (NJ) - May 3, 2019

Gov. signs beach access measure Beaches Law protects public's right to reach waterways in N.J.
Star-Ledger, The (Newark, NJ) - May 4, 2019

STRONGER NJ BEACH ACCESS TO BECOME LAW
Record, The (Hackensack, NJ) - May 4, 2019

Public access to NJ's beaches, waterways to increase this summer
northjersey.com (Published as northjersey.com (NJ)) - May 4, 2019

RWH

Title 13.
Chapter 1D.
Part X.
Public Access
§§1-6, 8
C.13:1D-150 to
13:1D-156
§9 - Note

P.L. 2019, CHAPTER 81, *approved May 3, 2019*
Senate, No. 1074 (*Fourth Reprint*)

1 AN ACT concerning ³[the]³ public ³[trust doctrine] access to
2 certain public trust lands³, amending P.L.1975, c.291, and
3 supplementing Title 13 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) The Legislature finds and declares that:

9 a. The public has longstanding and inviolable rights under the
10 public trust doctrine to use and enjoy the State's tidal waters and
11 adjacent shorelines for ³navigation, commerce, and³ recreational
12 uses, including, but not limited to, bathing, swimming, fishing, and
13 other shore-related activities;

14 b. The public trust doctrine establishes the rule that ownership
15 of ³the State's natural resources, including, but not limited to,
16 ground waters, surface waters, and³ land flowed or formerly flowed
17 by tidal waters is vested in the State to be held in trust for the
18 people, that the public has the right to tidal lands and waters for
19 navigation, fishing, and recreational uses, and, moreover, that even
20 land that is no longer flowed by the tide but that was artificially
21 filled is considered to be public trust land and the property of the
22 State;

23 c. This historic principle stems from Roman jurisprudence
24 declaring that the air, running water, and shores of the sea are
25 common to mankind. The concept was extended to English law so
26 that public property became classified as one of two types, either
27 property that was necessary for the state's use or property that was
28 common and available to all citizens. The common property
29 consisted of the air, tidally flowed waters, fish, and wild animals,
30 and the King did not own this common property as he owned other
31 state property, but rather held it in trust for the people. After the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted February 5, 2018.

²Senate SBA committee amendments adopted June 18, 2018.

³Assembly AEN committee amendments adopted March 11, 2019.

⁴Assembly AAP committee amendments adopted March 18, 2019.

1 Revolution, all royal rights in the land that was to become the State
2 of New Jersey became vested in the people of the State of New
3 Jersey. In 1821, the seminal court case of Arnold v. Mundy was
4 decided, outlining the history of the public trust doctrine and
5 applying it to tidally flowed lands in New Jersey, and from the time
6 it was decided, New Jersey courts have held that the State holds in
7 trust for the people of the State those lands flowed by tidal waters to
8 the mean high water mark ³. The courts have also recognized that
9 the public trust doctrine is not fixed or static; rather, it is to be
10 molded and extended to meet changing conditions and the needs of
11 the public it was created to benefit³;

12 d. ³**[The]** Pursuant to the public trust doctrine, the³ State of
13 New Jersey ³**[has a duty to]** ⁴**[shall³]** has a duty to⁴ promote,
14 protect, and safeguard the public's rights and ³**[to]**³ ensure
15 reasonable and meaningful public access to tidal waters and
16 adjacent shorelines;

17 e. The Department of Environmental Protection ³**[has the**
18 **authority and the duty to]** ⁴**[shall³]** has the authority and the duty
19 to⁴ protect the public's right of access to tidally flowed waters and
20 their adjacent shorelines under the public trust doctrine and
21 statutory law. In so doing, the department ³**[has the duty to]**
22 ⁴**[shall³]** has the duty to⁴ make all tidal waters and their adjacent
23 shorelines available to the public to the greatest extent ³**[possible]**
24 practicable³, protect existing public access, provide public access in
25 all communities equitably, maximize different experiences provided
26 by the diversity of the State's tidal waters and adjacent shorelines,
27 ensure that the expenditure of public moneys ³by the department³
28 maximizes public use and access where public investment is made,
29 and remove physical and institutional impediments to public access
30 to the maximum extent ³**[possible]** practicable³; and

31 f. Public access includes visual and physical access to, and use
32 of, tidal waters and adjacent shorelines, sufficient perpendicular
33 access from upland areas to tidal waters and adjacent shorelines,
34 and the necessary support amenities to facilitate public access for
35 all, including ³, but not limited to,³ public parking and restrooms.

36
37 2. (New section) a. The Department of Environmental
38 Protection shall ensure that any approval, permit, administrative order,
39 or consent decree issued, or other action taken, by the department
40 pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185
41 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act of 1970,"
42 P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard Area Control
43 Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's
44 implementation of the "Coastal Zone Management Act of 1972," 16
45 U.S.C. s.1451 et seq., or any other law, is consistent with the public
46 trust doctrine.

1 b. The Department of Environmental Protection shall ensure that
2 any public funding issued ³by the department³, and any action taken
3 on a project using ³such³ public funding, ³and any project or any
4 aspect of a project utilizing federal funding that is regulated or
5 reviewed by the department,³ is consistent with the public trust
6 doctrine.

7
8 3. (New section) a. The Department of Environmental
9 Protection shall not adopt any rule or regulation pursuant to the
10 “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-
11 1 et seq.), R.S.12:5-3, “The Wetlands Act of 1970,” P.L.1970,
12 c.272 (C.13:9A-1 et seq.), the “Flood Hazard Area Control Act,”
13 P.L.1962, c.19 (C.58:16A-50 et seq.), or the State’s implementation of
14 the “Coastal Zone Management Act of 1972,”
15 16 U.S.C. s.1451 et seq., or any other law, that mandates on-site public
16 access to tidal waters or adjacent shorelines as a condition of any
17 approval, permit, administrative order, or consent decree at any
18 ³[existing]³ structure or facility that:

19 (1) is required to submit a facility security plan pursuant to the
20 federal "Maritime Transportation Security Act of 2002," 46 U.S.C.
21 s.70101 et seq., and 33 C.F.R. s.101.100 et seq.;

22 (2) is required to develop and adhere to a transportation security
23 plan for hazardous materials pursuant to the regulations adopted by the
24 federal Pipeline and Hazardous Materials Safety Administration in the
25 United States Department of Transportation, 49 C.F.R. s.172.800 et
26 seq.;

27 (3) is required to participate in the United States Department of
28 Homeland Security's Chemical Facility Anti-Terrorism Standards
29 program;

30 (4) is located at any airport, railroad yard, or nuclear power plant;
31 ²[or]²

32 (5) requires exclusion of the public for security reasons as
33 designated in accordance with rules and regulations adopted pursuant
34 to subsection b. of this section by the New Jersey Office of Homeland
35 Security and Preparedness ²; or

36 (6) is owned or operated by the New Jersey Department of
37 Military and Veterans’ Affairs^{2 3} and on which on-site public access is
38 deemed to pose a threat to security or public safety³.

39 b. The New Jersey Office of Homeland Security and
40 Preparedness shall adopt rules and regulations pursuant to the
41 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.)
42 to establish a process to designate those facilities that, for homeland
43 security reasons, require exclusion of the public from the tidal waters
44 or adjacent shorelines located at those facilities. ¹The rules and
45 regulations shall nevertheless provide for access to tidal waters and
46 their adjacent shorelines to the maximum extent feasible and as
47 otherwise permitted by law.¹

1 4. (New section) ³a.³ For any application for a permit or other
2 approval to be issued by the Department of Environmental Protection
3 pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185
4 (C.13:19-1 et seq.), R.S.12:5-3, “The Wetlands Act of 1970,”
5 P.L.1970, c.272 (C.13:9A-1 et seq.), the “Flood Hazard Area Control
6 Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), or the State’s
7 implementation of the “Coastal Zone Management Act of 1972,”
8 16 U.S.C. s.1451 et seq., or any other law, if the application provides
9 for a change in the existing footprint of a structure, ³[or]³ a change in
10 use of the property, ³or involves beach replenishment or beach and
11 dune maintenance,³ the department shall review the existing public
12 access provided to tidal waters and adjacent shorelines at the property
13 and shall require as a condition of the permit or other approval that
14 additional public access to the tidal waters and adjacent shorelines
15 consistent with the public trust doctrine be provided ³[, in accordance
16 with] . In determining the public access that is required at a property,
17 the department shall consider³ the scale of the changes to the footprint
18 or use, the demand for public access, and any ³[adopted] department-
19 approved³ municipal public access plan or public access element of a
20 municipal master plan. ³The requirements of this subsection shall
21 apply to any application for an individual permit submitted on or after
22 the effective date of P.L. _____, c. _____ (C. _____) (pending before the
23 Legislature as this bill). No later than 18 months after the effective
24 date of P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
25 bill), the requirements of this subsection shall apply to permits-by-rule,
26 general permits, or general permits-by-certification issued by the
27 department as provided in rules and regulations adopted pursuant to
28 subsection b. of this section.

29 b. No later than 18 months after the effective date of
30 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill), the
31 department shall adopt, pursuant to the “Administrative Procedure
32 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations
33 establishing:

34 (1) those permits-by-rule, general permits, and general permits-by-
35 certification for which public access would be required, but which
36 would not require individual review pursuant to subsection a. of this
37 section;

38 (2) those permits-by-rule, general permits, and general permits-by-
39 certification for which, consistent with the public trust doctrine, public
40 access would not be required; and

41 (3) specific categories of projects which, due to the existence of an
42 emergency condition, or a condition that poses a significant and
43 immediate threat to public health and safety, shall not require
44 individual review of public access pursuant to subsection a. of this
45 section.³

1 5. (New section) a. For any application for a permit or other
2 approval to be issued by the Department of Environmental Protection
3 pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185
4 (C.13:19-1 et seq.), R.S.12:5-3, “The Wetlands Act of 1970,”
5 P.L.1970, c.272 (C.13:9A-1 et seq.), the “Flood Hazard Area Control
6 Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), or the State’s
7 implementation of the “Coastal Zone Management Act of 1972,”
8 16 U.S.C. s.1451 et seq., involving a marina in existence on the date of
9 enactment of P.L. , c. (C.) (pending before the Legislature as this
10 bill), if the regulated activity that is the subject of the application is on
11 the marina property, the department shall require that the existing
12 degree of public access to the waterfront and adjacent shoreline be
13 maintained. If the regulated activity affects or diminishes public access
14 on the marina property, the department shall require equivalent access
15 as a condition of the permit or other approval. Equivalent public
16 access includes access that allows the opportunity to participate in the
17 same activities in the same manner, by the same number of people as
18 the existing public access. If no public access is provided to the
19 waterfront and adjacent shoreline prior to application for a permit or
20 other approval, the department shall not impose new public access
21 requirements to the waterfront or adjacent shoreline as a condition of
22 the permit or other approval. However, if the application includes
23 property on which there is a beach, including any application
24 involving marina property that provided no public access prior to the
25 application, the department shall require public access to the beach and
26 the public’s use of the beach as a condition of the permit or other
27 approval, and activities that have the effect of discouraging or
28 preventing the exercise of public trust rights shall be prohibited.

29 b. (1) For any application for a permit or other approval to be
30 issued by the Department of Environmental Protection pursuant to the
31 “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et
32 seq.), R.S.12:5-3, “The Wetlands Act of 1970,” P.L.1970, c.272
33 (C.13:9A-1 et seq.), the “Flood Hazard Area Control Act,” P.L.1962,
34 c.19 (C.58:16A-50 et seq.), or the State’s implementation of the
35 “Coastal Zone Management Act of 1972,” 16 U.S.C. s.1451 et seq., for
36 the development of any marina property that proposes to increase the
37 existing developed area, which includes buildings and areas covered
38 by asphalt or other paving, by at least 50 percent, or that proposes the
39 development of property that is not within the parcel containing the
40 existing marina development, the applicant shall provide to the
41 department a public access plan that identifies:

42 (a) a site plan with the location and type of public access to be
43 provided;

44 (b) any areas to be closed to public access because of permanent
45 obstructions or risks due to hazardous operations where no reasonable
46 measures can be taken to avert those risks;

47 (c) an explanation of the specific risks and hazards in the areas
48 closed to public access with a description of the areas where public

1 access is enhanced ³, or where public access is to be provided offsite,³
2 to compensate for the area closed due to permanent obstructions or
3 risks due to hazardous operations; and

4 (d) the operating hours of the marina.

5 The department shall require, as a condition of the permit or other
6 approval, public access to the waterfront and adjacent shoreline, as
7 identified in the public access plan and approved by the department,
8 during the marina's operating hours.

9 If the application includes property on which there is a beach, the
10 department shall require public access to the beach and the public's
11 use of the beach as a condition of the permit or other approval, and
12 activities that have the effect of discouraging or preventing the
13 exercise of public trust rights shall be prohibited.

14 (2) After a public access plan has been approved by the department
15 pursuant to this subsection, any changes to the public access plan shall
16 be submitted to the department for review and approval, even if a
17 modification to the existing permit or other approval is not otherwise
18 required. The applicant shall submit to the department a copy of the
19 approved plan, the proposed changes to the plan, and information that
20 details how the proposed changes affect the approved plan. If the
21 proposed changes reduce the public access already provided pursuant
22 to the public access plan, the applicant shall be required to demonstrate
23 that the proposed public access reduction is offset by other changes to
24 the public access plan.

25 c. For the purposes of this section, public access includes visual
26 and physical access and includes the following in any combination, as
27 appropriate:

28 (1) a public accessway designed in accordance with rules and
29 regulations adopted by the department, located parallel to the shoreline
30 with perpendicular access to it;

31 (2) a boat ramp, pier, fishing pier, other facilities, or other direct
32 access to the waterway;

33 (3) a waterfront pocket park;

34 (4) public restrooms to accommodate those using the public
35 access; and

36 (5) additional public parking to accommodate those using the
37 public access.

38 d. The department shall consider, when determining if public
39 access is sufficient or appropriate, the type of public access available
40 or needed within the area, the compatibility of the proposed public
41 access with the applicant's proposed use of the site, the square footage
42 of the public access area, and the environmental impact or benefit of
43 the proposed development.

44

45 6. (New section) The Department of Environmental Protection
46 may restrict public access to tidal waters and adjacent shorelines to
47 protect critical habitat areas from injurious uses, or threatened or
48 endangered species or their habitat areas from injury or injurious

1 uses, but only to the extent necessary according to the needs of the
2 habitat areas or species.

3

4 7. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
5 read as follows:

6 19. Preparation; contents; modification.

7 a. The planning board may prepare and, after public hearing,
8 adopt or amend a master plan or component parts thereof, to guide the
9 use of lands within the municipality in a manner which protects public
10 health and safety and promotes the general welfare.

11 b. The master plan shall generally comprise a report or statement
12 and land use and development proposals, with maps, diagrams and
13 text, presenting, at least the following elements (1) and (2) and, where
14 appropriate, the following elements (3) through ~~[(16)]~~ (17):

15 (1) A statement of objectives, principles, assumptions, policies and
16 standards upon which the constituent proposals for the physical,
17 economic and social development of the municipality are based;

18 (2) A land use plan element

19 (a) taking into account and stating its relationship to the statement
20 provided for in paragraph (1) hereof, and other master plan elements
21 provided for in paragraphs (3) through (14) hereof and natural
22 conditions, including, but not necessarily limited to, topography, soil
23 conditions, water supply, drainage, flood plain areas, marshes, and
24 woodlands;

25 (b) showing the existing and proposed location, extent and
26 intensity of development of land to be used in the future for varying
27 types of residential, commercial, industrial, agricultural, recreational,
28 open space, educational and other public and private purposes or
29 combination of purposes including any provisions for cluster
30 development; and stating the relationship thereof to the existing and
31 any proposed zone plan and zoning ordinance;

32 (c) showing the existing and proposed location of any airports and
33 the boundaries of any airport safety zones delineated pursuant to the
34 "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-
35 80 et al.);

36 (d) including a statement of the standards of population density
37 and development intensity recommended for the municipality; ²~~[and]~~²

38 (e) showing the existing and proposed location of military
39 facilities and incorporating strategies to minimize undue encroachment
40 upon, and conflicts with, military facilities, including but not limited
41 to: limiting heights of buildings and structures nearby flight paths or
42 sight lines of aircraft; buffering residential areas from noise associated
43 with a military facility; and allowing for the potential expansion of
44 military facilities; ²~~and~~

45 (f) including, for any land use element adopted after the effective
46 date of P.L.2017, c.275, a statement of strategy concerning:

47 (i) smart growth which, in part, shall consider potential locations
48 for the installation of electric vehicle charging stations.

1 (ii) storm resiliency with respect to energy supply, flood-prone
2 areas, and environmental infrastructure, and

3 (iii) environmental sustainability;²

4 (3) A housing plan element pursuant to section 10 of P.L.1985,
5 c.222 (C.52:27D-310), including, but not limited to, residential
6 standards and proposals for the construction and improvement of
7 housing;

8 (4) A circulation plan element showing the location and types of
9 facilities for all modes of transportation required for the efficient
10 movement of people and goods into, about, and through the
11 municipality, taking into account the functional highway classification
12 system of the Federal Highway Administration and the types,
13 locations, conditions and availability of existing and proposed
14 transportation facilities, including air, water, road and rail;

15 (5) A utility service plan element analyzing the need for and
16 showing the future general location of water supply and distribution
17 facilities, drainage and flood control facilities, sewerage and waste
18 treatment, solid waste disposal and provision for other related utilities,
19 and including any storm water management plan required pursuant to
20 the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If a
21 municipality prepares a utility service plan element as a condition for
22 adopting a development transfer ordinance pursuant to subsection c. of
23 section 4 of P.L.2004, c.2 (C.40:55D-140), the plan element shall
24 address the provision of utilities in the receiving zone as provided
25 thereunder;

26 (6) A community facilities plan element showing the existing and
27 proposed location and type of educational or cultural facilities, historic
28 sites, libraries, hospitals, firehouses, police stations and other related
29 facilities, including their relation to the surrounding areas;

30 (7) A recreation plan element showing a comprehensive system of
31 areas and public sites for recreation;

32 (8) A conservation plan element providing for the preservation,
33 conservation, and utilization of natural resources, including, to the
34 extent appropriate, energy, open space, water supply, forests, soil,
35 marshes, wetlands, harbors, rivers and other waters, fisheries,
36 endangered or threatened species wildlife and other resources, and
37 which systemically analyzes the impact of each other component and
38 element of the master plan on the present and future preservation,
39 conservation and utilization of those resources;

40 (9) An economic plan element considering all aspects of economic
41 development and sustained economic vitality, including (a) a
42 comparison of the types of employment expected to be provided by the
43 economic development to be promoted with the characteristics of the
44 labor pool resident in the municipality and nearby areas and (b) an
45 analysis of the stability and diversity of the economic development to
46 be promoted;

47 (10) An historic preservation plan element: (a) indicating the
48 location and significance of historic sites and historic districts; (b)

1 identifying the standards used to assess worthiness for historic site or
2 district identification; and (c) analyzing the impact of each component
3 and element of the master plan on the preservation of historic sites and
4 districts;

5 (11) Appendices or separate reports containing the technical
6 foundation for the master plan and its constituent elements;

7 (12) A recycling plan element which incorporates the State
8 Recycling Plan goals, including provisions for the collection,
9 disposition and recycling of recyclable materials designated in the
10 municipal recycling ordinance, and for the collection, disposition and
11 recycling of recyclable materials within any development proposal for
12 the construction of 50 or more units of single-family residential
13 housing or 25 or more units of multi-family residential housing and
14 any commercial or industrial development proposal for the utilization
15 of 1,000 square feet or more of land;

16 (13) A farmland preservation plan element, which shall include:
17 an inventory of farm properties and a map illustrating significant areas
18 of agricultural land; a statement showing that municipal ordinances
19 support and promote agriculture as a business; and a plan for
20 preserving as much farmland as possible in the short term by
21 leveraging moneys made available by P.L.1999, c.152 (C.13:8C-1 et
22 al.) through a variety of mechanisms including, but not limited to,
23 utilizing option agreements, installment purchases, and encouraging
24 donations of permanent development easements;

25 (14) A development transfer plan element which sets forth the
26 public purposes, the locations of sending and receiving zones and the
27 technical details of a development transfer program based on the
28 provisions of section 5 of P.L.2004, c.2 (C.40:55D-141);

29 (15) An educational facilities plan element which incorporates the
30 purposes and goals of the "long-range facilities plan" required to be
31 submitted to the Commissioner of Education by a school district
32 pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4); and

33 (16) A green buildings and environmental sustainability plan
34 element, which shall provide for, encourage, and promote the efficient
35 use of natural resources and the installation and usage of renewable
36 energy systems; consider the impact of buildings on the local, regional
37 and global environment; allow ecosystems to function naturally;
38 conserve and reuse water; treat storm water on-site; and optimize
39 climatic conditions through site orientation and design; and

40 (17) A public access plan element that provides for, encourages,
41 and promotes permanently protected public access to all tidal waters
42 and adjacent shorelines consistent with the public trust doctrine, and
43 which shall include a map and inventory of public access points,
44 public facilities that support access, parking, boat ramps, and marinas;
45 an assessment of the need for additional public access; a statement of
46 goals and administrative mechanisms to ensure that access will be
47 permanently protected; and a strategy that describes the forms of

1 access to satisfy the need for such access with an implementation
2 schedule and tools for implementation.

3 c. The master plan and its plan elements may be divided into
4 subplans and subplan elements projected according to periods of time
5 or staging sequences.

6 d. The master plan shall include a specific policy statement
7 indicating the relationship of the proposed development of the
8 municipality, as developed in the master plan to (1) the master plans of
9 contiguous municipalities, (2) the master plan of the county in which
10 the municipality is located, (3) the State Development and
11 Redevelopment Plan adopted pursuant to the "State Planning Act,"
12 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and
13 (4) the district solid waste management plan required pursuant to the
14 provisions of the "Solid Waste Management Act," P.L.1970, c.39
15 (C.13:1E-1 et seq.) of the county in which the municipality is located.

16 In the case of a municipality situated within the Highlands Region,
17 as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the master plan
18 shall include a specific policy statement indicating the relationship of
19 the proposed development of the municipality, as developed in the
20 master plan, to the Highlands regional master plan adopted pursuant to
21 section 8 of P.L.2004, c.120 (C.13:20-8).

22 (cf: P.L.2017, c.275, s.1)

23

24 ³8. (New section) The department may adopt, pursuant to the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
26 rules and regulations necessary to implement the provisions of
27 P.L. , c. (C.) (pending before the Legislature as this bill).³

28

29 ³[8.] 9.³ This act shall take effect on the 60th day after the
30 date of enactment.

31

32

33

34

35 Provides for protection of public right of access to certain public
36 trust lands.

SENATE, No. 1074

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 22, 2018

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Senator Gopal

SYNOPSIS

Provides for protection of public's rights under public trust doctrine.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/6/2018)

1 AN ACT concerning the public trust doctrine, amending P.L.1975,
2 c.291, and supplementing Title 13 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) The Legislature finds and declares that:

8 a. The public has longstanding and inviolable rights under the
9 public trust doctrine to use and enjoy the State's tidal waters and
10 adjacent shorelines for recreational uses, including, but not limited
11 to, bathing, swimming, fishing, and other shore-related activities;

12 b. The public trust doctrine establishes the rule that ownership
13 of land flowed or formerly flowed by tidal waters is vested in the
14 State to be held in trust for the people, that the public has the right
15 to tidal lands and waters for navigation, fishing, and recreational
16 uses, and, moreover, that even land that is no longer flowed by the
17 tide but that was artificially filled is considered to be public trust
18 land and the property of the State;

19 c. This historic principle stems from Roman jurisprudence
20 declaring that the air, running water, and shores of the sea are
21 common to mankind. The concept was extended to English law so
22 that public property became classified as one of two types, either
23 property that was necessary for the state's use or property that was
24 common and available to all citizens. The common property
25 consisted of the air, tidally flowed waters, fish, and wild animals,
26 and the King did not own this common property as he owned other
27 state property, but rather held it in trust for the people. After the
28 Revolution, all royal rights in the land that was to become the State
29 of New Jersey became vested in the people of the State of New
30 Jersey. In 1821, the seminal court case of Arnold v. Mundy was
31 decided, outlining the history of the public trust doctrine and
32 applying it to tidally flowed lands in New Jersey, and from the time
33 it was decided, New Jersey courts have held that the State holds in
34 trust for the people of the State those lands flowed by tidal waters to
35 the mean high water mark;

36 d. The State of New Jersey has a duty to promote, protect, and
37 safeguard the public's rights and to ensure reasonable and
38 meaningful public access to tidal waters and adjacent shorelines;

39 e. The Department of Environmental Protection has the
40 authority and the duty to protect the public's right of access to
41 tidally flowed waters and their adjacent shorelines under the public
42 trust doctrine and statutory law. In so doing, the department has the
43 duty to make all tidal waters and their adjacent shorelines available
44 to the public to the greatest extent possible, protect existing public
45 access, provide public access in all communities equitably,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 maximize different experiences provided by the diversity of the
2 State's tidal waters and adjacent shorelines, ensure that the
3 expenditure of public moneys maximizes public use and access
4 where public investment is made, and remove physical and
5 institutional impediments to public access to the maximum extent
6 possible; and

7 f. Public access includes visual and physical access to, and use
8 of, tidal waters and adjacent shorelines, sufficient perpendicular
9 access from upland areas to tidal waters and adjacent shorelines,
10 and the necessary support amenities to facilitate public access for
11 all, including public parking and restrooms.

12
13 2. (New section) a. The Department of Environmental
14 Protection shall ensure that any approval, permit, administrative
15 order, or consent decree issued, or other action taken, by the
16 department pursuant to the "Coastal Area Facility Review Act,"
17 P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act
18 of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard
19 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the
20 State's implementation of the "Coastal Zone Management Act of
21 1972," 16 U.S.C. s.1451 et seq., or any other law, is consistent with
22 the public trust doctrine.

23 b. The Department of Environmental Protection shall ensure
24 that any public funding issued, and any action taken on a project
25 using public funding, is consistent with the public trust doctrine.

26
27 3. (New section) a. The Department of Environmental
28 Protection shall not adopt any rule or regulation pursuant to the
29 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
30 seq.), R.S.12:5-3, "The Wetlands Act of 1970," P.L.1970,
31 c.272 (C.13:9A-1 et seq.), the "Flood Hazard Area Control Act,"
32 P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's implementation
33 of the "Coastal Zone Management Act of 1972," 16 U.S.C. s.1451
34 et seq., or any other law, that mandates on-site public access to tidal
35 waters or adjacent shorelines as a condition of any approval, permit,
36 administrative order, or consent decree at any existing structure or
37 facility that:

38 (1) is required to submit a facility security plan pursuant to the
39 federal "Maritime Transportation Security Act of 2002," 46 U.S.C.
40 s.70101 et seq., and 33 C.F.R. s.101.100 et seq.;

41 (2) is required to develop and adhere to a transportation security
42 plan for hazardous materials pursuant to the regulations adopted by
43 the federal Pipeline and Hazardous Materials Safety Administration
44 in the United States Department of Transportation, 49 C.F.R.
45 s.172.800 et seq.;

46 (3) is required to participate in the United States Department of
47 Homeland Security's Chemical Facility Anti-Terrorism Standards
48 program;

1 (4) is located at any airport, railroad yard, or nuclear power
2 plant; or

3 (5) requires exclusion of the public for security reasons as
4 designated in accordance with rules and regulations adopted
5 pursuant to subsection b. of this section by the New Jersey Office of
6 Homeland Security and Preparedness.

7 b. The New Jersey Office of Homeland Security and
8 Preparedness shall adopt rules and regulations pursuant to the
9 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
10 seq.) to establish a process to designate those facilities that, for
11 homeland security reasons, require exclusion of the public from the
12 tidal waters or adjacent shorelines located at those facilities.

13
14 4. (New section) For any application for a permit or other
15 approval to be issued by the Department of Environmental
16 Protection pursuant to the “Coastal Area Facility Review Act,”
17 P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, “The Wetlands Act
18 of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.), the “Flood Hazard
19 Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), or the
20 State’s implementation of the “Coastal Zone Management Act of
21 1972,” 16 U.S.C. s.1451 et seq., or any other law, if the application
22 provides for a change in the existing footprint of a structure, or a
23 change in use of the property, the department shall review the
24 existing public access provided to tidal waters and adjacent
25 shorelines at the property and shall require as a condition of the
26 permit or other approval that additional public access to the tidal
27 waters and adjacent shorelines consistent with the public trust
28 doctrine be provided, in accordance with the scale of the changes to
29 the footprint or use, the demand for public access, and any adopted
30 municipal public access plan or public access element of a
31 municipal master plan.

32
33 5. (New section) a. For any application for a permit or other
34 approval to be issued by the Department of Environmental
35 Protection pursuant to the “Coastal Area Facility Review Act,”
36 P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, “The Wetlands Act
37 of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.), the “Flood Hazard
38 Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), or the
39 State’s implementation of the “Coastal Zone Management Act of
40 1972,” 16 U.S.C. s.1451 et seq., involving a marina in existence on
41 the date of enactment of P.L. , c. (C.) (pending before the
42 Legislature as this bill), if the regulated activity that is the subject
43 of the application is on the marina property, the department shall
44 require that the existing degree of public access to the waterfront
45 and adjacent shoreline be maintained. If the regulated activity
46 affects or diminishes public access on the marina property, the
47 department shall require equivalent access as a condition of the
48 permit or other approval. Equivalent public access includes access

1 that allows the opportunity to participate in the same activities in
2 the same manner, by the same number of people as the existing
3 public access. If no public access is provided to the waterfront and
4 adjacent shoreline prior to application for a permit or other
5 approval, the department shall not impose new public access
6 requirements to the waterfront or adjacent shoreline as a condition
7 of the permit or other approval. However, if the application
8 includes property on which there is a beach, including any
9 application involving marina property that provided no public
10 access prior to the application, the department shall require public
11 access to the beach and the public's use of the beach as a condition
12 of the permit or other approval, and activities that have the effect of
13 discouraging or preventing the exercise of public trust rights shall
14 be prohibited.

15 b. (1) For any application for a permit or other approval to be
16 issued by the Department of Environmental Protection pursuant to
17 the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1
18 et seq.), R.S.12:5-3, "The Wetlands Act of 1970," P.L.1970, c.272
19 (C.13:9A-1 et seq.), the "Flood Hazard Area Control Act,"
20 P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's implementation
21 of the "Coastal Zone Management Act of 1972," 16 U.S.C.
22 s.1451 et seq., for the development of any marina property that
23 proposes to increase the existing developed area, which includes
24 buildings and areas covered by asphalt or other paving, by at least
25 50 percent, or that proposes the development of property that is not
26 within the parcel containing the existing marina development, the
27 applicant shall provide to the department a public access plan that
28 identifies:

29 (a) a site plan with the location and type of public access to be
30 provided;

31 (b) any areas to be closed to public access because of permanent
32 obstructions or risks due to hazardous operations where no
33 reasonable measures can be taken to avert those risks;

34 (c) an explanation of the specific risks and hazards in the areas
35 closed to public access with a description of the areas where public
36 access is enhanced to compensate for the area closed due to
37 permanent obstructions or risks due to hazardous operations; and

38 (d) the operating hours of the marina.

39 The department shall require, as a condition of the permit or
40 other approval, public access to the waterfront and adjacent
41 shoreline, as identified in the public access plan and approved by
42 the department, during the marina's operating hours.

43 If the application includes property on which there is a beach, the
44 department shall require public access to the beach and the public's
45 use of the beach as a condition of the permit or other approval, and
46 activities that have the effect of discouraging or preventing the
47 exercise of public trust rights shall be prohibited.

1 (2) After a public access plan has been approved by the
2 department pursuant to this subsection, any changes to the public
3 access plan shall be submitted to the department for review and
4 approval, even if a modification to the existing permit or other
5 approval is not otherwise required. The applicant shall submit to
6 the department a copy of the approved plan, the proposed changes
7 to the plan, and information that details how the proposed changes
8 affect the approved plan. If the proposed changes reduce the public
9 access already provided pursuant to the public access plan, the
10 applicant shall be required to demonstrate that the proposed public
11 access reduction is offset by other changes to the public access plan.

12 c. For the purposes of this section, public access includes
13 visual and physical access and includes the following in any
14 combination, as appropriate:

15 (1) a public accessway designed in accordance with rules and
16 regulations adopted by the department, located parallel to the
17 shoreline with perpendicular access to it;

18 (2) a boat ramp, pier, fishing pier, other facilities, or other direct
19 access to the waterway;

20 (3) a waterfront pocket park;

21 (4) public restrooms to accommodate those using the public
22 access; and

23 (5) additional public parking to accommodate those using the
24 public access.

25 d. The department shall consider, when determining if public
26 access is sufficient or appropriate, the type of public access
27 available or needed within the area, the compatibility of the
28 proposed public access with the applicant's proposed use of the site,
29 the square footage of the public access area, and the environmental
30 impact or benefit of the proposed development.

31

32 6. (New section) The Department of Environmental Protection
33 may restrict public access to tidal waters and adjacent shorelines to
34 protect critical habitat areas from injurious uses, or threatened or
35 endangered species or their habitat areas from injury or injurious
36 uses, but only to the extent necessary according to the needs of the
37 habitat areas or species.

38

39 7. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
40 read as follows:

41 19. Preparation; contents; modification.

42 a. The planning board may prepare and, after public hearing,
43 adopt or amend a master plan or component parts thereof, to guide
44 the use of lands within the municipality in a manner which protects
45 public health and safety and promotes the general welfare.

46 b. The master plan shall generally comprise a report or
47 statement and land use and development proposals, with maps,
48 diagrams and text, presenting, at least the following elements (1)

1 and (2) and, where appropriate, the following elements (3) through
2 **[(16)] (17):**

3 (1) A statement of objectives, principles, assumptions, policies
4 and standards upon which the constituent proposals for the physical,
5 economic and social development of the municipality are based;

6 (2) A land use plan element

7 (a) taking into account and stating its relationship to the
8 statement provided for in paragraph (1) hereof, and other master
9 plan elements provided for in paragraphs (3) through (14) hereof
10 and natural conditions, including, but not necessarily limited to,
11 topography, soil conditions, water supply, drainage, flood plain
12 areas, marshes, and woodlands;

13 (b) showing the existing and proposed location, extent and
14 intensity of development of land to be used in the future for varying
15 types of residential, commercial, industrial, agricultural,
16 recreational, open space, educational and other public and private
17 purposes or combination of purposes including any provisions for
18 cluster development; and stating the relationship thereof to the
19 existing and any proposed zone plan and zoning ordinance;

20 (c) showing the existing and proposed location of any airports
21 and the boundaries of any airport safety zones delineated pursuant
22 to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-
23 80 et al.);

24 (d) including a statement of the standards of population density
25 and development intensity recommended for the municipality; and

26 (e) showing the existing and proposed location of military
27 facilities and incorporating strategies to minimize undue
28 encroachment upon, and conflicts with, military facilities, including
29 but not limited to: limiting heights of buildings and structures
30 nearby flight paths or sight lines of aircraft; buffering residential
31 areas from noise associated with a military facility; and allowing for
32 the potential expansion of military facilities;

33 (3) A housing plan element pursuant to section 10 of P.L.1985,
34 c.222 (C.52:27D-310), including, but not limited to, residential
35 standards and proposals for the construction and improvement of
36 housing;

37 (4) A circulation plan element showing the location and types of
38 facilities for all modes of transportation required for the efficient
39 movement of people and goods into, about, and through the
40 municipality, taking into account the functional highway
41 classification system of the Federal Highway Administration and
42 the types, locations, conditions and availability of existing and
43 proposed transportation facilities, including air, water, road and rail;

44 (5) A utility service plan element analyzing the need for and
45 showing the future general location of water supply and distribution
46 facilities, drainage and flood control facilities, sewerage and waste
47 treatment, solid waste disposal and provision for other related
48 utilities, and including any storm water management plan required

1 pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If
2 a municipality prepares a utility service plan element as a condition
3 for adopting a development transfer ordinance pursuant to
4 subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan
5 element shall address the provision of utilities in the receiving zone
6 as provided thereunder;

7 (6) A community facilities plan element showing the existing
8 and proposed location and type of educational or cultural facilities,
9 historic sites, libraries, hospitals, firehouses, police stations and
10 other related facilities, including their relation to the surrounding
11 areas;

12 (7) A recreation plan element showing a comprehensive system
13 of areas and public sites for recreation;

14 (8) A conservation plan element providing for the preservation,
15 conservation, and utilization of natural resources, including, to the
16 extent appropriate, energy, open space, water supply, forests, soil,
17 marshes, wetlands, harbors, rivers and other waters, fisheries,
18 endangered or threatened species wildlife and other resources, and
19 which systemically analyzes the impact of each other component
20 and element of the master plan on the present and future
21 preservation, conservation and utilization of those resources;

22 (9) An economic plan element considering all aspects of
23 economic development and sustained economic vitality, including
24 (a) a comparison of the types of employment expected to be
25 provided by the economic development to be promoted with the
26 characteristics of the labor pool resident in the municipality and
27 nearby areas and (b) an analysis of the stability and diversity of the
28 economic development to be promoted;

29 (10) An historic preservation plan element: (a) indicating the
30 location and significance of historic sites and historic districts; (b)
31 identifying the standards used to assess worthiness for historic site
32 or district identification; and (c) analyzing the impact of each
33 component and element of the master plan on the preservation of
34 historic sites and districts;

35 (11) Appendices or separate reports containing the technical
36 foundation for the master plan and its constituent elements;

37 (12) A recycling plan element which incorporates the State
38 Recycling Plan goals, including provisions for the collection,
39 disposition and recycling of recyclable materials designated in the
40 municipal recycling ordinance, and for the collection, disposition
41 and recycling of recyclable materials within any development
42 proposal for the construction of 50 or more units of single-family
43 residential housing or 25 or more units of multi-family residential
44 housing and any commercial or industrial development proposal for
45 the utilization of 1,000 square feet or more of land;

46 (13) A farmland preservation plan element, which shall include:
47 an inventory of farm properties and a map illustrating significant
48 areas of agricultural land; a statement showing that municipal

1 ordinances support and promote agriculture as a business; and a
2 plan for preserving as much farmland as possible in the short term
3 by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-
4 1 et al.) through a variety of mechanisms including, but not limited
5 to, utilizing option agreements, installment purchases, and
6 encouraging donations of permanent development easements;

7 (14) A development transfer plan element which sets forth the
8 public purposes, the locations of sending and receiving zones and
9 the technical details of a development transfer program based on the
10 provisions of section 5 of P.L.2004, c.2 (C.40:55D-141);

11 (15) An educational facilities plan element which incorporates
12 the purposes and goals of the "long-range facilities plan" required to
13 be submitted to the Commissioner of Education by a school district
14 pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4);

15 (16) A green buildings and environmental sustainability plan
16 element, which shall provide for, encourage, and promote the
17 efficient use of natural resources and the installation and usage of
18 renewable energy systems; consider the impact of buildings on the
19 local, regional and global environment; allow ecosystems to
20 function naturally; conserve and reuse water; treat storm water on-
21 site; and optimize climatic conditions through site orientation and
22 design; and

23 (17) A public access plan element that provides for, encourages,
24 and promotes permanently protected public access to all tidal waters
25 and adjacent shorelines consistent with the public trust doctrine, and
26 which shall include a map and inventory of public access points,
27 public facilities that support access, parking, boat ramps, and
28 marinas; an assessment of the need for additional public access; a
29 statement of goals and administrative mechanisms to ensure that
30 access will be permanently protected; and a strategy that describes
31 the forms of access to satisfy the need for such access with an
32 implementation schedule and tools for implementation .

33 c. The master plan and its plan elements may be divided into
34 subplans and subplan elements projected according to periods of
35 time or staging sequences.

36 d. The master plan shall include a specific policy statement
37 indicating the relationship of the proposed development of the
38 municipality, as developed in the master plan to (1) the master plans
39 of contiguous municipalities, (2) the master plan of the county in
40 which the municipality is located, (3) the State Development and
41 Redevelopment Plan adopted pursuant to the "State Planning Act,"
42 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)
43 and (4) the district solid waste management plan required pursuant
44 to the provisions of the "Solid Waste Management Act," P.L.1970,
45 c.39 (C.13:1E-1 et seq.) of the county in which the municipality is
46 located.

47 In the case of a municipality situated within the Highlands
48 Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the

1 master plan shall include a specific policy statement indicating the
2 relationship of the proposed development of the municipality, as
3 developed in the master plan, to the Highlands regional master plan
4 adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).
5 (cf: P.L.2016, c.21, s.4)

6
7 8. This act shall take effect on the 60th day after the date of
8 enactment.

9
10
11 STATEMENT

12
13 This bill would confirm in the statutes the public rights under the
14 public trust doctrine to use and enjoy the State's tidal waters and
15 adjacent shorelines. The people's ownership of the tidal waters and
16 adjacent shorelines is held in trust by the State. This bill would
17 ensure that the State, through the Department of Environmental
18 Protection (DEP), protects the public's right of access to public
19 trust lands in its funding decisions and in the implementation of the
20 "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront
21 development law), "The Wetlands Act of 1970," the "Flood Hazard
22 Area Control Act," the State's implementation of the federal
23 "Coastal Zone Management Act of 1972," or any other law. In
24 addition, the bill requires that the DEP ensure that any public
25 funding issued, and any action taken on a project using public
26 funding, is consistent with the public trust doctrine. The bill also
27 requires the DEP to ensure that any approval, permit, administrative
28 order, or consent decree issued, or other action taken by the DEP
29 pursuant to the above-cited statutes, is consistent with the public
30 trust doctrine. Further, the bill provides that for any application for
31 a permit or other approval issued pursuant to those laws, where the
32 applicant proposes a change in the existing footprint of a structure,
33 or a change in use of the property, the DEP is required to review the
34 public access provided and determine whether to require additional
35 public access consistent with the public trust doctrine and in
36 accordance with the scale of the changes to the footprint or use, the
37 demand for public access, and any adopted municipal public access
38 plan or public access element of a municipal master plan.

39 In addition, the bill would prohibit the DEP from adopting any
40 rule or regulation pursuant to the "Coastal Area Facility Review
41 Act," R.S.12:5-3 (the waterfront development law), "The Wetlands
42 Act of 1970," the "Flood Hazard Area Control Act," and the State's
43 implementation of the federal "Coastal Zone Management Act of
44 1972," or any other law, that mandates on-site public access to the
45 tidal waters or adjacent shorelines as a condition of any approval,
46 permit, administrative order, or consent decree at a facility or
47 structure that (1) is required to submit a security plan under the
48 federal "Maritime Transportation Security Act of 2002," (2) is

1 required to develop and adhere to a transportation security plan for
2 hazardous materials pursuant to regulations adopted by the U.S.
3 Department of Transportation, (3) is required to participate in the
4 U.S. Department of Homeland Security's Chemical Facility Anti-
5 Terrorism Standards Program, (4) is located at any airport, railroad
6 yard, or nuclear power plant, or (5) that requires exclusion of the
7 public for security reasons as designated by the New Jersey Office
8 of Homeland Security and Preparedness pursuant to rules and
9 regulations by which such facilities will be so designated. The bill
10 would also authorize the DEP to restrict public access to tidal
11 waters and adjacent shorelines to protect critical habitat areas from
12 injurious uses, or threatened or endangered species or their habitat
13 areas from injury or injurious uses, but only to the extent necessary
14 according to the needs of the habitat areas or species.

15 The bill would provide that for marinas in existence on the date
16 of enactment of the bill into law, for any application for a permit or
17 other approval issued by the DEP, if the regulated activity that is
18 the subject of the application is on the marina property, the DEP
19 would require the applicant to maintain the degree of the existing
20 public access to the waterfront and adjacent shoreline. If the
21 regulated activity affects or diminishes public access on the marina
22 property, the department must require equivalent access as a
23 condition of the permit or other approval. If no public access was
24 provided to the waterfront and adjacent shoreline, the department
25 could not impose new public access requirements to the waterfront
26 or adjacent shoreline, except as provided in the bill as outlined
27 below regarding beaches.

28 The bill also provides that for the development of any marina
29 property that proposes to increase the area of existing development
30 (which includes areas covered by structures and asphalt or other
31 paving) by at least 50 percent, or that proposes to develop property
32 that is not within the parcel of the existing marina development, the
33 applicant must provide to the department a public access plan that
34 identifies the location and type of public access to be provided, any
35 areas closed to public access because of permanent obstructions or
36 risks due to hazardous operations, and the operating hours of the
37 marina. The bill provides that as a condition of the permit or other
38 approval, public access to the waterfront and adjacent shoreline as
39 identified in the public access plan and approved by the department
40 must be provided during the marina's operating hours. Further, the
41 bill would require that any changes to an approved public access
42 plan be submitted to the department for review and approval.

43 If the application for a marina property includes property on
44 which there is a beach, in every case, the department must require
45 public access to the beach and the public's use of the beach as a
46 condition of the permit or other approval, and activities that have
47 the effect of discouraging or preventing the exercise of public
48 access rights are prohibited. The bill further provides that for the

1 purposes of public access to be provided by marinas, public access
2 includes visual and physical access and includes the following in
3 any combination, as appropriate: (1) a public accessway designed
4 in accordance with rules and regulations adopted by the department,
5 located parallel to the shoreline with perpendicular access to it; (2)
6 a boat ramp, pier, fishing pier, other facilities, or other direct access
7 to the waterway; (3) a waterfront pocket park; (4) public
8 restrooms to accommodate those using the public access; and (5)
9 additional public parking to accommodate those using the public
10 access. In addition, the bill provides that for public access
11 requirements for marinas, the department is required to consider,
12 when determining if public access is sufficient or appropriate, the
13 type of public access available or needed within the area, the
14 compatibility of the proposed public access with the applicant's
15 proposed use of the site, the square footage of the public access
16 area, and the environmental impact or benefit of the proposed
17 development.

18 Finally, the bill provides that a public access plan element for
19 tidal waters and adjacent shorelines be included, where appropriate,
20 in a municipality's master plan under the "Municipal Land Use
21 Law."

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 1074

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 5, 2018

The Senate Environment and Energy Committee favorably reports Senate Bill No. 1074 with committee amendments.

This bill would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the Department of Environmental Protection (DEP), protects the public's right of access to public trust lands in its funding decisions and in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law. In addition, the bill requires that the DEP ensure that any public funding issued, and any action taken on a project using public funding, is consistent with the public trust doctrine. The bill also requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken by the DEP pursuant to the above-cited statutes, is consistent with the public trust doctrine. Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure, or a change in use of the property, the DEP is required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine and in accordance with the scale of the changes to the footprint or use, the demand for public access, and any adopted municipal public access plan or public access element of a municipal master plan.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," and the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law, that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that (1) is required to submit a security plan under the federal

"Maritime Transportation Security Act of 2002," (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation, (3) is required to participate in the U.S. Department of Homeland Security's Chemical Facility Anti-Terrorism Standards Program, (4) is located at any airport, railroad yard, or nuclear power plant, or (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations by which such facilities will be so designated. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the department must require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the department could not impose new public access requirements to the waterfront or adjacent shoreline, except as provided in the bill as outlined below regarding beaches.

The bill also provides that for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant must provide to the department a public access plan that identifies the location and type of public access to be provided, any areas closed to public access because of permanent obstructions or risks due to hazardous operations, and the operating hours of the marina. The bill provides that as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the department must be provided during the marina's operating hours. Further, the bill would require that any changes to an approved public access plan be submitted to the department for review and approval.

If the application for a marina property includes property on which there is a beach, in every case, the department must require public access to the beach and the public's use of the beach as a condition of the permit or other approval, and activities that have the effect of discouraging or preventing the exercise of public access rights are

prohibited. The bill further provides that for the purposes of public access to be provided by marinas, public access includes visual and physical access and includes the following in any combination, as appropriate: (1) a public accessway designed in accordance with rules and regulations adopted by the department, located parallel to the shoreline with perpendicular access to it; (2) a boat ramp, pier, fishing pier, other facilities, or other direct access to the waterway; (3) a waterfront pocket park; (4) public restrooms to accommodate those using the public access; and (5) additional public parking to accommodate those using the public access. In addition, the bill provides that for public access requirements for marinas, the department is required to consider, when determining if public access is sufficient or appropriate, the type of public access available or needed within the area, the compatibility of the proposed public access with the applicant's proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

The committee amendments would require that the rules and regulations adopted by the Office of Homeland Security and Preparedness that provide for the designation of facilities that require exclusion of the public for security reasons ensure that access to tidal waters and their adjacent shorelines nevertheless be provided to the maximum extent feasible and as otherwise permitted by law.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1074

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JUNE 4, 2018

SUMMARY

- Synopsis:** Provides for protection of public’s rights under public trust doctrine.
- Type of Impact:** Annual State expenditure increase from the General Fund.
- Agencies Affected:** Department of Environmental Protection, New Jersey Office of Homeland Security and Preparedness, and certain municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Expenditure		Indeterminate increase.	
Annual Local Expenditure		Indeterminate increase.	

- The Office of Legislative Services (OLS) determines that there could be marginal yearly administrative costs to the Department of Environmental Protection (DEP) for oversight on funding decisions and to process any application for a permit or other approval for the waterfront development law, the “Coastal Area Facility Review Act,” “The Wetlands Act of 1970,” the “Flood Hazard Area Control Act,” or the State’s implementation of the “Coastal Zone Management Act of 1972,” or any other law, that mandates on-site public access to the tidal waters or adjacent shorelines to ensure it is consistent with the public trust doctrine.
- The OLS anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be determined by the number of applications received by the DEP for review and approval and, therefore, cannot be estimated by the OLS.
- The OLS determines that there would be a marginal one-time administrative cost to the New Jersey Office of Homeland Security and Preparedness to the extent it needs to adopt rules and regulations establishing the process for the exclusion of certain facilities from on-site public access.
- The OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in the municipality’s master plan under the “Municipal Land Use Law.”

BILL DESCRIPTION

This bill would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the DEP, protects the public's right of access to public trust lands in its funding decisions and in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law. In addition, the bill requires that the DEP ensure that any public funding issued, and any action taken on a project using public funding, is consistent with the public trust doctrine. The bill also requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken by the DEP pursuant to the above-cited statutes, is consistent with the public trust doctrine. Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure, or a change in use of the property, the DEP is required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine and in accordance with the scale of the changes to the footprint or use, the demand for public access, and any adopted municipal public access plan or public access element of a municipal master plan.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," and the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law, that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that (1) is required to submit a security plan under the federal "Maritime Transportation Security Act of 2002," (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation, (3) is required to participate in the U.S. Department of Homeland Security's Chemical Facility Anti-Terrorism Standards Program, (4) is located at any airport, railroad yard, or nuclear power plant, or (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations by which such facilities will be so designated. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the department must require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the department could not impose new public access requirements to the waterfront or adjacent shoreline.

The bill also provides that for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant must provide to the

department a public access plan that identifies the location and type of public access to be provided, any areas closed to public access because of permanent obstructions or risks due to hazardous operations, and the operating hours of the marina. The bill provides that as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the department must be provided during the marina's operating hours. Further, the bill would require that any changes to an approved public access plan be submitted to the department for review and approval.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be determined by the number of applications received by the DEP for review and approval and, therefore, cannot be estimated by the OLS.

The OLS determines that there could be marginal yearly administrative costs to the DEP for oversight on funding decisions to ensure that any public funding issued for public trust lands, and any action taken on a project using public funding, is consistent with the public trust doctrine. The DEP could incur marginal yearly administrative costs associated with processing any application for approval, permit, administrative order, or consent decree, or other action taken pursuant to the waterfront development law, the "Coastal Area Facility Review Act," "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," or the State's implementation of the "Coastal Zone Management Act of 1972," or any other law, to determine if it is consistent with the public trust doctrine. Furthermore, if the application provides for a change in the existing footprint of a structure, or a change in use of the property, the DEP is required to review the current public access provided and determine whether to require additional public access consistent with the public trust doctrine and in accordance with the scale of the changes to the footprint or use, the demand for public access, and any adopted municipal public access plan or public access element of a municipal master plan.

The DEP may incur marginal yearly administrative costs associated with processing any application for approval of a public access plan for the development of any marina property that proposes to increase the area of existing development by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development.

The bill would prohibit the DEP from adopting any rule or regulation pursuant to any law that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at any existing structure or facility that requires exclusion of the public for security reasons. The OLS also notes that the New Jersey Office of Homeland Security and Preparedness would incur a marginal one-time administrative cost to the extent it needs to adopt rules and regulations establishing the process for the exclusion of certain facilities from public access for homeland security reasons.

Further, the OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in a municipality's master plan under the "Municipal Land Use Law."

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Neha Mehta Patel
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1074

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1074 (1R), with committee amendments.

As amended, this bill would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the Department of Environmental Protection (DEP), protects the public's right of access to public trust lands in its funding decisions and in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law. In addition, the bill requires that the DEP ensure that any public funding issued, and any action taken on a project using public funding, is consistent with the public trust doctrine. The bill also requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken by the DEP pursuant to the above-cited statutes, is consistent with the public trust doctrine. Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure, or a change in use of the property, the DEP is required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine and in accordance with the scale of the changes to the footprint or use, the demand for public access, and any adopted municipal public access plan or public access element of a municipal master plan.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," and the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law, that mandates on-site public access to the

tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that (1) is required to submit a security plan under the federal “Maritime Transportation Security Act of 2002,” (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation, (3) is required to participate in the U.S. Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards Program, (4) is located at any airport, railroad yard, or nuclear power plant, (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations by which such facilities will be so designated, or (6) is owned or operated by the New Jersey Department of Military and Veterans’ Affairs. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species. The bill additionally states that the rules and regulations adopted by the Office of Homeland Security and Preparedness that provide for the designation of facilities that require exclusion of the public for security reasons ensure that access to tidal waters and their adjacent shorelines nevertheless be provided to the maximum extent feasible and as otherwise permitted by law.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the department must require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the department could not impose new public access requirements to the waterfront or adjacent shoreline, except as provided in the bill as outlined below regarding beaches.

The bill also provides that for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant must provide to the department a public access plan that identifies the location and type of public access to be provided, any areas closed to public access because of permanent obstructions or risks due to hazardous operations, and the operating hours of the marina. The bill provides that as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as

identified in the public access plan and approved by the department must be provided during the marina's operating hours. Further, the bill would require that any changes to an approved public access plan be submitted to the department for review and approval.

If the application for a marina property includes property on which there is a beach, in every case, the department must require public access to the beach and the public's use of the beach as a condition of the permit or other approval, and activities that have the effect of discouraging or preventing the exercise of public access rights are prohibited. The bill further provides that for the purposes of public access to be provided by marinas, public access includes visual and physical access and includes the following in any combination, as appropriate: (1) a public access way designed in accordance with rules and regulations adopted by the department, located parallel to the shoreline with perpendicular access to it; (2) a boat ramp, pier, fishing pier, other facilities, or other direct access to the waterway; (3) a waterfront pocket park; (4) public restrooms to accommodate those using the public access; and (5) additional public parking to accommodate those using the public access. In addition, the bill provides that for public access requirements for marinas, the department is required to consider, when determining if public access is sufficient or appropriate, the type of public access available or needed within the area, the compatibility of the proposed public access with the applicant's proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

COMMITTEE AMENDMENTS:

The committee amendments:

(1) prohibit the DEP from adopting any rule or regulation, pursuant to any law, that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that is owned or operated by the New Jersey Department of Military and Veterans' Affairs; and

(2) update section 7 to reflect an intervening change in the statute.

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that there could be marginal yearly administrative costs to the Department of Environmental Protection (DEP) for oversight on funding decisions and to process any application for a permit or other approval for the waterfront development law, the "Coastal Area Facility Review Act," "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," or

the State's implementation of the "Coastal Zone Management Act of 1972," or any other law, that mandates on-site public access to the tidal waters or adjacent shorelines to ensure it is consistent with the public trust doctrine.

The OLS anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be determined by the number of applications received by the DEP for review and approval and, therefore, cannot be estimated by the OLS.

The OLS determines that there would be a marginal one-time administrative cost to the New Jersey Office of Homeland Security and Preparedness to the extent it needs to adopt rules and regulations establishing the process for the exclusion of certain facilities from on-site public access.

The OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in their master plans, under the "Municipal Land Use Law."

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 1074

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JUNE 26, 2018

SUMMARY

Synopsis: Provides for protection of public’s rights under public trust doctrine.

Type of Impact: Annual State expenditure increase from the General Fund.

Agencies Affected: Department of Environmental Protection, New Jersey Office of Homeland Security and Preparedness, and certain municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Annual State Expenditure		Indeterminate increase.	
Annual Local Expenditure		Indeterminate increase.	

- The Office of Legislative Services (OLS) determines that there could be marginal yearly administrative costs to the Department of Environmental Protection (DEP) for oversight on funding decisions and to process any application for a permit or other approval for the waterfront development law, the “Coastal Area Facility Review Act,” “The Wetlands Act of 1970,” the “Flood Hazard Area Control Act,” or the State’s implementation of the “Coastal Zone Management Act of 1972,” or any other law, that mandates on-site public access to the tidal waters or adjacent shorelines to ensure it is consistent with the public trust doctrine.
- The OLS anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be determined by the number of applications received by the DEP for review and approval and, therefore, cannot be estimated by the OLS.
- The OLS determines that there would be a marginal one-time administrative cost to the New Jersey Office of Homeland Security and Preparedness to the extent it needs to adopt rules and regulations establishing the process for the exclusion of certain facilities from on-site public access.
- The OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in the municipality’s master plan under the “Municipal Land Use Law.”

BILL DESCRIPTION

This bill would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the DEP, protects the public's right of access to public trust lands in its funding decisions and in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law. In addition, the bill requires that the DEP ensure that any public funding issued, and any action taken on a project using public funding, is consistent with the public trust doctrine. The bill also requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken by the DEP pursuant to the above-cited statutes, is consistent with the public trust doctrine. Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure, or a change in use of the property, the DEP is required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine and in accordance with the scale of the changes to the footprint or use, the demand for public access, and any adopted municipal public access plan or public access element of a municipal master plan.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," and the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law, that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that (1) is required to submit a security plan under the federal "Maritime Transportation Security Act of 2002," (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation, (3) is required to participate in the U.S. Department of Homeland Security's Chemical Facility Anti-Terrorism Standards Program, (4) is located at any airport, railroad yard, or nuclear power plant, or (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations by which such facilities will be so designated. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the department must require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the department could not impose new public access requirements to the waterfront or adjacent shoreline.

The bill also provides that for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant must provide to the

department a public access plan that identifies the location and type of public access to be provided, any areas closed to public access because of permanent obstructions or risks due to hazardous operations, and the operating hours of the marina. The bill provides that as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the department must be provided during the marina's operating hours. Further, the bill would require that any changes to an approved public access plan be submitted to the department for review and approval.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be determined by the number of applications received by the DEP for review and approval and, therefore, cannot be estimated by the OLS.

The OLS determines that there could be marginal yearly administrative costs to the DEP for oversight on funding decisions to ensure that any public funding issued for public trust lands, and any action taken on a project using public funding, is consistent with the public trust doctrine. The DEP could incur marginal yearly administrative costs associated with processing any application for approval, permit, administrative order, or consent decree, or other action taken pursuant to the waterfront development law, the "Coastal Area Facility Review Act," "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," or the State's implementation of the "Coastal Zone Management Act of 1972," or any other law, to determine if it is consistent with the public trust doctrine. Furthermore, if the application provides for a change in the existing footprint of a structure, or a change in use of the property, the DEP is required to review the current public access provided and determine whether to require additional public access consistent with the public trust doctrine and in accordance with the scale of the changes to the footprint or use, the demand for public access, and any adopted municipal public access plan or public access element of a municipal master plan.

The DEP may incur marginal yearly administrative costs associated with processing any application for approval of a public access plan for the development of any marina property that proposes to increase the area of existing development by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development.

The bill would prohibit the DEP from adopting any rule or regulation pursuant to any law that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at any existing structure or facility that requires exclusion of the public for security reasons. The OLS also notes that the New Jersey Office of Homeland Security and Preparedness would incur a marginal one-time administrative cost to the extent it needs to adopt rules and regulations establishing the process for the exclusion of certain facilities from public access for homeland security reasons.

Further, the OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in a municipality's master plan under the "Municipal Land Use Law."

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Neha Mehta Patel
Associate Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 1074

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 2019

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Senate Bill No. 1074 (2R).

This bill, as amended, would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the Department of Environmental Protection (DEP), protects the public's right of access to public trust lands in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law.

The bill requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken, by the DEP pursuant to the above-cited laws or any other law is consistent with the public trust doctrine. In addition, the bill requires that the DEP ensure that any public funding issued by the DEP, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine.

Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure or a change in use of the property, or the application involves beach replenishment or beach and dune maintenance, the DEP would be required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine. In determining the public access that is required at a property, the DEP would be required to consider the scale of the changes to the footprint or use, the demand for public access, and any DEP-approved municipal public access plan or public access element of a municipal master plan. The

bill provides that these requirements would apply to any application for an individual permit submitted on or after the effective date of the bill. In addition, beginning no later than 18 months after the effective date of the bill, these requirements would apply to permits-by-rule, general permits, or general permits-by-certification issued by the DEP as provided in rules and regulations to be adopted pursuant to the bill.

Specifically, the bill requires the DEP, no later than 18 months after the effective date of the bill, to adopt rules and regulations establishing: (1) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review; (2) those permits-by-rule, general permits, and general permits-by-certification for which, consistent with the public trust doctrine, public access would not be required; and (3) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, would not require individual review of public access.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the above-cited laws or any other law that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that: (1) is required to submit a security plan under the federal "Maritime Transportation Security Act of 2002"; (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation; (3) is required to participate in the U.S. Department of Homeland Security's Chemical Facility Anti-Terrorism Standards Program; (4) is located at any airport, railroad yard, or nuclear power plant; (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations required by the bill by which such facilities will be so designated; or (6) is owned or operated by the New Jersey Department of Military and Veterans' Affairs, and on which on-site public access is deemed to pose a threat to security or public safety. The rules and regulations adopted by the Office of Homeland Security and Preparedness would be required to ensure that access to tidal waters and their adjacent shorelines nevertheless be provided to the maximum extent feasible and as otherwise permitted by law. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject

of the application is on the marina property, the DEP would require the applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the DEP would require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the DEP could not impose new public access requirements to the waterfront or adjacent shoreline, except as provided in the bill as outlined below regarding beaches.

The bill also provides that, for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant would be required to provide a public access plan to the DEP. The bill requires this public access plan to identify: the location and type of public access to be provided; any areas closed to public access because of permanent obstructions or risks due to hazardous operations; and the operating hours of the marina. The plan would also include an explanation of the specific risks and hazards in the areas closed to public access with a description of the areas where public access is enhanced, or where public access is to be provided off site, to compensate for the area closed due to permanent obstructions or risks due to hazardous operations. The bill provides that, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the DEP must be provided during the marina's operating hours. Further, the bill requires that any changes to an approved public access plan be submitted to the DEP for review and approval.

If the application for a marina property includes property on which there is a beach, in every case, the DEP must require that public access to the beach and the public's use of the beach is provided as a condition of the permit or other approval, and that activities that have the effect of discouraging or preventing the exercise of public access rights are prohibited. The bill further provides that for the purposes of public access to be provided by marinas, public access includes visual and physical access and includes the following in any combination, as appropriate: (1) a public access way designed in accordance with rules and regulations adopted by the DEP, located parallel to the shoreline with perpendicular access to it; (2) a boat ramp, pier, fishing pier, other facility, or other direct access to the waterway; (3) a waterfront pocket park; (4) public restrooms to accommodate those using the public access; and (5) additional public parking to accommodate those using the public access. In addition, the bill provides that, for public access requirements for marinas, the DEP is required to consider, when determining if public access is sufficient or appropriate, the type

of public access available or needed within the area, the compatibility of the proposed public access with the applicant's proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4221 as also amended and reported by the committee.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

- 1) revise the findings and declarations section;
- 2) require the DEP to ensure that any public funding issued by the DEP, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine;
- 3) provide that the prohibition on DEP adopting any rule or regulation mandating on-site public access as a condition of any approval, permit, administrative order, or consent decree at a facility or structure falling within the six categories specified in section 3 of the bill concerning security applies to all such facilities or structures, rather than only existing ones;
- 4) specify that the DEP's rules cannot require public access at those properties that are both owned or operated by the New Jersey Department of Military and Veterans' Affairs and on which on-site public access is deemed to pose a threat to security or public safety;
- 5) provide that when determining the additional public access that is required at a property, the DEP would be required to consider the scale of the changes to the footprint or use, the demand for public access, and any DEP-approved municipal public access plan or public access element of a municipal master plan, and provide that this requirement for additional public access would apply to any application for an individual permit submitted on or after the effective date of the bill;
- 6) provide that, beginning no later than 18 months after the effective date of the bill, the requirement for public access would apply to permits-by-rule, general permits, or general permits-by-certification issued by the DEP as provided in rules and regulations to be adopted pursuant to the bill;
- 7) require the DEP, no later than 18 months after the effective date of the bill, to adopt rules and regulations establishing: (a) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review; (b) those permits-by-rule, general permits,

and general permits-by-certification for which, consistent with the public trust doctrine, public access would not be required; and (c) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, would not require individual review of public access;

8) clarify the information to be included in the public access plan required to be submitted for an application for the development of any marina property that proposes to increase the area of existing development by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development; and

9) add a section providing the DEP with rulemaking authority to implement the provisions of the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Third Reprint]

SENATE, No. 1074

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Assembly Appropriations Committee reports favorably Senate Bill No. 1074 (3R), with committee amendments.

Senate Bill No. 1074 (3R) would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the Department of Environmental Protection (DEP), protects the public's right of access to public trust lands in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law.

The bill requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken, by the DEP pursuant to the above-cited laws or any other law is consistent with the public trust doctrine. In addition, the bill requires that the DEP ensure that any public funding issued by the DEP, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine.

Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure or a change in use of the property, or the application involves beach replenishment or beach and dune maintenance, the DEP would be required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine. In determining the public access that is required at a property, the DEP would be required to consider the scale of the changes to the footprint or use, the demand for public access, and any DEP-approved municipal public access plan or public access element of a municipal master plan. The bill provides that these requirements would apply to any application

for an individual permit submitted on or after the effective date of the bill. In addition, beginning no later than 18 months after the effective date of the bill, these requirements would apply to permits-by-rule, general permits, or general permits-by-certification issued by the DEP as provided in rules and regulations to be adopted pursuant to the bill.

Specifically, the bill requires the DEP, no later than 18 months after the effective date of the bill, to adopt rules and regulations establishing: (1) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review; (2) those permits-by-rule, general permits, and general permits-by-certification for which, consistent with the public trust doctrine, public access would not be required; and (3) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, would not require individual review of public access.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the above-cited laws or any other law that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that: (1) is required to submit a security plan under the federal "Maritime Transportation Security Act of 2002"; (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation; (3) is required to participate in the U.S. Department of Homeland Security's Chemical Facility Anti-Terrorism Standards Program; (4) is located at any airport, railroad yard, or nuclear power plant; (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations required by the bill by which such facilities will be so designated; or (6) is owned or operated by the New Jersey Department of Military and Veterans' Affairs, and on which on-site public access is deemed to pose a threat to security or public safety. The rules and regulations adopted by the Office of Homeland Security and Preparedness would be required to ensure that access to tidal waters and their adjacent shorelines nevertheless be provided to the maximum extent feasible and as otherwise permitted by law. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the

applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the DEP would require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the DEP could not impose new public access requirements to the waterfront or adjacent shoreline, except as provided in the bill as outlined below regarding beaches.

The bill also provides that, for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant would be required to provide a public access plan to the DEP. The bill requires this public access plan to identify: the location and type of public access to be provided; any areas closed to public access because of permanent obstructions or risks due to hazardous operations; and the operating hours of the marina. The plan would also include an explanation of the specific risks and hazards in the areas closed to public access with a description of the areas where public access is enhanced, or where public access is to be provided off site, to compensate for the area closed due to permanent obstructions or risks due to hazardous operations. The bill provides that, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the DEP must be provided during the marina's operating hours. Further, the bill requires that any changes to an approved public access plan be submitted to the DEP for review and approval.

If the application for a marina property includes property on which there is a beach, in every case, the DEP must require that public access to the beach and the public's use of the beach is provided as a condition of the permit or other approval, and that activities that have the effect of discouraging or preventing the exercise of public access rights are prohibited. The bill further provides that for the purposes of public access to be provided by marinas, public access includes visual and physical access and includes the following in any combination, as appropriate: (1) a public access way designed in accordance with rules and regulations adopted by the DEP, located parallel to the shoreline with perpendicular access to it; (2) a boat ramp, pier, fishing pier, other facility, or other direct access to the waterway; (3) a waterfront pocket park; (4) public restrooms to accommodate those using the public access; and (5) additional public parking to accommodate those using the public access. In addition, the bill provides that, for public access requirements for marinas, the DEP is required to consider, when determining if public access is sufficient or appropriate, the type of public access available or needed within the area, the compatibility

of the proposed public access with the applicant's proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

As amended and reported by the committee, Senate Bill No. 1074 (3R) is identical to Assembly Bill No. 4221 (1R) also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments revise the findings and declarations section of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill could lead to an increase in annual State expenditures, largely driven by the number of permit applications submitted to the DEP for review, and therefore cannot be estimated by OLS.

The bill requires the DEP to review certain permit applications to assess the amount of public access to tidal waters and adjacent shorelines provided at the site and to determine whether to require additional access as a condition of the permit. This may add a layer of complexity to the DEP's permit review process, which could result in additional marginal yearly administrative costs.

The OLS notes that the DEP would incur a marginal one-time administrative cost to adopt rules and regulations to implement public access requirements for certain general permits, permits-by-rule, and general permits-by-certification. The Office of Homeland Security and Preparedness would also incur a marginal one-time administrative cost to adopt rules and regulations establishing the process for the exclusion of certain facilities from public access for homeland security reasons.

Finally, certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in the municipality's master plan under the "Municipal Land Use Law."

LEGISLATIVE FISCAL ESTIMATE

[Fourth Reprint]

SENATE, No. 1074

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MARCH 29, 2019

SUMMARY

- Synopsis:** Provides for protection of public right of access to certain public trust lands.
- Type of Impact:** Annual State expenditure increase from the General Fund.
- Agencies Affected:** Department of Environmental Protection, New Jersey Office of Homeland Security and Preparedness, and certain municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure		Indeterminate increase.	
Local Expenditure		Indeterminate increase.	

- The Office of Legislative Services (OLS) anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be largely determined by the number of permit applications the Department of Environmental Protection (DEP) receives for review and therefore cannot be estimated by the OLS.
- The bill requires the DEP to review certain permit applications to assess the amount of public access to tidal waters and adjacent shorelines provided at the site and to determine whether to require additional access as a condition of the permit. This may add a layer of complexity to the DEP's permit review process, which could result in additional marginal yearly administrative costs.
- The OLS determines that there would be a marginal one-time administrative cost to the DEP to adopt rules and regulations to implement public access requirements for certain general permits, permits-by-rule, and general permits-by-certification.
- The OLS determines that there would be a marginal one-time administrative cost to the New Jersey Office of Homeland Security and Preparedness to adopt rules and regulations establishing the process for the exclusion of certain facilities from public access for homeland security reasons.

- The OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in the municipality's master plan under the "Municipal Land Use Law."

BILL DESCRIPTION

This bill would confirm in the statutes the public's right, under the public trust doctrine, to use and enjoy the State's tidal waters and adjacent shorelines. The bill requires the DEP to ensure that any action taken by the DEP pursuant to any law is consistent with the public trust doctrine. In addition, the bill requires that the DEP ensure that any public funding issued by the DEP, any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department is consistent with the public trust doctrine.

Further, the bill requires the DEP to review certain applications for permits and other approvals to assess the amount of public access to tidal waters and adjacent shorelines provided at the site, and to determine whether to require additional public access as a condition of the permit or other approval. Specifically, the bill requires the DEP to review any application issued pursuant to the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law, which application provides for a change in the existing footprint of a structure or a change in use of the property, or involves beach replenishment or beach and dune maintenance. The bill provides that these requirements would apply to any application for an individual permit submitted on or after the effective date of the bill. In addition, no later than 18 months after the effective date of the bill, the DEP would be required to adopt rules and regulations that implement public access requirements for certain permits-by-rule, general permits, and general permits-by-certification.

The bill also provides that, for the development of any marina property that proposes to increase the area of existing development by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant would be required to provide a public access plan to the DEP. The bill provides that, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline, as identified in the public access plan and approved by the DEP, must be provided during the marina's operating hours. Further, the bill requires that any changes to an approved public access plan be submitted to the DEP for review and approval.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be largely determined by the number of permit applications the DEP receives for review and therefore cannot be estimated by the OLS.

The bill requires the DEP to review certain permit applications to assess the amount of public access to tidal waters and adjacent shorelines provided at the property and to determine whether to require additional access as a condition of the permit. This may add a layer of complexity to the DEP's permit review process, which could result in additional yearly administrative costs. The DEP would also be required to adopt rules and regulations to establish public access requirements for certain general permits, permits-by-rule, and general permits-by-certification no later than 18 months after the effective date of the bill. The DEP would thus incur a marginal one-time administrative cost associated with this rulemaking process.

In addition, the OLS determines that there could be marginal yearly administrative costs to the DEP for oversight on funding decisions, since the bill requires the department to ensure that any public funding issued by the department, any action taken on a project using such funding, and any aspect of a project utilizing federal funding that is reviewed by the department is consistent with the public trust doctrine. The DEP may also incur marginal yearly administrative costs associated with processing applications for approval of public access plans for the development of certain marina properties.

The bill would prohibit the DEP from adopting any rule or regulation that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at any existing structure or facility that requires exclusion of the public for security reasons. The New Jersey Office of Homeland Security and Preparedness would incur a marginal one-time administrative cost to adopt rules and regulations establishing the process for the exclusion of such facilities from public access requirements.

Finally, the OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in a municipality's master plan under the "Municipal Land Use Law."

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Eric Hansen
Assistant Research Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4221

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 21, 2018

Sponsored by:

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Provides for protection of public's rights under public trust doctrine.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/15/2019)

1 AN ACT concerning the public trust doctrine, amending P.L.1975,
2 c.291, and supplementing Title 13 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. (New section) The Legislature finds and declares that:

8 a. The public has longstanding and inviolable rights under the
9 public trust doctrine to use and enjoy the State's tidal waters and
10 adjacent shorelines for recreational uses, including, but not limited
11 to, bathing, swimming, fishing, and other shore-related activities;

12 b. The public trust doctrine establishes the rule that ownership
13 of land flowed or formerly flowed by tidal waters is vested in the
14 State to be held in trust for the people, that the public has the right
15 to tidal lands and waters for navigation, fishing, and recreational
16 uses, and, moreover, that even land that is no longer flowed by the
17 tide but that was artificially filled is considered to be public trust
18 land and the property of the State;

19 c. This historic principle stems from Roman jurisprudence
20 declaring that the air, running water, and shores of the sea are
21 common to mankind. The concept was extended to English law so
22 that public property became classified as one of two types, either
23 property that was necessary for the state's use or property that was
24 common and available to all citizens. The common property
25 consisted of the air, tidally flowed waters, fish, and wild animals,
26 and the King did not own this common property as he owned other
27 state property, but rather held it in trust for the people. After the
28 Revolution, all royal rights in the land that was to become the State
29 of New Jersey became vested in the people of the State of New
30 Jersey. In 1821, the seminal court case of *Arnold v. Mundy* was
31 decided, outlining the history of the public trust doctrine and
32 applying it to tidally flowed lands in New Jersey, and from the time
33 it was decided, New Jersey courts have held that the State holds in
34 trust for the people of the State those lands flowed by tidal waters to
35 the mean high water mark;

36 d. The State of New Jersey has a duty to promote, protect, and
37 safeguard the public's rights and to ensure reasonable and
38 meaningful public access to tidal waters and adjacent shorelines;

39 e. The Department of Environmental Protection has the
40 authority and the duty to protect the public's right of access to
41 tidally flowed waters and their adjacent shorelines under the public
42 trust doctrine and statutory law. In so doing, the department has the
43 duty to make all tidal waters and their adjacent shorelines available
44 to the public to the greatest extent possible, protect existing public
45 access, provide public access in all communities equitably,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 maximize different experiences provided by the diversity of the
2 State's tidal waters and adjacent shorelines, ensure that the
3 expenditure of public moneys maximizes public use and access
4 where public investment is made, and remove physical and
5 institutional impediments to public access to the maximum extent
6 possible; and

7 f. Public access includes visual and physical access to, and use
8 of, tidal waters and adjacent shorelines, sufficient perpendicular
9 access from upland areas to tidal waters and adjacent shorelines,
10 and the necessary support amenities to facilitate public access for
11 all, including public parking and restrooms.

12

13 2. (New section) a. The Department of Environmental
14 Protection shall ensure that any approval, permit, administrative
15 order, or consent decree issued, or other action taken, by the
16 department pursuant to the "Coastal Area Facility Review Act,"
17 P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act
18 of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard
19 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the
20 State's implementation of the "Coastal Zone Management Act of
21 1972," 16 U.S.C. s.1451 et seq., or any other law, is consistent with
22 the public trust doctrine.

23 b. The Department of Environmental Protection shall ensure
24 that any public funding issued, and any action taken on a project
25 using public funding, is consistent with the public trust doctrine.

26

27 3. (New section) a. The Department of Environmental
28 Protection shall not adopt any rule or regulation pursuant to the
29 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
30 seq.), R.S.12:5-3, "The Wetlands Act of 1970," P.L.1970,
31 c.272 (C.13:9A-1 et seq.), the "Flood Hazard Area Control Act,"
32 P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's implementation
33 of the "Coastal Zone Management Act of 1972," 16 U.S.C. s.1451
34 et seq., or any other law, that mandates on-site public access to tidal
35 waters or adjacent shorelines as a condition of any approval, permit,
36 administrative order, or consent decree at any existing structure or
37 facility that:

38 (1) is required to submit a facility security plan pursuant to the
39 federal "Maritime Transportation Security Act of 2002," 46 U.S.C.
40 s.70101 et seq., and 33 C.F.R. s.101.100 et seq.;

41 (2) is required to develop and adhere to a transportation security
42 plan for hazardous materials pursuant to the regulations adopted by
43 the federal Pipeline and Hazardous Materials Safety Administration
44 in the United States Department of Transportation, 49 C.F.R.
45 s.172.800 et seq.;

46 (3) is required to participate in the United States Department of
47 Homeland Security's Chemical Facility Anti-Terrorism Standards
48 program;

1 (4) is located at any airport, railroad yard, or nuclear power
2 plant;

3 (5) requires exclusion of the public for security reasons as
4 designated in accordance with rules and regulations adopted
5 pursuant to subsection b. of this section by the New Jersey Office of
6 Homeland Security and Preparedness; or

7 (6) is owned or operated by the New Jersey Department of
8 Military and Veterans' Affairs.

9 b. The New Jersey Office of Homeland Security and
10 Preparedness shall adopt rules and regulations pursuant to the
11 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
12 seq.) to establish a process to designate those facilities that, for
13 homeland security reasons, require exclusion of the public from the
14 tidal waters or adjacent shorelines located at those facilities. The
15 rules and regulations shall nevertheless provide for access to tidal
16 waters and their adjacent shorelines to the maximum extent feasible
17 and as otherwise permitted by law.

18

19 4. (New section) For any application for a permit or other
20 approval to be issued by the Department of Environmental
21 Protection pursuant to the "Coastal Area Facility Review Act,"
22 P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act
23 of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard
24 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the
25 State's implementation of the "Coastal Zone Management Act of
26 1972," 16 U.S.C. s.1451 et seq., or any other law, if the application
27 provides for a change in the existing footprint of a structure, or a
28 change in use of the property, the department shall review the
29 existing public access provided to tidal waters and adjacent
30 shorelines at the property and shall require as a condition of the
31 permit or other approval that additional public access to the tidal
32 waters and adjacent shorelines consistent with the public trust
33 doctrine be provided, in accordance with the scale of the changes to
34 the footprint or use, the demand for public access, and any adopted
35 municipal public access plan or public access element of a
36 municipal master plan.

37

38 5. (New section) a. For any application for a permit or other
39 approval to be issued by the Department of Environmental
40 Protection pursuant to the "Coastal Area Facility Review Act,"
41 P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act
42 of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard
43 Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the
44 State's implementation of the "Coastal Zone Management Act of
45 1972," 16 U.S.C. s.1451 et seq., involving a marina in existence on
46 the date of enactment of P.L. , c. (C.) (pending before the
47 Legislature as this bill), if the regulated activity that is the subject
48 of the application is on the marina property, the department shall

1 require that the existing degree of public access to the waterfront
2 and adjacent shoreline be maintained. If the regulated activity
3 affects or diminishes public access on the marina property, the
4 department shall require equivalent access as a condition of the
5 permit or other approval. Equivalent public access includes access
6 that allows the opportunity to participate in the same activities in
7 the same manner, by the same number of people as the existing
8 public access. If no public access is provided to the waterfront and
9 adjacent shoreline prior to application for a permit or other
10 approval, the department shall not impose new public access
11 requirements to the waterfront or adjacent shoreline as a condition
12 of the permit or other approval. However, if the application
13 includes property on which there is a beach, including any
14 application involving marina property that provided no public
15 access prior to the application, the department shall require public
16 access to the beach and the public's use of the beach as a condition
17 of the permit or other approval, and activities that have the effect of
18 discouraging or preventing the exercise of public trust rights shall
19 be prohibited.

20 b. (1) For any application for a permit or other approval to be
21 issued by the Department of Environmental Protection pursuant to
22 the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1
23 et seq.), R.S.12:5-3, "The Wetlands Act of 1970," P.L.1970, c.272
24 (C.13:9A-1 et seq.), the "Flood Hazard Area Control Act,"
25 P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's implementation
26 of the "Coastal Zone Management Act of 1972," 16 U.S.C.
27 s.1451 et seq., for the development of any marina property that
28 proposes to increase the existing developed area, which includes
29 buildings and areas covered by asphalt or other paving, by at least
30 50 percent, or that proposes the development of property that is not
31 within the parcel containing the existing marina development, the
32 applicant shall provide to the department a public access plan that
33 identifies:

34 (a) a site plan with the location and type of public access to be
35 provided;

36 (b) any areas to be closed to public access because of permanent
37 obstructions or risks due to hazardous operations where no
38 reasonable measures can be taken to avert those risks;

39 (c) an explanation of the specific risks and hazards in the areas
40 closed to public access with a description of the areas where public
41 access is enhanced to compensate for the area closed due to
42 permanent obstructions or risks due to hazardous operations; and

43 (d) the operating hours of the marina.

44 The department shall require, as a condition of the permit or
45 other approval, public access to the waterfront and adjacent
46 shoreline, as identified in the public access plan and approved by
47 the department, during the marina's operating hours.

1 If the application includes property on which there is a beach, the
2 department shall require public access to the beach and the public's
3 use of the beach as a condition of the permit or other approval, and
4 activities that have the effect of discouraging or preventing the
5 exercise of public trust rights shall be prohibited.

6 (2) After a public access plan has been approved by the
7 department pursuant to this subsection, any changes to the public
8 access plan shall be submitted to the department for review and
9 approval, even if a modification to the existing permit or other
10 approval is not otherwise required. The applicant shall submit to
11 the department a copy of the approved plan, the proposed changes
12 to the plan, and information that details how the proposed changes
13 affect the approved plan. If the proposed changes reduce the public
14 access already provided pursuant to the public access plan, the
15 applicant shall be required to demonstrate that the proposed public
16 access reduction is offset by other changes to the public access plan.

17 c. For the purposes of this section, public access includes
18 visual and physical access and includes the following in any
19 combination, as appropriate:

20 (1) a public accessway designed in accordance with rules and
21 regulations adopted by the department, located parallel to the
22 shoreline with perpendicular access to it;

23 (2) a boat ramp, pier, fishing pier, other facilities, or other direct
24 access to the waterway;

25 (3) a waterfront pocket park;

26 (4) public restrooms to accommodate those using the public
27 access; and

28 (5) additional public parking to accommodate those using the
29 public access.

30 d. The department shall consider, when determining if public
31 access is sufficient or appropriate, the type of public access
32 available or needed within the area, the compatibility of the
33 proposed public access with the applicant's proposed use of the site,
34 the square footage of the public access area, and the environmental
35 impact or benefit of the proposed development.

36
37 6. (New section) The Department of Environmental Protection
38 may restrict public access to tidal waters and adjacent shorelines to
39 protect critical habitat areas from injurious uses, or threatened or
40 endangered species or their habitat areas from injury or injurious
41 uses, but only to the extent necessary according to the needs of the
42 habitat areas or species.

43
44 7. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to
45 read as follows:

46 19. Preparation; contents; modification.

47 a. The planning board may prepare and, after public hearing,
48 adopt or amend a master plan or component parts thereof, to guide

1 the use of lands within the municipality in a manner which protects
2 public health and safety and promotes the general welfare.

3 b. The master plan shall generally comprise a report or
4 statement and land use and development proposals, with maps,
5 diagrams and text, presenting, at least the following elements (1)
6 and (2) and, where appropriate, the following elements (3) through
7 **[(16)] (17):**

8 (1) A statement of objectives, principles, assumptions, policies
9 and standards upon which the constituent proposals for the physical,
10 economic and social development of the municipality are based;

11 (2) A land use plan element

12 (a) taking into account and stating its relationship to the
13 statement provided for in paragraph (1) hereof, and other master
14 plan elements provided for in paragraphs (3) through (14) hereof
15 and natural conditions, including, but not necessarily limited to,
16 topography, soil conditions, water supply, drainage, flood plain
17 areas, marshes, and woodlands;

18 (b) showing the existing and proposed location, extent and
19 intensity of development of land to be used in the future for varying
20 types of residential, commercial, industrial, agricultural,
21 recreational, open space, educational and other public and private
22 purposes or combination of purposes including any provisions for
23 cluster development; and stating the relationship thereof to the
24 existing and any proposed zone plan and zoning ordinance;

25 (c) showing the existing and proposed location of any airports
26 and the boundaries of any airport safety zones delineated pursuant
27 to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-
28 80 et al.);

29 (d) including a statement of the standards of population density
30 and development intensity recommended for the municipality;

31 (e) showing the existing and proposed location of military
32 facilities and incorporating strategies to minimize undue
33 encroachment upon, and conflicts with, military facilities, including
34 but not limited to: limiting heights of buildings and structures
35 nearby flight paths or sight lines of aircraft; buffering residential
36 areas from noise associated with a military facility; and allowing for
37 the potential expansion of military facilities; and

38 (f) including, for any land use element adopted after the
39 effective date of P.L.2017, c.275, a statement of strategy
40 concerning:

41 (i) smart growth which, in part, shall consider potential
42 locations for the installation of electric vehicle charging stations,

43 (ii) storm resiliency with respect to energy supply, flood-prone
44 areas, and environmental infrastructure, and

45 (iii) environmental sustainability;

46 (3) A housing plan element pursuant to section 10 of P.L.1985,
47 c.222 (C.52:27D-310), including, but not limited to, residential

1 standards and proposals for the construction and improvement of
2 housing;

3 (4) A circulation plan element showing the location and types of
4 facilities for all modes of transportation required for the efficient
5 movement of people and goods into, about, and through the
6 municipality, taking into account the functional highway
7 classification system of the Federal Highway Administration and
8 the types, locations, conditions and availability of existing and
9 proposed transportation facilities, including air, water, road and rail;

10 (5) A utility service plan element analyzing the need for and
11 showing the future general location of water supply and distribution
12 facilities, drainage and flood control facilities, sewerage and waste
13 treatment, solid waste disposal and provision for other related
14 utilities, and including any storm water management plan required
15 pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If
16 a municipality prepares a utility service plan element as a condition
17 for adopting a development transfer ordinance pursuant to
18 subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan
19 element shall address the provision of utilities in the receiving zone
20 as provided thereunder;

21 (6) A community facilities plan element showing the existing
22 and proposed location and type of educational or cultural facilities,
23 historic sites, libraries, hospitals, firehouses, police stations and
24 other related facilities, including their relation to the surrounding
25 areas;

26 (7) A recreation plan element showing a comprehensive system
27 of areas and public sites for recreation;

28 (8) A conservation plan element providing for the preservation,
29 conservation, and utilization of natural resources, including, to the
30 extent appropriate, energy, open space, water supply, forests, soil,
31 marshes, wetlands, harbors, rivers and other waters, fisheries,
32 endangered or threatened species wildlife and other resources, and
33 which systemically analyzes the impact of each other component
34 and element of the master plan on the present and future
35 preservation, conservation and utilization of those resources;

36 (9) An economic plan element considering all aspects of
37 economic development and sustained economic vitality, including
38 (a) a comparison of the types of employment expected to be
39 provided by the economic development to be promoted with the
40 characteristics of the labor pool resident in the municipality and
41 nearby areas and (b) an analysis of the stability and diversity of the
42 economic development to be promoted;

43 (10) An historic preservation plan element: (a) indicating the
44 location and significance of historic sites and historic districts; (b)
45 identifying the standards used to assess worthiness for historic site
46 or district identification; and (c) analyzing the impact of each
47 component and element of the master plan on the preservation of
48 historic sites and districts;

- 1 (11) Appendices or separate reports containing the technical
2 foundation for the master plan and its constituent elements;
- 3 (12) A recycling plan element which incorporates the State
4 Recycling Plan goals, including provisions for the collection,
5 disposition and recycling of recyclable materials designated in the
6 municipal recycling ordinance, and for the collection, disposition
7 and recycling of recyclable materials within any development
8 proposal for the construction of 50 or more units of single-family
9 residential housing or 25 or more units of multi-family residential
10 housing and any commercial or industrial development proposal for
11 the utilization of 1,000 square feet or more of land;
- 12 (13) A farmland preservation plan element, which shall include:
13 an inventory of farm properties and a map illustrating significant
14 areas of agricultural land; a statement showing that municipal
15 ordinances support and promote agriculture as a business; and a
16 plan for preserving as much farmland as possible in the short term
17 by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-
18 1 et al.) through a variety of mechanisms including, but not limited
19 to, utilizing option agreements, installment purchases, and
20 encouraging donations of permanent development easements;
- 21 (14) A development transfer plan element which sets forth the
22 public purposes, the locations of sending and receiving zones and
23 the technical details of a development transfer program based on the
24 provisions of section 5 of P.L.2004, c.2 (C.40:55D-141);
- 25 (15) An educational facilities plan element which incorporates
26 the purposes and goals of the "long-range facilities plan" required to
27 be submitted to the Commissioner of Education by a school district
28 pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4); and
- 29 (16) A green buildings and environmental sustainability plan
30 element, which shall provide for, encourage, and promote the
31 efficient use of natural resources and the installation and usage of
32 renewable energy systems; consider the impact of buildings on the
33 local, regional and global environment; allow ecosystems to
34 function naturally; conserve and reuse water; treat storm water on-
35 site; and optimize climatic conditions through site orientation and
36 design; and
- 37 (17) A public access plan element that provides for, encourages,
38 and promotes permanently protected public access to all tidal waters
39 and adjacent shorelines consistent with the public trust doctrine, and
40 which shall include a map and inventory of public access points,
41 public facilities that support access, parking, boat ramps, and
42 marinas; an assessment of the need for additional public access; a
43 statement of goals and administrative mechanisms to ensure that
44 access will be permanently protected; and a strategy that describes
45 the forms of access to satisfy the need for such access with an
46 implementation schedule and tools for implementation .

1 c. The master plan and its plan elements may be divided into
2 subplans and subplan elements projected according to periods of
3 time or staging sequences.

4 d. The master plan shall include a specific policy statement
5 indicating the relationship of the proposed development of the
6 municipality, as developed in the master plan to (1) the master plans
7 of contiguous municipalities, (2) the master plan of the county in
8 which the municipality is located, (3) the State Development and
9 Redevelopment Plan adopted pursuant to the "State Planning Act,"
10 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)
11 and (4) the district solid waste management plan required pursuant
12 to the provisions of the "Solid Waste Management Act," P.L.1970,
13 c.39 (C.13:1E-1 et seq.) of the county in which the municipality is
14 located.

15 In the case of a municipality situated within the Highlands
16 Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the
17 master plan shall include a specific policy statement indicating the
18 relationship of the proposed development of the municipality, as
19 developed in the master plan, to the Highlands regional master plan
20 adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).
21 (cf: P.L.2017, c.275, s.1)

22
23 8. This act shall take effect on the 60th day after the date of
24 enactment.

25

26

27

STATEMENT

28

29 This bill would confirm in the statutes the public rights under the
30 public trust doctrine to use and enjoy the State's tidal waters and
31 adjacent shorelines. The people's ownership of the tidal waters and
32 adjacent shorelines is held in trust by the State. This bill would
33 ensure that the State, through the Department of Environmental
34 Protection (DEP), protects the public's right of access to public
35 trust lands in its funding decisions and in the implementation of the
36 "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront
37 development law), "The Wetlands Act of 1970," the "Flood Hazard
38 Area Control Act," the State's implementation of the federal
39 "Coastal Zone Management Act of 1972," or any other law. In
40 addition, the bill requires that the DEP ensure that any public
41 funding issued, and any action taken on a project using public
42 funding, is consistent with the public trust doctrine. The bill also
43 requires the DEP to ensure that any approval, permit, administrative
44 order, or consent decree issued, or other action taken by the DEP
45 pursuant to the above-cited statutes, is consistent with the public
46 trust doctrine. Further, the bill provides that for any application for
47 a permit or other approval issued pursuant to those laws, where the
48 applicant proposes a change in the existing footprint of a structure,

1 or a change in use of the property, the DEP is required to review the
2 public access provided and determine whether to require additional
3 public access consistent with the public trust doctrine and in
4 accordance with the scale of the changes to the footprint or use, the
5 demand for public access, and any adopted municipal public access
6 plan or public access element of a municipal master plan.

7 In addition, the bill would prohibit the DEP from adopting any
8 rule or regulation pursuant to the "Coastal Area Facility Review
9 Act," R.S.12:5-3 (the waterfront development law), "The Wetlands
10 Act of 1970," the "Flood Hazard Area Control Act," and the State's
11 implementation of the federal "Coastal Zone Management Act of
12 1972," or any other law, that mandates on-site public access to the
13 tidal waters or adjacent shorelines as a condition of any approval,
14 permit, administrative order, or consent decree at a facility or
15 structure that (1) is required to submit a security plan under the
16 federal "Maritime Transportation Security Act of 2002," (2) is
17 required to develop and adhere to a transportation security plan for
18 hazardous materials pursuant to regulations adopted by the U.S.
19 Department of Transportation, (3) is required to participate in the
20 U.S. Department of Homeland Security's Chemical Facility Anti-
21 Terrorism Standards Program, (4) is located at any airport, railroad
22 yard, or nuclear power plant, (5) requires exclusion of the public for
23 security reasons as designated by the New Jersey Office of
24 Homeland Security and Preparedness pursuant to rules and
25 regulations by which such facilities will be so designated, or (6) is
26 owned or operated by the New Jersey Department of Military and
27 Veterans' Affairs. The rules and regulations adopted by the Office
28 of Homeland Security and Preparedness would be required to
29 ensure that access to tidal waters and their adjacent shorelines
30 nevertheless be provided to the maximum extent feasible and as
31 otherwise permitted by law. The bill would also authorize the DEP
32 to restrict public access to tidal waters and adjacent shorelines to
33 protect critical habitat areas from injurious uses, or threatened or
34 endangered species or their habitat areas from injury or injurious
35 uses, but only to the extent necessary according to the needs of the
36 habitat areas or species.

37 The bill would provide that for marinas in existence on the date
38 of enactment of the bill into law, for any application for a permit or
39 other approval issued by the DEP, if the regulated activity that is
40 the subject of the application is on the marina property, the DEP
41 would require the applicant to maintain the degree of the existing
42 public access to the waterfront and adjacent shoreline. If the
43 regulated activity affects or diminishes public access on the marina
44 property, the department must require equivalent access as a
45 condition of the permit or other approval. If no public access was
46 provided to the waterfront and adjacent shoreline, the department
47 could not impose new public access requirements to the waterfront

1 or adjacent shoreline, except as provided in the bill as outlined
2 below regarding beaches.

3 The bill also provides that for the development of any marina
4 property that proposes to increase the area of existing development
5 (which includes areas covered by structures and asphalt or other
6 paving) by at least 50 percent, or that proposes to develop property
7 that is not within the parcel of the existing marina development, the
8 applicant must provide to the department a public access plan that
9 identifies the location and type of public access to be provided, any
10 areas closed to public access because of permanent obstructions or
11 risks due to hazardous operations, and the operating hours of the
12 marina. The bill provides that as a condition of the permit or other
13 approval, public access to the waterfront and adjacent shoreline as
14 identified in the public access plan and approved by the department
15 must be provided during the marina's operating hours. Further, the
16 bill would require that any changes to an approved public access
17 plan be submitted to the department for review and approval.

18 If the application for a marina property includes property on
19 which there is a beach, in every case, the department must require
20 public access to the beach and the public's use of the beach as a
21 condition of the permit or other approval, and activities that have
22 the effect of discouraging or preventing the exercise of public
23 access rights are prohibited. The bill further provides that for the
24 purposes of public access to be provided by marinas, public access
25 includes visual and physical access and includes the following in
26 any combination, as appropriate: (1) a public accessway designed
27 in accordance with rules and regulations adopted by the department,
28 located parallel to the shoreline with perpendicular access to it; (2)
29 a boat ramp, pier, fishing pier, other facilities, or other direct access
30 to the waterway; (3) a waterfront pocket park; (4) public
31 restrooms to accommodate those using the public access; and (5)
32 additional public parking to accommodate those using the public
33 access. In addition, the bill provides that for public access
34 requirements for marinas, the department is required to consider,
35 when determining if public access is sufficient or appropriate, the
36 type of public access available or needed within the area, the
37 compatibility of the proposed public access with the applicant's
38 proposed use of the site, the square footage of the public access
39 area, and the environmental impact or benefit of the proposed
40 development.

41 Finally, the bill provides that a public access plan element for
42 tidal waters and adjacent shorelines be included, where appropriate,
43 in a municipality's master plan under the "Municipal Land Use
44 Law."

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4221

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 2019

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 4221.

This bill, as amended, would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the Department of Environmental Protection (DEP), protects the public's right of access to public trust lands in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law.

The bill requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken, by the DEP pursuant to the above-cited laws or any other law is consistent with the public trust doctrine. In addition, the bill requires that the DEP ensure that any public funding issued by the DEP, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine.

Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure or a change in use of the property, or the application involves beach replenishment or beach and dune maintenance, the DEP would be required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine. In determining the public access that is required at a property, the DEP would be required to consider the scale of the changes to the footprint or use, the demand for public access, and any DEP-approved municipal public access plan or public access element of a municipal master plan. The bill provides that these requirements would apply to any application

for an individual permit submitted on or after the effective date of the bill. In addition, beginning no later than 18 months after the effective date of the bill, these requirements would apply to permits-by-rule, general permits, or general permits-by-certification issued by the DEP as provided in rules and regulations to be adopted pursuant to the bill.

Specifically, the bill requires the DEP, no later than 18 months after the effective date of the bill, to adopt rules and regulations establishing: (1) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review; (2) those permits-by-rule, general permits, and general permits-by-certification for which, consistent with the public trust doctrine, public access would not be required; and (3) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, would not require individual review of public access.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the above-cited laws or any other law that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that: (1) is required to submit a security plan under the federal “Maritime Transportation Security Act of 2002”; (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation; (3) is required to participate in the U.S. Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards Program; (4) is located at any airport, railroad yard, or nuclear power plant; (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations required by the bill by which such facilities will be so designated; or (6) is owned or operated by the New Jersey Department of Military and Veterans’ Affairs, and on which on-site public access is deemed to pose a threat to security or public safety. The rules and regulations adopted by the Office of Homeland Security and Preparedness would be required to ensure that access to tidal waters and their adjacent shorelines nevertheless be provided to the maximum extent feasible and as otherwise permitted by law. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the

applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the DEP would require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the DEP could not impose new public access requirements to the waterfront or adjacent shoreline, except as provided in the bill as outlined below regarding beaches.

The bill also provides that, for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant would be required to provide a public access plan to the DEP. The bill requires this public access plan to identify: the location and type of public access to be provided; any areas closed to public access because of permanent obstructions or risks due to hazardous operations; and the operating hours of the marina. The plan would also include an explanation of the specific risks and hazards in the areas closed to public access with a description of the areas where public access is enhanced, or where public access is to be provided off site, to compensate for the area closed due to permanent obstructions or risks due to hazardous operations. The bill provides that, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the DEP must be provided during the marina's operating hours. Further, the bill requires that any changes to an approved public access plan be submitted to the DEP for review and approval.

If the application for a marina property includes property on which there is a beach, in every case, the DEP must require that public access to the beach and the public's use of the beach is provided as a condition of the permit or other approval, and that activities that have the effect of discouraging or preventing the exercise of public access rights are prohibited. The bill further provides that for the purposes of public access to be provided by marinas, public access includes visual and physical access and includes the following in any combination, as appropriate: (1) a public access way designed in accordance with rules and regulations adopted by the DEP, located parallel to the shoreline with perpendicular access to it; (2) a boat ramp, pier, fishing pier, other facility, or other direct access to the waterway; (3) a waterfront pocket park; (4) public restrooms to accommodate those using the public access; and (5) additional public parking to accommodate those using the public access. In addition, the bill provides that, for public access requirements for marinas, the DEP is required to consider, when determining if public access is sufficient or appropriate, the type of public access available or needed within the area, the compatibility

of the proposed public access with the applicant's proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

As amended and reported by the committee, this bill is identical to Senate Bill No. 1074 (2R) as also amended and reported by the committee.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

- 1) revise the findings and declarations section;
- 2) require the DEP to ensure that any public funding issued by the DEP, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine;
- 3) provide that the prohibition on DEP adopting any rule or regulation mandating on-site public access as a condition of any approval, permit, administrative order, or consent decree at a facility or structure falling within the six categories specified in section 3 of the bill concerning security applies to all such facilities or structures, rather than only existing ones;
- 4) specify that the DEP's rules cannot require public access at those properties that are both owned or operated by the New Jersey Department of Military and Veterans' Affairs and on which on-site public access is deemed to pose a threat to security or public safety;
- 5) provide that when determining the additional public access that is required at a property, the DEP would be required to consider the scale of the changes to the footprint or use, the demand for public access, and any DEP-approved municipal public access plan or public access element of a municipal master plan, and provide that this requirement for additional public access would apply to any application for an individual permit submitted on or after the effective date of the bill;
- 6) provide that, beginning no later than 18 months after the effective date of the bill, the requirement for public access would apply to permits-by-rule, general permits, or general permits-by-certification issued by the DEP as provided in rules and regulations to be adopted pursuant to the bill;
- 7) require the DEP, no later than 18 months after the effective date of the bill, to adopt rules and regulations establishing: (a) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review; (b) those permits-by-rule, general permits, and general permits-by-certification for which, consistent with the

public trust doctrine, public access would not be required; and (c) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, would not require individual review of public access;

8) clarify the information to be included in the public access plan required to be submitted for an application for the development of any marina property that proposes to increase the area of existing development by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development; and

9) add a section providing the DEP with rulemaking authority to implement the provisions of the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4221

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4221 (1R), with committee amendments.

As amended, Assembly Bill No. 4221 (1R) would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the Department of Environmental Protection (DEP), protects the public's right of access to public trust lands in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law.

The bill requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken, by the DEP pursuant to the above-cited laws or any other law is consistent with the public trust doctrine. In addition, the bill requires that the DEP ensure that any public funding issued by the DEP, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine.

Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure or a change in use of the property, or the application involves beach replenishment or beach and dune maintenance, the DEP would be required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine. In determining the public access that is required at a property, the DEP would be required to consider the scale of the changes to the footprint or use, the demand for public access, and any DEP-approved municipal public access plan or public access element of a municipal master plan. The bill provides that these requirements would apply to any application

for an individual permit submitted on or after the effective date of the bill. In addition, beginning no later than 18 months after the effective date of the bill, these requirements would apply to permits-by-rule, general permits, or general permits-by-certification issued by the DEP as provided in rules and regulations to be adopted pursuant to the bill.

Specifically, the bill requires the DEP, no later than 18 months after the effective date of the bill, to adopt rules and regulations establishing: (1) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review; (2) those permits-by-rule, general permits, and general permits-by-certification for which, consistent with the public trust doctrine, public access would not be required; and (3) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, would not require individual review of public access.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the above-cited laws or any other law that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that: (1) is required to submit a security plan under the federal “Maritime Transportation Security Act of 2002”; (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation; (3) is required to participate in the U.S. Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards Program; (4) is located at any airport, railroad yard, or nuclear power plant; (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations required by the bill by which such facilities will be so designated; or (6) is owned or operated by the New Jersey Department of Military and Veterans’ Affairs, and on which on-site public access is deemed to pose a threat to security or public safety. The rules and regulations adopted by the Office of Homeland Security and Preparedness would be required to ensure that access to tidal waters and their adjacent shorelines nevertheless be provided to the maximum extent feasible and as otherwise permitted by law. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the

applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the DEP would require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the DEP could not impose new public access requirements to the waterfront or adjacent shoreline, except as provided in the bill as outlined below regarding beaches.

The bill also provides that, for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant would be required to provide a public access plan to the DEP. The bill requires this public access plan to identify: the location and type of public access to be provided; any areas closed to public access because of permanent obstructions or risks due to hazardous operations; and the operating hours of the marina. The plan would also include an explanation of the specific risks and hazards in the areas closed to public access with a description of the areas where public access is enhanced, or where public access is to be provided off site, to compensate for the area closed due to permanent obstructions or risks due to hazardous operations. The bill provides that, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the DEP must be provided during the marina's operating hours. Further, the bill requires that any changes to an approved public access plan be submitted to the DEP for review and approval.

If the application for a marina property includes property on which there is a beach, in every case, the DEP must require that public access to the beach and the public's use of the beach is provided as a condition of the permit or other approval, and that activities that have the effect of discouraging or preventing the exercise of public access rights are prohibited. The bill further provides that for the purposes of public access to be provided by marinas, public access includes visual and physical access and includes the following in any combination, as appropriate: (1) a public access way designed in accordance with rules and regulations adopted by the DEP, located parallel to the shoreline with perpendicular access to it; (2) a boat ramp, pier, fishing pier, other facility, or other direct access to the waterway; (3) a waterfront pocket park; (4) public restrooms to accommodate those using the public access; and (5) additional public parking to accommodate those using the public access. In addition, the bill provides that, for public access requirements for marinas, the DEP is required to consider, when determining if public access is sufficient or appropriate, the type of public access available or needed within the area, the compatibility

of the proposed public access with the applicant's proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

As amended and reported by the committee, Assembly Bill No. 4221 (1R) is identical to Senate Bill No. 1074 (3R) also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments revise the findings and declarations section of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill could lead to an increase in annual State expenditures, largely driven by the number of permit applications submitted to the DEP for review, and therefore cannot be estimated by OLS.

The bill requires the DEP to review certain permit applications to assess the amount of public access to tidal waters and adjacent shorelines provided at the site and to determine whether to require additional access as a condition of the permit. This may add a layer of complexity to the DEP's permit review process, which could result in additional marginal yearly administrative costs.

The OLS notes that the DEP would incur a marginal one-time administrative cost to adopt rules and regulations to implement public access requirements for certain general permits, permits-by-rule, and general permits-by-certification. The Office of Homeland Security and Preparedness would also incur a marginal one-time administrative cost to adopt rules and regulations establishing the process for the exclusion of certain facilities from public access for homeland security reasons.

Finally, certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in the municipality's master plan under the "Municipal Land Use Law."

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4221

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MARCH 29, 2019

SUMMARY

- Synopsis:** Provides for protection of public right of access to certain public trust lands.
- Type of Impact:** Annual State expenditure increase from the General Fund.
- Agencies Affected:** Department of Environmental Protection, New Jersey Office of Homeland Security and Preparedness, and certain municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure		Indeterminate increase	
Local Expenditure		Indeterminate increase	

- The Office of Legislative Services (OLS) anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be largely determined by the number of permit applications the Department of Environmental Protection (DEP) receives for review and therefore cannot be estimated by the OLS.
- The bill requires the DEP to review certain permit applications to assess the amount of public access to tidal waters and adjacent shorelines provided at the site and to determine whether to require additional access as a condition of the permit. This may add a layer of complexity to the DEP's permit review process, which could result in additional marginal yearly administrative costs.
- The OLS determines that there would be a marginal one-time administrative cost to the DEP to adopt rules and regulations to implement public access requirements for certain general permits, permits-by-rule, and general permits-by-certification.
- The OLS determines that there would be a marginal one-time administrative cost to the New Jersey Office of Homeland Security and Preparedness to adopt rules and regulations establishing the process for the exclusion of certain facilities from public access for homeland security reasons.

- The OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in the municipality's master plan under the "Municipal Land Use Law."

BILL DESCRIPTION

This bill would confirm in the statutes the public's right, under the public trust doctrine, to use and enjoy the State's tidal waters and adjacent shorelines. The bill requires the DEP to ensure that any action taken by the DEP pursuant to any law is consistent with the public trust doctrine. In addition, the bill requires that the DEP ensure that any public funding issued by the DEP, any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department is consistent with the public trust doctrine.

Further, the bill requires the DEP to review certain applications for permits and other approvals to assess the amount of public access to tidal waters and adjacent shorelines provided at the site, and to determine whether to require additional public access as a condition of the permit or other approval. Specifically, the bill requires the DEP to review any application issued pursuant to the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law, which application provides for a change in the existing footprint of a structure or a change in use of the property, or involves beach replenishment or beach and dune maintenance. The bill provides that these requirements would apply to any application for an individual permit submitted on or after the effective date of the bill. In addition, no later than 18 months after the effective date of the bill, the DEP would be required to adopt rules and regulations that implement public access requirements for certain permits-by-rule, general permits, and general permits-by-certification.

The bill also provides that, for the development of any marina property that proposes to increase the area of existing development by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant would be required to provide a public access plan to the DEP. The bill provides that, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline, as identified in the public access plan and approved by the DEP, must be provided during the marina's operating hours. Further, the bill requires that any changes to an approved public access plan be submitted to the DEP for review and approval.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the bill could lead to an annual State expenditure increase, but the magnitude of the increase will be largely determined by the number of permit applications the DEP receives for review and therefore cannot be estimated by the OLS.

The bill requires the DEP to review certain permit applications to assess the amount of public access to tidal waters and adjacent shorelines provided at the property and to determine whether to require additional access as a condition of the permit. This may add a layer of complexity to the DEP's permit review process, which could result in additional yearly administrative costs. The DEP would also be required to adopt rules and regulations to establish public access requirements for certain general permits, permits-by-rule, and general permits-by-certification no later than 18 months after the effective date of the bill. The DEP would thus incur a marginal one-time administrative cost associated with this rulemaking process.

In addition, the OLS determines that there could be marginal yearly administrative costs to the DEP for oversight on funding decisions, since the bill requires the department to ensure that any public funding issued by the department, any action taken on a project using such funding, and any aspect of a project utilizing federal funding that is reviewed by the department is consistent with the public trust doctrine. The DEP may also incur marginal yearly administrative costs associated with processing applications for approval of public access plans for the development of certain marina properties.

The bill would prohibit the DEP from adopting any rule or regulation that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at any existing structure or facility that requires exclusion of the public for security reasons. The New Jersey Office of Homeland Security and Preparedness would incur a marginal one-time administrative cost to adopt rules and regulations establishing the process for the exclusion of such facilities from public access requirements.

Finally, the OLS notes that certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in a municipality's master plan under the "Municipal Land Use Law."

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Eric Hansen
Assistant Research Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



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Newark, N.J.

Governor Murphy Signs Legislation Protecting Public Access to Beaches

05/3/2019

TRENTON - Governor Phil Murphy today signed legislation (S1074) to protect the public's right to access the beaches and waterfronts in New Jersey. This legislation marks the 250th bill signed into law since Governor Murphy took office in January 2018.

The bill enshrines into state law the public trust doctrine, which is a principle that establishes that the State's tidal waters and adjacent shorelines belong to the public to be used for navigation, commerce, and recreation, including bathing, swimming, and fishing.

"New Jersey's shoreline and coastal communities are some of our state's greatest treasures," **said Governor Murphy**. "By strengthening the public's right to access our beaches, we are ensuring that all New Jersey residents and visitors can enjoy our beautiful shore this summer and for generations to come."

The people's ownership of tidal waters and adjacent shorelines is held in trust by the State. This legislation ensures that the State, through the Department of Environmental Protection, protects the public's right of access to public trust lands in the implementation of the Coastal Area Facility Review Act, the Wetlands Act of 1970, the Flood Hazard Area Control Act, the State's implementation of the federal Coastal Zone Management Act of 1972, or any other law.

The legislation also requires that action taken by the Department of Environmental Protection pursuant to those laws is consistent with the public trust doctrine. Additionally, the legislation requires that the Department of Environmental Protection ensure that any projects completed utilizing public funding overseen by the DEP is consistent with the public trust doctrine.

"Enjoying the shore is one of the best parts of life in New Jersey. As the trustee of the natural resources of the state, I consider it a priority to ensure open and equal access to New Jersey's treasured coastlines for all of our residents," **said Department of Environmental Protection Commissioner Catherine R. McCabe**. "I look forward to working with the land use and coastal planning experts at DEP to craft the regulations to implement this important legislation."

Primary sponsors of the bill include Senators Bob Smith and Kip Bateman; and Assemblymembers Nancy J. Pinkin, Andrew Zwicker, and Joann Downey.

"The public trust doctrine ensures the right for New Jersey residents to have access to its natural resources, beautiful landscapes and natural waters," **said Senator Bob Smith**. "New Jersey's beaches and waterfronts are some of state's most precious environmental assets. The right to access them must be preserved and honored for all residents. The public trust doctrine establishes legal rights of the public to access and use oceanfront property for recreation, navigation and fishing."

“Today’s bill signing represents the successful outcome of a bipartisan effort to strengthen the Public Trust Doctrine by putting it in statute, forever protecting the public’s right to enjoy the State’s rivers and waterfronts,” **said Senator Kip Bateman**. “From the beach to the bay, this is a win for all who utilize New Jersey’s tidal waters for commerce, fishing, and recreation.”

“Generation after generation of New Jersey families as well as visitors from out-of-state spend their summers vacationing at the shore,” **said Assemblywoman Nancy Pinkin**. “Although resident access to our beaches is expressed through the public trust doctrine, formally adopting this principle into law will ensure continued respect of residents’ rights to access New Jersey’s shoreline for recreational purposes and also allow us to further our environmental efforts to protect marine life and endangered species.”

“As the state continues to take necessary steps to protect our coastal environment, we have to make sure that the decisions we make in trying to protect our coastline do not come between or inhibit a resident’s right to take part in shore activities or simply enjoy the view,” **said Assemblyman Andrew Zwicker**. “We can protect our tidal waters, our marine life and still preserve the beautiful beaches and shore communities for which New Jersey is best known.”

“The Jersey shore is a source of joy, pride and admiration for residents of our State,” **said Assemblywoman Joann Downey**. “Our beautiful coastline belongs to the public, from lifelong New Jerseyans to summer visitors. With this bill, the public’s right to the shoreline will continue to be protected for years to come.”

“As we get ready for summer and the influx of tourists from around the world coming to enjoy New Jersey’s amazing 130-mile coastline, one thing remains clear, our connection to our oceans and waterways is a fundamental part of our lives, our culture, and our economy,” **said Ed Potosnak, Executive Director of New Jersey League of Conservation Voters**. “Today, the Governor, continuing to build on his commitment to make New Jersey a stronger and fairer state signed the Beach Access bill into law. The Beach Access Law is a win for all New Jerseyans, it’s a win for our waterways and beaches, and it’s a win for our economy. We thank Governor Murphy and the New Jersey Legislature for taking this important step.”

“We thank Governor Murphy for signing this important legislation. It will strengthen the protection of the public’s rights to get to and enjoy NJ’s beaches and waterfronts,” **said Tim Dillingham, Executive Director of the American Littoral Society**. “It will provide new tools to deal with long standing public access problems. We look forward to working with the administration to getting this law implemented and getting New Jerseyans everywhere to the waters that they have a right to enjoy.”

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