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REPORTS: No

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NEWSPAPER ARTICLES: Yes

“Governor signs law allowing marinas to avoid 24-hour access,” The Press of Atlantic City, 9-11-08, p.C1.

LAW/RWH 3/4/09

P.L. 2008, CHAPTER 82, *approved September 10, 2008*
Senate Committee Substitute for
Senate, No. 1553

1 AN ACT concerning public access requirements for marinas and
2 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. This act shall be known and may be cited as the “Public
8 Access and Marina Safety Task Force Act.”

9

10 2. The Legislature finds and declares that:

11 a. The Public Trust Doctrine is an important legal principle that
12 establishes the right of the public to use tidal waterways and their
13 shores, including the ocean, bays, and tidal rivers;

14 b. As interpreted today, the Public Trust Doctrine upholds that
15 public rights to tidal waterways and their shores are held by the
16 State in trust for the benefit of all of the people, and recognizes and
17 protects natural resources as well as recreational uses such as
18 swimming, sunbathing, fishing, boating and walking along tidal
19 waterways and their shores;

20 c. Marinas are a unique and essential part of the State’s
21 waterfront community, providing access to a variety of recreational
22 activities, and providing important boating infrastructure and
23 services, that should be encouraged;

24 d. In December 2007, the Department of Environmental
25 Protection adopted rules and regulations, and issued a concurrent
26 regulatory proposal, governing public access at marinas, which
27 rules and regulations are both economically destructive and
28 practically unworkable for the marina industry; and

29 e. It is therefore in the public interest to conduct a study of the
30 efficacy, practicability and feasibility of these rules and regulations
31 and to impose a moratorium on their implementation until such time
32 as the affected parties have had the opportunity to address the many
33 and variegated issues raised thereby.

34 The Legislature therefore determines that a moratorium on the
35 implementation of the rules and regulations adopted by the
36 Department of Environmental Protection in December 2007
37 governing public access at marinas is critical to ensure that all
38 affected interests are taken into account, thus increasing the
39 likelihood of a more reasonable and equitable policy emerging
40 therefrom.

41

42 3. There shall be a moratorium on the implementation of the
43 provisions of N.J.A.C.7:7E-3.50, N.J.A.C.7:7E-7.3 and
44 N.J.A.C.7:7E-8.11, as applied to marinas, as such rules and

1 regulations were adopted by the Department of Environmental
2 Protection on December 17, 2007. During the moratorium the
3 Public Access and Marina Safety Task Force established pursuant
4 to section 4 of this act shall conduct the study required pursuant to
5 section 5 of this act. The moratorium shall expire on December 31,
6 2010.

7
8 4. a. There is established in but not of the Department of
9 Environmental Protection the Public Access and Marina Safety
10 Task Force. The task force shall evaluate and study the efficacy,
11 practicability and feasibility of the rules and regulations governing
12 public access at marinas, and submit its findings and
13 recommendations, in writing, to the Governor and the Legislature as
14 provided in section 6 of this act.

15 b. The task force shall consist of 10 members as follows:

16 (1) a representative of the Department of Environmental
17 Protection;

18 (2) a representative of the Office of Maritime Resources in the
19 Department of Transportation;

20 (3) four elected public officials, to be appointed by the Governor
21 with the advice and consent of the Senate, representing the coastal
22 communities of Atlantic, Cape May, Monmouth and Ocean
23 counties, respectively; and

24 (4) four public members to be appointed by the Governor with
25 the advice and consent of the Senate. Of the four public members,
26 one shall be a representative of the Urban Coast Institute of
27 Monmouth University, and one shall be a representative of the
28 environmental community with a recognized expertise and
29 specialization in coastal and shore protection issues. The remaining
30 public members shall represent marina operators or a marine trade
31 association.

32 c. The members of the task force shall serve without
33 compensation, but may be reimbursed for necessary expenses
34 incurred in the performance of their duties, within the limits of
35 funds appropriated or otherwise made available to the task force for
36 its purposes.

37 d. Any vacancy in the membership shall be filled in the same
38 manner as the original appointment.

39 e. The task force shall be entitled to the assistance and service of
40 the employees of any State, county or municipal department, board,
41 bureau, commission, authority, or agency as it may require and as
42 may be available to it for its purposes, and to employ stenographic
43 and clerical assistance and to incur traveling or other miscellaneous
44 expenses as may be necessary in order to perform its duties, within
45 the limits of funds appropriated or otherwise made available to it
46 for its purposes. The Department of Environmental Protection shall
47 provide primary staff support to the task force.

1 f. The task force shall meet monthly or at the call of the
2 chairperson of the task force or when requested by any four
3 members of the task force.

4 g. The task force shall organize as soon as possible after the
5 appointment of its members, and shall select annually a chairperson
6 from among its members and a secretary who need not be a member
7 of the task force.

8
9 5. a. It shall be the duty of the Public Access and Marina Safety
10 Task Force to:

11 (1) evaluate and study the efficacy, practicability and feasibility
12 of the rules and regulations adopted by the Department of
13 Environmental Protection, and the concurrent regulatory proposal
14 issued thereon, governing public access at marinas, in order to
15 ascertain the most reasonable and equitable manner in which to
16 proceed with a public access and marina use policy; and

17 (2) hold at least one public hearing to solicit public comment and
18 suggestions on the issues and matters to be studied and evaluated
19 pursuant to this subsection.

20 b. The task force may solicit or receive any information or
21 resources concerning public access at marinas made available by
22 any governmental, public, private, not-for-profit or for-profit entity.

23
24 6. The task force shall submit its report, including its findings
25 and recommendations, to the Governor and, pursuant to section 2 of
26 P.L.1991, c.164 (C.52:14-19.1), to the Legislature by December 31,
27 2010. Copies of the report shall be provided to the public upon
28 request and free of charge, and the report shall be posted on the
29 department's internet website.

30
31 7. For the duration of the moratorium imposed pursuant to
32 section 3 of this act, the department shall not:

33 a. require a marina facility to provide unlimited public access to
34 the waterfront;

35 b. require a conservation easement by means of a deed
36 restriction;

37 c. require perpendicular access across the entire waterfront; or

38 d. require additional parking, as a condition of any permit for
39 activities relating to the expansion or renovation of an existing
40 marina facility issued pursuant to R.S.12:5-3, "The Wetlands Act of
41 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), or the "Coastal Area
42 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.).

43
44 8. This act shall take effect immediately.

45
46
47
48 _____
"Public Access and Marina Safety Task Force Act."

SENATE, No. 1553

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED APRIL 7, 2008

Sponsored by:

Senator ANDREW R. CIESLA

District 10 (Monmouth and Ocean)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

Senators Connors, Kyrillos, Adler, Beck, S.Kean and Scutari

SYNOPSIS

The “Public Access and Marina Safety Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/6/2008)

1 AN ACT concerning public access requirements for marinas and
2 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. This act shall be known and may be cited as the “Public
8 Access and Marina Safety Act.”

9

10 2. The Legislature finds and declares that:

11 a. The Public Trust Doctrine is an important legal principle that
12 establishes the right of the public to use tidal waterways and their
13 shores, including the ocean, bays, and tidal rivers;

14 b. As interpreted today, the Public Trust Doctrine upholds that
15 public rights to tidal waterways and their shores are held by the
16 State in trust for the benefit of all of the people, and recognizes and
17 protects natural resources as well as recreational uses such as
18 swimming, sunbathing, fishing, boating and walking along tidal
19 waterways and their shores;

20 c. Marinas are a unique and essential part of the State’s
21 waterfront community, providing access to a variety of recreational
22 activities, and providing important boating infrastructure and
23 services, that should be encouraged;

24 d. In December 2007, the Department of Environmental
25 Protection adopted rules and regulations, and issued a concurrent
26 regulatory proposal, governing public access at marinas, which
27 rules and regulations are both economically destructive and
28 practically unworkable for the marina industry; and

29 e. It is therefore in the public interest to require public access to
30 the tidal waterways and shores of this State by a private marina to
31 the maximum extent practicable and taking into consideration
32 proximity to alternative public access areas.

33

34 3. Notwithstanding any other law, or rule or regulation adopted
35 pursuant thereto, to the contrary, the department shall not require a
36 marina owner to:

37 a. provide unlimited public access to the waterfront at the
38 marina; or

39 b. deed restrict all or any part of the waterfront portion of the
40 property in perpetuity by way of a conservation easement solely for
41 the purpose of providing public access to the waterfront.

42

43 4. a. Within 60 days after receipt of a permit for an activity
44 relating to the expansion or renovation of an existing marina facility
45 from the Department of Environmental Protection pursuant to
46 R.S.12:5-3, “The Wetlands Act of 1970,” P.L.1970, c.272
47 (C.13:9A-1 et seq.), or the “Coastal Area Facility Review Act,”

1 P.L.1973, c.185 (C.13:19-1 et seq.), the applicant shall submit to
2 the department a public access plan.

- 3 b. The public access plan required pursuant to this section shall:
4 (1) specify the hours the public may access the waterfront at the
5 marina, including any seasonal restrictions;
6 (2) identify the area or areas designated for public access;
7 (3) identify any area where public access is restricted;
8 (4) identify alternative opportunities for public access to the
9 waterfront in the proximity of the marina; and
10 (5) be posted in a conspicuous place at the marina for viewing
11 by the public.

12 c. The public access plan may be prepared by the owner of the
13 marina and shall not require the approval of the department, or any
14 other approval.

15 d. The public access plan may restrict access to the public in any
16 area of a marina facility that poses a risk to public safety as a result
17 of the operation of the marina, when the marina is closed, or where
18 necessary for business or privacy needs.

19 e. If an applicant required to submit a public access plan
20 pursuant to subsection a. of this section does not submit the plan
21 within 60 days after receipt of the applicable permit, the applicant
22 shall be subject to a penalty of \$250 to be collected in a summary
23 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
24 P.L.1999, c.274 (C.2A:58-10 et seq.).

25
26 5. a. The department shall not require a marina facility to
27 provide unlimited public access to the waterfront as a condition of
28 any permit for activities relating to the expansion or renovation of
29 an existing marina facility issued pursuant to R.S.12:5-3, "The
30 Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), or the
31 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
32 seq.), nor may the department make the approval of such a permit
33 contingent upon the department's approval of a public access plan.

34 b. The department shall maintain a database of the public access
35 plans submitted pursuant to section 4 of this act, and make this
36 database available on the department's website.

37
38 6. This act shall take effect immediately.
39
40

41 STATEMENT
42

43 This bill would prohibit the Department of Environmental
44 Protection (DEP) from requiring a marina owner to provide
45 unlimited public access to the waterfront at the marina or deed
46 restrict all or any part of the waterfront portion of the property in
47 perpetuity by way of a conservation easement solely for the purpose
48 of providing public access to the waterfront.

1 However, this bill would require a marina to submit a public
2 access plan within 60 days after receipt of a permit for an activity
3 relating to the expansion or renovation of an existing marina facility
4 pursuant to R.S.12:5-3, “The Wetlands Act of 1970,” P.L.1970,
5 c.272 (C.13:9A-1 et seq.), or the “Coastal Area Facility Review
6 Act,” P.L.1973, c.185 (C.13:19-1 et seq.). (These permits are
7 commonly referred to as waterfront development permits, coastal
8 wetlands permits, and CAFRA permits.) The public access plan
9 would: specify the hours the public may access the waterfront at
10 the marina, including any seasonal restrictions; identify the area or
11 areas designated or set aside for public access; identify the area or
12 areas where public access is restricted; identify alternative
13 opportunities for public access to the waterfront in the proximity of
14 the marina; and be posted in a conspicuous place at the marina for
15 viewing by the public. Under this bill, a public access plan may
16 restrict access to the public in any area of a marina facility that
17 poses a risk to a person’s safety as a result of the operation of the
18 marina, when the marina is closed, or where necessary for business
19 or privacy needs. If a public access plan is not submitted as
20 required, the bill would impose a one-time penalty of \$250 on the
21 applicant.

22 The bill further provides that the DEP may not require a marina
23 facility to provide unlimited public access to the waterfront as a
24 condition of any permit for activities relating to the expansion or
25 renovation of an existing marina facility, nor may the department
26 make the approval of such a permit contingent upon the
27 department’s approval of a public access plan. The bill would
28 require the DEP to maintain a database of the public access plans,
29 and make this database available on the department’s website.

30 This bill recognizes that marinas, including yacht clubs and
31 boatyards, in New Jersey come in many shapes and sizes, and
32 therefore each marina must be permitted to establish a public access
33 plan that addresses its operation, size, and geographic location, and
34 the safety of the public at all times. It is the sponsor’s intent that
35 the term “marina” also encompasses yacht clubs and boatyards.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1553**

STATE OF NEW JERSEY

DATED: JUNE 9, 2008

The Senate Environment Committee reports favorably the Senate Committee Substitute for Senate Bill No. 1553.

The substitute bill would impose a moratorium on the implementation of the rules and regulations adopted by the Department of Environmental Protection (DEP) on December 17, 2007 governing public access at marinas. While the moratorium is in effect the Public Access and Marina Safety Task Force established under the substitute bill would conduct a study addressing the issues raised by the rules and regulations, and the concurrent regulatory proposal issued by the DEP on public access at marinas, and submit a report to the Governor and the Legislature. The moratorium would expire on December 31, 2010.

The Public Access and Marina Safety Task Force would consist of 10 members as follows:

- (1) a representative of the DEP;
- (2) a representative of the Office of Maritime Resources in the Department of Transportation;
- (3) four elected public officials, to be appointed by the Governor with the advice and consent of the Senate, representing the coastal communities of Atlantic, Cape May, Monmouth and Ocean counties, respectively; and
- (4) four public members to be appointed by the Governor with the advice and consent of the Senate. Of the four public members, one shall be a representative of the Urban Coast Institute of Monmouth University, and one shall be a representative of the environmental community with a recognized expertise and specialization in coastal and shore protection issues. The remaining public members shall represent marina operators or a marine trade association.

The Task Force must submit its report, including its findings and recommendations, to the Governor and the Legislature by December 31, 2010.

For the duration of the moratorium, the DEP shall not (1) require a marina facility to provide unlimited public access to the waterfront; (2) require a conservation easement by means of a deed restriction; (3) require perpendicular access across the entire waterfront; or (4) require

additional parking, as a condition of any permit for activities relating to the expansion or renovation of an existing marina facility issued pursuant to the waterfront development statute (R.S.12:5-3), “The Wetlands Act of 1970,” or the “Coastal Area Facility Review Act.”

ASSEMBLY, No. 2601

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MAY 5, 2008

Sponsored by:

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman JOHN F. AMODEO

District 2 (Atlantic)

Assemblyman VINCENT J. POLISTINA

District 2 (Atlantic)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

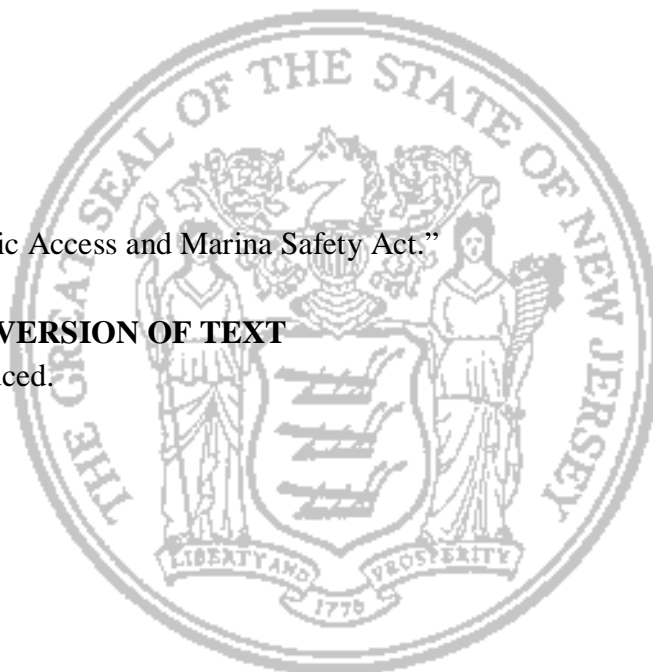
**Assemblymen Van Pelt, Ribble, Assemblywoman Casagrande,
Assemblymen Rumpf and O'Scanlon**

SYNOPSIS

The "Public Access and Marina Safety Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/6/2008)

1 AN ACT concerning public access requirements for marinas and
2 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:

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7 1. This act shall be known and may be cited as the “Public
8 Access and Marina Safety Act.”

9

10 2. The Legislature finds and declares that:

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12 establishes the right of the public to use tidal waterways and their
13 shores, including the ocean, bays, and tidal rivers;

14 b. As interpreted today, the Public Trust Doctrine upholds that
15 public rights to tidal waterways and their shores are held by the
16 State in trust for the benefit of all of the people, and recognizes and
17 protects natural resources as well as recreational uses such as
18 swimming, sunbathing, fishing, boating and walking along tidal
19 waterways and their shores;

20 c. Marinas are a unique and essential part of the State’s
21 waterfront community, providing access to a variety of recreational
22 activities, and providing important boating infrastructure and
23 services, that should be encouraged;

24 d. In December 2007, the Department of Environmental
25 Protection adopted rules and regulations, and issued a concurrent
26 regulatory proposal, governing public access at marinas, which
27 rules and regulations are both economically destructive and
28 practically unworkable for the marina industry; and

29 e. It is therefore in the public interest to require public access to
30 the tidal waterways and shores of this State by a private marina to
31 the maximum extent practicable and taking into consideration
32 proximity to alternative public access areas.

33

34 3. Notwithstanding any other law, or rule or regulation adopted
35 pursuant thereto, to the contrary, the department shall not require a
36 marina owner to:

37 a. provide unlimited public access to the waterfront at the
38 marina; or

39 b. deed restrict all or any part of the waterfront portion of the
40 property in perpetuity by way of a conservation easement solely for
41 the purpose of providing public access to the waterfront.

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43 4. a. Within 60 days after receipt of a permit for an activity
44 relating to the expansion or renovation of an existing marina facility
45 from the Department of Environmental Protection pursuant to
46 R.S.12:5-3, “The Wetlands Act of 1970,” P.L.1970, c.272
47 (C.13:9A-1 et seq.), or the “Coastal Area Facility Review Act,”

1 P.L.1973, c.185 (C.13:19-1 et seq.), the applicant shall submit to
2 the department a public access plan.

3 b. The public access plan required pursuant to this section shall:
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5 marina, including any seasonal restrictions;
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9 waterfront in the proximity of the marina; and
10 (5) be posted in a conspicuous place at the marina for viewing
11 by the public.

12 c. The public access plan may be prepared by the owner of the
13 marina and shall not require the approval of the department, or any
14 other approval.

15 d. The public access plan may restrict access to the public in any
16 area of a marina facility that poses a risk to public safety as a result
17 of the operation of the marina, when the marina is closed, or where
18 necessary for business or privacy needs.

19 e. If an applicant required to submit a public access plan
20 pursuant to subsection a. of this section does not submit the plan
21 within 60 days after receipt of the applicable permit, the applicant
22 shall be subject to a penalty of \$250 to be collected in a summary
23 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
24 P.L.1999, c.274 (C.2A:58-10 et seq.).

25
26 5. a. The department shall not require a marina facility to
27 provide unlimited public access to the waterfront as a condition of
28 any permit for activities relating to the expansion or renovation of
29 an existing marina facility issued pursuant to R.S.12:5-3, "The
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31 "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et
32 seq.), nor may the department make the approval of such a permit
33 contingent upon the department's approval of a public access plan.

34 b. The department shall maintain a database of the public access
35 plans submitted pursuant to section 4 of this act, and make this
36 database available on the department's website.

37
38 6. This act shall take effect immediately.
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41 STATEMENT
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5 c.272 (C.13:9A-1 et seq.), or the “Coastal Area Facility Review
6 Act,” P.L.1973, c.185 (C.13:19-1 et seq.). (These permits are
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17 poses a risk to a person’s safety as a result of the operation of the
18 marina, when the marina is closed, or where necessary for business
19 or privacy needs. If a public access plan is not submitted as
20 required, the bill would impose a one-time penalty of \$250 on the
21 applicant.

22 The bill further provides that the DEP may not require a marina
23 facility to provide unlimited public access to the waterfront as a
24 condition of any permit for activities relating to the expansion or
25 renovation of an existing marina facility, nor may the department
26 make the approval of such a permit contingent upon the
27 department’s approval of a public access plan. The bill would
28 require the DEP to maintain a database of the public access plans,
29 and make this database available on the department’s website.

30 This bill recognizes that marinas, including yacht clubs and
31 boatyards, in New Jersey come in many shapes and sizes, and
32 therefore each marina must be permitted to establish a public access
33 plan that addresses its operation, size, and geographic location, and
34 the safety of the public at all times. It is the sponsor’s intent that
35 the term “marina” also encompasses yacht clubs and boatyards.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2601

STATE OF NEW JERSEY

DATED: JUNE 12, 2008

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2601.

The substitute bill would impose a moratorium on the implementation of the rules and regulations adopted by the Department of Environmental Protection (DEP) on December 17, 2007 governing public access at marinas. While the moratorium is in effect the Public Access and Marina Safety Task Force established under the substitute bill would conduct a study addressing the issues raised by the rules and regulations, and the concurrent regulatory proposal issued by the DEP on public access at marinas, and submit a report to the Governor and the Legislature. The moratorium would expire on December 31, 2010.

The Public Access and Marina Safety Task Force would consist of 10 members as follows:

- (1) a representative of the DEP;
- (2) a representative of the Office of Maritime Resources in the Department of Transportation;
- (3) four elected public officials, to be appointed by the Governor with the advice and consent of the Senate, representing the coastal communities of Atlantic, Cape May, Monmouth and Ocean counties, respectively; and
- (4) four public members to be appointed by the Governor with the advice and consent of the Senate. Of the four public members, one would be a representative of the Urban Coast Institute of Monmouth University, and one would be a representative of the environmental community with a recognized expertise and specialization in coastal and shore protection issues. The remaining public members would represent marina operators or a marine trade association.

The Task Force would submit its report, including its findings and recommendations, to the Governor and the Legislature by December 31, 2010.

For the duration of the moratorium, the bill would prohibit the DEP from requiring (1) a marina facility to provide unlimited public

access to the waterfront; (2) a conservation easement by means of a deed restriction; (3) perpendicular access across the entire waterfront; or (4) additional parking, as a condition of any permit for activities relating to the expansion or renovation of an existing marina facility issued pursuant to the waterfront development statute (R.S.12:5-3), "The Wetlands Act of 1970," or the "Coastal Area Facility Review Act."