

ASSEMBLY, No. 4927

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JANUARY 7, 2016

Sponsored by:

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Assemblyman SCOTT T. RUMANA

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Authorizes DEP to require public access to waterfront and adjacent shoreline as condition of waterfront development approvals and CAFRA permits.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning public access to the waterfront and adjacent
2 shoreline, and amending R.S.12:5-3 and P.L.1973, c.185.

3

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

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7 1. R.S.12:5-3 is amended to read as follows:

8 12:5-3. a. All plans for the development of any waterfront upon
9 any navigable water or stream of this State or bounding thereon,
10 which is contemplated by any person or municipality, in the nature
11 of individual improvement or development or as a part of a general
12 plan which involves the construction or alteration of a dock, wharf,
13 pier, bulkhead, bridge, pipeline, cable, or any other similar or
14 dissimilar waterfront development shall be first submitted to the
15 Department of Environmental Protection. No such development or
16 improvement shall be commenced or executed without the approval
17 of the Department of Environmental Protection first had and
18 received, or as hereinafter in this chapter provided.

19 b. The following are exempt from the provisions of subsection
20 a. of this section:

21 (1) The repair, replacement or renovation of a permanent dock,
22 wharf, pier, bulkhead or building existing prior to January 1, 1981,
23 provided the repair, replacement or renovation does not increase the
24 size of the structure and the structure is used solely for residential
25 purposes or the docking or servicing of pleasure vessels;

26 (2) The repair, replacement or renovation of a floating dock,
27 mooring raft or similar temporary or seasonal improvement or
28 structure, provided the improvement or structure does not exceed in
29 length the waterfront frontage of the parcel of real property to
30 which it is attached and is used solely for the docking or servicing
31 of pleasure vessels; and

32 (3) Development in the coastal area, as defined in section 4 of
33 P.L.1973, c.185 (C.13:19-4), landward of the mean high water line
34 of any tidal waters.

35 c. Notwithstanding the provisions of any law, rule, or
36 regulation to the contrary, the Department of Environmental
37 Protection shall not, as a condition of approval required pursuant to
38 subsection a. of this section, include solar panels in any calculation
39 of impervious surface or impervious cover.

40 As used in this subsection, "solar panel" means an elevated panel
41 or plate, or a canopy or array thereof, that captures and converts
42 solar radiation to produce power, and includes flat plate, focusing
43 solar collectors, or photovoltaic solar cells and excludes the base or
44 foundation of the panel, plate, canopy, or array.

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 d. The Department of Environmental Protection may, as a
2 condition of an approval required pursuant to subsection a. of this
3 section, and pursuant to standards established by rule or regulation
4 adopted pursuant to the “Administrative Procedure Act,” P.L.1968,
5 c.410 (C.52:14B-1 et seq.), require a person or municipality to
6 provide on-site public access to the waterfront and adjacent
7 shoreline, or off-site public access to the waterfront and adjacent
8 shoreline if on-site public access is not feasible as determined by
9 the department. Nothing in this subsection shall be construed to
10 abrogate or otherwise affect any public access obligations or
11 requirements of any approval, administrative order, consent decree,
12 or court order in effect prior to the effective date of P.L. , c.
13 (pending before the Legislature as this bill).

14 (cf: P.L.2010, c.4, s.1)

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16 2. Section 10 of P.L.1973, c.185 (C.13:19-10) is amended to
17 read as follows:

18 10. The commissioner shall review filed applications, including
19 any environmental impact statement and all information presented
20 at public hearings or during the comment period, or submitted
21 during the application review period. A permit may be issued
22 pursuant to this act only upon a finding that the proposed
23 development:

24 a. Conforms with all applicable air, water and radiation
25 emission and effluent standards and all applicable water quality
26 criteria and air quality standards.

27 b. Prevents air emissions and water effluents in excess of the
28 existing dilution, assimilative, and recovery capacities of the air and
29 water environments at the site and within the surrounding region.

30 c. Provides for the collection and disposal of litter, recyclable
31 material and solid waste in such a manner as to minimize adverse
32 environmental effects and the threat to the public health, safety, and
33 welfare.

34 d. Would result in minimal feasible impairment of the
35 regenerative capacity of water aquifers or other ground or surface
36 water supplies.

37 e. Would cause minimal feasible interference with the natural
38 functioning of plant, animal, fish, and human life processes at the
39 site and within the surrounding region.

40 f. Is located or constructed so as to neither endanger human
41 life or property nor otherwise impair the public health, safety, and
42 welfare.

43 g. Would result in minimal practicable degradation of unique
44 or irreplaceable land types, historical or archeological areas, and
45 existing public scenic attributes at the site and within the
46 surrounding region.

47 h. Provides, pursuant to standards established by rule or
48 regulation adopted pursuant to the “Administrative Procedure Act,”

1 P.L.1968, c.410 (C.52:14B-1 et seq.), on-site public access to the
2 waterfront and adjacent shoreline, or off-site public access to the
3 waterfront and adjacent shoreline if on-site public access is not
4 feasible as determined by the department. Nothing in this
5 subsection shall be construed to abrogate or otherwise affect any
6 public access obligations or requirements of any permit,
7 administrative order, consent decree, or court order in effect prior to
8 the effective date of P.L. , c. (pending before the Legislature as
9 this bill).
10 (cf: P.L.1993, c.190, s.11)

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12 3. This act shall take effect immediately.

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STATEMENT

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17 This bill would confirm the authority of the Department of
18 Environmental Protection (DEP) to require, as a condition of (1) an
19 approval issued pursuant to R.S.12:5-3 (regulating waterfront
20 development), or (2) a permit issued pursuant to the “Coastal Area
21 Facility Review Act,” that the applicant provide on-site public
22 access to the waterfront and adjacent shoreline, or off-site public
23 access if the department determines that on-site public access is not
24 feasible. The bill would also direct that its provisions not be
25 construed to abrogate or otherwise affect any public access
26 obligations or requirements of any approval, permit, administrative
27 order, consent decree, or court order in in effect prior to its effective
28 date. This bill is in response to the Appellate Division decision
29 issued on December 22, 2015 in Hackensack Riverkeeper, Inc. and
30 NY/NJ Baykeeper v. New Jersey Department of Environmental
31 Protection that invalidated the DEP’s public access rules.