

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."