

ASSEMBLY, No. 2391

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

SYNOPSIS

Changes types of development requiring CAFRA permit from DEP.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning development in the coastal area and amending
2 P.L.1973, c.185 and P.L.1993, c.190.

3

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

6

7 1. Section 5 of P.L.1973, c.185 (C.13:19-5) is amended to read
8 as follows:

9 5. A permit issued pursuant to P.L.1973, c.185 (C.13:19-1 et
10 seq.) shall be required for:

11 a. A development located in the coastal area on any beach or
12 dune;

13 b. A development located in the coastal area between the mean
14 high water line of any tidal waters, or the landward limit of a beach
15 or dune, whichever is most landward, and a point 150 feet landward
16 of the mean high water line of any tidal waters or the landward limit
17 of a beach or dune, whichever is most landward **】, that would result,**
18 either solely or in conjunction with a previous development, in:

19 (1) A development if there is no intervening development with
20 an above ground structure, excluding any shore protection structure
21 or sand fencing, that is either completed or under active
22 construction between the proposed site of the development and the
23 mean high water line of any tidal waters;

24 (2) A residential development having three or more dwelling
25 units if there is an intervening development with an above ground
26 structure, excluding any shore protection structure or sand fencing,
27 that is either completed or under active construction between the
28 proposed site of the dwelling units and the mean high water line of
29 any tidal waters;

30 (3) A commercial development having five or more parking
31 spaces if there is an intervening development with an above ground
32 structure, excluding any shore protection structure or sand fencing,
33 that is either completed or under active construction between the
34 proposed site of the commercial development and the mean high
35 water line of any tidal waters; or

36 (4) A public development or industrial development**】** ;

37 c. **【**A development located in the coastal area between a point
38 greater than 150 feet landward of the mean high water line of any
39 tidal waters or the landward limit of a beach or dune, whichever is
40 most landward, and a point 500 feet landward of the mean high
41 water line of any tidal waters or the landward limit of a beach or
42 dune, whichever is most landward, which is located within the
43 boundaries of a municipality which meets the criteria of a
44 "qualifying municipality" pursuant to section 1 of P.L.1978, c.14
45 (C.52:27D-178), or which is located within the boundaries of a city

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 of the fourth class with a population of over 30,000 persons
2 according to the latest federal decennial census, that would result,
3 either solely or in conjunction with a previous development, in:

- 4 (1) A residential development having 25 or more dwelling units;
5 (2) A commercial development having 50 or more parking
6 spaces; or
7 (3) A public development or industrial development **】** (Deleted
8 by amendment, P.L. , c.) (pending before the Legislature as
9 this bill) ;

10 d. A development located in the coastal area at a point beyond
11 500 feet landward of the mean high water line of any tidal waters or
12 the landward limit of a beach or dune, whichever is most landward,
13 and which is located within the boundaries of a municipality which
14 meets the criteria of a "qualifying municipality" pursuant to section
15 1 of P.L.1978, c.14 (C.52:27D-178), or which is located within the
16 boundaries of a city of the fourth class with a population of over
17 30,000 persons according to the latest federal decennial census, that
18 would result, either solely or in conjunction with a previous
19 development, in:

- 20 (1) A residential development having **【75】** 25 or more dwelling
21 units;
22 (2) A commercial development having **【150】** 50 or more
23 parking spaces; or
24 (3) A public development or industrial development; or

25 e. Except as otherwise provided in **【subsection c. and】**
26 subsection d. of this section, a development in the coastal area at a
27 point beyond 150 feet landward of the mean high water line of any
28 tidal waters or the landward limit of a beach or dune, whichever is
29 most landward, that would result, either solely or in conjunction
30 with a previous development, in:

- 31 (1) A residential development having **【25】** three or more
32 dwelling units;
33 (2) A commercial development having **【50】** five or more
34 parking spaces; or
35 (3) A public development or industrial development.
36 (cf: P.L.1993, c.190, s.5)

37
38 2. Section 7 of P.L.1993, c.190 (C.13:19-5.2) is amended to
39 read as follows:

40 7. A permit shall not be required pursuant to section 5 of
41 P.L.1973, c.185 (C.13:19-5) for:

- 42 a. A development which has received preliminary site plan
43 approval pursuant to the "Municipal Land Use Law," P.L.1975,
44 c.291 (C.40:55D-1 et seq.) or a final municipal building or
45 construction permit on or prior to July 19, 1994, or a residential
46 development which has received preliminary subdivision approval
47 or minor subdivision approval on or prior to July 19, 1994 where no

1 subsequent site plan approval is required, provided that, in any of
2 the cases identified above, construction begins within three years of
3 July 19, 1994, and continues to completion with no lapses in
4 construction activity of more than one year. This subsection shall
5 not apply to any development that required a permit pursuant to
6 P.L.1973, c.185 (C.13:19-1 et seq.) prior to July 19, 1994;

7 b. **【The reconstruction of any development that is damaged or**
8 **destroyed, in whole or in part, by fire, storm, natural hazard or act**
9 **of God, provided that such reconstruction is in compliance with**
10 **existing requirements or codes of municipal, State and federal law】**
11 **(Deleted by amendment, P.L. _____, c. _____) (pending before the**
12 **Legislature as this bill) ;**

13 c. The enlargement of any development if the enlargement
14 does not result in:

15 (1) the enlargement of the footprint of the development; or

16 (2) an increase in the number of dwelling units within the
17 development;

18 d. The construction of a patio, deck or similar structure at a
19 residential development;

20 e. Services provided, within the existing public right-of-way,
21 by any governmental entity which involve:

22 (1) the routine reconstruction, substantially similar functional
23 replacement, or maintenance or repair of public highways;

24 (2) public highway lane widening, intersection and shoulder
25 improvement projects which do not increase the number of travel
26 lanes; or

27 (3) public highway signing, lighting, guiderail and other
28 nonintrusive safety projects;

29 f. **【The expansion of an existing, functional amusement pier,**
30 **provided such expansion does not exceed the footprint of the**
31 **existing, functional amusement pier by more than 25 percent, and**
32 **provided the expansion is located in the area beyond 150 feet**
33 **landward of the mean high water line, beach or dune, whichever is**
34 **most landward】** **(Deleted by amendment, P.L. _____, c. _____) (pending**
35 **before the Legislature as this bill) ; or**

36 g. **【The enclosure of an establishment offering dining, food**
37 **services and beverages that was in operation as of December 18,**
38 **2000 and is located upon a functional pier, provided the enclosure**
39 **only includes an open area which was actively used in the operation**
40 **of the establishment】** **(Deleted by amendment, P.L. _____, c. _____)**
41 **(pending before the Legislature as this bill) .**

42 A development subject to any exemption provided in this section
43 shall be required to satisfy all other applicable requirements of law.
44 (cf: P.L.2001, c.418, s.1)

45
46 3. This act shall take effect immediately, except that section 1
47 shall not apply to any application for a permit issued pursuant to

1 P.L.1973, c.185 (C.13:19-1 et seq.) deemed by the Department of
2 Environmental Protection to be complete for review on or prior to
3 the date of enactment of this act.

4
5
6 STATEMENT
7

8 This bill amends the “Coastal Area Facility Review Act”
9 (CAFRA), P.L.1973, c.185 (C.13:19-1 et seq.), to change the types
10 of development that require a CAFRA permit from the Department
11 of Environmental Protection (DEP).

12 Current law divides the CAFRA area into zones based on
13 proximity to the water, and requires permits for different types of
14 development in each zone based on whether the development is
15 residential, commercial, industrial or public. The law regulates:
16 any activity on a beach or dune; the first use within 150 feet of the
17 mean high water line, beach or dune; and all public or industrial
18 development. In addition, residential and commercial developments
19 are regulated based on their proximity to the mean high water line,
20 or landward limit of a beach or dune, whichever is more landward.
21 Within the first 150 feet of the mean high water line, or landward
22 limit of a beach or dune, if there is already an intervening structure,
23 the law regulates residential development of three or more units and
24 commercial development with five or more parking spaces. Beyond
25 150 feet, the law regulates residential development of 25 or more
26 units and commercial development with 50 or more parking spaces.
27 In addition, the law currently provides a separate threshold for
28 development in a municipality which meets the criteria of a
29 “qualifying municipality” pursuant to section 1 of P.L.1978, c.14
30 (C.52:27D-178), or which is located within the boundaries of a city
31 of the fourth class with a population of over 30,000 persons
32 according to the latest federal decennial census. For these
33 municipalities, for developments beyond 500 feet of the mean high
34 water line, or landward limit of a beach or dune, the law regulates
35 residential development with 75 or more units and commercial
36 developments with 150 or more parking spaces.

37 This bill amends these permitting thresholds. Under this bill, a
38 CAFRA permit would be required for any development within the
39 first 150 feet of the mean high water line, beach or dune, whichever
40 is most landward. Beyond this first 150 feet, the bill would require
41 a CAFRA permit for residential development having three or more
42 dwelling units and commercial development with five or more
43 parking spaces. For development beyond 500 feet of the mean high
44 water line, beach or dune, whichever is most landward, in a
45 municipality which meets the criteria of a “qualifying municipality”
46 pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178), or which is
47 located within the boundaries of a city of the fourth class with a
48 population of over 30,000 persons according to the latest federal

1 decennial census, the bill would require a CAFRA permit for
2 residential development with 25 or more dwelling units and
3 commercial developments with 50 or more parking spaces.

4 In addition, this bill deletes three exemptions currently provided
5 in the law from the CAFRA permitting requirements. The bill
6 deletes the exemptions provided for:

7 (1) the reconstruction of any development that is damaged or
8 destroyed, in whole or in part, by fire, storm, natural hazard or act
9 of God;

10 (2) the expansion of an existing, functional amusement pier,
11 provided the expansion does not exceed the footprint of the
12 existing, functional amusement pier by more than 25 percent, and
13 provided the expansion is located in the area beyond 150 feet
14 landward of the mean high water line, beach or dune, whichever is
15 most landward; and

16 (3) the enclosure of an establishment offering dining, food
17 services and beverages that was in operation as of December 18,
18 2000 and is located upon a functional pier, provided the enclosure
19 only includes an open area which was actively used in the operation
20 of the establishment.

21 The bill would take effect immediately; however, the changes to
22 the permitting thresholds in section 1 of the bill would not apply to
23 any application for a permit deemed by the DEP to be complete for
24 review on or prior to the date of enactment of the bill into law.