

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 and S.Kean

SYNOPSIS

The “Public Access and Marina Safety Act.”

CURRENT VERSION OF TEXT

As introduced.



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.

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38 6. This act shall take effect immediately.
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41 STATEMENT

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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.