

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Third Reprint]

SENATE, No. 1074

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Assembly Appropriations Committee reports favorably Senate Bill No. 1074 (3R), with committee amendments.

Senate Bill No. 1074 (3R) would confirm in the statutes the public rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines. The people's ownership of the tidal waters and adjacent shorelines is held in trust by the State. This bill would ensure that the State, through the Department of Environmental Protection (DEP), protects the public's right of access to public trust lands in the implementation of the "Coastal Area Facility Review Act," R.S.12:5-3 (the waterfront development law), "The Wetlands Act of 1970," the "Flood Hazard Area Control Act," the State's implementation of the federal "Coastal Zone Management Act of 1972," or any other law.

The bill requires the DEP to ensure that any approval, permit, administrative order, or consent decree issued, or other action taken, by the DEP pursuant to the above-cited laws or any other law is consistent with the public trust doctrine. In addition, the bill requires that the DEP ensure that any public funding issued by the DEP, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine.

Further, the bill provides that for any application for a permit or other approval issued pursuant to those laws, where the applicant proposes a change in the existing footprint of a structure or a change in use of the property, or the application involves beach replenishment or beach and dune maintenance, the DEP would be required to review the public access provided and determine whether to require additional public access consistent with the public trust doctrine. In determining the public access that is required at a property, the DEP would be required to consider the scale of the changes to the footprint or use, the demand for public access, and any DEP-approved municipal public access plan or public access element of a municipal master plan. The bill provides that these requirements would apply to any application

for an individual permit submitted on or after the effective date of the bill. In addition, beginning no later than 18 months after the effective date of the bill, these requirements would apply to permits-by-rule, general permits, or general permits-by-certification issued by the DEP as provided in rules and regulations to be adopted pursuant to the bill.

Specifically, the bill requires the DEP, no later than 18 months after the effective date of the bill, to adopt rules and regulations establishing: (1) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review; (2) those permits-by-rule, general permits, and general permits-by-certification for which, consistent with the public trust doctrine, public access would not be required; and (3) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, would not require individual review of public access.

In addition, the bill would prohibit the DEP from adopting any rule or regulation pursuant to the above-cited laws or any other law that mandates on-site public access to the tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at a facility or structure that: (1) is required to submit a security plan under the federal “Maritime Transportation Security Act of 2002”; (2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to regulations adopted by the U.S. Department of Transportation; (3) is required to participate in the U.S. Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards Program; (4) is located at any airport, railroad yard, or nuclear power plant; (5) requires exclusion of the public for security reasons as designated by the New Jersey Office of Homeland Security and Preparedness pursuant to rules and regulations required by the bill by which such facilities will be so designated; or (6) is owned or operated by the New Jersey Department of Military and Veterans’ Affairs, and on which on-site public access is deemed to pose a threat to security or public safety. The rules and regulations adopted by the Office of Homeland Security and Preparedness would be required to ensure that access to tidal waters and their adjacent shorelines nevertheless be provided to the maximum extent feasible and as otherwise permitted by law. The bill would also authorize the DEP to restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

The bill would provide that for marinas in existence on the date of enactment of the bill into law, for any application for a permit or other approval issued by the DEP, if the regulated activity that is the subject of the application is on the marina property, the DEP would require the

applicant to maintain the degree of the existing public access to the waterfront and adjacent shoreline. If the regulated activity affects or diminishes public access on the marina property, the DEP would require equivalent access as a condition of the permit or other approval. If no public access was provided to the waterfront and adjacent shoreline, the DEP could not impose new public access requirements to the waterfront or adjacent shoreline, except as provided in the bill as outlined below regarding beaches.

The bill also provides that, for the development of any marina property that proposes to increase the area of existing development (which includes areas covered by structures and asphalt or other paving) by at least 50 percent, or that proposes to develop property that is not within the parcel of the existing marina development, the applicant would be required to provide a public access plan to the DEP. The bill requires this public access plan to identify: the location and type of public access to be provided; any areas closed to public access because of permanent obstructions or risks due to hazardous operations; and the operating hours of the marina. The plan would also include an explanation of the specific risks and hazards in the areas closed to public access with a description of the areas where public access is enhanced, or where public access is to be provided off site, to compensate for the area closed due to permanent obstructions or risks due to hazardous operations. The bill provides that, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline as identified in the public access plan and approved by the DEP must be provided during the marina's operating hours. Further, the bill requires that any changes to an approved public access plan be submitted to the DEP for review and approval.

If the application for a marina property includes property on which there is a beach, in every case, the DEP must require that public access to the beach and the public's use of the beach is provided as a condition of the permit or other approval, and that activities that have the effect of discouraging or preventing the exercise of public access rights are prohibited. The bill further provides that for the purposes of public access to be provided by marinas, public access includes visual and physical access and includes the following in any combination, as appropriate: (1) a public access way designed in accordance with rules and regulations adopted by the DEP, located parallel to the shoreline with perpendicular access to it; (2) a boat ramp, pier, fishing pier, other facility, or other direct access to the waterway; (3) a waterfront pocket park; (4) public restrooms to accommodate those using the public access; and (5) additional public parking to accommodate those using the public access. In addition, the bill provides that, for public access requirements for marinas, the DEP is required to consider, when determining if public access is sufficient or appropriate, the type of public access available or needed within the area, the compatibility

of the proposed public access with the applicant's proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

Finally, the bill provides that a public access plan element for tidal waters and adjacent shorelines be included, where appropriate, in a municipality's master plan under the "Municipal Land Use Law."

As amended and reported by the committee, Senate Bill No. 1074 (3R) is identical to Assembly Bill No. 4221 (1R) also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments revise the findings and declarations section of the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill could lead to an increase in annual State expenditures, largely driven by the number of permit applications submitted to the DEP for review, and therefore cannot be estimated by OLS.

The bill requires the DEP to review certain permit applications to assess the amount of public access to tidal waters and adjacent shorelines provided at the site and to determine whether to require additional access as a condition of the permit. This may add a layer of complexity to the DEP's permit review process, which could result in additional marginal yearly administrative costs.

The OLS notes that the DEP would incur a marginal one-time administrative cost to adopt rules and regulations to implement public access requirements for certain general permits, permits-by-rule, and general permits-by-certification. The Office of Homeland Security and Preparedness would also incur a marginal one-time administrative cost to adopt rules and regulations establishing the process for the exclusion of certain facilities from public access for homeland security reasons.

Finally, certain municipalities may incur marginal costs to include, if appropriate, a public access plan element for tidal waters and adjacent shorelines in the municipality's master plan under the "Municipal Land Use Law."