

Smith-Van Drew Bill To Ensure Public Access to Waterfront Areas Now Law

Follows December 22nd Court Decision Invalidating DEP Authority

TRENTON – Responding to a recent court ruling that threatens public access to New Jersey’s beaches and other waterfront areas, Senators Bob Smith and Jeff Van Drew sponsored legislation to establish by law the state’s authority to set rules for public access to land along the ocean, rivers and bays. The bill, which was approved under an expedited process, is now law.

“This was an emergency situation for the state. The court ruling questioned the authority of the DEP to regulate waterfront access, and invalidated its rules governing this area. We had to act quickly to ensure chaos did not ensue, and that’s what we did,” said Senator Smith (D-Middlesex). “This clarifies that the DEP has the authority to regulate access to the state’s waterfront lands and keeps in place the current rules to do so. We recognize there are varying positions on the state’s rules, and while this law will not change the previously adopted regulations, we are working to create a committee made up of stakeholders to study this issue and come back to us with recommendations.”

“New Jersey’s waterfront areas are important to our economy, to tourism and the quality of life of our residents, so protecting the state’s authority to regulate waterfront access is a priority,” said Senator Van Drew (D-Cape May, Cumberland, Atlantic). “Since the recent court ruling could potentially have resulted in limits being placed on public access and could have jeopardized coastal protection programs, we decided we had to take emergent action. This law confirms the state’s authority to regulate waterfront access, protecting our coastal areas and all of the important benefits they provide to the state.”

The bill (S-3321) was introduced in response to the Appellate Division decision issued on December 22, 2015 in *Hackensack Riverkeeper, Inc. and NY/NJ Baykeeper v. New Jersey Department of Environmental Protection* that invalidated the DEP’s public access rules. In testimony before the Senate Environment and Energy Committee, DEP Commissioner Bob Martin said the ruling directly affected the nearly 1,300 access points along the 127 miles of beaches of the state, and directly impacted 120 towns and cities impacted by tidally flowed rivers. He added that the ruling also threatened completion of coastal protection projects along the shorelines since the Army Corps of Engineers was likely to suspend work until the matter is resolved.

The law confirms the authority of the Department of Environmental Protection (DEP) to require, as a condition of (1) an approval issued pursuant to R.S.12:5-3 (regulating waterfront development), or (2) a permit issued pursuant to the “Coastal Area Facility Review Act,” that the applicant provide on-site public access to the waterfront and adjacent shoreline, or off-site public access if the department determines that on-site public access is not feasible.