



LEGISLATIVE VIEWPOINT

New Jersey State League
of Municipalities

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February 5, 2018

Re: S-1074, Public Access

Dear Members of the Senate Environment and Energy Committee:

Please accept the following comments regarding S-1074, which is scheduled for consideration before the Senate Environment Committee on Monday, January 9. The League has carefully reviewed this legislation and reiterates the concerns we cited in our August 17, 2017 letter to the sponsors and this committee.

The underlying problem with S-1074, as introduced, is one of vagueness and lack of guidance, specifically regarding the scope of delegation to the NJDEP.

In Section 2, NJDEP is required to ensure that approvals, permits, administrative orders or consent decrees issued, or other actions taken by NJDEP under the Coastal Area Facility Review Act, and the other statutes referenced in the Section, are consistent with the public trust doctrine. NJDEP is further required to ensure that any public funding issued, and any action taken on a project using public funding, is consistent with the public trust doctrine.

Section 2 is altogether too vague and leaves the determination of the public trust consistency of the permits, administrative orders, consent decrees or actions taken to NJDEP, without any specific guidelines or guidance. There is no specific definition of “public trust doctrine.” There is also no requirement that NJDEP issue administrative regulations providing a mechanism and process for the public trust doctrine consistency determination. Section 2’s vagueness regarding NJDEP’s determination of public trust doctrine consistency, the lack of definition of “public trust doctrine”, and the failure to provide a specific mechanism and process for public trust consistency determinations needs to be corrected.

Section 6 appears to require municipalities to include a public access plan element in their municipal master plans. The League feels strongly that these public access elements must respect the municipalities’ police power authority to operate and regulate the shorelines and beaches in the interest of public health and safety, and must accommodate local conditions. The Appellate Division in Borough of Avalon v. New Jersey Dep’t. of Env’tl. Prot., 403 N.J. Super. 590 (App. Div. 2008), recognized municipalities have the police power authority to operate and regulate the shorelines and beaches and acknowledged that municipalities are in a better position than NJDEP to deal with public safety risks and to accommodate local conditions.

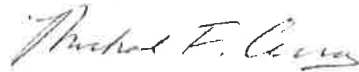
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“We also note that the circumstances in municipalities bordering on the ocean and other tidal waterways vary greatly A municipality that owns and operates property adjoining the ocean or other tidal waterway is in a better position than the DEP to determine whether the nature of its property and the public safety risks present within its community require the closing of that area at certain times.” Id. at 600

Accordingly, the list of points included in Section 6(17) of the bill should include the language “consistent with public health and safety and local conditions.”

There is also no indication of how development of these municipal public access plan elements will be funded. The Legislature should not impose an unfunded mandate on municipalities by requiring them to expend funds to develop these municipal public access plan elements. We would appreciate your consideration of these concerns.

Very truly yours,

A handwritten signature in cursive script that reads "Michael F. Cerra".

Michael F. Cerra
Assistant Executive Director &
Director of Government Affairs

MFC/sc