NEW JERSEY CHAPTER

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The Honorable Phil Murphy

Governor of New Jersey

Office of the Governor

PO Box 001

Trenton, NJ  08625

Re: Pending legislation **S1074 (Smith)/A4221 (Pinkin)**

April 5, 2019

Dear Governor Murphy,

We know you are concerned that the people of New Jersey have access to beaches and waterfront areas they own. We are concerned about what is happening to amendments of Bill **S1074 (Smith)/A4221 (Pinkin)** that started out to ensure public access. The original bill had widespread support from businesses, beach advocates and environmental groups, including the New Jersey Sierra Club, but last-minute amendments weakened it. Section 1d originally said that the state “shall” protect public access, and that was changed to “has a duty to” protect access, a weaker requirement. Section 1e went from saying access will be provided when “possible,” which was strong, to “practicable,” which is weak. We ask that you conditionally veto the bill to require the original language of the bill be restored to Sections 1d and 1e. We also ask that the conditional veto require Section 8 of the bill be changed from saying DEP “may” adopt rules implementing the legislation to DEP “shall” adopt rules. These changes will allow the bill to accomplish what it is supposed to accomplish in protecting public beach access.

The new amendments to the bill in Section 1d state “**[**The**]** Pursuant to the public trust doctrine, the**1** State of New Jersey **1[**has a duty to**]** **2[**shall**1]** has a duty to**2** promote, protect, and safeguard the public’s rights and **1[**to**]1** ensure reasonable and meaningful public access to tidal waters and adjacent shorelines.”

By changing from “has a duty to” to “shall,” the bill becomes too vague and open to interpretation. Some towns that have denied public access to beaches and waterfront areas in the past will continue to do so. The bill codifies the public trust doctrine, which is important, but there is no real implementation.

The amended version of Section 1e reads, “The Department of Environmental Protection **3[**has the authority and the duty to**]** **4[**shall**3]** has the authority and the duty to**4** protect the public’s right of access to tidally flowed waters and their adjacent shorelines under the public trust doctrine and statutory law.  In so doing, the department **3[**has the dutyto**]** **4[**shall**3]** has the duty to**4** make all tidal waters and their adjacent shorelines available to the public to the greatest extent **3[**possible**]** practicable**3**.”

The change from “possible” to “practicable” when it comes to public access is the most significant change in the amended bill. Practicable means current practice, or reasonableness. That means nothing will change. Some towns will decide they can continue to make it difficult for people to access beaches, or prevent access altogether.

Section 8 of the bill now reads   **3**The department may adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.    , c.   (C.        ) (pending before the Legislature as this bill).**3**

DEP should be required to adopt rules by changing “may” to the stronger “shall.” Giving DEP an option with the weaker language would eliminate any assurances that the legislation will be properly implemented. That would allow some towns to continue blocking access to beaches.

There are too many places in our state where private beachfront homeowners want the public’s money, but they don’t want the public to be there. The amended beach access legislation is a step backwards toward preventing that. People deserve access to beaches they are paying millions of dollars to restore. You have pledged a stronger and fairer New Jersey. We ask that you help make that happen with a conditional veto of the beach access bill.

I would be happy to discuss the issue with you further. Please feel free to reach out at any time at 609-558-9100.

Sincerely,



Jeff Tittel, Director, NJ Sierra Club