

SENATE, No. 488

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1996

By Senator CIESLA

1 AN ACT concerning public beaches and boardwalks and amending and
2 supplementing various sections of the "New Jersey Tort Claims
3 Act," P.L.1972, c.45.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. N.J.S.59:2-3 is amended to read as follows:

9 59:2-3. Discretionary activities.

10 a. A public entity is not liable for an injury resulting from the
11 exercise of judgment or discretion vested in the entity;

12 b. A public entity is not liable for legislative or judicial action or
13 inaction, or administrative action or inaction of a legislative or judicial
14 nature;

15 c. A public entity is not liable for the exercise of discretion in
16 determining whether to seek or whether to provide the resources
17 necessary for the purchase of equipment, the construction or
18 maintenance of facilities, the hiring of personnel and, in general, the
19 provision of adequate governmental services;

20 d. A public entity is not liable for the exercise of discretion when,
21 in the face of competing demands, it determines whether and how to
22 utilize or apply existing resources, including those allocated for
23 equipment, facilities and personnel unless a court concludes that the
24 determination of the public entity was palpably unreasonable. Nothing
25 in this section shall exonerate a public entity for negligence arising out
26 of acts or omissions of its employees in carrying out their ministerial
27 functions.

28 e. As used in this act, "the exercise of judgment or discretion"
29 includes any decision to open, or to close to the public, any public
30 beach.

31 (cf: P.L.1972, c.45, s.59:2-3)

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. N.J.S.59:4-2 is amended to read as follows:

2 59:4-2. Liability generally.

3 [A] a. Except as provided in subsection b. of this section, a public
4 entity is liable for injury caused by a condition of its property if the
5 plaintiff establishes that the property was in dangerous condition at the
6 time of the injury, that the injury was proximately caused by the
7 dangerous condition, that the dangerous condition created a
8 reasonably foreseeable risk of the kind of injury which was incurred,
9 and that either:

10 a. a negligent or wrongful act or omission of an employee of the
11 public entity within the scope of his employment created the dangerous
12 condition; or

13 b. a public entity had actual or constructive notice of the dangerous
14 condition under section 59:4-3 a sufficient time prior to the injury to
15 have taken measures to protect against the dangerous condition.

16 Nothing in this section shall be construed to impose liability upon
17 a public entity for a dangerous condition of its public property if the
18 action the entity took to protect against the condition or the failure to
19 take such action was not palpably unreasonable.

20 b. A public entity is not liable for injury caused by a condition of
21 a boardwalk if, at the time the injury was received, the public entity
22 can demonstrate that it was operating under an ongoing maintenance
23 plan calling for periodic review and repair of the boardwalk.

24 (cf: P.L.1972, c.45, s.59:4-2)

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26 3. N.J.S.59:4-8 is amended to read as follows:

27 N.J.S.59:4-8. Condition of unimproved public property--immunity.

28 Neither a public entity nor a public employee is liable for an injury
29 caused by a condition of any unimproved public property, including
30 but not limited to any natural condition of any lake, stream, bay, river
31 or beach.

32 As used in this section, "unimproved public property" includes any
33 public beach, regardless of whether a jetty, pier or other similar
34 structure has been constructed.

35 (cf: P.L.1972, c.45, s.59:4-8)

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37 4. (New section) Neither a public entity nor a public employee is
38 liable for an injury arising out of any act of commission or omission by
39 a person serving as a lifeguard in the course of rendering lifeguard
40 services.

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42 5. This act shall take effect immediately.

STATEMENT

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3 This bill would provide immunity to public entities for injuries
4 occurring on public beaches. Currently, under the provisions of the
5 Tort Claims Act (N.J.S.A.59:1-1 et seq.), public entities are immune
6 from injury "caused by a condition of any unimproved public property,
7 including but not limited to any natural condition of any . . . beach."
8 However, despite this language, in many cases municipalities still have
9 been forced to pay large amounts of money in damages for claims by
10 swimmers injured in the ocean. The bill would clarify and strengthen
11 the language of the Tort Claims Act in this regard, providing that
12 public entities are immune for these accidents regardless of the
13 circumstances under which they occur.

14 Public entities have also incurred large costs in defending lawsuits
15 by persons injured while walking on municipal boardwalks. Under the
16 bill, a public entity would be immune from such suit if it can
17 demonstrate that it complied with an ongoing maintenance plan to
18 periodically review and repair the boardwalk.

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23 Strengthens public entities' immunity for damages against claims of
24 injury occurring on public beaches and boardwalks.