

SENATE CONCURRENT RESOLUTION No. 71

STATE OF NEW JERSEY

INTRODUCED MAY 16, 1996

By Senator SCOTT

1 A CONCURRENT RESOLUTION concerning legislative review of Department
2 of Environmental Protection regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey.

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5 **BE IT RESOLVED** by the Senate of the State of New Jersey (the General
6 Assembly concurring):

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8 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of
9 the State of New Jersey, the Legislature may review any rule or regulation
10 adopted by an administrative agency to determine if the rule or regulation is
11 consistent with the intent of the Legislature as expressed in the language of the
12 statute which the rule or regulation is intended to implement.

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14 2. The Legislature enacted R.S.12:5-1 et seq., commonly known as the
15 "Waterfront Development Act" or the "Waterfront Development Law," to
16 regulate development of any waterfront upon any navigable water or stream
17 of the State or bounding thereon. The objective of the law is to regulate
18 commercial development of waterfront to facilitate navigation and commerce.
19 The act thus provides for the submission to the Department of Environmental
20 Protection of any plan for improvement or development along a waterfront,
21 including any general plan or portion thereof that involves the construction or
22 alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable or any other
23 kind of waterfront development, and that no such plan may be commenced or
24 executed without the approval of the department.

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26 3. The rules and regulations adopted by the department to implement the
27 "Waterfront Development Act" include provisions concerned with public
28 access to the waterfront. Specifically, those regulations, which are set forth
29 at N.J.A.C. 7:7E-8.11 and associated sections, authorize the department,
30 when evaluating whether to issue a waterfront development permit, to require
31 that "all development adjacent to water shall, to the maximum extent
32 practicable, provide within its site boundary, a linear waterfront strip
33 accessible to the public." The regulations, among other things, further require
34 that the public access "must be clearly marked, provide parking where
35 appropriate," and "be designed to encourage the public to take advantage of

1 the waterfront setting." In addition, the regulations require, for both natural
2 and developed waterfront areas, "permanent perpendicular and linear access
3 to the waterfront to the maximum extent practicable, including both visual and
4 physical access."
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6 4. a. The "Waterfront Development Act" does not expressly require a
7 permittee to provide public access over or through private property or to
8 finance and construct a public pathway or park as a condition of receiving a
9 permit.

10 b. Imposing such a condition for approval of a permit could possibly
11 constitute a taking of private property without just compensation in violation
12 of both the United States Constitution and the Constitution of the State of
13 New Jersey, a result plainly not within the intent of the Legislature when it
14 enacted the "Waterfront Development Act."

15 c. The regulations concerning public access to the waterfront fail to
16 reasonably distinguish between uses of property to determine when such
17 access may be entirely inappropriate or even unsafe to the public. Public
18 access is apparently required by the regulations even when the property is
19 industrial or surrounded by other industrial uses, thus requiring a permittee to
20 expend private funds for public pathways and parks that perhaps cannot be
21 safely used by the public or which, because of their location in a highly
22 developed industrial area, are unlikely to attract the public.
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24 5. For all of the above reasons, the Legislature therefore finds that the
25 public access requirements set forth in N.J.A.C. 7:7E-8.11 and any associated
26 regulations are not consistent with the intent of the Legislature as expressed in
27 the language of the "Waterfront Development Act," R.S.12:5-1 et seq., which
28 the regulations are intended to implement.
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30 6. The Secretary of the Senate and the Clerk of the General Assembly
31 shall transmit a duly authenticated copy of this concurrent resolution to the
32 Governor and the Commissioner of Environmental Protection.
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34 7. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of
35 the State of New Jersey, the Commissioner of Environmental Protection shall
36 have 30 days following transmittal of this resolution to amend or withdraw the
37 regulations codified at N.J.A.C. 7:7E-8.11 and associated sections or the
38 Legislature may, by passage of another concurrent resolution, exercise its
39 authority under the Constitution to invalidate those regulations in whole or
40 in part.
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42 STATEMENT
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1 This concurrent resolution embodies the finding of the Legislature that the
2 regulations of the Department of Environmental Protection concerning public
3 access to waterfront areas, codified at N.J.A.C. 7:7E-8.11 and associated
4 sections, are not consistent with legislative intent pursuant to Article V,
5 Section IV, paragraph 6 of the State Constitution.

6 The concurrent resolution finds that the regulations requiring permittees
7 under R.S.12:5-1 et seq., commonly known as the "Waterfront Development
8 Act" or the "Waterfront Development Law," to provide public access to the
9 waterfront to the maximum extent practicable are not expressly authorized by
10 the act, may cause unconstitutional takings of private property without just
11 compensation, and do not distinguish appropriately between uses of the
12 property when imposing such a requirement.

13 The Commissioner of Environmental Protection will have 30 days to
14 withdraw or amend the inconsistent regulations or the Legislature may, by the
15 passage of another concurrent resolution, invalidate the regulations in whole
16 or in part.

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21 Determines that public access regulations for "Waterfront Development Act"
22 are inconsistent with legislative intent.